

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA CHILDREN'S SERVICES,
CUPERTINO UNION SCHOOL
DISTRICT, AND SANTA CLARA
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012080386

ORDER GRANTING MOTION TO
DISMISS BY CUPERTINO UNION
SCHOOL DISTRICT AND SANTA
CLARA COUNTY OFFICE OF
EDUCATION

On August 13, 2012, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Cupertino Union School District (District), Santa Clara County Office of Education (SCCOE), and California Children's Services (CCS).¹ On September 13, 2012, Student informed OAH that Student had reached a settlement with the District and SCCOE, which dismissed those parties with prejudice. On September 14, 2012, OAH dismissed the District and SCCOE as parties.

On October 26, 2012, CCS filed a motion to add the District and SCCOE as parties. CCS also sought dismissal of Student's action, asserting that OAH does not have jurisdiction to hear Student's claims against CCS. On October 31, 2012, the District and SCCOE filed an opposition as to the motion to add them as parties. On October 31, 2012, Student filed an opposition to the motion to add parties and motion to dismiss. On November 6, 2012, the undersigned Administrative Law Judge (ALJ) denied CCS's motion to add the District and SCCOE as parties and its motion to dismiss.

On November 5, 2012, apparently in anticipation of the prehearing conference (PHC), CCS again filed a motion to be dismissed from Student's complaint because OAH lacked jurisdiction, and to join the District and SCCOE as parties. CCS also sought to have the issues in this proceeding limited to whether the occupational therapy and physical therapy services provided to Student were medically necessary, arguing that Chapter 26.5 only required it to provide medically necessary services to students.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

At the PHC on November 14, 2012, ALJ Deidre L. Johnson granted Student leave to amend his complaint, rendering CCS's pending motions moot, but expressly allowed CCS to "renew any appropriate motion in light of Student's amended complaint." Student's amended complaint specified that the equipment CCS had failed to provide was a wheelchair, and further alleged that CCS had denied Student a free appropriate public education (FAPE) for the 2011-2012 and 2012-2013 school years by failing to adequately assess Student for occupational therapy and physical therapy, to ensure that Student's IEP contained appropriate occupational therapy and physical therapy goals, to attend IEP team meetings or appropriately participate in the IEP team process.

On December 17, 2012, CCS filed a motion to limit issues, or in the alternative, to join the District and SCCOE as parties. On December 17, 2012, the District and SCCOE filed opposition to the motion to join. On December 18, Student filed opposition to the motion. On December 27, 2012, ALJ Alexa J. Hohensee granted CCS's motion and joined the District and SCCOE as parties to this action based on the fact that Student filed an amended complaint to allow CCS to raise further argument why the District and SCCOE should remain as parties. However, the December 27, 2012 order provided no final assurance that the District or SCCOE would remain as parties or prevented them from filing their own motion to dismiss.

On February 1, 2013, the District and SCCOE filed a motion to dismiss on the grounds that they have settled the underlying dispute between themselves and Student, and CCS's request that they remain as a party is not an issue over which OAH has jurisdiction as another administrative forum exists for CCS to exert any claims over the District and SCCOE regarding legal and financial responsibility regarding Student. On February 5, 2013, Student filed a non-opposition to the District's and SCCOE's motion. On February 8, 2013, CCS filed an opposition to the District's and SCCOE's motion.²

APPLICABLE LAW

Regarding joinder of a party, OAH considers the requirements of the Code of Civil Procedure. Under that Code, a "necessary" party may be joined upon motion of any party. Section 389, subdivision (a) of the Code of Civil Procedure defines a "necessary" party as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be

² On February 11, 2013, the District and SCCOE filed a motion to have OAH reject CCS's opposition brief for being untimely filed. CCS filed a response to that request on February 12, 2013, which also requested sanctions. The District's and SCCOE's motion to strike is denied, and CCS's request for sanctions is denied also.

accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 & 56028.5.)

Title 34, Code of Federal Regulations, parts 300.33 states that a “[p]ublic agency includes the SEA [state educational agency], LEAs [local educational agencies], ESAs [educational service agencies], nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (Accord, Ed. Code, § 56500.)

Chapter 26.5 of the Government Code requires that disputes concerning CCS’s provision of related services be resolved in special education due process hearings. Section 7586, subdivision (a), provides that “[a]ll state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code.”

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

The District and SCCOE request to be dismissed as parties because they have reached an agreement with Student that dismisses them as parties. CCS argues against this contention, asserting that the District and SCCOE are the responsible local education agencies for providing Student with FAPE, and that CCS’s responsibility is only to provide medically necessary services.

However, CCS does not set forth any new factual or legal authority for OAH not to dismiss a party who has been dismissed pursuant to a settlement agreement. Additionally, CCS fails to bring sufficient legal authority to support its position that OAH lacks jurisdiction to hear claims regarding its legal obligation to provide Student with occupational therapy and physical therapy services due to the severity of his disabilities.³ CCS ignores the statutory obligation that any dispute between CCS and the District and SCCOE regarding responsibility for providing occupational therapy and physical therapy services must be resolved by requesting an administrative hearing pursuant to Government Code section 7585. Finally, CCS, as a state agency, cannot file a request for a due process hearing against another public agency pursuant to Education Code section 56501, which is in fact what CCS's motions to add the District and SCCOE constituted. (Govt. Code, § 7585, subd. (d).) Therefore, the District and SCCOE established the legal authority that OAH lacks the authority to maintain the District and SCCOE as a parties to this action.

CCS contends that OAH does not have jurisdiction to hear Student's claims against CCS regarding its purported failure to provide Student with medically necessary occupational therapy and physical therapy services and its failure to attend individualized education program team meetings. CCS contends that because OAH lacks jurisdiction, it cannot be considered a responsible public agency, and that the District and SCCOE are responsible for educationally necessary occupational therapy and physical therapy services as the responsible local education agencies. Additionally, CCS asserts that procedural violations alleged in Student's complaint, which are imposed by the Individuals with Disabilities in Education Act (IDEA), are not applicable to CCS.

However, CCS's legal reasoning was rejected in *Student v. California Children's Services* (April 19, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2011060589, pp. 12-15.⁴ CCS in this present motion to dismiss does not bring forth any additional factual or legal argument to distinguish this case from the April 19, 2012 decision against it, except to state that the prior

³ OAH's granting of CCS's December 17, 2012 motion to limit issues, or in the alternative, to join the District and SCCOE as parties, was based on the possibility that Student's amended complaint might provide grounds for the District and SCCOE to be parties in this matter. However, the amended complaint provided no additional grounds for the District and SCCOE to remain as parties after their settlement agreement with Student than what existed in the original complaint.

⁴ This case set forth that the legal reasoning why *Nevada County Office of Educ. v. Riles* (1983) 149 Cal.App.3d 767, which would support CCS' position that it is not a responsible public agency under IDEA or implementing California special education laws and regulations, is no longer persuasive authority due to subsequent changes to Chapter 26.5 of the Government Code.

OAH decision was not correct.⁵ This decision followed long standing precedent in California. (*Student v. Fresno Unified School District* (June 15, 2001) 102 LRP 4471.)⁶

While CCS may not prefer to have a dispute regarding services it provides to children who also receive special education services heard before OAH pursuant to the IDEA and implementing California special education laws and regulations, the California Legislature has determined otherwise.⁷ Therefore, the District's and SCCOE's motion to be dismissed as parties is granted as the amended complaint did not add new issues not covered by the settlement agreement between Student and the District and SCCOE.

ORDER

1. The District's and SCCOE's motion to be dismissed as parties is granted.
2. This matter shall proceed as scheduled against CCS.

Dated: February 13 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁵ Prior administrative decisions have persuasive value in later cases, although they are not binding precedent. (Cal. Code Regs., tit. 5, § 3085.) CCS did not appeal this decision.

⁶ "The Hearing Office may have jurisdiction over CCS in cases where CCS is a 'public agency providing special education or related services' and is involved in decisions regarding the student. (See Education Code §§ 56500, 56501(a).) Government Code section 7586, subdivision (a) provides that issues regarding a related service shall be resolved via a due process proceeding, and the decision from such proceeding shall be binding on the state department or designated local agency having responsibility for providing the services to the student." (*Ibid.*)

⁷ CCS makes similar arguments regarding legal liability as county mental health agencies that also used to be covered by similar legal requirements in Chapter 26.5 of the Government Code for special education students, who required mental health services. The California Legislature terminated these previous legal obligations it had placed upon county mental health agencies and returned the obligation to provide educationally necessary mental health services to local educational agencies. (*Student v. Oakland Unified School District* (November 5, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2012040848, pp. 47-48.)