

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL
DISTRICT and SAN MATEO COUNTY
MENTAL HEALTH.

OAH CASE NO. 2009030672

ORDER DENYING SAN MATEO
COUNTY MENTAL HEALTH'S
MOTION TO DISMISS

On March 12, 2009, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) naming the Oakland Unified School District (Oakland), the Jefferson Union High School District (Jefferson Union), and San Mateo County Mental Health (Mental Health) as respondents. On April 3, 2009, OAH found Student's complaint sufficient as to the allegations against Mental Health. On April 21, 2009, OAH dismissed Oakland as a party to this action based upon a settlement between it and Student.

On April 3, 2009, Mental Health filed a motion to dismiss it as a party to this action.¹ Mental Health contends that Student's complaint fails to raise any facts upon which OAH could conclude that Mental Health violated Student's federal or state statutory rights with regard to the provision of mental health services. Mental Health states that on its face, Student's complaint admits that Mental Health assessed Student within the statutory guidelines found in Title 2, California Code of Regulations section 60045. Since Student admits that Mental Health timely assessed her, Mental Health posits that Student's complaint fails to raise any viable cause of action against it. Mental Health further appears to be making an argument that Student's causes of action against it are not ripe. Mental Health points out that Jefferson Union referred Student to it for an assessment approximately March 10, 2009, and that it completed its assessment of her a day later, on March 11, 2009. Since a mental health agency has 50 days to assess a student under the applicable regulations (Cal. Code Regs., tit. 2, § 60045, subd. (d)), Mental Health contends that it had until at least mid – to – late April to complete its assessment of Student. Mental Health then extrapolates that at least as of the date it filed its motion to dismiss (April 3, 2009), it was fully compliant with all relevant statutes and that Student raises no other allegations that Mental Health has not or is not fully discharging its statutory duties. Both of Mental Health's arguments are unpersuasive.

¹ Student has not filed an opposition to Mental Health's motion to dismiss.

Mental Health's contentions miss the crux of the allegations that Student has raised against it. Student does not allege that Mental Health failed to meet its statutory obligations to timely assess Student. Rather, Student contends that her IEP team concluded that she qualified for special education under the category of emotional disturbance, that her team referred her to Mental Health for an assessment, but that neither Jefferson Union nor Mental Health has offered her a placement and services. Student contends that Jefferson Union and Mental Health take the position that they are not obligated to offer Student a placement and/or services until she returns to the District from the out-of-state residential treatment center at which Student's parents placed her. Student contends that Jefferson Union and Mental Health are incorrect in that position and that by failing to offer Student a placement and/or services to address her needs they are substantively denying her a free appropriate public education. Student alleges therefore that the respondents have refused to hold an individualized education program (IEP) meeting to address her placement needs, *not* that the respondents have failed to timely hold the meeting. Student's allegations raise at least a colorable claim of a violation of Student's federal and state rights as a student with special needs, upon which OAH has authority to rule.²

GOOD CAUSE APPEARING, Mental Health's Motion to Dismiss is denied. The matter shall proceed as scheduled.

It is so ordered.

Dated: April 21, 2009

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

² Mental Health did not provide any evidence in its motion to dismiss, or otherwise state, that an IEP team meeting was contemplated, scheduled, and/or held within the applicable 50-day timeline.