

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY DEPARTMENT  
OF MENTAL HEALTH

OAH CASE NO. 2010071074

ORDER DENYING MOTION TO  
DISMISS

On July 26, 2010, Student's Parent (Student) filed a Due Process Hearing Request (complaint), naming Los Angeles County Department of Mental Health (DMH) as respondent. The operative pleading, the First Amended Complaint, was filed on August 4, 2010.<sup>1</sup> That complaint alleges that, for the 2009-2010 school year, DMH failed to provide FAPE by failing to adhere to the requirements of Education Code section 56043, subdivision (i), which requires IEPs to be implemented as soon as possible after the IEP team meeting. The complaint alleges that DMH failed to provide a reassessment pursuant to an April 15, 2010 IEP. Student's proposed resolutions are that DMH be ordered: 1) to pursue internal quality assurance measures; 2) to train all staff who provide AB 3632 services; 3) to provide verification of staff training to parent within 90 days; and 4) to pay attorney's fees for the paralegal, student's parent.

On September 8, 2010, DMH filed a motion to dismiss Student's complaint on the basis that OAH did not have subject matter jurisdiction, but rather was the administrative jurisdiction of the California Department of Education (CDE). The matter was identified by case number, and a CDE hearing had been held.

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<sup>1</sup> On July 28, 2010, DMH challenged the sufficiency of the complaint. On July 29, 2010, ALJ Castillo determined the complaint to be insufficient and allowed Student 14 days to amend his complaint and correct the deficiencies. On August 4, 2010, Student filed his first amended complaint pursuant to the Determination of Insufficiency. On August 25, 2010, Student filed a Motion to Amend the Due Process Hearing Request (second amended complaint). ALJ Pasewark denied Student's motion to amend his second amended complaint because Student provided no factual allegations to support his claim of FAPE denial. She determined the second amended complaint was subject to the same concerns and insufficiencies as defined in the July 28, 2010 Determination of Insufficiency. All dates were kept on calendar.

## APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A student who has been determined to be an individual with exceptional needs, or is suspected of needing mental health services, after parental consent, may be referred to a community mental health service in accordance with Government Code section 7576 when the student meets the criteria for referral specified in California Code of Regulations, title 2, section 60040, and the school district has, in accordance with specific requirements, prepared a referral package and provided it to the community mental health service. (Ed. Code section 56331, subdivision (a); Cal. Code Regs., tit. 14, section 60040, subd. (a).)

The IDEA requires each state to implement a complaint review process for state administrative compliance complaints. (34 C.F.R. § 300.151 (2006).) The California Department of Education (CDE) Special Education Quality Assurance Process (QAP) evaluates school district, county office of education, and Special Education Local Planning Area (SELPA) compliance with federal and state laws and regulations. When a district, SELPA, or county office of education fails to comply substantially with a provision of law regarding special education and related services, the State Superintendent of Public Instruction may apply sanctions (e.g., special conditions, withholding funds, writ of mandate).

"Substantial noncompliance" means an incident of significant failure to provide a child with a disability with a FAPE, an act which results in the loss of an educational opportunity to the child or interferes with the opportunity of the parents or guardians of the pupil to participate in the formulation of the individual education program, a history of chronic noncompliance in a particular area, or a systemic agency-wide problem of noncompliance. (Cal. Code Regs., title 2, § 3088.1)

Education Code section 56507 authorizes the due process hearing officer to determine who is the prevailing party, but attorney's fees may be awarded only by a court of competent jurisdiction or by agreement between the parties. A state compliance complaint is not an "action or proceeding brought under the [adjudicatory provision] of the IDEA., and therefore, attorney's fees are not available. (OSEP's commentary to the 2006 regulations, 71 Fed Reg. 46,602 (August 14, 2006).)

#### DISCUSSION

DMH alleges that Student's complaint contains proposed resolutions which relate to a CDE compliance complaint. DMH alleges that OAH has no jurisdiction over compliance complaint claims.

Student's complaint pleads the denial of a FAPE in two respects, as required by Education Code 56502. Student's four proposed resolutions, which must be plead to the extent known and available to the parties under the IDEA, are not required to be specific or sufficient at the pleading stage. The proposed resolutions are not determinative of OAH's jurisdiction, but rather the FAPE issues plead are the determinative factors. Because Student's stated issues fall within FAPE claims, OAH has jurisdiction and there are no grounds for dismissal of the complaint prior to adjudication.

#### ORDER

DMH's Motion to Dismiss is denied. All dates remain on calendar..

IT IS SO ORDERED.

Dated: September 21, 2010

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings