

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RED BLUFF UNION ELEMENTARY  
SCHOOL DISTRICT, RED BLUFF UNION  
HIGH SCHOOL DISTRICT, ANTELOPE  
ELEMENTARY SCHOOL DISTRICT,  
TEHAMA COUNTY DEPARTMENT OF  
EDUCATION AND TEHAMA COUNTY  
MENTAL HEALTH.

OAH CASE NO. 2011031548

ORDER DENYING TEHAMA  
COUNTY MENTAL HEALTH'S  
MOTION TO DISMISS

On March 29, 2011 Student filed a Due Process Complaint Notice<sup>1</sup> (complaint) naming, among others, Tehama County Mental Health (TCMH) as a Respondent. As to TCMH, Student's complaint alleged, in pertinent part, that in January 2009 upon Mother's request, Student began receiving counseling services from TCMH, that Student was treated in TCMH's crisis unit periodically, and that Student's parents notified TCMH they had placed Student in an out-of-state residential facility in December 2010. On January 27, 2011, Parents consented to a mental health assessment. Student's complaint alleged that TCMH, among the other respondents, never referred Student for special education services or provided Student's parents with notice of their procedural rights.

On April 8, 2011, TCMH timely filed, as one document, a Response to Due Process Complaint, Notice of Insufficiency (NOI), and Motion for Dismissal, arguing that the complaint failed to allege specific facts that demonstrated that any of the other respondents ever made a referral for a mental health assessment to TCMH until January 27, 2011, or that any of TCMH's actions amounted to a denial of FAPE.

By Order dated April 11, 2011, Office of Administrative Hearings (OAH) denied TCMH's NOI and Motion for Dismissal, finding that the complaint was sufficiently pled to put TCMH on notice of Student's claims, and that the merits of Student's claims could only be decided after giving Student an opportunity to make a factual record.

---

<sup>1</sup> 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).

On May 10, 2011, TCMH filed a Motion to Dismiss the County as a Party, which re-argued the same contentions as were stated in its April 8, 2011 NOI and Motion, namely that Student's complaint failed to allege facts demonstrating that the other respondents ever made a referral for a mental health assessment to TCMH until January 27, 2011, or that any of TCMH's actions amounted to a denial of FAPE.

Additionally, TCMH argued that OAH lacks jurisdiction over it by virtue of former Governor Schwarzenegger's veto of funding and suspension of the mandate for county mental health agencies to provide services under AB3632, upheld by the court of appeal in its decision in *California School Boards Ass'n, et al. v. Brown, et al.* (2011) 192 Cal.App.4th 1507, petn. for review pending, petn. filed April 16, 2011 (S191952) (*California School Boards*). TCMH asserts that because of the veto and the suspension of the mandate, it has no obligation to provide services to Student or to any other child under AB3632 for fiscal year 2010-2011, and is therefore not an appropriate respondent in this case.

On May 13 and 16, 2011, all other parties filed oppositions to TCMH's Motion, arguing that: (1) TCMH's contentions had already been determined by OAH's prior order; (2) the complaint stated allegations pre-dating the Governor's veto of funding and suspension of the mandate for county mental health agencies under AB3632; and (3) a petition for review of *California School Boards* has been filed with the California Supreme Court, rendering dismissal of TCMH on jurisdictional grounds premature.

## DISCUSSION

As an initial matter, TCMH's restated contentions, already made in its April 8, 2011 NOI and Motion, have already been considered in OAH's April 11, 2011 Order. For the reasons stated therein, they are again now denied. 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.) TCMH has not made any showing justifying reconsideration here.

With regard to TCMH's *California School Boards* argument, the Motion is denied. Student's complaint is not limited to allegations that occurred subsequent to the Governor's veto. TCMH's contentions regarding its defenses prior to that time are factual, and can only be decided after giving Student an opportunity to make a factual record. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied.

ORDER

1. TCMH's motion to dismiss is denied.
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 17, 2011

/s/

---

JUNE R LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings