

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT
AND CALIFORNIA CHILDREN'S
SERVICES.

OAH Case No. 2014080021

ORDER OVERRULING OBJECTON
OF CALIFORNIA CHILDREN'S
SERVICES TO DISMISSAL OF
DOWNEY UNIFIED SCHOOL
DISTRICT

On July 29, 2014, Student filed a complaint naming Downey Unified School District and California Children's Services with the Office of Administrative Hearings.

On September 2, 2014, Student notified OAH that Student had settled with District and that upon approval of the settlement by District's Board, Student would request that OAH dismiss District from the case. A telephonic Status Check is currently scheduled for October 15, 2014, if a request for dismissal has not been received prior to that date.

On September 26, 2014, CCS filed an objection to the anticipated dismissal of District.

On September 30, 2014, Student filed an opposition to CCS's objection. On October 1, 2014, District filed an opposition to CCS's objection.

On October 3, 2014, CCS filed a reply to Student's and District's oppositions.

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 applies to state and local educational agencies, and also to any other political subdivisions of the State that are responsible for providing education to children with disabilities. (34 C.F.R. § 300.33 (2006); Ed. Code § 56028.5).

Under the IDEA and state law, children with disabilities have the right to a free appropriate public education. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized

education program. (20 U.S.C. § 1401(9).) Special education related services include in pertinent part developmental, corrective, and supportive services, such as physical therapy and occupational therapy, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(a)(26); Ed. Code, § 56363.)

The IDEA requires a school district to provide a FAPE, or “access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034].) Related services needed by a child with a disability to benefit educationally are determined by the child’s IEP team members, at an IEP team meeting, and recorded in the IEP. (34 C.F.R. § 300.22 (2006)). The IEP team must consider, and an IEP must include, among other things, academic and functional goals designed (i) to meet the child’s needs resulting from the child’s disability to enable the child to be involved in and make progress in the general education curriculum, and (ii) to meet the child’s other educational needs that result from the child’s disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2); 34 C.F.R. § 300.320(a)(2)(i) (2006).)

In contrast to providing related services for purposes of implementing the IDEA, CCS, an agency administered by the Department of Health Care Services, is charged with providing medically necessary occupational therapy and physical therapy to pupils with physically disabling conditions who are treated in public schools, under the State of California’s Medical Therapy Program. (Health & Saf. Code, §§ 123825 and 123950; Cal. Code Regs., tit. 22, § 41450; Gov. Code, § 7575, subd. (b)(i).) Whether, and to what extent, occupational therapy and physical therapy services are medically necessary is determined by the pupil’s medical therapy conference members and prescribed by a CCS paneled physician.¹ (Cal. Code Regs., tit. 2, § 60323, subd. (d).) This determination is not controlled by the IEP team, and is not part of the IEP process. Medically necessary occupational therapy and physical therapy are provided by CCS to ameliorate or improve a pupil’s diagnosed condition, and are focused on medical treatment goals, not access to curriculum. (Cal. Code Regs., tit. 2, § 60323; Gov. Code, § 7575, subd. (b)(3).)

Pursuant to Title 1, Division 7, Chapter 26.5 of the Government Code, entitled “Interagency Responsibilities for Providing Services to Children with Disabilities” (Gov. Code, § 7570, et seq. (Chapter 26.5)), it is the joint responsibility of the Superintendent of Public Instruction (Superintendent) and the Secretary of the Health and Human Services Agency to ensure maximum utilization of resources to provide a child with a disability with a FAPE and related services. (Gov. Code, § 7570.) A child with a disability may need both educational and medical needs addressed during the school day, and the part of Chapter 26.5 that deals expressly with medically necessary occupational therapy and physical therapy provided by CCS requires that “[l]ocal education agencies shall provide

¹ A CCS physician may also approve a prescription submitted by a pupil’s private physician. (Cal. Code Regs., tit. 2, § 60323, subd. (c).)

necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.” (Gov. Code, § 7575, subd. (d).)

The language of Chapter 26.5 on interagency obligations draws a clear distinction between IDEA related services and medically necessary occupational therapy and physical therapy. The statute provides that CCS “shall be responsible for the provision of medically necessary occupational therapy and physical therapy . . . by reason of medical diagnosis and when contained in the child’s [IEP].” (Gov. Code § 7575, subd. (a)(1).) However, “[r]elated services not deemed medically necessary . . . that the [IEP] team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency . . .” (Gov. Code § 7575, subd. (a)(2).) Nowhere in the Medical Therapy Program or Chapter 26.5 is CCS required to provide related services not deemed by CCS to be medically necessary. Once CCS determines that occupational therapy and physical therapy are no longer medically necessary, if the pupil’s IEP team has determined that occupational therapy and physical therapy are related services necessary for a child to benefit from special education, the obligation to provide those services shifts to the local educational agency. (Gov. Code § 7575, subds. (a)(1) and (2).)

Under Chapter 26.5, “[a]ll state departments, and their designated local agencies shall be governed by the procedural safeguards in Section 1415 of Title 20 of the United States Code [IDEA].” (Gov. Code § 7586, subd. (a).) Thus, it appears that even though CCS-provided medically necessary physical therapy and occupational therapy were not intended to be provided for purposes of providing a FAPE under IDEA, California has determined that disputes arising about such services, when listed in the child’s IEP, shall be heard in an IDEA due process hearing. Further, all hearing requests that involve multiple services that are the responsibility of more than one state department “shall give rise to one hearing with all responsible state or local agencies joined as parties.” (Gov. Code § 7576, subd. (c).) OAH has jurisdiction to hear due process claims arising under the IDEA and California special education law. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

This case is the most recent of several disputes in which a student has filed a request for a due process hearing naming local educational agencies and also CCS, settled with and dismissed the local educational agencies but proceeded against CCS, and CCS has then contested both its singular presence in the case as well as OAH’s jurisdiction over CCS regarding provision of a FAPE. CCS has filed for writs of mandamus in the Superior Courts of at least two counties, challenging OAH’s exercise of jurisdiction over CCS in an IDEA due process matter in the absence of a local educational agency, as well as challenging OAH’s decisions and orders finding CCS failed to provide a student with a FAPE and requiring CCS to provide compensatory services to a student. CCS is expecting an imminent order from the United States District Court, Northern District of California, San Jose Division addressing CCS’s motion for writ of mandamus in a removed case (*Student v.*

Cupertino Union School District, Santa Clara County Office of Education, and California Children's Services (2013) Cal.Ofc.Admin.Hrngs. Case No. 2012080386), and CCS is awaiting oral argument in Tuolumne County Superior Court next month regarding its motion for writ of mandamus (*Student v. Tuolumne County California Children's Services, Sonora Elementary School District, and Tuolumne County Office of Education* (2013) Cal.Ofc.Admin.Hrngs. Case No. 2012100238).²

While review of some of OAH's prior orders and decisions regarding the ability of a student to proceed against CCS alone after dismissing local educational agencies due to settlement is pending, CCS has presented no new facts or law in its attempt to prevent the dismissal of District in this case. CCS has once again made the same arguments it asserted in the prior cases, which are not factually distinguishable from this case in any relevant way. At the core of CCS's objection to the dismissal of District is CCS's long-standing and well-known position that IDEA claims against CCS cannot be heard by OAH unless a local educational agency is also a party to the case; OAH has uniformly rejected CCS's position in cases where a student has settled all claims against local educational agencies. CCS has presented no new authority for retaining District in this case after Student and District have settled and Student desires to withdraw its case against District. Accordingly, CCS's objection to the anticipated dismissal of District is overruled.

IT IS SO ORDERED.

Dated: October 10, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings

² Prior administrative decisions have persuasive value in later cases, although they are not binding precedent. (Cal. Code Regs., tit. 5, § 3085.)