

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF
EDUCATION AND RIVERSIDE COUNTY
PROBATION DEPARTMENT.

OAH Case No. 2014041107

ORDER DENYING RIVERSIDE
COUNTY PROBATION
DEPARTMENT'S MOTION TO BE
DISMISSED AS A PARTY

Student filed an amended complaint with the Office of Administrative Hearings on June 27, 2014, naming the Riverside County Office of Education (RCOE) and the Riverside County Probation Department (Probation) as respondents. On October 14, 2014, Probation filed a motion to be dismissed as a party to this action. Student timely filed an opposition to Probation's motion on October 17, 2014. RCOE did not file a response.

APPLICABLE LAW, DISCUSSION, AND ORDER

Issue two of Student's complaint alleges that RCOE and Probation, acting either together or independently, denied Student a free appropriate public education by denying him the right to complete independent educational evaluations, including observations by his chosen independent evaluators.

Probation moves to be dismissed on two grounds. First, it contends that it is not a public agency and therefore was not responsible for providing Student with independent educational evaluations while Student was housed in juvenile hall in Riverside County. Second, Probation contends that factually it is not a proper party because Student failed to follow proper procedures to ensure the observations after being informed of what the procedures were.

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 and 56028.5.)

Probation contends that RCOE is the sole entity responsible for providing educational services to wards confined in juvenile hall, including the provision of a FAPE under the Individuals with Disabilities Education Act. Probation contends that it is only responsible for logistical services such as security to the wards in juvenile hall, and that there is no authority that supports a finding that it is public agency within the meaning of IDEA or the California Education Code.

First, Probation argues that OAH found in a prior case between Student and RCOE that RCOE was the local education responsible for Student's education, including the provision of a FAPE, while he was housed in juvenile hall in Riverside County. However, Probation's argument is not persuasive. In the prior case (*Student v. Riverside County Office of Education* (2014) Cal.Offc.Admin.Hrngs. Case Nos. 201304071 and 2013080367) Probation was not named as a respondent. Therefore, there was no finding as to whether Probation could be also be determined to be a public agency for purposes of special education law under any circumstances.

Probation's contention that no authority exists for finding that it is an appropriate party in a due process proceeding is likewise unpersuasive. OAH has determined in three cases that it has jurisdiction over county departments of probation as responsible public agencies during those times in which a ward is in the security program and the department of probation prevents the student from receiving education services from the county office of education. (See, *Student v. Contra Costa County Office of Education* (2014) Cal.Offc.Admin.Hrngs. Case No. 2013080462; *Student v. Contra Costa County Office of Education* (2013) Cal.Offc.Admin.Hrngs. Case No. 2013080449; *Student v. Contra Costa County Office of Education* (2013) Cal.Offc.Admin.Hrngs. Case No. 2013080471. While these OAH decisions are not precedent, they certainly provide persuasive authority for the proposition that under certain circumstances, a county office of probation may be a public agency responsible for assuring that a FAPE is provided to a student in the department's custody.¹

It remains to be seen whether under the facts of this case, Probation is a proper party. While Probation argues in its motion that the facts demonstrate that it did not hinder the access of Student's independent assessors, those facts are disputed by Student. 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 in California does not provide for a summary judgment procedure. Here, Probation's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits regarding disputed issues of fact as to whether Probation is a proper party and whether it hindered or prevented Student from obtaining an independent evaluation. Those issues are not appropriate for determination on a motion to dismiss.

¹ These cases are presently on appeal.

Accordingly, Probation's motion to be dismissed as a party is denied. This case shall proceed to hearing as to both named respondents.

IT IS SO ORDERED.

DATE: October 24, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings