BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT, v. CONTRA COSTA COUNTY OFFICE OF EDUCATION AND CONTRA COSTA COUNTY PROBATION DEPARTMENT.	OAH CASE NO. 2013080471 ORDER DENYING CONTRA COSTA COUNTY PROBATION DEPARTMENT'S MOTION TO DISMISS

On August 9, 2013, Educational Rights Holder on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming the Contra Costa County Office of Education (COE) and the Contra Costa Probation Department (CCCP) as respondents. The main allegation in the complaint is that the respondents have denied to Student a free appropriate public education (FAPE) because students in special education are not offered a continuum of placements to meet their unique needs; failure to hold manifestation hearings; failure to conduct Functional Behavior Analysis Assessments or create a Behavioral Intervention Plan; and withholding of educational and special education services to those students who are placed in solitary confinement as a disciplinary measure. As to CCCP, Student directly alleges that CCCP is jointly responsible for providing educational services to those in Juvenile Hall under section 1370 subsections (a), (b) and (d) and Section 1390 subsection (j) of Title 15 of the California Code of Regulations.

On August 26, 2013, CCCP filed a motion to dismiss itself as a party. CCCP contends that it is not a proper party because is not the local education agency responsible for providing educational services to Student. On August 26, 2013, COE filed with OAH a statement of non-opposition to the motion.

On August 29, 2013, Student filed her opposition to CCCP's motion. On August 30, 2013, the District filed a reply to Student's opposition.

APPLICABLE LAW AND DISCUSSION

Special educations 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.)

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.

Student has alleged in her complaint that CCCP shares joint responsibility for ensuring that Juvenile Court detainees are provided "a quality education program" by citing provisions of Title 15 of the California Code of Regulations. Additionally, Student points out that the Memorandum of Understanding (MOU) between COE and CCCP[1] also provides joint responsibility for "collaboration on a process" in which COE meets the educational needs of students who are "held-back in their units;" and to have on-site school and Probation staff meetings to "identify and implant ways to deliver the instructional program in a comprehensive, coordinated and collaborative manner." (Page four of Exhibit A to the Request for Official Notice attached to CCCP's motion.) Thus, Student is contending that CCCP is "any other public agency . . . providing special education or related services to individuals with exceptional needs."

In essence, CCCP is making a motion for summary judgment. Here, CCCP's motion raises contested issues of fact related to CCCP's liability in this matter.

For the reasons set forth above, CCCP's motion is denied.

ORDER

The Contra Costa County Probation Department's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: September 3, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

1 The MOU is attached to CCCP's motion as an exhibit in support of the motion.