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 UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040771 ORDER GRANTING RIVERSIDE COUNTY DEPARTMENT OF MENTAL HEALTH'S MOTION TO DISMISS

On May 8, 2013, the Riverside County Department of Mental Health (RCDMH) filed a motion to dismiss. No opposition has been received.

APPLICABLE LAW

Parents may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code, § 56504.) Educational records under Education Code, section 56504, include assessments and assessment protocols that are personally identifiable to the child, and must be disclosed to the parents. (*Newport-Mesa Unified Sch. Dist. v. State of Calif. Dept. of Educ.* (C.D. Cal. 2005) 371 F.Supp.2d 1170, 1175.) Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b).)

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).) For purposes of special education, Education Code section 56028.5 provides that:

> "Public Agency" means a school district, county office of education, special education local plan area, a nonprofit public charter school ...[as specified]..., or any other public agency under the auspices of the state or any political subdivision of the state *providing special education or related services to individuals with exceptional needs*. For purposes of this part, "public agency," means all of the public agencies listed in Section 300.33 of Title 34 of the Code of Federal Regulations. [Emphasis added.]

Part 300.33 of Title 34 of the Code of Federal Regulations provides in part that "public agency" includes "any other political subdivisions of the State that are responsible for providing education to children with disabilities."

Parents have 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).) The Office of Administrative Hearings (OAH) has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), Section 1983 of Title 42 United States Code (Section 1983), or California civil rights laws.

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.

DISCUSSION

Student's due process hearing request (complaint) alleges that despite years of significant problem behaviors and reported anxiety, the Riverside Unified School District (District) failed to assess Student for special education eligibility until 2006, performed incomplete assessments, and did little to address Student's increasingly violent behaviors until Student entered Juvenile Hall in August 2011, at which point District referred Student to RCDMH for a mental health assessment, which was not completed until January 2012. Student's complaint alleges that the conduct of District, Riverside County Office of Education (RCOE) and RCDMH (1) failed to provide educational records on request, (2) failed to procedurally provide Student with a FAPE for the last two years, (3) failed to substantively provide Student with a FAPE for the last two years, (4) violated the Americans with Disabilities Act (ADA), Section 504 and California civil rights laws, and (5) violated Section 1983.

RCDMH contends that it has provided all educational records, and that Issue 1 should be dismissed as moot. As to Issues 2 and 3 regarding denial of a FAPE, RCDMH contends that it is not a proper party to this due process proceeding, because due to changes in California law, as of October 8, 2010, county mental health agencies are no longer obligated to provide educationally related mental health services to disabled students. RCDMH argues that as Student's complaint alleges a mental health referral in August 2011, RCDMH had no responsibility for Student's mental health services. As to Issues 4 and 5, RCDMH asserts that OAH has no jurisdiction over ADA, Section 504, Section 1983 or other California civil rights claims.

RCDMH is Not a Proper Party to This Due Process Proceeding

Special education due process hearings extend to "the public agency involved in any decisions regarding a pupil" (Ed. Code, §§ 56501, subd. (a)), and "public agency" is defined for special education purposes as a public agency "providing special education or related services" (Ed. Code §§ 56500 and 56028.5) or "responsible for providing education" to disabled children (34 C.F.R. 300.33 (2006)). Therefore, to be a party subject to due process proceedings before OAH, the respondent must be a public agency (i) involved in decisions regarding a disabled child and (ii) providing special education or related services to that child.

The only references to RCDMH in Student's complaint are that District referred Student to RCDMH for a mental health assessment, that a RCDMH representative attended the October 24, 2011individualized education program (IEP) team meeting to report that no mental health assessment had yet been done, and that RCDMH completed the assessment in January 2012. On these alleged facts, respondent RCDMH is neither a public agency providing special education or related services to Student, nor involved in any decisions regarding Student's educational program.

RCDHM is not responsible for providing the mental health component of an educational program to Student. Prior to July 1, 2011, mental health services related to a disabled student's education were provided by a local county mental health agency that was jointly responsible with the school district pursuant to Chapter 26.5 of the Government Code. (Gov. Code §7570, et seq., often referred to by its Assembly Bill name, AB 3632 [Chapter 26.5].) However, on October 8, 2010, Governor Arnold Schwarzenegger vetoed the appropriation for Chapter 26.5 mental health services by county mental health agencies, and on February 25, 2011, the California Court of Appeal for the Second Appellate District affirmed that the Governor had authority to veto the funding for that statutory mandate. (*California Sch. Bds. Ass'n v. Edmund G. Brown Jr., Gov.* (2011) 192 Cal.App.4th 1507, review denied June 8, 2011).) Effective July 1, 2011, the obligation of the State Department of Mental Health, and its county designees, including RCDMH, to assess and provide related mental health services to special education pupils was suspended, and those statutory responsibilities were transferred to the LEAs instead. (Gov. Code § 7573.) Student's complaint alleges that the referral for a mental health assessment was made in August 2011, after responsibility for that assessment transferred directly to District and/or RCOE.

RCDMH had no responsibility for providing educationally related mental health services to Student after July 1, 2011, and Student has not alleged that RCDMH participated in any decisions regarding Student's educational program or provided special education or related services to Student. Therefore, RCDMH is not a "public agency" for special education due process purposes, and is not a proper party to this proceeding, at least as to issues regarding the provision of a FAPE.

Issue 1 – Educational Records

Educational records under Education Code, section 56504, include assessments and assessment protocols that are personally identifiable to the child. (Ed. Code § 56504.) However, under Education Code Section 56501, subdivision (a), the subject matter of IDEA due process complaints is limited to: a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education (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. As discussed above, RCDMH has no obligation to provide Student with a FAPE, and the obligation to timely provide copies of education records to Student for purposes of allowing Student's parents a meaningful opportunity to participate in designing Student's unique educational program falls upon RUSD or RCOE, and RCDMH is not a proper party to this claim. Accordingly, Issue 1as to RCDMH will be dismissed.

Issues 2 and 3 – Denial of a FAPE

As discussed above, RCDMH had no duty under Chapter 26.5 to provide Student with special education or related mental health services. On the allegations of Student's complaint, RCDMH was requested to conduct a mental health assessment on behalf of District, and performance of such an assessment, without more, does not constitute an assumption of the obligation to provide Student with a FAPE. Therefore, Student's Issues 2 and 3, claiming a denial of FAPE, will be dismissed as to RCDMH.

Issues 4 and 5 – Non-IDEA Claims

The jurisdiction of OAH is limited to complaints relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. OAH does not have jurisdiction to entertain claims based on the ADA, Section 504, Section 1983, or California civil rights laws. Accordingly, Student's Issues 4 and 5 against RCDMH will be dismissed.

ORDER

1. RCDMH's motion to dismiss is granted.

2. Riverside County Department of Mental Health is dismissed as a party from this proceeding.

Dated: June 3, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings