

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL  
DISTRICT, TWIN RIVERS UNIFIED  
SCHOOL DISTRICT, SACRAMENTO  
COUNTY MENTAL HEALTH,  
SACRAMENTO COUNTY OFFICE OF  
EDUCATION, CALIFORNIA  
DEPARTMENT OF MENTAL HEALTH,  
AND CALIFORNIA DEPARTMENT OF  
EDUCATION,

OAH CASE NO. 2009050920

ORDER GRANTING MOTION TO DISMISS  
CALIFORNIA DEPARTMENT OF  
EDUCATION AS A PARTY

PARENT on behalf of STUDENT ,

v.

TWIN RIVERS UNIFIED SCHOOL  
DISTRICT, SACRAMENTO COUNTY  
MENTAL HEALTH, CALIFORNIA  
DEPARTMENT OF EDUCATION,  
CALIFORNIA DEPARTMENT OF MENTAL  
HEALTH, AND MT. DIABLO UNIFIED  
SCHOOL DISTRICT.

On April 28, 2009, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Mt. Diablo Unified School District (MDUSD), Twin Rivers Unified School District (TRUSD), Sacramento County Mental Health (SCMH), Sacramento County Office of Education (SCOE), California Department of Mental Health (CDMH), and California Department of Education (CDE). This matter was designated as OAH Case No. 2009050043.

On May 21, 2009, Student filed a Request for Due Process Hearing against TRUSD, SCMH, CDE, CDMH, and MDUSD. This matter was designated as OAH Case No. 2009050920.

On June 8, 2009, Student filed a Motion to Consolidate OAH Case Number 2009050043 with OAH Case No. 2009050920. On June 12, 2009, OAH issued an order consolidating the two cases.

On July 13, 2009, CDE filed a Motion to Dismiss CDE as a party in both matters.

On July 21, 2009, Student filed an opposition to CDE's Motion to Dismiss.

#### APPLICABLE LAW

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.)

#### DISCUSSION

CDE contends that Student fails to state in each of her complaints a factual basis for including CDE as a party to this action. In addition, CDE contends that it is not a proper party to these consolidated matters because it has not been involved with Student's education, and it does not provide Student with special education or related services, and, therefore, is not a "public agency" within the meaning of California Education Code sections 56500 and 56028.5. CDE further contends that it has no obligation to directly provide Student with services, citing to only "rare cases" where CDE provides special education and related services to a student in a state school for the deaf and blind.

In opposition to CDE's Motion to Dismiss, Student contends that under section 1413(g) of title 20 of the United States Code, CDE may be determined to be the responsible public educational agency. Student contends that she requires placement in a California residential treatment program designed for young adults (over 18 years of age), that no such programs exist in California, and that she needs to be served by a regional or State program. Therefore, Student contends, CDE is a necessary party.

Education Code section 56041 places on the "district of residence" the responsibility for students between ages 18 to 22, distinguishing only between conserved and nonconserved pupils. Specifically, Section 56041 provides in relevant part:

Except for those pupils meeting residency requirements for school attendance specified in subdivision (a) of Section 48204, and notwithstanding any other provision of law, if it is determined by the individualized education program team that special education services are required beyond the pupil's 18th

birthday, the district of residence responsible for providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, shall be assigned, as follows:

(a) For nonconserved pupils, the last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.

\* \* \*

(Ed. Code, § 56041.)

It is undisputed that Student turned 18 years of age in June 2009. On December 12, 2008, when Student's mother resided within the jurisdictional boundaries of TRUSD, the Sacramento County Juvenile Court terminated Student's mother's educational rights (Mother resided at that time in TRUSD) and appointed Student's grandmother, who resides in MDUSD, as the responsible adult to make educational decisions for Student.

Student has cited no legal authority supporting her contention that CDE is a proper party to this action, and she has alleged no facts upon which OAH could make a determination at a hearing that CDE is among the parties that could be determined to be Student's "district of residence" within the meaning of Section 56041, or Student's responsible local educational agency within the meaning of Sections 56041, 56500, 56501, or 56028.5. Therefore, the motion to dismiss CDE as a party is granted.

#### ORDER

GOOD CAUSE APPEARING, CDE's Motion to Dismiss is granted. CDE is dismissed without prejudice as a party in the above-titled matters.

The matter will proceed as scheduled against the remaining parties.

It is so ordered.

Dated: July 29, 2009

/s/

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TRINA A. HIRSIG  
Administrative Law Judge  
Office of Administrative Hearings