

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIANS on behalf of STUDENT,

v.

SANTA CLARA COUNTY MENTAL  
HEALTH.

OAH CASE NO. 2009060851

ORDER DENYING IN PART MOTION  
TO DISMISS; REQUIRING  
ADDITIONAL INFORMATION  
REGARDING MOTION TO DISMISS;  
AND DENYING MOTION TO ADD  
PARTY

On June 15, 2009, attorney Alison Fitzgerald Sayer, on behalf of Student, filed a Request for Due Process Hearing (complaint) against the Santa Clara County Mental Health (SCCMH). On September 29, 2009, attorney Rima H. Singh, on behalf of SCCMH, filed a motion to dismiss and motion to add the Los Altos School District (District) as a party.<sup>1</sup> SCCMH filed additional documents on October 8, 2009. On October 16, 2009, Student filed an opposition. The District did not submit a response.

APPLICABLE LAW

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

---

<sup>1</sup> Student resolved his claims against the District in a confidential settlement agreement.

A parent may be entitled to reimbursement for placing a student in a private school without the agreement of the local school district if the parents prove at a due process hearing that: 1) the district had not made a free appropriate public education (FAPE) available to the student prior to the placement; and 2) that the private school placement is appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c)(2006); see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c)(2006); *Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [126 L.Ed.2d 284, 114 S.Ct. 361] (despite lacking state-credentialed instructors and not holding individualized educational program (IEP) team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress).)

For students who qualify for special education services, California law permits a school district to make a referral to the local community mental health agency for a mental health assessment. The school district may make the referral if the student is suspected of requiring mental health services and the services from the local school district have not been able to meet the student's needs and the student is not able to make educational progress. (Gov. Code, § 7576, subd. (b).) If the student qualifies for special education services under the criteria of emotional disturbance and a member of the IEP team recommends a residential placement based on relevant assessment information, the IEP team shall be expanded to include a representative of the local community mental health agency. (Gov. Code, § 7572.5.)

If the expanded IEP team determines that the student requires a residential placement, the local community mental health agency will become the student's lead case manager. The local community mental health agency has the responsibility for locating an appropriate residential facility. (Cal. Code Regs., tit. 2, § 60100, subd. (e).) If the IEP team then determines to place the child in a residential facility, the local community mental health agency shall ensure that the mental health services in the student's IEP are provided. (Cal. Code Regs., tit. 2, § 60100, subd. (i).) Regarding the funding of the residential placement, the school district is responsible for the educational costs and the local community mental health agency is responsible for the mental health services. For the residential costs of the placement, the community mental health agency is responsible to authorize payment based on the rate established by the California Department of Social Services for the residential facility, and the payment for the residential costs shall be made by the local county welfare department. (Cal. Code Regs., tit. 2, § 60200, subd. (e) and (f).)

California Code of Regulations, title 2, section 60100, subdivision (h), provides:

Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.

For-profit residential treatment centers do not meet the requirements of Welfare and Institutions section 11460, subdivision (c)(2) through (c)(3).

If a dispute arises between the school district and the community mental health agency regarding the provision of related services or financial responsibility, either agency may submit a complaint to either the Secretary of Public Instruction or the Secretary of the California Health and Human Services Agency. If the dispute cannot be resolved informally, the parties will then proceed to a hearing before the Office of Administrative Hearings (OAH). (Gov. Code, § 7585.) Additionally, the school district and community mental health agency are to use the dispute resolution procedures in Government Code section 7585, if a dispute regarding the responsibility, including financial responsibility, of providing services ordered by OAH after a hearing or agreed upon by the parties in mediation, pursuant to Education Code sections 56503 and 56505. (Cal. Code Regs., tit. 2, § 60600, subd. (a) and (b).) Neither the school district or the community mental health agency may request a due process hearing pursuant to Education Code section 56501, against another public agency. (Gov. Code, § 7586, subd. (d).)

The Individuals with Disabilities Education Improvement Act of 2004 (§ 1400, et. seq.; hereafter IDEA) provides that a party may not have a due process hearing until the notice of a due process hearing request meets the specifications listed in Title 20 United States Code section 1415(b)(7)(A). (§ 1415(b)(7)(B).) Further, Section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

## DISCUSSION

### *Statute of Limitations*

Student alleges in the complaint that SCCMH is liable for reimbursement for his Guardians' out-of-pocket expenses for placing Student at Forest Heights Lodge (FHL) from June 2007 through June 2009, because SCCMH's failed to offer an appropriate residential placement to meet Student's unique needs during the 2006-2007 school year. SCCMH asserts that Student's claims for reimbursement based on its purported conduct during the 2006-2007 school year are outside the two-year statute of limitations.

Student's claims that SCCMH's June 2006 IEP offer of services and placement are outside the two-year statute of limitations, and neither the complaint nor Student's opposition sets forth an exception to the statute of limitations. Additionally, Student's contention that SCCMH denied Student a FAPE by failing to subsequently change its placement offer to a residential placement before June 2007 because of Student's failure to meet his June 2006 IEP goals and his problems at school and home are also outside the two-year statute of limitations. However, Student will be given opportunity to submit additional evidence to demonstrate that his claims for the 2006-2007 school year fit within an exception to the two-year statute of limitations.

#### *Denial of FAPE During the 2007-2008 and 2008-2009 School Years*

Regarding Student's claims during the 2007-2008 and 2008-2009 school years that are within the two-year statute of limitations, the complaint alleges that SCCMH did not offer Student an appropriate placement to meet his unique needs. SCCMH asserts that it did not need to make an offer of placement for the 2007-2008 school year because Student's Guardians refused SCCMH services during the 2006-2007 school year. SCCMH also asserts that Student did not require an out-of-state residential placement to receive a FAPE at any time during the 2007-2008 and 2008-2009 school years, and that its June 2008 IEP offer was reasonably calculated to provide Student with a FAPE in the least restrictive environment.

Regarding the issue whether SCCMH was responsible to provide Student with any services during the 2007-2008 school year, a triable issue for hearing exists whether Student's Guardians waived his right to SCCMH services. Additionally, a factual dispute exists whether Student required an out-of-state residential placement and if Student's Guardians properly notified the District and SCCMH of Student's unilateral placement into FHL. An evidentiary hearing, not a motion to dismiss, is the appropriate venue to resolve these factual disputes.

#### *Reimbursement Request for a For-Profit Facility*

SCCMH contends that OAH cannot order it to reimburse Student's Guardians for Student's residential placement at FHL because FHL is a for-profit facility, and therefore the District is responsible for the residential costs of Student's placement. Student does not dispute that FHL is a for-profit facility. According to the complaint, Student has been at FHL since June 2007, when his Guardians unilaterally placed him there because the Guardians believed that Student required a residential placement and SCCMH and the District failed to provide Student with a FAPE.

California law prohibits OAH from ordering a prospective residential placement in a for-profit facility. (*Student v. Orange County Health Care Agency* (December 30, 2008) Cal.Ofc.Admin.Hrngs. Case No. 2008080612, pp. 21-22.) SCCMH also cites to a prior OAH decision, conducted pursuant to the dispute resolution process in Government Code section 7585, for the proposition that the District is responsible for all past and

future residential costs because FHL is a for-profit facility. (*Fremont Union High School District v. California Department of Mental Health and Santa Clara County Mental Health Department* (March 11, 1999) Cal.Ofc.Admin.Hrngs. Case No. N1998120081.) However, SCCMH's reliance on this case is misplaced because the dispute arose after the parties resolved the student's due process complaint regarding with the school district and the community mental health agency denied the student a FAPE, as provided in California Code of Regulations, title 2, section 60600, subd. (a) and (b).

Federal regulations permit a hearing officer to order reimbursement for a private school placement that does not meet state standards. (34 C.F.R. 300.148(c)(2006).) Therefore, OAH has the authority to order SCCMH to pay for FHL's residential cost as reimbursement if SCCMH failed to provide Student with a FAPE, even though FHL is a for-profit residential facility. Regarding SCCMH's financial responsibility, OAH does not have the jurisdiction to hear SCCMH's claim against the District in this special education due process action. (Gov. Code, § 7585.) Therefore, SCCMH's motion to dismiss because it is not financially responsible for any residential cost for Student's placement at FHL is denied.

*Motion to Add Party*

SCCMH also requested that the District be added as a party if OAH denies SCCMH's motion to dismiss. However, SCCMH failed to serve a copy of its motion on the District, which denied the District the opportunity to oppose SCCMH's motion. Therefore, SCCMH's motion to add the District as a party is denied.

ORDER

1. Regarding SCCMH's motion to dismiss all claims before June 12, 2007, Student shall submit to OAH by 5:00 p.m. on November 2, 2009, additional evidence, by declaration signed under penalty of perjury, regarding any exception to the two-year statute of limitations. OAH will rule on the motion to dismiss thereafter.
2. SCCMH's motion to dismiss all claims on or after June 12, 2007, is denied.
3. SCCMH's motion to add the District as a party is denied.

Dated: October 27, 2009

/s/  
\_\_\_\_\_  
PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings