

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

DAVIS JOINT UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009110584

ORDER GRANTING MOTION TO  
ADD PARTY

On November 12, 2009, attorney Margaret M. Broussard, on behalf of Student, filed a request for a due process hearing (complaint) against the Davis Joint Unified School District (District). On November 19, 2009, attorney Carlos M. Gonzalez, on behalf of the District, filed a motion to add the Yolo County Department of Mental Health Services (YCDMHS) as a party. On November 23, 2009, Student filed an opposition. YCDMHS did not file a response.

APPLICABLE LAW

Regarding joinder of a party, the Office of Administrative Hearings (OAH) considers the requirements of the Code of Civil Procedure. Under that Code, a “necessary” party may be joined upon motion of any party. Section 389, subdivision (a) of the Code of Civil Procedure defines a “necessary” party as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

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.)

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).)

## DISCUSSION

Education Code sections 56500 and 56501, subdivision (a), establish two requirements for including an entity in a special education due process hearing. First, the entity must be a public agency "providing special education or related services." (Ed. Code, § 56500.) Second, it must be "involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).)

The District asserts that YCDMHS should be joined as a necessary party because YCDMHS assessed Student regarding Parents' request for a residential placement, participated in the November and December 2008 IEP meetings and made the recommendation for an in-state residential placement. Student asserts that YCDMHS is not a necessary party because the District is the responsible local education agency and ultimately responsible for any denial of FAPE by a responsible public agency. Additionally, Student asserts that OAH does not have jurisdiction to hear a dispute between the District and YCDMHS regarding financial responsibility for the reimbursement of the residential placement costs.

Student contends in his complaint that the District denied him a FAPE at the November 21, 2008 IEP meeting by not making any offer of placement. The District further

denied Student a FAPE at the December 2008 by recommending residential placements within the State of California that did not meet Student's unique needs.

Student contends that YCDMHS is not a necessary party because YCDMHS informed Parents that it cannot reimburse them for the mental health and residential costs of Student's placement at Discovery Ranch because Discovery Ranch does not meet state standards as a for-profit facility. However, 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 YCDMHS to pay for Student's mental health and residential costs as reimbursement if YCDMHS failed to provide Student with a FAPE, even though Discovery Ranch is a for-profit residential facility.

Therefore, if OAH determines that the District and YCDMHS denied Student a FAPE, OAH may order reimbursement for the costs of the residential placement at Discovery Ranch. Then pursuant to California Code of Regulations, title 2, section 60600, subdivision (b), the District or YCDMHS could request a separate hearing before OAH to determine financial responsibility. Therefore, the District's motion to add YCDMHS is granted because YCDMHS is a necessary party since the dispute regarding the appropriate placement offer involves multiple agencies that have the responsibility to make the placement offer. (Govt. Code, § 7586, subd. (c).)

#### ORDER

The motion to add YCDMHS as a party is granted. Henceforth, this matter shall be known as *Student v. Davis Joint Unified School District and Yolo County Department of Mental Health Services*

Dated: November 24, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings