

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERDALE JOINT UNIFIED SCHOOL
DISTRICT AND FRESNO COUNTY
MENTAL HEALTH SERVICES.

OAH CASE NO. 2011020288

ORDER GRANTING MOTION TO
ADD FRESNO COUNTY MENTAL
HEALTH SERVICES AS A PARTY

On February 04, 2011, Student filed a request for a due process hearing (complaint),¹ naming the Riverdale Joint Unified School District (District).

On March 2, 2011, the District filed a motion to add Fresno County Mental Health Services (FCMH) as a party. The motion was served on Student but not on FCMH. Student did not submit a response.

APPLICABLE LAW

On a motion to join a party, the Office of Administrative Hearings 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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Chapter 26.5 of the Government Code generally requires a community mental health agency to provide mental health services to a special education student when required by the student's individualized education program. 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.

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).) 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.)

DISCUSSION

Student's complaint alleges that the District denied him a free appropriate public education (FAPE) because it failed to assess him in all areas of suspected disability, in that the District failed to conduct a timely and appropriate mental health assessment. It also alleges that the District failed to offer or provide him a program that met his unique needs, and that such a program would include counseling and mental health services.

The District alleges in its moving papers that, on August 30, 2010, it referred Student to FCMH for a mental health evaluation under Chapter 26.5 of the Government Code, but that FCMH did not timely complete the evaluation because it lost the first referral package it received.² The District further alleges that on December 9, 2010, FCMH completed its assessment of Student and found him eligible for mental health services, and that on February 15, 2011, the District offered Student 60 minutes a week of mental health services from FCMH and transportation to and from those services.

These allegations, if true, establish that FCMH is a public agency obliged to provide related services and is involved in decisions affecting Student. This action may therefore establish liability in FCMH for alleged violations of law the complaint at present attributes only to the District. FCMH is therefore a necessary party to this matter, because 1) complete relief could not be afforded in its absence; 2) disposition of the action in his absence may as a practical matter impair or impede its ability to protect its interest; and 3) because on these

² The factual allegations made in the District's motion are verified as true by the declaration of Liz Motta, the District's Administrator of Support Services and Accountability.

alleged facts Government Code section 7586, subdivision (c), requires joinder of the District and FCMH in a single action.

ORDER

]. 1. The motion to add FCMH as a party is granted. This matter shall be known as Parent on Behalf of Student v. Riverdale Joint Unified School District and Fresno County Mental Health Services, and the caption is amended accordingly.

2. The District shall promptly serve on FCMH copies of Student's complaint and its motion to join FCMH as a party.

3. All dates now on calendar are confirmed.

Dated: March 14, 2011

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings