

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL  
DISTRICT AND SAN MATEO COUNTY  
DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2009030672

ORDER DENYING MOTION TO  
DISMISS

On March 12, 2009, Student filed a Request for Due Process Hearing (complaint), naming Jefferson Union High School District (District) and San Mateo County Department of Mental Health (Mental Health).<sup>1</sup> On May 1, 2009, the District and Mental Health filed a motion to dismiss the issue of liability for the cost of placement of Student in a residential facility. On May 5, 2009, Student filed opposition to the motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a 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.) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child’s parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is

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<sup>1</sup> Student’s previous school district of residence, Oakland Unified School District, was also named in the complaint, but that district has now been dismissed pursuant to a settlement agreement.

no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

California Education Code section 56325 pertains to children with exceptional needs who transfer from one school district to another. Subdivision (c) requires the district placing a child in residential placement to pay for the costs of that placement to the end of the school year, even if the child's residence changes during the school year. Subdivision (c) states that it pertains to students described in subdivision (a) of section 56325. Subdivision (a) states that section 56325 applies to "an individual with exceptional needs who has an individualized education program and transfers into a district . . . ."

## DISCUSSION

In the present matter, Student asks that her current residential placement outside of California be determined to offer her a FAPE, and further contends that the District and Mental Health are liable for the cost of this placement. Student is requesting reimbursement for costs of placement commencing in March 2009, as well as prospective payment for this residential placement.

Student's parents (Parents) unilaterally placed her in out-of-state residential placement prior to moving to the District in October 2008. At that time, Student did not have an individualized education program (IEP) because she had not been assessed or found eligible for special education by her prior school district of residence. In January 2009, Parents asked that Student be assessed by the District. After assessment by the District in February 2009, Student was found eligible for special education at an IEP meeting held March 4, 2009. She was subsequently assessed by Mental Health and found eligible for their services as well. However, both the District and Mental Health have refused to fund Student's current residential placement.

The District and Mental Health have filed a motion to dismiss the issue of liability from the complaint, based on Education Code section 56325, subdivision (c). They contend that Student's former district of residence should be liable for the cost of residential placement for the remainder of the school year.

At the time Student was placed in residential care by her parents, she had not been found eligible for special education by any school district, and did not have an IEP. The plain language of subdivision (a) makes it clear that the provisions of section 56325 apply to children who have already been found eligible for special education services by a school district and have an IEP. When Student's parents established residence in the District in October 2008, the District became responsible for assessing her and providing her with special education services, if she was eligible. The former district of residence would be responsible for paying for Student's residential placement pursuant to section 56325, subdivision (c), only if she had an IEP from that district when her parents changed their residence, and the residential placement had been made pursuant to an IEP from that district.

This was not the case, as Student's former district of residence had not assessed her or found her eligible for special education before her parents moved into the District. Accordingly, the District's and Mental Health's motion to dismiss the issue of liability is denied.

ORDER

GOOD CAUSE APPEARING, the District's and Mental Health's motion to dismiss the issue of liability is denied.

Dated: May 14, 2009

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings