

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT, SAN FRANCISCO  
COMMUNITY MENTAL HEALTH, and  
CALIFORNIA DEPARTMENT OF  
MENTAL HEALTH

Respondents.

OAH CASE NO. N2008040541

ORDER GRANTING CALIFORNIA  
DEPARTMENT OF MENTAL HEALTH'S  
MOTION TO DISMISS

On April 15, 2008, attorney Laurene Bresnick filed with the Office of Administrative Hearings (OAH) a request for due process hearing, on behalf of Student, naming the San Francisco Unified School District (District), San Francisco Community Mental Health (SFCMH) and California Department of Mental Health (CDMH) as Respondents.

On April 25, 2008, OAH received a Motion to Dismiss from attorney Hadara R. Stanton, on behalf of CDMH. CDMH contends that it is not a proper party since Student does not allege that it directly denied Student a Free Appropriate Public Education (FAPE), and because CDMH did not provide or offer to provide Student with special education services. The same day, OAH received Student's opposition brief.

APPLICABLE LAW

The Individuals with Disabilities in Education Improvement Act of 2004 (IDEA) applies to state and local educational agencies, and also to any other political subdivision of the State that are responsible for providing education to children with disabilities. (34 C.F.R. §300.33; Ed. Code §56028.5). Specifically included in the regulatory reference is the Department of Mental Health. (34 C.F.R. §300.2(b)(iii).)

Education Code sections 56500 and 56028.5 define a public education agency as a district, special education local plan area, county office of education, or any other public agency responsible for providing special education or related services. (See, 34 C.F.R. § 300.33.)

Pursuant to Education Code section 56501, subdivision (a), a parent or public education agency that is involved in any decisions regarding a child may request a due process hearing when:

- (1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.
- (2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.
- (3) The parent or guardian refuses to consent to an assessment of the child.
- (4) There is a disagreement between a parent or guardian and a district, special education local plan area, or county office regarding the availability of a program appropriate for the child, including the question of financial responsibility, as specified in subsection (b) of Section 300.403 of Title 34 of the Code of Federal Regulations.

Regarding naming a “necessary” party as a respondent, OAH considers the requirements of the California Code of Civil Procedure. Under that Code, a “necessary” party may be named as a 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.

California Code of Regulations, title 2, section 60100, subdivision (h) and Welfare and Institutions Code, section 11460, subdivision (c), limit residential placements for emotionally disturbed students eligible for special education services, whether in or out-of-state, to non-profit entities.

## DISCUSSION

Student alleges that the District and SFCMH did not provide him with a FAPE, which caused Parents to place Student at Second Nature and Telos, both for-profit, out-of-state residential facilities, to meet his unique educational and mental health needs. The complaint does not allege that CDMH was involved in decisionmaking process regarding Student's placement, or provided or failed to provide Student with needed services. Student contends that SFCMH refuses to reimburse parents for Student's placement at Second Nature and Telos because CDMH improperly interpreted California Code of Regulations, title 2, section 60100, subdivision (h) to prohibit county mental health agencies, such as SFCMH, from reimbursing parents who place their child in a for-profit, out-of-state residential facility. Student argues that SFCMH may reimburse Parents if they unilaterally placed Student at Telos due to SFMCH's failure to provide Student with a FAPE. Because of CDMH's policy, Student asserts that SFCMH refuses to reimburse Parents, even though IDEA and implementing regulations permit SFCMH to reimburse Parents for Student's placement in an otherwise non-approved facility because SFCMH failed to provide Student with a FAPE. (20 U.S.C. § 1412(a)(10)(C); 45 C.F.R. § 300.148(c).) Therefore, Student asserts that CDMH is a proper party to determine whether its interpretation of California law complies with applicable federal law.

However, CDMH's presence in this matter is not needed to determine whether SFCMH may be required to reimburse Parents for their costs to place Student at Second Nature and Telos. The legal question regarding Student's proposed resolution seeking reimbursement can be addressed through a pre-trial motion or at hearing. Additionally, according to the complaint, CDMH was never involved in the placement decisionmaking process, nor was it involved in or responsible for providing Student with services. Therefore, CDMH is not a necessary or proper party to this action.

## ORDER

CDMH's Motion to Dismiss is granted.

Dated: April 29, 2008

  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings