

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CALIFORNIA DEPARTMENT OF MENTAL  
HEALTH.

OAH CASE NO. 2009050920

DECISION

Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on August 26 and 28, 2009.

Student and her Great Grandmother (Great Grandmother) were represented by F. Richard Ruderman, Ruderman & Knox, LLP, Attorneys at Law. Great Grandmother was present during the hearing.<sup>1</sup> Student did not attend the hearing.

The California Department of Mental Health (CDMH) was represented by Gayathri Murthy, Senior Staff Counsel, and Heidi L. Lehrman, Staff Counsel, with CDMH. Sophie Cabrera, Chief of the Community Support Branch of CDMH, was present during the hearing.

Student filed her request for a special education due process hearing (complaint) in this case with OAH on May 21, 2009. The complaint originally named seven public entities,

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<sup>1</sup> As set forth in Factual Findings 4 through 6, and Legal Conclusions 14 through 17, Great Grandmother is Student's "parent" for purposes of this proceeding.

including CDMH. Prior to hearing, OAH dismissed all other parties to this action for various reasons, leaving CDMH as the sole remaining party.

On June 12, 2009, OAH granted a continuance of the hearing in this case. At the hearing, oral and documentary evidence were received. At the request of the parties, the record remained open until September 11, 2009, for their submission of written closing arguments. On September 11, 2009, the parties submitted closing briefs, the record was closed, and the matter was submitted for decision.

## ISSUES<sup>2</sup>

1. Beginning on April 28, 2009, and for the 2009-2010 school year, was, and is, CDMH a public agency responsible to offer or provide Student with a special education program, placement, and related services?<sup>3</sup>

2. If so, did CDMH deny Student a free appropriate public education (FAPE) beginning on April 28, 2009, and for the 2009-2010 school year, by failing to offer or provide an appropriate educational placement in a residential treatment program located in California?

## REQUESTED REMEDY

Student requests that OAH issue an order directing CDMH to authorize a residential

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<sup>2</sup> The ALJ has reframed the issues for purposes of clarity and consistency

<sup>3</sup> Student's complaint expressly limits her issue to the time period beginning on April 28, 2009. She offered no explanation for why that date was chosen. As noted above, Student's first complaint was filed on April 28, 2009.

placement facility in California to admit Student for the remainder of the 2009-2010 school year, notwithstanding any state law or regulation that would prohibit such a placement.

## CONTENTIONS OF THE PARTIES

As set forth in Factual Findings 13 through 24, in March 2008, pursuant to an individualized education program (IEP) with the Twin Rivers Unified School District (Twin Rivers USD) and the Sacramento County Department of Behavioral and Health Services, Division of Mental Health (SCMH), Student was placed in an out-of-state residential treatment center (RTC) called Devereux Florida. Effective June 17, 2009, in connection with a subsequent IEP, Student was transferred to an RTC at Devereux Colorado.

Student contends that CDMH is a public agency responsible to provide her with a FAPE because CDMH is responsible for the provision of mental health services to her in a residential setting in California. Student asserts that CDMH denied her a FAPE beginning on April 28, 2009, and for the 2009-2010 school year. Student does not contend that another public agency is responsible for her residential education and mental health services. She asserts that, beginning April 28, 2009, her IEPs denied her a FAPE because she should have been placed in an appropriate residential facility in California, and that CDMH failed to fulfill its responsibility to provide her with a residential treatment placement in California.

CDMH made a motion to dismiss Student's complaint at the outset of the hearing. CDMH contends that Student's complaint should be dismissed because: (1) CDMH is not a public agency responsible for the provision of services to Student pursuant to her IEP; (2) following a settlement between Student and the SCMH, there is no remaining case or controversy against CDMH; and (3) Student's claim against CDMH is not ripe for adjudication. A dismissal prior to hearing, if granted, would serve to avoid litigation on the merits of a complaint. However, since this matter has been fully litigated on the merits,

CDMH's contentions are evaluated as its affirmative defenses to Student's claims.<sup>4</sup>

## FACTUAL FINDINGS

### JURISDICTION AND BACKGROUND

1. Student was born on June 18, 1991, and is now 18 years of age. When Student filed her complaint in May 2009, she was a 17 year-old minor. Student is eligible for, and receives special education and related services under the disability category of a serious emotional disturbance. She is still eligible for special education and related services until she obtains a high school diploma or reaches the age of 22.

2. Student was removed from the physical custody of her mother (Mother) when she was about seven years old. The evidence established that Student's historic diagnoses have included recurrent major depression, conduct disorder, oppositional defiant disorder, rule-out bipolar disorder, post traumatic stress disorder, and psychosis. Student has a history of avoidance of school, assaultive and self-injurious behaviors, suicidal ideation, and suicide attempts. Over the years since, Student has had approximately 40 physical and educational placements and 20 hospitalizations, and has been both a dependent and a ward of the California Courts.

3. Mother's last known address in Student's 2008 records reflected that Mother resided in Sacramento, California, within the educational jurisdiction of the Sacramento County Special Education Local Plan Area (SCO SELPA). Mother was the holder of Student's educational rights and resided within the boundaries of the Grant Joint Union

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<sup>4</sup> Because Student's claims are based on allegations of a denial of FAPE under two existing IEPs, beginning on April 28, 2009, and for the 2009-2010 school year, CDMH's argument that her claim is not ripe for adjudication is not persuasive.

High School District (Grant JUHSD). In about mid-2008, Grant JUHSD merged into the Twin Rivers Unified School District (Twin Rivers USD).

4. On December 18, 2008, the Superior Court of the County of Sacramento, Juvenile Justice Division (Sacramento Juvenile Court), issued an order that limited Mother's rights to make educational decisions for Student. The Sacramento Juvenile Court appointed Student's Great Grandmother as her responsible adult and educational representative, empowered to make educational decisions on Student's behalf during her minority.<sup>5</sup>

5. Great Grandmother resides in Concord, California, within the educational boundaries of the Mt. Diablo Unified School District (Mt. Diablo USD).

6. Great Grandmother credibly testified that in June 2009, when Student reached the age of majority, Student signed a document assigning her educational rights to Great Grandmother.<sup>6</sup> Accordingly, Great Grandmother represented Student's educational rights during the hearing.

## STUDENT'S UNIQUE NEEDS AND RESIDENTIAL TREATMENT PLACEMENTS

### 2007 and 2008 IEPs and Placements

7. A pupil with a disability has the right to a FAPE under the federal Individuals with Disabilities in Education Improvement Act (IDEA 2004), which includes special education and related services. A public agency responsible for providing special

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<sup>5</sup> The court order stated that the order was made "under Welfare and Institutions Code section 319(g), 361(a), or 726(b)."

<sup>6</sup> Although the document was not offered or admitted into evidence, Student submitted a copy of it to OAH in connection with this case on June 19, 2009.

education, including a local educational agency (LEA), must provide special education and related services to meet a pupil's unique needs, including the pupil's academic, social and emotional needs. Therapeutic mental health services are a related service that may be necessary for a pupil to benefit from his or her education.

8. Chapter 26.5 of the California Government Code sets forth a comprehensive system by which an LEA may refer a special education pupil suspected of being in need of mental health treatment to a local county mental health agency.<sup>7</sup> If a pupil requires a residential placement to meet his or her unique mental health needs and access education, the placement should be made in a facility that is located within, or in a county adjacent to, the county of the parent's residence. A residential placement for a pupil with a disability who is seriously emotionally disturbed may be made outside of California only after in-state alternatives have been considered and are found not to meet the child's needs.

9. Because Student and Mother resided in Sacramento, Sacramento County is the primary county or county of origin that has provided community services to Student over the years, including mental health and crisis care services. Student's 2007 and 2008 IEP placements provide a historical context for her 2009 claims.

10. Anthony Madariaga, Program Manager of the SCMH, has been involved in Student's mental health care for about 10 out of his 12 years of employment with SCMH. He has had oversight, clinical supervision, and management of the County's children's mental health programs for the past eight years. He also holds a Master's degree in

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<sup>7</sup> As set forth in Legal Conclusions 6 through 10, Chapter 26.5 of the Government Code, section 7570 et seq., governs interagency responsibilities for mental health services. These legal provisions are referred to as "3632," in reference to the legislative bill number which enacted these provisions into law, or "Chapter 26.5."

Counseling, and is a licensed marriage and family therapist. Mr. Madariaga's involvement with Student has included overseeing her care through the County's Children's Crisis Unit, Child Protective Services (CPS), and the Inter-Agency Management Authorization Committee (IMAC),<sup>8</sup> as well as the Chapter 26.5/3632 mental health referral program from school districts.

11. Mr. Madariaga established that from late 2006 to the spring of 2007, Student was involuntarily placed by the Sacramento County Conservator's Office and SCMNH in a locked children's ward at Metropolitan State Hospital (Metro) in Norwalk, California, pursuant to an IEP through the SCO SELPA. Metro no longer has a children's ward.

12. In November 2007, Student's IEP team, including SCMNH and Mr. Madariaga, worked with the Sacramento County Department of Probation (SCDP) to place Student at Starlight Adolescent Center (Starlight), a secured residential facility in Santa Clara County. In late December 2007, Starlight discharged Student back into the custody of the SCPD. Starlight no longer operates a secured children's facility.

13. In January 2008, Student's IEP team referred Student to SCMNH for Chapter 26.5 mental health services. On March 4, 2008, the Grant JUHSD and the SCO SELPA convened an IEP meeting. Based upon assessment by Sharon Saulsberry, an experienced SCMNH case manager, SCMNH determined Student to be eligible for its Chapter 26.5 residential mental health services. The IEP team adopted SCMNH's recommendation that Student required a residential "total milieu" placement for 24 hours a day, seven days a week; individual therapy for 45 minutes once a week; and medication management, in

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<sup>8</sup> IMAC is a statutory partnership between the school districts, SCMNH, CPS, Alta Regional Center, the Sacramento County Department of Probation, and other agencies that meets weekly to deal with services for persons needing special programs or out-of-state care.

order for Student to access her education.

14. Mr. Madariaga established that, pursuant to the March 4, 2008 IEP, SCMH took the lead as Student's IEP case manager to locate a residential placement for her. SCMH did not locate any appropriate residential placement for Student in California, but located one in Florida. On March 27, 2008, SCMH placed Student in a residential treatment facility called the Devereux Florida Residential Treatment Center (Devereux Florida RTC or Devereux Florida), located in Viera, Florida. Devereux Florida serves children and adolescents through the age of 17, who suffer emotional, behavior, and psychological problems.<sup>9</sup> It includes both a nonpublic school (NPS) and secured residence center. The evidence established that, due to Student's significant deficits and history of assault and self-harm, Devereux Florida required SCMH to fund the staffing of two adults to supervise Student within arms distance, twenty-four hours a day, and to manage Student's psychotropic medications to address her behavior, moods, impulse controls, and depression.

15. Student's Chapter 26.5 IEP placement at the Devereux Florida RTC in March 2008 was approved by the Sacramento Juvenile Court. In addition, in December 2008, when the Sacramento Juvenile Court appointed Great Grandmother as Student's responsible adult, it ordered the SCDP to continue Student's care and custody "for placement in residential program pursuant to minor's IEP based on Chapter 26.5 of the Government Code."

#### 2009 IEPs and Placements

16. On January 8, 2009, the Twin Rivers USD and the SCO SELPA held an annual

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<sup>9</sup> Mr. Madariaga's testimony was persuasive that Florida regulations prohibited the Devereaux Florida RTC from treating persons over the age of 17.



IEP meeting regarding Student while she was still at Devereux Florida.<sup>10</sup> The IEP team included SCMH and SCDP. By that date, Great Grandmother was the holder of Student's educational rights and attended the meeting. (Factual Findings 4 and 5.) The January 2009 IEP reflected that Devereux Florida NPS and residential staff informed the team by telephone of Student's levels of functioning and performance. The IEP noted that Student would turn 18 years old in mid-June, 2009, and she would no longer be eligible for the Devereux Florida program. The IEP reflected that after Student turned 18, SCDP planned to bring her back to Sacramento, and that her living situation would thereafter be facilitated through the California Independent Living Program (ILP).<sup>11</sup>

17. On May 7, 2009, the Twin Rivers USD held an IEP meeting, attended by Mt. Diablo USD and the Devereux Florida RTC by telephone. Great Grandmother and Student's attorney, Mr. Ruderman, and Mr. Madariaga from the SCMH, were also present. The purpose of the meeting was to discuss Student's levels of functioning and develop alternative placements after her 18th birthday in June 2009. The IEP reflected that the SCPD planned to ask the Court to terminate Student's ward status. Devereux Florida staff reported to the IEP team that Student still needed constant medication management, was at risk for an increase in assaultive and self-abusive behaviors, particularly in connection with transitions, and was still a danger to herself.

18. The May 2009 IEP found that Student still required a secured, structured

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<sup>10</sup> IEP records indicated that Mother had moved within the educational boundaries of the Twin Rivers USD.

<sup>11</sup> The ILP is coordinated by the California Department of Social Services on a county-wide basis.

environment with intensive supervision and medication management to minimize the risks of harm to herself and others. Mr. Madariaga persuasively established that he and his team at SCMH, as lead case manager, determined that Student needed an RTC or group home placement with a “high level” placement rating, meaning a program with psychiatric staff on duty, a staff to client ratio of three-to-one, awake staff during the night, management of psychotropic medications, and use of seclusion or restraints. In addition, for purposes of Chapter 26.5, the facility needed to provide access to education.

19. Mr. Madariaga explained to the May 2009 IEP team, and established at hearing, that SCMH could continue to fund Chapter 26.5 mental health services after Student turned 18 years old as long as Student had a concurrent IEP and she agreed to accept those services. However, Mr. Madariaga established that the age of majority in California is 18, and there are legal prohibitions in California against placing adults in group homes where minors reside.<sup>12</sup> Mr. Madariaga established that a waiver for a children’s residential placement might be available if Student, as an 18 year-old adult, established that she was already working well in such a residential program toward obtaining a high school diploma by the age of 19.

20. SCMH did not find a California program for minors that agreed to admit Student. In addition, SCMH did not find any comparable residential facility in California for adults over the age of 18 that also provided educational services. SCMH therefore looked

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<sup>12</sup> Under the mental health and community care laws, services for children are generally provided until they reach the age of 18, after which they are considered adults with different eligibility criteria and available services. (See, e.g., 22 Cal. Code Regs., § 84022, subd. (b)(2)(E), which requires licensed community group homes for minors to have policies and procedures to discharge the child at the age of 18.)

for an out-of-state alternative that would meet her needs. SCMH located such an alternative at the Devereux Cleo Wallace RTC (Devereux Colorado RTC or Devereux Colorado) near Denver, Colorado, which treats youths to the age of 21. Devereux Colorado also has both an NPS and a residential center.

21. On June 12, 2009, the Twin Rivers USD and SCO SELPA held an IEP meeting to review SCMH's proposal to transfer Student to the Devereux Colorado RTC. The IEP adopted SCMH's recommendation to transfer Student there prior to her 18th birthday. Great Grandmother established that the possibility of an RTC placement in California was not discussed at the June 2009 IEP meeting because SCMH had already determined that there was no appropriate RTC facility in California available for Student. On June 17, 2009, just prior to Student's 18th birthday, SCMH implemented the IEP and transferred Student from Devereux Florida to the Devereaux Colorado RTC.

22. The evidence established that, as a result of a confidential settlement agreement between Student, Great Grandmother, SCMH, and Mt. Diablo USD in August 2009, Mt. Diablo USD agreed to assume the responsibility as the LEA to provide Student's education and fund her special education placement.<sup>13</sup> As of the date of the hearing, SCMH remained the county of origin responsible to fund and manage Student's mental health placement under Chapter 26.5. From June 18, 2009, to an unknown date, the Twin Rivers USD continued to be Student's school district of record for purposes of her IEP

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<sup>13</sup> Official notice is taken that on August 18, 2009, OAH issued an Order dismissing the Twin Rivers USD, Mt. Diablo USD, and SCMH, as parties to this action, based on a settlement of Student's case regarding them. Prior to that, after noticed motions, OAH dismissed SCPD on June 10, 2009, and dismissed CDE on July 29, 2009, on the grounds that neither agency was a public agency responsible for Student's FAPE.

placement at Devereux Colorado.

23. Student is now over the age of 18, and is legally an adult. Student is no longer legally required to attend a public school, or to participate in an educational or mental health program. Mr. Madariaga credibly established that the Sacramento Juvenile Court terminated its wardship of Student when she reached the age of majority. However, because of her severe emotional disturbance disability, Student remains eligible for special education and related services until she obtains a high school diploma or reaches the age of 22.

24. Mr. Madariaga established that Devereux Colorado staff notified SCMHS that, about two weeks prior to the hearing, Student again engaged in self-abusive, suicidal behaviors and caused herself physical harm, was placed on a legal hold, and taken temporarily to a psychiatric hospital. As of the hearing, Student was still placed at the Devereux Colorado RTC and has not returned to California. Great Grandmother believes that Student wants to return to California, and that Student's IEPs should have placed her in California, and not out-of-state.

25. The evidence did not establish that the CDMH had any role in making decisions about Student in connection with any of her IEPs at issue in this case. By statute, CDMH provides a leadership role for the local, county-based provision of mental health services to consumers. There is no evidence that any public agency involved in Student's IEP meetings from April 28, 2009, to the present invited the CDMH to participate in any of Student's IEP meetings or to be involved in any decisions regarding her education or related mental health services.<sup>14</sup> During the relevant time period, Student was not without a public agency responsible to provide her a FAPE, as three public agencies, the Twin

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<sup>14</sup> During the hearing, the parties represented that an IEP meeting for Student was held on August 28, 2009, to which the CDMH was not invited.

Rivers USD, the Mt. Diablo USD, and the SCMH, were involved in making decisions about her education and services. Moreover, there is no evidence that the CDMH has any responsibility to authorize or establish residential treatment centers in California for pupils 17, or 18 years of age or older, with IEPs, or the legal authority to require a California residential treatment facility to accept Student with her existing IEP for the 2009-2010 school year.

## LEGAL CONCLUSIONS

1. Student, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].) The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

2. A pupil with a disability has the right to a FAPE under the IDEA 2004, consisting of special education and related services. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) The right to special education is extended to pupils from the ages of 18 through 21 years, who have preexisting IEPs, and who have not yet completed their prescribed courses of study, have not met proficiency standards or have not graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subds. (c)(3) & (4).)

## FAPE AND RELATED SERVICES

3. FAPE is defined as special education, and related services, that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5 § 3001, subd. (o).) A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493,

1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

4. The term “related services” (designated instruction and services (DIS) in California) includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

5. Education Code section 56360 requires that the SELPA must ensure that a continuum of alternative programs is available to meet the needs of individuals with exceptional needs for special education and related services. (34 C.F.R. § 300.115(a) (2006); Ed. Code, § 56360.) This continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. (34 C.F.R. § 300.115(b)(1) (2006); see also Ed. Code, §§ 56360, 56361.) If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child. (34 C.F.R. § 300.104.) Thus, therapeutic residential placement and services are related services/DIS that must be provided if they are necessary for the pupil to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).)

## CHAPTER 26.5 MENTAL HEALTH SERVICES AND RESIDENTIAL PLACEMENT

6. California Government Code Chapter 26.5 provides for the coordination of services provided by state and local governmental agencies to children who qualify for special education services. (Gov. Code, § 7570 et seq.) Government Code section 7576, subdivision (a) provides:

The State Department of Mental Health, or any community mental health service, as defined in Section 5602 of the Welfare and Institutions Code, designated by the State

Department of Mental Health, is responsible for the provision of mental health services ... developed in consultation with the State Department of Education, if required in the individualized education program of a pupil. A local educational agency is not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services can be appropriately provided in a less restrictive setting.

[Emphasis added.]

7. By regulation, the CDMH designated that the counties of California shall have the responsibility for the provision of mental health services required in an IEP. Section 60200, subdivision (c) of title 2 of the California Code of Regulations provides that "the community mental health service of the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP.... Mental health services shall be provided either directly by the community health service or by contractors."

8. Chapter 26.5 sets forth a comprehensive system by which an LEA may refer a special education student suspected of being in need of mental health treatment to the local county mental health agency for such treatment. Referrals shall be made to the community mental health service in the county in which the pupil lives. (Gov. Code, § 7575, subd. (g).) Government Code section 7572.5 provides that when an assessment determines, and a member of the pupil's IEP team recommends, a residential placement for a pupil with a serious emotional disturbance, the IEP team shall be expanded to include

a representative of the county mental health department. (Gov. Code, § 7576, subd. (a); Cal. Code Regs., tit. 2, § 60100, subd. (a).)

9. If the resulting IEP calls for residential placement, the IEP must designate the county mental health department as lead case manager. (Gov. Code, § 7576, subd. (c)(1).) The county mental health case manager shall coordinate the residential placement plan as soon as possible after the decision has been made to place the pupil in a residential placement. (Cal. Code Regs., tit. 2, § 60110, subd. (b).) Thus, the county mental health agency's responsibility is derivative of that of the school district. The county mental health agency "is responsible for the provision of mental health services" to the pupil only "if required in the individualized education program" of the pupil.

10. The regulations implementing Chapter 26.5 require that a residential placement should be made in a facility that is located within, or in a county adjacent to, the county of the parent's residence. (Cal. Code Regs., tit. 2, § 60100, subd. (f).) A residential placement for a pupil with a disability who is seriously emotionally disturbed may be made outside of California only after in-state alternatives have been considered and are found not to meet the child's needs, and the reasons why in-state alternatives were rejected are documented. (Gov. Code, § 7572.55; Cal. Code Regs., tit. 2, § 60100, subd. (h).) This statutory and regulatory structure for residential placement does not address the age of the pupil and merely requires the pupil to be eligible for special education on the basis of an emotional disturbance disability.

ISSUE 1: BEGINNING ON APRIL 28, 2009, AND FOR THE 2009-2010 SCHOOL YEAR, WAS, AND IS, CDMH A PUBLIC AGENCY RESPONSIBLE TO OFFER OR PROVIDE STUDENT WITH A SPECIAL EDUCATION PROGRAM, PLACEMENT, AND RELATED SERVICES?

Public Agencies Responsible for Educational Services

11. Student contends that the CDMH is a responsible public agency because it



has the authority to authorize a residential treatment placement for her in the state of California. CDMH contends that it is not a public agency responsible to provide Student's education and related mental health services.

12. Due process hearing procedures extend to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as a school district, county office of education SELPA, a charter school in some instances, or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs. (34 C.F.R. § 300.33; Ed. Code, §§ 56028.5, 56500.) Education Code section 56026.3 defines a "local educational agency" (LEA) as "a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area."

13. In California, the determination of which agency is responsible to provide education to a particular pupil is, in most instances, governed by residency requirements as set forth in sections 48200 and 48204 of the Education Code. (Katz v. Los Gatos-Saratoga Joint Union High School Dist. (2004) 117 Cal.App.4th 47, 57; Orange County Dept. of Educ. v. A.S. (C.D. Cal. 2008) 567 F.Supp.2d 1165, 1167.) An LEA is generally responsible for providing a FAPE to pupils with disabilities who reside within the LEA's jurisdiction. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.)

#### Public Agency Responsible for a Minor Pupil

14. For a pupil under the age of 18, Education Code section 48200 provides for the pupil's compulsory attendance at the public full-time day school or continuation school of the school district in which the residency of either the parent or legal guardian is located.

15. Effective January 1, 2009, the definition of a "parent" in Education Code section 56028 was amended to include, under subsection (a)(3), a "guardian generally

authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with sections 361 and 726 of the Welfare and Institutions Code.” Subsection (b)(2) of section 56028 also defines a “parent” as follows:

If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the “parent” for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

16. As part of California’s general statutory scheme of determining which LEA is responsible for educating a pupil, the Education Code contains exceptions for situations other than a child living with a “parent or legal guardian.” One exception relates to children who attend “juvenile court schools.” Their education is the responsibility of the county board of education in which the juvenile court school is located. (Ed. Code, § 48645.2.) However, during the time at issue herein, although Student was a ward of the Court subject to the SCPD until June 18, 2009, she was placed in an out-of-state RTC and not a juvenile jail facility in California, and the exception does not apply. (Factual Findings 8 through 24.)

17. As set forth in Factual Findings 4 and 5, and Legal Conclusions 2 through 5, and 11 through 16, subsequent to January 1, 2009, Great Grandmother was Student’s

responsible adult and the holder of her educational rights. Great Grandmother therefore qualified as Student's "parent" under Education Code section 56028, subdivisions (a)(3) and (b)(2) above, for purposes of determining which public agency is responsible to provide Student's education during her minority.

18. Accordingly, from April 28, through June 17, 2009, when Student was 17 years old, her school district of residence was based on Great Grandmother's residency in Concord, and did not involve the CDMH.

19. As set forth in Factual Findings 8 through 25, and Legal Conclusions 2 through 5, and 11 through 18 during the relevant time period prior to Student attaining the age of majority, the CDMH was not a public agency or an LEA responsible to provide Student a FAPE. The CDMH was not involved in any decisions regarding Student's education or related mental health services at any time from April 28, through June 17, 2009. Student was not bereft of any responsible public agency during that time period, as two school districts and SCMHS took responsibility. Therefore, the CDMH was not responsible for Student's education as a minor during that time period.

#### Public Agency Responsible for Pupils 18 Years or Older

20. Education Code section 56041 places on the "district of residence" the responsibility for pupils between ages 18 to 22, distinguishing only between conserved and nonconserved pupils. Section 56041 provides in relevant part:

Except for those pupils meeting residency requirements for school attendance specified in subdivision (a) of Section 48204, and notwithstanding any other provision of law, if it is determined by the individualized education program team that special education services are required beyond the pupil's 18th birthday, the district of residence responsible for

providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, shall be assigned, as follows:

(a) For nonconserved pupils, the last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.

21. As set forth in Factual Findings 4 through 6, and Legal Conclusions 2 through 5, and 11 through 20, subsequent to June 18, 2009, when Student became 18 years old, the last school district of residence in effect prior to her attaining the age of majority was based on Great Grandmother's residency. In addition, after Student became 18, she assigned her educational rights to Great Grandmother.

22. As set forth in Factual Findings 8 through 25, and Legal Conclusions 2 through 10, SCMH was the county of origin responsible for Student's mental health services in connection with her IEPs. SCMH assumed the role as Student's lead case manager, commencing with the March 2008 IEP when she was made eligible for Chapter 26.5 services. CDMH was not invited to any of the IEP meetings for Student from 2007 to the present. There is no evidence that any public agency involved in providing Student's education and related services requested the involvement of CDMH in any decisions regarding Student. Student was not without any responsible public agency during that time period, as two school districts and SCMH continued to take responsibility. Therefore, the CDMH was, and is, not Student's public agency responsible for her education and

related services at any time from June 18, 2009 to the present.

23. There is no evidence or legal authority to support Student's contention that the CDMH is responsible for community group homes for adults in California. In addition, there is no evidence or legal authority to support Student's contentions that CDMH is a public agency required to establish a residential treatment facility in California for Student to benefit from her education, or required to order an existing California residential facility to admit Student, either as a 17-year old minor, or as an 18 year-old adult for the 2009-2010 school year.

24. Accordingly, Student did not establish that the CDMH has any role as a public agency involved in decisions regarding Student, or the provision of mental health services to Student pursuant to her IEPs in effect at any time from April 28, 2009, to the present. Therefore, Student did not establish that CDMH was a public agency responsible to provide her a FAPE.

ISSUE 2: IF CDMH IS A RESPONSIBLE PUBLIC AGENCY, DID CDMH DENY STUDENT A FAPE BEGINNING ON APRIL 28, 2009, AND FOR THE 2009-2010 SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE AN APPROPRIATE EDUCATIONAL PLACEMENT IN A RESIDENTIAL TREATMENT PROGRAM LOCATED IN CALIFORNIA?

25. As set forth in Legal Conclusions 2 through 24, since the CDMH is not a public agency involved with making decisions regarding Student's IEP, including her mental health services, or responsible to provide her a FAPE, the second issue of whether the CDMH denied Student a FAPE need not be reached.

## ORDER

Student's requests for relief are denied.

## PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision

indicate the extent to which each party has prevailed on each issue heard and decided. CDMH prevailed on Issue 1 in this case. Issue 2 was not decided.

## NOTICE OF APPEAL RIGHTS

This is a final administrative decision, and all parties are bound by this Decision. The parties are advised that they have the right to appeal this decision to a state court of competent jurisdiction. Appeals must be made within 90 days of receipt of this decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505 subd. (k).)

DATED: October 26, 2009

/s/

DEIDRE L. JOHNSON

Administrative Law Judge

Office of Administrative Hearings