

CLIENT NEWS BRIEF

School District Cannot Avoid Responsibility For Residential Placement Despite Availability Of Financial Assistance From A Non-Educational Agency

In a significant special education case published earlier this year, the California Court of Appeal ruled that a school district was responsible for funding the costs of residential placement for an adopted former foster child, despite funding assistance provided for the placement by the Department of Children and Family Services (DCFS).

Background

B.H., a former foster child with significant disabilities, lived with his adoptive parents within the boundaries of the Manhattan Beach Unified School District (MBUSD). B.H.'s parents arranged for his placement at a residential treatment facility and its affiliated nonpublic school in Sonoma County. MBUSD offered this placement to B.H. in an individualized education program (IEP) upon B.H. qualifying for special education. As adoptive parents of a child formerly under DCFS's supervision, B.H.'s parents applied for and received financial assistance for his residential placement through the Adoptive Assistance Program (AAP), administered through DCFS. Given this financial assistance from DCFS, MBUSD refused to fund the IEP placement. MBUSD's reasoning was two-fold: DCFS had placed the student—not the school district—and so MBUSD was not responsible for the costs of B.H.'s education; and, as DCFS was funding the placement, MBUSD had no need to do so.

The parents initiated a due process hearing, with the sole issue being whether MBUSD was responsible for implementing B.H.'s IEP and paying the parents' travel expenses related to B.H.'s placement at the residential treatment center. The administrative law judge (ALJ) ruled in favor of MBUSD, finding that MBUSD was not responsible for the costs of B.H.'s education. In reaching this conclusion, the ALJ relied on Education Code sections 56155 and 56156.4, which provide that if a child with disabilities is placed in a licensed children's institution (LCI) . . . *by a public agency, other than an educational agency*, then the special education local plan area (SELPA) shall be responsible for providing special education to the child residing in the LCI, and not the district of parents' residence. (Ed. Code, § 56156.4, subd. (a); emphasis added.) The ALJ concluded that DCFS was a "public agency other than an educational agency" for purposes of Sections 56155 and that DCFS had placed B.H. in the residential treatment center.

On appeal, the trial court agreed with the ALJ's finding that MBUSD was not responsible for the costs of B.H.'s residential placement.

Analysis

The Court of Appeal reversed the trial court's decision, holding that because DCFS is not a "public agency, other than an educational agency" under Education Code section 56155 and that because DCFS did not in fact "place" B.H. in the residential facility but rather only offered AAP funding assistance, Education Code section 56156.4, subdivision (a), did not provide MBUSD with an exception to the rule that the school district of the parents' residence is responsible for the costs of education for a student with disabilities.

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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In reaching these conclusions, the court first pointed out that B.H.'s educational placement was to be determined under the Individuals with Disabilities Education Act (IDEA), which required MBUSD to provide a free appropriate public education (FAPE), including placement, to B.H. Further, regardless of any other agency involvement, the statutory schemes of the IDEA and related provisions of the California Education Code do not provide an exception to a school district's obligation to provide residential placement services solely on the basis that such services or placement may be available through another agency.

Next, the court explained that for purposes of Education Code sections 56155 and 56156.4, subdivision (a), a "public agency" is defined, in part, as "... 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." (Ed. Code, § 56028.5.) Because DCFS did not provide "special education or related services" to B.H. it was not a "public agency, other than an educational agency," and thus the exception under Education Code section 56156.4, subdivision (a) did not apply.

The court found that the purpose of AAP funding is to ease financial burdens on adoptive families in addressing a child's serious mental health or emotional problems that pre-existed the child's adoption. The court emphasized that the law does not authorize DCFS to facilitate a residential placement for the purposes of providing special education, noting that such authority arises only when a student is a dependent of the juvenile court, and the court orders or permits DCFS to make educational decisions on behalf of the child.

Takeaways

Under *B.H. v. Manhattan Beach Unified School District*, a residential placement financially facilitated by DCFS for a child no longer under DCFS's jurisdiction did not constitute "placement" by a non-educational public agency for purposes of determining the agency responsibility for funding the student's FAPE. As school districts take stock of the recent legislative season and evaluate their practices midway through the school year, they should bear the *B.H.* case in mind. Education Code provisions concerning residential placements and licensed children's institutions are nuanced, and legal counsel should be consulted when these issues arise.

For more information on this decision or to discuss any questions related to special education, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#). Over the next few weeks our housing experts will also be developing materials in response to the 2019 housing laws including sample checklists and preliminary applications to assist local governments in complying with SB 330. Keep an eye out for these resources.

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