

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

In the matter of:

STUDENT,

Petitioner,

v

ORANGE COUNTY DEPARTMENT OF
EDUCATION, LOS ANGELES UNIFIED
SCHOOL DISTRICT, CHARTER OAKS UNIFIED
SCHOOL DISTRICT, and CALIFORNIA
DEPARTMENT OF EDUCATION,

Respondents.

DECISION

Administrative Law Judge Robert F. Helfand, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Laguna Hills, California on August 13 and 14, 2007.

Attorney Kathleen M. Loyer, of the Law Offices of Kathleen M. Loyer, represented the Student. Attorney Karen L. Van Djik, of Rutan & Tucker, LLP, represented the Orange County Department of Education (OCDE). Melvin Peters of OCE also attended. Attorney Donald Erwin, Assistant General Counsel, represented the Los Angeles Unified School District (LAUSD). Attorney Joyce E. Paul, of Parker & Covert, LLP, represented Charter Oaks Unified School District (Charter Oaks). Allan H. Keown, Deputy General Counsel, represented the California Department of Education (CDE).

Student filed his request for due process hearing on October 2, 2006, and an amended request for due process hearing on November 1, 2006. Following mediation,

all issues were resolved except for a single issue which is the subject of this due process hearing. The parties agreed to multiple stipulated facts. Two witnesses, David Glidden, Program Manager at the Orangewood Children's Home, and Rick Martin of OCDE, testified at the due process hearing.

At the conclusion of the hearing, the record remained open to permit Student to submit additional documentary evidence and to permit the parties to submit post-hearing briefs. On September 4, 2007, Student submitted into evidence copies of orders from the Orange County Juvenile Court dated February 19, 1999; December 3, 1999; and July 10, 2006, which were designated as exhibits A, B, and C, respectively. The parties timely submitted post-hearing briefs. The matter was submitted on October 1, 2007. The parties agreed to waive the 45 day time limit and the ALJ agreed to issue his decision no later than November 1, 2007.

ISSUE

Which of the Respondents is responsible for the implementation of Student's Individual Education Program (IEP) and/or funding of his educational placement for the 2007-2008 school year?

CONTENTIONS OF THE PARTIES

CDE contends that California law sets up requirements for school districts, county offices of education and special education local planning areas (SELPA) to provide students with a free and appropriate public education (FAPE). The Education Code requires a child to attend the schools in the local district where the parent or guardian of the child resides. The Code contains exceptions to this requirement including when a child resides in a licensed children's institution (LCI) or attends a juvenile court school. Here, CDE contends that Student resided at Orangewood Children's Home (Orangewood) and since OCDE provides educational services to Orangewood, it is the

educational agency responsible for providing FAPE to Student including funding his placement at a residential treatment facility (RTC).

OCDE contends that it is not responsible for implementing Student's IEP and funding his placement at a RTC because Student, as a homeless child, fails to be covered by any of the exceptions to the California residency statutes contained in the Education Code since Oranewood is only a temporary children's shelter. Because California law fails to address the situation of what local educational agency is responsible to provide a FAPE to a homeless child, the Individuals with Disabilities Education Act (IDEA) requires the state education agency, here the CDE, to fund the cost of providing Student a FAPE. Alternatively, OCDE contends that LAUSD may be responsible for funding Student's current placement as it was the last local education agency to provide services to Student prior to his being placed at the RTC. OCDE also contends, alternatively, that Charter Oaks could be the responsible educational agency since Student is "homeless" and that Oranewood is a temporary shelter and Charter Oaks was the last district where he was enrolled.

Charter Oaks avers that its responsibilities to provide Student with a FAPE ceased when Student was removed from a LCI located within Charter Oaks and moved to Oranewood.

LAUSD contends that it was only responsible to provide educational services to Student for the period he was hospitalized in a private psychiatric hospital within LAUSD pursuant to the Education Code sections 56167, subdivision (a), and 56167.5.

Student contends that he is entitled to be provided a FAPE; and that if present law fails to acknowledge which local education agency is responsible, then the burden to ensure that Student receives a FAPE falls to the state education agency, CDE.

FACTUAL FINDINGS¹

1. Student is a 14-year-old ninth-grade pupil. He is eligible for special education and related services as a student with an emotional disturbance. Student currently resides in a RTC, Cinnamon Hills Youth Crisis Center (Cinnamon Hills), located in St. George, Utah.

2. Since March 1, 1996, Student has been a dependent of the Orange County Juvenile Court (Court) in accordance with Welfare and Institutions Code section 300 et seq.

3. The parental rights of Student's parents, including educational rights, were terminated by the Court on December 3, 1999.

4. Lori Hardy served as Student's foster parent from February 2000 through March 25, 2004. On April 15, 2003, Ms. Hardy was appointed by the Court as Student's de facto parent.²

5. On March 25, 2004, the Orange County Social Services Agency (OCSSA) placed Student at Canyon Acres, a group home in Anaheim, California. Student remained at Canyon Acres until July 19, 2004 when he was hospitalized at Arroyo Charter Oaks Hospital.

¹ Factual Findings 1 through 8, 12 through 16, and 18 through 21 are based upon the stipulated facts.

² A "de facto parent" is permitted to participate in dependency proceedings as a party pursuant to Rule 1412, subd. (e), of the California Rules of Court. (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 751.) A de facto parent does not possess the rights and responsibilities of a legal guardian. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 77.) Thus, a de facto parent possesses no educational rights

6. On or about September 2, 2004, OCSSA placed Student at the San Gabriel Children's Center (SGCC) located in Covina, California and within the jurisdiction of the Charter Oaks. SGCC is a LCI. While at SGCC, Student attended Live Oak Canyon School, a non-public school, pursuant to Charter Oaks's 30-day interim placement and addendum to Student's IEP prepared by Charter Oaks on September 7, 2004, which reflected Student's transfer into Charter Oaks.

7. Student's placement at SGCC continued until February 3, 2006, with intermittent psychiatric hospitalizations. From January 21, 2005 through January 25, 2005, Student was hospitalized at the Arroyo Charter Oak Hospital in Covina. Student was next hospitalized from February 23, 2005 through March 11, 2005, at the Del Amo Hospital in Torrance. Student was treated at the BHC Alhambra Psychiatric Hospital (BHC) on three occasions, March 14-18, 2005, January 10-17, 2006, and January 19–February 3, 2006.

8. Following Student's release from BHC on February 3, 2006, OCSSA placed Student at the Orangewood in Orange, California.

9. The parties dispute whether Orange is a temporary children's shelter as it relates to Student. Orangewood is operated by OCSSA under Juvenile Court authority, for neglected and sexually, physically or emotionally abused children. Orangewood opened in 1985 and became an LCI in July 2000. Orangewood is located on a campus in Orange consisting of nine cottages with 216 beds, two swimming pools, a gym, kitchen facilities, game room, and a branch of the public library. Orangewood provides medical and counseling services on site. Orangewood is intended as a residency for these children until OCSSA can make a suitable permanent placement. The First Step Assessment Center at Orangewood is where children remain for up to 23 hours while relative and non-extended relative family members are evaluated for placement by OCSSA staff. The vast majority of children at Orangewood stay a few hours to several days. In Fiscal Year 2005-2006, Orangewood provided care for 1,584 children. The

average stay for a child at Orangewood is 27 days with a range of a few hours to several months.

10. Also located on the Orangewood campus is the William Lyon School (WLS). WLS is a kindergarten through 12th grade school operated by OCE as a juvenile court school (see Legal Conclusion 10).

11. At Orangewood, the vast majority of children only stay for periods of several hours or a few days. Others, like Student, reside at Orangewood for as long as several months. Orangewood consists of a campus that is designed to be more than a short term residency for these children in that there are residential cottages, athletic facilities, library, and school buildings. Thus, Orangewood is not a temporary shelter, but it is an LCI as it relates to Student.

12. On February 8, 2006, Student was hospitalized at the Los Encinitas Psychiatric Hospital in Pasadena, California where he remained until February 16, 2006, when Student returned to Orangewood. The Pasadena Unified School District provides educational services to students hospitalized at Los Encinitas.

13. From February 17 through March 9, 2006, Student was hospitalized at College Hospital in Cerritos, California. Student returned to Orangewood on March 9, 2006. The ABC Unified School District provides educational services to students hospitalized at College Hospital.

14. On March 13, 2006, OCDE sent an Invitation to Participate in an IEP Team Meeting scheduled for March 15, 2006, at 10:00 a.m., to representatives from OCSSA, the Clinical Evaluation and Guidance Unit of OCSSA, the Continuing Care Placement Unit (CCPU) of OCSSA, the Orange County Health Care Agency (OCHCA), Pasadena Unified School District, and Student's Court Appointed Special Advocate (CASA), plus Student's court appointed attorney, Kathleen Loyer.

15. On March 15, 2006, an emergency IEP meeting was convened by OCDE. Attending on behalf of Student were Ms. Hardy, Student's de facto parent, and Kathleen

M. Loyer, his attorney. The IEP team also comprised Chris Off, speech language pathologist; Melvin Peters, OCDE representative; Greg Manning of the CCPU of OCSSA; Deborah McGowan, a school psychologist; K. Burrell, Student's court appointed special advocate (CASA); and Sandra Warne, a special education teacher. The IEP team discussed that Student's emotional instability may require his placement at a residential treatment facility. The team then issued a referral to the OCHCA for a mental health assessment

16. Student was placed by the Court in the Orange County Juvenile Hall, located in Orange, from April 15 through May 2, 2006. On May 2, 2006, Student returned to Orangewood.

17. Michael Mullen, Ph.D., of OCHCA conducted Student's mental health assessment on March 27, 28, 29 and April 10, 2006. In his May 15, 2006 report, Dr. Mullen noted that Student "has had many applications of psychiatric and psychological interventions, intensive school-based counseling, residence in group homes and foster families, and public and non-public schools" and that Student's "behavioral problems have consistently made benefiting from his special education program difficult, and at times, impossible." Dr. Mullen concluded that Student was "failing in his current level of care." Dr. Mullen recommended that Student be placed in a residential treatment facility.

18. On May 18, 2006, the IEP team reconvened and accepted Dr. Mullen's recommendation for placement and agreed to conduct a residential placement search.

19. From June 8, 2006 through July 28, 2006, Student was hospitalized at Gateways Hospital, an acute psychiatric hospital, in Los Angeles. LAUSD provides educational services to children at Gateway through the Bernice Carlson Home Instructional Program and Hospital School. Student enrolled in this program, but he never attended any classes.

20. On July 6, 2006, the IEP team met and received OCHCA's recommendation

that Student be placed at Cinnamon Hills in Utah. The IEP team adopted OCHCA's recommended placement as appropriate. On July 10, 2006, the Court issued an order approving Student's placement at Cinnamon Hills.

21. Student was transported from Gateways Hospital to Cinnamon Hills where he is currently placed. Student's current placement is being financed pursuant to an interim agreement reached at mediation.

LEGAL CONCLUSIONS

1. The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that children with disabilities receive an education that is both appropriate and free." (*Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 13 [114 S.Ct. 361, 126 L.Ed.2d 284].) The act provides federal funds to assist "state and local efforts" to meet the educational needs of children with disabilities where the state elects to participate. (*Patricia P. v. Board of Education of Oak Park* (2000 7th Cir.) 203 F.3d 462, 467, citing 20 U.S.C. § 1400(b)(9).) A state choosing to participate in the IDEA must adopt a plan setting forth policies, procedures, and programs. (20 U.S.C. § 1412(a).) The state education agency (SEA), which in California is the CDE, is responsible for general supervision and ensuring that the requirements of the act are complied with. (20 U.S.C. § 1412(a)(11)(A)(i).)

2. Under the IDEA, the local educational agency (LEA) is generally responsible to provide a free appropriate public education (FAPE) to students with disabilities who are within its jurisdiction. (20 U.S.C. § 1414(d)(2)(A).) California law defines a LEA as "a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area (SELPA)." (Ed. Code, § 56026.3.)

3. Pursuant to California special education law, and the Individual with Disabilities in Education Improvement Act of 2004 (IDEIA), children with disabilities have

the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20U.S.C. § 1401(9); Ed. Code, § 56040, subd. (a).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29); Ed. Code, § 56031.)

4. Although the Education Code does not explicitly set forth its overall purpose, the code's primary aim is to benefit students, and in interpreting legislation dealing with our educational systems, it must be remembered that the fundamental purpose of such legislation is the welfare of the children. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, (2004) 117 Cal. App. 4th 47, 63.) With regard to the special education portion of the Education Code, the Legislature intended "to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.)." (Ed. Code, § 56000.)

5. Education Code section 48200 mandates that children between the ages of six and 18 years of age attend a full-time day school or continuation school in the school district where the residency of the child's parents or legal guardian is located.

6. A "parent" is defined as any of the following: (1) a person having legal custody of a child; (2) any adult pupil for whom no guardian or conservator has been appointed; (3) a person acting in the place of a natural or adoptive parent; or (4) a foster parent if the authority of a parent to make educational decisions for the child has been specifically limited by court order in accordance with subsection (b) of section 300.20 of

Title 34 of the Code of Federal Regulations.³ (Ed. Code, § 56028, subd. (a).) But a “parent’ does not include the state or any political subdivision of government.” (Ed. Code, § 56028, subd. (b).)

7. There are exceptions to the general compulsory education requirements that a child attends school in the district where his parents or legal guardian resides. Students with disabilities who are placed in a hospital, including a psychiatric hospital, for medical purposes are the educational responsibility of the district, SELPA, or county office of education, in which the hospital is located. (Ed. Code, § 5616, subd. (a).) But, the placement of a student with disabilities at such a hospital does not constitute a necessary residential placement for which the district, SELPA, or county office of education would be responsible as an educational program option. (Ed. Code, § 56167.5.) Thus, the entity providing educational services to those students hospitalized is only responsible for providing educational services during the student’s attendance at the hospital.

8. Education Code section 48204 provides that a child is deemed to have complied with the residency requirements for school attendance “notwithstanding [Education Code] section 48200” if the child, in pertinent part, is:

- (a) A pupil placed within the boundaries of that school district in a regularly established licensed children’s institution, or a licensed foster home, or a family home pursuant to a commitment or placement under chapter 2 of the Welfare and Institutions Code.

An agency placing a pupil in a home or institution described in this subdivision shall provide evidence to the school that the placement or commitment is pursuant to law.

³As of October 13, 2006, 34 C.F.R. § 300.20 was restated as 34 C.F.R. § 300.30

- (b) A pupil for whom interdistrict attendance has been approved pursuant to chapter 5 (commencing with section 46600) of part 26.
- (c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.
- (d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to part 1.5 (commencing with section 6550) of division 11 of the Family Code by the caregiving adult is sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.
- (e) A pupil residing in a state hospital within the boundaries of that school district...

9. A "homeless child" is an individual who lacks a fixed, regular, and adequate nighttime residence. (42 U.S.C. § 11434a.) Pursuant to Factual Finding 8, Student is not homeless as he does not lack a fixed, regular, and adequate nighttime residence since he was placed at Orangewood.

10. Another exception to the general rule relates to children who attend "juvenile court schools." Their education is the responsibility of the county office of education in which the juvenile court school is located. (Ed. Code, § 48645.2.) The definition of "juvenile court schools" includes public schools or classes in certain group homes, juvenile halls, juvenile home, day center, juvenile ranch, juvenile camp, regional youth educational facility, or Orange County youth correctional center. (Ed. Code, § 48645.1.) Specifically, Education Code section 48645.1 defines "juvenile court schools" to include, in pertinent part, public schools or classes "in any group home housing 25 or more children placed pursuant to sections 362, 727, and 730, of the Welfare and Institutions Code or in any group home housing 25 or more children and operating one

or more additional sites under a central administration for children pursuant to section 362, 727, or 730 of the Welfare and Institutions Code...” Here, OCDE provides educational services to Orangewood through a juvenile court school.

11. Under Education Code, section 48645 et seq, county offices of education are charged with “the operation and administration of public schools within any group home housing 25 or more placed pursuant to Sections 362, 727, and 730 of the Welfare and Institutions Code...”⁴ Such schools are designated “juvenile court schools.” (Ed. Code, §§ 48645, 48645.1, 48645.2.)

LOS ANGELES UNIFIED SCHOOL DISTRICT

12. LAUSD contends that its responsibilities educating Student are limited to providing educational services while he was a patient at the private psychiatric hospital, Gateways Hospital.

13. As discussed in Legal Conclusion 7, when a child is hospitalized for medical reasons, the LEA where the hospital is located is charged with providing the child educational service only for the period of his hospitalization since such hospitalization does not constitute a residential placement.

14. Pursuant to Factual Findings 2, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, and 19 and Legal Conclusions 5, 6, and 8, LAUSD was only responsible for providing educational services while Student was hospitalized at Gateways Hospital and is not the LEA responsible for implementing Student’s IEP and/or funding his placement at the RTC.

⁴Section 362 refers to children adjudged dependents of the court pursuant to Welfare and Institutions Code, section 300. Student falls under this section. Sections 727 and 730 involve wards of the court.

CHARTER OAKS UNIFIED SCHOOL DISTRICT

15. Charter Oaks contends that its responsibilities for providing a FAPE to Student ceased when he no longer was placed at SGCC, an LCI, located within the geographic boundaries of the district.

16. As discussed in Legal Conclusion 8, when a child is placed in a LCI within the jurisdiction of a LEA, the child is deemed to have complied with the residency statutes of the Education Code. Thus, that LEA must provide the child with educational services and a FAPE while residing at the LCI.

17. Pursuant to Factual Findings 1, 2, 3, 6, 7, and 8 and Legal Conclusions 1, 2, 3, 4, 5, 6, 7 and 8, Charter Oaks's responsibilities ceased at the time Student was removed from SGCC and placed at Orangewood. Thus, Charter Oaks is not responsible for implementing Student's IEP and/or funding his placement at the RTC.

ORANGE COUNTY DEPARTMENT OF EDUCATION

18. OCDE contends that it is not responsible for implementing Student's IEP and/or funding his placement at Cinnamon Hills because (i) he is homeless and not covered by any of the exceptions to the residency statute since OCH is a temporary children's shelter, and (ii) that California law fails to address Student's situation. OCDE further avers that since there is no entity responsible to provide a FAPE to Student, the IDEA requires the state education agency (CDE) to be responsible for ensuring that Student receives a FAPE. (20 U.S.C. § 1412(a)(11)(A)(I).)

CDE counters that California law requires the district or SELPA to provide a child located within its service area to provide a FAPE, including placement at a RTC. Because Orangewood is a LCI, California law requires the OCDE and its SELPA to implement the IEP and fund placement at Cinnamon Hills.

19. As discussed in Legal Conclusions 8 and 16, when a child is placed in a LCI,

within jurisdiction of an LEA, that LEA is responsible for providing the child with educational services and a FAPE. Also, as discussed in Legal Conclusions 11 and 12, county offices of education, like OCDE, are charged with operating and administering juvenile court schools.

20. Pursuant to Factual Findings 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 20 and Legal Conclusions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 14, 16, and 17, OCDE is the responsible educational agency to implement Student's IEP and fund his RTC placement since county offices of education are the LEA for juvenile court schools.

ORDER

The Orange County Department of Education is responsible for implementing Student's IEP and funding his placement at Cinnamon Hills, the residential treatment center, for the 2007-2008 school year.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student was the prevailing party because he received the relief requested in his request for due process hearing.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: October 31, 2007



Handwritten signature of Robert F. Helfand in black ink, written over a horizontal line.

ROBERT F. HELFAND

Administrative Law Judge

Office of Administrative Hearings

Special Education Division