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

In the Matter of STUDENT: Petitioner, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	OAH CASE No. 2006110108

DECISION

Debra R. Huston, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division, State of California (OAH), heard this matter telephonically on May 14, 2007, in Sacramento, California.

Attorney Richard Peterson represented Student. Student's father (Father), step-mother (Mother), and stepbrother (Brother) were present by telephone during the entire hearing. Two law students of Mr. Peterson, Nick Raichart and Jackie Chiang, were present by telephone during portions of the hearing for the purpose of observing.

Attorney Ricardo Silva represented the Los Angeles Unified School District (District). Vicky McKendall of District's Due Process Unit was present by telephone during the entire hearing on District's behalf.

On November 6, 2006, Student filed his request for due process hearing. On December 21, 2006, the due process hearing was continued. On May 14, 2007, the matter was submitted for decision and the record was closed.

ISSUES[1]

1. Does Student live with Brother for purposes of the caregiver exception of Education Code section 48204?

2. Does the evidence support the District's determination that Student is not living in the caregiver's home?

3. Is Student a resident within the jurisdictional boundaries of District?

CONTENTIONS OF THE PARTIES

Student contends that his stepbrother (Brother), who lives within the jurisdictional boundaries of District, is his caretaker pursuant to Education Code section 48204 for purposes of determining residency, and that District is, therefore, required to continue providing special education and related services to Student pursuant to his placement at Wide Horizons Ranch (WHR) in Northern California.

District contends that Student is not "living in the home of a caregiving adult" within the meaning of the caregiver exception to the residency requirements established by Education Code section 48204 because that statute requires that the student physically live in the caregiver's home, while Student lives at WHR in Northern California and his parents now live in the state of Washington. District contends that Student's claim that he lives with Brother is incorrect because Student visited Brother's home only once since his placement at WHR, in April 2007, and because the reunification plan from WHR states that Student will likely live with his parents upon discharge. According to District, Student's residence for purposes of the IDEA is with his parents in Washington.

---

[1] The issues for hearing were agreed upon during a prehearing conference (PHC) held on May 2, 2007. For clarity, the issue has been rephrased but is the same issue presented in Student's complaint and agreed upon at the PHC.

PROCEDURAL MATTERS

On November 6, 2006, Student's father filed a request for a due process hearing, claiming that District inappropriately changed Student's address from Brother's address, within District, to his parents' address in the state of Washington, terminated funding for all services for Student, including the cost of his placement at WHR in Northern California, and notified Colville School District in Washington of its responsibility to provide educational programming for Student. [2]

Student moved for summary judgment and District moved to dismiss, but at a prehearing conference on May 2, 2007, the parties stipulated that the matter should proceed to a telephonic due process hearing, and that all pleadings and declarations filed in conjunction with those motions may be considered by OAH in determining the issues in the case.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is a 16-year-old tenth-grade pupil. In December 2000, Student was first determined by a District IEP team to be eligible for special education and related services as a student with an emotional disturbance. Student is currently placed, pursuant to his IEP with District, at WHR, which is a residential treatment center located in Oak Run, California. Student was living with his father, stepmother, and younger brother within the boundaries of District in April 2004 when he was placed at WHR, and he has been at WHR continuously since the date of his placement.

2. On July 10, 2005, Brother signed a caregiver affidavit declaring that Student

[2] Student claimed in his complaint that District violated Student's privacy by sending confidential documents regarding Student without first obtaining a release to do so. This claim was withdrawn during a prehearing conference held on March 23, 2007.

"lives in" Brother's home, which is in Sherman Oaks and within the jurisdictional boundaries of District. Student's parents continued residing within the boundaries of District until August 2005, at which time they moved to the state of Washington and established residency there. It is an undisputed fact that Student was never enrolled in school in Washington.

FACTUAL BACKGROUND

3. Prior to Student's placement at WHR, Student was experiencing significant psychiatric and behavioral problems. He was verbally abusive, destroyed property, and engaged in violent altercations. He was violent and angry toward members of his family, and particularly toward his younger brother. In the fall of 2003, Student broke his younger brother's leg and attempted to drown him in a swimming pool. Student was both homicidal and suicidal. He experienced five psychiatric hospitalizations during the fall of 2003 and early 2004. In December 2003, the Los Angeles County Department of Mental Health assessed Student for eligibility for mental health services pursuant to the AB 3632 program (Gov. Code, Ch. 26.5 [governs interagency responsibilities for providing services to students with disabilities].)

4. Student was discharged from a psychiatric hospital in February 2004, and resided with his parents in Los Angeles. An emergency IEP meeting was held on February 5, 2004, at which it was determined that Student qualified for AB 3632 mental health services. The IEP team recommended that the services be delivered in a residential setting because Student was a danger to himself and to others. Pursuant to that recommendation, Student was placed at WHR in April 2004, where he receives intensive, year-round treatment and services.

5. Student's parents believe that Student will never be able to live in their home again because Student's aggressive and violent conduct, which arises from his disability, presents a physical danger to Student's family, and particularly to his younger brother.

Mother and Father intend to keep Student separate from his younger brother because of that danger.

6. Before Student's parents moved to Washington in August 2005, they began discussing with Brother, Student's 31-year-old stepbrother who is Mother's son from a previous relationship, whether Student could live with Brother. At some point, Student's parents learned of the existence and effect of a caregiver affidavit. Student's parents put their house on the market for sale in July 2005. On July 10, 2005, Brother signed a "Caregiver's Authorization Affidavit" declaring that Student lives in his home. This caregiver status was the only legal vehicle available to Student's family, other than guardianship, that would enable Brother to enroll Student in school. A guardian has never been appointed for Student. The caregiver's authorization affidavit was provided to District when it was executed by Brother, and District was aware of Student's parents' subsequent move to Washington. Physically, Student continued in his IEP placement at WHR and remains there to this day.

7. On October 30, 2006, District conducted a triennial IEP team meeting by telephone. At the conclusion of that IEP meeting, District informed Father that it would cease funding Student's placement at WHR as of October 31, 2006, and would notify the school district in Colville, Washington, that it was their responsibility to provide educational programming for Student. Father testified credibly that District told him that the caregiver affidavit had expired and that Student's residence was now in Washington.[3]

8. District informed Colville School District (Colville) in Washington on October 31, 2006, that District was ceasing its provision of services to Student, and that it was Colville's responsibility to provide those services. Colville responded by letter denying responsibility for Student's educational services and asserting that Student was a resident of District, and not of Washington. District requested a notarized caregiver authorization affidavit from Brother, and Brother provided it, making the same declarations described in

[3] District concedes in its pleadings that the caregiver affidavit had not expired.

Factual Finding 6.

DOES STUDENT LIVE WITH BROTHER FOR THE PURPOSES OF THE CAREGIVER EXCEPTION OF EDUCATION CODE SECTION 48204?

9. As discussed in Legal Conclusions 2, 3, 6, and 17, a student's residence under the IDEA is determined by state law. California law requires children between the ages of six and 18 years to attend school in the district in which the residency of either the parent or legal guardian is located. Education Code section 48204 establishes an exception to the residency requirement for students who "live[s] in the home of a caregiving adult that is located within the boundaries of the school district" and whose caregivers have signed a caregiver's affidavit as described in Family Code sections 6550 and 6552. This caregiver exception to California's residency requirement was enacted by the California Legislature in 1994 to help to "ensure that minors living with nonparent caregivers will have unhindered access to public education and essential medical care."

10. District contends that Student "is not a resident of District pursuant to the Caregiver's Authorization Affidavit because [Student] does not *actually live* with his alleged caregiver, [Brother]." (Emphasis added.)

11. According to Father, Mother, and Brother, for the purposes of the caregiver authorization affidavit, Student lives with Brother, and it was their intent at all times on and after July 10, 2005, that Brother be Student's caregiver. In addition, Student would be physically living with Brother but for the fact that Student's IEP team placed him at WHR, and Student will physically live with Brother upon his discharge from WHR. If District were to terminate funding for Student's placement at WHR, Student would live with Brother within District boundaries and Brother would request of District an emergency IEP team meeting for Student, and that Student be returned to WHR.

12. There was credible evidence at hearing that Student does not live with Father and Mother, and that Father and Mother will not allow Student to live with them again. Student presents a serious danger to himself and to his family members, and particularly

to his younger brother, whose leg Student has broken and whom Student attempted to drown.

13. In addition, Student is easily over stimulated, and being in the family environment causes Student to act out violently. Change of any kind is traumatic to Student,[4] and he cannot tolerate living in a family home.

14. Father and Mother's actions are consistent with their testimony that they have no intention of reunifying with Student. Mother has never visited Student at WHR in the three years that Student has been there, [5] and Father has visited Student at WHR on only one occasion. Student has visited Father and Mother at their home only once in the three years that he has been at WHR. On that occasion, Brother planned to pick up Student and take him to Father and Mother's home for a visit, but was unable to make the drive from Los Angeles because of his work schedule. Father and Mother only reluctantly agreed to permit with that visit because they knew that Student was counting on the visit and would be upset and act out if the visit were canceled. In addition, while students at WHR have one to twelve family therapy sessions a year, and on average three to five family therapy sessions a year, Student has had no family therapy sessions in the three years that he has been at WHR. The absence of such sessions confirms that Parents do not expect Student to live with them. In addition, Student has no personal belongings at his parents' home. Student had destroyed most of his furniture before his placement at WHR. He took some belongings with him to WHR, and the rest are gone.

15. Based on the foregoing, the authorities cited in Legal Conclusions 2 through 8, and the discussion in Legal Conclusions 22 through 29, Student "lives" with Brother for

[4] For example, when Student learned of his parents' move from California to Washington in 2005, he attempted to jump out of a window at WHR to kill himself.

[5] Father testified that Mother visited Student at WHR for Thanksgiving one year, but Mother denied having visited Student.

purposes of Education Code section 48204.

DOES THE EVIDENCE SUPPORT THE DISTRICT'S DETERMINATION THAT STUDENT IS NOT LIVING IN THE CAREGIVER'S HOME?

16. As discussed in Legal Conclusion 6, the caregiver's signing of a caregiver authorization affidavit "is a 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."

17. According to District, Student is not currently living with Brother, and Brother has no daily burden to care for Student. In addition, District contends that "the desire and intent of [Student's] parents for the Student to live with [Brother] is suspect" because Student visited Brother's home only once, and that was in April 2007 after Student's filing of his due process complaint, and "all previous visits by the Student for which the District reimbursed the family have been to his parents' home in Washington." Also, according to District, the reports of WHR "clearly indicate that [Student] was to be reunited with his parents, not with [Brother]." According to District, Brother's declaration under penalty of perjury in the caregiver affidavit that Student is living with Brother when he is actually living at WHR "reveals that he may be perpetuating a fraud," citing *Berkeley Unified School District v. Student* (2001) SEHO Case No. SN01-02101. Therefore, District contends, Student's residence is in Washington.

Student's visits with Brother and with his Parents

18. Typically, students at WHR have visits with their families at WHR approximately six times a year. However, Student has had very few visits with his family since his placement at WHR. Mother has never visited Student at WHR. Father visited Student at WHR one time for a 45-minute lunch while on his way to a vacation in Idaho with Student's younger brother. Brother visited Student at WHR in August 2005 and was at the school for over two hours. Brother had lunch with Student, and also met with the

staff at WHR regarding Student. Mr. David Gaught, the administrator and Chief Executive Officer of WHR, talked with Brother during this visit regarding Student's needs and what Brother would need to provide when Student lived with Brother. District paid for the cost of this visit.

19. In the spring of 2006, as discussed in Factual Finding 14, Brother had to cancel his participation in a visit with Student. Instead, Student's older sister picked up Student and took him to his parents' home in Washington for a two-day visit. While Student was in Washington with his family, Father spent 24 hours a day with Student. Student was on edge, anxious, and hypervigilant, but the family was able to manage him. Father drove Student back to WHR after the visit. Had it not been for his sudden scheduling conflict, Brother would have participated in this visit more than Parents, since he would have accompanied Student to and from California as well as in Parents' home.

20. Student's only visit with his Brother in Sherman Oaks was in April 2007. The visit lasted four days. Brother was called away from the visit a number of times because of his work. Brother left Student at the apartment with Brother's girlfriend because Student could not be with Brother at his place of work for insurance reasons. According to Brother, Student was subdued, relaxed, and happy during the visit.

21. Both Student's parents and Brother talk with Student by phone weekly. Student initiates those calls.

22. Student has a substantial and positive relationship with Brother. Student's father and Brother's mother have been married for 12 years, and during that time Student and Brother have lived together at times. Brother is familiar with Student's behavioral problems and has been the emergency contact for schools Student attended prior to his placement at WHR, and Brother has responded to emergency calls from those schools. Brother provides emotional support to Student during their weekly phone conversations and also during their visits. Although Student is hurt that he will not be able to live with his family again and is struggling to accept that fact, Student has a more positive

relationship with Brother than he does with his parents. In addition, Brother lives alone in an environment that, unlike Parent's home, is not overstimulating to Student.

23. In summary, it is clear that Student has had few visits with Father and Mother and few visits with Brother. However, he has spent more time visiting with Brother than with his parents, both at WHR and in their respective homes. Therefore, the fact that Student has had few visits with Brother does not tend to establish that Student lives with Parents, with whom he also had few visits.

24. The evidence showed that that Student's parents do not consider their home to be Student's home, and that they have no intention of allowing him to return to live in their home. In addition to the lack of visits discussed in Factual Finding 18, Student's parents are not participating in counseling at WHR with Student. Student's parents' testimony that they will never allow Student to live in their home because of the danger he presents to his younger brother was credible. Father's, Mother's, and Brother's testimony that Student's home is with Brother was also credible.

Student's reunification plan and assessment at WHR

25. Until October 30, 2006, the discharge plan portion of Student's quarterly reports from WHR stated that Student will likely return to his parents' home upon discharge. According to Mr. Gaught, this statement was an error in the quarterly reports. A student's return to his or her parents' home is the "default" discharge plan at WHR, Mr. Gaught wrote that in the first quarterly report, and the error was perpetuated in quarterly reports thereafter. From the time of Brother's August 2005 visit to WHR forward, Mr. Gaught recognized Brother as the caregiver, and he testified that the discharge plan in each quarterly report should have been altered from the date WHR received the caregiver's authorization affidavit. Mr. Gaught corrected the discharge plan in the most recent quarterly report, on October 30, 2006, to state that Student will be living with Brother upon his discharge.

26. Student's March 22, 2007, quarterly assessment prepared by Student's WHR

therapist, Robert Frye, states that Student is at a plateau in certain areas of his progress, and that he may be there

> . . . because he sees no need to advance in order to leave placement early as he really has no place to go. He now recognizes that returning to his parents[’] home is not an option. [Student] talks little about this and it may be he really does not want to tap into his feelings about this.... Given his history and family situation, [Student] has done exceptionally well in placement and will need much support to continue to improve.

According to Mr. Gaught, Mr. Frye wrote this from Student’s perspective. It has taken Student a long time to begin to accept the fact that he will not be returning to live with his parents. Student still wants to return to his parents’ home, but he now understands that reunification with his parents is not possible. Mr. Frye’s statement does not detract from the fact that the reunification plan is with Brother, and it confirms that Student’s return to his parents’ home is “not an option.”

27. Student’s Father intends to remain involved in Student’s life, and intends to continue paying the cost of Student’s medical care, as needed, so as not to burden Brother with that. However, it is clear that Student will not live with his parents upon his discharge from WHR.

28. Based on the foregoing, the fact that the discharge plan portion of Student’s quarterly reports state that Student will “likely” return to his parents’ home does not establish that Student will return to his parents’ home when he is discharged. The statement was credibly disowned by its author. Based on the foregoing, and on the discussion in Legal Conclusions 6 through 9 and 30, the evidence shows that Brother’s home is Student’s home now, and Student knows that, and he also knows that when he

leaves WHR, he will be living with Brother. Whether Brother is the ideal caretaker for a minor with a severe psychiatric disability is not an issue here. He is the only caretaker available, and he has taken on the job.

IS STUDENT A RESIDENT WITHIN THE JURISDICTIONAL BOUNDARIES OF DISTRICT?

29. Pursuant to Legal Conclusion 2, a local educational agency is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries.

30. Based on Factual Findings 15 and 23, and on the discussion in Legal Conclusions 22 through 31, Student is residing within the jurisdictional boundaries of District under the caregiver exception.

LEGAL CONCLUSIONS

APPLICABLE LAW

The IDEA

1. Pursuant to California special education law, and the Individuals with Disabilities in Education Improvement Act of 2004 (IDEA), children with disabilities have the right to a free appropropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(c); 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. (20 U.S.C. § 1401(9).) "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).)

Residency Requirements and the California Caregiver Exception

2. A local educational agency is generally responsible for providing a FAPE to

those students with disabilities residing within its jurisdictional boundaries. (34 C.F.R. § 300.201; Ed. Code, § 48200.) A pupil's residence for purposes of the IDEA is determined according to state law. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

3. Education Code section 48200 requires that children between the ages of six and eighteen years:

> attend 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 and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to 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.

4. Education Code 56028 defines "parent" as follows:

(a) "Parent," includes 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, including a grandparent, stepparent, or other relative with whom the child lives. "Parent" also includes a parent surrogate.

(4) A foster parent if the authority of a parent to make educational decisions on the child's behalf 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.

(b) "Parent" does not include the state or any political subdivision of government.[6]

[6] The IDEA defines parent as follows:

(A) natural, adoptive or foster parent of a child (unless a foster parent is prohibited

5. Determination of a parent or guardian's residence is based on the following rules: (1) it is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose; (2) there can only be one residence; (3) a residence cannot be lost until another is gained; and (4) the residence can be changed only by the union of act and intent. (Gov. Code, § 244.)

6. for pupils who live in the home of a caregiving adult that is located within the boundaries of the school district. Specifically, Education Code section 48204 provides:

> (a) Notwithstanding Section 48200, a pupil is deemed to have complied with the residency requirements for school attendance in a school district if he or is . . .[¶] (4) 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 a 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.

---

by State law from serving as a parent);

(B) guardian (but not the State if the child is a ward of the State);

(C) an individual acting in place of a natural or adoptive parent … with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(D) except as used in sections 1415(b)(2) and 1439(a)(5), an individual assigned under either of those sections to be a surrogate parent.

(20 U.S.C. § 1401(23).)

(Ed. Code, § 48204(a); emphasis added.) Education Code section 48204 does not define "lives in" the home of the caregiving adult.

7. Family Code section 6550, subdivision (a), authorizes a caregiver who completes the caregiver's affidavit specified in that section to "enroll a minor in school and consent to school-related medical care on behalf of the minor," and provides that the caregiver who is a relative and who signs the affidavit "shall have the same rights to authorize medical care and dental care for the minor that are given to guardians under Section 2353 of the Probate Code."

8. Family Code section 6552 requires the caregiver affidavit to be substantially in the form specified in that section. That form contains the following notice to school officials:

> TO SCHOOL OFFICIALS:
>
> 1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.
>
> 2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

(Fam. Code, § 6552; emphasis added.)

9. As discussed in Legal Conclusion 6, the signing of a caregiver authorization affidavit is a 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. In *Berkeley Unified School District v. Student* (2001) SEHO Case No. SN01-02101, the Special Education Hearing Office, OAH's predecessor, held that the facts in that case supported the district's determination that the student did not live in the caregiver's home because the student's mother testified at the hearing that the student had lived with her at all times. Therefore, the student did not qualify for the caregiver exception to the residency requirement under Evidence Code section 48204, subdivision (a).

Statutory Construction

10. When the language of a statute is clear and unambiguous, there is no need for construction. (*Granberry v. Islay Invs.* (1995) 9 Cal.4th 738, 744.) In determining the legislative intent, the court first examines the words of the statute. If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs. (*People v. Coronado* (1995) 12 Cal.4th 145, 151.)

11. The primary task of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1226; *Kimmel v. Goland* (1990) 51 Cal.3d 202, 208.) The guiding star of statutory construction is the intention of the Legislature, and the statute is to be read in the light of its historical background and evident objective. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1979) 88 Cal.App.3d 43, 53.)

12. Where the language of a statutory provision is susceptible of two constructions, one of which, in application will render it reasonable, fair, and in harmony with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted. Stated differently, where uncertainty exists, consideration should be given to the consequences that will flow from a particular interpretation. A court should not adopt a statutory construction that will lead to results contrary to the Legislature's apparent purpose. (*People ex rel. Lungren v.*

Superior Court (1996) 14 Cal.4th 294, 305.)

13. Statutes must be constructed to give reasonable and commonsense construction that is consistent with the apparent purpose and intention of the lawmakers, that is practical rather than technical, and that leads to wise policy rather than mischief or absurdity. (*People v. Turner* (1993) 15 Cal.App.4th 1690, 1696.)

14. In addition, where the plain meaning of the words of a statute are not dispositive, the statute's legislative history and the wider historical circumstances of the enactment may be considered in ascertaining legislative intent. (*Int'l Medication Sys. v. Assessment Appeals Bd.* (1997) 57 Cal.App.4th 761, 765.)

15. The language in Education Code section 48204 regarding whether a pupil is living in the home of a caregiver has been held to be ambiguous. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117. Cal.App.4th 47, 62-63 [the terms living "in" and "within", as used in Education Code Section 48204 are ambiguous and are reasonably susceptible of several meanings].) In addition, the statute does not specify whether "living in the home" includes or excludes students who are placed pursuant to IEPs in residential treatment facilities. In general, those students' residence is not, for IDEA purposes, that of the residential treatment facility.

16. When a school district is responsible for the special education of a disabled child living within its boundaries, it does not lose that responsibility when the child is placed by an IEP in a residential treatment facility outside the school district's boundaries. (*Union Sch. Dist. v. Smith, supra,* 15 F.3d 1519, 1524-1525, citing *Taylor v. Honig* (9th Cir. 1990) 910 F.2d 627.) The school district in which the student resides is financially responsible for the educational portion of the residential placement and the mental health agency in the county in which the student resides is responsible for the residential portion. (Gov. Code, § 7576, subd. (a).)

Legislative Purpose for Enacting the Caregiver Exception to Residency Requirements

17. In amending Education Code section 48204 to establish the caregiver exception to residency requirements and in enacting Family Code sections 6550 and 6552, the Legislature recognized the growing number of children living with nonparent relatives and nonrelatives, and stated its purpose:

> The Legislature further finds and declares that the enactment of Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code will help to ensure that minors living with nonparent caregivers will have unhindered access to public education and essential medical care.

(Ch. 98, Stats. 1994, Sec. 1 (Sen. Bill No. 592).) According to a committee report, SB 592 crated a "new type of procedure for care, custody and control of minor children that is an alternative to guardianship." The bill "creates a category of persons called 'caregivers' who have certain limited rights to authorize medical care for and enroll in school minor children currently residing in their home." Further, "SB 592 will lighten the burden carried by thousands of relatives in our state who are raising children left in their care." (Assem. Judiciary Com., com. on Sen. Bill No. 592 (1993-1994 Reg. Sess).)

The Purposes of the IDEA

18. The IDEA provides that a state is eligible for assistance under the Act if the state submits a plan that provides assurances to the Secretary of Education that the state has in effect policies and procedures that, among other things, ensures a "[a] free appropriate public education is available to all children with disabilities residing in the State. . .." (20 U.S.C. § 1412(a)(1)(A); see also 34 C.F.R. § 300.101.)

The Purposes of California Law Enacted in Conformity to the IDEA

19. In the special education portion of the Education Code, the Legislature intended, in relevant part, that every disabled child receive a FAPE:

> It is the … intent of the Legislature 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.)

20. 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 to ensure and provide for the welfare of the children. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal.App.4th 47, 63.)

Burden of Proof

21. The petitioner has the burden of proving at an administrative hearing the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163L.Ed.2d 387].)

DETERMINATION OF ISSUES

Issue 1: Does Student live with Brother for the purposes of the caregiver exception of Education Code section48204?

22. It cannot be determined from the language of the Education Code section 48204 if the caregiver exception is inapplicable to a student who has been placed by the school district in a residential treatment facility pursuant to the Student's IEP and, by reason of that placement, is not *physically* living in the home of the caregiver. Therefore,

the language of Education Code section 48204 is ambiguous and, pursuant to Legal Conclusions 10 through 16, the rules of statutory construction are applicable to determine the Legislature's intent in enacting this statute.

23. Pursuant to Legal Conclusion 17, the purpose of the Legislature in enacting the caregiver exception was to help ensure that minors living with nonparent caregivers will have unhindered access to public education and essential medical care, and "to lighten the burden carried by thousands of relatives in our state who are raising children left in their care."

24. Pursuant to Factual Findings 3 through 8, Student is a pupil who cannot live with his parents, and his parents have therefore left him in the care of Brother, a relative, who has agreed to take on his care.

25. Pursuant to Legal Conclusion 12, an absurdity would result if, despite the fact that a caregiver within the district is available and has signed a caregiver authorization affidavit, a student a with disability who lived in a residential treatment facility pursuant to an IEP could be forced to leave the facility because the student's parents or guardian no longer had a residence in the district as a result of incarceration or hospitalization or disappearance. Such an interpretation would conflict with the purpose of the Legislature in enacting the statute.

26. Moreover, on the facts presented in this case, it would be inconsistent with the purpose of the IDEA and California special education law to interpret Education Code section 48204 in such a manner as to hold that Student does not live in the home of his Brother while Student is placed at WHR pursuant to his District IEP. Based on that interpretation, Student could be forced to leave his placement for lack of funding, whereupon he would return to District and to the home of Brother. Then Brother would request an emergency IEP team meeting and properly demand that Student be placed back at WHR. And based on that interpretation, whenever a student resides with a caregiver, a district could divest itself of responsibility for the student by adopting an IEP

placing the student in a residential treatment facility out of the district. These results would be absurd. As discussed in Factual Finding 4, Student is suffering from a severe psychiatric disability and is receiving intensive, year-round treatment at WHR. Leaving WHR for even a few days has been traumatic to Student. Student is among the neediest of students covered by Section 48204: His parents will not permit him to live in their home because of the danger he presents to the family, and especially to his younger brother, as a result of his psychiatric disability. Student has a pressing need for stability in his placement and treatment.

27. Contrary to District's assertion, Student is not subject to the provisions of the IDEA, enacted by amendment in 2004 that affects a child who transfers from a school district in one state to a school district in another. (20 U.S.C. § 1414(d)(2)(C)(i)(II).) That subsection expressly applies to "a child with a disability who transfers school districts within the same academic year, *who enrolls in a new school.*" (*Ibid.*; emphasis added.) As discussed in Factual Finding 2, it is undisputed that Student was never enrolled in a school in Washington. Rather, Student's parents and Brother intended that Student live in California with Brother, and complied with the requirements of Education Code section 48204 and Family Code section 6550 and 6552 in order to gain exception from the residency requirements under California law.

28. Because of Legal Conclusion 2, District's citation to the Office of Special Education Programs's (OSEP) *Letter to Moody* (October 24, 1995, 23 IDELR 833) is not persuasive. In *Moody*, OSEP interpreted the provisions of the Code of Federal Regulations to mean that a student is presumed to reside in the state in which his or her parents reside or the state in which he or she is a ward. In *Moody,* the student was placed by an educational agency in Massachusetts in a residential facility located in Massachusetts. The Student's parents later moved out of Massachusetts and established residency in another state. OSEP was of the opinion that Massachusetts would not continue to be responsible for ensuring the provision of FAPE to the student "under the circumstances presented by

[the] inquiry." (*Ibid.*) The circumstances of the inquiry did not include a caregiver, or a statute such as Education Code section 48204, which establishes the caregiver exception to residency requirements in California. As discussed in Legal Conclusion 2, residency is determined according to state law.

29. Based on the foregoing, Education Code section 48204 is applicable in this situation, and Brother is Student's caretaker. Student "lives in" Brother's home, within the meaning of Education Code section 48204, even though he is temporarily absent pursuant to his IEP placement in a residential treatment facility. This arrangement is exactly the practice that the Legislature intended to foster in enacting Section 48204.

Issue 2: Does the evidence support the District's determination that Student is not living in the caregiver's home?

30. Pursuant to Legal Conclusions 6 through 9, and pursuant to Factual Findings 3 through 28, the evidence does not support District's determination that Student is not living in Brother's home, and Student established by a preponderance of the evidence that he is "living in" Brother's home within the meaning of Evidence Code section 48204.

Issue3: Is Student a resident within the jurisdictional boundaries of District?

31. Pursuant to Legal Conclusions 22 through 30, Student is a resident within the jurisdictional boundaries of District.

ORDER

Student is a resident within the jurisdictional boundaries of District.

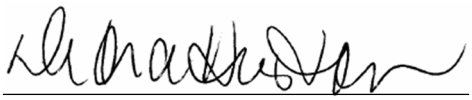
PREVAILING PARTY

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. The following findings are made in accordance with this statute: *Student prevailed on all issues.*

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

IT IS SO ORDERED THIS 11th day of June, 2007.



DEBRA R. HUSTON
Administrative Law Judge
Office of Administrative Hearings
Special Education Division