

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, LOS ANGELES COUNTY
OFFICE OF EDUCATION, LOS ANGELES
COUNTY DEPARTMENT OF MENTAL
HEALTH, CALIFORNIA DEPARTMENT
OF EDUCATION,

Respondents.

OAH CASE NO. 2009100939

DECISION

Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter in Los Angeles, California, on December 16, 2009, and January 19, 2010.

Patricia Cromer, Attorney at Law, represented Petitioner (Student). She appeared in person on the first day of hearing and appeared telephonically the second day of hearing.

Mambre Pomakian, Attorney at Law, represented Respondent, Los Angeles Unified School District (District). My Nguyen, Attorney at Law, attended the first day of hearing on behalf of the District.

Karen Gilyard, Attorney at Law, represented Respondent, Los Angeles County Office of Education (LACOE). Carlos Gonzalez, Attorney at Law, attended the second day of hearing on behalf of LACOE.

Michael Herscher, Attorney at Law, represented Respondent, California Department of Education (CDE). He appeared telephonically on both hearing days.

Student dismissed the Los Angeles County Department of Mental Health (LACDMH) prior to hearing.

Student filed his request for Due Process hearing on October 19, 2009. The first day of hearing was held on December 16, 2009. The matter was continued for good cause to January 19, 2010, when the matter was submitted and the record was closed.

ISSUE

Under the Individuals with Disabilities Education Act (IDEA), which public agency is responsible for funding Student's placement at a Residential Treatment Center (RTC)?

FACTUAL FINDINGS

1. Student is a 17-year-old male who, at all relevant times, was eligible for special education services. Student's parents are deceased, and he is a dependant of the juvenile court with supervision from the Los Angeles County Department of Children and Family Services (DCFS). At the time of hearing, Student was also under juvenile delinquency court supervision.

2. From April 16, 2008, through approximately June 12, 2009, District provided special education services to Student based on his residency at Runnymede Group Home and Vista del Mar, both of which were licensed children's institutions located within the District's boundaries. District is a Special Education Local Plan Area (SELPA).

3. On June 12, 2009, Student was arrested and detained in Los Padrinos Juvenile Hall (Juvenile Hall). LACOE was responsible for providing education to children detained there and assumed responsibility for providing special education to Student. LACOE is a SELPA.

4. On June 25, 2009, LACOE appointed a surrogate parent for Student. At all relevant times, the surrogate parent's residence was within the boundaries of the District.

5. On July 15, 2009, LACOE held an Individualized Education Plan (IEP) in which it referred Student to LACDMH for an AB 3632 mental health referral. LACDMH's subsequent evaluation of Student demonstrated a history of psychiatric hospitalizations, depression, suicidal ideation and suicide attempts. At an IEP meeting held on September 28, 2009, LACDMH recommended residential treatment, and the surrogate parent agreed. LACOE agreed that Student required a residential placement immediately after his release from juvenile hall.

6. On December 10, 2009, the Juvenile Dependency Court approved the implementation of Student's September 28, 2009 IEP, including placement at an out-of-state residential treatment center.

7. An IEP team meeting was held on January 8, 2010. At the meeting, the surrogate parent, Student, LACOE, and LACDMH agreed to place Student at Cathedral Home for Children in Wyoming. LACDMH would be financially responsible for the residential and therapeutic component of the placement. The IEP stated that LACOE was responsible for offering Student a free and appropriate public education (FAPE) while he was detained in Los Angeles County Juvenile Hall and attending a LACOE educational program. LACOE agreed Student required a residential placement directly upon release from Juvenile Hall. LACOE understood Student was ready to be released from Juvenile Hall only if Student would go directly into a RTC.

8. The Juvenile Delinquency Court ordered that Student be released from detention to attend an out-of-state RTC as soon as an educational agency takes financial responsibility or a court of competent jurisdiction determines the responsible educational agency. Student remained in detention at the time of hearing.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Student seeks a determination of which public agency is responsible for funding Student's placement at an RTC upon his release from detention.

3. LACOE contends it has accepted responsibility while Student remains at Juvenile Hall. LACOE contends that the District is responsible upon Student's release from Juvenile Hall. The District contends that, because Student has not yet been released from Juvenile Hall, it is not yet responsible for him. The District further contends that LACOE would be financially responsible for Student until the end of the school year and the extended school year, pursuant to Education Code section 56325, subdivision (c), which provides that financial responsibility remains with the educational agency that placed the child, if the child's parents move during the school year. Alternatively, the District contends that CDE is responsible because Education Code section 56325 is ambiguous when applied to the release of a juvenile hall student to an RTC. CDE contends that the District is responsible upon Student's release from Juvenile Hall based on residency of the surrogate parent. As discussed below, this decision does not reach the issue of which agency is responsible for his education after his release because, at the time of hearing, Student continued to be detained in a juvenile hall school.

4. Special education due process hearing procedures extend to a student who is a ward or dependant of the court, to the parent or guardian, and to "the public

agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “surrogate parent” is defined as a “parent” and may represent a student in special education matters. (Ed. Code, §§ 56028, subd. (a)(5), and 56050, subds. (a) and (b).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

5. Interagency due process hearing requests in which one agency names another as a respondent are outside of the jurisdiction of IDEA hearings. (Gov. Code, § 7586, subd. (d) [no state or local public agency may request a due process hearing against another public agency].) However, IDEA hearings brought by a student against a public agency properly include determinations of residency for purposes of identifying the public agency responsible for providing special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.) However, OAH cannot write advisory opinions based on speculation as to what might occur. OAH’s jurisdiction is limited to an examination of the time frame plead in the Due Process Request and as established by the evidence at the hearing.

6. In California, for the most part, residency determines which LEA has the responsibility for providing a disabled child with a FAPE. Under the state’s compulsory education law, a pupil who is between the ages of six and 18 must attend the school district where his/her parent, surrogate parent or legal guardian resides. (Ed. Code, §§ 48200 and 56028; *Katz v. Los Gatos-Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 54.) There are exceptions to this basic rule of residency if the pupil is placed in a licensed children’s institution, a licensed foster home or a family home; if the pupil is the subject of an interdistrict transfer; if the pupil is emancipated; if the pupil is

living in the home of a caregiving adult; or if the pupil is residing in a state hospital. (Ed. Code, § 48204, subds. (a)-(e).) None of these exceptions are applicable in this case. A juvenile hall school is not a licensed children's institution. (Ed. Code, § 56155.5.)

7. Children who have been adjudicated by the juvenile court for placement in a juvenile hall are entitled to a FAPE. (Ed. Code, § 56150.) "Juvenile court schools" provide educational services to all students "detained", e.g., in juvenile halls. (Ed. Code, § 48645.1) When a child with a disability attends a juvenile court school, the normal rules of residency for determination of the LEA that is responsible for providing the child with FAPE do not apply. Instead, the county office of education for the county in which the juvenile court school is located must develop and implement a special education program for the child. The county office of education has authority to contract with other educational agencies for supporting services. (Ed. Code, §§ 48645.2, 56150.) The Legislature addressed the need for county offices of education to develop memorandums of understanding and other collaborative processes with the county probation department to meet the needs of wards of the court who are receiving their education in juvenile court schools. County offices of education were directed to develop an educational plan for students, while assigned to the juvenile hall, which were integrated with other rehabilitative and behavioral management programs that supported the educational needs of the student. (Ed. Code, § 48646, subds. (a), (b)(5)(B).)

8. Under the IDEA, the State Educational Agency has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) This responsibility includes ensuring that a FAPE is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a)(2006).) In the rare instance when state law does not provide for a responsible LEA or public agency, then the duty to provide a FAPE falls

upon the SEA. (*Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 952-953; *Orange County Dept. of Education v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170 [*OCDE v. A.S.*].)

9. OAH can address which public agency has the responsibility to provide Student with a FAPE as established by the evidence at the hearing. (See *OCDE v. Student* 2009010078/2009010529 (2009), *Student v. OCDE* 2009090943/2009100565 (2009), *OCDE v. Student*, 2008120021/2009020130 (2009), and *Student v. Hemet Unified School District* 2006100472 (2006).) However, OAH, like other administrative and judicial bodies, cannot give advisory opinions regarding future events. Thus, to the extent Student is seeking a determination about which agency is responsible for his education in the future, the OAH decisions cited above are not applicable.

10. Applying the law to the facts at hand, LACOE is responsible for providing Student with a FAPE while Student is under the jurisdiction of the juvenile court and attending the juvenile court school, as set forth in Factual Findings 3, 4, 5, 6, 7 and 8 and Legal Conclusions 7 and 10. As of the date of hearing, Student has remained at Juvenile Hall and has not yet been released into a residential treatment center. As the agency charged with providing Student with a FAPE, LACOE must implement the January 8, 2010 IEP in which the parties agreed to Cathedral Home as a RTC. The IEP stated that LACOE understood Student would be released from Juvenile Hall "only if he went directly into the residential treatment center." Thus, LACOE must implement that IEP and place Student in the RTC. It must integrate him into his identified rehabilitative and behavioral management program which will support his educational needs, as set forth in Legal Conclusion 7, in accordance with Education Code §§ 48645.2, 48646, and 56150. To provide Student with a FAPE, LACOE has a responsibility to coordinate efforts between agencies toward this end, including signing the educational and related services component of the RTC contract and initially funding the placement. After

Student is placed in the RTC, LACOE may then seek reimbursement from other public agencies by using the appropriate administrative or legal procedures.

11. In light of the above resolution, and because OAH will not address future events, CDE and the District are not currently responsible for the educational component of Student's RTC. The question of whether the District or CDE are ultimately responsible for Student's RTC can only be determined once the Student has been released.

ORDER

LACOE shall immediately implement Student's January 8, 2010 IEP by coordinating and funding the educational and related services component of placement in the RTC that is otherwise not funded by LACDMH.

PREVAILING PARTY

Pursuant to 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. Here, Student was the prevailing party against LACOE on the sole issue presented.

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 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: January 29, 2010

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings