

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2010040889

DECISION

The due process hearing in this matter was held on June 14, 2010, in Downey, California, before Clifford H. Woosley, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH).

Attorney Tania L. Whiteleather appeared on behalf of Student. Student's aunt was present for part of the hearing. Attorney Constance Taylor of Atkinson, Andelson, Loya, Ruud & Romo, represented the Los Angeles County Office of Education (LACOE). Jim Albanese, Jr., Compliance Support Services, attended the hearing for LACOE.

On April 16, 2010, Parents filed the request for due process hearing. At the close of hearing, the matter was continued to June 21, 2010, for the submission of closing briefs.

On June 18, 2010, Student filed a motion requesting that the record remain open to allow notice of an anticipated Los Angeles County Superior Court order. After providing both parties an opportunity to be heard, the ALJ granted the motion, directed the Student to file and serve the Superior Court order, and continued the matter to June 25, 2010. On that day, briefs were received, the record was closed, and the matter was submitted.

ISSUES

Is LACOE responsible for funding transportation, educational services, and related services in order to implement the April 2010 IEP recommendation that Student be placed at a residential treatment center (RTC)?¹

FACTUAL FINDINGS

1. Student is a 14-year-old young man. From June 11, 2009, through the date of hearing, he has been enrolled at a Juvenile Court School.

2. LACOE is the educational agency that administers the Juvenile Court Schools in Los Angeles County. LACOE was Student's local educational agency (LEA) as of June 11, 2009.

3. LACOE held a Special Review Individualized Education Program (IEP) meeting for Student on June 11, 2009, when Student was at Los Padrinos Juvenile Hall. Student had previously been found eligible for special education and related services by the Whittier City School District and had an IEP from that district.

4. The June 2009 IEP team affirmed Student's special education eligibility, with a primary disability of Other Health Impairment (related to Student's ADHD) and a secondary disability of Speech/Language Impairment.

¹ Student's Issue Three raised various civil rights claims and was dismissed for lack of jurisdiction. Student withdrew Issue Two at the prehearing conference.

5. At the next IEP meeting, held by LACOE for Student on October 6, 2009, the IEP team referred Student for an AB 3632² assessment.

6. LACOE obtained consent to evaluate from Student's guardian on November 16, 2009. Student was assessed, in collaboration with the Orange County Department of Mental Health. LACOE produced a Triennial Multi-Disciplinary Psycho-Educational Report regarding Student, dated February 2010. The report assessed Student's social-emotional/behavioral functioning, utilizing a number of standardized assessment tools, as well as observations and interviews. The report concluded that Student continued to meet the criteria for special education services as a student with OHI. The report further concluded that Student appeared to meet eligibility criteria of Emotional Disturbance (ED).

7. Orange County Health Care Agency (OCHCA) completed an AB 3632 assessment of Student, producing a February 11, 2010 report. OCHCA concluded its assessment with a recommendation that Student be placed in an unspecified residential placement center (RTC) to address his social-emotional and interpersonal difficulties that impacted his ability to benefit from his academic environment.

8. At a February 11, 2010 meeting, the IEP team considered both the psycho-educational report and the OCHCA assessment report. The team changed Student's secondary eligibility to Emotional Disturbance (ED), while maintaining the primary eligibility of OHI.

9. The IEP team agreed with RTC placement for Student and, per AB 3632, authorized OCHCA "to start the process and find an appropriate placement as part of

² California Assembly Bill (AB) 3632, as amended by AB 882, entitles school children with serious emotional disturbances to mental health services. Such services are also referred to as AB 3632/882.

[Student's] free and appropriate public education (FAPE)." Once the RTC was determined, another IEP would be scheduled. In the meantime, the IEP team agreed with LACOE's offer of special day class placement and related services at the Juvenile Court School.

10. An IEP was held on April 15, 2010, to review OCHCA's recommendation of RTC placement of Student at Cathedral Home in Wyoming, pending ICPC³ process approval.

11. At the April 15, 2010 IEP, LACOE inserted the following statement on the IEP's supplemental page:

"LACOE is responsible for offering FAPE at this time because student currently is detained in an LA County Juvenile Hall and is attending a LACOE educational program. By making an offer of FAPE at this time, LACOE is not assuming responsibility for student's placement following student's release from Juvenile Hall.

"LACOE understands that the student is ready to be released from Juvenile Hall, the court will release the student from Juvenile Hall only if the student will be transferred directly into a residential treatment center, and the student must therefore remain in Juvenile Hall until the IEP team places

³ The Interstate Compact on the Placement of Children (ICPC) is a contract among member states and U.S. territories authorizing them to work together to ensure that children who are placed across state lines for foster care or adoption receive adequate protection and support services.

him in a residential placement. LACOE agrees that the student requires a residential placement directly upon release from Juvenile Hall.”

12. Student’s aunt testified at the hearing. She legally adopted Student after the death of Student’s parents and she is Student’s legal guardian. She agreed to the RTC placement of Student at Cathedral Home but disagreed with LACOE’s position, as stated in the April 2010 IEP. The Aunt summarized Student’s difficulties over the last few years, including his association with an unsavory crowd and participation in illegal activities. The Aunt testified that Student cannot be released home because Student would run away and again associate with the wrong element. The Aunt also stated that Student wants to go to the Cathedral City RTC, but is frustrated with having to remain in Juvenile Hall because of LACOE’s refusal to implement the IEP.

13. LACOE has not offered placement, or agreed to fund Student’s educational or related services, at Cathedral Home or any other residential treatment center.

14. LACOE has not offered, or agreed to fund, Student’s transportation to Cathedral Home or to any other residential treatment center.

15. LACOE has not arranged for Student’s educational or related services or transportation at Cathedral Home or any other residential treatment center.

16. Student remains at Juvenile Hall, although he has been transferred from Los Padrinos to Central Juvenile Hall, where LACOE also runs the Juvenile Court School. LACOE is currently providing educational services to Student at the Juvenile Court School at Central Juvenile Hall.

17. LACOE’s position on the issue raised at hearing is that it has not offered, nor does it have a duty, to fund, provide, or arrange for educational or related services at, or transportation to, a residential treatment center for Student as part of his IEP.

18. On June 24, 2010, the Superior Court of California, County of Los Angeles, Juvenile Court, issued an order stating, in relevant part, that: "The Court will permit the implementation of the residential placement, Cathedral Home, in Wyoming, for Minor [Student] upon determination of the agency responsible for the educational services to the minor"

LEGAL CONCLUSIONS

1. Student contends that LACOE is the LEA for purposes of IEP implementation and that LACOE must implement the recommendations of Student's IEP team that Student requires a RTC placement directly upon release from Juvenile Hall. Student contends that LACOE has a present duty to provide for special education and related services at the recommended RTC, as well as needed transportation.

2. LACOE contends that it is presently providing Student with a FAPE while he is in Juvenile Hall and that it does not have a present duty to implement a placement outside of Juvenile Hall because it has no duty to provide a FAPE to Student upon his release from Juvenile Hall.⁴

3. 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].) As discussed below, Student has met his burden of proof.

⁴ In its Closing Brief, LACOE also argues that it cannot be required to implement placement because the recommended RTC is "pending ICPC approval" and Student has not provided any evidence that the ICPC approval process is complete. ICPC approval is part of every similar interstate placement and is not a basis for refusing to commence implementation.

4. The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education (FAPE),” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A FAPE means special education and related services that are available to the student at no cost, that meet the state educational standards, and that conform to the student’s IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

5. Special education due process hearing procedures extend to pupils who are wards or dependants of the court, to their parents or guardians, and to the public agencies involved in any decisions regarding the pupils. (Ed. Code, § 56501, subd. (a).) IDEA hearings brought by a pupil against a public agency properly include determinations of 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, special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing and expressly do not include declaratory decisions about how the IDEA would apply hypothetically. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs, tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L. Ed. 2d 855] (“courts do not sit to decide hypothetical issues or to give advisory opinions”); *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 (court deemed the matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship).)

6. The IDEA allows states the flexibility to determine which agency provides the assessments or related services required by the IEP process. (See 20 U.S.C. § 1412(a)(12).) In California, county departments of mental health, such as OCHCA,

conduct mental health assessments for purposes of developing IEPs. (Gov. Code, §§ 7570; 7572, subds. (a) & (c), 7576, subd. (a).) If mental health services are recommended by an assessor as a related service, "the recommendation of the person who conducted the assessment shall be the recommendation of the [IEP] team members who are attending on behalf of the local educational agency." (Gov. Code, § 7572, subd. (d)(1).)

7. In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) When a residential placement is recommended by an IEP team, the local educational agency, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) (including county offices of education within the definition of local educational agency), 60110, subd. (b)(2) (for residential placements, "The LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil."), & 60200, subd. (d).)

8. Here, at all relevant times through the date of hearing, LACOE was statutorily responsible for providing Student with a FAPE because Student is under the jurisdiction of the juvenile court and housed in Juvenile Hall. LACOE is obligated by operation of the Education Code to provide a FAPE to students in Juvenile Hall. The recommendation of OCHCA for related services must be accepted by LACOE as the recommendation of the IEP team under Government Code section 7572, subdivision (d)(1). Moreover, LACOE has unequivocally agreed in IEPs that to receive a FAPE, Student requires a RTC upon release from Juvenile Hall.

9. LACOE argues that another agency is Student's "district of residence" after his release from Juvenile Hall by operation of Education Code sections 48645, 48645.1,

48645.2 and 56150.⁵ LACOE refers to the previously issued OAH decision that decided which party was the responsible LEA for a student's RTC placement from juvenile court school. (*Student vs. Orange County Dept. of Ed., et al.* (November 30, 2009) OAH Case No. 2009090943 (OCDOE).) However, in OCDOE, the student had already been placed in the RTC and both potential LEAs were parties to the due process proceeding. Here, Student remains in the juvenile court school, no efforts are being made to proceed with RTC placement, and LACOE is the only party LEA.

10. The facts herein demonstrate the practical absurdity of LACOE's legal contention. LACOE is the LEA responsible for providing Student a FAPE, and agrees that Student requires such a placement to receive a FAPE upon his release from juvenile hall. LACOE will not implement the IEP because it claims another LEA will be responsible for providing a FAPE to Student upon his release. However, the identity of the LEA responsible for providing Student with a FAPE in the future is speculative and not an issue in this due process hearing. LACOE acknowledges that the juvenile court will not release Student from Juvenile Hall unless Student is directly transferred into a RTC. (Factual Findings 12.) Consequently, Student languishes in Juvenile Hall and continues to be denied the IEP's offer of a FAPE at the RTC.

11. The ALJ is unaware of any statutory authority, and LACOE has produced none, to support LACOE's position that it has no present duty to implement placement in a RTC when recommended by OCHCA, or that LACOE's duty to provide a FAPE is limited or qualified based on the possibility that another agency may have financial responsibility for Student's education upon his release from Juvenile Hall.

⁵ LACOE refers to Whittier City School District, which held Student's last IEP before Juvenile Hall. The parties acknowledged during hearing that Student would have aged out of the district at the end of the current school year.

12. Thus, under the facts presented, LACOE must immediately implement the RTC placement recommended by OCHCA at the April 15, 2010 IEP. (See Ed. Code §§ 48645.2, 48646, and 56150 [together establishing LACOE's duty to provide a FAPE to students in Juvenile Hall]; Cal. Code Regs., tit. 2, §§ 60010, subd. (k), 60110, subd. (b)(2) & 60200, subd. (d) [together establishing that LACOE is considered a local educational agency responsible for all non-mental-health educational services related to a RTC placement].) Specifically, where the juvenile court has indicated a willingness to release Student to a RTC, LACOE has a responsibility to coordinate efforts between agencies toward this end, including signing any necessary contracts, providing any necessary funding, and transporting Student. After LACOE has met its duty to Student, it may use whatever legal process it deems appropriate to attempt to shift responsibility for the provision of a FAPE to another public agency. (Factual Findings 1-19; Legal Conclusions 4-11.)

ORDER

LACOE is responsible for funding transportation, educational services, and related services by implementing the April 2010 IEP recommendation that Student be placed at a residential treatment center. In order to meet its responsibility, LACOE shall coordinate efforts amongst agencies, sign any necessary contracts, provide any necessary funding, and provide transportation for Student.

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 prevailed on the sole issue heard and decided.

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: July 12, 2010

/s/

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearings