

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENTS ON BEHALF OF STUDENT I,	OAH CASE NO. 2013020662 (Primary)
v.	
CORONADO UNIFIED SCHOOL DISTRICT,	
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PARENTS ON BEHALF OF STUDENT II	OAH CASE NO. 2013020663
v.	
CORONADO UNIFIED SCHOOL DISTRICT.	
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DECISION

The due process hearing for the bifurcated residency issue in this case convened on April 16, 17, and 18, 2013, before Paul H. Kamoroff, Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH), State of California.

Seth A. Schwartz, Attorney at Law, appeared on behalf of Parents on behalf of Student I and Student II (individually referred to as Student I or Student II; collectively referred to as Students). Matthew H. Storey, Attorney at Law, also appeared on behalf of Students. Mother and Father attended each day of the hearing. Students did not attend the hearing.

Jack M. Sleeth, Jr., Attorney at Law, appeared on behalf of the Coronado Unified School District (District). Richard J. Erhard, Assistant Superintendent of Student Services for the District, was present during each day of the hearing.

On February 19, 2013, Students, who are siblings, filed separate Requests for Due Process Hearing and Mediation, naming the District as the respondent. On April 5, 2013, OAH granted Students' request to consolidate Student I and Student II's issue pertaining to residency. On April 10, 2013, OAH granted Students' and District's joint request to bifurcate the residency issue and to consolidate the remaining issues. Also on April 10, 2013, OAH granted the parties' joint request to continue the non-bifurcated issues to June 17, 18 and 19, 2013. As of the date of this Decision, the hearing for the non-bifurcated issues has not yet occurred.

At hearing, the ALJ received oral and documentary evidence regarding the residency issue. The following witnesses testified: Robert Price, Richard Erhard, Students' mother (Mother), Students' grandmother (Grandmother), Students' father (Father), and Bryan Scott.

At the request of the parties, the record remained open for the submission of written closing arguments. The parties filed their closing briefs on May 3, 2013. The ALJ marked Students' closing brief as Exhibit S-68 and District's closing brief as Exhibit D-81. The matter was submitted on May 3, 2013.

ISSUE

The sole issue for the bifurcated hearing and decision in this matter is the following:

Were Students residents of the District during all times material to these cases such that the District was responsible for providing them with special education and for implementing Students' IEP's?

CONTENTIONS

Student I is a 17 year-old male who has been found to exhibit serious emotional deficits, including depression and suicidal ideation. In August 2012, the parties entered into a settlement agreement, whereby the District agreed to find Student I eligible for special education and agreed to fund placement for him at a residential treatment center.

Student II is Student I's younger brother. Student II is deaf in one ear. Student II has been found eligible for special education and related services as a pupil who is deaf and hard-of-hearing.

The District asserts that Students have resided outside of the District during a period of time which is material to these cases. For this reason, the District argues it is no longer obligated to provide Students special education and related services.

Students assert they are residents of a house in Coronado, within the District's boundaries, which their parents own but rent out due to financial difficulties. Students assert that this particular home should be considered their permanent residence because the family intends to someday return to this house. In the alternative, Students argue they are residents of a house which is owned by their grandmother, and which is also located in the District.

For the following reasons, this Decision finds that during a period of time material to these cases, Students resided outside of the District.

STATEMENT OF FACTS

BACKGROUND OF THE FAMILY'S TENANCY

1. Students' parents (Parents) are married and have legal custody of Students, who are minors. From 2005 to January 2010, Parents and Students resided in Coronado, within the District's geographic boundaries, at a house which is owned by

Parents (the A house). In January 2010, Parents chose to lease out this house due to financial difficulties. Parents have leased out the A house without interruption since January 2010.

2. Parents also own a home in the North Park area of San Diego, which they have also leased to long term tenants. Parents have utilized this house solely as an income property, Parents and Students have never resided at this property.

3. Beginning in January 2010, Parents and Students moved all of their furniture and most of their personal belongings to a house located in the Point Loma area of San Diego (the B house), which is owned by Students' grandmother (Grandmother) and which had been vacant for several years. Father also moved his business, a small, landscape architecture firm, into a detached garage at the B house, which he converted into a home office. The B house is not within the District's geographic boundaries, and instead lies within the boundaries of the San Diego Unified School District.

4. Also in January 2010, after moving their furniture, some personal belongings, and Father's home-office, into the B house, Parents and Students moved themselves into a second house which is owned by Grandmother, and which is located in Coronado and within the District's boundaries (the C house). At that time, Grandmother and mother's step-father (Grandfather) resided exclusively at the C house. Grandmother permitted Parents and Students to temporarily reside in a single bedroom loft, located over a detached garage, at the C property.

5. In January 2011, Parents and Students moved into the B house. At that time, Mother also moved her home business, an art studio, into the B house.

STUDENT I

6. Student I currently attends the Family Life Center, a non-profit residential treatment center and private school located in Petaluma, California. A residential

treatment center (RTC) is a live-in health care facility which treats multiple conditions from drug and alcohol addictions, to emotional and physical disorders as well as mental illnesses. Parents placed Student I at the Family Life Center in November 2012.

7. Parents first placed Student I in an RTC in early February 2012, after he began exhibiting serious depression and began abusing drugs. At that time, Parents placed Student I at the In Balance Ranch Academy, an RTC located in Southern Arizona. In June 2012, Parents moved Student I from the In Balance Ranch to the Meridell Achievement Center, an RTC located in Liberty Hill, Texas. Student I has lived continuously and exclusively at RTC's since February 2012. He has not lived with, or visited, his family in California since he first began attending RTC's in February 2012.

8. Student I was initially assessed by the District in 2009, due to his mother's concerns regarding difficulties with focusing and completing his school work. Based upon the results of the assessment, the District determined that he did not qualify for special education and related services.

9. Parents requested a second assessment in the fall of 2011, due to concerns regarding his lack of success at school and low motivation. The District agreed to Parents' request and conducted its second assessment of Student I during September and October 2011.

10. On November 3 and December 8, 2011, and February 8, 2012, the District convened Individualized Education Program (IEP) meetings for Student I, where the District reviewed the second assessment and determined that he was not eligible for special education.

11. On February 22, 2012, the District filed a Request for Due Process against Student I, alleging that it had properly completed educational assessments for Student I and lawfully denied him eligibility for special education. OAH designated this matter as case No. 2012020760. On March 6, 2012, Student I filed a complaint for due process

against the District, alleging, amongst other claims, that the District had unlawfully denied Student I eligibility for special education. OAH designated this matter as Case No. 2012030133. On March 9, 2012, OAH ordered that these cases be consolidated.

12. On August 28, 2012, the District and Student I executed a written settlement agreement (Agreement) whereby they settled all claims pertaining to cases 2012020760 and 2012030133. In pertinent part, the Agreement provided the following terms:

- a) Based upon ongoing residency within the geographic boundaries of the District, the District agrees to either reimburse Parents in an amount not to exceed \$364.00 per day, for educational, residential, and mental health services provided by Meridell Achievement Center ("Meridell"), or to contract directly with a California certified residential treatment center ("RTC") for educational, residential, and mental health services, from the date of execution of this Agreement, through and including the last day of the 2012-2013 regular school year.
- b) Should Parents cease residing within the geographic boundaries of the District, the Parties agree that the District will bear no further financial responsibility for Student's placement at Meridell or a California certified RTC.
- c) The District agrees to schedule, and Parents agree to attend, an IEP meeting, to include staff from either Meridell, and/or other RTC pursuant to...to determine Student's eligibility, present levels of performance, review progress, and develop goals and objectives within 30-days of full execution of this agreement.

13. Following the execution of the Agreement, the District did not convene an IEP meeting for Student I. Student I has never been determined eligible for special education pursuant to an IEP.

STUDENT II

14. Student II is a 14 year-old male who has been found eligible for special education and related services as a pupil who is deaf and hard-of-hearing. Student II is currently a ninth grade student at Coronado High School, a District school.

15. In September 2012, which was Student II's freshmen year of high school, he began attending High Tech High School (High Tech High). High Tech High is a charter school which is chartered by the Desert/Mountain Special Education Local Plan Area (SELPA), and is located in San Diego, California. Although High Tech High is physically located within the San Diego Unified School District, it is not a member school of the San Diego Unified School District. High Tech High, along with the Desert/Mountain SELPA, is a separate local educational agency. Similar to other charter schools, High Tech High does not have established residency requirements for admission. Normally, a minor student attends the public school of his or her parents' residence. A public charter school, however, does not admit students by residency. It admits only volunteers, and can admit students who reside in the county of the charter school or in any county immediately adjacent to the county of the charter school.

16. While attending High Tech High, Student II resided with his parents at the B house. The B house is located conveniently close to High Tech High and Student II was able to ride his bicycle daily to-and-from school from this location.

17. Other than Student I, who was placed at an RTC, the family inhabited the B house each day and slept there each night. On occasion, Mother would spend the night with Grandmother, who was recently widowed, at the C house.

18. Parents were pleased that Student II had been admitted to High Tech High, which they considered a prestigious high school. Based upon its close proximity, Parents and Student II intended to reside at the B house during Student's II's tenure at High Tech High, which was anticipated to be the regular four years of high school.

19. In December 2012, during a school sponsored field trip, Student II engaged in conduct which was prohibited by High Tech High. In early January 2013, High Tech High brought a disciplinary proceeding against Student II. Pursuant to this disciplinary action, Parents and High Tech High agreed that Student II would leave the charter school.

20. On January 9, 2013, Parents enrolled Student II at Coronado High School. As part of this enrollment, Parents declared that they resided at the C house, and Mother signed an affidavit verifying residency at this address. Mother also provided a waste disposal invoice and a telephone invoice which were addressed to her at the C house address.

21. On January 7, 14, and 18, 2013, the District sent letters to Parents regarding its belief that the family did not reside within the geographic boundaries of the District. The District asserted that Students' enrollment was based on false or unreliable evidence of residency.

22. On February 12, 2013, the District revoked Students' enrollment in the District, including Student II's enrollment at Coronado High School. The District also terminated its payments for Student I's RTC placement.

23. In April 2013, the District permitted Student II to resume attending Coronado High School. The District has held IEP meetings for Student II and was implementing an agreed upon IEP as of the date of this hearing. The District also resumed payments for Student I's RTC placement.

THE DISTRICT'S RESIDENCY INVESTIGATION

24. The District's residency investigation of Students' family was supervised by Richard J. Erhard, Assistant Superintendent of Student Services for the District, and Dr. Jeffrey Felix, the District's Superintendent. Mr. Erhard testified as a witness on behalf of the District.

25. Beginning in January 2011, various District staff, including school site administrators, notified Mr. Erhard that they believed Students did not reside within the District.

26. By November 2011, the District had conducted a residency check at the C house, which was conducted by a school administrator and a local sheriff. These individuals went to the C house during the daytime and were greeted by Grandmother. Mr. Erhard found this residency check to be inconclusive.

27. By August 28, 2012, although Mr. Erhard suspected that Students did not reside within the District, he believed that he did not have enough evidence of non-residency to forego approving the Agreement, or to delay the District Board's ratification of this agreement, which occurred several weeks later.

The ESI Investigation

28. On August 30, 2012, two days following the full execution of the Agreement, the District retained the services of ESI International, Inc. (ESI), a private investigation firm, to determine whether Students were residing within the geographic boundaries of the District. ESI has conducted various high profile investigations since 1994 and specializes in fraud, economic crimes, and personnel issues for private and public sector clients. ESI is owned and operated by Robert Price. Mr. Price was a special agent for the Federal Bureau of Investigation from 1978 through 1986. He has received various commendations for his roles as a special agent and was directly involved in various investigations ranging from bank fraud to kidnapping. Since 1986, Mr. Price has worked as a private investigator. Mr. Price testified as a witness on behalf of the District.

29. On September 4, 2012, ESI began surveillance of Parents and Student II. From September 2012, through February 20, 2013¹, ESI conducted 245 separate observations, called "spot checks," pertaining to their investigation for this matter. This surveillance was meticulously recorded in hundreds of photographs and many hours of video recordings. ESI kept the District abreast of its surveillance and findings in periodic written reports to the District's superintendent and attorney.

30. ESI spot checks were conducted at various times of the day, often several times on the same day, and ranged from as early as 4:56 a.m., to as late as 10:13 p.m. Spot checks were conducted on weekdays and weekends.

31. As part of its surveillance, ESI conducted spot checks at the A, B and C houses.

32. ESI's surveillance of the B house revealed the following:

On September 4, 5, 13, 14, 19, 20, 26, and 27, 2012, and October 4, 5, 2012, and January 2, 3, 7, 9, 10, 11, 12, 14 and 15, 2013, Student II was observed at the B house;

On numerous occasions, Student II was observed departing the B house on a bicycle during early morning hours;

Student II was frequently observed playing at the B house, including playing with the family's black and white dog in the front yard;

Parents' automobiles (a silver Volvo and a red Mini Cooper) were generally observed parked at the B address, in the driveway of that home. Family vehicles were observed at the B house on September 4, 8, 9, 10, 12, 13, 14, 18, 19, 20, 22, 23, 24, 25, 26, 27, 2012, October 3, 4, 5, 6, 7, 8, 10, 2012, December

¹ ESI did not conduct surveillance from October 11, 2012, through December 20, 2012.

22, 23, 24, 25, 26, 28, 29, 30, 31, 2012, and January 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14 and 15, 2013. Family vehicles were observed during early morning and late night hours;

Mother and/or Father were observed at the B house on September 4, 5, 13, 14, 20, 26, 2012, October 4 and 5, 2012, December 28, 2012, and January 2, 3, 9, 10, 11, 12, 14, and 15, 2013;

Mother and Father were each observed on various occasions letting out the family dog early in the morning (generally around 6:45 a.m.), and picking up a newspaper;

Mother, Father and Student II were each observed in various states of casual dress (bath robes, barefoot, sandals, shorts, etc.) while at the B house;

Father was observed leaving and coming back into the B house with bags of groceries;

There were holiday decorations, Christmas lights and a tree, at the B residence.

33. During this same time period, on three occasions, ESI observed Mother leaving the B home late at night, generally after 9:00 p.m., and driving to the C house. On each of these occasions, Mother would return to the B home early the next morning, generally around 6:30 a.m. From September 4 through January 11, 2013, ESI observed Father at the C house on one occasion. ESI did not observe Student II at the C house during this time frame.

34. ESI did not observe Parents or Students at the A house on any occasion.

35. Beginning on January 13, 2013, and lasting through the conclusion of the ESI surveillance on February 20, 2013, Parents and Student II spent the majority of nights sleeping at the C house. During this period, the family continued to frequent the B house during the daytime. Father and Mother continued to operate their home offices

from the B house, and it was not unusual for them to be at the B house on both weekdays and weekends. Student II generally accompanied his Parents at the B house when he wasn't in school, and the family's black and white dog also accompanied Parents at the B house each day.

36. Mr. Price believes that at some point during the first two weeks of January 2013, the Parents discovered ESI's surveillance. He asserted that this discovery, along with the present lawsuit, coincided with, and was the catalyst for, Parents and Student II changing their pattern of sleeping at the B house to sleeping at the C house. Mr. Price testified credibly on behalf of the ESI surveillance, which was substantial and persuasive evidence that the family resided outside of the District, at the B house, during a component of time which is material to these cases.

MOTHER'S BLOG

37. Mother is an artist who operates an art studio from the B house. To gain publicity for her art, she operates an online blog. A blog is a website where an individual can post their thoughts, journal entries and messages to the entire on-line world. Mother's blog contained thoughts and information pertaining to both her art studio and her personal life.

38. On December 29, 2010, Mother posted a blog entry where she referred to an upcoming move to the B house, which she referred to as "our new home." Mother also described in this blog that the family had been staying at the C house, which she referred to as "my mom's [Grandmother] house."

39. On January 5, 2011, Mother posted a blog entry where she stated "So, the mojo is good here at Camp [B] (the nickname for our new home), because there was a vacant room for my studio to occupy after the dust settled down from moving in."

40. On January 14, 2011, Mother posted a blog discussing new curtains she put in her home and posted before and after pictures, one of which is a picture looking out the window of the B house.

41. On January 25, 2011, Mother posted a blog recapping her recent move to the B house, which she described as having been vacant for the past three years. Mother also described that Student II was getting into trouble at school, a junior high school in the District. She stated that she was concerned the District may discover that the family was not residing within the District's boundaries. Mother posted the following:

Teen...in trouble at school. Tells principle we have moved
from Coronado. Yikes...

42. Also on January 25, 2011, Mother described in her blog how she could overcome an anticipated District residency check. She discussed how she could have Grandmother take over as the legal care giver for Students, and also why this proposition would be difficult to accomplish. Mother posted the following in her blog regarding the residency issue:

Get my mom to legally take over as "Caregiver" for my boys
in order for them to continue at Coronado school. Realize
this means that the boys are supposed to move in over at my
mom's house... (Ok, my mom is 76, and is caring for my step
father with Alzheimers [*sic*]...I can't ask anything more of her.
Really.)²

² No evidence was provided which demonstrated that Grandmother was granted any form of custodial rights, or caregiver status, over Students.

Learn that they do “bed checks” in Coronado, where the asst. [sic] principal and a Sheriff arrive unannounced at your door at 6am [sic] to make sure your child is in the bed at the caregiver’s house...(Freakshow [sic], sheesh).

43. On March 19, 2011, Mother posted a blog entry where she stated that she enjoyed exploring her new neighborhood in Point Loma, where the B home is located.

44. On July 25, 2011, Mother posted a blog wherein described working on her home “here in Pt. Loma.”

45. On September 11, 2011, Mother posted a blog entitled “Distractions....”, wherein she discussed a power outage at her home. Accompanying this blog post, Mother included a photograph of her family lying on the lawn at the B house.

46. On October 31, 2011, Mother stated in her blog “We are going to head over to my mom’s [Grandmother’s] house tonight and help her hand out candy.”

47. On several occasions over the course of several months of blog entries, Mother regularly referred to the C house as Grandmother’s home, and consistently described the B house as her new home, where she, Father and Students resided.

PARENTS’ MAILING ADDRESS

48. Over the past several years, Mother and Father have intermittently used all three houses, A, B and C, as their mailing address. The parties provided examples of letters and invoices which intermittently bear each one of these addresses.

49. However, prior to June 2012, Mother used bank checks from her Wells Fargo checking account which listed the A house address. As of June 2012, Mother began using checks from this same account which listed solely the B house address.

50. From January 2011, to the present, it is normal for Parents to receive their business mail at the B home. Father is uncomfortable receiving any mail at the C house

because Grandmother, who has lent him money, will often rifle through his personal belongings and documents, especially documentation which may refer to financial matters. Father presently receives all of his mail at the B address.

MOTHER'S TESTIMONY

51. Mother is an established artist who is local to Coronado. She described growing up in her parent's home in Coronado, which was the A house. Mother has fond memories regarding the A house and she has an emotional attachment to this house.

52. Mother considers the A house her childhood home, and she was thrilled when she was able to purchase this property from Grandmother in 2005. Parents purchased the home for \$600,000.00, and spent approximately \$400,000.00 to restore the property. Their present mortgages for the home total one million dollars. In 2012, Parents listed the A home for sale for approximately 240 days. Following this listing, they received a firm offer to purchase the home for their original asking price of just over \$2,100,000.00, which they turned down. Mother explained that when she received this favorable sale's offer, she no longer desired to sell the property, due to her emotional attachment to this house.

53. After residing at the A house for several years, Parents chose to lease out this property due to financial difficulties. Initially, Parents chose to rent out the property on a short term, six month lease, because they believed they would return to the A home when their financial difficulties subsided. However, Father's landscape architecture business was seriously impacted by the recent recession. Following the six month lease, Parents sought and found a long term lessor for the property. Presently, the A property has an annual lease, with a tenant's right of renewal. Mother does not have an anticipated date for returning to the A home.

54. Nonetheless, Mother considers the A home her permanent residency. During her testimony, she regularly referred to the C house as her "Mom's home" and

she does not consider the B house a permanent residency. Rather, Mother asserts that her family was forced to leave the A home due to financial difficulty, and because she intends to return there some day, the A home is her family's permanent residence. For this reason, Mother contends that Students are residents of Coronado and the District.

55. Mother described some of Student I's emotional deficits and his difficulties with drug addiction. Student I is a bright, likable young man who has suffered from serious depression and some processing delays. She attributed Student I's drug abuse to his growing up in Coronado and various influences he was subjected to while attending Coronado High School. She purported that Coronado High School has a well-known problem with students abusing drugs, which she feels is endemic to the small beach community. She is concerned that Student I's younger brother, Student II, may fall into a similar pattern of drug abuse if he is exposed to the same influences his brother was subjected to, which include influences she feels still exist at Coronado High School.

56. Mother described that she was very pleased when Student II was accepted to High Tech High, so that he could avoid attending Coronado High School. When he left High Tech High in early January 2013, Mother enrolled Student II at Coronado High School because she believed Parents resided within the District, at either the A or C houses.

57. Mother asserted that some conclusions drawn by the ESI surveillance were inaccurate. For example, Mother testified that she had slept at the C house more frequently than the three instances recorded by ESI. Mother described that she occasionally spent the night at Grandmother's house during the time period covered by the ESI surveillance due to marital problems, and because Grandmother required more assistance due to the recent death of her husband. Mother described that her marital problems were caused by a difficult relationship between Father and Grandmother. During these occasions, Father and Student II continued to sleep at the B house and

Mother would go by herself, very late at night, to the C home. Mother was unable to recall how many nights she slept at Grandmother's home, but her testimony evidenced it was approximately six times rather than the three occasions recorded by ESI. Mother continued to keep all of her personal belongings at the B home, and would return early the next morning to be with Student II and to operate her home business. Mother posited that the C house could be considered Students' residence due to her sleeping there on occasion.

58. Mother provided testimony which was often confusing and incongruent with other evidence. For example, Mother was unable to recall where her family resided during substantial periods of time over the last two years. She testified that after moving to the B house in January 2011, Parents and Student II moved back to the C house, and then returned again to the B house prior to September 2012, when Student II began his freshman year at High Tech High. However, she could not recall the month or year when either of these two moves occurred, and she was unable to provide any details regarding these transitions. Mother became frustrated when trying to describe this information, and rather than provide concrete information, summarized her family's whereabouts as a "freak show." Another example of a problem found in Mother's testimony related to her testimony concerning a mold problem. She testified that her family had to leave the B house due to a mold problem, but was uncertain when. However, evidence showed that a mold problem was remediated within one week of discovery, during the month of October 2012. Mold impacted one bathroom of this three bathroom property, during a period of time that Parents acknowledged working and sleeping at this home. There was no evidence provided which showed that the family vacated the B home during this period of time, or ever, due to a mold problem. While Mother was an impassioned witness, her testimony was often unclear and inconsistent with more persuasive evidence.

FATHER'S TESTIMONY

59. Father generally testified in a similar manner as Mother. He believes that the A home is his permanent residence. However, like Mother, he does not anticipate returning to this property anytime in the foreseeable future. Similar to Mother, he does not consider either the B or C houses as his family's permanent residence.

60. Throughout his testimony, Father regularly referred to the C house as his mother-in-law's, or Grandmother's, home. However, unlike Mother, he did not feel comfortable at the C house. Grandmother regularly infringed upon Father's privacy at the C house. Grandmother went through his mail and personal belongings, did not respect closed doors, and made living at the C house unbearable for Father. It was due, in part, to this conduct that the family chose to move to the B house, which was vacant.

61. Similar to Mother, Father described moving back to the C house after moving into the B house, and then returning to the B house in September 2012. Father was similarly unable to recall when these moves occurred, or to provide any details regarding these moves, such as what caused the family to move back and forth between these two houses.

62. Since returning to the C house in mid-January 2013, Parents and Student II have slept in the main house, as the detached loft is now being used by Grandmother's niece. Given the problems Father complained of while residing in a detached part of the home, it is likely his concerns will be greater now that the family is sleeping in the main portion of the C home, along with Grandmother.

63. Father testified that Grandmother will permit him and his family to return to the B house whenever they wish. He described that Grandmother would like to sell the B house someday, but this property is not presently for sale and there is no anticipated date when it may be listed for sale.

64. The family does not pay rent at the C house, but has an agreement with Grandmother to pay her one dollar per month as rent for the B house.

65. As of the date of the hearing, the family's furniture and various personal items were still in Point Loma at the B house. Father testified that he would not move the family's furniture to the C house, because this was Grandmother's house and she already had her own furniture.

66. Father still works at the B house daily with several employees. The B house is residentially zoned. Therefore, any business at this location must be accompanied by a residence.

67. From January 13, 2013, through the date of the hearing, Parents and Student II, and the family dog, would sleep at Grandmother's home in Coronado and then return daily to the B home in Point Loma, where they conducted their business and personal affairs. At present, while the family sleeps uncomfortably at Grandmother's house, the B house sits livable and fully furnished, yet unoccupied at night.

68. Father provided testimony that all of Student I's furniture and personal property have been kept at the B home since he began attending RTC's in February 2012, other than some personal effects that he took to the RTC's. Student I's personal property was still located at the B house as of the date of this hearing.

69. Father's testimony failed to substantiate Students' claim that their permanent residence should be considered either the A or C houses, for a period of time which is material to these cases.

THE CONTRACTOR

70. Bryan Scott is a general contractor who has worked directly for Parents and Grandmother. He has conducted various repairs and renovations to the A, B and C homes. Mr. Scott testified as a witness on behalf of Students.

71. Mr. Scott confirmed that Parents and Student II are not presently sleeping at the B home, although they are generally there during the daytime. He described the B home as an active location during the daytime, with both Mother and Father's small businesses operating from this location. Student II also goes to this location on a daily basis, when he is not at school.

72. Mr. Scott described that the family's furniture is spread throughout the B house in a livable manner, and not kept in a manner consistent solely as storage. He described seeing the family's personal belongings and effects, such as toothbrushes and toothpaste, still present in the B house.

73. Mr. Scott explained that he had been hired by Grandmother to renovate the B house so that she could one day sell this property, but he does not know when Grandmother intends on selling this home. Although Grandmother hired and pays him, he described that Mother oversees and directs his work. The property has undergone various renovations from time to time, including improvements to a bathroom, remediating mold in one bathroom, the addition of a bathroom for Father's office, and improvements to the kitchen. However, he described that the property has always been in a livable condition and remains so at present.

GRANDMOTHER

74. Grandmother is Mother's mother, and is an active participant in Parents and Students' lives. She testified briefly on behalf of Students. Grandmother owns the B and C houses through a trust which was established by her late husband (Grandfather). Grandfather passed away in October 2012 after suffering from Alzheimer's disease. He was Mother's stepfather and has several adult children from a previous marriage. Grandmother described that, pursuant to the trust, several offspring, including half-siblings, will have an ownership interest in the B and C homes when she passes. She

does not want to diminish the ownership interests the other siblings will have in the B property by selling, or giving, it to Parents.

75. Grandmother resides solely at the C home. She provided details concerning the loft above the garage where Parents and Students temporarily stayed after leaving the A house in January 2010. She described that she had promised this particular loft space to her niece, who attended a local college. Grandmother testified that it was well known to Parents that they could only use this space for a temporary period of time, until her niece, who was then a freshman in college and residing in the school dormitory, required this space during her sophomore, junior and senior years of college. As of the hearing, the niece was residing in the detached loft at the C house.

76. Grandmother will permit Parents and Students to reside at either the B house or the C house for as long as they wish, subject only to the trust taking effect upon her death. To that end, she does not charge the family rent to stay at the C house. However, she does charge Parents rent, one dollar per month, which she takes seriously, to stay at the B house. Moreover, as part of their agreement to stay at the B house, Parents have promised to supervise the property's various renovations.

77. Grandmother presented as a credible and caring witness. However, her testimony failed to overcome the substantial evidence which showed that Students resided outside of the District during times material to these cases.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a special education administrative due process proceeding, the party seeking relief has the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) The standard of a preponderance of evidence, also known as a balance of probabilities, is met if the

proposition is more likely to be true than not true. Effectively, the standard is satisfied if there is greater than a 50 percent chance that the proposition is true. In this case, the parties stipulated that the District had the burden of establishing that Students' were not residents during a period of time which was material to these cases.

RESPONSIBLE AGENCIES

2. Under the Individuals with Disabilities Education Act (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 free appropriate public education (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).) Generally, a FAPE is made available through a Local Educational Agency (LEA) within the state. (20 U.S.C. § 1412(a)(12)(A); *Letter to Covall*, 48 IDELR 106 (OSEP Dec. 2006).) In this case, the District and the San Diego Unified School District (SDUSD) are the Local Educational Agencies, or LEA's, within the meaning of these provisions.

OAH JURISDICTION

3. Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) Such parties have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) In this matter, OAH has jurisdiction to hear and decide the residency issue presented for decision because the issue concerns what LEA has the responsibility of providing Students with a FAPE.

PURPOSE OF THE IDEA

4. The express purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” (20 U.S.C. § 1400(d)(1)(A))

5. FAPE means special education and related services that are available at no cost to the disabled student, that meet the state educational standards, and that conform to the pupil’s IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

RESPONSIBILITY DETERMINED BY RESIDENCY

6. In California, for the most part, identification of the LEA that has the responsibility for providing a disabled child with a FAPE is determined through residency. 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 or legal guardian resides. (Ed. Code, § 48200; *Katz v. Los Gatos-Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 54.)

7. The IDEA speaks in terms of an LEA “providing for the education of children with disabilities within its jurisdiction.” (20 U.S.C. § 1413(a)(1).) California law generally requires students to attend the public school “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.) Students are not claiming any exceptions to this general rule.

DEFINITION OF RESIDENCY

8. Residency under the IDEA (20 U.S.C. §1400 et seq.) is measured by “normal standards.” (*Union School District v. Smith* (1994) 15 F.3d 1519, 1525 (*Union*).) In California, Government Code section 244 lists “the basic rules generally regarded as

applicable to domicile [legal residency]." (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1114.) In *Smith v. Smith* (1955) 45 Cal.2d 235, 239, the California Supreme Court explained:

Courts and legal writers usually distinguish "domicile" and "residence," [b]ut statutes do not always make this distinction in the employment of those words. They frequently use "residence" and "resident" in the legal meaning of "domicile" and "domiciliary," and at other times in the meaning of factual residence or in still other shades of meaning. . . . [I]n our codes "residence" is used as synonymous with domicile in the following statutes: sections 243 and 244 of the Government Code

9. Government Code, section 244, states in relevant part:

In determining the place of residence [domicile] the following rules shall be observed:

- (a) 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.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another is gained.
- (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.
- (f) The residence can be changed only by the union of act and intent.

ISSUE: WERE STUDENTS RESIDENTS OF THE DISTRICT DURING ALL TIMES MATERIAL TO THESE CASES SUCH THAT THE DISTRICT WAS RESPONSIBLE FOR PROVIDING THEM WITH SPECIAL EDUCATION AND FOR IMPLEMENTING STUDENTS' IEP'S?

10. On February 19, 2013, Students filed separate complaints for due process. In Student I's complaint he alleged that the District denied him educational rights during a period of time which began 30 days after the Agreement was signed. Student II similarly alleged he was denied educational rights beginning sometime in September 2012. Neither Student included an allegation in their respective complaints which predated September 2012. Consequently, this Decision will be limited to the period of time which is material to these cases, which is September 1, 2012, through the date of the hearing.

SEPTEMBER 1, 2012, THROUGH JANUARY 12, 2013

11. From September 1, 2012, through January 12, 2013, evidence obtained from the ESI investigation, Mr. Erhard's testimony, Mr. Price's testimony, and Parents' testimony, demonstrated that Parents and Student II spent days and nights residing at the B house. (Factual Findings 24-69.)

The A House

12. Students argue that the A home should be considered Students' legal residence. Students assert that Parents' stated intent to return to the A home someday is sufficient, by itself, to confer the responsibility of providing Students a FAPE to the District.

13. Case law, developed over many years, does emphasize intent as a crucial factor in the legal definition of residency. *Union School Dist. v. Smith, supra*, 15 F.3d at p. 1525, is instructive on the issue of intent. There, parents who were residents of the city of San Jose, placed their child at a non-public school in Los Angeles. The school district

argued that the child “resided” in Los Angeles during the week while attending a school there and, therefore, the Union School District was not responsible for the child’s education. The Ninth Circuit found otherwise. The pupil’s parents were only temporarily in Los Angeles during the school week and did not intend to move there permanently. The parents’ intent, therefore, was to remain residents of San Jose and their actions supported that intent. Here, Students assert that, similar to *Union*, the A house should be considered their permanent residence because the family intends on returning to this home. However, *Union* is distinguishable from the present matter. In *Union*, the father maintained his medical practice in San Jose and parents maintained a permanent home there. The pupil’s parents did not lease out their San Jose home or relocate all of their furniture and personal belongings to Los Angeles. Here, Father maintained his landscape architecture firm, and Mother maintained her art studio, from the B residence. Parents did not return to the A home every weekend. In fact, Mother and Father each testified that they had no intent to return to the A home anytime in the foreseeable future, and instead leased out this property on a long term basis, annually, with a unilateral right of the tenant to renew the lease. Given the stated reason for leasing out this property, financial difficulties, it is not improbable that the family may never return to the A house, and it may be leased indefinitely. Regardless, Parents can re-enroll Students in the District if they do return to the A house. Parents and Students moved all of their personal belongings to the B home, conduct which manifested their intent to move from Coronado and to relocate in San Diego. Mother blogged of this intent and declared to the world her action of moving to the B house, which she described as the family’s new home. The ESI investigation, Mother’s blog, and Parents’ testimony, all show that the union of intent and action necessary to establish residency at the B house existed in this matter. (Legal Conclusions 6-9; Factual Findings 24-69.)

14. Consequently, a preponderance of evidence in the present matter revealed that Parents' intended to relocate their residence from the A home, located within the District, to the B house, located within the boundaries of the SDUSD, and their actions supported this intent. For these reasons, Students were not residents of the District for a period of time material to these cases.

The C House

15. In the alternative, Students argue that the C house should be considered Students' residence.

16. Students argue that the C house should be considered Students' permanent residence because Mother occasionally slept at the C house during this time frame. Evidence showed that Mother, on occasion, would leave the B house late at night and sleep at the C house, only to return very early the next morning. However, Mother's conduct at the C house was more stereotypical of a temporary residence. Mother slept at the C house infrequently and mainly to assist Grandmother, who was recently widowed. Mother maintained her home office and all of her belongings at the B house. When she did spend the night at Grandmother's, Father and Student II continued to sleep at the B house. Mother testified that she considered the C house as Grandmother's home and did not, at any point in time, consider this house as her permanent residency. (Factual Findings 24-69.)

17. Mother declared in her blog that the B house was her new home. As far back as December 2010, in her blog, Mother described her upcoming move to the B house, which she described as her "new home." On January 5, 2011, Mother detailed the move in her blog and described the B house as her new home. In March, July, September and October, 2011, Mother posted blogs which described in a variety of ways that the B house was the family's residence. Throughout her blog, Mother regularly

referred to the C house as Grandmother's home, and she regularly referred to the B house as her home. (Factual Findings 37-47.)

18. Parents and Students maintained their furniture and personal belongings solely at the B house, and in a manner that was consistent with long term residency, not storage. Items were not kept in boxes or in the attic. Instead, furniture and belongings were moved into this home in a livable manner. Mother and Father each maintained home offices from this residence, received mail there, changed their checking account to reflect this address, and decorated this home during the holidays. The family worked and played there, kept their dog there, slept and ate there. (Factual Findings 24-69.) Residency is not supposed to be a difficult analysis, but rather a prima facial reflection of where the family lives. (Legal Conclusions 8.) The family intended to make the B house their residence and their actions reflected this intent. (Legal Conclusions 6-9; Factual Findings 24-69.)

19. Finally, Mother and Father each testified that they intended to reside at the B house during Student II's attendance at High Tech High, which they anticipated would encompass the next four years. It is objectively unreasonable to describe a home which the family has physically moved all of their belongings into, and where they intend to sleep nightly for at least the next four years, as a temporary residence.

20. Consequently, the majority of evidence showed that from September 1, 2012, through January 12, 2013, Students resided at the B house, which was located outside of the District's geographic boundaries.

JANUARY 13, 2013, THROUGH THE HEARING

21. From January 13, 2013, through the date of the hearing, witnesses for both the District and Students testified that Parents and Student II slept at the C house. The ESI investigation recorded a change in the family's pattern of residing solely at the B house, and found that as of January 13, 2013, the family would spend the majority of

nights sleeping at the C house. (Factual Findings 24-72.) Mother, Father and Grandmother, each testified that Parents and Student II have slept at the C house since mid-January, and the contractor witnessed the family spend their nights at the C house during this time frame. (Factual Findings 24-72.)

22. Evidence was provided which showed that the family may easily return to the B house whenever they wish. (Factual Findings 67-77.) However, this evidence was not sufficient to establish residency at the B house in light of the family actually sleeping at the C house. (Legal Conclusions 6-9.)

23. Consequently, a preponderance of the evidence demonstrated that the C house, located within the District's geographic boundaries, was Students' residence from January 13, 2013, through the date of this Decision.

ORDER

1. The District was not responsible for providing Students with special education and implementing Student's IEP's from September 1, 2012, through January 12, 2013.

2. The District was responsible for providing Students with special education and implementing Student's IEP's from January 13, 2013, through the date of this Decision.

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 District and Student each prevailed partially on the residency issue.

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: May 24, 2013

/s/

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings