BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, BIRMINGHAM COMMUNITY CHARTER HIGH SCHOOL, AND EL MONTE UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017070535 ORDER DENYING MOTION TO DISMISS LOS ANGELES UNIFIED SCHOOL DISTRICT; AND GRANTING MOTION TO DISMISS BIRMINGHAM COMMUNITY CHARTER HIGH SCHOOL, AND EL MONTE UNION HIGH SCHOOL DISTRICT

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on July 14, 2017, naming Los Angeles Unified School District, Birmingham Community Charter High School, and El Monte Union High School District. On August 30, 2017, July 21, 2017, and July 17, 2017, respectively, each Respondent served its written response to the complaint on Student.

On July 20, 2017, Los Angeles filed a motion to dismiss both Los Angeles and Birmingham as Student had not enrolled with either entity. Los Angeles filed its motion concurrently with its opposition to Student's motion for stay put, the opposition to stay put included a request to bifurcate the issue of residency. On August 4, 2017, El Monte filed its opposition to the motion to dismiss but joined in the request for bifurcation to determine which Respondent, if any, was responsible to offer and provide special education services to Student. On August 4, 2017, Student filed an opposition to the motion to dismiss or bifurcate.

On August 31, 2017, OAH issued an order bifurcating the issue of residency. On September 1, 2017, OAH granted Birmingham's request for a continuance, based upon good case, setting the bifurcated issue for hearing on October 24, 2017. At the request of the ALJ, all parties timely filed written briefs on the bifurcated issue of residency on October 18, 2017.

Administrative Law Judge Cole Dalton heard the bifurcated issue of residency in Van Nuys, California, on October 24 and 25, 2017.

Diane Weissburg, Attorney at Law, represented Student. Mother attended each day of hearing on behalf of Student. Father appeared only for his testimony, which El Monte secured by subpoena.

Mary Kellogg, Attorney at Law, represented Los Angeles. Due process specialist Natalie Hofland attended each day of hearing on behalf of Los Angeles.

Lisa Corr, Attorney at Law, represented Birmingham. School psychologist and director of special education programs Cindy Balestrero attended each day of hearing on behalf of Birmingham.

Jennifer Chamberlain, Attorney at Law, represented El Monte. Interim special education director Larry Willis attended each day of hearing on behalf of El Monte.

At the parties' request, oral arguments were heard on the last day of hearing. At the close of oral arguments, the bifurcated issue was submitted and the due process hearing on any remaining issues was continued to November 6 through 9, 2017.

ISSUE

Which Respondents are responsible for offering and providing Student with a free appropriate public education for the 2017 – 2018 school year?

SUMMARY OF ORDER

A preponderance of the evidence demonstrated that Student resided within Los Angeles's boundaries at all relevant times, such that Los Angeles was the local educational agency responsible to offer and provide Student with a free appropriate public education for the 2017 – 2018 school year. Mother held sole legal custody for making educational decisions on behalf of Student, making her the sole "parent" under state and federal law for purposes of determining residency for Student's school attendance. The evidence, including Mother's purchase of a home in Encino in which she could live with Student, demonstrated Mother's intent to reside in Encino. Neither Birmingham nor El Monte were responsible for offering a Student a FAPE for the 2017 – 2018 school year.

CONTENTIONS

1. The parties do not dispute that Parents are divorced and share joint physical custody on a 50/50 basis; that, on January 18, 2017, the Superior Court issued an order granting Mother sole legal custody for educational decision making purposes; and that Father resides in Rosemead, California.

2. Mother contends that El Monte is the local educational agency responsible for offering and providing Student a free appropriate public education for the 2017 – 2018 school year. Mother argues that, because Father owned a home in El Monte's jurisdictional boundaries within the relevant time frame, she can choose to make El Monte the responsible District, regardless of where she resides. Los Angeles and Birmingham join in Parents' argument and contend that policy considerations override the law, putting educational placement decisions squarely within the realm of parental choice. Further, Birmingham contends that it cannot be responsible to offer Student a FAPE, as it is not a local educational agency under state or federal law. El Monte argues that Mother, the sole holder of educational rights, resided in Encino since September 2016 and, as such, Los Angeles is the sole responsible local educational agency.

FACTUAL FINDINGS

1. On September 15, 2015, Rosemead School District held Student's initial individualized education program team meeting, finding him eligible for special education services due to speech-language impairment. Attorney Diane Weissburg represented Mother at the IEP team meeting. Rosemead serves students in kindergarten through eighth grade, who reside in Rosemead and portions of El Monte, San Gabriel, and Temple City. Students from Rosemead matriculate into El Monte Union High School District.

2. Parents and Rosemead mediated a prior due process dispute on December 9, 2015. Ms. Weissburg represented Mother and Student at the mediation. The parties executed a settlement agreement on December 9, 2015, providing compensatory funding of Student's placement at Westmark, a private school in Encino, California. The parties agreed that, once placed at Westmark, Student would be considered a parentally placed private school student.

3. At the time of the December 2015 agreement, Parents held joint physical and legal custody of Student. The agreement required that either Father agree to Student's Westmark placement for the 2016 – 2017 school year, or that Mother obtain a court order entitling her to make placement decisions for Student such that Father could not withdraw Student from Westmark. The agreement required an IEP team meeting in the spring for Student's transition to El Monte. El Monte was not a party to the agreement.

4. On November 1, 2016, El Monte sent a letter to Parents explaining that it operated as the high school district for students matriculating from Rosemead. The letter explained the enrollment process, school choice options, and transfer options. Parents did not begin the enrollment process until July 2017, as discussed below.

5. On January 18, 2017, Father and Mother appeared before the Honorable Armen Tamzarian, Judge presiding in Department 84 of the Superior Court in Los Angeles, California. Under oath, Mother reported living in Encino. Father reported living in Rosemead. The reporter's transcript of the proceedings demonstrated that Mother intended

to continue seeking funding for Student's placement at Westmark, a placement that Father disagreed with. At Mother's request, the Court ordered that Parents exchange custody of Student at the Glendale Police Department on days Student did not attend school in Encino. Mother's then family law attorney designated this location as being a good halfway meeting point between Parent residences.

6. In February 2017, Student underwent testing by Dr. Marguery Lyvers, a licensed clinical psychologist. Dr. Lyvers obtained an extensive history of Student, including his activities within and outside of school over the 2016 – 2017 school year. Dr. Lyvers reported that Father resided in Rosemead and Mother resided in Encino at the time of the assessment. Dr. Lyvers mentioned nothing about Student spending time with his grandmother or living with grandmother at her home in Norwalk.

7. On March 30, 2017, Ms. Weissburg sent email correspondence to Rosemead's special education director Dawn Rock and Rosemead's counsel Karen Gilyard, requesting a transition IEP team meeting with El Monte to develop a program for Student's 2017 – 2018 school year.

8. On May 16, 2017, a transition IEP team meeting was held with Jennifer Chamberlain representing El Monte and Ms. Weissburg representing Mother and Student. The IEP identified Father's address in Rosemead as Student's residence. A release of information authorization signed by Mother on April 27, 2017, identifies Student's address at his Father's house in Rosemead.

9. At the meeting, El Monte requested an opportunity to conduct assessments. Ms. Weissburg represented that she reviewed El Monte programs and did not believe the district could meet Student's needs. Ms. Weissburg requested continued funding of Student's placement at Westmark in lieu of filing an expedited request for due process hearing. El Monte sought a subsequent IEP team meeting, requesting attendance by Mother's district of residence, Los Angeles, based upon Mother's status as the education rights holder.

10. On May 18, 2017, Rosemead and Student entered into another settlement agreement to fund Student's placement at Westmark over the 2017 extended school year. The agreement required only one of Student's Parents to reside within Rosemead's boundaries. Mother alone signed the agreement, acknowledging that she had "sole [e]ducational decision making [authority]."

11. On May 18, 2017, Ms. Weissburg provided Ms. Chamberlain with an August 22, 2014 court order showing that Parents had joint physical and legal custody. Ms. Chamberlain requested Mother's current address to determine if Los Angeles needed to be involved in the IEP process, due to Mother having sole education decision-making authority.

12. On May 21, 2017, in response to Ms. Chamberlain's residence request, Ms. Weissburg summarized Student's living arrangements throughout his education. Student

lived with both Parents at a house in Rosemead from kindergarten through sixth grade. After Parents separated, Mother moved to Arcadia. The marital house was sold and, in April 2015, Father purchased another house in Rosemead. In October 2016, Mother moved to an Encino address to be closer to Westmark, Student's private school.

13. On June 9, 2017, Ms. Weissburg emailed Ms. Chamberlain Father's utility bills to verify residency within El Monte. Ms. Weissburg advised Ms. Chamberlain that, "parents share joint physical and legal custody." Ms. Chamberlain asked to verify Mother's address and clarified that El Monte was brought into Student's transition IEP team meeting as part of a requirement from the settlement agreement with Rosemead.

14. On June 23, 2017, Mother signed an authorization for release of information from El Monte to Los Angeles. The release identifies Father's residence in Rosemead and Mother's residence in Encino.

15. El Monte's June 28, 2017 psychoeducational assessment report reflects, in part, parent and student interviews and an educational history review. Mother reported that Student lived with her in Encino Monday through Thursday mornings and alternating Sundays. Student lived with Father in Rosemead Thursday afternoons through Saturday and on alternating Sundays. Mother and Father corroborated this physical custody schedule at hearing. The report does not mention Student staying with his grandmother in Norwalk.

16. On July 10, 2017, Mother prepared enrollment documents and provided them to El Monte. She identified her residence in Encino. The forms required her to affirm that she did not present any false information regarding residence or guardianship. She verified her understanding of this requirement at hearing, under oath. She provided utility bills from Los Angeles Department of Water and Power and SoCal Gas Company for her residence in Encino. She provided emergency contact information using that address. Mother did not provide grandmother's address or contact information in the enrollment packet.

17. On July 12, 2017, Birmingham's counsel Lisa Corr began an email exchange with Ms. Weissburg explaining Birmingham's status as a conversion charter school. Birmingham continued to do some assessments for Los Angeles for privately placed students within Birmingham's former attendance boundaries. Since Mother lived in Encino and Student attended a private school in Encino, Birmingham would assess Student, on behalf of Los Angeles, if asked to do so.

18. At hearing, Ms. Balestrero explained Birmingham's status as a charter school. Ms. Balestrero holds a bachelor of arts in psychology, and a master of arts in education counseling and education administration. She holds a pupil personnel services credential in school psychology and school counseling and a Tier 1 administrative credential. Based upon Ms. Balestrero's experience, scope of knowledge, and forthright responses, her testimony was given considerable weight.

19. As a charter school, Ms. Balestrero explained, any parent could choose to enroll their child in Birmingham, regardless of where parents lived. At the time of the bifurcated hearing, Student had not enrolled in Birmingham. However, based upon Mother's residence in Encino, Mother could choose to enroll Student in either Birmingham or other local Los Angeles schools.

20. Ms. Balestrero explained that Birmingham operated as a school within the local education agency of Los Angeles. Mother's address in Encino fell within Birmingham's former attendance boundaries, which were encompassed within Los Angeles's attendance boundaries. Birmingham did not operate as an independent charter school at any time relevant to these proceedings. As such, Los Angeles was local education agency responsible for offering educational services to Student.

21. In early July 2017, El Monte arranged an IEP team meeting with all parties to this dispute to be held on July 12, 2017. The evidence showed that El Monte was prepared to review its assessments and believed that Los Angeles would offer placement and services for Student. Birmingham agreed to attend the IEP team meeting, on behalf of Los Angeles, since Student resided with his Mother within Birmingham's former attendance boundaries. Mother insisted on having a school nurse and audiologist present. However, in summer time, neither district could obtain these participants. Ms. Weissburg decided to pursue due process and stay put at Westmark, rather than schedule an IEP team meeting.

22. On July 14, 2017, Ms. Weissburg, on behalf of Student, filed the complaint and a motion for stay-put at Westmark in this case. No IEP team meeting was held by the time of this hearing on the bifurcated issue.

23. On July 19, 2017, Los Angeles filed its opposition to Student's motion for stay put. In the opposition, Los Angeles clarified its position that Birmingham is chartered by Los Angeles; that, based upon Mother's address in Encino, Student could elect to attend Birmingham but could also seek out other placements within Los Angeles' boundaries; and that, in either event, Los Angeles was responsible for ensuring that Student receive a FAPE should he attend or enroll in Birmingham.

24. On July 21, 2017, El Monte sent a letter to Mother's home in Encino, explaining that, as educational rights holder, her residence in Encino determined Student's residence for educational purposes and that Los Angeles was Student's district of residence and responsible for offering him a FAPE.

25. On July 23, 2017, in supplemental pleadings for Student's motion for stay put, Mother signed a declaration under oath stating that she moved from Arcadia to Encino due to the long drive from Arcadia to Encino, where Student attended Westmark. She admits not advising Rosemead of the move until February 2017. She acknowledged that Ms. Weissburg represented her, on behalf of Student, since January 2015.

26. On October 10, 2017, Mother obtained an abstract of her voter registration, reflecting a mailing address in Norwalk. That address falls within the boundaries of Norwalk Unified School District. The Norwalk address first surfaced in these proceedings in Student's opening brief, filed with OAH on October 17, 2017.

27. At the hearing, Mother asserted that she made the home in Norwalk her permanent residence when she separated from her husband in 2013 and that her moves to Arcadia and later Encino were meant to be temporary. She explained that she merely rented the home in Encino, while she owned the home in Norwalk. She lived in the Norwalk home with her mother and Student, when Student was not in school at Westmark or with his Father in Rosemead.

28. At hearing, she contradicted her October 17, 2017 declaration, by claiming that she notified Rosemead of her permanent residence in Norwalk just after her separation. Mother produced a business license showing that her hair salon in South Pasadena is registered with the City of South Pasadena with the Norwalk address. According to the business license abstract, Mother changed her address from the marital home in Rosemead to Norwalk on January 15, 2015.

29. When confronted with a deed to her condominium in Encino, Mother admitted purchasing the property in September 2016. Similarly, a deed and title transfer history for the Norwalk property shed light on ownership of that home. Mother purchased the Norwalk property sometime in 1991 and transferred the property to her mother and father in 2004. This fact may explain why Mother consistently referred to the Norwalk property as "my mother's home."

30. Mother's testimony was, in large part, contradictory, confusing, and misleading. Mother's testimony was given little weight, where not corroborated by other evidence. Mother would not have admitted (1) owning the home in Encino and (2) not owning the home in Norwalk had she not been confronted with public records showing otherwise.

31. Mother insisted that she and Father sought to establish a residence in Rosemead and maintain that throughout Student's educational career. She suggested that she could assign educational rights to Father, making El Monte a choice for enrollment, rather than Los Angeles. She did not express any reservations with violating the Superior Court's legal custody order of January 18, 2017.

32. In an attempt to show ties with El Monte/Rosemead, she identified local activities she engaged in with Student. These included eating out at restaurants in Pasadena, Rosemead, El Monte and other locations within the San Gabriel Valley area. She pointed to her work in South Pasadena. She described taking Student to church in Pasadena.

33. To make matters more confusing, she persisted in referring to her mother's house in Norwalk as her permanent residence. She did not explain how maintaining an address in Norwalk made Student's entitlement to enroll in El Monte any more plausible.

34. Student does not have an offer of FAPE from any district for the 2017 – 2018 school year.

APPLICABLE LAW

1. Under the IDEA, a local education agency is charged with "providing for the education of children with disabilities within its jurisdiction." (20 U.S.C. § 1413(a)(1).) A nonprofit public charter school that is included within a local education agency is not a public agency. (Ed. Code, § 56028.5.)

2. California law requires students, between the ages of 6 and 18, to attend school in the school district in which either the student's parent or legal guardian resides. (Ed. Code § 48200; *Orange County Dept. of Educ. v. California Dept. of Educ.* (9th Cir. 2011) 668 F.3d 1052, 1056 (*Orange County*); *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.) Thus, residency for purposes of school attendance is established not by where the child lives, but where the parents live.

3. The IDEA's residency determination is made under state law and is no different from the residency determination in other types of cases. (*Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525 (*Union*).) There may be only one residence. (Gov. Code, § 244, subd. (b).) A residence cannot be lost until another is gained. (*Id.*, subd. (c).)

4. Education Code section 56028 defines the meaning of "parent" for special education purposes and mirrors the IDEA's definition of "parent" provided in the Code of Federal Regulations title 34, part 300.30. A biological parent falls within the definition of a "parent." (34 C.F.R. § 300.30(a); Ed. Code, § 56028, subd. (a)(1).)

5. Generally, each "parent" under the IDEA has the same due process protections, even when they are divorced or living apart, unless provided otherwise in a specific provision of the IDEA or its implementing regulations. (See, 34 C.F.R. § 300.30(a); Ed. Code, § 56028, subd. (a)(1); *In Re Student with a Disability v. Virginia State Educational Agency*, No. 16-023 (Va. SEA 2016) [68 IDELR 117] (*Virginia*); *Navin v. Park Ridge School Dist.* (7th Cir. 2001) 270 F.3d 1147.)

6. Both California law and the IDEA's implementing regulations limit the general rule, by providing that where a judicial order identifies a specific [biological parent] to make educational decisions on behalf of a child, that specific [biological parent] becomes the "parent" under the IDEA. (34 C.F.R. § 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2).) The parent with the right to make educational decisions becomes the sole parent entitled to due process protections under the IDEA. (*Virginia*, *supra*, 68 IDELR 117 (court order

granting mother final education decision making authority made her the sole "parent" under the IDEA); *Schares v. Katy Independent School Dist.* (Tx. 2003) 252 F.Supp.2d 364 (court order granting mother exclusive right to make education decisions made her sole "parent" under IDEA; *In Re Shikellamy School Dist* (Pa. SEA 2012) 142 LRP 9604 (where mother held sole education decision-making authority, father lost standing to file for due process under the IDEA.)

7. Further, as the sole parent, that parent's residency is controlling for purposes of determining the responsible local educational agency under Education Code Section 48200. (34 C.F.R. 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2); *Orange* County, *supra*, 668 F.3d at 1058 – 1059; see also, *Saucon Valley School Dist.* (Penn. SEA 2014) 114 LRP 45479 (a state court order giving father exclusive education decision making authority altered mother's status as "parent" under IDEA).)

8. The California legislature intended the definition of parent found in the current and prior versions of Education Code section 56028 to apply to section 48200 for students receiving special education. (*Orange County, supra,* 668 F.3d at 1059.) In so doing, the legislature sought to place educational decision-making and funding responsibility at the local level. (*Ibid*.)

DISCUSSION

1. Both Mother and Father are biological parents of Student. However, the effect of the Superior Court's order designating Mother as the sole educational rights holder is that Student's residence for school attendance is determined by Mother's residence. Since September 2016, Mother maintained her residence within Los Angeles' boundaries, for purposes of Student's school attendance.

2. On one hand, Student argues that Los Angeles has responsibility to provide educational services, should he choose to receive such services. Alternatively, Student argues that intent to make El Monte his servicing district should somehow override state and federal special education law that make local education agencies responsible for educating children with disabilities.

3. Los Angeles joined Student's argument that El Monte should be the responsible school district, despite knowledge of the court order granting Mother education decision-making authority. The argument stems from Mother's assertions that Father will always reside in Rosemead and that Mother's permanent residence is in Norwalk.

MOTHER'S RESIDENCE

4. As a preliminary matter, Mother's sworn statements that she holds a permanent residence in Norwalk lack corroboration. Father was unaware of Student spending nights in Norwalk with his Mother. Mother referred to the Norwalk house

throughout the hearing as her "mom's [mother's] house." From the IEP team meeting in September 2015 until the time Student filed his opening brief on residency, Mother never mentioned the Norwalk address to any school staff. She did not include the Norwalk address in IEP's, enrollment documents, assessment reports, or her sworn declaration attached to the motion for stay put. From September 2015 through these proceedings, Mother had the advice of counsel.

5. Notwithstanding these issues, Los Angeles and Student argue that Mother's intentions are the crucial factor in determining where she maintains a permanent residence. Mother always intended Encino to be a temporary address. Her intentions, she argues, are buttressed by the acts of tying her business license and voter registration to the Norwalk address and staying at the Norwalk address when working in South Pasadena.

6. In deed, intent is a crucial factor in the legal definition of residency. (*Union, supra*, 15 F.3d 1519, 1525.) In *Union*, parents, who were residents of the city of San Jose, placed their child at a non-public school in Los Angeles and resided in Los Angeles while he attended school. Union School District argued that the child "resided" in Los Angeles during the week while attending a school there and, therefore, Union School District was not responsible for the child's education. The Ninth Circuit disagreed. Parents temporarily lived in Los Angeles, only during the school week, and did not intend to move there permanently as evidenced by father's maintenance of his medical practice in San Jose and the maintenance of the family's permanent home there. The parents' intent, therefore, was to remain residents of San Jose and the court found their actions supported that intent.

7. In contrast, here, Mother purchased a home in Encino, where she lived with her son during days she enjoyed physical custody. She had physical custody Monday through Thursday and alternating Sundays. Utility bills for the residence are in her name and sent to the Encino address. Mother presented no evidence tending to show the temporary nature of the Encino residence. To the contrary, purchase of a home shows intent to remain. Mother abandoned her address in Arcadia when she purchased the home in Encino. (See *Eriksen v. Eriksen* (1943) 57 Cal.App.2d 532, 534-535 [intent shown by the act of abandonment of one residence and the intent to establish a new residence elsewhere.].)

8. Significantly, during the family law court proceedings on January 18, 2017, Mother sought out a meeting point for Parents to exchange custody of Student, on days when Student wasn't being picked up or dropped off at Westmark in Encino. Mother requested and received an order to make the Glendale Police Department the drop off point, as it was a good halfway point between Mother and Father. Glendale is halfway between Rosemead and Encino. Glendale is not remotely near Norwalk.

9. Further, Mother provided no credible evidence that she intended to abandon the Encino home in favor of the Norwalk home. The weight of the evidence demonstrated that Mother, if anything, used the Norwalk address for convenience. Because she moved from Rosemead to Arcadia before finally purchasing a home in Encino, it may have been convenient to have her business license and voter registration attached to the Norwalk

address. That, without more, did not establish that Mother intended to make Norwalk her permanent address.

FATHER'S RESIDENCE

10. In the second part of their argument, Student and Los Angeles argue that Student's residence is tied to his Father's address in Rosemead, making El Monte the responsible district. The parties cite *R.F. v. Delano Union School Dist.*, No. 1:16-cv-01796-LJO-JLT, 2017 WL 633919 (E.D. Cal. Feb. 15, 2017) (*Delano*) to support their contention that parents have the right to choose which school district will serve their children. In *Delano*, student received special education services from Torrance Unified School District while residing with his parents in Torrance. After mother passed away, father moved student to Delano, where grandmother and uncle could provide childcare support. Grandmother and uncle each signed caregiver affidavits so that student could enroll in Delano Union School District. Delano offered student an IEP with considerably reduced services, compared to his IEP from Torrance. Student rejected the IEP and father re-enrolled student in Torrance. Father expressed his intention that student reside and attend school in Delano, if Delano provided services similar to those previously provided by Torrance. Student filed for due process and a motion for stay put. OAH denied student's request for stay put. Student brought an action for declaratory and injunctive relief seeking an order compelling Delano to treat his implemented Torrance IEP as the stay put placement.

11. The *Delano* court held that student could not compel the provision of special education services from Delano as parent did not reside within Delano's boundaries. The *Delano* court's analysis follows that of the court in *Orange County*, applying the definition of "parent" in Education Code section 56028 to the residency statute found in section 48200.

12. Student argues, as the father did in *Delano*, that parental intent to maintain a residence in a certain locality is determinative as to a student's residence for purposes of receiving special educational services from the local school district. But in *Delano*, the court found that father only intended to have student permanently reside in Delano if a future event occurred, namely, if Delano offered the same level of services as Torrance had. Since father kept student in Torrance until this event occurred, the court found that the "union of act and intent" to reside in Torrance was satisfied and student's residence was in Torrance, with his father, not in Delano with a caregiver.

13. Here, Student and Los Angeles seek to apply the "union of act and intent" argument to Father's residence in Rosemead. The parties argue that, because Parents always intended to make Rosemead and El Monte responsible districts and Father still lives there, that El Monte is now responsible for Student's education. But Father hasn't held education rights since January 18, 2017 and, therefore, is not a "parent" whose residence can establish the responsible district under state and federal law. Cases cited by the parties where parents share joint physical and legal custody are inapposite.

14. In keeping with *Delano*, the "union of act and intent" here shows that Mother purchased a home for Student in Encino, within Los Angeles' boundaries, because Student attended Westmark, which is also in Encino. Mother intended to maintain that home and seek continued funding for Westmark. Therefore, Mother evidenced the union of act and intent to reside in Los Angeles.

15. Student produced no evidence demonstrating that Birmingham acts as a local education agency responsible for offering and providing him with a FAPE. Further, Student failed to demonstrate that El Monte is responsible for offering or providing him with a FAPE, since Student's Mother did not reside in that district during the relevant time period.

16. Mother established a permanent residence in Encino in September 2016 and became the sole parent for making education decisions and determining Student's residency for school attendance. Therefore, Los Angeles has been the local education agency responsible for offering and providing Student with a FAPE for the 2017 – 2018 school year.

ORDER

1. As of January 18, 2017, Student was a resident of Encino, such that Los Angeles was the local educational agency responsible to offer and provide Student with a free appropriate public education for the 2017 – 2018 school year. Los Angeles' motion to dismiss is denied.

2. Birmingham Community Charter High School and El Monte Union High School District are dismissed.

3. All remaining issues will be addressed at the due process hearing scheduled for November 6 through 9, 2017.

IT IS SO ORDERED

DATED: October 31, 2017

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings