BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT AND ANAHEIM UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016051232 ORDER GRANTING MOTION FOR STAY PUT

On May 26, 2016, Student filed a motion for stay put seeking an order that Anaheim Union High School District or Irvine Unified School District fund Student's current placement at New Haven Residential Treatment Center during the pendency of this due process matter. On June 1, 2016, Anaheim filed an opposition with a supporting declaration and documents. On June 2, 2016, Irvine filed an opposition with a supporting declaration, and Anaheim filed a reply to Irvine's opposition. On June 3, 2016, Student filed a reply to respondents' oppositions with a supporting declaration and documents.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

In California, the agency responsible for providing education to a child is controlled by residency as set forth in the Education Code. Education Code section 48200 embodies the general rule that parental residence dictates a student's proper school district. (Ed. Code, §

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

48200; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57; *N.G. v. ABC Unified School Dist.* (C.D. Cal., Sept. 19, 2014, No. CV 13-06929) 2014 WL 4678967, p. 4; *Orange County Dept. of Educ. v. California Dept. of Educ.* (9th Cir. 2011) 668 F.3d 1052, 1053 [the school district in which the parent resides is responsible for a student's out-of-state residential treatment facility].) Section 48204 sets forth exceptions to the general rule of parental residence as the determinant of the proper school district. (Ed. Code, § 48204; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.)

Education Code sections 56155 and 56156.4 are part of a legislative chapter entitled "Licensed Children's Institutions and Foster Family Homes." Education Code section 56155 states the article "shall only apply to individuals with exceptional needs placed in a licensed children's institution or foster family home by a court, regional center for the developmentally disabled, or public agency, other than an educational agency." Where individuals with exceptional needs are placed in a licensed children's institution by a regional center, "[e]ach special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children's institutions ... located in the geographical area covered by the local plan." (Ed. Code, §§ 56155, 56156.4, subd. (a).)

Government Code section 7579.1 describes interagency coordination and responsibilities which must be carried out when disabled children with IEP's are discharged from a licensed children's institution. Once a disabled child has been discharged, the receiving local educational agency shall ensure that the child receives an appropriate educational placement that commences without delay upon his or her discharge from the institution in accordance with Education Code section 56325. (Gov. Code § 7579.1, subd. (b).) Further, "[r]esponsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which the child resides" pursuant to Education Code sections 56156.4 and 56167. (Gov. Code § 7579.1, subd. (b).)

Government Code section 7579.1 also applies to children with IEP's who are discharged from a hospital. (Gov. Code § 7579.1, subd. (a).) Courts have held that while the district where a psychiatric hospital is located is educationally responsible for a student who is a patient, that responsibility shifts to the district where the parent resides when the student is discharged from the hospital and placed in a residential treatment center in another state. (*N.G. v. ABC Unified School Dist.* (C.D. Cal., Sept. 19, 2014, No. CV 13-06929) 2014 WL 4678967; *Orange County Dept. of Educ. v. California Dept. of Educ.* (9th Cir. 2011) 668 F.3d 1052.)

If a student with exceptional needs was placed and residing in a residential nonpublic school prior to transferring to a district in another special education local plan area within the state, the district that made the residential nonpublic school placement is responsible for the

funding of the placement for the remainder of the school year. (Ed. Code, § 56325, subd. (c).)

DISCUSSION

Student is eligible for special education as a student with autism and emotional disturbance. Student lived with Parent(s) within Irvine's boundaries until July 31, 2015, when he was placed by the Regional Center of Orange County in a licensed children's institution, or group home, in Anaheim. Student attended Anaheim High School during the 2015-2016 school year until he was placed by his IEP team at New Haven Residential Treatment Center in Vista, California, and escorted there on April 11, 2016. Student's last implemented IEP, dated May 23, 2016, continued Student's placement at New Haven. Student seeks a stay put order requiring either Anaheim or Irvine to fund Student's continued placement at New Haven through the completion of this due process matter.

Anaheim contends that a stay put decision should be deferred because the issue of which local educational agency is responsible for providing Student's FAPE is an issue in this due process matter and should only be resolved following a full evidentiary hearing. Anaheim also contends that although it was responsible for providing Student a FAPE while he resided in the licensed children's institution in Anaheim, it was relieved of this responsibility once Student moved to New Haven on April 11, 2016.

Irvine contends that a stay put determination would provide Student with a determination on the merits of his case and deprive Irvine of its due process rights. Irvine further contends that it is not responsible for providing Student's FAPE because Student was a resident of Anaheim, and Student's IEP placement at New Haven did not change Student's residency or Anaheim's legal responsibility. Irvine also asserts that Student has not enrolled, nor established residency, in Irvine.

It is undisputed that Student's current educational placement, based on the last implemented IEP, is at New Haven. It is also undisputed that, upon Student's placement in a group home within Anaheim's boundaries, Student became a resident of Anaheim for purposes of IDEA responsibility. When Student's IEP team placed him in a residential treatment center outside of Anaheim's boundaries, the dispute arose over whether Anaheim remained responsible for Student's FAPE or whether that responsibility reverted back to Irvine, based on Parent's residence in Irvine. Respondents correctly note that the ALJ who presides over the due process hearing will make a final determination of this issue but fail to offer any legal authority to show that a stay put determination may be deferred under these circumstances. Student is entitled to remain at New Haven until this due process hearing procedure is complete. Accordingly, it is necessary to make a determination as to which district is responsible for Student's stay put placement.

The findings in this order are therefore intended solely to determine Student's right to stay put and are made without prejudice to the parties, who are not precluded from presenting

the arguments made herein at the due process hearing. Furthermore, nothing in this order precludes the ALJ presiding over the due process hearing from making a different determination after a full evidentiary hearing as to which local educational agency is responsible for Student's FAPE and ordering a remedy which may affect the financial impact of this order.

Student's FAPE became the responsibility of Anaheim pursuant to Education Code section 56156.4 based on his placement by the regional center into a group home within Anaheim's boundaries. Once Student was no longer placed in that group home, or any other licensed children's institution within Anaheim's area, Education Code section 56156.4 no longer applied. The plain language of section 56156.4 indicates that districts are responsible for students "residing" in licensed children's institutions in their geographical area. The term "residing" is in the present tense and indicates an ongoing responsibility for districts while students reside there. Likewise, Education Code section 56155 explicitly states that the subsequent sections pertaining to licensed children's institutions apply "only" to students "placed in a licensed children's institution." Here, Student is neither residing, nor placed, in a licensed children's institution in Anaheim. Therefore, Anaheim is not responsible for Student's stay put placement pursuant to section 56156.4.

Irvine's contention that Anaheim retains responsibility pursuant to Education Code section 56157, which describes the ongoing responsibilities of districts that make placements at nonpublic schools for their students residing in local licensed children's institutions, fails for the same reason. The section is inapplicable because Student is not currently residing in a licensed children's institution in Anaheim.

Anaheim is not responsible for the funding of New Haven pursuant to Education Code section 56325, subdivision (c), because subdivision (c) is not applicable. Section 56325, subdivision (c), requires the district that made the placement at a residential nonpublic school district to fund that placement for the remainder of the school year, despite a student's transfer to a new district, if that student "was placed and residing in" that residential placement "prior to transferring" to a new district. Here, it has not been established that Student was residing in New Haven prior to transferring districts.

Because Education Code section 56156.4 no longer assigns responsibility for Student's FAPE to Anaheim, and the parties have not established that any other statute assigns responsibility to Anaheim, the responsibility for Student's stay put placement shall be assigned based on Parent's residence. Such an assignment is consistent with Government Code section 7579.1, which expressly states that upon discharge from a licensed children's institution, responsibility for the provision of special education rests with the district where the parent resides. Such an assignment is also consistent with Education Code section 48200, which is generally applicable to all students unless another statute or code specifically shifts the responsibility to another local educational agency. Finally, assignment of responsibility to the district of parental residence is consistent with the holdings of courts who have examined a similar dispute with respect to students discharged from hospitals to out of state residential treatment centers. (*N.G. v. ABC Unified School Dist., supra*, 2014

WL 4678967; *Orange County Dept. of Educ. v. California Dept. of Educ., supra,* 668 F.3d 1052.) Accordingly, it is determined that Irvine, as Parent's district of residence, is responsible for Student's stay put placement at New Haven.

Irvine's assertions that Student has not enrolled in its district or established he resides in Irvine are not persuasive. Student's failure to enroll is not relevant to the determination of residency, and Irvine does not dispute that Parent resides within its boundaries. However, as previously stated, Irvine's assertions remain available as possible defenses at the due process hearing.

ORDER

1. Student's motion for stay put is granted.

2. Irvine shall fund Student's current educational placement at New Haven Residential Treatment Center while this due process proceeding is pending unless the parties agree otherwise.

IT IS SO ORDERED.

DATE: June 13, 2016

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Lisa Lunsford
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LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings