

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030347

DECISION

On March 5, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing naming the Manhattan Beach Unified School District, Sonoma County Office of Education, and the Los Angeles Unified School District. Pursuant to requests by Student, OAH dismissed Sonoma on March 12, 2014, and Los Angeles on May 27, 2015. On April 16, 2015, OAH granted a joint request to continue the due process hearing from April 29, 2015, to June 8, 2015.

Administrative Law Judge Robert Helfand heard this matter in Manhattan Beach, California on June 8 and 9, 2015.

David M. Grey, Attorney at Law, represented Student. Student's parents were present throughout the entire hearing.

Christopher J. Fernandes, Attorney at Law, represented Manhattan Beach. Susan Curtis, Interim Director of Special Education for Manhattan Beach, attended throughout the hearing.

At the request of the parties, the record remained open for the submission of a

written closing and rebuttal briefs. Both parties filed closing briefs on June 18, 2015, and rebuttal briefs on July 1, 2015. The matter was submitted on July 2, 2015.

ISSUE¹

The following issue was determined:

Was Manhattan Beach Unified School District the local education agency responsible for providing Student with a special education program and services?

SUMMARY OF DECISION

This decision finds that the Manhattan Beach Unified School District is not the local education agency responsible for providing Student with a special education program and services, as Student was placed at his current location, a licensed children's institution, by a non-educational public agency.

FACTUAL FINDINGS

1. Student is a 16-year-old male who qualified for special education services on November 10, 2014, under the eligibility category of Emotional Disturbance. Parents adopted Student through the Foster-Adoption program of the Los Angeles County Department of Child and Family Services (DCSF). Student has resided within the boundaries of Manhattan Beach, along with his adoptive parents and siblings, since his adoption.

2. Student attended Manhattan Beach schools until August 2013 when he

¹ The ALJ has reformatted the issue. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

enrolled at Da Vinci Communications Academy, a charter school. In January 2014, Da Vinci notified Parents that Student's classmates reported that Student was suicidal. Student required hospitalization on two occasions following psychotic episodes. He also started to self-mutilate himself by cutting, and continually expressed feelings of being unsafe. Student's psychiatrist recommended that he be placed at a residential treatment facility. Student withdrew from Da Vinci in the beginning of February 2014.

3. On February 14, 2014, Student entered a residential treatment center, Vista Del Mar, a licensed children's institution located within the boundaries of the Los Angeles Unified School District. Student was also enrolled at the Vista School, a licensed nonpublic associated with Vista Del Mar.² Manhattan Beach was not involved in the decision to place Student at Vista Del Mar or the Vista School.

THE ADOPTION ASSISTANCE PROGRAM

4. The Adoption Assistance Program,³ which is administered in Los Angeles County by DCFS, is a federally funded financial assistance program providing financial support to the adoptive parents of foster children. Adoption Assistance is intended to assist parents of former foster children in meeting the needs of the children. The Post Adoption Services section of DCFS handles issues encountered by families after an adoption occurs. When an adoptive child requires placement in a residential treatment facility, DCFS may provide financial assistance through Adoption Assistance. The goal for Adoption Assistance funding is to return the child to his adoptive family.

² Vista Del Mar is a licensed children's institution as defined in Education Code §56155.5. Vista School is a California Department of Education approved non-public school as defined in Education Code § 56034.

³ See Welfare and Institutions Code §§ 16115 to 16125.

5. DCSF does not directly place a child out of home care. The adoptive parents choose a placement, and then they must submit an application to DCFS for Adoption Assistance financial assistance. DCFS accepts the funding request if the placement meets certain requirements. First, the placement must be a non-profit licensed by California. Second, a residential treatment center placement must be justified by a specific episode or condition. Third, a reunification plan must be established with parental participation. DCFS authorization for Adoption Assistance funding is for up to 18 months, which can be extended. DCFS maintains a list of eligible facilities which is available to parents.

6. Parents may request that DCFS pay the facility directly if the parents so authorize by a transfer payment agreement, or make reimbursement to the parents for costs incurred. Following placement, DCFS does not actively monitor the child's progress. Only the parent can choose to terminate the placement. If a parent desires to remove the child from the facility and move to another facility, the parent would contact DCFS and notify which placement is desired and submit an application for DCFS to determine if the child and facility are eligible for funding through Adoption Assistance.

PLACEMENT AT VISTA DEL MAR

7. After receiving the psychiatrist's recommendation that Student should be placed in a residential treatment center, Parents began a search for an appropriate facility. A friend informed Mother of Vista Del Mar. Mother observed the placement and applied to Vista Del Mar which accepted Student. Parents then contacted DCFS and applied for funding through Adoption Assistance.

8. On February 11, 2014, Angelica Petit, a social worker in the Post Adoption section, forwarded a form letter to Parents indicating the procedures to obtain Adoption Assistance funding. Enclosed in the letter was a list of residential treatment centers in Los Angeles County which "had been previously used" by the agency. Parents were

directed to contact the facility and complete all necessary intake requirements. Also, the family was directed that they were required to participate in creating a plan for family reunification. Once a placement had been selected, Parents were required to submit to DCFS the following: (a) letter from a treating physician or therapist stating why the child needs to be placed in residential treatment; (b) proof of the facility being licensed by California, being a non-profit, and its Internal Revenue Service exemption; (c) a letter from the facility that it had accepted the child; (d) a copy of the facility's state license; (e) a letter from the facility that it is entitled to receive funding per All County Letter 94-76; (f) information from the facility ensuring the child's rights; (g) a letter from the facility that it is not a locked facility; and (h) a copy of the monthly costs to be incurred.

9. DCFS approved Student's application, and he was admitted to Vista Del Mar on February 14, 2014. Student's depression continued and his self-mutilation continued. Student was required to be sent to a psychiatric hospital on three occasions prior to May 30, 2014. Because of Student's lack of progress, Parents decided that he should be placed in a new residential treatment center.

MANHATTAN BEACH'S ASSESSMENT AND PARENTS' SEARCH FOR A NEW PLACEMENT

10. On June 1, 2014, Mother forwarded a letter to Ellyn Schneider, Manhattan Beach's special education director, requesting that Student "be considered for special education and related services." Mother stated that Student had been diagnosed with major depressive disorder and had been hospitalized five times as a result. She also noted that Student was residing at Vista Del Mar, which now appeared to not be an appropriate placement.

11. Lindy Alley, the Manhattan Beach program specialist who was the case manager for special education students placed in non-public schools, responded to the June 1, 2014 letter. Ms. Alley referred Mother to the Los Angeles Unified School District

where Vista was located. Ms. Alley stated that if Student was offered special education and related services by Los Angeles, “[Student] will once again become a student serviced by MBUSD.”

12. Student made several requests for Los Angeles to assess Student. Los Angeles failed to respond. Mother contacted Ms. Alley who agreed for Manhattan Beach to conduct the assessment. On September 10, 2014, Manhattan Beach forwarded to Parents an assessment plan. Mother consented to the assessment plan the same day.

13. Parents began to search for an appropriate therapeutic treatment facility which would be able to meet Student’s needs. Parents received recommendation from several therapists and others as to TLC Child and Family Services, which operates a residential treatment center and non-public school in Sebastopol, California, in Sonoma County.

14. TLC is a licensed children’s institution as defined in Education Code section 56155.5. TLC operates Journey High School, a California Department of Education non-public school as defined in Education Code section 56034.

15. On September 11, 2014, Mother left a voice mail message for Lynn Burrell, the Manhattan Beach school psychologist who was to conduct the assessment, to inform her that Student had been hospitalized again for a few days. Mother also stated that she was in Sonoma County looking at a residential treatment center there. Ms. Burrell spoke to Mother and informed her that Manhattan Beach was looking toward out-of-state residential treatment centers. Mother requested that the district look at TLC, which she thought would be appropriate for Student.

16. TLC opened its intake file on Student on September 29, 2014.

17. A psycho-educational/educationally related mental health assessment was conducted by Ms. Burrell and Lilla Foster, a special education teacher. The assessment commenced on September 30, 2014, and ended on November 7, 2014. An assessment

report was prepared dated November 7, 2014. Ms. Burrell recommended that Student be found eligible for special education under the category of Emotional Disturbance. The report concluded: "Due to [Student's] medical history of depression, suicidal ideation, and engagement of self-harm behaviors, it is recommended that the least restrictive environment at this time is 24 hours/7 day a week care in a residential treatment center."

18. Prior to the scheduled November 10, 2014 IEP meeting, Ms. Burrell informed Mother that she had researched TLC; and she felt it would be an appropriate placement for Student. She said she would recommend TLC at the IEP meeting.

NOVEMBER 10, 2014 IEP

19. On November 10, 2014, Manhattan Beach convened an initial individualized education program team meeting. In attendance were Student's mother, Ms. Burrell, Ms. Foster, and Ms. Alley, who acted as district administrator. Ms. Burrell and Ms. Foster reviewed the results of their assessment. The IEP team found Student eligible for special education under the category of Emotional Disturbance and developed an IEP. The Services page of the IEP noted that Student will be in a year-round program at a residential treatment center. The services listed were specialized academic instruction for 314 minutes per day; individual counseling for 60 minutes per week; counseling and guidance for 300 minutes per week; and parent counseling for 240 minutes per month. The page also states that Student cannot participate in the general education curriculum because "student requires 24-7 therapeutic environment in order to access curriculum." All educational services will be provided in a "Non Public (sic) Residential School, with "[t]ransportation to and from residential treatment for therapeutic visits per recommendation of the treatment team."

20. Manhattan Beach's FAPE offer was contained in the Notes section entitled "MBUSD Offer of Free and Appropriate Public Education (FAPE) 10/10/2014 –

10/10/2015" and consisted of a non-public school and a restatement of the services listed on the Services page. The Services section above the FAPE offer stated:

Services were reviewed. The IEP team considered a full continuum for determining Least Restrictive Environment. At this time the team agrees that education and individual, group and family therapy should be provided through a non-public (NPS) in a 24/7 residential treatment facility as the least restrictive environment to meet [Student's] needs at this time. The program is a year round program...All therapeutic services are provided consistently throughout the year. Parent visits to see [Student] and [Student's] visit off-campus are made at the recommendation of the treatment team and in conjunction with the IEP team. The professional IEP team is recommending placement in Journey NPS which works closely with the residential treatment facility TLC being considered by the parents.

STUDENT'S PLACEMENT AT TLC AND JOURNEY

21. On November 24, 2014, Ms. Burrell received an email message from Mother that "adoptions went ahead with the one year placement for [Student] at TLC," and that Parents had signed the necessary forms.

22. On November 26, 2014, Student was discharged from Vista Del Mar and returned home. Student remained at home until his admission at TLC on December 1, 2014.

23. On December 1, 2014, Student was admitted to TLC. At the time of admission, a document entitled "Agency-Group Home Agreement" was signed by Jackie

Johansen, TLC admissions director, and Mother. Mother and Ms. Johansen also signed a letter addressed to Rita Nwabuzoh, a social worker at DCFS, stating that Parents agree to have funds paid directly to TLC.

24. On December 1, 2014, Ms. Johansen emailed Ms. Nwabuzoh that Student was admitted to TLC, and the intake had occurred that morning. Attached was the group home agreement. Ms. Nwabuzoh replied that since Student's adoption had been finalized and he was not under court jurisdiction, DCFS does not do agency-group home agreements since DCFS only facilitates "in the transfer of his Adoption Assistance Program (AAP) funding directly to you for his placement." She indicated that placement authorization is for 12 months and that Parents had already signed the payment transfer "without which this placement would not have occurred."

MANHATTAN BEACH'S REFUSAL TO IMPLEMENT IEP

25. On December 10, 2014, Ms. Schneider forwarded a letter to Mother in response to her request for reimbursement for costs incurred by Parents for Student to attend Vista School. Ms. Schneider stated that Manhattan Beach denied Mother's request for reimbursement for Student's attendance at Vista School. Ms. Schneider did state that "District assessed and developed an IEP for [Student] to ensure that he had an appropriate placement if he left Vista Del Mar and moved back into your home, in which case we would be the responsible school district." Ms. Schneider continued to note that Manhattan Beach "understand[s] that [Student] was transferred directly from Vista Del Mar directly to another LCI (TLC)." She then concludes: "For these reasons, the District is not responsible for funding [Student's] placement at Vista Del Mar and/or his placement at his new LCI and school."

26. On January 30, 2015, Mother wrote Susan Curtis, the interim director for

student services at Manhattan Beach,⁴ stating that Student had been discharged from Vista Del Mar on November 26, 2015. She also wrote that he had moved home before enrolling at TLC and Journey on December 1, 2015, contrary to Ms. Schneider's statement in her December 10, 2014 letter. Mother also commented on her understanding that Manhattan Beach's FAPE offer was (1) placement for a non-public school at a residential facility with the understanding that "post adoptions" will fund the residential housing; (2) Manhattan Beach would monitor Student's progress to ensure that his IEP goals were being met, including a visit to make sure TLC is a "good fit for his needs," and, if not, then Manhattan Beach would move Student to a more appropriate facility out of California chosen by Manhattan Beach; and (3) Parents would be reimbursed for travel to TLC.

27. On February 2, 2015, Mandy Hoffman, an administrator for Non-Public School/Non-Public Agency programs with the Sonoma County Office of Education,⁵ forwarded an email to Ms. Schneider informing her that Parents were requesting reimbursement for travel to TLC. She requested that Ms. Schneider contact her to discuss the matter.

28. On February 10, 2015, Ms. Hoffman forwarded an email to Ms. Curtis. Ms. Hoffman noted that Sonoma only acts when a student resides in Sonoma County, is placed by another governmental agency, and requires a non-public school placement. She noted that she had requested a copy of the Manhattan Beach IEP as Sonoma was

⁴ Ms. Curtis was appointed interim student services director following Ms. Schneider's leaving her position.

⁵ Sonoma County Office of Education operates the Sonoma County Special Education Local Planning Area, which is responsible for licensed children's institutions and foster family students.

never provided a copy. Ms. Hoffman states that Sonoma had scheduled an IEP for February 26, 2015, and invited Manhattan Beach to attend. She also requested "documentation" that Manhattan Beach's IEP offer had been changed so as to permit Sonoma to decide whether it had responsibility for Student's education.

29. On February 12, 2015, Ms. Curtis responded by stating that Manhattan Beach would hold an IEP if Student was returned to his home. She continued that Manhattan Beach was not responsible for Student since he never returned to his home because he was directly placed by Adoption Assistance Program to TLC. She also claimed that Manhattan Beach "was not involved in the decision, or funding of the student's transfer to TLC." She concluded that since Student never returned to his home, he "never became MBUSD's responsibility, and therefore, we were not required to implement the IEP developed in November."

30. Manhattan Beach did not agree to attend the proposed IEP meeting. Sonoma decided to not hold an IEP meeting as it determined that it had no responsibility for providing special education services to Student.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁶

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs.,

⁶ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below. All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) Related services include speech and language services and other services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527.) Related services shall be provided when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. (Ed. Code, § 56363, subd. (a).)

3. In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate

in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

4. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues

alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

6. The IDEA due process hearing requests brought by a student against a public agency properly includes determinations of the public agency responsible for providing special education services. (See, *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School District* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

DEFINITIONS

7. A "public agency" is defined as a "school district, county office of education, special education local plan area... or any other public agency providing special education and related services to individuals with unique needs." (Ed. Code, §§ 56500 and 56028.5.)

8. A "licensed children's institution" means a residential facility that is licensed by the state to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. (Ed. Code, § 56155.5, subd. (a).) The definition of a licensed children's institution includes a group home defined by subdivision (g)(1) of Section 80001 of Title 22 of the California Code of Regulations. (Ed. Code, § 56155.5.) "Group home" means any facility of any capacity, which provides 24-hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. (Cal. Code Regs, tit. 22, § 80001, subd. (g)(1).)

DETERMINATION OF LEA RESPONSIBLE FOR PROVIDING SPECIAL EDUCATION

9. California law determines which local education agency is responsible for

the provision of a FAPE. For the most part, residency determines which local education agency has the responsibility for providing a disabled child with a FAPE. Generally under the compulsory education law, a pupil between 6 and 18 must attend the school district where his/her parent or legal guardian resides. (Ed. Code, §§ 48200 and 56028; *Katz v. Los Gatos-Saratoga Joint Union High School District* (2004) 117. Cal. App. 4th 47, 54.)

10. Residency in a particular local education agency is also established if a pupil is placed in a licensed children's institution, or a foster home, or a family home pursuant to a commitment or placement under the Welfare and Institutions Code; if the pupil is the subject of an inter-district transfer; if the pupil is emancipated; if the pupil is living in the home of a caregiving adult; or if the pupil is residing in a state hospital. (Ed. Code, § 48204, subds. (a)-(e).)

11. 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."

12. Where a pupil with exceptional needs is placed in a licensed children's institution by a non-educational public agency, the "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); *Parent v. Elk Grove Unified School District and Berkeley Unified School District* (February 19, 2013) OAH Case Number 2013020224 (*Elk Grove*).)

ANALYSIS

13. Student contends that (a) DCFS is not a public agency as defined by the

Education Code because it is not responsible for providing education to children with disabilities; (b) the funding by DCFS through Adoption Assistance does not equal placement; and (c) Student's placement was pursuant to the November 10, 2014 IEP.

14. Manhattan Beach contends that it is not responsible for providing Student with special education services since his placement at TLC was by a non-educational public agency and that Education Code section 56155 controls in this situation.

15. In *Elk Grove*, a student, who was a resident of the Berkeley Unified School District, was placed in Milhous Children's Services, a licensed children's institution, located within the Elk Grove Unified School District, which is a single district special education local plan area. Berkeley filed a motion to dismiss on grounds that student had been placed by a non-educational public agency, the Alameda County Social Services Agency which funded the placement through Adoption Assistance. OAH granted Berkeley's motion finding that the Alameda County Social Services/Adoption Assistance was not an educational agency; and that "[t]herefore, Student's placement at Milhous meets the requirements of Ed. Code §§ 56155, 56156.4(a), so that Berkeley "is not the educational agency responsible for the education of Student while he lives at Milhous under the Adoption Assistance Program agreement."

Is DCFS a Non-Educational Public Agency?

16. There is no dispute that DCFS is not a public agency as defined in Education Code sections 56500 and 56208.5 as it is not a school district, county office of education, special education local plan area ... or any other public agency providing special education and related services to individuals. Thus, DCFS is a public agency, other than an educational agency.

Did DCFS Place Student at TLC?

17. Welfare and Institutions Code section 16121 subdivision (b) (Section

16121) authorizes Adoption Assistance funds to be used to pay for an eligible child to be placed in a state-approved group home or residential care facility if the department or county responsible for determining payment has confirmed that the placement is necessary for the temporary resolution of mental or emotional problems related to a condition that existed prior to the adoptive placement.

18. Section 16121 states:

Payment may be made on behalf of an otherwise eligible child in a state- approved group home or residential care treatment facility if the department or county responsible for determining payment has confirmed that the placement is necessary for the temporary resolution of mental or emotional problems related to a condition that existed prior to the adoptive placement. Out-of-home placements shall be in accordance with the applicable provisions of Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code and other applicable statutes and regulations governing eligibility for AFDC-FC payments for placements in in-state and out-of-state facilities. The designation of the placement facility shall be made after consultation with the family by the department or county welfare agency responsible for determining the Adoption Assistance Program (AAP) eligibility and authorizing financial aid. Group home or residential placement shall only be made as part of a plan for return of the child to the adoptive family, that shall actively participate in the plan. Adoption Assistance Program benefits may be authorized for payment

for an eligible child's group home or residential treatment facility placement if the placement is justified by a specific episode or condition and does not exceed an 18-month cumulative period of time. After an initial authorized group home or residential treatment facility placement, subsequent authorizations for payment for a group home or residential treatment facility placement may be based on an eligible child's subsequent specific episodes or conditions.

The statute goes on to require that such placement can only be made as part of a plan for the return of the child to the adoptive family, who shall actively participate in the plan. The county welfare agency authorization can be for no more than 18 months initially. "After an initial authorized group home or residential treatment facility placement, subsequent authorizations for payment for a group home or residential treatment facility placement may be based on an eligible child's subsequent specific episodes or conditions."

19. The core issue is whether DCFS placed Student at TLC. There are limits placed on a parent to obtain funding for a residential facility to receive Adoption Assistance funding. Certain conditions must be met before DCFS will fund a placement through the Adoption Assistance. These include a letter from the child's treating physician or therapist attesting to the need for residential treatment, the facility must be state licensed and being a non-profit.

20. Student cites as support for his position the OAH case *Parent v. Alhambra Unified School District et al* (October 7, 2013) OAH Case Number 2013050780 (*Alhambra*). The student in *Alhambra* was over 18, considered an adult, and was placed in an adult residential facility rather than a licensed children's institution. OAH ruled that Education Code sections 56155 and 56155.5 do not apply as the statutes apply only to

those children under 18. Thus, *Alhambra* is not applicable to the instant situation.

21. Student claims that DCFS acts only as funding agent since it does not receive progress reports from the institution. DCFS is concerned with the reunification of the child with his adoptive family and not with his education progress. The county agency must determine whether the proposed placement meets certain conditions. The agency is required to have approved the plan for reunification of the child to his family. Because the authorization is limited to no more than 18 months, the agency is in effect monitoring progress as parents are required to reapply for a renewal of funding. Here, Parents had to reapply for an extension of the funding as well as the transfer from Vista Del Mar to TLC. As part of this application, Parents had to provide DCFS a reunification plan. Thus, the county agency has final say in the placement. Since, the county agency, DCFS here, has final say in the placement; this is tantamount to making the placement.

Was Student's Placement at Journey Pursuant to the IEP?

22. Student also contends that Student was placed per the terms of the November 10, 2014 IEP. The evidence demonstrates that placement at TLC was not made pursuant to the IEP. Mother had identified TLC and set in motion the application process both with TLC and DCFS prior to the assessment by Manhattan Beach. Ms. Alley testified that at the time that Manhattan Beach agreed to conduct the assessment, Mother had informed her that she was already looking at placement at TLC and Journey. When Mother was informed that Manhattan Beach was looking at out-of-state facilities for Student, she informed Ms. Burrell that she had decided on TLC. TLC's intake form shows that the file was opened on September 29, 2014, prior to Ms. Burrell commencing the assessment on September 30, 2014. Student did not establish that Manhattan Beach agreed to place Student at TLC as Parents made the placement pursuant to Adoption Assistance requirements.

CONCLUSION

23. For the reasons set forth above, Manhattan Beach was not the local education agency responsible for providing special education to Student. Manhattan Beach neither placed Student pursuant to an IEP, nor was Student placed pursuant to the action of a public agency as defined in Education Code sections 56500 and 56028.5.

ORDER

Student's request for relief is denied.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: Manhattan Beach prevailed on the sole issue heard and decided in this matter.

RIGHT TO APPEAL THIS DECISION

This Decision is a final administrative determination and is binding on all parties. (Ed. Code, § 56506, subd. (h).). Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code § 56505, subd. (k).)

DATE: July 31, 2015

/s/

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings