

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016080999

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on August 18, 2016, naming Los Angeles Unified School District. OAH continued the matter for good cause on September 14, 2016.

Administrative Law Judge Robert G. Martin heard this matter in Van Nuys, California on January 17, 2017.

Mark Wood small and Nelson Chu, Attorneys at Law, represented Student. Student's paternal great uncle (Uncle) attended the hearing on behalf of Student. Student did not attend the hearing. Patrick Balucan, Attorney at Law, represented District. District Special Education Specialist Anait Sinanian attended the hearing on behalf of District.

At the parties' request, OAH continued the matter for written closing arguments. The record closed on February 13, 2017, upon timely receipt of closing briefs from the parties.

ISSUES¹

On January 14, 2017, the parties filed a joint stipulation limiting the issues for hearing. The sole issue for decision was:

Was District responsible for providing Student a free appropriate public education from March 30, 2016, to the filing of the complaint?

The stipulation provided that Student would be awarded the following relief if District was found to be responsible for providing Student a FAPE:

1. District shall pay Uncle reimbursement in the amount of \$10,300 for services provided by Dr. Russell Hyken beginning on April 27, 2016, and ending on December 13, 2016.
2. District shall pay Uncle reimbursement in the amount of \$81,615 for payments made to Kaizen Academy. Services and fees for Kaizen Academy began on April 28, 2016, and ended in December 2016.

SUMMARY OF DECISION

This decision finds District responsible for providing a FAPE to a 16-year-old male placed in residential treatment in Utah by his great uncle, who resided in District. Uncle was acting as attorney-in-fact of Student's biological father, pursuant to special powers of attorney executed by Father in 2015 and 2016 that made Uncle responsible for Student's welfare. Uncle therefore qualified as Student's "Parent" under the Education Code, which made Student a resident of District entitled to a FAPE from District. For a portion of the period at issue, District was also responsible for providing Student a FAPE

¹ The issues have been rephrased and reorganized for clarity. 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.)

under the Interstate Compact on Educational Opportunity for Military Children, incorporated in the Education Code. The Compact was applicable for a period of one year after Father was medically discharged from the Army in July 2015. It provided that special powers of attorney such as those executed by father were sufficient to establish that Student was eligible for enrollment in District, making District responsible for providing Student a FAPE. The decision awards Student the remedies to which the parties stipulated.

FACTUAL FINDINGS

1. Student's mother abandoned Student when Student was one year old, and her parental rights were terminated when Student was two. Student lived with his paternal grandmother, who at all relevant times resided in Florida, until age four, when he went to live with Father, who had joined the United States Army in 2001 and had remarried. Student's stepmother physically abused Student, and he returned to Grandmother in 2006 at age six. Father and Stepmother subsequently divorced, and Stepmother held no parental rights. Father later remarried, but Student never lived with Father again after 2006.

2. Student lived with Grandmother from 2006 to 2012, and attended public school in Florida. Student exhibited increasing behavior problems at home and in school. In September 2012, Student's initial individualized education program from his school district in Florida found Student eligible for special education under the category of emotional/behavioral disabilities.

3. In November 2012, Grandmother and Uncle had Student admitted to the medical evaluation and assessment program at the University of Utah. Following assessment at the University of Utah, Grandmother and Uncle enrolled Student in a residential treatment program at Sand hill Development Center in New Mexico from December 2012 until March 2013. Uncle paid for the program. Sand hill asked Student

to leave in March 2013 because Student engaged in sexual behavior with another resident.

4. After Student left Sand hill, Uncle moved Student to Uncle's home in Los Angeles from March through May, 2013. Uncle then, and at all relevant times, resided in District. Uncle took Student on several visits to a psychiatrist who examined Student, prescribed medication, and provided therapy. Uncle paid for these services. The psychiatrist also assisted Uncle in evaluating potential schools for Student. Uncle did not consider enrolling Student in any District schools because he did not believe that they could offer the levels of supervision and therapy Student required.

5. At the end of May 2013, after visiting and rejecting potential schools in Los Angeles and Boston, Uncle enrolled Student in the residential treatment program at Oxbow Academy in Utah. Uncle paid for the program.

6. When Uncle enrolled Student in Oxbow Academy, he expected that Student would complete a course of residential treatment and return to Uncle's home to live with Uncle and older brother. Uncle reserved a room for Student in Uncle's home, and placed everything Student owned in Student's room, where they remained at the time of hearing.

7. In January, 2014, after eight months at Oxbow, Student was evaluated by clinical psychologists Marina Mooney and Tyler Mooney. Student had not made much progress on his significant behavioral problems and sexual preoccupation, and the assessors estimated Student would need residential treatment for one to three more years. They also concluded that Grandmother was not capable of dealing with Student's severe behavioral problems. Noting that it might be very difficult to improve the family dynamic enough for Student to return to Grandmother, the assessors observed that it might be necessary to make alternative arrangements in the future.

8. On July 1, 2015, Father was medically discharged from the United States Army based on numerous medical conditions related to Father's military service. The

Army found that, taken together, Father's service-connected disabilities were permanent and total.

9. On July 15, 2015, Father signed a military special power of attorney prepared pursuant to title 10 of the United States Code, section 1044b. The power of attorney, notarized by a commissioned Colorado notary public, appointed Uncle as Father's attorney-in-fact for Student until July 15, 2016. Father granted Uncle temporary custody of Student, to exercise all legal rights to maintain and care for him to the same extent as Father, and to authorize all medical and hospital care deemed necessary by a physician for his health and well-being. This military power of attorney stated it would become null and void on July 15, 2016.

10. Father resided in Colorado from at least July 15, 2015 to the time of hearing.

11. Student remained at Oxbow Academy until December 2015, when he was asked to leave due to a lack of progress.

12. Uncle enrolled Student in Wingate Wilderness Program in Utah, and had Student transported directly from Oxbow to Wingate. Uncle hoped that the new therapy methods offered by Wingate in a wilderness environment would lead to a breakthrough for Student.

13. On April 1, 2016, Uncle sent District a letter requesting special education support for Student. Uncle stated that Student had an IEP and a permanent residence in District, and was attending Wingate in Utah. Uncle also stated that he was Student's guardian; however, Uncle in fact was never appointed as Student's legal guardian. District did not respond to Uncle's letter.

14. On April 18, 2016, Student's attorney wrote District to give formal notice of Uncle's intent to keep Student at Wingate and seek reimbursement from District, and to request placement and related services for Student. District did not respond.

15. After Student completed Wingate's wilderness program, Uncle enrolled him in the residential treatment program at Kaizen Academy in Utah, and had Student transported directly from Wingate to Kaizen, where he received a psycho educational evaluation from psychologist Russell Hymen.

16. On June 27, 2016, Father signed a new military special durable power of attorney, notarized by a commissioned Colorado notary, appointing Uncle as Father's attorney-in-fact for Student until June 27, 2017. This power of attorney granted Uncle full power to act for the benefit of Student in any way Father could act, and specifically authorized Uncle to, among other things: arrange for and consent to medical appointments for the general health and welfare of Student; give consent for emergency medical care, including hospitalization and surgery; arrange for and consent to mental health treatments; enroll Student in school and in extracurricular and recreational activities; provide for Student's basic food, clothing and shelter; and in the event of a public safety directive demanding evacuation, to perform any acts or functions (including the execution of documents) to accomplish a prompt and safe evacuation of Student. This military power of attorney was to remain in effect until June 27, 2017, unless revoked by Father sooner, in writing. As of the date of hearing, Father had not revoked the military power of attorney.

17. On August 17, 2016, Student's attorney wrote District to give notice that Uncle had elected to place Student at Kaizen and seek reimbursement from District, and to request placement and related services for Student. District did not respond prior to Student's filing of the complaint on August 18, 2016.

18. In December 2016, Kaizen asked Student to leave because he was grooming a younger student for sex. Uncle arranged for Student to be transported directly to the Star Guides wilderness program in Utah, where Student remained at time of hearing.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)³ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., 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 free appropriate public education (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 individualized education program (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) [In California, related services are also called

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All subsequent references to the Code of Federal Regulations are to the 2006 version.

designated instruction and services].) 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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. 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.) In *Endrew F. v. Douglas County School District* (March 22, 2017, No. 15-827) 580 U.S. ___, 2017 WL 1066260, the Court considered the meaning of the phrase "some educational benefit" for a child not being educated in a general education classroom. The Court rejected the contention that the IDEA was satisfied by a program providing "merely more than *de minimis*" progress. To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Id.*, 2017 WL 1066260 at p. 11.)

4. 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) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 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).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (j).) 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].) Student filed the complaint in this matter, and therefore had the burden of persuasion.

ISSUE: DISTRICT RESPONSIBILITY FOR PROVIDING STUDENT A FAPE

5. Student contended that District was responsible for providing Student a FAPE, based on Student's own residency in District, or on Uncle's residency within District and Uncle's status either as Student's "Parent" under the Education Code, or as Father's attorney-in-fact responsible for Student under a power of attorney given by Father to Uncle pursuant to the Interstate Compact on Educational Opportunity for Military Children. District contended that Student himself had never resided within District, and that Uncle did not qualify as Student's Parent. District also contended that the Interstate Compact on Educational Opportunity for Military Children did not establish Student's residency in District, and that public policy considerations counseled against qualifying California residents as Parents based on powers of attorney.

Applicable Law

RESIDENCY OF PARENT GENERALLY DETERMINES RESPONSIBLE DISTRICT

6. The IDEA leaves it to each state to decide how it will allocate among its various state and local public agencies the responsibility for providing, and funding, special education programs. (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 184 (*Garcia*.) Under Education Code section 48200, a school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several specified exceptions. (*Id.* at pp. 186-187, citing *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525, fn. 1 (*Union*) [Ed. Code, § 48200 determines the local educational agency responsible for providing a special education program].) Generally, the California agency responsible for funding a special education student's education at an out-of-state residential treatment facility is the school district in which the student's "Parent," as defined by Education Code section 56028, resides. (*Orange County Dept. of Educ. v. California Dept. of Educ.* (9th Cir. 2011) 668 F.3d 1052, 1053).

RULES OF RESIDENCY

7. Residency in special education matters is determined based on the following rules set forth in Government Code, section 244 (*Union, supra*, 15 F.3d at p. 1525): (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 an unmarried minor child is the residence of the parent with whom the child maintains his or her place of abode; (e) the residence of an unmarried minor who has a parent living cannot be changed by his or her own act; and (f) the residence can be changed only by the union of act and intent. (Gov. Code, § 244, subds. (a)-(f).)

DEFINITION OF "PARENT"

8. Education Code section 56028, subdivision (a) defines "Parent" for special education purposes as a person holding any one of the following relationships to a child:

- (1) A biological or adoptive parent of a child.
- (2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code.
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative⁴, with whom the child lives, or an individual who is legally responsible for the child's welfare.

⁴ In the instructions for completing a caregiver affidavit pursuant to Education Code section 48204, a "Qualified Relative" is defined as "a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution." (Fam. Code, § 6552, additional information to caregivers, item 1.)

- (5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

9. To "remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents," California adopted the Interstate Compact on Educational Opportunity for Military Children in 2009. (Ed. Code, § 49701, art. I.) Section 49701 seeks to achieve its purpose by, among other things, "[f]acilitating the timely enrollment of children of military families," "[f]acilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities, "and "[p]romoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student." (Ed. Code, § 49701, art. I, subds. (A), (C) & (H).)

10. The provisions of Section 49701 apply to the children of: (1) active duty members of the uniformed services as defined in the compact, including members of the National Guard and Military Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211; (2) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and (3) members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death. (Ed. Code, § 49701, art. III, subds. (A)(1)-(3).) It applies to children enrolled in kindergarten through twelfth grade. (Ed. Code, § 49701, art. II, subds. (B) & (P).)

11. Section 49701 contemplates that military families may need to bring or send their children from one state to another. It defines a "sending state" as "the state

from which a child of a military family is sent, brought, or caused to be sent or brought," a "receiving state" as "the state to which a child of a military family is sent, brought, or caused to be sent or brought," and "transition" as "1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state." (Ed. Code, § 49701, art. II, subs. (L), (N) & (Q).)

12. Section 49701 specifically provides for children with disabilities. It requires a receiving state to initially provide comparable services to a student with disabilities based on his or her current IEP. (Ed. Code, § 49701, art. V, subd. (C).) The school in the receiving state may perform subsequent evaluations to ensure appropriate placement of the student. (*Ibid.*)

13. Section 49701 also contemplates that military families may need to place their child in the care of persons other than the custodial parent, living in a jurisdiction other than that of the custodial parent, and it allows the family to choose whether the child will remain in his or her current school, or attend school in the new jurisdiction. (See, e.g. Ed. Code, § 49701, art. VI, subd. (A)(2); Ed. Code, § 49701, art. VI, subd. (A)(3).)

14. To facilitate enrollment of a military child placed with a person other than the custodial parent, Section 49701 provides, under the heading "eligibility for enrollment," that "[s]pecial power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent." (Ed. Code, § 49701, art. VI, subd. (A)(1).)

POWERS OF ATTORNEY UNDER STATE LAW AND THE ARMED FORCES CODE

15. California's 1994 Power of Attorney Law, Probate Code section 4000 et seq., reorganized and placed in the Probate Code the various state laws pertaining to powers of attorney. (Recommendation: Comprehensive Power of Attorney Law

(Feb.1994) 24 Cal. Law Revision Com. Rep. (1994) p. 120.) The law generalized rules regarding execution, termination, revocation of authority, and the like to apply to all powers of attorney covered by the statute, whether for property matters, personal care, or health care.*(Id.* at p. 122.)

16. Probate Code section 4121 provides that a power of attorney is legally sufficient if it: (a) contains the date of its execution; (b) is signed either (1) by the principal or (2) in the principal's name by another adult in the principal's presence and at the principal's direction; and (c) is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Section 4122. A power of attorney that complies with this section is legally sufficient to grant another person authority to act as attorney-in-fact for the principal. (Cal. Law Revision Com. com., West's Ann. Cal. Prob. Code (1994 ed.) foll. § 4121.)

17. United States Code, Title 10 - Armed Forces, provides for a military power of attorney. A military power of attorney is "any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law." 10 U.S.C. § 1044b(b). Section 1044a grants general powers of a notary public to certain armed forces personnel and civilians providing legal assistance to armed forces personnel, and authorizes them to provide free notary services to members of the armed forces and other qualifying persons.

18. Title 10 United States Code section 1044b(a) provides that a military power of attorney: (1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and (2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.

Analysis

DISTRICT RESPONSIBILITY BASED ON STUDENT'S RESIDENCE

19. Under Government Code section 244, subdivisions (d) & (e), Student's residence was determined by the residence of Student's Parent, and could not be changed by an act of Student. More specifically, under Education Code section 48200, the residence of Parent – not Student – determined District's responsibility to provide Student a FAPE. The relevant inquiry is thus whether Uncle, who resided in District, was Student's Parent. The place where Student lived is relevant only as far as it applies to the question of whether Uncle qualified as Student's Parent.

DISTRICT RESPONSIBILITY BASED ON UNCLE'S STATUS AS PARENT UNDER EDUCATION CODE SECTION 56028

20. Uncle was Student's Parent during the period at issue – March 30, 2016, to the filing of the complaint on August 18, 2016 – as an individual legally responsible for Student's welfare within the meaning of the second clause of Education Code section 56028, subdivision (a)(4).

21. The military powers of attorney executed by Father on July 15, 2015 and June 27, 2016 were legally sufficient and made Uncle legally responsible for Student's welfare. The powers of attorney satisfied the requirements of Probate Code section 4121, having been signed and dated by Father and acknowledged before a notary public.⁵ The power of attorney for the period July 15, 2015 through June 26, 2016 appointed Uncle as Father's attorney-in-fact for Father, to exercise all legal rights to

⁵ Because the powers of attorney satisfied California's requirements of form, substance and formality, they were valid with no need to apply the exemption from the required form for a power of attorney under state law available under title 10 United States Code section 1044b(a).

maintain and care for Student to the same extent as Father, and to authorize all medical and hospital care deemed necessary by a physician for his health and well-being. It also granted Uncle temporary custody of Student, giving Uncle “the right and the responsibility to make the decisions relating to the health, education, and welfare of [Student].” (Fam. Code, § 3006.) The power of attorney for the period June 27, 2016 to the filing of the complaint also granted Uncle full power to act for the benefit of Student in any way Father could act. It made Uncle responsible for arranging for and consenting to medical appointments for Student’s general health and welfare; consenting to emergency medical care for Student, including hospitalization and surgery; arranging for and consenting to mental health treatments; enrolling Student in school and in extracurricular and recreational activities; providing for Student’s basic food, clothing and shelter; and in the event of a public safety directive demanding evacuation, to perform any acts or functions (including the execution of documents) to accomplish a prompt and safe evacuation of Student.

22. Uncle did not qualify as Student’s Parent under the first clause of Education Code, section 56028, subdivision (a)(4), because he was not a person “with whom the child lived” during the relevant period. The phrase “with whom the child lived” is not defined in the Education Code, but like the phrase “lives in the home of” in Education Code section 48204, subs. (a)(5), its meaning is clear and ambiguous and needs no interpretation. (See, e.g., *R.F. v. Delano Union School District* (E.D. Cal., Feb. 15, 2017, No. 1:16-cv-01796) 2017 WL 633919, at p.6 (finding that a student who was spending half or fewer of his nights with grandmother and the rest with his father did not live in grandmother’s home).) Under the plain meaning of the term, Student was living at his residential treatment facilities in Utah, where he slept and stayed day to day throughout the relevant period.

DISTRICT RESPONSIBILITY UNDER EDUCATION CODE 49701 – THE INTERSTATE
COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

23. The provisions of Education Code section 49701 are relevant to this case from the start of the period at issue on March 30, 2016, through June 30, 2016. The latter date marked the end of the one-year period following Father's July 1, 2015 medical discharge from the army, at which point Education Code section 49701 ceased to apply to Student. (Ed. Code, § 49701, art. III, subd. (A)(2).)

24. From March 30, 2016, through June 30, 2016 District was responsible for providing Student a FAPE based on section 49701, in addition to being responsible based on Uncle's status as Parent under Education Code section 56028, subdivision (a)(4). Through his special powers of attorney, Father placed Student in the care of Uncle, who resided in District in the receiving state of California. Under section 49701, the powers of attorney were sufficient for Uncle to act as a parent, performing all actions "requiring parental participation and consent," and to establish Student's eligibility for enrollment in District and enroll Student in District. Section 49701 thus made District responsible for Student, whether by making Uncle Student's Parent within the meaning of section 56028, or as an exception to section 48200 setting forth alternate means of establishing district responsibility, as with the caregiver provisions of Education Code section 48204.

25. District argued that public policy considerations "counsel against" qualifying California residents as Parents based on powers of attorney, because doing so would make it too easy for parents from other jurisdictions to make California districts pay for residential treatment of children with no legitimate connection to California. District did not indicate that this was anything other than a theoretical concern, and in this case Uncle's connection with Student was significant and ongoing. Uncle paid for Student's residential treatment from November 2012 to April 2016 before seeking assistance from District. Student's older brother lived with Uncle, and Uncle brought

Student to live with him for three months in 2013. Uncle prepared and maintained a room for Student with the intention that Student would return to Uncle's home when he stopped requiring residential treatment.

26. Father's grant of authority to Uncle by execution of powers of attorney was consistent with the stated purpose of Education Code Section 49701, to "remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents." Public policy that favors accommodating and cooperating with families to minimize barriers to educational success is also evidenced by Education Code section 56028, which provides multiple ways in which an individual can qualify as a child's parent, and section 48204, which allows an individual acting as caregiver to enroll a child based on an affidavit. A power of attorney is just one of many ways that an individual other than a child's biological parent can qualify as apparent, caregiver, or attorney-in-fact to act on the child's behalf to obtain a FAPE for the child. Qualifying Uncle as Student's Parent based on the special powers of attorney that Father executed is not contrary to public policy.

REMEDIES

1. Student prevailed on the sole issue in this case. District was responsible for providing Student a FAPE from March 30, 2016 to the filing of the complaint because Uncle, who resided in District, qualified as Student's Parent under Education Code section 56028 based on powers of attorney that made Uncle responsible for Student's welfare. For the period from March 30, 2016 to June 30, 2016, District was additionally responsible for providing Student a FAPE under Education Code section 40701, which provided that those same powers of attorney were sufficient to establish Student's eligibility for enrollment in District. Student is entitled to the following stipulated remedies:

- (1) District shall pay Uncle reimbursement in the amount of \$10,300 for services provided by Dr. Russell Hyken beginning on April 27, 2016, and ending on December 13, 2016.
- (2) District shall pay Uncle reimbursement in the amount of \$81,615 for payments made to Kaizen Academy. Services and fees for Kaizen Academy began on April 28, 2016, and ended in December 2016.

ORDER

Within 90 days of the date of this order, District shall reimburse Uncle the total amount of amount of \$91,915, consisting of \$10,300 for services provided by Dr. Russell Hyken beginning on April 27, 2016, and ending on December 13, 2016, and \$81,615 for payments made to Kaizen Academy from April 28, 2016, through December 2016.

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. Here, Student prevailed on the sole issue presented.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, 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).)

DATED: March 29, 2017

/s/

ROBERT G. MARTIN

Administrative Law Judge

Office of Administrative Hearings