

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT, WHITTIER UNION HIGH
SCHOOL DISTRICT, WHITTIER AREA
COOPERATIVE SPECIAL EDUCATION
LOCAL PLAN AREA

OAH CASE NO. 2013050780

DECISION

The due process hearing in this matter proceeded on August 27 and 28, 2013, in Alhambra, California, before Administrative Law Judge (ALJ) Clifford H. Woosley, from the Office of Administrative Hearings (OAH), State of California. Attorney Mark Woodsmall appeared on Student's behalf; Student's Mother was present throughout the hearing. Attorney Cole Dalton appeared on behalf of Alhambra Unified School District (Alhambra USD). Special Education Directors, Patricia Mahony and Mona Neter, attended on behalf of Alhambra USD. Attorneys Darin W. Barber and Jeremy J. Rytky appeared on behalf of Whittier Union High School District (Whittier UHSD) and Whittier Area Cooperative Special Education Local Plan Area (Whittier ACSELPA). Coordinator of Special Education, Jacquelyne Leigh, attended the hearing on behalf of Whittier UHSD, and Executive Director, Jimmy Templin, attended on behalf of the Whittier ACSELPA.

On May 21, 2013, Student filed a Request for Due Process. On July 8, 2013, OAH continued the matter at the parties' request. On August 28, 2013, at the close of hearing, the matter was continued to September 13, 2013, for the parties to file written closing arguments. On September 13, 2013, upon receipt of the written closing arguments, the record was closed and the matter submitted.

ISSUES¹

1. As of March 8, 2013, which of the three respondents – Alhambra USD, Whittier UHSD, and/or Whittier ACSELPA – was the local educational agency (LEA) responsible for providing Student with a special education program, including supports and related services?
2. Did the responsible LEA fail to provide Student with a free and appropriate public education (FAPE) as of March 8, 2013?

FACTUAL FINDINGS

1. Student is a nineteen-year-old man who has resided at a group home located in Whittier, California, since February 28, 2013. He is eligible for special education placement and related services as a student with Autistic-like behaviors.
2. Mother testified at the hearing. Before the group home, Student lived his entire life with his Mother within the boundaries of the Alhambra USD, from which he received special education services since being found eligible at the age of three. Mother is divorced from Student's father and had primary custody of Student. Before March 2013, Alhambra USD was the only LEA to have ever provided IDEA special education services to Student.
3. Before turning 18 years old on July 16, 2012, Student assigned his educational decision-making authority to Mother. For the 2012-2013 school year, Student participated in a post-secondary, adult transition program called Learning Independence For Transition (LIFT), with some related services. During this time, Mother noted an increase in Student's difficult behaviors.
4. On February 6, 2013, Student violently attacked Mother at their home. Student was hospitalized pursuant to a "5150 hold."² Mother was badly injured, having been battered about the head, and required hospital care. Student has never returned to live at Mother's residence.

¹ At the hearing, the parties agreed that these two issues reflected the complaint's remaining disputes. Prior to receipt of evidence, the parties resolved all other issues raised by the complaint and, further, stipulated to the remedies to which the Student would be entitled, dependent on the ALJ's finding as to the responsible LEA.

² Welfare and Institutions Code, section 5150, allows a qualified officer or clinician to involuntarily confine a person deemed to have a mental disorder that makes them a danger to him or her self, and/or others and/or is gravely disabled, for up to 72 hours for evaluation. Related provisions allow for an extension of the confinement under certain circumstances.

5. On February 15, 2013, Mother applied for and received Letters of Temporary Conservatorship over the person of Student. Mother's specified powers included: to fix the residence of Student; to have access to Student's confidential records and papers; to make medical decisions; and to make decisions regarding Student's education.

6. On February 22, 2013, Alhambra USD convened an amendment individualized educational program (IEP) team meeting. All legally required members of the IEP team attended, including: Mother; Attorney Shima Kalaei of Mr. Woodsmall's offices; Ms. Mahoney; Attorney Cole Dalton; Dina Hernandez, East Los Angeles Regional Center³ (ELARC); Cruz Elena Garcia, ELARC Placement Coordinator; and Gwennyth Palafox, Ph.D., Student's private psychologist.

7. Mother informed the IEP team that Student remained in a psychiatric facility and had somewhat improved. She also stated that Student's conduct and needs meant that he could not return to the family home. ELARC was looking for a residential placement. The IEP meeting concluded, noting that the normal procedure was for a residential placement to be identified and that an educational placement would be developed. Alhambra USD indicated that its offer of a FAPE, should Student be placed within its boundaries, was the LIFT program, with additionally enumerated assessments and related services.

8. On February 28, 2013, ELARC placed Student in Canyon Rim, a group home located within the areas served by Whittier UHSD and Whittier ACSELPA. Canyon Rim does not accept residents less than 18 years of age. All residents of Canyon Rim are adults, 18 years of age and older.

9. ELARC had assisted Mother in finding a residential placement for Student. ELARC researched the type of facility in which to place Student and assisted in coordinating Student's care. Identifying potential residential placements was difficult because of Student's prior conduct. ELARC identified Canyon Rim as a possible residential placement; Mother toured the facility, as she did other suggested residences. She chose to residentially place Student at Canyon Rim as authorized by her powers as conservator.

10. ELARC was aware that Mother had applied, on behalf of Student, for Supplemental Security Income (SSI) benefits. ELARC offered to finance Student's residential placement until the SSI benefits were distributed. Mother and Student signed an agreement with ELARC, which authorized ELARC to be repaid for the residential placement from back SSI benefits and for Student's future SSI benefits to be sent to ELARC, as long as ELARC managed the Student's residential placement.

³ The Lanterman Act, beginning at Welfare and Institutions Code, section 4500 *et seq.*, provides assistance to persons with certain developmental disabilities to live at home to the extent possible, and access the community. Although under the supervision of the Department of Developmental Services, services under the Lanterman Act are administered locally by private non-profit entities called "regional centers."

11. ELARC did not exercise any decision-making authority regarding placement of Student in a group home. Student was not placed in Canyon Rim by any other public agency or court. Parent, as conservator, chose to place Student at Canyon Rim.

12. Mother obtained letters of conservatorship on March 29, 2013, appointing Student's Father and Mother as conservators over Student, the conservatee. The letters provided the additional powers enumerated in the previously issued temporary letters of conservatorship.

13. Ms. Mahony testified at the hearing. She received her bachelor of science in rehabilitation counseling in 1981 and her master of science in 1982, both from California State University, Los Angeles. In 1988, she obtained a marriage and family therapist license. In 1992, she received her Pupil Personnel Services Credential. She obtained her Preliminary Administrative Services Credential in 1997 and her Professional Administrative Services Credential in 2000.

14. Ms. Mahony has worked for the Alhambra USD since August of 1999, when she was Dean of Students at Alhambra High School. She was Assistant Principal at Inez Elementary School from 2002 to 2005 and then Assistant Principal-Guidance at Alhambra High School from 2005 to 2006. She became Assistant Principal-Guidance at Mark Keppel High School in 2006, where she remained until 2009 when she became the Coordinator of Student Services/Welfare for the Alhambra USD. In January of 2012, she started her present position as the Alhambra USD's Director of Secondary Special Education.

15. Ms. Mahony affirmed that Alhambra USD was a member district of the West San Gabriel SELPA, which had an established policy that a pupil is no longer a student of a district if the student is placed in a group home outside of the district's boundaries. Further, this policy was not dependent upon a student's age. Therefore, from Alhambra USD's perspective, consistent with their policy, when Student was placed in a group home within the Whittier UHSD's boundaries, Student was no longer a pupil of Alhambra USD.

16. Ms. Mahony knew that the other member school districts followed this policy, which was based upon the recommendation of counsel to the West San Gabriel SELPA. This policy similarly required a member district to provide special education services to any student who was placed in a group home, within a district's boundaries, regardless of age. Alhambra USD has followed the West San Gabriel SELPA's policy in this regard as long as Ms. Mahony had been associated with the district. If a pupil was placed in a group home within the Alhambra USD boundaries, Ms. Mahony would arrange for the provision of special education services, even if the student was over 18 years of age. The policy was based upon Education Code sections 56155 through 56166.5, entitled "Licensed Children's Institutions and Foster Family Homes" (LCI Article).

17. Ms. Mahony referred to this policy at the February 22, 2013 amendment IEP meeting. The IEP document notes read that Alhambra USD would provide Student with a FAPE if he "is placed within the school district boundaries."

18. When Ms. Mahony learned that Student was placed at Canyon Rim in Whittier, Alhambra USD considered him to no longer be enrolled. This was Alhambra USD's normal process and procedure when the district would not be servicing a student. Mother therefore believed that Student no longer had a program with Alhambra USD.

19. On March 4, 2013, Ms. Leigh sent Ms. Mahony an email, informing her that Mother contacted Whittier UHSD, requesting a special education program and services because Student resided in a group home within Whittier UHSD's boundaries. In the email, Ms. Leigh noted that Student turned 18 years of age in July 2012 when he was living with Mother in the Alhambra USD. Consequently, in Whittier UHSD's opinion, pursuant to Education Code section 56041, Alhambra USD remained as Student's district of residence, regardless of where Student resided. Ms. Leigh noted that Whittier UHSD's attorneys had addressed similar situations a number of times the past year due to the number of group homes in the Whittier UHSD. Ms. Leigh noted that she copied Mr. Templin with the email and, further, included a copy of the code section to which she referred.

20. Ms. Leigh testified at the hearing. She earned her bachelor of arts in psychology in 1981 and a master's in psychology in 1984, both from California State University, Northridge. In 1984, she received her Advanced Pupil Personnel Services Credential and has maintained her license as an educational psychologist since July 1987. She holds an Administrative Credential, Tier One, and was in the process of obtaining her Tier Two. Since 2008, she has been the coordinator of special education with the Whittier UHSD. For the school year 2007–2008, she was a program specialist with the district. Previously, from 1984 through 2007, she was a school psychologist with the Whittier ACSELPA.

21. When she was advised of Mother's request for services, Ms. Leigh determined that Student was a conserved adult when he was placed in Canyon Rim. Ms. Leigh and Mother discussed Whittier UHSD's position regarding the LEA responsible for providing special education services to Student. By e-mail of March 8, 2013, Ms. Leigh notified Mother that Whittier UHSD had referred the matter to its attorneys, who would be communicating with Mother's attorneys and Alhambra USD's counsel.

22. Ms. Leigh explained that Whittier UHSD and the Whittier ACSELPA had always applied Education Code section 56041, including when the pupil was in a group home. When a student to whom Whittier UHSD had been providing special education services turned 18 years old while living with parents residing within the district's boundaries, Whittier UHSD would continue to provide services even if the adult student lived outside its boundaries, as long as the parents continued to reside within the district. If the adult student was conserved and the conservator resided within Whittier UHSD, the district would provide services to the adult student living outside the district boundaries, as long as the conservator remained within the district. Whittier UHSD's policy was not dependent upon whether the adult conserved student was living in a group home.

23. Generally, if a child entitled to special education services is placed in a licensed children's institution (LCI), including a group home, within its boundaries, Whittier UHSD would be notified by both the LCI and the placing public agency. Whittier UHSD would then become the LEA, or responsible district of residence, and provide the child with needed services. Here, Canyon Rim never contacted Whittier UHSD or Whittier ACSELPA; nor did any public agency.

24. The Whittier ACSELPA and its member districts, including Whittier UHSD, had a policy that a child placed in an LCI within the SELPA boundaries would be serviced by the member district in which the LCI was located. Though Ms. Leigh admittedly had never seen the local written agreement, she had at all times provided special education services consistent with this policy.

25. After March 1, 2013, Alhambra USD did not make an offer of FAPE or provide Student with any special education or related services.

26. After March 8, 2013, Whittier UHSD and Whittier ACSELPA did not make an offer of FAPE or provide Student with any special education or related services.

27. Since no district or SELPA acknowledged it was the LEA responsible for Student's special education, Student filed the request for a due process hearing.

28. The California Department of Social Services (CDSS), Community Care Licensing Division (CCLD), licenses the Canyon Rim group home as an adult residential facility for the developmentally disabled.⁴ The Canyon Rim group home is an adult facility and does not service children.

29. On August 27, 2013, the parties hereto entered into a written agreement, or settlement, which specified the remedies to which Student would be entitled from the responsible LEA, as well as specifying the rights and obligations amongst all parties, depending on this decision's determination of the responsible LEA. The written agreement was signed by each party or authorized representative, as well as the parties' attorneys of record.⁵ Accordingly, this decision does not make factual findings, or otherwise analyze, Student's special needs.

⁴ After the parties submitted their documentary and testimonial evidence, ALJ Woosley noted that no one had submitted evidence regarding the licensing status of the Canyon Rim group home. Accordingly, all parties agreed that ALJ Woosley could take official notice of the CDSS web-based services, which identify the CCLD's licensing status of residential homes (https://secure.dss.cahwnet.gov/cclid/securenet/cclid_search/cclid_search.aspx).

⁵ The executed, written agreement was marked and entered as a part of the documentary record, herein.

LEGAL CONCLUSIONS

Issue One – Responsible LEA

1. In Issue One, Student contends that he is a conserved adult entitled to receive special education services, who was voluntarily placed by his Mother/conservator in a group home within the boundaries of Whittier ACSELPA and Whittier UHSD as of March 2013. Student contends that Whittier ACSELPA and Whittier UHSD are obligated, individually or jointly, to provide him with a FAPE because he resides in a group home within their boundaries. In the alternative, Student asserts Alhambra USD is obligated to provide a FAPE because his Mother/conservator continues to reside within its boundaries.

2. Alhambra USD contends that it is no longer responsible for Student's FAPE because Student has been placed in a group home within the boundaries of Whittier ACSELPA and, pursuant to statutory exceptions (Ed. Code §§56155, 56156.4, subd. (a)) to the general residency requirements, Whittier ACSELPA and Whittier UHSD are obligated to provide Student with special education services. Alhambra USD also asserts that well-recognized standards of statutory interpretation require that Education Code sections 56155 and 56156.4 take precedence over any other arguably applicable residency statute because of the sections' narrowly defined and focused legislative purpose.

3. Whittier UHSD and Whittier ACSELPA contend, pursuant to section 56041, that Alhambra USD is the LEA responsible for Student's FAPE because Student is a conserved adult, whose last district of residence before turning 18 years of age was Alhambra USD and whose Mother/conservator continues to reside in Alhambra USD. They further claim that the statutory exception cited by Alhambra USD is factually inapplicable herein and, even if applicable, would be displaced by section 56041, which states it applies "notwithstanding any other provision of law."

Applicable Law

4. In a special education administrative due process hearing, the party seeking relief has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, the Student has the burden of proof.

5. The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education (FAPE)," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A FAPE means special education and related services that are available to the student at no cost, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

6. Special education due process hearing procedures extend to pupils who are wards or dependents of the court, to their parents or guardians, and to the public agencies involved in any decisions regarding pupils. (Ed. Code, § 56501, subd. (a).)

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

8. California law determines which LEA is responsible for the provision of a FAPE. In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in Education Code sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57 (interpreting §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Barring exceptions, children between the ages of six and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.)

9. A “licensed children’s institution” (LCI) means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. (Ed. Code, § 56155.5, subd. (a).) The definition of an LCI includes a group home as defined by subdivision (g) 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).) “Child” means anyone under the age of 18 years. (Cal. Code Regs., tit. 22, § 101152, subd. (c)(4).)

10. Where individuals with exceptional needs are placed in a LCI by a regional center for the developmentally disabled, 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).) Local plan areas with multiple district members will enter into local written agreements to identify the public education entities that will provide the special education services. (Ed. Code, § 56156.4, subd. (b).)

11. “Adult Residential Facility” means any facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to (A) persons 18 years of age through 59 years of age, and (B) persons 60 years of age and older only in accordance with Section 85068.4. (Cal. Code Regs., tit. 22, § 80001, subd. (a)(5).) “Adult” means a person who is 18 years of age or older. (Cal. Code Regs., tit. 22, §§ 80001, subd. (a)(3) & 101152 subd. (a)(2).)

12. For individuals who are between the ages of 18 and 21, and who are not conserved, and who are not confined to juvenile hall, the “last district of residence in effect prior to the pupil’s attaining the age of majority shall become and remain as the responsible local education agency, as long as and until the parent or parents relocate to a new district of residence.” (Ed. Code, § 56041, subd. (a).) For individuals who are between the ages of 18 and 21, and who are conserved, the “district of residence of the conservator shall attach and remain the responsible local educational agency, as long as and until the conservator relocates or a new one is appointed.” (Ed. Code, § 56041, subd. (b).)

13. Although the Education Code does not explicitly set forth its overall purpose, the code’s primary aim is to benefit students, and in interpreting legislation dealing with our educational systems, it must be remembered that the fundamental purpose of such legislation is the welfare of the children. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal. App. 4th at p. 63.) With regard to the special education portion of the Education Code, the Legislature intended “to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).” (Ed. Code, § 56000.)

14. The plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) “Under well-established principles of statutory interpretation, the more specific provision [statute omitted] takes precedence over the more general one [statute omitted]. [Citations omitted.] To the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute.” (*Salazar v. Eastin* (1995) 9 Cal. 4th 836, 857.)

15. Here, Student has met his burden of demonstrating by a preponderance of the evidence that Alhambra USD is the district of residence, and consequently, the LEA responsible for providing Student with special education services after Student’s placement in the Canyon Rim group home. As further discussed below, Education Code sections 56155 and 56156.4 apply only to children and are therefore inapplicable to Student because he is an adult. Also, Education Code sections 56155 and 56156.4 require a public agency placement; whereas here, Student’s properly empowered conservator voluntarily placed Student in a group home for adults. Further, Student has met his burden of establishing that Education Code section 56041 controls, because Student is a conserved adult whose conservator lives within Alhambra USD.

16. The respondent LEA’s have quarreled about which statutory residence exception takes precedence. This line of argument is misplaced. The exception of Education Code sections 56155 and 56156.4, which requires that the SELPA where the LCI is located provide services, applies only to children placed in a LCI by a public agency; whereas

section 56041 applies only to adults. The statutory provisions are not in conflict as they apply to different types of students requiring special education. Each statutory scheme is therefore analyzed separately.

LEA for Children Placed in an LCI

17. Education Code sections 56155 and 56156.4 are part of a legislative chapter entitled “Licensed Children’s Institutions and Foster Family Homes,” which uses the term “children” throughout the statutory scheme. 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 [italics added].”

18. Education Code section 56155.5 defines an LCI as a “residential facility that is licensed by the state . . . to provide nonmedical care to *children*, . . . [italics added]” The section further states that an LCI includes a group home as defined by subdivision (g) 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* . . . (Cal. Code Regs., tit. 22, §80001, subd. (g) [italics added].) Nothing within this chapter of the Education Code, or the regulations to which it refers, indicates that the term “children” would include adults.

19. In fact, the statutory and regulatory language itself distinguishes between adults and children. “Adult” means a person who is 18 years of age or older. (Cal. Code Regs., tit. 22, §§ 80001, subd. (a)(3) & 101152 subd. (a)(2).) In contrast to an LCI, an “adult residential facility” means any facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to persons 18 years of age through 59 years of age. (Cal. Code Regs., tit. 22, §80001, subd. (a)(5)).

20. Therefore, as used in these sections, the term “children” does not include adults. The exception provided by Education Code sections 56155 and 56156.4 is inapplicable to Student because he was an adult at the time he was placed at Canyon Rim group home.

21. Further, Education Code sections 56155 and 56156.4 are inapplicable because Student’s placement at Canyon Rim was a voluntary placement by Student’s conservator, and not a placement by a public agency. ELARC assisted Mother in identifying an appropriate placement for Student. She toured a number of facilities and decided on Canyon Rim. The letters of conservatorship – temporary and final – empower her to determine the residential placement of Student. She exercised these powers in putting Student at Canyon Rim. Student’s placement was not “by a court, regional center for the developmentally disabled or public agency, other than an educational agency.” (Ed. Code, § 56155.)

22. Finally, the Education Code sections relied on by Alhambra USD to justify their position that other LEA’s are responsible are inapplicable because Canyon Rim is not

an LCI. The evidence established that Canyon Rim only accepts adults; it does not service children. Further, the CDSS, via CCLD, licenses Canyon Rim as an adult residential facility for the developmentally disabled. Accordingly, Education Code sections 56155 and 56156.4 do not apply.

LEA for Conserved Adult Entitled to Special Education Services

23. Student successfully established that Education Code section 56041 applies, and, as a consequence, Alhambra USD remains the district of residence, or LEA, responsible for providing special education services to Student after he moved to Canyon Rim.

24. The general residency scheme (Ed. Code, §§ 48200 & 48204) does not apply to Student because the residency statutes apply to pupils between six and 18 years of age. Therefore, Education Code section 56041 applies “notwithstanding any other provision of law,” as long as Student is a pupil whose IEP team determined he requires special education services beyond his 18th birthday. Pursuant to subdivision (a), for such an adult pupil who is not conserved, the last district of residence prior to the pupil’s attaining the age of majority shall become, and remain, the responsible LEA, as long as and until the parent locates to a new district of residence. Pursuant to subdivision (b), for a conserved adult pupil, the district of residence of the conservator shall attach and remain the responsible LEA, as long as and until the conservator locates to a new district of residence.

25. Here, the evidence established that Student is conserved, his Mother is an appointed conservator, and Mother lives within the boundaries of Alhambra USD. Therefore, the Alhambra USD is the LEA responsible for providing special education services to Student, even though Student lives in an adult group home outside of Alhambra USD’s boundaries. As long as Mother remains the conservator and resides within the Alhambra USD’s boundaries, Alhambra USD remains Student’s LEA, irrespective of where Student resides. (Ed. Code, § 56041, subd. (b).)

26. At the time that Student was placed in Canyon Rim, Mother possessed temporary letters of conservatorship. The final letters of conservatorship were issued a few weeks after Student’s placement. The powers provided Mother as conservator in the final letters were the same as those provided by the temporary letters, which included the power to determine Student’s residence. Therefore, the distinction between the temporary and final letters of conservatorship has no bearing on the statute’s application herein.

27. However, even if one assumes that Student was not conserved as contemplated by the statute because Mother possessed temporary letters of conservatorship, Education Code section 56041 still controls. Student lived with Mother, within Alhambra USD boundaries, when he turned 18 years of age in July 2012. Therefore, Alhambra USD was the last district of residence when Student became an adult. Since Mother remains a resident within Alhambra USD’s boundaries, Alhambra USD is the responsible LEA. (Ed. Code, § 56041, subd. (a).)

28. Student met his burden of proof as to Issue One and has established, by a preponderance of the evidence, that Education Code section 56041 applies and that Alhambra USD, not Whittier UHSD or Whittier ACSELPA, is the LEA responsible for providing Student with special education services as of March 8, 2013. (Factual Findings 1 through 29; Legal Conclusions 1 through 27.)

Issue Two – Failure to Provide FAPE to Student

29. In Issue Two, Student contends that he was entitled to receive special education services since entering Canyon Rim, that such services have not been provided by any LEA and that, consequently, the responsible LEA denied him a FAPE as of March 8, 2013.

30. The parties have agreed that Student has not received special education services as of March 8, 2013.

31. As determined in Issue One, Alhambra USD is the LEA responsible for providing Student with his special education services. As of March 8, 2013, Alhambra USD was obligated to offer and provide a FAPE to Student. Alhambra USD has not done so.

32. Student met his burden of proof and has established by a preponderance of the evidence that Alhambra USD has denied Student a FAPE as of March 8, 2013. (Factual Findings 1 through 29; Legal Conclusions 1 through 31.)

REMEDY

33. Federal law provides that a court that hears a civil action taken from a special education administrative due process hearing “shall grant such relief as the court deems appropriate.” (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) The United States Supreme Court has held that this authority “confers broad discretion on the court” to grant relief that is appropriate in light of the purpose of the IDEA. (*School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) The broad authority to grant relief extends to the administrative law judges and hearing officers who preside at administrative special education due process proceedings. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230 [129 S.Ct. 2484, 2494, fn. 11; 174 L.Ed.2d 168].)

34. The fashioning of equitable relief in IDEA cases requires a “fact-specific” analysis. (*Parents of Student W. v. Puyallup School Dist. No.* (9th Cir. 1994) 31 F.3d. 1489, 1497.) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Id.* at p. 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Ibid.*) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized

assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

35. On August 27, 2013, the parties hereto commendably entered into a written agreement, or settlement, which specified the remedies to which Student is entitled from the responsible LEA, as well as specifying the rights and obligations of all parties, depending on this decision's determination of the responsible LEA (Remedy Agreement). (Factual Finding 29.).

36. This decision recognizes that the parties, with the advice and counsel of their respective attorneys, negotiated the Remedy Agreement in good faith. Therefore, the Remedy Agreement is hereby adopted and incorporated herein, as the remedies to which Student is entitled.

37. This decision sets forth, in the Orders below, the remedies in favor of Student and the obligations of Alhambra USD, as agreed to in the Remedy Agreement, which the administrative law judge would have otherwise been obligated to address herein. In so doing, this decision does not, and cannot be interpreted to, limit, amend, or alter the Remedy Agreement in any way, including the stipulations and obligations agreed to by the parties therein.

ORDER

1. As of March 8, 2013, Alhambra USD was the LEA responsible for providing Student with a special education program, including supports and related services. Accordingly, pursuant to the August 27, 2013 Remedy Agreement:

- a. Student will attend Whittier UHSD/Whittier ACSELPA's adult transition program (TRANS) for the school year 2013-2014, including extended school year (ESY) 2014. Speech and language services, aide support, job coaching, coping skills, social skills, communication skills and counseling are embedded in the TRANS program, as well as a staffing ratio of one adult to three students. In addition, while in TRANS, Student shall receive DIS counseling services for one (1) 60-minute session per week, and will be provided transportation, as more specifically described in the Remedy Agreement. TRANS is not "stay put" for the 2013-2014 school year. (Remedy Agreement, Stipulation of Remedies, paragraph 1.)
- b. Notwithstanding the TRANS placement, Student may terminate his participation in the TRANS program at any time and return to Alhambra USD for his special education program and services. Similarly, 10 days

following issuance of this decision, Whittier UHSD/Whittier ACSELPA may terminate Student's participation in TRANS with 10 days' notice, with or without cause, and return Student to Alhambra USD for his educational program and services. Student retains all legal rights and remedies as to Alhambra USD. (Remedy Agreement, Stipulation of Remedies, paragraphs 2 and 4.)

- c. Alhambra USD shall reimburse Whittier UHSD/Whittier ACSELPA for all expenses related to Student's educational program at TRANS, including but not limited to placement, programming, DIS, and transportation, for the time that Student participates in TRANS including, if applicable, ESY 2014. The reimbursement sum shall not exceed \$150.00 per day. Whittier UHSD/Whittier ACSELPA shall provide Alhambra USD with invoices for Student's participation in TRANS; Alhambra USD shall reimburse Whittier UHSD/Whittier ACSELPA within 45 days of each invoice's receipt. (Remedy Agreement, Stipulation of Remedies, paragraph 3.)
 - d. If Student's participation in the TRANS program is terminated, for any reason, Alhambra USD will place Student in a mutually agreeable nonpublic school (NPS) within 10 miles (or as close to that as possible) to where Student is living, which has an adult transition program with the same or similar services as specified in Student's then current IEP. If Alhambra USD and Student do not agree on an NPS, within 10 school days of Alhambra USD being notified of termination of Student's participation in TRANS, Alhambra USD shall place Student in an appropriate NPS within 10 miles, or as close as possible, to Student's residence, in order to provide Student with continuity of services. (Remedy Agreement, Stipulation of Remedies, paragraph 5.)
 - e. Alhambra USD shall reimburse Parent up to \$15,000 for compensatory education to be used for educational purposes (as defined by 35 C.F.R. § 300.34), unless Parent and Alhambra USD agree otherwise. Parent shall provide Alhambra USD with invoices or receipts, with proof of payment, for reimbursement by June 30, 2015; Alhambra USD will reimburse Parent within 45 days. (Remedy Agreement, Stipulation of Remedies, paragraph 7.)
2. These orders do not, and cannot be interpreted to, limit, amend, or alter the Remedy Agreement in any way, including the stipulations and obligations agreed to by the parties.
 3. Whittier UHSD and Whittier ACSELPA are not, and have never been, LEA's responsible for providing Student with a special education program.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on Issues One and Two as to Alhambra USD only.

RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

DATED: October 7, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearing