

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

FORTUNA UNION HIGH SCHOOL  
DISTRICT; KELSEYVILLE UNIFIED  
SCHOOL DISTRICT AND KONOCTI  
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014080602

**DECISION**

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on August 11, 2014, naming Fortuna Union High School District, Kelseyville Unified School District, and Konocti Unified School District.

On October 2, 2014, the matter was bifurcated so that the threshold issue of residency could be determined before the substantive claims were adjudicated. At that time, the matter was continued. The parties agreed to waive a hearing on the issue of residency and have the issue decided based upon submission of stipulated facts and briefs. The undersigned Administrative Law Judge Margaret M. Broussard was assigned to this matter.

Tim Poe, Attorney at Law, represented Student. Carl Corbin, Attorney at Law, represented Fortuna, Kelseyville and Konacti.

The parties timely filed stipulated facts and briefs and the matter was submitted.

**PRELIMINARY MATTERS**

The order following prehearing conference grants the parties' request to bifurcate this matter to determine the issue of residency for Student. The issues listed in the order following prehearing conference were:

- 1) While Student's parent lived within the geographical boundaries of Fortuna Union High School, was Konocti Unified School District or Fortuna Union High School District responsible for providing Student, a

non-conserved adult, with a free appropriate public education from the time Student moved into the boundaries of Konocti?

- 2) While Student's parent lived within the geographical boundaries of Fortuna, was Kelseyville Union School District or Fortuna responsible for providing Student, a non-conserved adult, with a free appropriate public education from the time Student moved into the boundaries of Kelseyville until the time he relocated within the boundaries of Konocti?
- 3) If Student is entitled to compensatory education for the time he received special education services from Kelseyville, is Fortuna or Kelseyville responsible for providing the compensatory services?
- 4) If Fortuna is responsible for providing Student with a FAPE, can Fortuna require Student to relocate back within the boundaries of Fortuna in order to serve Student?

The issues presented for decision in the order following prehearing conference are beyond the scope of residency. As explained further below, this bifurcated decision reflects the residency issue only and concludes that Fortuna has been Student's district of residence during all relevant time periods. Issues one and two are more properly before OAH in motions to dismiss, once the residency issue has been decided. These issues concern whether Kelseyville and Konocti are proper parties to this matter. Since the parties have not specifically argued their positions in a motion to dismiss after a determination was made regarding Student's residency, these issues are preserved for the second part of the bifurcated matter. Issue three is not ripe for determination until a determination is made regarding whether Student is entitled to compensatory services and therefore is also preserved for the second part of the bifurcated matter. Finally, issue four concerns the appropriate location for Student's placement. This must be analyzed as a part of the offer of FAPE from Fortuna, which Student has put at issue in the second part of the bifurcated hearing. The appropriateness of the location of the placement offer must be analyzed along with the rest of the offer and therefore, this issue is also preserved for the second part of the bifurcated hearing.

Therefore, the remaining issue in this bifurcated decision is Student's residency during the relevant time periods. The other issues are preserved for the second part of the bifurcated hearing and some of the issues may be ripe for determination through prehearing motions.

## ISSUE<sup>1</sup>

During the period from August 11, 2012, through the present time, in which school district has Student been a resident for purposes of special education?

## SUMMARY OF DECISION

Student has been a resident of Fortuna Union High School District from August 11, 2012, through the present time.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Student is a 21-year-old man who has been eligible for special education services pursuant to the Individuals with Disabilities Education Act since November 14, 1997, under the eligibility category of autism. Student has not been legally conserved. Mother has lived in Fortuna, California, at all relevant time periods.

### *Student's Living Arrangements*

2. Prior to Student's 18th birthday, he was privately placed at College Hospital in Cerritos, California, from September 2010 until he turned 18 years-old on October 31, 2011. The school district in which College Hospital was located provided Student with his special education services.

3. When Student turned 18-years-old, he moved to Kelseyville, California, into a supported living situation. This placement was voluntary and not an agency placement pursuant to Education Code section 48204(a)(1). At no time after Student's 18th birthday was he placed in a licensed children's institution, been a foster child, been subject to an inter-district transfer permit, been emancipated, been in the home of a caregiving adult with a caregiver affidavit, or resided in a state hospital.

4. Student applied for and received special education and related services from Kelseyville beginning shortly after he moved to Kelseyville until March 24, 2014. On this date, Student moved to a new residence within the boundaries of Konacti.

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<sup>1</sup> The issue has been rephrased or 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)

5. Konacti referred Student back to Fortuna, based upon its determination that Student was a resident of Fortuna. Konacti has never provided Student with special education.

6. Student enrolled in Fortuna and was offered an IEP placement located in the city of Fortuna. Student continues to live in Konacti, which is located a substantial distance from Fortuna.

## LEGAL CONCLUSIONS

### *Introduction – Legal Framework under the IDEA<sup>2</sup>*

1. This decision is rendered under the 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)<sup>2</sup> 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, 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. 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, 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).) 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] (*Schaffer*)). In this case, Student, as the complaining party, bears the burden of proof.

### *Issue: What is Student's District of Residency from August 11, 2014, to the Present?*

3. The parties have asked for a determination of residency for Student. This issue has arisen because while his parent has continued to reside in Fortuna, Student has lived in both Konacti and Kelseyville and was served on an IEP by Kelseyville during the some of the relevant time period.

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<sup>2</sup> Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

4. For non-conserved pupils, 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 educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local education agency. (See Education Code §56041(a).) Residency under the IDEA is measured by "normal" standards. (See 20 U.S.C. §1413 (a)(1); see also, *Union Sch. Dist. V. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525, and *Student v. LAUSD* (OAH April 17, 2007) No. N2007010772.)

5. The California Supreme Court has held that the purpose of Education Code §56041 should not be construed narrowly and that the statute follows the general state educational policy of assigning funding responsibility to the school district in which the pupil's parent resides. (*Los Angeles Unified School District v. Garcia* (2013) 58 Cal.4th 175,189-192)

6. Student is a non-conserved adult under the age of 22. Mother has continuously resided in Fortuna, California for the time period at issue in this case. Therefore, Fortuna has been the District of residence for Student. The effects of Kelseyville serving Student under an individualized education program and Student's failure to register Student at Fortuna are not relevant to the determination of residency, but remain available as possible defenses to any liability imposed later if a denial of FAPE is determined.

#### ORDER

Student's district of residence has been Fortuna from August 11, 2012, through the present time.

#### 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: December 2, 2014

/s/  
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MARGARET BROUSSARD  
Administrative Law Judge  
Office of Administrative Hearings

