

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

SANTA MARIA JOINT UNION HIGH
SCHOOL DISTRICT,

Respondent.

Case No. N2006070104

**ORDER DENYING RESPONDENT
DISTRICT'S MOTION TO DISMISS
BASED ON RESIDENCY AND
DENYING PETITIONER'S MOTION
FOR SANCTIONS**

PROCEDURAL HISTORY

District's Motion to Dismiss

An evidentiary hearing was held on August 22, 2006, before Eileen M. Cohn, Administrative Law Judge of the Office of Administrative Hearings, Special Education Division (OAH). The evidentiary hearing was held pursuant to the Order Setting Hearing on Residency issued August 11, 2006, by Administrative Law Judge Richard M. Clark. In that Order Administrative Law Judge Clark determined that District has the burden of proof.

At the hearing, Petitioner/Student (Student) was represented by Kathy Greco, Esq. Student's Mother (Parent), was also present. Respondent, Santa Maria Joint Union High School District (District), was represented by Stacy L. Inman of Schools Legal Service. Also present on behalf of the District was Jeff Hearn, Ph.D., Superintendent, District, and Jennifer C. Kausch, Director of Special Education, District, and Jim Hemsley, Director, Santa Barbara County Special Education Local Plan Area (SELPA).

On August 8, 2006, District filed a motion to dismiss it as a party to Student's due process request (complaint). In its motion, the District asserted that Student is not a resident of the District pursuant to California Education Code Section 48200. District contended that Student must be educated where her parent's reside in Camarillo, California, not in Santa Maria, California, where her group home is located. District argued that because Student is not under the care, custody or control of the juvenile court, Student does not meet the

applicable exemption authorized by California Education Code Section 48204(a)(1). Consequently, District requested that Student's complaint be dismissed on the ground that District is not responsible for providing educational services to Student.

Student filed her opposition to District's motion on August 14, 2006. In her opposition, Student relied upon California Education Code Section 56162. On August 18, 2006, Petitioner filed an additional brief and also requested sanctions. On August 21, 2006, Student filed an amended further brief pursuant to California Code of Civil Procedure Section 473. In this last brief, Student requested that, pursuant to California Code of Civil Procedure Section 473, OAH replace the section of her August 18, 2006 brief, citing California Education Code Section 56162, with a new section, citing California Education Code Sections 56155, 56155.5(a) and 56156.4(a). Administrative Law Judge Eileen M. Cohn denied Student's request. However, Administrative Law Judge Cohn allowed Student to file the August 21, 2006 as an additional brief as District was not prejudiced by Student's offer of additional statutory authority in defense of District's motion. District was provided an opportunity prior to the conclusion of the hearing to address the additional statutory provision cited in Student's August 21, 2006, brief.

At the hearing, the parties submitted stipulated, oral and documentary evidence. District objected to the admission of Exhibit "A" to the Declaration of Kathy Greco, appended to Student's August 18, 2006, brief. Administrative Law Judge Cohn considered the arguments of counsel for District and Student, and tentatively sustained District's objection. Upon further consideration, Administrative Law Judge sustains District's objection. Education Code Section 48204 (a) (4) does provide for the submission of the Exhibit "A" declaration. However, the Exhibit "A" declaration was not relevant because Administrative Law Judge Cohn did not base her decision on Education Code Section 48204. Moreover, if Student wished to rely upon the Exhibit "A" declaration at trial she was required to provide the appropriate foundation through the witness executing the declaration.¹

Student's Request for Sanctions

On August 14, 2006, Student also requested sanctions and attorneys' fees against District for filing its Motion to Dismiss. Student contends that District made the motion in bad faith, as a delaying tactic and intentionally omitted the appropriate statute. Student's request was not addressed at the hearing. On August 24, 2006, District responded to Student's request for sanctions and attorneys' fees. Administrative Law Judge Cohn carefully reviewed Student's request and District's response. District, as the moving party, ignored the governing statute. However, Student had an equal opportunity to research the law and failed to decisively identify the operative statutory provisions until the day before the hearing. Moreover, District did not withhold evidence from Student. Both parties had an

¹ Student moved to substitute this code section for California Education Code 56155, 56155.5(a) and 56156.4(a). At trial, in response to District's objection to the declaration, Student argued that she still wished to introduce the document in the event Education Code Section 48200 and the exceptions thereto are considered.

equal opportunity to present evidence at the hearing. Furthermore, both parties fully cooperated at the hearing by stipulating to undisputed facts. Based upon consideration of the briefs submitted by the parties and the foregoing events, Administrative Law Judge denies Student's request for sanctions.

FACTUAL FINDINGS

1. The parties stipulated to the following facts.
 - (A). Student's birthday is September 10, 1990.
 - (B). Student is a child with exceptional needs as that term is defined by the Individuals with Disabilities Education Act (IDEA) and the California Education Code.
 - (C). Student is currently a client of the Tri-Counties Regional Center.
 - (D). Genesis Group Home, located at 729 Mill Street, Santa Maria, California, is a licensed children's institution as defined by the California Education Code and the California Code of Regulations.
 - (E). Student's parents have resided in Camarillo, California since 1972. They currently reside in Camarillo, California at 150 Camarillo Street.
2. The State of California contracts with Tri-Counties Regional Center to provide support and services for children and adults with developmental disabilities.²
3. Student has been a resident of Genesis Group home, located at 729 Mill Street, Santa Maria, California 93454 since June 15, 2006.
4. Student enrolled in a District school, Pioneer Valley School, on June 16, 2006.

LEGAL CONCLUSIONS

Applicable Law

1. The IDEA is designed to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE). (20 U.S.C. § 1400 (d)(1)(A), (B), and (C); see also Educ. Code, § 56000.)

² Official notice is taken of this fact pursuant to Section 11515 of the Administrative Procedures Act. This fact is set forth in the Tri-Counties Regional Center web-site at www.tri-counties.org.

2. A “licensed children’s institution” 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. “Licensed children’s institution” 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, § 8001(g).)

3. Where individuals with exceptional needs are placed in a licensed children’s institution 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(a).)

4. Barring exceptions, persons between the ages of 6 and eighteen years of age are required to attend “the full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located.” (Ed. Code § 48200). Under California Education Code Section 48204(a)(1), a pupil placed in the boundaries of a school district in a regularly established licensed children’s institution pursuant to a commitment or placement under Chapter 2 (commencing with section 200) of Part 1 of Division 2 of the Welfare and Institutions Code, is deemed to have complied with the residency requirements for school attendance in that school district. The Welfare and Institutions Code, commencing with section 200 et seq., provides for the protection and safety of children under the jurisdiction of the juvenile court. (Welf. & Inst. Code § 202.)

4. California Education Code Section 56155 et seq., governs this matter. “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.)

Determination of Issue

The sole issue presented at the hearing was whether Student, as a pupil with exceptional needs living in a licensed children’s facility, qualified as a resident of the District. District argued that it was not required to provide Student a FAPE because Student’s parents do not live in the District as set forth in factual finding 1(E) and Applicable Law 4. Further, District argued that it was not required to educate Student because Student was not placed by the court in a licensed children’s facility located in the District. District’s argument is without merit because Education Code Section 48200, and the statutory exception thereto, as set forth in Applicable Law 4, do not govern the determination of Student’s residency in this matter. Consistent with Applicable Law 3, California Education

Code Section 56165 et seq., governs this matter as it expressly addresses the provision of services to pupils with exceptional needs. As set forth in the factual findings, Student resides in a licensed children's institution within the District and qualifies as resident of the District pursuant to Education Code Section 56155 et seq., as set forth in Applicable Laws 2 and 3. Accordingly, Student is not required to comply with the provisions of California Education Code Section 48200, or the exceptions thereto, in order to receive a free and appropriate public education from District.

ORDER

1. Respondent's Motion to Dismiss is denied.
2. As a pupil with exceptional needs residing in a licensed children's institution within the District, Student is a resident of the District.
3. Student's Request for Sanctions is denied.

DATED: September 7, 2006

A handwritten signature in black ink, appearing to read "Eileen M. Cohn", written over a horizontal line.

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings
Special Education Division