

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO COUNTY OFFICE OF
EDUCATION, CALIFORNIA
DEPARTMENT OF EDUCATION, and
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012120710

ORDER GRANTING MOTION FOR
STAY PUT

On December 17, 2012, Student filed a motion for stay put. On December 21, 2012, the California Department of Education (CDE) filed an opposition to the motion for stay put, as well as a motion to dismiss CDE from this case.¹ On December 21, 2012, the Sacramento County Office of Education (SCOE) also filed an opposition to the motion for stay put. On December 24, 2012, Student filed a reply to the oppositions filed by CDE and SCOE. On December 26, 2012, Sacramento City Unified School District (District) filed an opposition to Student's motion for stay put, and responded to Student's reply to SCOE and CDE's oppositions, with a declaration from the District's director of special education attached.

APPLICABLE LAW

The purpose of the 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 party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited

¹ The motion to dismiss shall be ruled upon separately.

to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

Title 34, Code of Federal Regulations, part 300.33 states that a “[p]ublic agency includes the SEA [state educational agency], LEAs [local educational agencies], ESAs [educational service agencies], nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.”

In California, the determination of which agency is responsible to provide education to a particular student, is, in most instances, governed by residency requirements as set forth in sections 48200 and 48204 of the Education Code. The IDEA requires states to develop programs for ensuring that the mandates of the IDEA are met, and that children eligible for special education receive a FAPE. (20 U.S.C. § 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the LEA, usually the school district in which the parents of the child reside. (Ed. Code, §§ 56300, 56340 [describing LEA responsibilities].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)²; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

If an entity responsible for providing services to a child with an IEP is unable to provide (or fund) those services, it must notify CDE, and CDE is required to assist the entity so it can comply with the provision of those services. (Govt. Code § 7585, subd. (a).) If CDE cannot provide assistance and there is a dispute between agencies as to which one is responsible, CDE can ask OAH to adjudicate the matter. (Govt. Code § 7585, subd. (c).)

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

*Factual Background*³

Student is 16 years of age and a ward of the Sacramento County Juvenile Court (juvenile court). When Student was adjudicated a ward in 2009, she was incarcerated in Sacramento County Juvenile Hall (juvenile hall). SCOE operates the school at juvenile hall. Before her incarceration Student was placed in a group home in Merced County due to her being a dependent of juvenile court. The record is unclear as to where Student resided or attended school before then. SCOE assessed Student in mid-2009, while she was at juvenile hall, held an IEP team meeting, and found her eligible for special education services as a student with a specific learning disability.

At the request of the Sacramento County Probation Department, SCOE developed an addendum IEP that referred Student for a mental health assessment by Sacramento County Mental Health (SCMH).⁴ SCMh found that Student was emotionally disturbed. In the meantime, Student remained in juvenile hall. In February 2010, SCOE convened an IEP team meeting to determine the appropriate educational placement for Student. The District was invited to attend that IEP team meeting, as were two other school districts, Vallejo City Unified School District (Vallejo), and Elk Grove Unified School District (Elk Grove).⁵ None of the invited school districts attended the IEP team meeting held on February 24, 2010. At this meeting SCMh recommended placement in a residential treatment center, but there was confusion about which school district would be considered as Student's district of residence, and as such, the responsible entity to pay for the educational portion of the placement.⁶

³ The Factual Background has been derived from the following sources: the opinion of the California Court of Appeals, Third Appellate District, *In re Q. N.*, Case No. C064967, November 9, 2012; and the sworn declaration of Rebecca Bryant (special education director for the District). These are the facts considered by this ALJ in making this stay-put determination, but this is merely a preliminary view of the case and should not be construed as Factual Findings that an ALJ would make in a Decision issued following a due process hearing.

⁴ At that time the costs of residential treatment placements for California students with mental health needs were statutorily provided for by a local county mental health agency that was jointly responsible with the student's school district of residence pursuant to Chapter 26.5 of the Government Code. (Gov. Code §7570, et seq.), often referred to by its Assembly Bill name, AB 3632. This statutory assessment and funding scheme ceased to exist following Governor Arnold Schwarzenegger's veto of mental health funding on October 18, 2010, and subsequent statutory and regulatory changes.

⁵ Student's former legal guardian may have resided in these school districts at one time.

On February 25, 2010, a juvenile court hearing took place at which time the court informed the representatives of several education and other public agencies attending the hearing that Student's public defender would be filing a motion for joinder so that a determination could be made as to which agency or agencies would be responsible for funding Student's residential placement. Student continued to be temporarily placed in juvenile hall.

Student's public defender filed a motion for joinder naming seven public agencies, including SCOE, and on March 16, 2010, a hearing was held in juvenile court concerning that motion.⁷ Although the juvenile court did not grant the motion for joinder, it nonetheless ordered SCOE to pay for the residential educational placement, and SCOE has done so since that time. Student has been placed outside the State of California, and remains so. She is currently placed at a residential treatment facility in Florida, operated by Devereux.⁸

SCOE filed an appeal of the juvenile court payment order with the California Court of Appeals, Third Appellate District. It paid for the placement, and held regular IEP team meetings, with a surrogate representing Student's interests.⁹ However, SCOE did not file a complaint with OAH asking that it determine whether it was Student's district of residence, nor did it ever file an action with CDE pursuant to Government Code section 7585 asking for an adjudication as to whether it, or one or more other public entities was responsible for paying for all or part of the costs of Student's out-of-state placement.

Procedural Status

On September 17, 2012, the juvenile court appointed as Student's "responsible adult," the person who had been appointed by SCOE as her surrogate.¹⁰ Student contends that this

⁶ As indicated in the previous footnote, several separate and significant changes have taken place in the funding scheme for residential treatment placements since the October 18, 2010 veto by Governor Schwarzenegger, but they will not be detailed here as they are not pertinent to this stay put order.

⁷ It is unclear what entities other than SCOE were named in the motion for joinder.

⁸ Devereux is a non-profit organization that operates residential treatment facilities in several states.

⁹ The surrogate may reside in the boundaries of the District, which explains why the District was named as a party to this action.

¹⁰ If the juvenile court has limited a ward's guardian or parents' rights to make educational or developmental decisions on behalf of the young person, the juvenile court can name someone else as the "responsible adult" for making those decisions. (Welf. & Inst. Code, § 726.)

“responsible adult” resides in the District, and that is why the District has been named as a party to this action.

On November 8, 2012, SCOE convened an IEP team meeting and continued Student’s placement in the Devereux Program located in Florida. On November 9, 2012, the Court of Appeals issued its Decision. In this Decision the appellate court found that the juvenile court did not have jurisdiction over SCOE when it ordered SCOE to pay for Student’s residential placement, and reversed this order. It remanded the matter to juvenile court and ordered that a “responsible adult” be appointed to represent Student’s needs. However, the appellate court made no other orders, nor did it provide any direction to either SCOE, or the juvenile court, as to what other action now needed to be taken. Therefore, Student filed her complaint with OAH asking for an adjudication of who was to pay for her residential placement. She also filed a motion for stay put to ensure that she could continue in her current residential placement, and asked that OAH determine which party was responsible pending final adjudication of this matter by OAH.

Stay Put

The overriding purpose of the IDEA is to ensure that students with disabilities receive a FAPE. When a student with an IEP has services provided by several different public agencies, some of which may be at least partially responsible for assuming the cost of those services, OAH has jurisdiction to make decisions allocating these costs, and can do so pursuant to the IDEA, or pursuant to a public agency filing for this adjudication pursuant to Government Code section 7585.

The purpose of stay put is to maintain the last agreed upon placement of a student, including services the student is receiving, pursuant to her last signed and implemented IEP, when a dispute arises concerning placement and services. Unless the parties agree to a different placement, the stay put placement will remain the student’s placement until there has been a final adjudication of the due process complaint.

Student’s IEP of November 8, 2012, calls for her to be placed in residential public school outside the State of California. Although not mentioned by name in the IEP, none of the parties dispute that her current placement is Devereux in Florida. Based on the information in that most recent IEP, Student is doing extremely well in this placement, and is making progress towards high school graduation.

SCOE argues that because the appellate court reversed the juvenile court’s determination that SCOE should pay for the placement, it is no longer financially responsible. However, the determination by the appellate court was based on it finding that the juvenile court did not have jurisdiction over SCOE, since it did not join SCOE as a party in the juvenile court’s proceedings. There was no substantive determination by the appellate court that SCOE was not responsible for paying any of the costs of Student’s placement.

The entity that has jurisdiction to determine whether SCOE is financially responsible pursuant to the IDEA and California statutes governing residential placements, or whether some other named entity is responsible, to pay the cost of Student's placement, is OAH, and that is what Student is asking for in her complaint. And it is within OAH's jurisdiction to determine whether SCOE should continue to pay for Student's placement during the pendency of these proceedings.

Student claims that the District may be responsible for paying for Student's placement because the court-appointed "responsible adult" resides in the District. The District argues that if it is responsible for paying for Student's placement because the court-appointed "responsible adult" resides in the District, it is not required to pay those costs until the current school year ends. However, there is no real evidence currently before OAH that proves that the surrogate resides in the District. The District also argues that because the residential placement was made by SCOE, it is responsible for paying for that placement until the end of the current school year.

CDE argues that it should not be ordered to pay for Student's placement because it is not a proper party to this case, and there is statutory and other law that can be looked to in this case to determine which school district or other public agency should be paying for this placement.

Student's last implemented IEP, was developed by SCOE on November 8, 2012, and called for her to continue in a residential placement outside California, and there is no dispute among the parties that this placement is Devereux Florida. There is evidence in the IEP document itself that Student is thriving in her current placement. It is appropriate to order that this placement is stay put, and SCOE should continue to pay for it until OAH makes a final determination as to which public entity or entities ultimately bears the responsibility for paying for Student's residential placement. Depending on the evidence presented at a due process hearing, it is possible that another party to this action will be found to be the responsible party, and may be ordered to reimburse SCOE for its expenditures on Student's behalf. But in the meantime, it is important that Student's placement be maintained. Accordingly, SCOE shall continue to pay for Student's placement at Devereux Florida, during the pendency of this case with OAH.

ORDER

Devereux Florida is Student's stay put placement. SCOE shall continue to pay all costs related to Student's placement at Devereux Florida, consistent with the current IEP developed by SCOE on November 8, 2012, until this matter is finally adjudicated by OAH.

Dated: January 3, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings