

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

In the Consolidated Matters of:

STUDENT,

Petitioner,

v.

ORANGE COUNTY DEPARTMENT OF
EDUCATION, ESCONDIDO UNION HIGH
SCHOOL DISTRICT, LOS ANGELES
UNIFIED SCHOOL DISTRICT, and TUSTIN
UNIFIED SCHOOL DISTRICT,

Respondents.

OAH CASE NO. N 2006051042

ORANGE COUNTY DEPARTMENT OF
EDUCATION,

Petitioner,

v.

STUDENT, ESCONDIDO UNION HIGH
SCHOOL DISTRICT, and CALIFORNIA
DEPARTMENT OF EDUCATION,

Respondents.

OAH CASE NO. N 2006070791

DECISION ON BIFURCATED ISSUE

Administrative Law Judge (ALJ) Trevor Skarda, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on September 29, 2006, in Costa Mesa, California.

Orange County Office of Education (OCOE) was represented by attorney Karen L. Van Dijk. Also present on behalf of OCOE was Mel Peters. Escondido Union High School District (District) was represented by attorney Darin W. Barber. Also present on behalf of Escondido was Susan Davis, the District's Director of Special Programs. Attorney Patricia Cromer was present on behalf of the Student. Student's sister, who has been designated by

the Orange County Juvenile Court as Student's Responsible Adult (RA) was not present. Gabriel Vivas appeared briefly on behalf of the California Department of Education (CDE).¹

The bifurcated issue was heard on September 29, 2006. Thirteen exhibits were admitted by stipulation of the parties. The parties agreed to and submitted eleven stipulated facts, which were admitted. No witnesses testified. The parties agreed to waive the forty-five day time lines, and the ALJ agreed to issue his decision on the bifurcated issue no later than November 22, 2006.² On October 11, 2006, Student's attorney obtained an Order from the Orange County Juvenile Court related to Student's wardship status. On October 25, 2006, Student's attorney submitted the order, attached to a stipulation to the admissibility of the order. The stipulation is signed by all parties. Thereafter, on October 28, 2006, the last of the written closing arguments was received by the ALJ, and the bifurcated issue in the consolidated hearing was submitted for decision.

PROCEDURAL MATTERS

On May 26, 2006, Student's attorney filed a request for a due process hearing, naming Escondido, OCOE, Los Angeles Unified School District, and Tustin Unified School District as Respondents.³ Student's forty-eight page complaint lists five issues. The fifth issue is, "What [local educational agency] is responsible to fund [Student's] [residential treatment center] placement ... from [June 19, 2006]?"

On July 13, 2006, OCDE filed a request for a due process hearing, naming Student, the District, and the CDE as Respondents. The complaint contains one issue: "Is OCDE the Student's district of residence, thus responsible to implement the Student's April 25, 2006 IEP following his release from juvenile hall on June 19, 2006?"

On September 27, 2006, a telephonic prehearing conference was held in both matters. Student's fifth issue regarding what local educational agency is responsible for Student's education after he was released from juvenile hall on June 19, 2006, was bifurcated. All parties except CDE agreed to consolidate OCDE's complaint with Student's complaint. The motion to consolidate was granted because the bifurcated issue in the Student's complaint and OCDE's complaint involve identical questions of law and fact, and the interests of judicial economy were promoted by consolidation. The previously-scheduled hearing date of

¹ CDE was dismissed at the beginning of the hearing.

² This decision resolves the only issue in the complaint filed by OCDE. It does not resolve all of the issues raised in Student's complaint. As previously ordered at the September 27, 2006 prehearing conference, a telephonic trial setting conference will convene on November 30, 2006, at 10:30 a.m., to schedule further hearing dates regarding the remaining issues.

³ Los Angeles Unified School District and Tustin Unified School District reached final settlement agreements with Student and were dismissed as parties.

September 29, 2006, was confirmed. The hearing date was agreed to by the parties.⁴ CDE moved to be dismissed as a party. Because CDE's motion was untimely, the parties were ordered to provide oral arguments on the first day of hearing.

The hearing convened on September 29, 2006. At the outset of the hearing, after the parties provided oral arguments regarding CDE's motion to be dismissed as a party, the ALJ dismissed CDE. CDE was dismissed because it is not "a public agency involved in any decisions" regarding Student.⁵ (Ed. Code 56501, subd. (a).)

ISSUE⁶

Upon Student's release from juvenile hall on or about June 19, 2006, was the Orange County Office of Education or, in the alternative, the Escondido Union High School District the local educational agency (LEA) responsible for Student's free and appropriate public education (FAPE)?

CONTENTIONS OF THE PARTIES

On June 19, 2006, Student, who during all relevant times has remained a ward of the Orange County Juvenile Court, was released from juvenile hall and transported to a California State certified non-public, non-sectarian school (NPS) residential treatment center (RTC) placement called the Cathedral Home located in Laramie, Wyoming.

OCDE admits that it was responsible for Student's education from October 17, 2005, to June 19, 2006. During that period, Student was placed in juvenile hall by the Probation Department of Orange County (Probation). OCDE contends, however, that it was not the responsible LEA after June 19, 2006, because it was not Student's "district of residence." OCDE contends that the District, CDE or some other public agency was the responsible LEA after June 19, 2006.⁷

The District admits that it was responsible for Student's education from May 2004 to October 2004, and again from March 5, 2005 to October 17, 2005. During those periods, Student attended Sumerhill School, an NPS located in the geographical boundaries of the District. Student was placed at Sumerhill by Probation on both occasions.

⁴ OCOE's complaint had been previously set for hearing for September 29, 2006.

⁵ CDE may be a party over which OAH has jurisdiction if and only if it is a direct service party. For example, CDE provides direct services to students because it administers the California School for the Deaf.

⁶ For purposes of clarity and organization, the ALJ has rephrased the issue presented.

⁷ As previously discussed, CDE, the state educational agency (SEA) was dismissed as a party at the outset of the hearing.

Student contends that OCOE was the responsible LEA upon Student's release, in part, because OCOE developed an IEP for Student and otherwise provided Student with a FAPE during his incarceration in juvenile hall.⁸

FACTUAL FINDINGS

Jurisdictional Matters

1. Student is a 16-year-old tenth-grade pupil. He is eligible for special education and related services as a student with an emotional disturbance. Student currently resides in a residential treatment center (RTC) located in Laramie, Wyoming, called Cathedral Home.

Factual Background

Was the District responsible for Student's FAPE after June 19, 2006?

2. Student's parent's whereabouts are unknown, although the parties believe that Student's Mother was deported to Mexico at some point prior to the period at issue in this matter.⁹

3. A guardian has never been appointed for Student.

4. On April 1, 2004, Juvenile Court Judge Robert H. Hutson, of the Superior Court of the State of California, County of Orange, issued a minute order declaring, in pertinent part, Student "a ward of the Orange County Juvenile Court" pursuant to Section 602 of the Welfare and Institutions Code.

5. Student has remained a ward of the court since April 1, 2004.

6. From March 5, 2005, to October 17, 2005, Probation placed Student at the California Family Life Center, a licensed children's institution (LCI) located within the boundaries of the District. During that time period Student attended Summerhill School. It is not disputed that his FAPE was the responsibility of the District during this time period.

⁸ Curiously, Student argues in his closing brief that the District *is not* the responsible LEA. (Student's Closing Brief on Bifurcated Issue of Residency, p. 11.)

⁹ Apparently the parties do not dispute that Student's mother was deported to Mexico at some point prior to the period at issue in the instant proceeding. However, this fact was not contained in the set of thirteen stipulated facts submitted by the parties at the hearing. Similarly, there was no dispute that Student's father's identity is unknown; however, again, this fact was not stipulated to by the parties.

7. On October 17, 2005, Student was removed from the California Family Life Center by Probation and placed in juvenile hall.

8. As determined in Legal Conclusion 1, all children who are otherwise eligible are entitled to a FAPE. As determined in Legal Conclusions 2 through 5, typically, the public entity responsible for the provision of a child's FAPE is the school district in which either: (1) the parent of the child resides; or, (2) the guardian resides. Student and OCDE failed to establish that Student's parents' have ever resided in the boundaries of the District, or that a guardian has ever been appointed for Student.

9. As determined in Legal Conclusion 7, a Student may also meet the residency requirements of a school district if he has been placed in a LCI located within the district's jurisdictional boundaries. Student and OCDE failed to establish that Student was placed in an LCI located within the boundaries of the District on or after June 19, 2006.

10. Because Student's parents never resided within the District, and because Student was not placed in an LCI located within the District after his release from juvenile hall on June 19, 2006, the District was not responsible for Student's FAPE.

Was OCOE responsible for Student's FAPE after June 19, 2006?

11. It is not disputed that from October 17, 2005, to June 19, 2006, the OCOE was responsible for Student's FAPE. During that period Student attended Otto A. Fischer School, a juvenile court school.

12. On January 18, 2006, the Orange County Juvenile Court appointed Student's sister to be his responsible adult (RA), "to make educational decisions for the child ... until ... the court orders otherwise." The Order states, in pertinent part, that Student's parents' whereabouts are unknown. Student's sister resides in La Habra, California, and remains Student's RA.

13. Student was referred to the Orange County Health Care Agency (OCHCA) for an AB 3632/Chapter 26.5 assessment by OCOE. On March 27, 2006, OCHCA completed its assessment and the resultant report. OCHCA recommended that Student be placed in a RTC.

14. On April 10, 2006, the OCOE convened an expanded individualized education program (IEP) team meeting to discuss OCHCA's RTC recommendation. The team developed an IEP which was agreed to by all parties, including Student's RA. The District attended the IEP team meeting.

15. On April 12, 2006, the Orange County Juvenile Court issued an order consenting to the April 10, 2006 IEP. The Order also states that "care and custody will vest with minor's responsible adult when [Student] is released from Juvenile Court." Furthermore, the Order restricts the RA from removing Student from the RTC without prior Court approval as part of Student's probation. The Order also restricts Student from "signing

himself out of the educational RTC” after his 18th birthday without prior consent of the Court, as part of his probation.

16. On April 25, 2006, another expanded IEP team meeting convened. At the meeting OCHCA recommended that Student be placed in a RTC located in Laramie, Wyoming called Cathedral Home. Although invited, the District did not attend this IEP team meeting.

17. On April 27, 2006, the Orange County Juvenile Court issued an Order “to strike Language of Care and Custody Vesting with RA.” The Order removed “care and custody” from the RA. The Order states that care and custody was to “remain with probation.” The Order acknowledges that Student’s RTC placement will be at Cathedral Home in Laramie, Wyoming. Finally, the Court required the Order to be released to “probation, [Student’s attorney], OCHCA and juvenile hall for purposes of obtaining an [Interstate Compact on Placement of Children (ICPC)].”

18. On June 13, 2006, the ICPC was granted.¹⁰

19. On June 19, 2006, Student left juvenile hall for Cathedral Home in Laramie, Wyoming. He remains there today.

20. As discussed in Legal Conclusion 3, a county office of education may be a local educational agency (LEA) as that term is defined by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). OCOE is a county office of education.

21. As discussed in Legal Conclusion 10, county offices of education are responsible for the provision of FAPE for special education-eligible children while they are detained in juvenile hall. As discussed more fully in Legal Conclusions 16 through 18, under the unique facts of this case, student is essentially a parentless, guardian-less ward, with no applicable “district of residence,” and juvenile court has retained decision making authority (along with probation) over nearly every aspect of a student’s life, the OCOE remained responsible for Student’s FAPE after he was released from juvenile hall on June 19, 2006.

LEGAL CONCLUSIONS

Applicable Law

1. Pursuant to California special education law, and the Individuals with Disabilities in Education Improvement Act of 2004 (IDEA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Ed. Code § 56000.) FAPE consists of special education and related services that are available to the

¹⁰ See Legal Conclusion 11.

student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29).)

2. A "local educational agency" is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. (34 C.F.R. § 300.220(a);¹¹ Ed. Code § 48200.)

3. Education Code 56026.3 defines "local educational agency" as "a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.

4. Education Code section 48200 mandates that children between the ages of six and eighteen years "shall attend the public full-time day school or continuation school ... of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school ... of the school district in which the residence of either the parent or legal guardian is located."

5. The State of California, or any political subdivision thereof, cannot be a child's parent. Education Code 56028 defines "parent" as follows:

(a) "Parent," includes any of the following:

(1) A person having legal custody of a child.

(2) Any adult pupil for whom no guardian or conservator has been appointed.

(3) A person acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives. "Parent" also includes a parent surrogate.

(4) A foster parent if the authority of a parent to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.

(b) "Parent" does not include the state or any political subdivision of government.¹²

¹¹ See also, 34 C.F.R. § 300.201 (effective October 13, 2006).

¹² The IDEA defines parent as follows:

(A) a natural, adoptive or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in place of a natural or adoptive parent ... with whom the child lives, or an individual who is legally responsible for the child's welfare; or

6. Determination of a parent or guardian's residence is based on the following rules: (1) 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, (2) there can only be one residence, (3) a residence cannot be lost until another is gained, and (4) the residence can be changed only by the union of act and intent. (Gov. Code § 244.)

7. There are exceptions to the general compulsory education requirement that children attend school in the district in which one of their parents or their legal guardian resides. Education Code section 48204 provides that a child is deemed to have complied with the residency requirements for school attendance "notwithstanding [Education Code] Section 48200" if the child, in pertinent part, is:

A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or licensed foster home, or a family home 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

8. Another exception to the general compulsory education rule applies in the case of an emancipated minor. A child is deemed to have complied with the residency requirement for a school district if his or her residence is located within the boundaries of that school district and if his or her "parent or legal guardian is relieved of responsibility, control, and authority through emancipation." (Ed. Code 48204, subd. (a)(3).)

9. The residence of an unmarried minor child is determined by the "residence of the parent with whom the child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction." (Welf. & Inst. Code § 17.1, subd. (a).)

10. Children who have adjudicated by the juvenile court for placement in a juvenile hall are entitled to a FAPE. (Ed. Code § 56150.) Juvenile court schools provide educational services to all students "detained" in, e.g., juvenile halls. (Ed. Code § 48645.1) Regardless of where the parents or legal guardians of such children reside, the responsibility for any student's FAPE who is "detained" in juvenile hall rests with the local county board of education. Education Code section 48645.2 states that:

The county board of education shall provide for the administration and operation of juvenile court schools established pursuant to Section 48645.1:

(D) except as used in sections 1415(b)(2) and 1439(a)(5), an individual assigned under either of those sections to be a surrogate parent.

(20 U.S.C. § 1401(23).)

(a) By the county superintendent of schools, provided that, in any county in which the board of supervisors is establishing or maintaining juvenile court schools on January 1, 1978, the county superintendent of schools may contract with the board of supervisors for the administration and operation of such schools if agreed upon between the board of education and the board of supervisors. In any event, the county superintendent of schools may contract with other educational agencies for supporting services to the same extent that school districts may contract with other such agencies.

(b) By contract with the respective governing boards of the elementary, high school, or unified school district in which the juvenile court school is located.

11. California has adopted the Interstate Compact on Placement of Children (ICPC). (Fam. Code § 7900 *et seq.*) The purpose of the ICPC is, in pertinent part, to allow children to receive the “maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.” (Fam. Code § 7901) A “sending agency” (including, in pertinent part, a party state or a court of a party state) retains jurisdiction over the child who is moved to another state “sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency’s state” (Id.)

12. 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.*, 117 Cal. App. 4th 47, 63 (Cal. Ct. App. 2004).)

13. With regard to the special education portion of the Education Code, the Legislature intended, in relevant part, that every disabled child receive a FAPE:

It is the ... intent of the Legislature 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 petitioner has the burden of proving at an administrative hearing the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

Determination of Bifurcated Issue

Upon Student's release from juvenile hall on or about June 19, 2006, was the Orange County Office of Education or, in the alternative, the Escondido Union High School District the local educational agency (LEA) responsible for Student's free and appropriate public education (FAPE)?

Escondido Union High School District

15. As discussed in Factual Finding 10, and as developed in Legal Conclusions 2 through 7, the District was not the local educational agency responsible for Student's FAPE on or after June 19, 2006.

Orange County Office of Education

16. As discussed in Legal Conclusion 10, county offices of education must provide a FAPE to students who are (pertinent part) "detained" in juvenile hall.¹³ As discussed in Legal Conclusions 2 through 6, when a student is released from juvenile hall, the responsibility for FAPE typically shifts to the district in which either parent of the student resides, or in the alternative, in which the guardian resides. (Ed. Code § 48200.) Student has no guardian and his parents' whereabouts are unknown. Moreover, none of the exceptions found at Education Code section 48204 apply. For instance, Student is not an emancipated minor. (See Legal Conclusion 9.)¹⁴

17. OCDE remained responsible for Student's FAPE after his release from juvenile hall. Student is essentially a guardian-less, parentless ward of the Court. And although technically released, the Court and Probation have retained all but the most trivial decision-making authority related to Student education. As developed above in Factual Findings 2 through 19: (1) Student currently resides in Laramie, Wyoming in a *Court-approved* residential treatment center, (2) Student remains a *ward of the Court*; (3) Student's parents' location is unknown, although his mother likely resides in Mexico; (4) Student has no guardian; (5) the *Court-appointed* RA, whose only authority is to make educational decisions, may not exercise the most fundamental of all education rights *without Court approval* – she may not, for instance, remove Student from his present placement; (6) upon reaching the age of majority, when educational rights would ordinarily transfer to the Student (who becomes the "parent" at age 18 pursuant to the Education Code) Student may not sign

¹³ Black's Law Dictionary, Sixth Ed., defines "detained" as follows: "To retain as the possession of personalty. To arrest, to check, to delay, to hinder, to hold, or keep in custody, to retard, to restrain from proceeding, to stay, to stop, to withhold."

¹⁴ After an exhaustive search, the ALJ has found no State statute, State regulation, federal statute or federal regulation, or court decision (at any level, in any jurisdiction) that directly applies to the unique facts and narrow legal question involved in this case, which is: what public agency is legally obligated to provide a FAPE to a child who is essentially a parentless ward of the Court upon his or her release from juvenile hall?

himself out of the RTC *without Court approval*; (7) care and custody of Student remains with Orange County Probation Department *by order of the Court*; and (8) *the Court* approved the IEP developed by OCOE and OCHCA which placed Student in the RTC out-of-State. As such the ALJ finds that Student remains, in essence, “detained” by the Orange County Juvenile Court. As a result, the OCOE, which is responsible for the provision of educational services for students while they are “detained” by order of the Orange County Juvenile Court, remains the educational agency responsible for Student’s FAPE.

18. The only logical alternative in light of the murky statutory framework and dearth of relevant precedent – that Student has no responsible local educational agency – is untenable. As discussed in Legal Conclusions 12 and 13, the general legislative intent of the Education Code is the welfare of children, and the specific intent of special education provisions of the Code is, in relevant part, that all eligible students receive a FAPE. If no public agency is accountable for Student’s education, neither the general nor the specific intent of the Code would be served.

19. OCOE argues that it can never be a “district of residence.” The issue is, however, whether OCOE is the public agency responsible for Student’s FAPE after he was released from juvenile hall, not whether OCOE is Student’s district of residence.

20. OCOE argues that it is not equipped to provide educational services to pupils like Student. This argument is not persuasive. As discussed in Legal Conclusions 2 and 3, county offices of education, along with school districts, special education local plan areas and charter schools, may be local educational agencies and thus, responsible for the provision of FAPE.¹⁵

21. OCOE cites numerous California Special Education Hearing Office (SEHO)¹⁶ decisions for the proposition that, once a student is released from juvenile hall, the district of residence becomes responsible for the student’s FAPE. All of the decisions cited by OCOE are factually distinguishable from the present case. None involve a Student who is essentially a parentless, guardian-less ward of the court. None involve a Student who has no “district of residence” as that term is defined by Education Code section 48200, and for whom none of the exceptions to the general “district of residence” rule found at Education Code section 48204 are applicable.

22. Student argues generally that OCOE should be held responsible for Student’s FAPE after his release from juvenile hall because OCOE developed the IEP that placed him

¹⁵ Numerous county offices of education provide direct services to special education students throughout the State. Many of these students are not incarcerated. Rather, the “local plan” to which the county is party often requires the particular county to, e.g., operate special day classes for children with specific (often severe) disabilities who are residents of the county or a member LEA.

¹⁶ SEHO is OAH Special Education Division’s predecessor. SEHO’s decisions are persuasive, not binding, authority.

in the Cathedral Home.¹⁷ Student's argument is not persuasive and contrary to public policy. OCOE was *legally obligated* to provide Student with a FAPE during his incarceration in juvenile hall. The fact that OCOE fulfilled its legal obligations during his incarceration is not relevant to the question presented.¹⁸

ORDER

1. Orange County Office of Education was responsible for Student's free and appropriate public education on and after June 19, 2006.
2. A telephonic trial setting conference will convene on November 30, 2006, at 10:30 a.m., to schedule further hearing dates regarding the remaining issues.

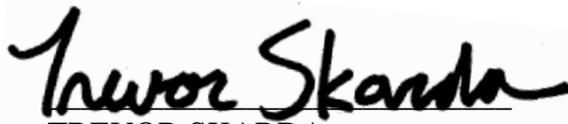
PREVAILING PARTY

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. The following findings are made in accordance with this statute: *Student prevailed on the bifurcated issue related to whether OCOE was the responsible for Student's FAPE after June 19, 2006.*

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Cal. Ed. Code § 56505, subd. (k).)

IT IS SO ORDERED THIS 20th DAY OF November 2006.


TREVOR SKARDA
Administrative Law Judge
Office of Administrative Hearings
Special Education Division

¹⁷ OCOE also: (1) referred Student for an AB 3632 assessment, (2) held IEP team meetings, (3) developed a written offer of placement; (4) assisted OCHCA in its search for an appropriate out-of-state RTC prior to Student's discharge from juvenile hall; and (5) provided Student with services it was required to provide pursuant to applicable special education laws.

¹⁸ OCOE should not be saddled with additional financial obligations because it did what it was required to do under applicable law.