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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

RIVERSIDE COUNTY DEPARTMENT)
OF MENTAL HEALTH,)
)
) Plaintiff,)
)
) v.)
) ANTHONY SULLIVAN et al,)
)
) Defendants.)

CASE NO. EDCV 08-0503-SGL (RCx)

ORDER AFFIRMING ADMINISTRATIVE
LAW JUDGE'S DECISION

CONSOLIDATED CASES:

MONICA VALENTINE,)
)
) Plaintiff,)
)
) v.)
) RIVERSIDE UNIFIED SCHOOL)
) DISTRICT et al,)
)
) Defendants.)

RIVERSIDE UNIFIED SCHOOL)
DISTRICT,)
)
) Plaintiff,)
)
) v.)
) ANTHONY SULLIVAN et al,)
)
) Defendants.)

1 At its core, the case before the Court presents a simple question: Is a school
2 district excused from its duty under the federal Individuals with Disabilities Education Act
3 (“IDEA”) to provide a free, appropriate public education (“FAPE”) where certain state
4 administrative code provisions prohibit the reimbursement of expenses associated with
5 placement at an out-of-state for-profit facility but where that facility is the only one
6 identified as an appropriate placement? As set forth below, the Court rejects arguments
7 that the ALJ exceeded the scope of her authority, that California law prohibits the
8 recommended placement, and that a limited waiver made by the student does not
9 preclude the remedy imposed and, in the end, the Court concludes that such a funding
10 structure does not excuse the school district from its duty.

11 I. INTRODUCTION

12 This case arises from a dispute regarding the provision of educational services to
13 a disabled individual, defendant Anthony Sullivan (“Sullivan”). Plaintiffs Riverside
14 County Department of Mental Health (“DMH”) and Riverside Unified School District
15 (“RUSD”) seek the reversal of the January 15, 2008, decision of Administrative Law
16 Judge Judith L. Pasewark (“ALJ”), Office of Administrative Hearings, Special Education
17 Division, State of California (“OAH”), in *Anthony Sullivan v. Riverside Unified School*
18 *District and Riverside County Department of Mental Health*, and ask the Court to find
19 that Sullivan was not entitled to an order directing placement at the National Deaf
20 Academy (“NDA”) under the Individuals with Disabilities Education Act (“IDEA”), 20
21 U.S.C. § 1400 *et seq.*, or California special education law, California Education Code
22 section 56000 *et seq.* See Administrative Record (“A.R.”) 780-89.

23 Sullivan filed his First Amended Request for Due Process Hearing on September
24 25, 2007. A.R. 780. At the pre-hearing conference on December 7, 2007, the parties
25 agreed to have the matter decided by the ALJ without oral argument based stipulation
26 facts, stipulated evidence, and written closing arguments. *Id.* Ultimately, in the decision
27 that is the subject of the current appeal, the ALJ decided that defendant had been
28 denied a free, appropriate public education (“FAPE”), and ordered immediate placement

1 of defendant at an out-of-state residential facility. In a separate decision (which is also
2 the subject of the present appeal), the ALJ denied a motion for reconsideration based
3 on an issue of waiver.

4 Upon review of the ALJ's decision, the ALJ's Order Denying Motion for
5 Reconsideration, the pleadings, and the administrative record, the Court **AFFIRMS** the
6 ALJ's decisions.

7 **II. FACTUAL BACKGROUND**

8 At the time of the administrative hearing, Sullivan was seventeen years old and
9 resided with his mother, Monica Valentine ("Valentine"), within the RSUD in Riverside
10 County, California.¹ His family was considered low-income. Sullivan is deaf, has
11 impaired vision, and an orthopedic condition affecting the hip known as legg-perthes.
12 His only effective mode of communication is American Sign Language ("ASL"). He has
13 also been assessed as having borderline cognitive ability and a long history of social
14 and behavioral difficulties. As a result, Sullivan was eligible for special education and
15 related services and mental health services under the category of emotional disturbance
16 ("ED"), with a secondary disability of deafness.

17 Sullivan requires an education environment in which he has an opportunity to
18 interact with peers and adults who are fluent in ASL. Between January, 2005, and
19 September, 2006, he was a resident of the Monrovia Unified School District ("MUSD")
20 and attended the California School for the Deaf, Riverside ("CSDR"). CSDR did not
21 specialize in therapeutic behavior interventions. Sullivan was removed from CSDR for
22 suicide prevention because he physically harmed himself and was placed in home-
23 hospital instruction. Between June, 2005, and October, 2005, Sullivan was placed on
24 several 72-hour psychiatric holds.

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¹ As part of the Request for Due Process Hearing, the Parties filed a joint Stipulated Statement of Undisputed Facts and Evidence to the ALJ. A.R. 731 - 738. The facts presented here are contained in the Parties' joint stipulation, which was relied upon by the ALJ. See A.R. 781 - 784.

1 On September 14, 2006, MUSD and the Los Angeles County Department of
2 Mental Health ("LACDMH") held a meeting and recommended residential placement for
3 Sullivan. It was recommended that Sullivan be placed at National Deaf Academy
4 ("NDA") because of his need for a higher level of care to address his continuing
5 aggressive and self-injurious behaviors and to interact with deaf peers and adults
6 without the use of an interpreter. On August 5, 2006, Sullivan was accepted by NDA,
7 but was instead placed at Willow Creek/North Valley Non-public School. The placement
8 failed in March, 2007; MUSD and LACDMH indicated they were unable to find a
9 residential placement for Sullivan that could meet his mental health and communication
10 needs. As explained more fully below, NDA was not considered an option for MUSD
11 and LACDMH because of NDA's for-profit status.

12 In April, 2007, defendants moved into Riverside County and RUSD. On April 20,
13 2007, RUSD convened an Individual Education Plan ("IEP") meeting. The IEP team
14 changed Sullivan's primary disability classification from ED to deafness with social-
15 emotional overlay to enroll him in CSDR for a 60-day assessment period, which was the
16 only appropriate placement. CSDR terminated Sullivan's placement for poor behavior
17 within the 60-day assessment period.

18 On May 23, 2007, RUSD convened another IEP meeting to discuss Sullivan's
19 termination from CSDR. It was recommended that Sullivan be placed at Oak Grove
20 Institute/Jack Weaver School ("Oak Grove") and have support from a deaf interpreter.
21 On August 3, 2007, RUSD convened another IEP meeting to develop an annual IEP.
22 The IEP team proposed placement at Oak Grove with a signing interpreter, deaf and
23 hard-of-hearing consultation, and support services provided by RUSD and DMH.
24 Sullivan, his mother, and his attorney agreed to the proposed IEP, but disagreed that
25 the offer constituted a FAPE due to Oak Grove's lack of staff, teachers, and peers who
26 used ASL.

27 On October 9, 2007, RUSD convened another IEP and it was determined that
28 Sullivan's primary special education eligibility category should be changed back to ED

1 with deafness as a secondary condition. It was recommended by the IEP team that
2 Sullivan be placed in a residential treatment program and, until a proper residential
3 placement was found, he would remain at Oak Grove. DMH made inquiries to find a
4 proper non-profit residential placement for Sullivan, including schools in California,
5 Florida, Wyoming, Ohio, and Illinois, but was unsuccessful.

6 Sullivan, his mother, and his attorney all identified NDA as an appropriate
7 placement for Sullivan. NDA is a residential treatment center for the treatment of deaf
8 and hard-of-hearing children with the staff and facilities to accommodate Sullivan's
9 emotional and physical disability needs. NDA also accepts students with borderline
10 cognitive abilities. Also, nearly all of the service providers, including teachers,
11 therapists and psychiatrists are fluent in ASL. The Charter School at NDA is a
12 California certified non-public school and is operated on a for-profit basis. All parties
13 agree that NDA is an appropriate placement and would provide Sullivan with a FAPE.

14 Notwithstanding this agreement, the RSUD and DMH took the position that they
15 could not place Sullivan at NDA because it is operated by a for-profit entity. Sullivan
16 filed for a due process hearing to resolve the issue.

17 **III. THE ALJ'S DECISION**

18 As noted previously, the matter was submitted to the ALJ by stipulation. The
19 parties stipulated to a single issue, which was articulated as:

20 Must RUSD and RCDMH place Anthony at the
21 National Deaf Academy or other appropriate therapeutic
22 residential placement that can meet both his mental health
23 and communication needs, regardless of whether the facility
24 is run on a for-profit basis, in the absence of existing
25 alternatives?

26 A.R. 724. In articulating this issue, the parties noted their agreement on a number of
27 key points: (1) Sullivan's current placement at Oak Grove did not constitute a FAPE;
28 (2) Sullivan required therapeutic residential placement; (3) despite a nationwide search,

1 no appropriate non-for-profit residential placement could be found; and (4) placement at
2 NDA, would constitute a FAPE.

3 On January 15, 2008, the ALJ issued her decision in favor of Sullivan. A.R. 788.
4 She found that Sullivan had been denied a FAPE since May 23, 2007, when he was
5 removed from CSDR, that his need for therapeutic residential placement with ASL
6 service continued, and that he was "entitled to compensatory education consisting of
7 immediate placement at the National Deaf Academy." A.R. 788.

8 On January 28, 2008, RUSD submitted a Motion for Reconsideration of Decision
9 and Order. A.R. 791-97. The motion challenged the propriety of the remedy ordered by
10 the ALJ – immediate placement at NDA, in light of the fact that such a remedy was not
11 sought by the parties' stipulation, and in light of the fact that Sullivan had agreed to
12 waive all claims for a compensatory education for the period April, 2007, through
13 October 9, 2007. The existence of a waiver was not disputed by Sullivan. The ALJ, on
14 February 20, 2008, denied the Motion for Reconsideration. A.R. 818-20.

15 In response, Plaintiffs filed the instant action.

16 **IV. THE IDEA**

17 THE IDEA guarantees all disabled children a FAPE "that emphasizes special
18 education and related services designed to meet their unique needs and prepare them
19 for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).
20 A FAPE is defined as special education and related services that: (1) are available to
21 the student at public expense, under public supervision and direction, and without
22 charge; (2) meet the state education standards; (3) include an appropriate education in
23 the state involved; and (4) conform with the student's IEP. 20 U.S.C. § 1401(9).

24 "Special education" is defined as instruction specially designed to meet a
25 disabled student's unique needs, at no cost to parents, whether it occurs in the
26 classroom, at home, or in other settings. 20 U.S.C. § 1401(29); Cal. Educ. Code
27 § 56031. "Related services" include developmental, corrective, and supportive services,
28 such as speech-language services, needed to assist a disabled child in benefitting from

1 education, and to help identify disabling conditions. 20 U.S.C. § 1401(26); Cal. Educ.
2 Code § 56363.

3 The primary tool for achieving the goal of providing a FAPE to a disabled student
4 is the IEP. *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 818 (9th
5 Cir. 2007). An IEP is a written statement containing the details of the individualized
6 education program for a specific child, which is crafted by a team that includes the
7 child's parents and teacher, a representative of the local education agency, and,
8 whenever appropriate, the child. 20 U.S.C. § 1401(14), § 1414(d)(1)(B). An IEP must
9 contain: (1) Information regarding the child's present levels of performance; (2) a
10 statement of measurable annual goals; (3) a statement of the special educational and
11 related services to be provided to the child; (4) an explanation of the extent to which the
12 child will not participate with non-disabled children in the regular class; and (5) objective
13 criteria for measuring the child's progress. 20 U.S.C. § 1414(d)(1)(A).

14 The IDEA contains numerous procedural safeguards to ensure that the parents
15 or guardians of a disabled student be kept informed and involved in decisions regarding
16 the child's education. 20 U.S.C. § 1415. As part of this procedural scheme, the local
17 educational agency must give parents an opportunity to present complaints regarding
18 the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(6). Upon the presentation of
19 such a complaint, the parent or guardian is entitled to an impartial due process
20 administrative hearing conducted by the state or local educational agency. 20 U.S.C.
21 § 1415(f).

22 V. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

23 The IDEA provides that a party aggrieved by the findings and decisions made in
24 a state administrative due process hearing has the right to bring an original civil action
25 in federal district court. 20 U.S.C. § 1415(i)(2). The party bringing the administrative
26 challenge bears the burden of proof in the administrative proceeding. *Schaffer ex rel.*
27 *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Similarly, the party challenging the
28 administrative decision bears the burden of proof in the district court. *Hood v. Encinitas*

1 *Union Sch. Dist.*, 486 F.3d 1099, 1103 (9th Cir. 2007).

2 The standard for district court review of an administrative decision under the
3 IDEA is set forth in 20 U.S.C. § 1415(i)(2), which provides as follows:

4 In any action brought under this paragraph the court --
5 (i) shall receive the records of the administrative
6 proceedings; (ii) shall hear additional evidence at the request
7 of a party; and (iii) basing its decision on the preponderance
8 of the evidence, shall grant such relief as the court
9 determines is appropriate.

10 20 U.S.C. § 1415(i)(2)(C). Thus, judicial review of IDEA cases is quite different from
11 review of most other agency actions, in which the record is limited and review is highly
12 deferential. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993).
13 Courts give "due weight" to administrative proceedings, *Board of Educ. of the Hendrick*
14 *Hudson Central Sch. Dist. Westchester County v. Rowley*, 458 U.S. 176, 206 (1982),
15 but how much weight is "due" is a question left to the court's discretion, *Gregory K. v.*
16 *Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987). In exercising this discretion,
17 the Court considers the thoroughness of the hearing officer's findings and award more
18 deference where the hearing officer's findings are "thorough and careful." *Capistrano*
19 *Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995).

20 A hearing officer's findings are treated as "thorough and careful when the officer
21 participates in the questioning of witnesses and writes a decision contain[ing] a
22 complete factual background as well as a discrete analysis supporting the ultimate
23 conclusions." *R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th
24 Cir. 2007) (internal quotation marks and citations omitted).²

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26 ² Plaintiffs contend that the Court, when reviewing purely legal questions such as
27 those at issue here, must subject the ALJ's decision to *de novo* review. Plaintiffs'
28 contention is not without support. See *Paul K. ex rel. Joshua K. v. Hawaii*, 567
F.Supp.2d 1231, 1234 (D. Hawai'i 2008) (setting forth standard of review in IDEA case
by stating, *inter alia*, "[s]tatutory interpretation is reviewed de novo," and collecting

1 **VI. CHALLENGES TO THE ALJ DECISIONS**

2 Plaintiffs oppose the decisions of the ALJ on three grounds: (1) First, they argue
3 that the remedy the ALJ ordered was beyond the scope of the order to which the parties
4 stipulated, and thus, should not have been decided by the ALJ; (2) next, California law
5 is an absolute bar to a placement at NDA; and (3) finally, that Sullivan waived his rights
6 to a compensatory education for the time period April, 2007, through October 9, 2007.

7 In the end, the Court rejects each of these challenges.

8 **A. The Remedy Ordered by the ALJ was Proper**

9 Plaintiffs assert that the ALJ overstepped her authority by awarding
10 compensatory education to Sullivan. Essentially, plaintiffs contend that the ALJ was
11 limited by the stipulation before her to the issue of the duty of plaintiffs regarding
12 placement of Sullivan in light of certain California Administrative Code provisions.

13 The ALJ rejected plaintiffs' argument in her February 20, 2008, Order Denying
14 Motion for Reconsideration. The ALJ found that "[n]one of the documents filed in this
15 matter indicate that Student's Request for Due Process Hearing had been restructured
16 as a request of Declaratory Relief only." A.R. 820. The Court agrees with the ALJ's
17 assessment.

18 When the ALJ ordered that Sullivan be placed at NDA, she ordered the natural
19 remedy that flowed from her determination that Sullivan was denied a FAPE and that
20 the California Administrative Code provisions relied upon by plaintiffs did not excuse
21 them from providing one. All the parties agreed that Sullivan was not receiving a FAPE,
22 and they agreed that NDA was the only facility, despite a nationwide search that could
23 provide him with a FAPE. Upon the presentation of the issue to the ALJ, the parties
24 should have understood that any affirmative response by the ALJ would result in an
25 order setting forth an appropriate remedy.

26 The suggestion that the ALJ was limited to sending the issue back to the parties

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28 cases). Nevertheless, because the Court's own analysis would lead it to the same
conclusion as that reached by the ALJ, the Court need not resolve this issue.

1 for another IEP process is absurd in light of the agreement as to the only appropriate
2 placement. Sullivan would be forced to litigate an issue that he was entitled to a
3 particular placement when an ALJ had already effectively determined the issue. Such
4 an outcome is horribly inefficient; it would be a waste of administrative and judicial
5 resources, and would result in a wholly avoidable delay in the only appropriate
6 placement identified for Sullivan.

7 Accordingly, this Court finds that the issue of a compensatory education was
8 presented to the ALJ and she did not overstep her authority by granting Sullivan a
9 remedy after finding that he had been denied a FAPE.

10 **B. California Law Does Not Prohibit Placement at NDA and Does Not Excuse**
11 **Compliance with the IDEA**

12 The heart of the present appeal is represented by plaintiffs' argument regarding
13 funding for Sullivan's placement at NDA. As alluded to earlier, the difficulty in placing
14 Sullivan at that facility is in its for-profit status.

15 The Court begins with Cal. Adm. Code tit. 2, § 60100(h), relating to "Interagency
16 Responsibility for Providing Services to Pupils with Disabilities" in the area of
17 "Residential Placement" such as that considered for Sullivan:

18 (h) Residential placements for a pupil with a disability who is
19 seriously emotionally disturbed may be made out of
20 California only when no in-state facility can meet the pupil's
21 needs and only when the requirements of subsections (d)
22 and (e) have been met. Out-of-state placements shall be
23 made only in residential programs that meet the
24 requirements of Welfare and Institutions Code Sections
25 11460(c)(2) through (c)(3). For educational purposes, the
26 pupil shall receive services from a privately operated
27 non-medical, non-detention school certified by the California
28 Department of Education.

1 Id. This provision has many requirements, but no party contends that the student is not
2 “seriously emotionally disturbed,” that there is an “instate-facility [that] can meet [his]
3 needs,” that the requirements of subsection (d) (relating to documentation for residential
4 placement) have not been met, or that the requirements of subsection (e) (relating to a
5 mental health service case manager assessment) have not been met. Rather, plaintiffs
6 focus on the requirement that out-of-state placements meet the requirements of Cal.
7 Welfare & Inst. Code § 11460(c)(2)-(3) have not been met.

8 In relevant part, § 11460(c)(2)-(3) provides that “(3) State reimbursement for an
9 AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home
10 organized and operated on a nonprofit basis.”³

11 Reading these statutes together, the Court, like the ALJ, can discern no outright
12 prohibition under California law on Sullivan’s placement at NDA. To be sure,
13 § 60100(h) speaks in terms of conditions precedent to out-of-state placements when it
14 provides as follows: “Out-of-state placements **shall be made only** in residential
15 programs that meet the requirements of Welfare and Institutions Code Sections
16 11460(c)(2) through (c)(3),” but the subsection upon which plaintiffs focus, subsection
17 (c)(3) does not set forth a requirement so much as a limitation upon reimbursement for
18 the costs of such placement.⁴ This is especially so when viewed in light of § 60000,
19 which provides that the intent of the chapter of the Administrative Code in which
20 § 60100 appears “is to assure conformity with the federal Individuals with Disabilities
21 Education Act or IDEA.” That section provides guidance on interpretation of the Code
22 provisions that follow it:

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24 ³ The parties cite to subsection (c)(2) and (c)(3), but the “for-profit” non-
placement provision is found only in subsection (c)(3).

25 ⁴ This incorporation of the requirements makes much more sense as to
26 subsection (c)(2), which sets forth certain conditions relating to the operations of the
27 facility. Plaintiffs do not argue that these requirements have not been met; their
28 argument is that they are prohibited from placing Sullivan at NDA because of its for-
profit status.

1 Thus, provisions of this chapter shall be construed as
2 supplemental to, and in the context of, federal and state laws
3 and regulations relating to interagency responsibilities for
4 providing services to pupils with disabilities.

5 *Id.*

6 Plaintiffs reliance on *Yucaipa-Calimesa Joint Unified School District and San*
7 *Bernardino County Department of Behavioral Health*, OAH Case No. N2005070683
8 (2005), does not compel a contrary result. The ALJ properly distinguished that case on
9 the grounds that other acceptable placements were identified for the student. No such
10 alternative placements have been identified for Sullivan, and therefore the cited case is
11 unpersuasive.

12 What was apparent to the ALJ, and what is apparent to this Court, is that
13 whatever funding limitations plaintiffs may face, the duty under the IDEA to provide to
14 Sullivan a FAPE is clear and cannot be diminished. Equally clear from the record
15 before the ALJ, and before this Court, is that Sullivan can receive a FAPE through
16 placement at NDA, and that no other alternative placement has been identified.

17 **C. Sullivan’s Waiver Was Limited and Does not Affect the ALJ-Ordered**
18 **Remedy**

19 The waiver was limited to the time period of April, 2007, through October 9, 2007.
20 Rights for the time period thereafter are expressly reserved. DMH Compl., Exh. D.
21 (“Parent does not waive any claims of any kind from October 9, 2007 forward.”).

22 The compensatory education ordered by the ALJ only applied to the period from
23 the date of her decision, January 15, 2008, through the 2008- 2009 school year, several
24 months after the Defendants’ waiver expired. A.R. 788. The ALJ’s order of
25 compensatory education was a prospective equitable remedy that did not require RUSD
26 and DMH to provide any compensation for the time period before January 15, 2008.

27
28 **VI. CONCLUSION**

1 Accordingly, and for the foregoing reasons, the Court **AFFIRMS** the ALJ's
2 January 15, 2008, decision requiring RUSD and DMH provide Sullivan with a
3 compensatory education consisting of immediate placement at the National Deaf
4 Academy. The Court also **AFFIRMS** ALJ's February 20, 2008 Order Denying Motion for
5 Reconsideration.

6 Counsel for defendants shall lodge a proposed judgment that complies with Fed.
7 R. Civ. P. 54(a) within five days of the entry of this Order. A motion for attorney fees
8 may be filed in accordance with the schedule previously set by the Court.

9 **IT IS SO ORDERED.**

10 DATE: July 20, 2009



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12 STEPHEN G. LARSON
13 UNITED STATES DISTRICT JUDGE
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