

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT, LOS ANGELES COUNTY  
OFFICE OF EDUCATION, LOS ANGELES  
COUNTY DEPARTMENT OF MENTAL  
HEALTH, AND CALIFORNIA  
DEPARTMENT OF EDUCATION,

Respondents.

OAH CASE NO. 2009100740

**DECISION**

Administrative Law Judge Eileen M. Cohn (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in Los Angeles, California, on February 8, 2010.

Patricia Cromer, Attorney at Law, represented Petitioner (Student). Karen Gilyard, Attorney at Law, represented Respondent, Los Angeles County Office of Education (LACOE). My Nguyen, Attorney at Law, represented Los Angeles Unified School District (District). Edmundo Aguilar, Attorney at Law, represented Respondent, California Department of Education (CDE). He appeared telephonically. Andrea Ross, Attorney at Law, represented the Los Angeles County Department of Mental Health (LACDMH).

At the hearing, Student withdrew his due process hearing request as to LACDMH due to a pending settlement with LACDMH; based upon Student's request, LACDMH was dismissed without prejudice.

Student filed his request for Due Process Hearing (complaint) on October 7, 2009. Student filed an amended complaint for due process on December 14, 2009, adding Long Beach Unified School District (LBUSD) as a respondent. LBUSD's motion to dismiss was

granted on January 6, 2010. At the conclusion of the hearing, the matter was continued to February 16, 2010 to allow CDE to file a supplemental brief. The record was closed upon receipt of CDE's brief on February 16, 2010.

## ISSUE

Under the Individuals with Disabilities Education Act (IDEA), which public agency is responsible for funding Student's placement at a Residential Treatment Center (RTC) as offered in the April 8, 2009 individualized education program (IEP)?<sup>1</sup>

## FACTUAL FINDINGS

1. Student was 16 years old at the time of the April 8, 2009 IEP team meeting. Student is eligible for special education under the category of emotional disturbance (ED). Student has great strengths; he has high educational aspirations, good verbal skills, and a great sense of humor, which enable him to engage others in conversation.

2. Student has been a foster child since the age of two and a dependent child of the Superior Court of Los Angeles County (Juvenile Court). During the years after Student was removed from the care and custody of his abusive biological mother, he was placed in more than 40 foster homes and group homes, where he again was subjected to incidences of horrific abuse. Intermittently, from the time Student was two months old, he was taken care of by his grandmother in her capacity as a foster mother. Student's grandmother lives within the boundaries of LAUSD.

3. On February 24, 2006, the Juvenile Court appointed Joel Andres, J.D., M.A., (Mr. Andres), as Student's responsible adult (RA). At all relevant times, Mr. Andres resided within the boundaries of District. Mr. Andres was Student's RA at the time of the April 8, 2009 IEP team meeting.

4. Student has been detained in Juvenile Hall without interruption since October 2008. At the time of his detention, criminal charges were pending against him. Prior to Student's detention in Juvenile Hall, LAUSD was responsible for developing and implementing Student's IEP. LAUSD is a Special Education Local Plan Area (SELPA). LAUSD recognized Mr. Andres as Student's RA and holder of educational rights. LAUSD last prepared an IEP for Student on September 23, 2008. At that time, Student resided at Star View Adolescent Center. LAUSD's IEP team offered and placed Student at Hawthorne Academy, a non-public school (NPS).

5. On November 24, 2008, the Los Angeles County Office of Education (LACOE) convened its first IEP team meeting (the "LACOE IEP team") for Student after his

---

<sup>1</sup> Student withdrew her allegation that the IEP was procedurally flawed.

confinement in Juvenile Hall. LACOE is a SELPA. The LACOE IEP team confirmed LAUSD's identification of Student as eligible for special education under the category of ED. The LACOE IEP team placed Student in an SDC at Juvenile Court School (JCS). It also developed a behavior plan for Student. By the time of this IEP team meeting, Student's grandmother was no longer his foster parent and, at all times relevant to this dispute, Student did not have any identified foster parent.

6. One month later, on December 19, 2008, the LACOE IEP team met again. The school psychologist attended this meeting to confirm the necessity of an AB3632 mental health assessment referral to LACDMH. The LACOE IEP team also updated Student's behavior plan. With the consent of Mr. Andres, Student was referred to LACDMH for an AB3632 mental health assessment on December 24, 2008.

7. LACDMH completed its AB3632 mental health assessment of Student and provided a copy to LACOE during the first week of April 2009. The LACDMH mental health assessor observed that Student had never been treated for his emotional problems, including depression and high-risk behaviors resulting from the neglect, abandonment and severe abuse he suffered throughout his life. The LACDMH mental health assessor diagnosed Student with Bipolar Disorder not otherwise specified (NOS). LACDMH recommended that Student be placed in an out-of-state residential placement.

8. LACOE convened an IEP team on April 8, 2009, to discuss LACDMH's AB3632 assessment and placement recommendation. The LACOE IEP team was expanded to include LACDMH ("the LACOE expanded IEP team."). LAUSD was invited to the meeting, but did not attend. The LACOE expanded IEP team adopted the conclusions and recommendations of LACDMH and offered an out-of-state RTC placement. LACDMH estimated that residential placement would be required for at least one year.

9. Mr. Andres was not included in the April 8, 2009 LACOE expanded IEP team meeting. Without his participation, LACDMH was not certain who was authorized to consent to Student's referral and placement. Student's grandmother attended the IEP team meeting. The LACOE expanded IEP team acknowledged that she was no longer the foster parent of pupil. Pending consent from Student's authorized guardian to the out-of-state RTC, LACDMH agreed to initiate referrals with residential treatment facilities. LACDMH also agreed to provide outpatient mental health services for Student while he remained in Juvenile Hall. LACDMH agreed to provide individual psychotherapy from 60 minutes to 120 minutes per week, family therapy from 30 to 60 minutes per week, medication support at a frequency deemed medically necessary by the treating psychiatrist, and case management from 15 to 45 minutes per week.

10. The LACOE expanded IEP team did not agree to implement the residential placement. As memorialized in the IEP, "placement would not be implemented" until the "school district" responsible for pupil's placement after his release from Juvenile Hall was established. LACOE disavowed any responsibility for Student's placement after his release from Juvenile Hall. LACOE stated that it is "responsible for offering FAPE at this time

because the student is currently detained in a [Los Angeles] county juvenile hall and is attending a LACOE educational program.” LACOE further represented that “[b]y making an offer of FAPE at this time, LACOE is not assuming responsibility for student’s placement following student’s release from Juvenile Hall.”

11. The LACOE expanded IEP team concluded the April 8, 2009 meeting by setting another IEP team meeting on May 19, 2009, for the purpose of including LAUSD. The May 19, 2009 LACOE expanded IEP team meeting was also planned as Student’s annual review. LACOE contacted LAUSD prior to the meeting, but LAUSD declined LACOE’s invitation on the stated ground that it was the policy of LAUSD to hold IEP team meetings once the pupil returns to LAUSD, but not IEP team “placement meetings” in other districts prior to the pupil’s return to LAUSD.

12. On May 19, 2009, the expanded IEP team met as agreed, but without LAUSD. At the May 19, 2009, LACOE expanded IEP team meeting, LACDMH notified LACOE that Student had been accepted at Devereux Residential placement in Texas, an RTC with an NPS. It cautioned that Devereaux could rescind the placement unless Student was placed soon. In the event that Devereaux rescinded its acceptance, LACDMH would have to re-refer Student and pursue other placements. LACOE refused to take any further action on the placement without LAUSD, which it maintained was Student’s home district upon his release from Juvenile Hall. The May 19, 2009 LACOE expanded IEP team noted that “nothing [about placement] is going to be discussed at the meeting because student’s home district did not attend.” The LACOE expanded IEP team continued the annual review from this IEP team meeting to another meeting in November 2009. The expanded IEP team did agree to additional counseling services for Student, 60 minutes a week for two months. Mr. Andres signed the IEP on May 21, 2009.

13. LACDMH continued to pursue several out-of-state RTC placements for Student after the May 19, 2009 LACOE expanded IEP team meeting. By mid-summer, Student was accepted at Emily Griffith Center in Larkspur, Colorado, an RTC that LACDMH preferred for Student. LACDMH did not immediately notify LACOE of Student’s acceptance at Emily Griffith.

14. On September 18, 2009, at the behest of Student’s Court Appointed Special Advocate (CASA) volunteer, the Juvenile Court issued an order, which was intended to change Mr. Andres’s status from RA to that of “surrogate.” Utilizing the form entitled “Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child’s Educational Needs,” the court reaffirmed at section 11(a) of the form that it was limiting the right of Student’s biological parents to make educational decisions for Student pursuant to Welfare and Institutions Code sections 319(g), 361(a), or 726(b). Pursuant to these same Welfare and Institutions Code sections, it also identified at section 11(d) Mr. Joel Andres as Student’s “educational representative.” The boilerplate of the form states as follows:

The following responsible adult who has no apparent conflict of interest and who is not prohibited by Education Code section 56055 or 34 Code of Federal Regulations section 300.519 or 3030.19, is appointed as the child's educational representative.

The court form at section (d) was modified by hand. Specifically, the term "responsible adult" was crossed out and replaced with the term "Court Appointed Surrogate." The court did not check section (e) of the court form which provides for a referral to the local educational agency to appoint a surrogate parent under Government Code section 7579.5 within 30 days of the court referral where the court cannot identify a responsible adult to make educational decisions for the child.

15. On October 10, 2009, Mr. Andres consented to the April 8, 2009 LACOE expanded IEP team placement offer of an out-of-state RTC.

16. On November 9, 2009, the Juvenile Court issued an order entitled "Consent Order to Implement the April 8, 2009 Addendum to the November 24, 2008 IEP for Educational Residential Placement (RTC) VIA AB3632 at Emily Griffith Center, a Non-Public School (NPS) in Larkspur, Colorado"(Consent Order). Through the Consent Order, the Juvenile Court:

- Affirmed its consent to the implementation of the residential placement recommendation of the April 8, 2009 IEP;
- Acknowledged that Student would be placed at the out-of-state RTC, Emily Griffith Center;
- Ordered the Student released from Juvenile Hall to LACOE, LAUSD, or any school district determined to be responsible for implementing the April 8, 2009 IEP;
- Retained its jurisdiction over the minor after his release from Juvenile Hall and placement at the RTC;
- Restricted the right of anyone, including Student, from removing him from the RTC, before or after Student's 18th birthday, without court consent;
- Established the responsibilities of the LADCFS [Los Angeles Department of Children and Family Services] to assist in Student's placement at the out-of state RTC;
- Charged LADCFS with Student's care and custody and directed the agency to attend to Student's medical insurance, disability insurance, clothing, personal expenses and execution of documents required to finalize the placement; and
- Required LADCFS to escort the Student to the residential placement instead of the court-appointed RA on the ground that the RA's duties did not encompass accompanying Student to the RTC.

17. As of the date of hearing, Student remained confined in Juvenile Hall. The Juvenile Court has not released Student from Juvenile Hall to attend the RTC.

## LEGAL CONCLUSIONS

1. As the petitioning party in a special education due process hearing, Student has the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Student seeks a determination of which public agency is responsible for funding Student's placement at an RTC upon his release from Juvenile Hall. Student is concerned that without a definitive decision as to which entity is responsible for funding the out-of-state RTC upon Student's release from Juvenile Hall, Student will be retained in Juvenile Hall and will not receive the intensive therapy that all agree that he needs to access his education and which is only available at an RTC. Student further argues that given the distinctions between the statutory construction of the terms "responsible adult" and "surrogate," the CDE should be deemed the agency responsible for providing Student a FAPE if no other agency is found to be responsible. As discussed below, based upon the evidentiary record in this matter, OAH's jurisdiction to determine the responsible agency is limited to determination of the agency responsible for providing Student a FAPE while he is in Juvenile Hall. As further discussed below, LACOE is responsible for providing Student a FAPE while he is housed in Juvenile Hall.

### *OAH's Jurisdiction*

3. OAH's jurisdiction to determine the agency responsible for funding Student's out-of-state RTC placement is limited. Student, LACOE and the CDE requested that OAH identify the agency responsible for funding Student's placement at the RTC after his release from Juvenile Hall. LACOE and the CDE contend that LAUSD is responsible upon Student's release from Juvenile Hall based on their confidence in the continued residency of the responsible adult/surrogate parent in LAUSD's territory. As further discussed below, this decision does not reach the issue of which, if any, respondent agency, LAUSD and/or the CDE, is responsible for providing Student a FAPE after Student is released from Juvenile Hall.

4. Special education disputes under the IDEA encompass disagreements between parents and public agencies regarding: public agency offers; the refusal of public agencies to initiate or change the identification, assessment, or educational placement of the pupil; or the provision of a FAPE to the pupil. (Cal. Code Regs. tit. 5, § 3080.) IDEA hearings brought by a pupil against a public agency properly include determinations of residency for purposes of identifying the public agency responsible for providing special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.) In contrast, inter-agency due process

hearing requests in which one agency names another as a respondent are outside of the jurisdiction of IDEA hearings. (Gov. Code, § 7586, subd. (d) [no state or local public agency may request a due process hearing against another public agency].)

5. Pupils subject to the jurisdiction of the juvenile court may be adjudged either as dependents or wards of the court. (Welf. & Inst. Code, §§ 300, 601 & 602.) Special education due process hearing procedures extend to pupils who are wards or dependants of the court, to their parents or guardians, and to the public agencies involved in any decisions regarding pupils. (Ed. Code, § 56501, subd. (a).) The juvenile court may adjudge a child a dependent of the court where, e.g., the child has suffered, or is at substantial risk of suffering, serious physical harm or illness, serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, or sexual abuse, by the child's parent or guardian, or where the child has no parent or guardian capable of protecting or supervising the child or providing appropriate care. (Welf & Inst. Code, §300, subds. (a)-(d).) The juvenile court may adjudge the child a ward of the court where children under the age of 18 are beyond the control of their parents or guardians, or have violated municipal, state or federal law. (Welf. & Inst. Code, §§ 601, 602.)

6. Welfare and Institutions Code section 361, provides that a "responsible adult" must be appointed when a child is adjudicated a dependent child of the court under section 300 and the court limits parental rights to make educational decisions on behalf of the child. (Welf. & Inst. Code, § 361, subd. (a); see also Welf. & Inst. Code , § 319, subd. (g), 361, subd. (a), 726, subd. (b)) A responsible adult must be in place unless the parents' rights to make educational decisions are fully restored. (Welf. & Inst. Code, § 361, subd. (a).)

7. A "surrogate parent" is defined as a "parent" and may represent a student in special education matters. (Ed. Code, §§ 56028, subd. (a)(5) & 56050, subds. (a) and (b).) Government Code section 7579.5 (contained in sections relating to inter-agency coordination of the provision of mental health services), provides that a local educational agency is obligated to appoint a "surrogate parent," as defined under the IDEA, for a dependent child only if no "responsible adult" had been appointed pursuant to Welfare and Institutions Code section 361 (setting forth the definition of "responsible adult") or Education Code section 56055 (setting forth the definition and responsibilities of a "foster parent"). (Gov. Code, § 7579.5, subd. (a)(1)(C).) The authority of the juvenile court to directly appoint a "surrogate parent" to make educational decisions is limited. The juvenile court must refer the pupil to the local educational agency for appointment of a surrogate parent when it is unable to appoint a responsible adult to make educational decisions for the pupil (Welf. & Inst. Code § 726, subd. (b)(5). It can only appoint a surrogate when the child is deemed to be a ward of the court. (Gov. Code, § 7579.6, subd. (a).)

8. The applicable sections of the Welfare and Institutions Code when read together with the Education Code, demonstrate that the main difference between a "responsible adult" and a "surrogate parent" is that a "responsible adult" under state law is appointed by a judge of the juvenile court whereas a "surrogate parent" is appointed by a local educational agency under the IDEA. While the Education Code specifies in more detail

the scope of the surrogate parent's authority as it relates to educational decision-making, the authority of the RA to make educational decisions in special education, when read together with the definition of special and related services, is synonymous with that of a surrogate parent, and includes authorization for the extensive mental health services and placement required to provide Student a FAPE. It is axiomatic that the educational benefit required to satisfy a FAPE is not limited to academic needs, but includes the pupil's mental health needs, social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

9. 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 & 56028.5.)

10. OAH's jurisdiction is limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing. OAH is expressly barred from issuing declaratory decisions in special education matters, regarding the applicability of a statute, regulation, or judicial precedent unless otherwise expressly authorized by the IDEA. (Cal. Code Regs. tit. 5, § 3089.) The IDEA expressly authorizes a school district to bring a due process complaint regarding a pupil with special needs where it seeks a "declaration" that it appropriately assessed a pupil or provided the pupil with a FAPE. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a)(1)(2006); Ed. Code, § 56501, subs. (a)(1)-(4).)

11. Further, like other judicial and administrative bodies, OAH cannot write advisory opinions based upon speculation as to what might occur. (See e.g., *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [84 Cal. Rptr.3d 223, 230] (the court deemed the matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship).)

12. Here, Student's former residency in LAUSD is well-established. Both his grandmother and former foster parent, and Mr. Andres, his RA, currently live within the boundaries of LAUSD. However, the timing and circumstance of Student's release from Juvenile Hall is speculative. Student's counsel represented that Student was being housed in Juvenile Hall as a dependent minor, under Welfare and Institutions Code section 300, and not a ward, under section 602. Student asserts that his status as a dependent and not a ward is relevant to a determination of Student's residency post-release. Student also maintains that Mr. Andres's new status as a surrogate as opposed to an RA is also relevant to Student's residence post-release. However, Mr. Andres's status as an RA was unaffected by the Juvenile Court's order recasting him as a surrogate because only the SELPA can designate a surrogate, not the Juvenile Court, unless Student is a ward. However, given the Juvenile Court's recent attempt to redesignate Student as a surrogate, it is not inconceivable that further orders changing his RA will be made in the future. Likewise, as evidenced by the Consent Order, the Juvenile Court exercises broad powers over Student and, at any time, may issue additional orders which affect Student's release date, including its election as to

either suspend or prosecute pending criminal charges against pupil. Accordingly, representations made about Student's status *before* his release from Juvenile Hall do not provide a fixed evidentiary foundation for determining the public agency responsible for providing him a FAPE, *after* his release from Juvenile Hall.

13. The parties could not identify any binding precedent for OAH to issue an advisory opinion regarding which agency has responsibility for providing Student a FAPE after his release from Juvenile Hall. The parties identified previous OAH special education decisions. Past OAH decisions may be cited as persuasive, but they are not binding authority. (Cal. Code. Regs. tit. 5, § 3030.) The non-binding OAH decisions referenced by the parties are not persuasive as the pupils in these decisions were already released from Juvenile Hall and placed in out-of-state RTCs. (See *OCDE v. Student* 2009010078/2009010529 (2009), *Student v. OCDE* 2009090943/2009100565 (2009), *OCDE v. Student*, 2008120021/2009020130 (2009), and *Student v. Hemet Unified School District* 2006100472 (2006).)

14. LACOE contends that the Special Education Hearing Office (SEHO), the predecessor to OAH, in *Student v. Placentia-Yorba Linda Unified School District* 1001 (2005) did reach the issue of the SELPA responsible for Student's FAPE after his release from Juvenile Hall. In that case, the juvenile court ordered Student "released" to the specified school district for placement and transportation to an out-of-state treatment facility, but "detained" at Juvenile Hall pending transportation to the out-of-state facility. Based upon the undisputed fact that Student still remained in Juvenile Hall, the hearing officer determined that the local county board of education remained responsible for providing him a FAPE. The juvenile court further ordered that care of Student for educational purposes be vested with the grandmother. Based upon the juvenile court's order, Student claimed that grandmother's district of residence was responsible for providing him a FAPE. Comparing the governing residency statute at the time, which rendered grandmother's residence irrelevant without a grant of formal guardianship, to the undisputed facts establishing that Student's biological parents did not live within the boundaries of the respondent school district, the hearing officer determined that the respondent school district was not responsible for providing Student a FAPE. The decision did not consider the limitations on administrative decisions imposed by California law.

15. In short, OAH can address which public agency has the responsibility to provide Student with a FAPE while he is in Juvenile Hall as established by the evidence at the hearing. However, OAH cannot render declaratory decisions outside of the narrow parameters of the IDEA. Like other administrative and judicial bodies, it cannot give advisory opinions regarding future events. Thus, to the extent Student is seeking a determination about which agency is responsible for his education in the future, the OAH decisions cited above are not applicable. (Legal Conclusions 1, 4 through 11, 13 and 14; Factual Findings 1 through 17.)

*LACOE's Responsibility for Providing Student a FAPE in Juvenile Hall*

16. LACOE has accepted responsibility for convening IEP team meetings, making IEP offers of placement and services and providing special education and related services to Student while Student remains physically confined in Juvenile Hall and is attending a JCS. LACOE maintains that the moment Student is released from Juvenile Hall, and steps across its threshold, he no longer attends a JCS, and accordingly, its responsibility ends. Furthermore, LACOE asserts, at the very moment of his release from Juvenile Hall, the obligation to provide Student a FAPE is shifted to Student's school district of residence, here, LAUSD. Because the RTC offered is out-of-state, LACOE insists that it has no responsibility to implement the IEP by physically placing the Student at the RTC and providing any funding for the RTC, even if the funding is subject to reimbursement. As further discussed below, LACOE is responsible for fully implementing Student's IEP under the facts presented, including physically placing him at the RTC.

17. Children who have been adjudicated by the juvenile court for placement in a juvenile hall are entitled to a FAPE. (Ed. Code, § 56150.) Under both California law and the IDEA, a child is eligible for special education if the child needs special education and related services by reason of emotional disturbance. (20 U.S.C. § 1401(3)(A)(i) and (ii); Cal. Code Regs., tit. 5, § 3030.)

18. The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a [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 FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

19. "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031, subd. (a).) "Related services" are developmental, corrective and supporting services that are required to assist a special needs pupil to benefit from special education. (20 U.S.C. § 1401(a)(26); 34 C.F.R. § 300.34(a) (2006); Ed. Code, § 56363, subd. (a).) "Related services" include psychological services and counseling services. (Ed. Code, § 56363, subds. (b)(9-10).) Specially designed instruction also includes accommodations that address a child's unique needs and that ensure access to the general curriculum. (34 C.F.R. § 300.39(b)(3) (2006).)

20. Each local educational agency shall have an IEP in effect for each individual with exceptional needs within its jurisdiction at the beginning of each school year. (Ed. Code, § 56344, subd.(c).)

21. The IEP is a written document for each child who needs special education and related services. The contents of the IEP are mandated by the IDEA and require, among

other things, a statement of the special education and related services, program modifications and support, and the projected date for the beginning of the services and modifications. (20 U.S.C. § 1414(d)(1)(A)(IV)& (VII); 34 C.F.R. § 300.320.)

22. Although the Education Code does not explicitly set forth its overall purpose, the primary aim of the Education Code 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 District* (2004) 117 Cal.App.4th 47, 63.)

23. In California, for the most part, residency determines which SELPA has the responsibility for providing a disabled child with a FAPE. Under the state's compulsory education law, a pupil who is between the ages of six and 18 must attend the school district where his/her parent, surrogate parent or legal guardian resides. (Ed. Code, §§ 48200 and 56028; *Katz v. Los Gatos-Saratoga Joint Union High School District, supra*, 117 Cal.App.4th 47, 54) There are exceptions to this basic rule of residency: if the pupil is placed by a court, regional center for the developmentally disabled, or public agency other than an educational agency, in a licensed children's institution, a licensed foster home or a family home; if the pupil is the subject of an inter-district transfer; if the pupil is emancipated; if the pupil is living in the home of a care-giving adult; or if the pupil is residing in a state hospital. (Ed. Code, § 48204, subs. (a)-(e).) None of these exceptions are applicable in this case. A juvenile hall school is not included in any of these exempted categories. (Ed. Code, § 56155.5.)

24. JCSs provide educational services to all students in juvenile halls. (Ed. Code, § 48645.1) When a child with a disability attends a JCS, the normal rules of residency for determination of the LEA that is responsible for providing the child with a FAPE do not apply. Instead, the county office of education for the county in which the JCS is located must develop and implement a special education program for the child. The county office of education has authority to contract with other educational agencies for supporting services. (Ed. Code, §§ 48645.2, 56150.) The Legislature addressed the need for county offices of education to develop memorandums of understanding and other collaborative processes with the county probation department to meet the needs of wards of the court who are receiving their education in juvenile hall schools. County offices of education were directed to develop an educational plan for pupils, while assigned to juvenile hall, which were integrated with other rehabilitative and behavioral management programs that supported the educational needs of the student. (Ed. Code, § 48646, subs. (a), (b)(5)(B).)

25. After pupils are released from juvenile hall, the responsibility for a FAPE typically shifts to the school district in which either parent of the student resides, or in the alternative, in which the guardian resides. (Ed. Code § 48200.)

26. Here, LACOE is responsible for providing Student with a FAPE while Student is under the jurisdiction of the Juvenile Court and housed in Juvenile Hall. Student has remained housed in Juvenile Hall and has not been released to an RTC. As the agency

charged with providing Student with a FAPE, LACOE's responsibilities encompass offering and implementing its offer of a FAPE embodied in the April 8, 2009 IEP. LACOE developed the IEP and made the offer of an RTC as part of an expanded IEP team. As long as Student remains in Juvenile Hall, LACOE must also implement that IEP and place Student in the RTC. LACOE cannot disavow its obligation to implement Student's IEP, as it did. It must integrate him into his identified rehabilitative and behavioral management program, which will support his educational needs, in accordance with Education Code sections 48645.2, 48646, and 56150. To provide Student with a FAPE, LACOE has a responsibility to coordinate efforts between agencies toward this end, including signing the educational and related services component of the RTC contract, transporting Student, and initially funding the placement. After Student is placed in the RTC, LACOE is entitled to seek reimbursement from other public agencies subject to the residency statutes. (Legal Conclusions 1, 4 through 9, 17 through 25; Factual Findings 1 through 17.)

#### *LAUSD's Responsibility*

27. Student, LACOE and the CDE maintain that LAUSD is responsible for funding the placement because, the moment Student is released from Juvenile Hall, the agency where his RA and/or "surrogate" lives will be responsible for providing a FAPE. District contends it is not obligated to provide Student a FAPE and fund his placement in the out-of-state RTC because Student has not yet been released from Juvenile Hall. LAUSD further contends under various theories that, upon Student's release, it will still not be responsible.

28. Here, OAH has no jurisdiction or ability to decide if LAUSD is responsible for providing Student with a FAPE until such time as he is actually released. Until such time as Student is actually released, LACOE must implement the RTC placement. Consistent with the above, this decision need not reach the issue of what, if any, responsibility District has to provide Student a FAPE after his release. (Legal Conclusions 1, 4 through 26; Factual Findings 1 through 17.)

#### *CDE's Responsibility*

29. Student, LACOE and District argue that, where the statutes are ambiguous, the CDE should be deemed responsible. The CDE maintains that it is not charged with the responsibility for funding Student's out-of-state RTC placement under any scenario because the residency statutes clearly control, and if not, its statutory obligations clearly do not extend to the provision of direct services to special education pupils. According to the CDE, its obligations as the overseer of local educational agencies and SELPAs are mainly supervisory.

30. Under the IDEA, the State Educational Agency (SEA) has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) This responsibility includes ensuring that a FAPE is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C.

§ 1412(a)(1)(A); 34 C.F.R. § 300.101(a)(2006).) In the rare instance when state law does not provide for a responsible LEA or public agency, then the duty to provide a FAPE falls upon the SEA. (*Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 952-953; *Orange County Dept. of Education v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170.)

31. For the reasons set forth above, LACOE unequivocally has the responsibility to provide Student with a FAPE under the facts presented at the time of hearing. The CDE is not responsible for providing Student a FAPE while Student is in Juvenile Hall. Thus, at present, the CDE is not responsible for the educational component of Student's RTC. (Legal Conclusions 1 through 30; Factual Findings 1 through 17.)

### ORDER

1. LACOE shall immediately implement Student's April 8, 2009 IEP by coordinating and funding the educational and related services component of placement in the agreed-upon RTC, including transportation to the RTC that is not otherwise funded by LACDMH or another agency.

2. LACDMH is dismissed without prejudice.

### PREVAILING PARTY

Pursuant to 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. Here, Student was the prevailing party against LACOE on the sole issue presented.

### 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 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: March 3, 2010

\_\_\_\_\_  
/s/  
EILEEN M. COHN  
Administrative Law Judge  
Office of Administrative Hearings