

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2010040050

DECISION

Administrative Law Judge (ALJ) Richard T. Breen, Office of Administrative Hearings (OAH), State of California, heard this matter in Downey, California, on May 24, 2010.

Attorney Tania L. Whiteleather represented Student. Student was not present at the hearing. Attorney Karen E. Gilyard represented the Los Angeles County Office of Education (LACOE). Dr. Gary Levin attended the hearing for LACOE.

Student's Request for a Due Process Hearing was filed on March 30, 2010. No continuances were granted prior to hearing. At hearing, a continuance was granted to June 2, 2010, to permit the parties to file written closing arguments. The record was closed and the matter was submitted upon receipt of written closing arguments on June 2, 2010.

ISSUE¹

Is LACOE currently responsible for providing Student with a free appropriate public education (FAPE)?

¹ Student withdrew her second issue on the day of hearing. Student's third issue was dismissed prior to hearing for lack of jurisdiction.

FACTUAL FINDINGS

1. Student is an 18-year-old young woman, who, at all relevant times was detained at the Los Angeles County Central Juvenile Hall (Juvenile Hall) pursuant to a wardship petition filed on May 15, 2009. From the time of her detention through February 24, 2010, Student was eligible for special education services as a student with a learning disability. After February 24, 2010, Student also became eligible for special education as a student with an emotional disturbance.
2. At all relevant times, Student attended the Central Juvenile Hall School.
3. LACOE operated the Central Juvenile Hall School and developed individualized education programs (IEPs) for special education students enrolled there.
4. At an IEP team meeting on September 25, 2009, Student was referred for a mental health assessment to the Los Angeles County Department of Mental Health (DMH) pursuant to AB 3632. The IEP reflects that Student was 18 years old at the time, that Student had not been in school for approximately five years prior to the IEP, that Student's parent did not attend, and that the last time an IEP had been developed for Student was in 2005.
5. DMH assessed Student in December of 2009. DMH found that Student was also eligible for special education as a student with an emotional disturbance. In a report dated January 8, 2010, DMH recommended that Student should be placed in a residential treatment center (RTC).
6. At an IEP team meeting on February 24, 2010, Student's IEP was changed to add emotional disturbance as a basis for Student's eligibility for special education. DMH repeated the recommendation in its January 8, 2010 report that Student required placement in a RTC. The IEP expressly stated "LACOE agrees that the student requires a residential [treatment center] directly upon her release from Juvenile Hall."
7. At subsequent IEP team meetings on March 25, 2010; May 5, 2010; and May 7, 2010, LACOE took the position that it did not have to do anything to provide the RTC placement to Student because, consistent with its statement in the February 24, 2010 IEP, the RTC placement would only occur upon her release from Juvenile Hall. LACOE's offer of placement and services at these IEP team meetings was continued placement in a special day class at Central Juvenile Hall School with counseling. As of the date of hearing, LACOE had not taken any steps to implement the recommendation for a RTC placement.
8. At hearing, the ALJ took notice of a May 20, 2010 order of the Superior Court of California, County of Los Angeles, Juvenile Court (Juvenile Court). The order stated, in relevant part, that: "The Court will permit the implementation of the residential placement recommended for [Student] in the February 24, 2010 IEP, upon determination of the agency responsible for the educational services to the minor"

9. As of the date of hearing, Student had been accepted for admission to Devereux, a RTC in Texas with a program for young women over the age of 18. As a condition of enrolling Student, Devereux required written confirmation of the “agency/district” that was “committed to funding for the duration of the placement” and confirmation that Student had medical insurance. Devereux anticipated that there would be two openings around May 28, 2010. If Student was not enrolled at that time, Devereux generally had openings in August.

LEGAL CONCLUSIONS

1. Student contends that LACOE was responsible for providing Student with a FAPE. In particular, Student contends that, because LACOE is a “local educational agency” for purposes of implementation of the IDEA, LACOE must implement the recommendations of Student’s IEP team, including the recommendation by DMH that Student requires placement at a RTC in order to receive a FAPE. LACOE disagrees, contending that: 1) they have been providing Student with education in a SDC at all relevant times; 2) that no specific RTC was recommended on February 24, 2010, and as of the time of hearing, it was uncertain whether a bed was available at Devereux; and 3) because LACOE would not have a duty to provide a FAPE to Student upon her release from Juvenile Hall, it does not have a present duty to implement a placement outside of Juvenile Hall. As discussed below, Student is correct.

2. As the petitioning party, Student had the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

3. 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 free appropriate public education (FAPE),” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A FAPE means special education and related services that are available to the student at no cost, 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).)

4. 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).) IDEA hearings brought by a pupil against a public agency properly include determinations of 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.) However, special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing and expressly do not include declaratory decisions about how the IDEA would apply hypothetically. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs, tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L. Ed. 2d

855] [“courts do not sit to decide hypothetical issues or to give advisory opinions”]; *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [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].)

5. The IDEA allows states the flexibility to determine which agency provides the assessments or related services required by the IEP process. (See 20 U.S.C. § 1412(a)(12).) In California, county departments of mental health, such as DMH, conduct mental health assessments for purposes of developing IEPs. (Gov. Code, §§ 7570; 7572, subs. (a) & (c), 7576, subd. (a).) If mental health services are recommended by an assessor as a related service, “the recommendation of the person who conducted the assessment shall be the recommendation of the [IEP] team members who are attending on behalf of the local educational agency.” (Gov. Code, § 7572, subd. (d)(1).)

6. In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) When a residential placement is recommended by an IEP team, the local education agency, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) [including county offices of education within the definition of local education agency], 60110, subd. (b)(2) [for residential placements, “The LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil.”], & 60200, subd. (d).)

7. Here, at all relevant times through the date of hearing, LACOE was statutorily responsible for providing Student with a FAPE because Student is under the jurisdiction of Juvenile Court and housed in Juvenile Hall. LACOE’s first two arguments, that it provided a SDC placement, and that no specific RTC placement was reserved for Student as of the date of hearing, do not change that LACOE is obligated by operation of the Education Code to provide a FAPE to students in Juvenile Hall. The issue of whether the program offered by LACOE during the relevant time period actually constituted a FAPE had been withdrawn by Student prior to hearing and is not at issue. Further, the recommendation of DMH for placement in a residential treatment center must be accepted by LACOE as the recommendation of the IEP team under Government Code section 7572, subdivision (d)(1). Moreover, LACOE has unequivocally agreed in numerous IEPs that to receive a FAPE, Student requires a RTC upon release from Juvenile Hall. Thus, LACOE’s first two arguments fail.

8. LACOE further argues that another agency is Student’s “district of residence” after her release from Juvenile Hall by operation of Education Code section 56041, subdivision (a), because she resided in Juvenile Hall prior to her eighteenth birthday. However, the full text of Education Code section 56041, subdivision (a) provides: “For nonconserved pupils, the last district of residence in effect prior to the pupil’s attaining the age of majority shall become and remain as the responsible local educational agency, as long

as and until the parent or parents relocate to a new district of residence.” However, as of the date of the hearing, prior to Student’s actual release from Juvenile Hall, there was no way to determine what other agency or local school district, if any, would be responsible to pay for Student’s education. In particular, it cannot be said with any certainty that Student’s prior school district (who was not a party to the due process hearing) is responsible for Student’s education when according to LACOE’s own IEP, Student had not been enrolled in school for five years prior to the September 25, 2009 IEP. Accordingly, any such determination would be purely speculative and not ripe for adjudication. The ALJ is unaware of any statutory authority, and LACOE has produced none, to support LACOE’s position that it has no present duty to implement placement in a RTC when recommended by DMH, or that LACOE’s duty to provide a FAPE is limited or qualified based on the possibility that another agency may have financial responsibility for Student’s education upon her release from Juvenile Hall.

9. Thus, under the facts presented, LACOE must immediately implement the RTC placement recommended by DMH at the February 24, 2010 IEP. (See Ed. Code §§ 48645.2, 48646, and 56150 [together establishing LACOE’s duty to provide a FAPE to students in juvenile hall]; Cal. Code Regs., tit. 2, §§ 60010, subd. (k), 60110, subd. (b)(2) & 60200, subd. (d) [together establishing that LACOE is considered a local educational agency responsible for all non-mental-health educational services related to a RTC placement].) Specifically, where the Juvenile Court has indicated a willingness to release Student to a RTC as part of the disposition of the wardship petition, LACOE has a responsibility to coordinate efforts between agencies toward this end, including signing any necessary contracts, providing any necessary funding, and transporting Student. After LACOE has met its duty to provide a FAPE to Student, it may use whatever legal process it deems appropriate to attempt to shift responsibility for the provision of a FAPE to another public agency. (Factual Findings 1-9, Legal Conclusions 2-8.)

ORDER

LACOE is responsible for providing Student with a FAPE by implementing the February 24, 2010 IEP team recommendation to place Student in a residential treatment center. LACOE’s responsibility includes coordinating efforts between agencies, signing any necessary contracts, providing any necessary funding, and providing transportation for Student.

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. Student prevailed on the sole issue heard and decided.

