

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

In the Matter of:

STUDENT,

Petitioner,

v.

HEMET UNIFIED SCHOOL DISTRICT,
ORANGE UNIFIED SCHOOL DISTRICT,
and ORANGE COUNTY DEPARTMENT OF
EDUCATION,

Respondents.

OAH CASE NO. N 2006100472

DECISION

Administrative Law Judge (ALJ) Trevor Skarda, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on December 21, 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, a consultant for OCOE. Both Orange Unified School District (Orange) and Hemet Unified School District (Hemet) were represented by attorney Brian R. Sciacca. Also present on behalf of Orange was William Gee, the special education local plan area (SELPA) Director for Orange. Also present on behalf of Hemet was Gary Goldamere, Hemet's Director of Special Education.

Attorney Patricia Cromer was present on behalf of the Student. Jackie Warner, who has been designated by the Orange County Juvenile Court as Student's Responsible Adult (RA), was also present on behalf of Student. Student's parents did not attend.

The hearing convened on December 21, 2006. Thirty-four exhibits were admitted by stipulation of the parties. The parties agreed to multiple stipulated facts. Several witnesses testified. The parties agreed to waive the forty-five day time lines, and the ALJ agreed to issue his decision no later than January 31, 2007.¹ Thereafter, on January 19, 2007, the last

¹ Under the applicable statutory timelines, the decision would have been due *after* the stipulated date.

of the written closing arguments was received by the ALJ, and the matter was submitted for decision.

ISSUE²

Which local educational agency (LEA) is responsible for Student's free and appropriate public education (FAPE): Hemet Unified School District, Orange Unified School District, or the Orange County Office of Education?

CONTENTIONS OF THE PARTIES

In August 2005, Student was transported to a California State certified non-public, non-sectarian school (NPS) residential treatment center (RTC). The placement is called Excelsior Academy (Excelsior) and is located in Aurora, Colorado. Prior to Excelsior, Student's educational placement was Orangewood. It was not disputed that, while Student was at Orangewood, her education was the responsibility of OCDE. The question presented is which agency became responsible for Student's FAPE after she left Orangewood.

Student contends that after she left Orangewood, her FAPE became the responsibility of Hemet because one or both of Student's parents resided within the boundaries of Hemet at that time. In the alternative, Student contends that OCDE or Orange is responsible for Student's FAPE.

While OCDE admits that it was responsible for Student's education during her stay at Orangewood (from February to August 2006). OCDE contends that it was not the responsible LEA after she left Orangewood, because it was not Student's "district of residence." OCDE contends that Hemet or some other public agency then became responsible for Student's FAPE.

Hemet contends that it is not responsible for Student's FAPE because Student's parents were stripped of educational decision-making rights by a court of competent jurisdiction. Hemet contends that the general rule found in Education Code section 48200 (that the parent's residence determines what public agency is responsible for a pupil's FAPE) is inapplicable.

Orange contends that it is not responsible for Student's FAPE.

² For purposes of clarity and organization, the ALJ has rephrased the issue presented.

FACTUAL FINDINGS

Jurisdictional Matters

1. Student is a 15-year-old ninth-grade pupil. She is eligible for special education and related services as a student with an emotional disturbance. As noted above, Student currently resides in an RTC located in Colorado called Excelsior.

Factual Background

2. Student is currently a dependent of the Orange County Juvenile Court (Court) in accordance with Welfare and Institutions Code section 300, et. seq. Student is not a ward of the Court.

3. Educational rights have been removed from Student's parents. However, parental rights (including legal custody) have not otherwise been removed from Student's parents. Student's mother is currently involved in Student's treatment program at Excelsior.

Student's Temporary Placement at Orangewood Children's Home

4. On or about February 6, 2006, the Orange County Department of Social Services (SSA) placed Student at Orangewood Children's Home (Orangewood). Orangewood is Orange County's only temporary emergency shelter for neglected and sexually, physically or emotionally abused children who fall within the provisions of section 300, et. seq., of the Welfare and Institutions Code.

5. On May 4, 2006, the Student's individualized education program (IEP) team referred Student to Orange County Health Care Agency (Mental Health) for a mental health assessment and potential placement in an RTC. OCDE subsequently sent a copy of the IEP to Hemet.

6. On May 5, 21 and 22, 2006, counsel for the Student sent separate correspondence to Hemet regarding Hemet's potential responsibility for Student's education based on the residence of her parents. The May 22, 2006 correspondence states that Student's mother lived within the boundaries of Hemet.

7. On June 8, 2006, the Court appointed Jackie Warner as the Student's RA, authorizing her to make educational decisions on behalf of the Student.

8. On July 5, 2006, OCDE invited Hemet to attend an IEP team meeting scheduled for July 13, 2006. Student's mother resided in the boundaries of Hemet as of that date.

9. On July 13, 2006, Student's expanded IEP team meeting convened. Hemet agreed to participate telephonically, but did not participate.³ At the meeting, Mental Health recommended that Student be placed in an RTC following her release from Orangewood, and further agreed to conduct a residential placement search. On the same date, OCDE sent another letter to Hemet indicating, in relevant part, that Student's mother resided in the boundaries of Hemet and that Hemet would be responsible for Student's education once she was released from Orangewood.

10. On July 17, 2006, Mel Peters from OCDE and Michael Hubbard of Hemet corresponded via email regarding the status of Parents' educational rights.

11. On July 20, 2006, OCDE faxed an invitation to Gary Goldamer, Hemet's special education director inviting him to participate in an IEP team meeting for Student on July 24, 2006.

12. On July 20, 2006, the Court issued an order consenting to the implementation of Student's July 13, 2006 IEP.⁴ Care and custody of Student remained with SSA "when minor is released from Orangewood ... to enter the RTC placement." The order also requires that Orangewood release Student to OCDE staff, an agent, or any agent of a school district "determined to be responsible to fund the educational costs" of Student's placement at Excelsior.

13. On July 24, 2006, Student's expanded IEP team meeting reconvened to discuss the already Court-approved placement at Excelsior. Hemet refused to attend the meeting. Mental Health recommended that Student be placed at Excelsior upon her release from her temporary placement at Orangewood. Mental Health was unable to find an appropriate and/or available in-state RTC for Student. OCDE subsequently sent Hemet a copy of the IEP.

14. In August 2006⁵, Student left Orangewood and was transported to Excelsior in Aurora, Colorado. Since that time, no public agency has accepted responsibility for Student's education.⁶

³ Due to technical difficulties, Hemet's representatives were not able to participate in the meeting via telephone. However, Hemet subsequently received a copy of the IEP. Thereafter, Hemet refused to participate in further IEP team meetings (even via telephone) because it believed that Student's education was not Hemet's responsibility.

⁴ It is unclear why the Court approved Excelsior before the expanded IEP team determined that, based on the recommendation of Mental Health, Excelsior was a FAPE for Student. Although the Court must approve any specific placement proposed by the IEP team for children like Student, it is typically done after the IEP team agrees the placement is appropriate.

⁵ The parties did not disclose the exact date.

⁶ Although not relevant to the proceedings, the ALJ notes that OCDE and Student's attorney entered into a confidential settlement agreement, the specific terms of which were not disclosed to the ALJ. The ALJ notes however, that in Student's closing brief, her attorney disclosed that OCDE agreed, outside of the IEP process, "to

Hemet Unified School District

15. As discussed in Legal Conclusion 1, all children who are otherwise eligible are entitled to a FAPE. As discussed in Legal Conclusions 2 through 5, typically, the public entity responsible for the provision of a child's FAPE is the LEA in which either: (1) the parent of the child resides or, (2) the guardian resides.

16. Hemet is an LEA.

17. Student's mother has resided at all times relevant to this decision within the boundaries of Hemet.

18. Student's mother (as well as her father) has retained legal custody of Student.

19. Student's mother and father do not have educational decision-making rights in regards to Student at this time. The Court-appointed RA, Jackie Warner, has educational decision-making rights.

20. As discussed more fully in Legal Conclusions 15 through 17, because one or more of Student's parents have resided within the boundaries of Hemet at all times pertinent to this case, Hemet was responsible for Student's education after she was released from Orangewood in August 2006, up to the date of this decision, absent some exception.

21. No exception applies: (1) Student was not placed in a licensed children's institution (LCI) when she left Orangewood; (2) Student is not currently a party to an inter-district transfer; (3) Student does not reside within the home of a care-giving adult or hospital within the jurisdiction of any school district of the state; (4) Student has not been declared an emancipated minor by a court of competent jurisdiction; and (5) Student was not placed in another juvenile court school when she left Orangewood.

22. As discussed more fully in Legal Conclusions 18 through 21, because no exception applies, Hemet became responsible for Student's education from the time she left Orangewood.

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

place Student in her RTC placement" so that Student would not languish in an inappropriate placement. The ALJ did not consider this disclosure in reaching the instant decision because Student's disclosure: (1) appears to be a confidential communication; (2) is not evidence; and (3) is not relevant.

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 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);⁷ Ed. Code, § 48200.)

3. Education Code section 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. Education Code section 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

⁷ See also, 34 C.F.R. § 300.201 (effective October 13, 2006).

of title 34 of the Code of Federal Regulations.

(b) "Parent" does not include the state or any political subdivision of government.⁸

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:

(1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a 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.

An agency placing a pupil in a home or institution described in this subdivision shall provide evidence to the school that the placement or commitment is pursuant to law.

(2) A pupil for whom interdistrict attendance has been approved pursuant to chapter 5 (commencing with section 46600) of part 26.

⁸ 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

(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).)

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to part 1.5 (commencing with section 6550) of division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(5) A pupil residing in a state hospital located within the boundaries of that school district...

8. Another exception to the general rule relates to children who attend “juvenile court schools.” Their education is the responsibility of the county board of education in which the juvenile court school is located. (Ed. Code, § 48645.2) The definition of “juvenile court schools” includes public schools or classes in certain group homes. Specifically, Education Code section 48645.1 defines “juvenile court schools” to include, in pertinent part, public schools or classes:

... in any group home housing 25 or more children placed pursuant to sections 362, 727, and 730, of the Welfare and Institutions Code or in any group home housing 25 or more children and operating one or more additional sites under a central administration for children placed pursuant to section 362, 727, or 730 of the Welfare and Institutions Code ...

9. Under limited circumstances, a special education local plan area (SELPA) must continue to fund a RTC for the remainder of a school year (including an extended school year) after a child transfers mid-year from one district to another district operating within a different SELPA. (Ed. Code, § 56325, subd. (c).) However, this provision only applies if the child was already placed and residing in the RTC “prior to transferring to a district in another [SELPA].” *Id.*

10. 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.*, (2004) 117 Cal.App. 4th 47, 63.)

11. 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.)

12. The petitioner has the burden of proving at an administrative hearing the essential elements of his claim; the burden is a preponderance of the evidence. (*Schaffer v. West* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

13. While the burden of proving the essential elements of his claim (the burden of proof) remains the petitioner's throughout the hearing, the burden of *producing evidence* may shift from petitioner to respondent during the hearing once the petitioner presents sufficient evidence to establish a prima facie case. (Evid. Code, §§ 500, 550; *Sargent Fletcher v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1668.)

14. The plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) "Under well-established principles of statutory interpretation, the more specific provision [statute omitted] takes precedence over the more general one [statute omitted]. [Citations omitted.] To the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute." (*Salazar v. Eastin* (1995) 9 Cal. 4th 836, 857.)

Determination of Issue

Which LEA is responsible for Student's FAPE: Hemet Unified School District, Orange Unified School District, or the Orange County Office of Education?

Hemet Unified School District

15. As stipulated by OCDE, OCDE was responsible for Student's education while she was placed at the juvenile court school Orangewood. As discussed in Legal Conclusion 8, Student was the responsibility of OCDE during her stay at Orangewood because Orangewood is a juvenile court school.

16. As discussed in Legal Conclusions 2 through 6, when a student is released from juvenile court school, the responsibility for FAPE typically shifts to the district in

which either parent of the student resides, or in the alternative, in which the legal guardian resides. (Ed. Code, § 48200.)

17. As determined in Factual Finding 17, Student's mother, at all relevant times, has resided within the boundaries of Hemet. As determined in Factual Finding 20, because Student's mother resides within the boundaries of Hemet, Hemet is responsible for Student's education from the time Student left Orangewood in August 2006.

18. Hemet argues that because the RA has educational decision-making rights, Student's parents are not her parents as that term is used in Education Code section 48200. As discussed in Legal Conclusion 5, the Education Code defines "parent" as a person having legal custody of a child. Student's parents have legal custody. Hemet's argument is not persuasive.

19. As discussed in Legal Conclusions 7, 8 and 9, there are exceptions to the general rule that the residence of the parent determines what local education agency is responsible for a child's FAPE. Hemet argues that OCDE, not Hemet, retained responsibility for Student's education after she left Orangewood. As determined in Factual Finding 21, none of the exceptions apply.

20. Hemet also argues that OCDE is responsible for funding Student's Excelsior placement pursuant to Education Code section 56325, subdivision (c), for the remainder of the current school year because it placed Student at Excelsior. As discussed in Legal Conclusion 9, this provision is only applicable where a Student transfers from district to district in different SELPAs during a school year. Because Student did not transfer from one district to another district (OCDE is not a district, and Student's Orangewood placement was a temporary, Court approved placement made by SSA), this provision is inapplicable. Additionally, Student was not "residing" at Excelsior at the time she left Orangewood.

21. Hemet makes several additional arguments, none of which are persuasive or relevant. Of note, Hemet argues that it would be unfair to burden Hemet with the costs of a placement made by OCDE. OCDE was legally obligated to provide a FAPE to Student during her temporary placement at Orangewood. One of OCDE's responsibilities was to work in conjunction with Mental Health to find an appropriate post-Orangewood placement for Student; in this case, it is not disputed that Student requires an RTC because of her emotional disturbance and mental health needs. OCDE should not be punished for fulfilling its legal obligations to Student. Moreover, Hemet had every opportunity to participate in the development of Student's IEP. Student and OCDE regularly communicated with Hemet. Hemet chose not to participate because it believed (incorrectly) that it would not become responsible for Student's FAPE when Student left Orangewood.

ORDER

Hemet Unified School District became responsible for Student's FAPE from the time she left Orangewood.

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 issue related to whether Hemet was responsible for Student's FAPE after she left Orangewood.*

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. (Ed. Code, § 56505, subd. (k).)

IT IS SO ORDERED THIS 31ST DAY OF January 2007.



TREVOR SKARDA

Administrative Law Judge
Office of Administrative Hearings
Special Education Division