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LEGAL UPDATE

August 16, 2019

To: Superintendents, Member School Districts (K-12)

From: Kaitlyn Schwendeman, Schools Legal Counsel *KAS*

Subject: Special Education Update
Memo No. 19-2019

Welcome to the 2019-2020 school year. As part of School & College Legal Services' commitment to providing ongoing timely resources to our clients, this legal update provides a summary of three special education cases that came out last year.

Unilateral Parent Placement:

The Case: The first case¹ addressed a parent unilaterally placing a student in a private residential placement, primarily due to concerns in the home setting, which resulted in a challenge over fiscal and programmatic responsibility. There, the Court found that the school district had no obligation to monitor the student's progress while in the parental private placement, and could not be required to hold interim Individual Education Plan ("IEP") meetings to suggest modifications to programs over which the school had no control.²

Agency Placement:

The Case: The second case³ addressed the fiscal responsibility for a student that was placed in a residential treatment center ("RTC"). The parents received financial assistance from the Los Angeles County Department of Children and Family Services ("DCFS") for the cost of the program as the student had been

¹ *N.G. v. Placentia-Yorba Linda Unified School District*, Case No. SACV 17-02121 AG, 2018 WL 6137196 (C.D. Cal., October 5, 2018). The ultimate decision and finding in this case is non-precedential, meaning no other court, including the court that issued the decision, is required to follow this ruling. Nevertheless, the decision is helpful in ascertaining the potential direction of other courts and ALJs, as it will be looked to as persuasive authority.

² The Court also held that the ALJ's reimbursement finding was appropriate. The ALJ established that the school district had made an insufficient offer of FAPE for a period of approximately two months, where the offered program did not have space for the student; once the school district found a program with space, it revised the offer. Reimbursement was limited to those two months where the offer of FAPE was for the program without space.

³ *B.H. v. Manhattan Beach Unified Sch. Dist.*, Case No. B281864, -- Cal Rptr.3d --, 2019 WL 2171129 (2nd Appellate District Cal., May 20, 2019). Decision may be accessed online:

<https://www.courts.ca.gov/opinions/documents/B281864.PDF>



adopted; however, assistance was contingent on the program meeting stringent criteria established by DCFS. At the student's IEP meeting the home district recommended residential placement at the parent-requested RTC, based upon parent's representation that they had secured funding from DCFS. The Court held: (1) **because the IEP team recommended a residential placement for an educational purpose, the RTC placement was made by the school district where the student's parents resided**; (2) it was irrelevant that the parents had identified the RTC prior to the IEP meeting and that they had secured funding for the RTC prior to the IEP meeting; likewise, testimony from the IEP team that it would not have recommended the RTC without the DCFS funding was irrelevant; and (3) DCFS is not a "public agency" able to make placements at an RTC pursuant to Education Code § 56155.5,⁴ as it does not provide special education services.

Attorneys' Fees:

The Case: Most recently, a court considered a student's application for attorneys' fees following a due process hearing.⁵ In that case, the student partially prevailed on five issues, and the District partially prevailed on five issues, and fully prevailed on three issues. As remedies, the Student was awarded tuition of their unilateral placement, at a cost of \$42,990, and there was no appeal of the ALJ's decision. The Student filed suit for \$218,745 in legal fees related to the due process hearing, and \$167,360 in legal fees related to the fees motion. The Court found that the appropriate rate for attorneys in the Los Angeles region, with similar skills as the Student's attorneys, is between \$600 and \$650 per hour. The Court also found that it was not inappropriate for the Student to have two experienced litigators attend the due process hearing, despite that the second attorney did not call or examine any witnesses.

These cases remind clients of the ongoing and rising costs of special education litigation. As always, our office is available to assist with preventive solutions to assist in avoiding litigation, including training, IEP audits, attendance and participation at IEP meetings, and other targeted interventions.

Please contact our office with questions regarding this Legal Update or any other matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁴ Education Code §§ 56155-56166.5 apportion fiscal and programmatic responsibility for students placed at a residential treatment center.

⁵ *Gordon v. Los Angeles Unified Sch. Dist.*, Case No. 2:18-CV-00919-CAS-JCx, 2019 WL 2511936 (C.D. Cal., Slip Copy, June 17, 2019)