Tackling Parents’ Educational Rights and Residency Issues

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Agenda

• Define “parent” for purposes of exercising educational decision-making rights.
  – Define a “parent” for purposes of residency; access to pupil records; and special education decision making.
• Identify solutions to common parent rights issues.

RELATIONSHIP STATUS: IT’S COMPLICATED
– OR –
ARE YOU READY FOR SOME DRAMA?
The Fluid Meaning of “Parent”
What does “parent” connote?
- Consanguinity (i.e., blood relationship)?
  - Too restrictive: adoptive parents and legal guardians
  - Also, what about a biological parent who is not involved in the raising of a child?
- Nurturer?
- Caretaker (i.e., provider of food, clothing, and shelter)?
- Holder of legal rights?

The Fluid Meaning of “Parent”
The definition of “parent” is a moving target, changing depending on the legal right at issue.
- Is parenthood merely a matter of legal perspective, defined by legislators, argued by attorneys, and decided by judges?

Immutable characteristics(?)
- Surely, certain immutable characteristics must have some dispositive role in whether a person can be a lawful father or mother of a person, right?
  - E.g., biological relationship and gender
- For instance, a child can have only one father and one mother, right?
  - “[F]or any child California law recognizes only one natural mother…” (Johnson v. Calvert (1993) 5 Cal.4th 84, 92.)
  - But consider the number of students who are parented by biological parents, stepparents, extended family members, and family friends.
  - Is a loving step-mom any less of a mom?
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The Fluid Meaning of “Parent” Immutable characteristics(?): Gender

- Is gender even a necessary part of the definitions of “father” or “mother”? Thomas Beatie, a transgender man, gave birth June 29, 2008 to a girl. Beatie grew up as a female but later legally changed to a male identity. Beatie became pregnant using donor sperm and artificial insemination.

The Fluid Meaning of “Parent” Immutable characteristics(?): Gender

*Elisa B. v. Superior Court*

- In 2005, the California Supreme Court decided that a woman who had no biological relation to the children was the “presumptive father” and obligated to pay child support because she had agreed to raise the children with the birth mother, supported the birth mother’s artificial insemination using an anonymous donor, and received the children into her home and held them out as her own.

The Fluid Meaning of “Parent” Immutable characteristics: Consanguinity

*In re Marriage of Moschetta*

- The Moschettas paid $10,000 to a surrogate, Elvira Jordan, who agreed that (a) the father would receive sole custody of any resulting child, (b) she would agree to terminate her parental rights, and (c) she would aid the father’s wife in adopting the child.
- The baby was the biological child, both genetically and gestationally, of Ms. Jordan.
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The Fluid Meaning of “Parent”
Immutable characteristics: Consanguinity
*In re Marriage of Moschetta*

- The Moschettas divorced, and custody was divided between the husband and the surrogate because the child was only allowed two legal parents.
- Because Ms. Jordan was the natural and gestational mother of the child, she was determined the legal mother.

The Fluid Meaning of “Parent”
Immutable characteristics: Consanguinity

*In re Marriage of Moschetta*

- The court discounted the fact that the “intended mother,” Mrs. Moschetta, had raised the child from birth.
- So, nature – i.e., consanguinity and having given birth to the child – is determinative of legal motherhood…?
  -- Not so fast…

The Fluid Meaning of “Parent”
Immutable characteristics(?): Consanguinity
*Steven W. v. Matthew S.*

- Julie was married to Matthew. She later left Matthew (kind of) for Steven, but she secretly maintained an intimate relationship with Matthew.
- Julie became pregnant with Matthew (still her husband), while living with Steven, but told each men that he was the father.
The Fluid Meaning of “Parent”
Immutable characteristics(?): Consanguinity

**Steven W. v. Matthew S.**

- Steven went through the pregnancy and childbirth with Julie, and fed, bathed, and cared for baby Michael. Matthew did not see Michael until he was several months old.
- When Steven discovered that Julie was still seeing Matthew, Steven moved out, but continued to share custody and support of Michael. Steven later sought a determination of legal paternity.

Blood tests showed Matthew to be Michael’s biological father.

The court of appeal resolved these conflicting presumptions in favor of preserving the extant, functional father-child relationship between Steven and Michael.

So, nurture – i.e., caring for a child – is determinative of legal parentage...?

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**Craig L. v. Sandy S.**

- Sandy, who was married to Brian, had an affair with Craig.
- Sandy had a baby, Jeffrey.
- Routine neonatal blood tests eliminated Brian as Jeffrey’s biological father.
The Fluid Meaning of “Parent”
Immutable characteristics?: Consanguinity
Craig L. v. Sandy S.

- Sandy told Brian that Craig must be the biological father.
- Craig acted as Jeffrey’s father:
  - He signed a support agreement and made support payments to Sandy;
  - Craig’s wife(!), Kathryn, took care of Jeffrey three to four days per week in their home; and
  - Jeffrey spent one night per week in Craig and Kathryn’s home.

- Sandy and Brian then told Craig they no longer needed “childcare services.” (Ouch!)
- Craig filed a petition with the court to establish his status as Jeffrey’s father.
- Brian argued that, because he was Sandy’s husband at the time of Jeffrey’s conception and birth, he was Jeffrey’s “presumed father.” The trial court agreed with Brian.

- However, the court of appeal found that Craig could pursue his paternity claim because he held out Jeffrey as his son.
- The court also found that Brian had standing to pursue a paternity claim.
The Fluid Meaning of “Parent”

Immutable characteristics(?): Consanguinity

* Craig L. v. Sandy S.

- The case was remanded to the trial court to determine the nature of Craig’s actual relationship with Jeffrey, and to weigh that relationship against the interests embodied in Brian’s status as Sandy’s husband and his relationship with Jeffrey.
- So, which is it? Nature or nurture?

LEGAL DEFINITIONS OF “PARENT”

Legal Definitions of “Parent”

Ed. Code § 8208(u)

- The California Education Code provides several different definitions of “parent.”
- For purposes of the “Child Care and Development Services Act” a parent is “a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.”
Legal Definitions of "Parent"
Ed. Code § 8208(u)

- Notice that this definition says nothing about a biological relationship, or the provision of love and nurturing.
  - Section 8208 defines a parent according to obligations, specifically for care and welfare.
  - Really, section 8208 is a codification of the line from Robert Frost’s poem "Death of the Hired Man": "Home is the place where, when you have to go there / They have to take you in."

Legal Definitions of "Parent"
Ed. Code § 22152

- For purposes of statutes related to the State Teachers’ Retirement System, "Parent" means a natural parent of a member or a parent who adopted the member prior to his or her attainment of 18 years of age or to the member’s marriage, whichever occurs earlier.

Legal Definitions of "Parent"
Ed. Code § 51131

- Teresa P. Hughes Family-School Partnership Award and Grant Program: "As used in this article, 'parent' means the natural, adoptive, or foster parent of a pupil, a surrogate parent, a family member acting on behalf of the parent, or any person having legal authority to make educational decisions on behalf of a pupil."
Legal Definitions of “Parent”
Ed. Code §§ 68014, 49061(a), & more

- Student Residency Requirements: “’Parent’ means the parent with whom the minor resides; or, if both parents are deceased, his or her legal guardian.”
- We’ll discuss pupil records in a moment . . .
- See also sections 15502(j), 22124, and 25920.

Special Education “Parent”
Who Gives Consent?
The IDEA requires parental consent for the actions of a school district in conjunction with the following educational events:
1) Initial evaluations and reevaluations;
2) Initial placements; and
3) Subsequent IEPs and placements.

Special Education “Parent”
Education Code Section 56028

(a) “Parent” means any of the following:
(1) A biological or adoptive parent of a child.
(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child’s behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.
(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child.
Education Code Section 56028

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

Education Code Section 56028

(b)(1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (More on this in a moment.)

Education Code Section 56028

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this section.
Tackling Parents’ Educational Rights and Residency Issues

**Education Code Section 56028**

(c) "Parent" does not include the state or any political subdivision of government.
(d) "Parent" does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child. (Can you say, "conflict of interest"?)

**Parent Priority = Biological/Adoptive**

- When two or more people fit into the category of "parent," and one is a biological/adoptive parent attempting to act on behalf of the child, the school district shall presume the biological/adoptive parent to be the "parent" under the Education Code unless:
  - The biological/adoptive parent does not have legal authority to act (rights terminated), or
  - There is a court order identifying a specific person to act on behalf of the child.
  (Ed. Code § 56028(b).)

**Divorced Parents: Custody Orders**

Assume both parents have educational rights for student, unless there is a court order or other document stating otherwise.
- Joint custody: Both parents have equal rights for physical and legal custody, and they may be exercised separately.
- Sole legal custody: Only one parent holds educational rights (to provide consent), but non-custodial parent has participation rights (e.g., IEP meetings, records requests) unless otherwise noted.
  (Fam. Code §§ 3002, 3003, 3006.)
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Divorced Parents: Joint Custody

- Under California law, if a custody order does not specifically require the consent of both parents, then either parent with joint custody can exercise the right acting alone, absent a court order/agreement to the contrary.
- Only one signature is needed for consent on:
  - Assessment plans; and IEPs, including initials and exits.
- Timelines begin on the date that the first parent consent is received by the District.
(Fam. Code § 3003; Parent v. Val Verde Unified Sch. Dist., OAH Case No. 2013090251.)

Parent v. Val Verde Unified Sch. Dist. (2014) OAH Case No. 2013090251

- Student’s parents divorced; the court ordered joint custody.
  - “Parents shall share equally in authority and the responsibility to make decisions regarding the health, education and welfare of Student.”
  - “Parents shall confer in making major decisions regarding education...”
- December 5, 2012: Mother requested an initial assessment for special education.
- December 17, 2012: District presented an assessment plan to both Parents.
- February 11, 2013: Mother consented to the Plan.
  - Father did not want Student tested and refused to consent.
  - District informed Mother that it would not initiate testing unless and until both parents agreed to the assessment; district continued to follow up with Father.
- March 18, 2013: Father consented to the Plan.
- May 20, 2013: District held initial IEP meeting with Parents.
  - Testing revealed that Student did not qualify for special education.
  - Mother filed a due process hearing request alleging denial of FAPE for failure to timely assess.

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Val Verde Unified Sch. Dist.

ALJ Held:
- The District failed to timely assess Student by not completing the assessments within 60 days of the date Mother provided her consent.
- “If the court does not state that the consent of both parents is required on an issue, either parent acting alone may exercise legal control of the child.”

Mother consented on February 11, 2013, meaning the assessments should have been completed, and an IEP meeting held, on or before April 12, 2013.
- District did not convene a meeting until May 20, 2013—38 days after the deadline.
- However, District’s delay did not rise to a denial of FAPE because Student was not found eligible for special education.

Divorced Parents: Joint Custody

- Acting alone, even if the other parent disagrees, either parent can:
  - File a request for due process;
  - Request a district assessment or an IEE;
  - Consent to an IEP;
  - Revoke consent for special education.
- What happens in the case of one-parent revocation?
"Kramer v. Kramer" Type Consent Issues

- One parent may revoke consent to special education over the other parent’s objection. One parent’s revocation is sufficient for a district to stop providing ALL services.
- District must provide prior written notice before terminating services.
- Neither the district nor the other (dissenting) parent may use due process procedures to override the parent’s revocation decision.

(Letter to Cox, 54 IDELR 60 (OSEP 2009); Letter to Ward, 56 IDELR 237 (OSEP 2010).)

If one parent disagrees about continuing a particular service or program and if the district IEP team does not think the child needs it for FAPE:
- It can be removed from the IEP and due process procedures cannot be used against the revoking parent.
- BUT, if the District thinks the service/program is necessary for FAPE, the dissenting parent can initiate due process procedures against the District to get a ruling that the service/program is not appropriate.
- Until then, services continue! (There is no such thing as "partial revocation." There is only partial consent.)

Student v. Los Alamitos Unified Sch. Dist. (2017) OAH Case No. 2017050096

- Family court awarded Parents joint legal custody.
- Mother requested special education assessment, and Student was found eligible in June 2012.
- At the 2015 triennial, Student was found NOT eligible, and FATHER agreed at the IEP meeting to exit Student and sent a written letter explicitly revoking consent to special education; Mother disagreed.
District properly notified BOTH parents via PWN that Student would be returned to general education.

Two years later in 2017, MOTHER requested the IEP be “immediately” reinstated.

District’s PWN stated the IEP could not be reinstated without an IEP team recommendation AND consent from BOTH Parents, because the Father had previously revoked.

The Mother attempted to prove that she had sole legal custody.

Mother filed a DPH complaint claiming, among other things, that Student was improperly exited from special education.

Father filed with OAH a Notice of Intent to Exercise Parental Rights in the OAH case.

ALJ Held:

- The Ninth Circuit has not commented on the issue of which divorced parent has superior rights in special education under IDEA.
- Other courts have held that the determination of superior parental right is a matter for local or state courts.
Los Alamitos Unified Sch. Dist.

- The express language of the custody order is controlling.
- The order must specify when both parents’ consents are required; without the express order, either parent may act alone and exercise legal control.
- Thus, exit based on only Father’s consent was proper, but District would not require both parents’ consent to reinstate IEP even though Father previously had agreed to exit.

Student v. Roseville Joint Union High Sch. Dist. (2017) OAH Case No. 2017070292

- Student was narcoleptic; struggled to get to school on time.
- Spring 2015: Parents legally separated.
- November 4, 2015: Mother met with a special education administrator to discuss late start options.
  - Administrator informed Mother that Student could only get a late start if he transferred to Independence High School, an independent study program.
  - However, Administrator told Mother she would have to revoke consent to Student’s IEP in order to complete the transfer.
  - Mother refused and ended the meeting.

Roseville Joint Union High Sch. Dist.

- Immediately after the meeting with Mother, Administrator called Father and requested that he revoke consent to Student’s IEP so Student could transfer to Independence High.
  - Father sent an email revoking his consent.
- That same day, Administrator drafted a PWN indicating the Student’s IEP would terminate on November 5, 2015.
  - The PWN was sent by U.S. Mail and only to Father’s address.
  - No IEP meeting was held.
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Roseville Joint Union High Sch. Dist.

- November 9, 2015: Student began at Independence High as a general education student.
- Several weeks later, Mother learned Student was no longer receiving special education services.
- Parents filed a due process hearing request alleging denial of parent participation.

ALJ Held:

“Since the purpose of the [PWN] requirement is to notify parents of an action before that action is taken, in order to allow them time to take any steps they think necessary with respect to the action before it occurs, Roseville’s [PWN] failed entirely in its statutory purpose.”

The ALJ acknowledged that Father had the lawful authority to revoke his consent to Student’s special education without the input or consent of Mother.
- However, prior written notice must be given to both parents — not just one of them.
- If Mother had been made aware of the proposed termination, she would have had a chance to convince Father to not revoke his consent.
Divorced Parents: Non-Custodial

- Unless otherwise prohibited (by court order or a restraining order), as it pertains to non-custodial parents, the District should:
  – Invite non-custodial parent to all IEP meetings;
  – Encourage participation of non-custodial parent in IEP meetings;
  – Provide educational records to non-custodial parent, upon request; and
  – Send all letters of prior written notice to both the custodial parent and the non-custodial parent.

Parents who do not have educational decision-making authority, also do not have a right to:
  – Request an IEE*;
  – Consent to an IEP;
  – Revoke consent to special education; or
  – File a request for due process.

*But note: Anyone may request an assessment (e.g., teacher, advocate), but only an educational rights holder may consent to the assessment.

Divorced Parents: Custody Orders

Do you have the current agreement?

- If you suspect the agreement is outdated, ask both parents for the updated version.
- Best Practice: Unless you receive an updated version of the agreement, abide by the latest version you have in your possession.
  – Remember: District = Switzerland.
  – Safety concerns re releasing student to parent.
In making an order of joint legal custody, the court must specify when the consent of both parents is required to be obtained.

– Otherwise, either parent may exercise legal control of the child.

– An order of joint legal custody does not permit an action that is inconsistent with the physical custody order, except as expressly authorized. (E.g., releasing student to one parent during other parent’s custodial time.)

Examples of Modified Educational Rights

• “Father has final educational decision-making power, which can only be exercised after consultation with Mother.”

• Best Practice: When sending prior written notices, send to both parents. The District is not obligated to ensure Father did, in fact, consult with Mother. If Father does not do so, Mother has a remedy in Family Court.

• “Parents shall confer and reach mutual decisions as to educational decisions.”

• Well... what if Parents cannot come to a mutual decision?

– IEP meeting, ADR, mediation only, due process hearing.
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Foster Parents

True or False: If DCFS removes a student from her biological parents and places her with a foster parent, the foster parent has now absorbed the right to make educational decisions for student.

False – a foster parent has the authority to make educational decisions on the child’s behalf if the biological parents’ educational rights have been specifically limited by a court order (JV-535).

This is of particular importance in situations of:
- School enrollment;
- Participants at IEP meetings;
- Consent for IEP related matters;
- Standing to file a request for due process hearing.

Student v. Eastside Union Sch. Dist. (Lancaster) (2012) OAH Case No. 2012050086

- Student was on an IEP since December 2009.
- Student was eventually placed in foster care after a school fight, which led to a suspension and police involvement.
- The District updated the Student's information with the foster parent's information and sent a NOM for an IEP meeting, which was attended by the foster parents.
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Eastside Union Sch. Dist.

- The biological Parents did not receive the NOM or know of the IEP meeting.
- Student was placed at an interim placement for two weeks, which she attended for four days, and was returned to her original school.
- After over two years, the biological Parents became aware of the interim placement when they received a copy of Student's records.

Eastside Union Sch. Dist.

ALJ Held:
- The biological Parents timely filed their DPH complaint from the time they knew their claim accrued.
- The District committed a procedural violation and denied FAPE, however, there was no appropriate remedy as Student had already matriculated to the next school.

Eastside Union Sch. Dist.

- Parents could not prove what educational benefits or compensatory education accrued for four days while at the interim placement, thus no equitable remedy could be identified.
- District acknowledged the procedural violation and the ALJ did not find it necessary to order the District to comply with IDEA.
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**Student v. Antelope Valley Union High Sch. Dist.**
(2013) OAH Case Nos. 2012080122, 2012090246

- Student was high school aged and eligible under ED.
- Parents held educational rights at all relevant times.
- Upon student's transition into the high school district, Mother completed and submitted enrollment paperwork for the 2010-2011 school year for Quartz Hill.
- While still in middle school, April 2010, Student was placed in foster care with a CASA.

- CASA had authority to assist and advise regarding Student's educational planning.
- Student was placed in foster care at various times from April 2010 through March 2011.
- Rather than SDC at Quartz Hill, Student was enrolled in general education classes at Pete Knight HS.
- District did not advise Parents that Student was attending Pete Knight, and Parents did not know she was attending there.
- Rather, Mother again submitted enrollment paperwork to Quartz Hill.

- After approximately three days, Student was removed and placed in a new foster home.
- CASA informed the transportation clerk Student was in court-ordered temporary foster care and would remain at Quartz Hill and need transportation.
- New foster parent enrolled Student at Eastside HS where she remained until Sept. 2010.
- Student advised Mother she was attending Eastside HS.
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Antelope Valley Union High Sch. Dist.

- September 1 court hearing confirmed Parents had educational rights and ordered Student to be enrolled at Quartz Hill.
- On September 7 Mother executed a withdrawal from Eastside and a transfer to Quartz Hill.
- Student was finally attending Quartz Hill.

Antelope Valley Union High Sch. Dist.

ALJ Held:
- Education Code pertaining to foster care child calls for the school to immediately enroll her even if the usual items required for enrollment are not present.
- District’s position was it had to enroll Student pursuant to 48853.3, but the ALJ commented “it is not clear the District’s position is correct.”
- Parents are required to consent to a change in placement.

Antelope Valley Union High Sch. Dist.

- District did not deprive Student of a FAPE by enrolling her without parent consent:
  - Undisputed evidence enrollment not initiated by District.
  - Foster parent enrolled Student.
  - District had no reason to know the enrollment was not authorized by Parents and were not involved in the change of placement.
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Antelope Valley Union High Sch. Dist.

• Enrollment at Eastside:
  – District’s reliance on Ed. Code 48853.5 may not be correct.
  – No evidence District involved an educational liaison and holder of educational rights in decision to enroll Student.
  – Six school days elapsed between Eastside enrollment and Student telling Parents.

Antelope Valley Union High Sch. Dist.

• Yet no procedural violation:
  – No evidence Parents’ lack of knowledge of Eastside enrollment for short period impeded right to FAPE or participation.
  – Foster parent initiated enrollment, not District.
  – No evidence District knew or should have known Parents did not authorize or initiate change of placement.

Takeaways

• District got lucky…it is not a safe bet to rely on “oops, we didn’t know.”
• Do not assume a CASA or foster parent holds educational rights.
• Do get foster youth educational liaison involved! It is required in these types of circumstances.
• Part of their involvement is to make a “new school” placement decision with the educational rights holder—this will allow the District to identify the correct person.
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Above All Else…

Follow the Court Order!

Caregiver

- Execution of a "caregiver affidavit" allows a pupil who lives in the home of a caregiving adult to attend school in the caregiver's school district.
- Upon execution of a "caregiver affidavit," does the caregiver also obtain educational rights?

Caregiver Affidavit

- No – it does not constitute a designation of ed rights.
- The purpose of the caregiver exception was to "ensure minors living with nonparent caregivers will have unhindered access to public education and medical care."
- This affidavit is not a means of designating an ERH.
  (Student v. LAUSD (2007) OAH Case No. 2006110108.)
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**Adult Student as ERH**

**Ed. Code § 56041.5**

- When a special education student reaches the age of 18, the school district shall provide the notice of procedural safeguards to both the adult student and the parents.
- All other rights accorded to a parent under this part shall transfer to the adult special education student.
- Exception: Educational rights do not transfer if the adult student has been determined incompetent under state law, or if the adult student has assigned ed rights to parent or other adult.

**Adult Student as ERH**

- If a student holds educational rights, the district must seek the adult student’s consent for all IEP related matters.
  - Student becomes a “parent” for purposes of special education law.
- May still invite parents to the IEP meeting as a courtesy but no longer required participants, so adult student may object.
- Adult student is the only person who can:
  - Consent to assessments and IEPs;
  - Revok consent to special ed;
  - Request IEEs;
  - File for due process and enter into settlement agreements.

**Student v. Los Angeles Unified Sch. Dist.**

(2016) OAH Case Nos. 2016060696, 2016061298

- Student was slated to graduate in June 2015 but did not meet graduation requirements.
- On October 3, 2015, Student turned 18.
- On November 16, 2015, the District mistakenly sent Mother an assessment plan instead of Student.
- Mother consented to the plan on December 11, 2015.
- The District began conducting a speech-language assessment, but Student refused to complete testing.
On February 12, 2016, the District presented the assessment plan to Student and he refused to consent to any further testing.

On February 29, 2016, Student’s annual IEP review began.

Team determined Student was on track to graduate in June 2016.

Based on the partially completed speech assessment and Student’s refusal to participate in speech assessment or services, the team recommended exiting Student from speech-language services.

Mother disagreed and wanted Student to continue in speech.

Student consented to the IEP and exit from speech services.

On May 18, 2016, Student’s IEP team held his exit IEP meeting.

Mother did not attend the meeting.

Since Student was on track to meet the graduation requirements, the team recommended his graduation and exit from special education in June 2016.

Student consented to the IEP.

On June 8, 2016, Student signed his educational rights over to Mother and attempted to revoke his consent to the May 18, 2016 IEP.

Neither the purported revocation nor the assignment of rights were provided to the District before Student graduated on June 10, 2016.

Parent filed a due process hearing request alleging denial of FAPE based on failure to provide her with prior written notice before graduating Student.
Los Angeles Unified Sch. Dist.

ALJ Held:
- District was not required to provide Parent with any notice regarding Student’s education services after October 3, 2015, when Student turned 18.
- Further, since Student was informed of his performance and graduation requirements at the May 18, 2016 meeting and was provided the IEP documents after the meeting, no PWN to Student was required prior to graduating and terminating his special education.


- Student attended Montcalm RTC as a student of Lake Elsinore School District for the 2013-14 school year.
- Student turned 18 on July 11, 2014.
- In August 2014, Student transferred into the District and began her 12th grade year at Peninsula High School.
- The District convened Student’s triennial review on November 18, 2014. The team reconvened several more times to continue the discussion regarding Student’s placement, with the final meeting occurring April 15, 2015.

Palos Verdes Peninsula USD

- Student requested a “split-day schedule” placement—she would spend half her day at Peninsula High and the other half at a NPS.
  - The team agreed to this for a 30-day diagnostic placement.
- December 2014: Student had poor attendance with the split day, so the team changed the offer to full-time NPS placement. Student consented.
- February 2015: Due to continued absences and escalating behaviors, the team offered placement at Devereux Wallace, a RTC in Colorado. Student consented.
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**Palos Verdes Peninsula USD**

- April 15, 2015: Student's IEP team held a 30-day review meeting for her placement at Devereux.
- Student stated she did not believe Devereux was a good fit and intended to sign herself out.
- The team continued to believe Student required an RTC placement and offered Devereux through Student's November 2015 annual review.
- Student did not consent and signed herself out.
- Student filed a due process hearing request alleging denial of her participation rights and predetermination.

**ALJ Held:**

- Student meaningfully participated in the development of her IEP(s)—she attended, received detailed information regarding her disability and assessment results, heard the input of multiple mental health professionals, and voiced her opinions about her preferences for her educational program.

- There was no evidence the District predetermined its offer of Devereux RTC. The District diligently considered and implemented less restrictive placements before determining that Student needed a RTC.
- As of April 15, 2015, Student's absenteeism and severe social-emotional problems precluded her from obtaining benefit from a general education or NPS setting.
- “District was open and flexible in properly considering a continuum of placement options, including Student in the decision-making process every step of the way.”
Adult Student: Non-Conserved – Transfer of Rights

- A non-conserved adult student can transfer rights to parents or another adult.
- Requires a signed document from the adult student expressing his/her intent to give her educational rights to parents or other.
- Adult student can revoke the designation of ed rights to parents or other at any time!

Student v. Santa Clara Unified Sch. Dist.
(2015) OAH Case Nos. 2015030117, 2014120222

- Student was almost 19 years old when she transferred her educational rights to Parents.
- Student sent District a written document prepared by her attorney that she had assigned her educational rights to Parents.
- District declined to recognize the document as valid. District did not believe the educational rights were validly assigned to Parents.

Santa Clara Unified Sch. Dist.

- District sent correspondences home to Student, which included transition planning documents and correspondences requesting Student consent to IEPs.
- Student had been home schooled for the four years of her high school education and resided with Parents when she received the correspondences from District.
Santa Clara Unified Sch. Dist.

- Parents received District documents and arranged for Student’s speech and language pathologist to read the letters to Student.
- Parents attended all IEPs, and Student attended one IEP meeting. Despite not directly receiving NOMs or documents, Parents timely arranged Student to present a 37-slide PowerPoint presentation to IEP team.
- Parents claimed deprivation of meaningful participation.

Santa Clara Unified Sch. Dist.

- Parents did not miss any of the meetings or communications while the correspondences were sent home to Student.
- Parents’ attorney disagreed that correspondences should be addressed directly to Student. Parents’ attorney attended the IEP meetings and sent responses to District on behalf of Student.

ALJ Held:

- Procedural violations that do not result in a loss of educational opportunity, or seriously infringe on an educational right holder’s opportunity to participate, are not denials of FAPE.
- The District’s mistake in sending correspondences to Student was procedural only and did not deny Student a FAPE.
Tackling Parents’ Educational Rights and Residency Issues

Santa Clara Unified Sch. Dist.

- Student had intelligence scores in the average to high average range and academic achievements at grade level and could read and understand District correspondences without assistance.
- The ALJ denied Parents’ request for monetary compensation for the cost of hiring a speech and language pathologist to read District’s correspondences to Student.

Santa Clara Unified Sch. Dist.

- The ALJ pointed out to Parents that there was no reason why Parents could not perform their parental obligations and read the letters themselves to their intelligent daughter.
- The weight of the evidence established the mistake did not impede Student’s right to FAPE, deprive Student of educational benefit, or significantly impede Parents’ opportunity to participate in the decision making process.
- All of Parents’ requests for relief were denied.

Ed. Code § 56028(b)(2)

- If a student has been determined incompetent by a court, student’s conservator is the “parent.”
- A judicial decree may authorize a responsible adult to act as the parent and make educational decisions.
Tackling Parents’ Educational Rights and Residency Issues

Transfer of Rights: By Parents

Can a parent assign his/her child’s educational rights to a relative or family friend?

- Based on California Rules of Court, Rule 5.650, the court has the authority to determine a responsible adult relative, nonrelative extended family member, or other adult known to the child to serve as the ERH.
- Yes, a parent can designate another relative or family friend as the ERH with the following caveats:
  - Transfer of rights must be in writing and signed by both individuals.
  - Both parent and the designated ERH should be invited to all IEP meetings and any required documents should be given to both.
  - If parent and ERH disagree, parent may revoke assignment of rights in writing.

Student v. Ravenswood City Sch. Dist. (2008) OAH Case No. 2008040747

- For the 2004-2005 school year, Student resided with Mother.
- For the 2005-2006 school year, Student resided with Father and his girlfriend.
- For the 2006-2008 school years, Student resided with his grandparents within District.
• While Student was residing with grandparents, Father appointed his girlfriend as a "surrogate" to act on behalf of Student and exercise Father's educational rights.
• The Surrogate filed a DPH complaint shortly after the appointment.

Ravenswood City Sch. Dist.

ALJ Held:
• The propriety of the surrogate as the educational rights holder was not at issue before the ALJ, who, in a footnote, noted that the surrogate was assigned the Student's educational rights as a family friend.
• The family friend (assignee) was not a “surrogate” as defined by Government Code Section 7579.5 (or 34 CFR 300.519).
• ALJ proceeded to decide the DPH complaint with the surrogate (assignee) as the educational right holder.

PUPIL RECORDS ACCESS
Pupil Records Access

- Education Code section 49069 permits "parents of currently enrolled or former pupils [to] have an absolute right to access any and all pupil records related to their children which are maintained by school districts or private schools."

Pupil Records Access

- For purposes of interpreting section 49069, "parent" is defined by Education Code section 49061 as a natural parent, an adopted parent, or legal guardian. If the parents are divorced or legally separated, only a parent having legal custody of the pupil may challenge the content of a record pursuant to Section 49070, offer a written response to a record pursuant to Section 49072, or consent to release records to others pursuant to Section 49075.

Pupil Records Access

- Section 49069's definition is so restrictive that some natural parents without legal custody have only limited rights. Correspondingly, a domestic partner, like other persons who lack parental status, cannot access pupil records.
Tackling Parents' Educational Rights and Residency Issues

TEST YOUR LATE AFTERNOON ATTENTION SPAN!

You make the call!

- Step-mom requests a copy of the student's latest progress report. What should the records clerk do?
  - A. Give step-mom the progress report, even though she does not hold ed rights.
  - B. Refuse to give step-mom the progress report, but inform her that father/ERH may make the request.
  - C. Other
    - Special ed student?
    - Assignment of ed rights?

You make the call!

- Step-dad refers step-son for assessment. What should the school district do?
  - A. Nothing. Step-dad is not a "parent" who can refer for assessment.
  - B. Present step-dad an assessment plan within applicable statutory timeline, but tell him only mom/ERH may consent to AP.
  - C. Send PWN and AP to ed rights holder(s), explaining who made the request and asking if ERH consents.
You make the call!

- Student lives with Mother and Grandmother. Mother does not participate in Student’s education. Grandmother, who is primary contact with school, signs assessment plan. What should the school district do?
  - Assess within applicable statutory timelines.
  - Reject AP and resend it to Mother/ERH with PWN explaining only ERH may consent to AP.
  - Nothing. Grandmother is not a parent who can consent to assessment.

RESIDENCY REQUIREMENTS AND ISSUES

Residency Requirements

- Generally, a student subject to the compulsory attendance statute is the responsibility of the school district where the student’s parents reside.
- Education Code section 48200 states that a child shall attend the public full-time day school or continuation school or classes operated by the school district in which “the residency of either the parent or legal guardian is located.”
Residency Requirements


Residence with Caretaker

- Caretakers
  - For purposes of the Education Code, a caregiver affidavit operates to establish a student’s residence for enrollment purposes within a school district where the caregiver resides.
  - An adult relative who completes a caregiver affidavit meeting the requirements of California Family Code section 6550 may enroll a minor in school and consent to school related medical or dental care on behalf of the minor.
  - Remember: Caretaker status does not confer educational rights!

Residence with Caretaker

- The caretaker must be a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons specified in this definition, even after the marriage has been terminated by death or dissolution. (Fam. Code § 6550(h)(2).)
Residency and Divorce

- Divorced parents living in different school districts
  - When one parent wants to enroll the student in your district, and the other parent objects, consider:
    - Is there a court order addressing legal custody, such that one parent gets to decide which district?
    - Is there a court order addressing physical custody, such that the student lives with one parent substantially more than the other?
    - What is in the student’s best interest:
      - Remaining in the current district or transferring to a new one?
      - What is the student’s current grade level — could a transfer take place at a natural transition time?
    - How old is the student, such that the student’s preference should be considered?

Question & Answer Session

Thank You

For questions or comments, please contact:

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Tackling Parents’ Educational Rights and Residency Issues

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