(Cite as 17 D.o.E. App. Dec. 20)

IOWA DEPARTMENT OF EDUCATION

In re Richard U.	)	
	)	
Bonita U., Appellant	)	Decision
	)	
v.	)	
	)	
Iowa Department of Education; Iowa Department of Human Services, Western Hills Area Education Agency No. 12, Sioux City Community School District, Arrowhead Area Education Agency 5, and Fort Dodge Community School District.	)	Doc. # SE-203
	)	#119
Appellees	)	

The above entitled hearing was heard before Administrative Law Judge (ALJ) Larry Bartlett. The Appellant was represented by Attorney Curt L. Sytsma of Iowa Protection and Advocacy Services (P & A); the Iowa Department of Education (Education) was represented by Assistant Iowa Attorney General, Chris Scase; the Iowa Department of Human Services (Human Services) was represented by Iowa Assistant Attorney General Charles K. Phillips; the Sioux City Community School District (Sioux City) and Western Hills Area Education Agency (AEA 12) were represented by Attorneys Ronald Peeler and James Hanks; Arrowhead Area Education Agency (AEA 5) and the Fort Dodge Community School District (Fort Dodge) were not represented by legal counsel, but were represented at various conferences and proceedings by Sandy Schmitz, Director of Special Education, and David Haggard, Superintendent, respectively.

The hearing was held pursuant to Section 256B.6, Code of Iowa and Chapter 281-41, Iowa Administrative Code.

There is an extensive procedural history to this appeal. Due to the nature of potential confusion related to actual filing, i.e. with Education or the ALJ, and facsimile transmission, some dates may be approximate.

On March 25, 1998, the Appellant filed a request for a due process hearing. In her appeal documentation, the Appellant alleged that Human Services was proposing to "recommend and effect a change" in special education programming and services for her son, Richard. She further alleged that Human Services was ignoring its legal duties to provide various parent procedural safeguards under the Individuals With Disabilities Education ACT (IDEA), and that judicial approval would likely be sought by Human Services. As relief, the Appellant seeks an order compelling Human Services' compliance with the procedures required by federal special education law. She also asked originally that the alleged proposed change in her son's programming and placement not be formally completed until she was allowed an opportunity to participate in the decision-making process, as required by the IDEA.

On April 7, 1998, the Appellant filed a request for continuance stating that active negotiations were in process to resolve the underlying facts of the dispute. A continuance was granted on April 13 and was to last until June 26, 1998. On June 26, this ALJ received a request for an additional continuance from the Appellant, again for the purpose of attempting to reach a mutually agreeable solution. A continuance was granted until August 28. For the first time, as a result of the Appellant's motion for continuance in June, this ALJ became aware of a pending motion for dismissal, due to lack of jurisdiction, filed by Human Services on April 10, 1998.

On July 31, 1998, AEA 12 and Sioux City filed a motion to dismiss this appeal as it applied to them. The thrust of the motion was the unfairness of including them in the hearing process when the resident area education agency and school district were not parties to the appeal. In a motion for amendment filed by the Appellant on August 3, 1998, the Appellant joined, without objection, AEA 5 and Fort Dodge as Appellees in the appeal. On August 7, Human Services moved to amend its original motion to dismiss by the addition of "mootness" as grounds for dismissal. No additional written objections to motions to amend were filed, nor were any argued at appropriate times.

On August 11, 1998, the Parties met with the ALJ to offer oral arguments on the various motions. Parties agreed to file simultaneous written briefs by August 26, and a decision was to be rendered on or about September 1. The matter was continued by joint request until September 30, 1998.

On August 26, Human Services filed a motion for continuance requesting additional time to further explore informal resolution of the dispute. A continuance was granted until November 20. On October 9, Human Services requested a further continuance in order for the Parties to continue negotiations. A continuance was granted until December 30, 1998, and times were extended for briefing and ruling on the motions to dismiss. A tentative hearing date of December 10 was set.

On November 24, 1998, briefs by the parties were filed regarding the motions to dismiss. On November 30, the parties and this ALJ met via telephone conference call. It was mutually agreed that a decision on the motions to dismiss should be issued and the matter continued until March 22, 1999. The Parties agreed to again meet via telephone conference call on January 22, 1999.

On December 1, 1998, this ALJ issued a ruling on the two pending motions to dismiss. Both were denied.

Concurrent with this appeal was a continuing action regarding Richard U. in the Juvenile Division of the District Court for Webster County. A hearing on the release of court records for use in this appeal was set for January 11, 1999. In an order dated January 12, 1999, the Juvenile Court Judge directed the release of the court file regarding Richard U. for use in these proceedings.

The parties and this ALJ again met via telephone conference call on January 22, 1999. The Parties indicated that the Juvenile Court had released Richard's record for use in this due process

proceeding. The Parties agreed that they wished to proceed without a formal hearing, and requested that the matter be resolved through a summary judgment motion and the filing of additional briefs.

A Motion for Summary Judgment was filed by the Appellant on February 12, 1999, and was accompanied by a brief in support of the Motion, Exhibit A, an order by the Juvenile Court Judge releasing Richard's records for these proceedings, and Exhibit B, Richard's records from the Juvenile Court. Education and Human Services responses and briefs were to be filed on March 5, 1999. On March 8, the undersigned ALJ received from Human Services a Resistance to the Appellant's Motion for Summary Judgment, a Motion for Summary Judgment of its own, and a brief in support of its position. Also on March 8, 1999, this ALJ received an oral request from Education for a delay in the briefing schedule, and a request for additional time for briefing and for ALJ deliberation and written opinion. An additional time to complete filings was granted Education until March 19, and a continuance was granted until March 29, 1999. This ALJ contacted the Attorney for Education through Education staff on March 24, and advised her that her brief had not been received. A copy was received by facsimile communication that same day. The original Education mailing was received the next day, March 25.

In a letter to the Parties dated February 23, 1999, the undersigned ALJ requested that additional education records be placed in the hearing record. To date, no objection has been received. A March 9 submission was received regarding selected Ft. Dodge education records regarding Richard. Also, records regarding Richard received by Education in August, 1998, from AEA 12 and Ft. Dodge, were forwarded to this ALJ. Having received no objection to the education records becoming part of the record of this proceeding, they are hereby accepted into the record.

The Appellant and her Attorney are currently satisfied with the placement of Richard, and do not seek an educational change at this time. All Parties at this time seek clarification of the legal issues as they relate to Richard U. and to children in situations analogous to Richard's.

Findings of Fact

This ALJ finds that he and the Department of Education and the State Board of Education have jurisdiction over the parties and subject matter involved in this appeal.

From the record, it is obvious that all Parties have worked diligently in the best interest of Richard U. and, for the most part, doing so in a cooperative fashion. No fault lies here and none is adjudged to be present as a result of these proceedings. This ruling involves a question of law and fact only and not one of blame.

Most of the factual details of the situation are not directly relevant to a resolution of the legal issues presented, nor, as will be seen, will they be of much aid in arriving at a resolution of Richard's educational needs at the current time. Therefore, for the most part, the factual history of this situation will be stated in general rather than specific terms.

Richard U. is a thirteen-year-old boy who has a long history of severe emotional and behavioral problems. His mother and two sisters reside together. The whereabouts of his father is not

known. The entire family has experienced a good deal of turmoil, conflict, and abuse from each other and from the father when he was present.

At least as early as 1993, Richard's behavior at home and at school were greatly out of control. On November 30 of that year, an IEP team meeting was held to discuss potential options. An in-home counselor and a social worker were in attendance. The two options recommended as a result of that meeting were "home-bound tutorial services two hours per day" and involvement of additional non-school persons and agencies. On the same day of that meeting, the County Attorney prepared and signed a Child-In-Need-Of-Assistance Motion (CHINA) for Juvenile Court. The Motion alleged that Richard was a "child who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior."

As a result of the CHINA hearing, Richard was adjudicated as needing assistance and his custody was transferred to Human Services. The court concluded the "child is clearly in need of some type of intense treatment." Richard was placed in a residential setting, Gerard of Iowa in Mason City, for 18 months and returned to his mother's home in July, 1995. Although the entire family is reported to have attempted to make appropriate adjustments upon Richard's return, difficulties soon arose and he was placed by Human Services in a foster care placement.

During the period of time discussed thus far, Richard was under the care of a psychiatrist and had at various times been provided various medications. The list of medications provided Richard in his various settings, both before this time and after, is quite remarkable, and is indicative of the medical nature of his needs. A list of medications prescribed for Richard at various times during the time period under consideration include: Zyprexa; Thorazine; Tenex; Carbumazine; Mellaril; Navane; Haldol; Risperdal; Seroquel, Imipiramme; Wellbatrin; Paxil; Prozac; Ritalin; Dexedrine; Cylert; Adderall; Depakote; Tegretol; Lithium; Clonidine; Tenex; Benadryl; Atraix; Buspar; and Propranotol. In a report dated June 27, 1997, a psychiatrist reported that Richard had received "the most exhaustive list of previous medication treatments that I have ever seen in a child."

During his foster care placement, Richard was placed for education in a self-contained BD classroom in a Fort Dodge elementary school. There were two other students and a teacher and teacher associate in the classroom. A report dated October 19, 1995, indicates that at that time Richard was responding well to the school environment and was making progress.

A few days later his mother left town for a vacation, and Richard experienced several uncontrolled incidents where he engaged in violent, assaultive, and property destructive behavior. At one point, the police were called to the school when Richard's foster parents were unable to pick him up from school after an especially violent outburst. He was placed for a time in a local hospital psychiatric unit. When he left the hospital, his home environment was not ready to receive him, and arrangements were made for him to live with an uncle. Due to safety concerns, the school was hesitant regarding his return to school, but he was transitioned gradually back into school.

A week after Richard returned to a full-day school program, he assaulted his classroom teacher and was suspended from school. It was agreed, after an IEP meeting, that Richard would be allowed back in school if his mother would be in the building the entire time he was present. This arrangement was moderately successful, and it was agreed at an IEP team meeting involving 15 persons, including the Superintendent of Schools, that the arrangement should continue for about six more weeks.

The record indicates that from February 1996 to November 1996 problems at school, at home, and in his life generally, especially frequently aggressive behaviors, continued for Richard. By the end of 1996, Richard had been removed from the special behavior program at school and placed on a home-bound tutorial program of four hours a day. His home life was not showing improvement either.

In November 1996, a report filed with the court discussed hospital testing which revealed that Richard had "lead deposits in his joints" and an unusual amount of calcification in his brain. That report also discussed Richard's natural father's attempts to visit his children after a seven year absence and the turmoil which resulted for Richard and the family.

By the end of 1996, things were not improving for Richard. Things were so bad for him, in fact, that he was again admitted for in-patient care at a local hospital psychiatric unit just before the beginning of the new year. Records indicate that he had previously been hospitalized there "numerous" times over the years. His medical diagnosis was "schizaffective disorder" and "lead encephalopathy." Hospital staff had previously "strongly" recommended a residential treatment program due to his continued problems with aggressive behavior.

In a report dated January 3, 1997, the County Attorney, with Human Services assistance, reported the foregoing situation to Juvenile Court. The report noted a previous "strong recommendation" from Richard's physicians that Richard be placed into a DMIC program (the record does not explain this term), and that his mother had objected. His mother had then returned Richard to her home following discharge from the adolescent psychiatric unit and the Ft. Dodge home-bound tutorial was reinstated.

By the time of completion of the January 3, 1997, report to the court, his return home was problematic, and Richard's mother had requested his placement in a children's psychiatric medical institution. His psychiatrist had recommended three residential programs in Iowa. Richard's mother expressly requested involvement in any pre-placement decision activities. A court hearing on the report and Richard's status was held on January 9, 1997. The court continued Richard's status as a child in need of assistance, with custody in Human Services and directed placement into a DMIC facility with residential care.

Richard was then placed in Beloit Lutheran Children's in Ames on February 18, 1997. By April 10 he had over 50 behavior incidents cited on his record, and the Beloit staff expressed concern regarding the appropriateness of the placement there. His behavior continued to worsen and Beloit requested additional funding from Human Services to assist it with Richard's intensive behaviors. Beloit's request was denied. An April 10 report from Beloit strongly indicated that its

staff considered the placement inadequate for Richard. Shortly after that, Richard was again hospitalized as a result of his aggressive behaviors.

In a May 5 report, Beloit staff, and Richard's psychiatrist, recommended a more intensive program placement. In a subsequent report made ten days later, Beloit staff noted continuing escalation of Richard's aggressive behavior toward others and increased self-abusive behavior. At all times he was continued on medication.

During the May, 1997, hospitalization, hospital staff made several recommendations for treatment, but those options were not then available due to his funding status and the inflexibility of funding sources in meeting his individual needs. None of the recommendations made at that time by physicians or Beloit staff could be designed to fit Richard's needs due to funding constraints.

In mid-May, 1997, with no options available, Richard was discharged to the custody of his mother.

In an order dated June 12, the Juvenile Court found that Richard is a child found to be "suffering from a serious mental impairment, such that he is in need of evaluation and treatment at the Cherokee MHI Adolescent Unit," and the treatment placement was ordered. That was one of the treatment placements previously considered and rejected due to funding formula constraints.

Richard's evaluation placement lasted for 15 days and the recommendation of the chief medical officer contained in the evaluation report was brutally clear.

> Recommendations:
>
> In my opinion the only environment that can maintain this child is one in which there is a structured behavioral management program with 24-hour staff supervision and ability to enforce the rules of that program, coupled with a school as an integrated part of that program, all of which is supervised by a psychiatrist who can monitor medication and has the ability to instantly order mechanical restraints and/or IM medication to deal with assaultive or potentially assaultive, self-abusive or potentially self-abusive behaviors. The only environment which fulfills these criteria would be a psychiatric hospital setting. I would see the only alternative as the new "intensive residential treatment" category established at MHI's Independence and Cherokee. Anything less than this will be insufficient to control or change his behavior. If the system is not prepared to deal with him in a sufficient manner as a Child in Need of Assistance, then his case should be closed and he should be sent back home with his mother and resources should not again be mobilized until such time as he is a delinquent and ready for the training school.
>
> But no one should have any lingering hope that heretofore unused mediation or combination of medications will bring about a dramatic improvement in the boy's behavior. He will remain a danger to himself and others for years to come

> regardless of whether he takes medication or not, and for that reason I think he requires the maximum that we have to offer, either as a Child in Need of Assistance or as a delinquent.

In an order dated August 20, 1997, the Juvenile Court continued Richard's placement at the Cherokee Mental Health Institute until residential care was available in group residential foster care, specifically the Boy's and Girl's Home Residential Treatment Program at Cherokee, where the staff was to "successfully complete all programming offered." Placement was subsequently changed, but from June to December, Richard spent most of the time in the Cherokee MHI.

In a report from the Cherokee Boy's and Girl's Home dated January 5, 1998, it was stated that Richard had returned to his mother's home for Christmas. The report related extremely serious aggressive behavior on Richard's part and similar self-injurious behavior. As a result, an emergency commitment was sought and obtained for the hospitalization of Richard, and he was again placed for treatment in Cherokee MHI By order of the Juvenile Court, Richard's commitment was confirmed until his behavior stabilized, at which time he was to be returned to the Boy's and Girl's Home, if appropriate. That court order, dated January 21, 1998, stated "the Court finds that the child continues to suffer from a serious mental impairment, and has shown actions which indicate that he is a danger to himself without further inpatient evaluation." A subsequent order of the Juvenile Court moved Richard's treatment placement from Cherokee MHI to a PMIC facility. (This term is not explained in the record.)

A report to the Juvenile Court dated April 3, 1998, did not offer much hope for Richard's improvement. It stated that while at Cherokee MHI, he had achieved little or no progress and spent a great deal of time in restraints. His placement at the Cherokee Boy's and Girl's Home was considered a disaster, even though it had a conduct disorder program focusing primarily on his type of behavior. After the return to the MHI, Richard had been accepted for a 45-day trial placement at Boy's and Girl's Home DMIC facility in Sioux City. He was there from February 9, 1998, until his discharge on April 2, 1998. While in the Sioux City placement, Richard's educational programming was provided by AEA 12 and was apparently based on an IEP from Ft. Dodge. Many educational records from Ft. Dodge were placed in the record by AEA 12 and are indicative of good record sharing practices.

The social worker supervising Richard's case notified Richard's mother of the pending discharge from the Sioux City residential facility in March, and his mother contacted P & A. As a result, the March 25, 1998, a request for due process hearing was filed, which briefly delayed Richard's discharge. The discharge eventually occurred and he returned to his mother's home on April 2. Reports from the Sioux City placement did not indicate any improvement in Richard's behavior, and he was, in fact, criminally charged with assault while there. The April discharge from the Boy's and Girl's Home in Sioux City was concluded due to Richard's time for evaluation being up and the inappropriateness of the trial placement. The discharge was not due to the fact that he had improved or that an alternate placement was available.

In the April 3 report to the Juvenile Court, the supervising social worker concluded that Richard "is in need of one-to-one attention, is verbally and physically aggressive, is difficult to redirect, has a lot of difficulty relating to peers and adults, can be suicidal, assaultive, and can be into self-harm." The social worker recommended a treatment placement at Iowa Juvenile Home (IJH) in

Toledo, while still under the custody of Human Services. By order of the Juvenile Court on April 7, Richard was transferred to the IJH in Toledo for placement and evaluation. In its order, the court noted that Richard's mother had expressed concern that his educational needs were not being met.

An April 30, 1998, report of the initial evaluation conducted at IJH was issued. In it Richard's continuing aggressive and self-abusive behavior is documented. The psychologist author's conclusion and recommendations were not optimistic:

> It appears as though Richard was placed at the Iowa Juvenile Home by default as his aggressive/assaultive behaviors led him to be discharged from other residential treatment placements. His psychiatric problems appear sufficiently severe that this writer doubts our institution can adequately meet his needs. For this reason, I recommend Richard be considered for psychiatric hospitalization at MHI in Independence.

A subsequent report at the IJH, dated May 7, highlighted Richard's continuing problems with no sign of progress. Even with his disruptive behaviors, however, he apparently participated in an undefined academic program with mild success. The report author's conclusions were that IJH was not an appropriate treatment situation for Richard, but no other placement was specifically recommended.

On May 20, Richard was directed by the Juvenile Court to participate in a "home visit for treatment purposes." While there, he was the subject of an informal evaluation conducted by two persons familiar with autism. They recommended that a formal evaluation of Richard for autistic tendencies be conducted. On June 8, the Juvenile Court ordered an evaluation for autism.

On July 10, 1998, Richard was evaluated by a psychologist at the Children's Health Center in Des Moines. The psychologist determined that "Richard displayed behaviors consistent with autism spectrum disorders," and Attention Deficit Hyperactivity Disorder. She recommended that a better job be done to meet "his needs rather than trying to make him fit the environment," and she made specific recommendations on how that might be done.

The IJH at Toledo adopted the approach recommended by the Des Moines psychologist and began by changing from a position of responding to Richard's behavior to one of proactive planning and reaction to Richard's needs. A September 9 report to the Juvenile Court indicated small improvements in his aggressive and self-abusive behavior over the brief time of the implementation of change in approach at IJH. That same report indicated some improvement in his educational pursuits and an apparent positive attitude from Richard about his environment. Richard's mother was apparently involved in the planning of his current educational program at IJH.

A Juvenile Court order dated September 22, 1998, following a hearing, concluded that Richard was making "substantial progress" at the IJH. The court directed that his treatment placement continue at the IJH, and efforts be made to more accurately determine his educational potential.

A sentence in the brief in support of the Appellants' Motion For Summary Judgment (p. 13) sums up this ALJs emotional and professional feeling at the conclusion of his review of the record from the Juvenile Court. "This has been a painful record to read."

Richard's educational history is one filled with emotional and behavior problems negatively impacting his opportunity for academic advancement. Behavior concerns were noted in the record beginning at age three years while he was in day care, and continued through Headstart and early childhood special education programs. Education reports from this early age indicate great difficulty in remediating Richard's behavior needs. When adult attention was focused on a specific behavior need, a different behavior need would surface. Behavior concerns from Richard's home were expressed throughout the education record. Richard's mother reportedly sought assistance through private agencies with his behavioral issues at home, at least from the time he was in Headstart programming. He was described as often "angry and defiant" while in Headstart. Richard's kindergarten IEP documents an angry, argumentative and moody child who made many negative comments about himself and the people in his life. According to the record, representatives from Human Services and from various service agencies regularly participated in Richard's early education planning.

In February, 1994, when Richard was age nine, his Present Levels of Educational Performance (PLEP) on his IEP stated the following:

> Although Richard is beginning to make significant improvement in the classroom, his behaviors of impulsiveness, inattention, oppositionalism and need of staff attention, continue to be a problem. He tests limits often, [eligible] and tries to change direction to fit his agenda.

Richard was placed for treatment at Gerard of Iowa at the time.

A year later, while still at Gerard, Richard's IEP PLEP indicated recent improvements in his behavior. Additional staff time and attention had been assigned to him, however, as a result of occasional severe emotional outbursts.

By the time of his next IEP meeting in January, 1996, Richard had been discharged from Gerard, placed in foster care when his home situation became problematic, and then placed in his uncle's home. That PLEP stated:

> Richard is having great difficulties on the weekends at home. Problems center on aggressiveness and sibling peer relationships. ... Out of 14 school days during this period of time Richard has 4 successful days. (Success is no interventions or office referrals). On October 26, Richard became very oppositional, refusing to follow instructions, swearing, tipped over chairs, threw chairs across the room and began to destroy school and personal property of others.

Two days following the above described incident in October, 1995, Richard was admitted to the psychiatric unit of a local hospital. In December, Richard returned to school with his mother being present at the school when he was present. Staff members from Gerard were also

continuing to work with Richard. In school behavior plans were operational, but only mildly effective. Half of his IEP goals and objectives were focused on behavior issues. His school placement was in a self-contained behavior disorder class with assistance from his mother as needed.

Richard's PLEP and other IEP items on January 30, 1997, show a further destabilizing of behavior and a growing ineffectiveness of efforts to control and change behavior. Late in 1996, he had been on "home-bound tutoring 2-4 hours per day," and again hospitalized in a local hospital's adolescent psychiatric program.

All in all, school records establish an early picture of a troubled youth and a slowly escalating deterioration of Richard's behavior and self-control, both in and out of school. Most of the serious episodes of aggressive behavior exhibited while at school were directly related to Richard's life outside of school. For instance, it bothered him greatly when his mother left town on a vacation, and when he learned that his long absent and allegedly abusive father was seeking a return to the family scene. The educators and staff members worked diligently and cooperatively among themselves, with outside agencies, and with hospitals in an effort to assist Richard with his emotional, behavioral, and educational needs.

The educational record in this proceeding establishes that Richard's behavioral and emotional needs exhibited while attending school in his resident district stemmed from long-term personal and family issues which escalated quickly beyond what the school was able to remediate. Outside agencies, institutions, programs and repeated psychiatric interventions and prescriptions for medication were not effective in meeting Richard's emotional and behavioral needs. At least not until recently.

While the record indicates that academic growth was a consideration during most of Richard's tumultuous days of residential treatment and changing environments, his medical and emotional issues become the real, obvious, and immediate focus of concern. With each new change of treatment program and environment came less and less exhibited concern for Richard's educational needs. Clearly, his educational needs took a distant back seat to the immediate needs exhibited in his aggressive, oppositional, and self-injurious behavior. Most, if not all, of his residential placements, including hospitalizations, were clearly for noneducational purposes.

The record discloses a consistent educationally healthy practice of educational planning and consideration by the school districts and area education agencies involved in Richard's education. Also evident is a healthy collaboration between educational agencies and other youth service agencies seeking to resolve Richard's emotional and behavioral needs. The record is not clear, however, on IEP changes or adjustments to Richard's educational programming while in treatment and residential settings.Records indicate that, while some type of educational programming usually continued, it sometimes, especially when in hospital settings, appeared to be limited to an established local program which was previously available, and the IEPs were actually observed in only a few of the settings. With so many varied agencies involved and the focus of concern not on educational needs, this is understandable, if technically inappropriate.

Conclusions of Law

On January 22, 1999, in a telephone conference call, the Parties agreed that they desired to proceed to a decision in this matter without the benefit of a full evidentiary hearing. They proposed to do so upon a motion for Summary Judgment. This ALJ voiced concern that the Individuals With Disabilities Education Act (IDEA) did not expressly provide for summary judgments. The Parties jointly expressed a desire for a ruling based upon the record released from the Juvenile Court, and a Motion for Summary Judgment was filed by the Appellant on February 12, 1999. Human Services responded on March 5 with a resistance to the Appellant's Motion and offered a Motion for Summary Judgment of its own. We are at this juncture faced with cross motions for Summary Judgment. The Parties were provided a mutually agreed upon opportunity for briefing and response.

The Iowa Court Rules (Rule 237) provide that summary judgment may be entered if "there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law." The record from the Juvenile Court and the various education records requested by this ALJ, and placed into the record without objection, present enough facts upon which to make a determination in this matter. However, a review of federal statute at 20 USC § 1415 (f) and federal regulations to appear in the future at 34 CFR §§ 300.507-.509 [(64 Federal Register No. 48, 12406, 12450-51 (March 12, 1999)] confirm this ALJ's concern that Summary Judgment is neither expressly or impliedly authorized under the IDEA hearing procedures. Summary Judgments are, however, appropriate for courts, e.g., *Brown v. Wilson County Sch. Bd.*, 747 F. Supp. 436, 439 (M.D. Tenn. 1990). Not being comfortable that summary judgment is appropriate in IDEA due process hearings, this ALJ will proceed to decision, as desired by the Parties, as if proceeding on a stipulated hearing record. The result should not be too different.

Mootness

Human Services had previously moved for dismissal of this hearing due to its being moot. That argument is continued here primarily on the basis that the Appellant is currently satisfied with Richard's educational placement. There is considerable problem with declaring the issues in this proceeding moot. Surely, it cannot automatically be presumed that Richard will remain in his current treatment and educational placements at IJH until his eligibility under IDEA is completed, i.e. 21st birthday. This ALJ, being in agreement that Richard U. may again have his treatment placement, and potentially his educational placement, unilaterally changed by Human Services desires to achieve clarity on as much of the law surrounding this issue as possible. Therefore, Richard's current educational placement in a situation satisfactory to the Parties does not render the issues involved in this dispute moot. *See Rowley v. Board of Educ.*, 458 U.S. 176, 186 (1982); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1041 (5th Cir. 1989).

Jurisdiction

It is important, before arriving at a decision, to frame the overall issue in its proper context. On December 1, 1998, this ALJ denied a Human Services motion to dismiss Human Services as a party to this proceeding. Along with allegations of mootness, Human Services had taken the position that Education and this ALJ had no jurisdiction over decisions made by it and by

juvenile courts regarding the care, custody, treatment, and educational placement of children with disabilities under its jurisdiction. It is desirable to again discuss generally the law as it applied to that denial of motion to dismiss in order to better understand the ALJ's final ruling in this matter and the implications it has for the educational programming of children, such as Richard U., under the jurisdiction of Human Services.

In order to receive federal funds under the IDEA, the State of Iowa, and its political and educational leaders, must assure compliance with a series of conditions. Several of the conditions were formerly found in 20 U.S.C. § 1412(1),(5),(6)(1994):

> (1) The State has in effect a policy that assures all children with disabilities the right to a free appropriate public education.
>
> . . . . .
>
> (5) [The State must establish procedural safeguards and procedures to assure the least restrictive environment requirement is observed with children with disabilities], including children in public or private institutions or other care facilities, . . .
>
> (6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for children with disabilities within the state, including all such programs administered by any other state or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State education agency and shall meet education standards of the State education agency. (emphasis added)

Those required assurances have been previously set forth in the state plan requirement as found at 20 U.S.C. § 1413(a) (1994).

The concept of all special education programs in a state being under the authority of the IDEA and subject to Part B requirements was further detailed in federal regulations. Found in 34 C.F.R. § 300.2(b) (1998), the state's previously cited conditions of acceptance of federal funds under the IDEA obligates the state as a whole to its terms and conditions:

> . . . . .
>
> Therefore, the provisions of this Part [B] apply to all political subdivisions of the State that are involved in the education of children with disabilities. These would include:
> (1) The State educational agency;
> (2) Local educational agencies and intermediate educational units;
> (3) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for students with deafness or students with blindness); and
> (4) State correctional facilities.

See also 34 C.F.R. §§ 300.134, .136, .152, and .600 (1997).

The 1997 Amendments to the IDEA continued the same requirements. See 20 U.S.C. § 1412(a)(11)(A);(ii), Supp. III, 1994 Edition, 1998). The regulations under the 1997 Amendments found in 64 Federal Register, No. 48, 12406 (March 12, 1999) also detailed the continuing requirements, although with some minor changes in formatting and language. *See* § 300.2; .141; .142(a)(1997). Rule § 300.600 now provides as follows:

> § 300.600 Responsibility for all educational programs.
>
> (a) The SEA [State Educational Agency] is responsible for ensuring—
>
> . . . . .
>
> (2) that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—
>
> (i) is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and
>
> (ii) meets the education standards of the SEA (including the requirements of this part).
>
> (b) The State must comply with paragraph (a) of the section through State statute, State regulation, signed agreements between respective agency official or other documents.

Education has provided for its statutorily required jurisdiction in 281-41.1, Iowa Administrative Code (1995):

> These rules apply to the provision of education to children requiring special education between birth and the age of 21..., who are enrolled... in state-operated education programs. In addition, they apply to children requiring special education and who are being educated... in hospitals or in facilities other than schools. ...Under the provision of [federal regulations], all agencies offering special education within this state shall comply with these rules.

The phrase "special education" is defined in Rule 281-41.5 as "specially designed instruction, ... to meet the unique needs of an eligible individual," and "includes specially designed instruction conducted ... in hospitals and institutions, and in other settings; ..."

The 1999 version of the Federal Regulations have further clarified the responsibility of all special education programming in the state by expressly requiring all state agencies, including Human Services (see § 300.22), to assure that IEPs are developed and implemented in private schools and facilities acting as their agents when serving children in need of special education and related services.

§ 300.341 Responsibility of SEA and other public agencies for IEPs.

(a) The SEA shall ensure that each public agency –

. . . . .

(2) Ensures that an IEP is developed and implemented for each eligible child placed in, or referred to, a private school or facility by the public agency.

(b) Paragraph (a) of the section applies to –

(2) . . .the other public agencies described in § 300.2, including LEAs and other state agencies that provide special education services and related services either directly, by contract, or through other arrangements. (emphasis provided) 64 Federal Register, No. 48, 121406, 12440 (March 12, 1999).

It is significant to note, that after exhaustive review of the IDEA by Congress between 1995 and its enactment of the 1997 Amendment to the IDEA, issues facing correctional institutions were the only noneducational agency issues addressed in resulting amendments. 20 USC § 1412 (a)(11) and § 1414(d) (Supp. III, 1994 Edition, 1998).

From the foregoing, there is no doubt that the decisions made regarding the education of children with disabilities under the jurisdiction of Human Services, and other state agencies, is subject to the IDEA. *Mrs. C. v. Wheaton*, 916 F.2d 69 (2nd Cir. 1990) (human services counterpart in another state could not terminate educational services to a student without following IDEA procedural safeguards); *Paul L. v. Singletary*, 979 F. Supp. 1422 (S.D. Fla. 1997)(state corrections department educational program had to comply with IDEA; *King v. Pine Plains Central Sch. Dist.*, 918 F.Supp. 772, 780 (S.D.N.Y. 1996) (State Department of Social Services was subject to the IDEA); *Petties v. District of Columbia*, 894 F. Supp. 465 (D.D.C. 1995) (IDEA applies to students who are "wards" of the state under human services department jurisdiction); *State v. State Department of Education*, 699 A.2d 1077 (Conn. Sup. Ct. 1997) (IDEA applied to pretrial detainees held by department of corrections); *Corbett v. Regional Center*, 676 F. Supp. 964, 968 (N.D. Cal. 1988).

An important example of the type of impact the IDEA would have in a situation where Human Services unilaterally made changes which directly or indirectly impacted the educational programming and "placement" of a child with disabilities, is in those situations where such children have become a "ward of the state." The IDEA prohibits the state and its employees and its agents from taking the role of a parent or guardian when making decisions regarding special education programs and services. Instead, the IDEA requires the appointment of a surrogate parent for purposes of educational decision making (20 U.S.C. § 1415 (b)(2); Supp. III, 1994 Edition, 1998); *Hehir to Thompson*, 23 IDELR 890 (OSEP 1995).

Neither is there any doubt that Richard U. is a child eligible for special education and services under state and federal law regardless of where those services are provided by local and state governmental agencies or private agencies acting on their behalf.

While not directly relevant here, the role of juvenile courts in IDEA proceedings should not be confused. Juvenile courts play an exceptionally important role in the lives of many children and, under state law, they exercise a great deal of authority within their jurisdiction. Not surprising, many of the children appearing in juvenile courts, especially for CHINA considerations, are in need of special education. Only rarely do juvenile courts misunderstand their limitations in dealing with children's issues under the IDEA. For the most part, the IDEA does not impact juvenile court authority over child welfare, treatment, confinement, and safety. *In re Trent N.*, 212 Wisc. 2d 728, 569 N.W.2d 719 (Ct. App. Wisc. 1997); *In re Christopher V. T.*, 620 N.Y.S.2d 213 (Fam. Ct. 1994). However, educational programming issues for children identified as needing special education, are outside the jurisdiction of juvenile courts as a result of the IDEA. *See Oscar F. v. County of Worcester*, 412 Mass. 38, 587 N.F.2d 208 (1992)(judge in a child in need of assistance proceeding has no authority to order a child's placement in special education); *Tanya v. Cincinnati Bd. of Educ.*, 651 N.E.2d 1373 (Ohio App. 1 Dist., 1995)(Court could not issue a permanent injunction ordering a school to place a student in a special education classroom. Annual team review of student IEP must be allowed to consider changes); *Morgan v. Chris L.*, 927 F. Supp. 267 (E.D. Tenn. 1994) (school district cannot use juvenile court to circumvent the IDEA).

Issues involving "educational programming and placement" of children with disabilities who are in need of special education and services are under the authority of the IDEA and state law, and within the jurisdiction of Education and this ALJ. Unilateral decisions of Human Services and juvenile courts regarding the care, custody, confinement, "treatment," and non-educational placement, only, regarding children with and without disabilities are not within the jurisdiction of Education or this ALJ. This dichotomy is at times obvious and clear, and other times not. That is why these determinations can seldom be made in the absence of factual context.

Primary Issue Presented

The Appellant's "Due Process Appeal" document filed with Education on March 25, 1998, contended that Human Services was planning a change in location of Richard's care, custody, and treatment. The planned change was expected to be judicially reviewed and approved, and it was alleged that the change in placement would result in changes which impacted Richard's entitlement to special education and related services under the IDEA. The appeal document also alleged that the action planned by Human Services resulted in Richard's mother being deprived of various procedural safeguards, including notice provisions of the IDEA. As relief, the Appellant sought an order compelling Human Service to comply with IDEA procedural safeguards, including IEP team consideration of programming, and the "stay put" or "status quo" provisions of the IDEA. By doing so, the Appellant sought to bind Human Services to the provisions of the IDEA for all decisions involving her son which may or may not impact his educational programming and services.

Human Services, on the other hand, argues for the proposition that it, in conjunction with court review and approval, is not subject to the provisions of the IDEA when it unilaterally makes decisions regarding children in its care and custody, such as Richard U. Although it has on occasion in this proceeding backed away from its earlier position of no jurisdiction of Education

or this ALJ over its decisions, Human Services continues to argue for a very limited and narrow Education jurisdiction.

The question presented here, put in its simplest form, is to what extent, if any, does the IDEA impact the decisions of Human Services regarding children under its authority who are in need of special education and related services, and indirectly those decisions of juvenile courts involving children with disabilities entitled to special education and related services?

The Appellant's argument would result in the IDEA providing a broad umbrella of control over decision making by non-educational agencies when dealing with children with disabilities, and Human Services denied, at least at first, all responsibility on its part to comply with the terms of the IDEA when it carries out its duties mandated by state statute.

Neither the Appellant nor Human Services are fully right or fully wrong in their position. The final result lies somewhere in between.

The IDEA, through the Supremacy Clause of the Constitution, supersedes state statutes, regulations, and practices contrary to it. E.g. *Paul Y. v. Sengletary*, 979 F. Supp. 1422, 1426 (S.D. Fla. 1997). But the IDEA is limited to "all educational programs for children with disabilities in the State" [(20 USC § 1412 (a)(11)(A)(ii); Supp. III, 1994 Edition, 1998], and does not necessarily include such elements as care, custody, confinement, and medical treatment.

The specific inquiry here is, was the decision or proposed decision to end Richard U.'s program of treatment at the Boy's and Girl's Home in Sioux City and transfer him to the IJH in Toledo an issue involving his education program or placement, or was it a decision made for non-educational reasons? If the decision and proposed decision were primarily for educational reasons, it would be subject to the parental due process and safeguard provisions of the IDEA. If not, those due process and safeguard provisions would not apply to that specific decision because it was not a decision regarding educational programming and placement. However, a decision to change locations of treatment programs may have an indirect impact upon Richard's educational program services and environment, which might then implicate the IDEA parental due process and safeguard provisions.

It is unlikely that the mere changing of location of provision of special education services will implicate the IDEA.

The closing of a facility for purely budgetary reasons, and the transfer of students entitled to special education, does not of itself invoke the IDEA safeguards. *Tilton v. Jefferson county Bd. of Educ.*, 705 F.2d 800 (6th Cir. 1993); *Concerned Parents and Citizens v. New York City Bd. of Educ.*, 629 F.2d 751 (2nd Cir. 1980), *cert. denied*, 449 U.S. 1078 (1981). When educational programs available to transferred students at both sites are substantially similar, the IDEA procedural safeguards are not implicated. *Weil v. Board of Elementary and Secondary Educ.*, 931 F.2d 1069, 1072 (5th Cir. 1991); *Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992); *Morris v. Metropolitan Gov.*, 26 IDELR 159, 165 (M.D. Tenn. 1997).

However, when a change in physical location for non-educational reasons impacts the availability of educational programming and services, such as the unavailability of a formerly provided year-round program, the resulting programming change is a "change in educational placement" and has many IDEA implications. *Tilton v. Jefferson County Bd. of Educ.*, 705 F.2d 800, 804 (6th Cir. 1983). As a federal district court in Florida stated:

> In the typical case, educational placement means a child's educational program and not the particular institution where that program is implemented.... Because his IEP did not change upon his transfer to Countryside, Andrew remains in the "then current educational placement" for the purposes of the IDEA and, therefore no change in his educational placement occurred. *Hill v. School Bd.*, 25 IDELR 429, 431 (M.D. Fla. 1997).

This view is consistent with interpretations of the Office of Special Education Programs of the United States Department of Education. In *Hehir to Fisher*, 21 IDELR 992, 995 (OSEP 1994), the Department stated that a change in location of a child's programs, alone, which did not substantially or materially alter the education program, would not trigger the IDEA procedural safeguards. Since the child was maintained in an educational program which was not substantially changed, only provided at a different location, the IDEA was not implicated.

No court ruling directly on point with the issues and facts present here has been shown to, or discovered by, this ALJ. Interpretations from other contexts, such as parental reimbursement for unilateral residential placement and school district responsibility for payment of related services of a medical nature, are conflicting and not generally very helpful, even though they often involved children with severe emotional and behavioral problems similar to Richard's.

One line of such case law has taken the easy way out for judges, but made determinations of provision of services a nightmare for educators. These court decisions expressly found that severe emotional, social, and medical problems requiring hospitalization, institutionalization, and residential placement "create or are intertwined with the educational problem" to the point that they cannot be separated, and the total responsibility remains with the educators. *Vander Mall v. Ambach*, 667 F.Supp. 1015, 1039 (S.D.N.Y. 1987); *Kruelle v. New Castle County Sch. Dist.*, 642 F.2d 687, 693 (3d Cir. 1981); *North v. District of Columbia Bd. of Educ.*, 471 F.Supp. 136 (D.D.C. 1979). An extreme situation for this interpretation occurred in *J.B. v. Killingly Board of Education*, 990 F.Supp. 57 (D. Conn. 1997), where a court overruled a hearing officer and found that psychiatric treatment for pedophilia and multiple personality disorder were so intermixed with a child's educational needs that the school was responsible, under the IDEA, for addressing all the child's needs in a residential setting. Another court found that

> [i]f institutionalization is required due to a child's emotional problems, and the child's emotional problems prevent the child from making meaningful educational progress, the Act requires the [school] to pay for the costs of the placement. *Mrs. B. v. Milford Board of Educ.*, 103 F.3d 1114, 1122 (2nd Cir. 1997).

Yet, another court found that a residential placement primarily for pervasive mental illness (medical/chemical and psychiatric problems) did not preclude the implications of the IDEA because all that was required by law was that those services be necessary to allow the child to benefit from special education. *Doe v. Anrig*, 651 F.Supp. 424, 431 (D. Mass. 1987).

Still, another court determined that, although a student's academic problems were not severe, his social and emotional needs were severe and warranted residential placement provided under the IDEA. *Naugatuck Bd. of Educ. v. Mrs. D.*, 10 F.Supp. 2d 170, 181 (D. Conn. 1998).

A second line of case law has taken the position that educational needs can be separated from psychiatric, medical treatment, and other needs of children, and education is the only service for which schools are responsible under the IDEA. *Clovis Unified Sch. Dist. v. California Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir. 1990); *Tice v. Botetort County Sch. Bd.*, 908 F.2d 1200, 1209 (4th Cir. 1990). In *Board of Education v. Illinois State Board of Education*, [21 F.Supp 2d 862 (N.D. Ill. 1998)], a court determined that a 24-hour residential placement was not subject to IDEA requirements because it was primarily needed for non-educational reasons (out-of-school behavior; substance abuse, runaway behavior, defiance of home rules, and negative peer group).

The difficulty for this ALJ from these cases is that both lines of case law are related to the question of whether medical treatment by a physician is required. Thus, a determination usually boils down to all the services obtained in a hospital or residential setting being dissected to determine on which side of the physician "bright line" test they fall. If a physician is required, services are not educational and if a physician is not required, it is an educational related service. That results in decisions that border on the arbitrary. In *Field v. Haddenfield Board of Education*, 769 F.Supp. 1313 (D.N.J. 1991), the court determined that a child's substance abuse treatment program was separate from his learning needs and medical in nature and not, therefore, covered by the IDEA. See also *Seattle Sch. Dist., No. 1 v. B.S.*, 82 F.3d 1493, 1502 (9th Cir. 1996); *J.B. v. Killingly Bd. of Educ.*, 990 F. Supp. 57 (D. Conn. 1997).

In the opinion of this ALJ, the law requires IDEA compliance for residential settings, only when the placement is for an educational purpose and not when the placement is necessary for the purpose of addressing non-educational needs (such as medical, social, confinement, emotional, and behavioral). In the latter situation, only the educational programming component is subject to the IDEA, and not other institutional decisions and services related to non-educational concerns. *See Corbett v. Regional Center*, 676 F. Supp. 964, 968 (C.D. Cal. 1987). To find otherwise is to turn an important federal education statute on its head. All social and mental health services needed by a child would become the responsibility of educational authorities merely because the child has a disability and needs assistance with education. This ALJ has not in 25 years of study in this area of the law found where Congress has stated its intent that schools were to become the super-ultimate umbrella service agency for the social, health, and education needs of children. Those court decisions which require schools to be responsible for severe mental health and emotional problems of children, merely because they are "intertwined" with their educational needs are inconsistent with reasonable interpretation of the law. If this was a proper interpretation, schools would have to also pay for the expense of confinement for those children with disabilities who are imprisoned and need special education. Surely, a valid

argument can be made that many children are in correctional institutions as a direct or indirect result of their disabilities, and thus the need for incarceration is "intertwined" with their educational needs.

It must be remembered that current federal regulations provide for a limited, rather than broadened IDEA coverage when children are situated in a residential setting:

> § 300.302 Residential placement
>
> If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board must be at no cost to the parents of the child. (emphasis is provided)(64 Federal Register, No. 48, 12406, 12421 (March 12, 1966).

The following note of explanation was originally provided under § 300.302 in the proposed regulations under the 1997 Amendments to the IDEA:

> Note: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State operated schools for children with disabilities, ...(emphasis provided)(62 Federal Register No. 204, p. 55066, October 22, 1997).

Due to a decision to remove all notes from the final regulations, this note was deleted from the final regulations. The comment section for § 300.302, however, restates the concept (64 Federal Register No. 48, 12406, 12573 (March 12, 1999). *See* 20 U.S.C. § 1412(a)(10)(B); Supp. III, 1994 Edition, 1998.

Thus, a determination of whether IDEA jurisdiction applies to the entire residential setting requires a determination of whether the full-time residential setting is "necessary for educational purposes as opposed to medical, social, or emotional problems that are separable from the learning process," *Tennessee Dept. of Mental Health and Mental Retardation v. Paul B.*, 88 F.3d 1466, 1471 (6th Cir. 1996). In *Daugherty v. Hamilton County Schools*, 21 F.Supp. 2d 765, 775 (E.D. Tenn. 1998), the court followed the ruling in *Paul B.* and found that when psychiatric, social, and emotional services were separable from a student's educational programming needs, the student was not entitled under the IDEA to residential placement for only his educational needs. In *Corbett v. Regional Center*, 676 F. Supp. 964, 968 (N.D. Call. 1988), the court said that residential placements, even when approved by a juvenile court, were subject to the IDEA (formerly EAHCA), only if made for educational purposes. Where residential placements are required primarily for non-educational reasons, however, the placement is not entirely subject to the IDEA.

It appears to this ALJ that a simple "but for" test would reasonably delineate whether the IDEA coverage applies to an entire residential placement or whether the IDEA covers only the special education and related services provided in a residential setting. "But for" a student's non-educational needs (such as medical, confinement, emotional, behavioral, social) was it

"necessary" for the provision of special education and related services that the child be placed in a residential setting? [§ 300.302, 64 Federal Register, No. 48, p. 132438 (March 12, 1999)]. If the answer is in the negative, the entire institutional setting is not subject to the IDEA, only the special education and related services component. If the answer is affirmative, the placement was based primarily on educational needs and the entire placement setting may be subject to the IDEA provisions. Compare why a student is in a penal institution or a medical hospital to the reasons why a child is placed in a private school, and the "but for" test fits snuggly.

Applying the "but for" test to Richard U.'s situation; "but for" his non-educational (emotional, behavioral, and medical) needs would Richard have been institutionalized at the Boy's and Girl's Home in Sioux City or transferred to the Iowa Juvenile Home at Toledo? The unmistakable answer is "no." The placement was made for non-educational reasons, and the entire institutional setting is not subject to IDEA jurisdiction. Only the special education and related services portion of these settings, as part of a free appropriate public education program, is subject to the provisions of the IDEA.

The initial CHINA petition filed by the County Attorney's Office regarding Richard's 1993 initial involvement alleged that Richard, at the beginning of his extensive and various residential treatment settings, was "in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or outward aggressive behavior." The Juvenile Court adjudged Richard to be a child in need of assistance because he "is clearly in need of some type of intense treatment." Following two out-of-school and out-of-home treatment placements, severe and regular difficulties in his home life resulted in foster care placement and placement in the home of an uncle. In the court order placing Richard at Cherokee MHI in June, 1997, the Juvenile Court order stated that Richard was "suffering from a serious mental impairment such that he is in need of evaluation and treatment at the Cherokee MHI Adolescent Unit." In the 14 months prior to the Human Services action challenged here, Richard had been hospitalized for medical treatment of his behaviors and emotional outbursts at least four times. During these treatment placements, he was regularly restrained physically, mechanically, and chemically.

In the approximate nine months prior to the March 25, 1998, filing for due process hearing, Richard U. had been institutionalized at the Cherokee MHI (from June to November, 1997), and considered "seriously mentally impaired and in need of full-time custody, care, and treatment in a hospital;" institutionalized at the Boys and Girls Home in Cherokee; returned to the Cherokee MHI; returned to the Boys and Girl's Home in Cherokee; transferred to the Boys and Girls Home in Sioux City for a 45-day trial placement; discharged from Sioux City Boys and Girls Home (temporarily delayed due to filing of due process hearing request) due to a staff determination that the 45-day trial placement was not meeting Richard's severe emotional needs; and placed in IJH in Toledo. All reports from this time period indicate that Richard had gotten progressively more aggressive and self-abusive. All reports referring to medical aspects of Richard's treatment indicate that he was at all relevant times medicated with a variety of drugs. All reports on educational programming were minimal in nature and scope. Obviously, educational progress was not a primary concern of the staff members in these hospitals and residential treatment centers. A report of psychiatric evaluation conducted on April 7, 1998, a few days following his

discharge from the Boys and Girls Home in Sioux City and his placement at IJH in Toledo, concluded that Richard should be in a 24-hour a day supervised program involving a:

> psychiatrist who can monitor medication and has the ability to instantly order mechanical restraints and/or IM medication to deal with assaultive or potentially assaultive behaviors.
>
> The only environment which fulfills these criteria would be a psychiatric hospital setting.

This ALJ finds that the decision of Human Services, approved by Juvenile Court, to remove Richard from his treatment placement at the Boy's and Girl's Home in Sioux City to a treatment placement at the IJH in Toledo, was a decision made for non-educational reasons and was not a significant "change in educational placement," for Richard U. under the IDEA.

The record is not clear what actual educational program changes, if any, were made as a result of the treatment transfer between the Boys and Girls Home in Sioux City and IJH in Toledo. No substantial changes are shown in the record to have previously been made when Richard was transferred, except possibly when in hospital education programs, which are not the subject of this appeal. It is not clear from the record whether existing IEPs were followed, modified, or ignored during hospital stays. Some type of education programming occurred, but details are absent. However, the hospital stays were usually of short duration. One result of the 1997 Amendments to the IDEA and the Regulations promulgated thereunder will be much greater attention paid to the existence and implementation of IEPs in all placement settings [34 C.F.R. § 300.341; 64 Federal Register, No. 48, 12406, 12440 (March 12, 1999)].

It cannot be determined from the existing record that the residential change from Sioux City to Toledo resulted in a change in educational programming. The record does establish that an IEP continued in existence (with annual review) between Ft. Dodge, Cherokee, Sioux City, and Toledo placements. Therefore, on the basis of the existing record, this ALJ concludes that the educational program provided Richard U. at the Boy's and Girl's Home treatment placement in Sioux City to the IJH in Toledo did not result in a change in educational program or placement.

All motions not previously ruled upon, if any, are hereby overruled.

In a personal and professional note, this ALJ was appalled by the occasional mention in the record that appropriate treatment funding for Richard U. was not available to service agencies or that funding regulations were inflexible in providing funding for recommended treatment programs. There is something seriously wrong with a system when doctors suggest ending treatment so that a child may get into trouble with the law and become adjudicated as a delinquent in order to obtain funding for appropriate mental health treatment programming. It is a fundamental truism that societies are judged on how they treat their weakest and most vulnerable members.

Decision

The issues presented by this appeal are not moot as applied to Richard U., as they may again arise with regard to future decisions of Human Services regarding Richard. The change of treatment placement of Richard U., proposed and then completed by Human Services in late March and early April, 1998, was not a "change of educational placement" envisioned by, and subject to, the legal mandates of the IDEA. Human Services was not required by the IDEA to provide procedural safeguard elements of the IDEA for that particular decision. Human Services, however, must accept that educational programming decisions for children eligible for special education and related services under its jurisdiction are subject to IDEA provisions. No state or local agency, or private agency acting on their behalf, may make unilateral long-term decisions regarding such childrens' special education programming. The express relief requested by the Appellant, in this regard, is hereby denied.

In the conclusion to the Appellant's brief, she is hopeful this ruling will lead to "more complete and richer input" into educational decisions, a "wider range of funding options," and "coordination and collaboration in planning for and meeting the needs of children with disabilities" through mutual recognition and respect among educational and other public service professionals. The procedures of the IDEA require such an effort. The professionalism of the various staff members will have to be depended upon for the substance.

All the foregoing is for the benefit of children with disabilities and for the various agencies designed to serve their needs. The IDEA legal processes and procedures provides state and local agencies with considerable authority and resources to collaboratively plan and carry out educational programming for children with disabilities. Working together, rather than unilaterally, makes all agencies serving children stronger, wiser, and richer (in terms of shared resources), and leads to a universally improved effort to meet the needs of children.

Human Services and the other Appellees are the prevailing Parties in this due process proceeding. Human Services, however, is encouraged to heed its responsibilities in other areas discussed in this ruling. It should continue to work cooperatively with Education, local schools, and other various state and private agencies in serving the children of Iowa under its jurisdiction.

Any Party wishing to challenge this decision may do so in state or federal court within the allotted time for filing. *See* 20 U.S.C. § 1415(i).

Immediately following completion of judicial review, if any, or thirty days following this decision, if no appeal is taken, Juvenile Court records regarding Richard U. should be returned to the Juvenile Court in Webster County or destroyed. Those records should not be maintained by the Parties without express Juvenile Court approval.

Respectfully Submitted.

Larry D. Bartlett, J.D., Ph.D.,
Administrative Law Judge

March 29, 1999
Date