

APPLICATION FOR
DISTRICT COURT JUDGESHIP
First Judicial District

A. PERSONAL INFORMATION

1. **Full Name:** DeeAnn Gribble Cooney **What name do you commonly go by?** DeeAnn Cooney
2. **Birthdate:** [REDACTED] **Are you a U. S. citizen?** Yes
3. **Home Address:** [REDACTED] **Ph:** [REDACTED]
4. **Office Address:** 2717 Skyway Dr., Ste. F, P.O. Box 7775, Helena, MT 59604-7775 **Ph.** (406) 443-7298
5. **Length of residence in Montana:** 58 years
6. **List your place of residence for the last five years:** Helena, since 1985.

B. EDUCATIONAL BACKGROUND

7. **List the names and location of schools attended, beginning with high school:**

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Butte High School	Butte, MT	1974	H.S. diploma
University of Montana	Missoula, MT	1979	B.A. Psychology
Antioch School of Law	Washington D.C.	1985	J.D.

8. **List any scholarships, awards, honors, and citations that you have received:**

Montana Bar Association Professionalism Award 2000
CASA (Court Appointed Special Advocates) Volunteer of the Year 2006

9. **Were you a member of the Law Review?**

No.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. **List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.**

Court or Administrative Body

Admission

Ninth Circuit Court of Appeals	1993
U.S. District Court for the District of Montana	1986
Montana Supreme Court	1985

11. Indicate your present employment.

Owner, Cooney Law Firm, solo practice

12. State the name, dates and addresses of all law firms with which you have been associated in practice, all governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Utick & Grosfield	Associate	1985-2006
Grosfield Law Firm	Associate	2006-2009
Cooney Law Firm	Owner	2009-present

13. If you have not been employed continuously since the completion of your formal education, describe what you were doing.

N/A.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

Local Government Legal Matters. My practice primarily involves defending counties in civil litigation. I occasionally do wills and conservatorships, but that is less than one percent of my practice. I am also a due process Hearing Officer for the Office of Public Instruction (OPI) in due process hearings initiated pursuant to the Individuals with Disabilities Education Improvement Act (IDEA).

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

For the first half of my career, my practice was principally Social Security disability and general civil practice, including wills, probates, conservatorships, and other types of cases related to Social Security disability clients.

16. If you specialize in any field of law, what is your specialty?

My defense practice as described above involves frequent civil rights actions.

17. **Do you regularly appear in court?**

I appear regularly in motion and pretrial filing. My appearances before a judge are generally associated with pretrial issues including arguing pretrial motions as well as appearing as co-counsel at trial.

What percentage of your appearances in the last five years was in:

Federal court	60%
State or local courts of record	20%
Administrative bodies	20%

18. **During the last five years, what percentage of your practice has been trial practice?**

95%

19. **How frequently have you appeared in court?**

My court appearances are infrequent, as stated above.

20. **How frequently have you appeared at administrative hearings?**

Twice a year on average.

21. **What percentage of your practice involving litigation has been:**

Civil 100%

22. **Have you appeared before the Montana Supreme Court within the last five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses, and phone numbers of all opposing counsel for the five most recent cases.**

Caption	Case Citation	Opposing Counsel	Case Description
<i>Estate of Stacy v. Fergus County</i>	12-0398	Craig R. Buehler 505 W. Main, Ste. 210 Lewistown, MT 59475 (406) 538-2466 Torger S. Oaas 618 W. Main, Ste. 201 P.O. Box 76 Lewistown, MT 59457 (406) 538-2338	Opposition to Motion for Supervisory Control

23. State the number of jury trials that you have tried to conclusion in the last ten years.

Three.

24. State the number of nonjury trials that you have tried in the last ten years.

One.

25. State the names, addresses, and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

Caption	Dates	Presiding Judge	Opposing Counsel
<i>Weber v. Schmiesing-Smith, Broadwater County, et al.</i> 1 st Jud. Dist. DV-2011-58	summary judgment	Hon. James Reynolds (406) 447-8209/8205	Norman Newhall and Stacy Tempel-St. John P.O. Box 2629 Great Falls, MT 59403 (406) 453-4500
<i>Duxbury v. Farmers Alliance Mutual and Madison County</i> 2 nd Jud. Dist. No. 11-342	settled	Hon. Bradley Newman (406) 497-6420	C. Richard Anderson 3930 Saddle Road Rd. Butte, MT 59701 (406) 490-7028 Zander Blewett III P.O. Box 2807 Great Falls, MT 59403 (406) 761-1960
<i>Bennett v. Chouteau Co.</i> 12 th Jud. Dist. DV-13-11	settled	Hon. Daniel Boucher (406) 265-5481 X231	Kevin Brown P.O. Box 1450 Livingston, MT 59047 (406) 222-4420 Jeremy Yellin P.O. Box 564 Havre, MT 59501 (406) 265-3303
<i>Bass v. Mineral County</i> USDC No. CV-14-70-M-DLC	settled	Hon. Dana Christensen (406) 829-7140	Lance Jasper and Cynthia Smith P.O. Box 7785 Missoula, MT 59802-7785 (406) 541-7717 Ann L. Moderie P.O. Box 1180 Polson, MT 59860 (406) 883-2332

Caption	Dates	Presiding Judge	Opposing Counsel
<i>Teamsters Union Local No. 2 v. Roosevelt County</i> Arbitration No. 15-2012	2014	Zane Lumbley Arbitrator (512) 557-6300	D. Patrick McKittrick and Timothy J. McKittrick Strain Bldg., Ste. 622 Great Falls, MT 59401
<i>Roosevelt County v. Teamsters Union Local No. 2</i> 15 th Jud. Dist. No. ADV-14-134	2014	Hon. David Cybulski (406) 286-5615	D. Patrick McKittrick Timothy J. McKittrick Strain Bldg., Ste. 622 Great Falls, MT 59401 (406) 727-4044 (406) 727-4044
<i>AFSCME Local 1660 and Lake County</i> Arbitration No. 15-2	2014	William Reeves Arbitrator (541) 552-1139	Matthew Thiel P.O. Box 8125 Missoula, MT 59807 (406) 543-1550
<i>Fenner v. Cascade County MT Expo Park</i> , HRB Case No. 0131016154	2015	Terry Spear, HRC Hearing Officer (406) 444-9689	Donald Ford Jones 863 Great Northern Blvd., Ste. 302 Helena, MT 59601 (406) 443-4601
<i>Brown v. Fergus County</i> 10 th Jud. Dist. DV-2014-92	pending	Hon. Jon Oldenburg (406) 535-8028	Craig Buehler 505 W. Main, Ste. 210 Lewistown, MT 59457 (406) 538-2466
<i>Estate of Lattin v. Cascade County</i> 8 th Jud. Dist. BDV-14-375	pending	Hon. Julie Macek (406) 771-3950	Patrick Flaherty P.O. Box 1968 Great Falls, MT 59403 (406) 727-8494 Paul Gallardo 1714 4 th Ave. N. Great Falls, MT 59401 (406) 899-6359
<i>Shaw v. Cascade County</i> 8 th Jud. Dist. ADV-14-134	pending	Hon. Gregory Pinski (406) 454-6894	Douglas Buxbaum and Stephanie Carsten Kucera P.O. Box 8209 Missoula, MT 59807 (406) 327-8677

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I represent county entities in discrimination claims made against them before the Human Rights Bureau. This has included representation before hearing officers and arguments before the Human Rights Commission dealing with employment discrimination. I have also represented counties in arbitrations under collective bargaining agreements.

27. **If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, please state the date, topic and group to which you spoke.**

None.

D. PROFESSIONAL AND PUBLIC SERVICE

28. **List all bar associations and legal professional societies of which you are a member, and give the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.**

Montana State Bar Association, 1985 - present
Washington D.C. Bar Association, 1987 - present
Montana Defense Trial Lawyers Association, 2012
First Judicial District Bar Association

29. **List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. Please state the title and date of any office that you have held in each organization. If you held any offices, please describe briefly your activities in the organization.**

Last Chance Nordic Ski Club, 2006 to present. I have been treasurer of the club for three years. The club is comprised of local Nordic skiers who, through club membership fees and grant funds, maintain and groom the McDonald Pass ski trails. The members have participated in the improvement and development of the trail system as well as provided free clinics to encourage and introduce new skiers to the sport.

CASA Helena. Active advocate from 1999 through 2013. Inactive from 2013 to present. I represented the interests of children before the Court in cases in which they had been removed from their parents.

Helena Public School Book Challenge Review Committee. 2007 through 2011. The committee would review books challenged by parents, take public comment, and come to a conclusion regarding the challenges.

30. **Have you ever run for or held public office?**

No.

31. **Please explain your philosophy of public involvement and practice of giving your time to community service.**

It is my belief that we are all obligated to contribute positively to our communities and to our society. Those who have the ability and resources are required to share them with those people and families who do not have the same resources. I was active in the Helena School System and volunteered at a

tutor for many years. Also, as stated above, I was a member of the Helena Public School Book Challenge Committee and spent many years as an active advocate for children through the CASA program. My philosophy reflects my family philosophy. My husband and I have been active and contributing members of our community and our state and have raised three children who share the same commitment and obligation to contribute positively wherever possible.

E. PROFESSIONAL CONDUCT AND ETHICS

32. **Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group?**

No.

33. **Have you ever been found guilty of contempt of court or sanctioned by any court for any reason?**

No.

34. **Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance?**

No.

35. **Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty, and/or unethical conduct?**

No.

36. **Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor, or the Montana Supreme Court, would affect adversely your qualifications to serve on the court for which you have applied?**

No.

F. BUSINESS AND FINANCIAL INFORMATION

37. **Since being admitted to the Bar, have you ever engaged in any occupation, business, or profession other than the practice of law?**

No.

38. **If you are an officer, director, or otherwise engaged in the management of any business, please state the name of the business, its nature, and the nature of your duties.**

N/A.

39. **State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization.**

None.

40. **Do you have any personal relationships, financial interests, investments, or retainers that might conflict with the performance of your judicial duties or which, in any manner or for any reason, might embarrass you?**

No.

41. **Have you filed appropriate tax returns as required by federal, state, local and other government authorities?**

Yes.

42. **Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?**

No.

43. **Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years?**

No.

G. WRITING SKILLS

44. **In the last five years, explain the extent to which you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.**

My practice largely consists of motions practice which includes extensive research and writing. I do all of my own writing and, with rare exception, all of my own research. I have drafted motions to dismiss, motions to compel discovery, and summary judgment motions in both state and federal court. I have briefed and argued issues on appeal in the 9th Circuit. I have drafted proposed findings and conclusions in administrative Human Rights Bureau hearings and findings and conclusions as a hearing officer in due process hearings under the IDEA which have been subject to appeal in the federal district court.

45. **If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., please explain the type and extent of writing that you have done.**

I have drafted various agreements, releases, and settlement brochures.

46. **Please attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.**

I am attaching an Order and Memorandum that I issued as hearing officer in a matter for the OPI.

47. **What percentage of your practice for the last 5 years has involved research and legal writing?**

60-80%.

48. **Are you competent in the use of Westlaw and/or Lexis?**

Yes.

H. MISCELLANEOUS

49. **Briefly describe your hobbies and other interests and activities.**

I enjoy outdoor activities and am an avid Nordic skier and cyclist. I have traveled extensively to trek different parts of the world. I believe having knowledge of the larger world creates a more well-grounded and broad-minded person, and I enjoy learning about other cultures. Our family spends as much time as possible together hiking, camping, skiing, and enjoying all that Montana has to offer.

50. **Describe the jobs that you have held during your lifetime.**

From 1980 to 1982, I was administrator of the Soroptimist Attention Home in Butte, MT, a short-term care facility for youth in need of care and youth in need of supervision. From 1985 to present, I have been a practicing attorney.

51. **Please identify the nature and extent of any pro bono work that you have personally performed during the last five years.**

Over the years I have spent many hours as a volunteer advocate for children. I have worked on guardianships which have often resulted in continuing involvement in the lives of the individuals, including will preparation or consultation on other matters. I have also offered my services as mediator in disputes between pro bono clients. Through these experiences I have gained renewed appreciation of the importance for people to have an attorney available who they can call upon for a myriad of issues.

52. **In the space provided, please explain how and why any event or person has influenced the way you view our system of justice.**

There have been many people who have influenced me; but there are two whose influence has defined my view of the justice system and my role in that system: Norman Grosfield, who hired me as a newly licensed lawyer, and Keith Stapley, a claims manager with whom I worked extensively until his death in 2013.

Norm Grosfield's entire practice has been premised on the understanding that, in order for our justice system to work effectively, a lawyer must respect and promote the integrity of the system. While attorneys are obligated to advocate zealously for their clients, they must also be mindful of the rights of each party to have a meaningful day in court. Any practice otherwise can undermine and denigrate the entire system. An effective attorney can argue either side of an issue and must not become invested in one perspective only. Regardless of which party the attorney represents, he or she must not lose regard

for the other party's right to participate in the legal process. Members of the public cannot value the role of attorneys or the justice system unless members of the bar and judiciary elicit respect by their conduct throughout the process. I agree with Norm's philosophy that every lawyer's goal should be fair and just results rather than winning at any cost.

Keith Stapley was not an attorney; he was a claims administrator with whom I worked for many years through the Montana Association of Counties. Keith had enormous respect for the role of the judicial system and the need for parties to feel they were able to participate effectively. He approached every settlement conference with the understanding that, whether a dispute was resolved by the parties in settlement or ultimately by a jury at trial, it was essential that each party could feel they had been given a forum to be heard. Keith always approached litigation with the attitude that, while the case posture may begin a certain way, he might learn something which could change his position completely. Our system of justice depends on the willingness of parties to honestly assess and develop their case and be willing to alter their positions to effect a compromise where the facts dictate. The intellectual openness to the possibility of changing positions based on facts learned is critical to a fair process and is an essential quality for a judge to possess.

53. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

A judge must be objective. While it is human to have biases and personal beliefs, a judge must be assiduous in putting those aside. A judge must be respectful of the process and must convey that as a requirement to the parties and their counsel. A judge must respect precedents, have good analytical skills in order to evaluate arguments and the law presented, and then must be decisive based on the law and the facts. Finally, a judge should be mindful of the realities of practicing law and the scheduling issues that arise in any practice, while maintaining control over the efficient and professional presentation of a case.

54. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

The concept of precedent provides for the consistent and logical development of a body of law. A respect for precedent results in a predictability of outcomes for litigants and a continuity that is essential in order for our society to exist. If precedent is not observed as an important aspect in a decision, the developing law can become unreasoned or subject to improper influences or considerations. Precedent must be given proper weight in order to prevent law from being developed through outcome-based considerations.

However, we live in an increasingly evolving society. Judges are obligated to apply established law, and precedent is an essential starting point in the analysis of a case. There may be facts reflecting fundamental shifts of culture and belief systems which obligate a judge to have perspective in analyzing and applying law in order to make decisions that recognize change or adjustment which may be necessary for emerging law to be coherent and representative of society.

55. In the space provided, state the reasons why you are seeking office as a district court judge.

I applied to law school because I had concluded that the children with whom I was dealing as a social worker advocate would be better served with a lawyer advocate. In the years I have been privileged to practice law, it has repeatedly been reconfirmed for me that the practice of law provides limitless opportunities to do good work. I have been an effective advocate throughout the years for my clients, and this is the next step for me to contribute in a positive way to my profession and my community. The role of a district court judge would be challenging and intellectually stimulating. I possess the skills and temperament essential to be a judge. I have a depth and range of experience acquired over thirty years of practice which is vital to the position, and I have great respect for the process. I am organized, focused, and decisive, and I have the patience to manage a courtroom. This application reflects the events of my life that have shaped my perspective of life and my profession. These are qualities I would bring to the office of district court judge.

56. What items or events in your career have distinguished you or of which you are most proud?

I am proud of my effectiveness as an attorney. Throughout my practice I have performed good work and helped every client. I have represented claimants and helped them get benefits and regain a sense of control over their lives. Often this representation would go beyond the legal work, and I assisted many in other ways. I am proud of the work I have done as a defense attorney. I have represented county entities and individuals who trust me and were responsive and cooperative in adjusting ways of doing things to make their jobs more effective and less likely to end in litigation. I am proud of my career which has allowed me to assist people who, across the board, were apprehensive and distressed about being part of litigation to become empowered participants, regardless of the outcome. I am proud of the voice I have given to many children who, through the actions of others, were thrust into fearful and uncertain circumstances. I am proud of the opportunities I have had to be able to contribute as a lawyer during the past thirty years of my practice. I look forward to being able to continue this service as a district court judge.

57. State any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

All the pertinent information to be considered has been disclosed in the responses above.

58. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge candidate?

I believe the length of my career and the varied private practice experience and perspective distinguishes me from other applicants. I have a depth and breadth of civil litigation and legal experience that will compliment that of the current judges in the First Judicial District. My career has been fulfilling and rewarding and has afforded me great opportunities to serve my community, raise a family, and grow professionally. I feel I am well-rounded, compassionate, and a student of the law.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the First Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

September 4, 2015
(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Sunday, September 13, 2015.

Mail the signed original to:

**Lois Menzies
Office of Court Administrator
P.O. Box 203005
Helena, MT 59620-3005**

Send the electronic copy to: mtsupremecourt@mt.gov

Application form approved 7/10/93
Revised 9/15/2009

Attachment to #46
Writing Sample

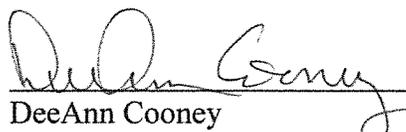
BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
DENISE JUNEAU
STATE OF MONTANA

IN RE THE MATTER OF [REDACTED].	Cause No. OSPI No. 2014-[REDACTED] ORDER
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The parent of [REDACTED] has filed a Motion requesting the District be required to provide [REDACTED] with special education and related services, within the [REDACTED] area, as comparable as is feasible to those provided previously at the [REDACTED] located in [REDACTED], Montana. Because of the urgency of this request and the significant amount of time [REDACTED] has been without services -- in excess of two months, the undersigned is compelled to issue a summary Order with the analysis and discussion to follow in the near future.

IT IS HEREBY ORDERED that the Motion is GRANTED, and [REDACTED] School District No. 1 shall provide immediate special education services to [REDACTED] in a manner as comparable as is feasible to those provided at the [REDACTED], pending resolution of the issues raised in the Due Process Request.

DATED this 29th day of October, 2014.



DeeAnn Cooney
HEARING OFFICER

pc: [REDACTED]

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
DENISE JUNEAU
STATE OF MONTANA**

IN RE THE MATTER OF [REDACTED].

Cause No. OSPI No. 2014-[REDACTED]

**MEMORANDUM REGARDING ORDER
ISSUED ON OCTOBER 29, 2014**

The undersigned hearing officer signed an Order 10/29/14 granting the Motion filed by the parent of [REDACTED] which asked that the District be required to provide [REDACTED], within the [REDACTED] area, with special education and related services as comparable as is feasible to those services provided previously at the [REDACTED] located in [REDACTED], Montana. The Order was issued without discussion after considering the arguments raised by the parties in briefing, and based on the need for the District to immediately address the situation because of the significant amount of time [REDACTED] has been without services. Following is a discussion and analysis of the issue.

FACTS

The facts of this case, as represented in the Request for Due Process and the Response, reflect undisputed facts which are relevant to this Motion.

[REDACTED] is 8 years old. He has been qualified for IDEA special education and related services under the categories of Cognitive Delay and Speech-Language Impairment.

[REDACTED] is a resident of the [REDACTED] School District, based on the residence of his mother.

[REDACTED] was placed in an AWARE group home in [REDACTED] from September 18, 2013 until August 14, 2014, at which time he was discharged from the group home and returned to the family home in [REDACTED].

During the time he resided in the group home, [REDACTED] received special education and related services at the [REDACTED] in [REDACTED], Montana.

█'s last agreed-upon and implemented IEP is dated May 13, 2014 and calls for placement at the █. The █ School District and █'s parent have been unable to come to an agreement concerning █'s annual IEP and placement.

As of the date of the Order, █ has not received any special educational and related services since he returned to his family home in █.

DISCUSSION

Under federal and state special education law, a student is entitled to remain in his/her current educational placement pending the completion of due process proceedings, unless the parties agree otherwise. 20 U.S.C. § 1415(j); Admin. Rules of Mont. § 10.16.3505. 20 U.S.C. §1415(j), the 'stay put' provision of the IDEA, reads:

During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

The purpose of the 'stay put' provision is to strip schools of the "unilateral authority they had traditionally employed to exclude disabled students ... from school." *Honig v. Doe*, 484 U.S. 305, 323, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988); see also *Doe v. Brookline Sch. Comm.*, 722 F.2d 910, 918 n. 8 (1st Cir.1983).

The dispute in this matter arises over how to implement the 5/13/14 IEP which refers to the placement as the █, a day treatment/school operated by AWARE, Inc. in █, Montana.

The District has taken the position that █'s parent has not asked to maintain the status quo or the last agreed-upon placement. It asserts that she seeks change of placement by essentially requesting the District recreate a day treatment setting in its own facilities based "personal preference and convenience".

The District acknowledges its obligation to provide services to [REDACTED] and that, until a new IEP is implemented, the services must be comparable to those provided by the [REDACTED] School District through the [REDACTED]. It then attempts to sidestep the obligation by asserting that, because there are no close day treatment programs available and the District does not have qualified staff or space to meet the level of [REDACTED]'s needs, the only option is the [REDACTED] -- a 270-mile round trip a day.

Currently, there is no evidence as to why [REDACTED] was removed from the group home and returned to the [REDACTED] area after a year, or what compelled the decision. The District's conclusion that "The mother risked interrupting the services provided to her child when she removed him from the [REDACTED] [REDACTED]" is neither supported by undisputed facts considered at this juncture or relevant to the analysis of the District's responsibility.

The District asserts that the parent is attempting to force a unilateral placement decision upon the District which is not appropriate, as the District does not have the staff or facilities to provide the necessary services and support. There are no facts which support the characterization of the situation as a "unilateral placement". The arguments related to lack of staff and resources are contrary to and precluded by the IDEA. Placement decisions cannot be based on a public agency's needs or available resources, including budgetary consideration and the ability to hire and recruit qualified staff. See 71 Fed. Reg. 46587.

Families face decisions to relocate for a variety of reasons which have no bearing on the obligations of a school district to comply with the requirements of the IDEA. Lack of qualified personnel and lack of space do not negate the obligation. An offer to transport a child hundreds of miles daily from his/her place of residence to prior a placement or to require that the parent make some change in living arrangements to accommodate the prior placement are not sufficient to meet the obligation.

The District asserts, however, that [REDACTED] should not be subjected to receiving services by the District which would not meet minimal standards, and further, that the only program available is the [REDACTED]

██████████. Finally, the District notes that, while the distance from ██████████ (and the corresponding necessity of moving ██████████ or transporting him for some 4 or 5 hours each day) may be an inconvenience, the placement is not an impossibility and the ██████████ remains the last agreed-upon placement and the option for the 'stay put' provision.

The District cites *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467 (9th Cir. 1993) for the proposition that distance does not prohibit forcing an appropriate placement far from the student's home. That case is not applicable to the analysis in this case. No evidence which would compel hundreds of miles of travel on a daily basis or require the parent to relocate to the solitary appropriate setting is currently before the undersigned.

The District concludes that the ██████████ is the only appropriate setting and its obligation is met by agreeing to provide reasonable travel expenses. The District, in determining that this is the only option, ignores the significant practical problems such a solution presents to the family. It also begs the questions (1) how would its analysis change if the program was in Kalispell or Wolf Point rather than ██████████; and (2) at what distance does "inconvenient" become "impossible"?

The District's characterization of the situation as a unilateral placement is incorrect. ██████████'s parent correctly states that this situation is akin to an intra-district transfer.

In *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115 (9th Cir. 2003) (superseded by statute on other grounds), the court addressed a similarly analogous situation -- the progression of a child from one level of education to another. When a child progresses from preschool to elementary school, from elementary school to middle school, or from middle school to high school, the "status quo no longer exists." *Id.* at 1133. Under these circumstances, the obligation of the new district is to provide educational services that approximate the student's old IEP as closely as possible. *Id.* at 1134.

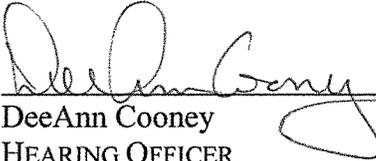
The proximity of the previous placement is not relevant to the analysis, and the receiving district is required to implement the closest approximation to the last educational placement. *Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of Cal.*, 287 F.3d 1176, 1181 (9th Cir. 2002). [REDACTED] School District is not required to provide the exact same educational program. However, “[w]hen responsibility transfers from one public education agency to another, the new public agency is required only to provide a program that is in conformity with the placement in the last agreed-upon IEP or IFSP.” The new agency need not, and probably could not, provide the exact same educational program. The purpose of interim placement “in conformity with” an IEP is to “maintain the stability of [the student’s] educational program as contemplated by the ‘stay put’ provision, while taking into account the reality of a shift in responsible educational agencies.” *Id.* @1181-1182; see also *Dep’t of Educ., State of Haw. v. M.F. ex rel. R.F.*, 840 F.Supp. 2d 1214, 1241-42 (D. Haw. 2011), clarified on denial of reconsideration sub nom., Dep’t of Educ. v. M.F. ex rel. R.F., No. CIV. 11-00047 JMS, 2012 WL 639141 (D. Haw. Feb. 28, 2012).

A child’s “current placement” is generally not considered to be location specific. See 71 Fed. Reg. 46709 (discussion of comments to 34 C.F.R. §300.518).

[REDACTED] no longer resides in [REDACTED], and the [REDACTED] cannot, therefore, remain his educational placement. [REDACTED]’s parent has requested the child be maintained in the same educational placement as possible in the [REDACTED] School District. The District provided no authority to support the contention that a change in residence and, consequently, prior educational placement constitutes a unilateral placement by the parent. The District’s obligation to provide special education and services as comparable as is feasible to the prior placement cannot be met by suggesting that a return to the prior setting is the only available option.

The Motion was granted on 10/29/14 for the reasons stated above. The District has been ordered to provide special education and related services that are as comparable as is feasible to those services provided in [REDACTED].

DATED this 5th day of November, 2014.


DeeAnn Cooney
HEARING OFFICER

pc:

[REDACTED]