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

In the Matter of: STUDENT, Petitioner, vs. WALNUT CREEK SCHOOL DISTRICT and MT. DIABLO UNIFIED SCHOOL DISTRICT, Respondents.	OAH No. N2005070157

DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Walnut Creek, California, on July 21, 2005.

Mara Rosen, Attorney at Law, represented Student, who was not present. His mother and father were present.

Nancy Klein, Attorney at Law, represented the Walnut Creek School District (WCSD).

Matthew Juhl-Darlington, Attorney at Law, represented the Mt. Diablo Unified School District (MDUSD).

In evidence are the following exhibits: WCSD's exhibits (not marked separately by exhibit numbers, but identified by page numbers 1 through 135), MDUSD's exhibits 1 through 11, and Student's exhibits A1 through A11 and B1 through B11.

The record closed on July 21, 2005.

ISSUE

Since May 13, 2004, has Student been a resident of MDUSD or WCSD for purposes of determining which school district has been and is responsible for providing services to Student?

FACTUAL FINDINGS

1. Student was born on May 15, 2001, in Walnut Creek, and is currently four years old. He has resided with his parents since birth. At 20 months, Student was diagnosed with cerebral palsy and he was subsequently determined to have global developmental delays. In July of 2004, Student was diagnosed with autism.

2. On February 9, 2005, Student requested a due process hearing naming both WCSD and MDUSD as respondents. Subsequently, each school district moved for dismissal as a party, alleging that Student was a resident of the other district. On June 17, 2005, MDUSD's motion for a separate hearing on the sole issue of residency was granted. Student agrees with MDUSD's position. This hearing followed.

3. Student's parents formerly resided in Southern California. Because of employment changes, they moved to the San Francisco Bay Area, first locating in San Jose. Following a search for a community where they would like to live permanently and raise a family, the couple settled upon Walnut Creek. The quality of Walnut Creek's schools was an important factor in their decision. In September 1999, Student's parents purchased and moved into a house located at 124 Lancaster Road, Walnut Creek (Lancaster). In July or August of 2003, they purchased another house located at 1251 Mountain View, Walnut Creek (Mountain View). Both the Lancaster and Mountain View houses are located within the WCSD boundaries. Student's parents lived in the Lancaster house from September 1999 through April 2004.

4. Student's parents planned to remain in the Lancaster house while the Mountain View house was demolished and replaced with a larger house, and then move into the new Mountain View house. At some point after purchasing the Mountain View property, however, they learned that Lancaster needed to be sold in order to finance the construction of the new house. Student's parents sold the Lancaster house in April 2004.

5. In April of 2004, the family moved from the Lancaster house to a house located at 381 Caroni Street, Walnut Creek (Caroni) to await construction of the new house. Student's parents signed a one-year lease for the Caroni house. Like the Lancaster and Mountain View houses, the Caroni house is located in the City of Walnut Creek. Unbeknownst to Student's parents, however, the Caroni house is not located within the

WCSD boundaries; it is located within the MDUSD boundaries. Caroni Street was developed recently and does not appear on the WCSD boundary map, but it appears to be roughly seven blocks from the WCSD boundary. Nevertheless, it is uncontested that the Caroni house is located within the MDUSD boundaries.

6. Also in April of 2004, Student's parents signed a contract for the construction of the new house on Mountain View. The contract specified that construction was to be completed within eight to ten months. The old house on Mountain View was donated to a local fire department for training and ultimately demolished in July of 2004. In October 2004, construction of the new house began. In December 2004, Student's parents had problems with the contractor and construction stopped. At that point construction was only five percent complete. In March 2005, Student's parents switched contractors and construction resumed, again with a term specifying completion within eight to ten months (from that date). Student's parents have extended their lease of the Caroni house through September 2005.

7. Student's parents intended and still intend to live in the Caroni house only until the new Mountain View house is completed. Student's parents did not intend to move out of the WCSD boundaries or into the MDUSD boundaries. Student's father credibly testified that he had "no idea in the world" that Caroni Street was not located within the WCSD boundaries. In September 2004, Student's parents registered to vote at the Caroni address. They also receive mail, park two of their three cars there and sleep there. They currently insure their cars at the Caroni address, at least partly because of concerns that a claim might not be honored if the Mountain View address were used. It is clear that Caroni Street is their temporary residence.

8. Student's parents pay property taxes, store one car and some personal items, and recently re-registered to vote at the Mountain View address.

9. On May 12, 2004, Student's parents met with WCSD representatives to prepare an Individualized Education Plan (IEP) for Student. At that meeting, Student's parents used the Caroni address. Lorraine Ryor, WCSD Director of Special Services, noticed that the Caroni address was outside the WCSD boundaries. She discussed the issue with Student's parents but proceeded with the IEP because she was under the impression that Student and his family would move into the Mountain View house within a few months, or at least by the start of the regular school year in August 2005. Soon after the IEP meeting, WCSD offered Student placement in the special day class at Burton Valley School.[1] Student's parents visited the Burton Valley School and Student began class there on about May 24, 2004.

10. Subsequently, a speech pathologist who was working in Student's class told Ryor that the family was still living on Caroni Street. During a telephone conversation, Ryor

[1] Burton Valley School is in the Lafayette School District. Nonetheless, WCSD students are sometimes placed at that school pursuant to an inter-agency agreement.

told Student's father that the situation was "too open-ended" and that Student would have to attend school in MDUSD. On September 7, 2004, Leslie Rupley, WCSD Director of Curriculum and Administrative Services, sent Student's parents a letter stating that Student would no longer be enrolled in WCSD because Student was living within MDUSD boundaries. Student's parents therefore enrolled Student in MDUSD. They felt that they had no choice because they had been "forced out" of the WCSD.

LEGAL CONCLUSIONS

1. Residency under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §1400 et seq.) is measured by "normal standards." (*Union School Dist. v. Smith* (1994) 15 F.3d 1519, 1525.) In California, Government Code section 244 lists "the basic rules generally regarded as applicable to domicile [legal residency]." (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1114.) In *Smith v. Smith* (1955) 45 Cal.2d 235, 239, the California Supreme Court explained:

> Courts and legal writers usually distinguish "domicile" and "residence," [b]ut statutes do not always make this distinction in the employment of those words. They frequently use "residence" and "resident" in the legal meaning of "domicile" and "domiciliary," and at other times in the meaning of factual residence or in still other shades of meaning. . . . [I]n our codes "residence" is used as synonymous with domicile in the following statutes: sections 243 and 244 of the Government Code . . . .

2. Government Code, section 244, states in relevant part:

> In determining the place of residence [domicile] the following rules shall be observed:
> (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
> (b) There can only be one residence.
> (c) A residence cannot be lost until another is gained.
> (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child. [¶] . . . [¶]
> (f) The residence can be changed only by the union of act and intent. [¶] . . . [¶]

3. Student's family's move to Caroni is only temporary—it is undisputed that they do not intend to remain there. This gives rise to Government Code section 244,

subdivision (f): "The residence can be changed only by the union of act and intent." And case law, developed over many years, emphasizes intent as a crucial factor in the legal definition of residency.

4. The court in *Eriksen v. Eriksen* (1943) 57 Cal.App.2d 532, 534-535, explains:

> In order to effect a change of residence, there must be a concurrence in the act of abandonment of one residence with the intent to establish a new residence elsewhere. It is mainly a question of intent, which may be shown by the testimony of the parties, considered in connection with the surrounding circumstances, plus corroboration when essential.

5. In the case of *Michelman v. Frye* (1965) 238 Cal.App.2d 698, 704, the court states:

> Absence from one's permanent residence, if all the while he intends the absence only for a special temporary purpose and to be followed by resumption of the former residence, constitutes neither abandonment thereof nor a change of residence.

6. Student's parents moved from Lancaster into the house on Caroni for a temporary purpose. They always intended to move into the new house being built on the Mountain View property upon its completion. They never intended to return to the house on Lancaster. So when determining whether Student's parents "all the while" intended "resumption of the former residence" the question of the scope of the phrase "former residence" remains. Does it refer to the former school district or does it refer to the physical dwelling? In other words, to retain their status as legal residents of WCSD, did the parents have to intend to move back into the Lancaster house? The answer is no—legal residence is a broader concept geographically than one's actual physical dwelling.

7. In *Demiglio v. Mashore* (1992) 4 Cal.App.4th 1260, the court held: "We pointed out in our first opinion that the concept of a temporary versus permanent move has to do with the territorial jurisdiction, not the actual dwelling place: '[T]he notions of permanency and an intention to remain which attach to the domicile concept have nothing to do with the actual dwelling, and everything to do with the actual place or location.' " (*Id.* at pp.1269-1270.)

Thus, Student's parents' constant intent to remain within the WCSD boundaries, combined with an absence strictly confined to a temporary purpose (construction of the new house) means that the house on Caroni is properly considered a temporary residence, not a new legal residence. Student's parents did not have the requisite intent to change their legal residency.

8. In *Smith v. Smith*, *supra*, 45 Cal.2d at p. 239, the court defined domicile as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection . . . but which the law may also assign to him constructively." Here, Student's parents are clearly most connected to WCSD. They are building a house within the district at considerable trouble and expense. They previously owned and lived in another house within the district for over four years. From July or August of 2003 through approximately July of 2004, they were paying property taxes on two residences within the WCSD boundaries. Student's parents' move into MDUSD was temporary and unintentional. They have consistently intended to remain permanent residents of WCSD.

9. Under the "normal standards" of California law, then, Student's legal residency is within WCSD boundaries (See Legal Conclusion 1.) He is, however, also a temporary resident within MDUSD boundaries.

10. The IDEA speaks in terms of a local education agency "providing for the education of children with disabilities within its jurisdiction." (20 U.S.C. § 1413(a)(1).) California law requires students to attend the public school "in which the residency of either the parent or legal guardian is located." (Ed. Code § 48200.) But both the IDEA and California education law also require districts to provide education to children temporarily residing within their boundaries. For example, Education Code section 48204 provides that residency for school attendance is complied with if a child is placed in a licensed foster home within district boundaries by juvenile court order (subd. (a)(1)) or if the child resides at a state hospital within district boundaries (subd. (a)(5)). Accordingly, MDUSD has a responsibility to provide educational services to Student, should he choose to receive such services.

11. Since May 13, 2004, Student has been a legal resident and domiciliary of WCSD and a temporary resident of MDUSD. Therefore, Student has been and is entitled to receive educational services from either school district.

12. No party prevailed on the sole issue heard and decided. (Ed. Code, § 56507, subd. (d).)

ORDERS

1. MDUSD's motion to be dismissed as a party is denied. MDUSD shall provide educational services to Student, should he choose to be enrolled in the district.

2. WCSD's motion to be dismissed as a party is denied. WCSD shall provide educational services to Student, should he choose to be enrolled in the district.

3. Within five days of receipt of this decision, the Parties shall contact the Oakland office of the Office of Administrative Hearings in order to schedule a status conference.

DATED: December 9, 2005

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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS

The parties are advised that they have the right to appeal this Decision to a state court of competent jurisdiction. Appeals must be made within 90 days of receipt of this Decision. Or, a party may bring a civil action in United States District Court. (Ed. Code § 56505, subd. (k).)