

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2011040320

ORDER GRANTING MOTION TO
LIMIT ISSUES AND TO QUASH
SUBPOENA DUCES TECUMS

On April 7, 2011, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Panama-Buena Vista Union School District (District).

On May 16, 2011, Student filed a motion to limit issues for hearing regarding Student's residency and to quash subpoena duces tecums (SDTs) issued by the District regarding his residency. On May 17, 2011, the District filed an opposition to Student's motion.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child [FAPE]." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The Office of Administrative Hearings (OAH) has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Under the IDEA, local educational agencies are charged with "providing for the education of children with disabilities within its jurisdiction." (20 U.S.C. § 1413(a)(1).) In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in Education Code sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57 (interpreting §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Under section 48200, children between the ages of 6 and 18 must attend school in the district "in which the residency of either the parent or legal guardian is located." (Ed. Code, § 48200.)

The McKinney-Vento Education for Homeless Children and Youth Act (McKinney-Vento) is part of the No Child Left Behind Act, and it requires school districts to continue educating a homeless child in his “school of origin,” usually the school student attended before he became homeless. A child who is homeless may continue to attend his “school of origin,” even if that school is not in the district where the child is temporarily housed. (42 U.S.C. § 11432, subd. (g)(3).) A child who resides with a parent in an emergency or traditional shelter may be considered homeless. (42 U.S.C. § 11434a, subds. (2)(A) and (2)(B)(i).) Both school districts, the one where a child is staying, and the one where the “school of origin” is located, and the child’s parents must work collaboratively to determine the appropriate educational setting for the homeless child. (42 U.S.C. § 11432, subds. (g)(3) and (g)(4).) There is an appeal process when a dispute arises between a school district and parent concerning a homeless student’s educational placement. (42 U.S.C. § 11432, subd. (g)(3)(E)(ii).)¹ OAH does not have jurisdiction to adjudicate disputes arising under McKinney-Vento.

A party to a due process hearing under the IDEA has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) The hearing officer in a special education due process proceeding may issue subpoenas or SDTs upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, OAH relies by analogy on the relevant portions of the California Code of Civil Procedure.² Section 1987.1 of that code provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

Motion to Limit Issues

The District previously filed a motion to dismiss, contending that Student did not reside within the boundaries of the District. On May 9, 2011, OAH denied the District’s motion because triable issues for hearing existed regarding Student’s residency. Student contends in his motion to limit issues that OAH does not have jurisdiction to consider Student’s residency because he asserts that he is homeless and he and the District are in the midst of the dispute resolution process to determine if Student is entitled to the protections of

¹ California’s procedures are set forth in a January 30, 2007 letter from the California Department of Education (CDE). (www.cde.ca.gov/sp/hs/cy/disputeres.asp (5/19/2011).)

² Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act found in Government Code sections 11450.05 to 11450.30, do not apply in special education due process proceedings.

McKinney-Vento. The District presented no evidence that the parties have exhausted California's McKinney-Vento's dispute resolution process. CDE's established process to resolve these disputes does not grant OAH jurisdiction to determine whether Student is entitled to the protections of McKinney-Vento. Therefore, Student's motion to limit issues regarding his residency is granted.³

Motion to Quash SDTs

The District issued SDTs to various entities to gather information regarding Student's residency. The District asserts that Student only lived in the District for a short period after his enrollment on December 14, 2010 and that he presently resides in a neighboring school district. Because OAH does not have jurisdiction to resolve issues as to whether Student is entitled to the protections of McKinney-Vento as to his attendance with the District from on or after December 14, 2010, Student's motion to quash the SDTs issued by the District is granted. However, the District may raise again its right to issue SDTs if the McKinney-Vento dispute resolution process determines that Student was not homeless.

ORDER

1. Student's motion to limit issues is granted as to Student's residency.
2. Student's motion to quash SDTs issued by the District regarding his residency is granted, pending the completion of the McKinney-Vento dispute resolution process.

Dated: May 20, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

³ Neither party raised in their papers the issue of whether OAH should continue this matter until the parties exhaust the McKinney-Vento dispute resolution process.