

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL
DISTRICT, POMONA UNIFIED SCHOOL
DISTRICT, and NORWALK-LA MIRADA
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012060908

ORDER GRANTING STUDENT'S
MOTION FOR STAY PUT AS TO
GLENDALE UNIFIED SCHOOL
DISTRICT

PROCEDURAL BACKGROUND

Student filed an initial request for due process hearing (herein, complaint) on June 15, 2012, naming as respondents the Glendale Unified School District (Glendale), the Pomona Unified School District (Pomona), the Norwalk-La Mirada Unified School District (Norwalk), and the Los Angeles County Office of Education. Student filed a motion for stay put on June 26, 2012. In separate Orders dated June 27 and June 28, 2012, the Office of Administrative Hearings (OAH) found Student's complaint insufficient as to all respondents. On July 5, 2012, OAH denied Student's motion for stay put without prejudice due to the lack of supporting evidence on which to base an order for stay put.

Student filed an amended complaint on July 11, 2012. Student's complaint alleges that he is a conserved adult eligible for special education. He contends that he had attended school in Glendale under an individualized education program (IEP) that placed him at a non-public school in Pasadena named Villa Esperanza. Student states that his father (Father) has left the family home in Glendale, but has not established a new residence. Rather, Father has been staying with a succession of friends who live in different cities. Student contends that Glendale improperly dis-enrolled him on June 15, 2012, based upon its determination that Student's Father, who is Student's conservator, was no longer a resident of Glendale. Student also informs that Father helped place Student in an adult group home in Pomona called Dare 2 Care on May 23, 2012. Student alleges that Pomona and Norwalk also have refused to enroll Student in their respective school districts, each alleging they are not responsible for Student because Father does not reside within either of their boundaries.

Student contends that one of the school districts is responsible for his education and asks that OAH make that determination. Student's amended complaint attaches a letter from Glendale, dated June 15, 2012, which informs Father that it is dis-enrolling Student, Letters of Conservatorship from the Los Angeles County Superior Court giving Father limited

conservatorship over Student, and a copy of Villa Esperanza's school calendar. Student also attaches a copy of what Student identifies as his latest signed and implemented IEP, dated March 26, 2012, that was developed by Glendale and that placed Student at Villa Esperanza.

On July 12, 2012, Student filed a motion for reconsideration of the Order denying his motion for stay put. The pleading renews Student's original request for stay put. Student contends that Father is basically homeless as he has moved out of the family home in Glendale, where Student's mother still resides, and has been staying temporarily with friends in various different cities. Student states that at the time of the filing of his amended complaint, Father had been staying with friends in Norwalk, but still has not decided where he will reside permanently. Student requested that OAH order that Glendale maintain his IEP placement as stay put until a hearing is conducted to determine which school district is responsible for Student's education.

Based on the filing of Student's amended complaint, OAH treated Student's motion for reconsideration as a renewed motion for stay put.

On July 17, 2012, Glendale and Pomona filed a joint opposition to Student's motion for stay put. They contend that Student is not a resident of either school district based upon the fact that Student's father does not live within the boundaries of either one. Glendale and Pomona contend that Student's school district must be determined by Father's residency, even if his residency is only temporary. Therefore, Glendale and Pomona contend that Norwalk, where Father appears to have last lived, even if temporarily, is Student's school district of residence and responsible for his education. In the alternative, Glendale and Pomona request that OAH conduct an evidentiary hearing to determine Student's residency.

On July 18, 2012, LACOE filed a notice of insufficiency as to Student's amended complaint. On July 24, 2012, OAH issued an amended order finding Student's complaint insufficient as to LACOE. Student has not filed an amended complaint as to LACOE and LACOE therefore is no longer a party to this case.

On July 23, 2012, Norwalk filed a motion to be dismissed as a party to this proceeding. Norwalk contended that it is not Student's district of residence since Father has stated that he is only staying temporarily within its boundaries. In an order issued July 27, 2012, OAH denied Norwalk's motion.

On July 26, 2012, Pomona filed a notice of insufficiency as to Student's amended complaint. In an order issued on July 31, 2012, OAH overruled Pomona's motion, finding the amended complaint sufficient as to it.

On July 24, 2012, OAH issued an order for Student to provide additional information in support of Student's motion for stay put. Student has not provided the requested information.

The present status of this case is therefore as follows: Student’s amended complaint stands as to Glendale, Pomona, and Norwalk. Still pending is Student’s renewed motion for stay put.

APPLICABLE LAW AND DISCUSSION

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505, subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student’s individualized education program (IEP), which has been implemented prior to the dispute arising. (*A.M. , et al. v. Monrovia Unified School District* (9th Cir. 2010) 627 F.3d 773; *Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) California Code of Regulations, title 5, section 3042, defines “educational placement” as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. For purposes of stay put, the current educational placement includes the placement called for in the pupil’s most recently implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School Dist.* (9th Cir. 2008) 538 F.3d 1261, 1270.) Generally, the “starting point” for determining the current educational placement is the terms of the “last educational plan agreed upon by the parents and the professional educators.” (*See John M. v. Board of Educ. of Evanston Twp. High School Dist. 202* (7th Cir. 2007) 502 F.3d 708, 715.)

In this case, each of the named school districts posits that it is not responsible for educating Student and implementing his IEP because each alleges that Father does not reside within its respective boundaries. Glendale and Pomona, recognizing the dispute, ask that OAH convene an evidentiary hearing before determining Student’s stay put based upon the conflicting evidence in the case.

There are admittedly arguments that can be made that would support a finding that any of the three named districts should be responsible for Student’s education and for implementing his IEP. While Glendale and Pomona’s urging of an evidentiary hearing to determine the issue is attractive, it overlooks the basic premise of a motion for stay put, which is to maintain a student in a disputed educational placement while the dispute is resolved through the hearing and court processes. An order on stay put is not meant to be a final determination of the responsibilities of any of the parties to the case. That fact is even more apparent in this case where the *only* issue presented in Student’s complaint is which, if any, of the school districts is responsible for educating Student.

In *Joshua A. v. Rocklin Unified School District* (9th Cir. 2009) 559 F.3d 1036, 1039 the Ninth Circuit found that the purpose of the stay put requirement was to prevent any

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

irreparable harm to a child that was inherent in the child's premature removal from an appropriate educational setting to a potentially inappropriate one. The court stated that "In light of this risk, the stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process." (*Ibid.*)

Because Student's last IEP was developed and implemented by Glendale, and because the heart of Student's due process complaint is whether Glendale has denied him a free appropriate public education by dis-enrolling him from the district, thereby failing to implement his IEP, Glendale is Student's stay put placement.

This is not a final determination on the merits. Evidence at hearing may demonstrate that one of the other named responding school districts or yet another district is legally responsible for Student's education. However, both the letter and the spirit of the Individuals with Disabilities Education Act's stay put provisions would be thwarted by holding Student's education in limbo while this legal dispute is resolved.

ORDER

1. Student's motion for stay put is granted as to Glendale Unified School District.
2. Glendale shall immediately resume implementation of Student's IEP, including Student's attendance at and transportation to Villa Esperanza.
3. If Student's attendance at Villa Esperanza is impracticable due to his residing in Pomona, Glendale shall locate another appropriate non-public school closer to Student's place of residence and arrange for Student to attend that school, along with corresponding transportation.

Dated: August 1, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings