

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS  
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2011010104

ORDER DENYING MOTION FOR  
STAY PUT

On January 5, 2011, Student filed a motion for stay put. On January 10, 2011, District filed an opposition.

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.)

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); 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. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In the case of a child with a disability who transfers school districts within the same academic year, the local education agency (LEA) shall provide the child with a FAPE, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the LEA adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with the law. (20 U.S.C. §1414 (d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e) (2006); Ed. Code, § 56325, subd. (a).)

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.)

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.

The McKinney-Vento Education for Homeless Children and Youth Act 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).) OAH does not have jurisdiction to adjudicate disputes arising under McKinney-Vento.

## DISCUSSION

Student was enrolled in a special day class at Glenwood Elementary School (Glenwood), a District school, until December 18, 2010. In early December 2010, the District notified Parents that he could no longer attend Glenwood as he was no longer a resident of the District. Student then filed his complaint in this matter, and a motion for stay put at Glenwood.

In his complaint, Student claims that Mother “has resided at a battered women’s shelter in Novato, California” since March 2010, and she has been homeless since July 2009. In his response to the District’s opposition, Student more specifically claims that he “is residing with his mother in a shelter for battered women, [and therefore] is considered a homeless youth.” Therefore, it appears that Student is residing within boundaries of the Novato Unified School District.

In its opposition, the District contends as follows: Student resided in the District with both parents until October 2009, at which time Mother reported that they had moved to an address within the boundaries of the Ross Valley School District (Ross Valley). Father subsequently relocated to a residence outside the District. However, Student continued to attend Glenwood after an IEP was developed by Ross Valley, Student’s new school district of residence, due to an “inter-SELPA agreement.”<sup>1</sup> On March 4, 2010, Father informed the District that he had moved back into the boundaries of the District, and Student was now residing with him. The District then resumed responsibility for Student’s education.<sup>2</sup> In November 2010, Parents attended an IEP meeting with District personnel to develop a new IEP, and Mother confirmed that Student was still residing with Father in the District.

The District claims that it suspected that Student was not residing in the District, and then hired a private investigator to conduct surveillance of the address where Father claimed to be residing, and the investigator concluded that Father was not living there. In early December 2010, Father responded to a letter from the District that informed him that Student was being disenrolled because he was not a resident of the District. Father claimed that he did reside in the District, and Student was living with him, but the District disenrolled Student on December 18, 2010.

Student argues in his stay put motion that he is homeless, and pursuant to McKinney-Vento, Glenwood is his “school of origin,” and this is why it is his “stay-put” placement.

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<sup>1</sup> A SELPA is a special education local plan area. Often several school districts will belong to the same SELPA, and this enables those districts to share resources for the benefit of students eligible for special education services. (Ed. Code, §§ 56195 et seq.)

<sup>2</sup> There is no explanation as to why a new IEP was not developed by the District at this time. Instead, both parties agree that the last agreed-upon and implemented IEP is one dated November 30, 2009, which was developed in conjunction with the Ross Valley School District.

Student has failed to present evidence, by way of sworn declarations for example, to establish his homelessness and resulting entitlement to continue to attend Glenwood pursuant to the McKinney-Vento Act. Further, Student has failed to present any authority to establish that OAH has jurisdiction over disputes governed by the McKinney-Vento Act.

The District has presented credible evidence that Student does not reside within its boundaries. If Student is indeed living with Mother in a shelter in Novato, then Student's remedy is to start the process to have the Novato Unified School District work collaboratively with the District to determine his educational placement pursuant to the parameters established by the McKinney-Vento Act. Accordingly, since OAH does not have jurisdiction over disputes arising under McKinney-Vento Act, Student's stay put motion is denied.

#### ORDER

Student's motion for stay put is denied.

Dated: February 4, 2011

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings