BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EL RANCHO UNIFIED SCHOOL DISTRICT .	OAH Case No. 2018050641 ORDER GRANTING STUDENT'S MOTION FOR STAY PUT

At the beginning of the 2017-2018 school year, Student was enrolled in Rivera Elementary School in the El Rancho Unified School District pursuant to the McKinney-Vento Homeless Assistance Act. (42 U.S.C. § 11301 *et seq.*)[1] On May 13, 2018, Student filed a request for due process hearing. The primary issue in the complaint was that Student was being required to change schools. However, Student also raised procedural violations of the Individuals with Disabilities Education Act, including failing to provide procedural safeguards and prior written notice. The due process complaint was accompanied by a motion for Stay Put. On May 16, 2018, District filed an opposition to Student's stay put motion on the ground that Student was not a resident of the District.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her "then-current educational placement", unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[2]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." In California, "specific educational placement" is defined 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. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

The Ninth Circuit has defined "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a

[1] Although Student asserted in his motion for stay put that Mother was employed by El Rancho, no evidence of that fact was provided and no argument that stay put legally flowed from Mother's employment was asserted. Therefore, this order does not address Mother's employment with El Rancho in relation to stay put.

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

due process hearing to challenge a proposed change to the child's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096.) Typically, that has been acknowledged to be the child's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.) When a child transfers into a new school district, in a new local educational agency within the state, during the school year, the new educational agency must provide a FAPE to the child. (Ed. Code § 56325 subd. (a)(1).) The educational program offered by the new district must include services comparable to those described in the child's IEP from the prior educational agency until the new educational agency either, adopts the IEP from the prior educational agency on behalf of the child; or develops, adopts and implements a new IEP. (*R.F. v, Delano Union School District* (2016) 224 F.Supp.3d 979, 985; 20 U.S.C 1414 (d)(2)(C)(i)(1); 34 C.F.R. 300.323(e); Ed. Code §56325, subd. (a)(1).)

However, Student's status as a formerly homeless child, admitted to an El Rancho school pursuant to the McKinney Vento Homeless Assistance Act. (42 U.S.C. § 11301 *et seq*.) results in the applicability of California's Education of Pupils in Foster Care and Pupils Who are Homeless Act, section 488852.7, subdivision (b)(2) of the Education Code. The act states that Student, as a formerly homeless student, is entitled to remain in his elementary classroom through the end of the academic year.

DISCUSSION

It is undisputed that Student has attended elementary school in El Rancho since the beginning of the 2017-2018 school year pursuant to the McKinney-Vento Homeless Assistance Act. On December 14, 2017, Student's annual individualized education program team meeting was held. El Rancho had accelerated Student's triennial assessments in order to evaluate Student's needs and develop an IEP for him. The results of those assessments were reviewed at the December 14, 2017 IEP team meeting, and Student was offered accommodations as well as speech therapy and specialized academic instruction. During the course of the December 14, 2017 IEP team meeting, Mother disclosed that the family had relocated to Los Angeles.

On April 30, 2017, Mother applied for an inter-district permit from Student's District of Residence, Los Angeles Unified School District, to allow Student to attend Rivera Elementary School. This was the first request for a transfer permit made by Student. On May 7, 2018, a letter was issued by El Rancho denying the inter-district permit. The stated grounds were simply, "impacted program." Mother was informed that Student would need to be enrolled in the district of residence within five days. Student was notified of his right to appeal the denial of the permit within 30 days.

Los Angeles Unified School District and El Rancho do not operate programs under the same local plan. However, in this case, the IDEA, state special education laws and the McKinney-Vento Homeless Assistance acts intersect. Although Student's new residence is in the Los Angeles Unified School District, here, residency is not solely dictated by where the child currently resides. The IDEA, state special education laws and McKinney-Vento all

align to promote the same underlying policy of avoiding the disruption of a child's education. Student is entitled to stay put in the El Rancho elementary school he has attended during the 2017-2018 school year state law through the end of the academic year .

ORDER

1. Student's request for a stay put order requiring El Rancho to continue to provide special education and related services at Riveral Elementary School as provided for in the December 14, 2017 IEP, through the end of the 2017-2018 school year, is GRANTED.

2. Based on the unique circumstances of this case, no order is made as to what, if any, stay put rights Student will have following the conclusion of the 2017-2018 school year.

IT IS SO ORDERED.

DATE: May 30, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings