BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>WASHINGTON UNION HIGH SCHOOL DISTRICT. | OAH CASE NO. 2013050157<br><br>ORDER DENYING MOTION FOR STAY PUT |

On May 3, 2013, Student filed a motion for stay put, seeking that she be returned to her placement at Washington High School (Washington High) after being dis-enrolled for moving out of the boundaries of the Washington Union High School District (District). On May 8, 2013, District filed an opposition.

APPLICABLE LAW

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

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 a free appropriate public education (FAPE) 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 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

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

attended before he or she 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 (g)(3).) A child who resides with a parent in an emergency or traditional shelter may be considered homeless. (42 U.S.C. § 11434a (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 (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 (g)(3)(E)(ii).)[2] OAH does not have jurisdiction to adjudicate disputes arising under the McKinney-Vento Act. (*Parent v. Panama-Buena Vista Union School Dist.* (2011) Cal.Offc.Admin.Hrgs. Case No. 2011040320 (Order Granting Motion to Limit Issues and to Quash Subpoena Duces Tecums); see also *Parent v. Lincoln Unified School Dist.* (2011) Cal.Offc.Admin.Hrgs. Case No. 2011061010 (Order Partially Granting Motion to Dismiss Issues 4 and 5 of Student's Complaint) [OAH has no jurisdiction to resolve No Child Left Behind claims].)

## DISCUSSION

Student's due process hearing request (complaint) alleges that Student is sixteen, in tenth grade, and qualifies for special education under the eligibility category of specific learning disability. Student alleges that she lived with her mother (Mother) and grandmother (Grandmother) at a home within District during the 2011-2012 school year, but when a family dispute over ownership of the home arose in June 2012, Mother and Grandmother "temporarily" moved out of the District. In August 2012, Student and District resolved a prior due process dispute, and Student stayed with her father, who was renting a room in Student's uncle's home within District, in order to attend school. Student's complaint alleges that District denied her a FAPE during the 2012-2013 school year by failing to assess her in all areas of suspected disability, failing to adequately conduct assessments, failing to provide her with an educational program designed to meet her unique needs, and dis-enrolling her from Washington High on April 26, 2013 because she was no longer a resident of District.

Student's motion for stay-put seeks Student's re-enrollment at Washington High because she resides with her father. Alternatively, Student seeks that District be determined to be her "district of origin" for stay-put purposes because her Mother and Grandmother's moves rendered her "homeless," or that stay put be imposed in equity. Student's motion is not supported by a sworn declaration. Attached to the motion are two unidentified and unauthenticated documents, one purporting to be a room rental agreement for Student and her father dated June 20, 2012, and the other an IEP for Student dated December 10, 2012.

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[2] 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 (8/31/2012)

District's opposition contends that Student is not a resident of District, and District has no obligation to provide Student with a FAPE, during stay-put or otherwise. It contends that Mother and Grandmother are Student's "parents" for residency purposes and that Student has submitted no evidence that she, or Mother or Grandmother, are homeless. District's opposition is supported by the sworn declaration of District's special education director, Ms. Gomez, who authenticates and attaches the following documents submitted by Mother or Grandmother to District, or served on District by Student's counsel: (i) a settlement agreement with District dated August 31, 2012, executed by Mother and Grandmother, respectively, as Student's parent and guardian, (ii) a restraining order, dated December 8, 2012, barring Student's father from coming within 100 yards of Student, and (iii) a due process hearing request filed on behalf of Student, dated March 12, 2013, identifying the "temporary" addresses of Mother and Grandmother, and her uncle's address as that of Student's "babysitter."[3] Ms. Gomez explains that the addresses of Mother and Grandmother are outside of District boundaries, and that the uncle's address is within District boundaries. She also declares that District performed a residency investigation in April 2013 and determined that Student was not residing within District boundaries prior to Student's dis-enrollment.

Mother and Grandmother represented in the August 2012 settlement agreement with District that they have custody of Student and authority to make educational decisions for Student. Therefore, Student's residency is the residency of Mother and Grandmother, unless Student can establish that her father is also her parent for educational purposes and that she resides with her father. Regardless of whether Student's father is a parent for educational purposes, or actually resides within District boundaries, Student submits no admissible evidence that she is currently residing with her father. On the other hand, District submits persuasive evidence that Student is not, and has not, been living with her father. Student's March 2013 due process request alleged that she resided with Mother and Grandmother, albeit at a temporary address while their home is "in litigation." In that same request, Student alleged that the address she now contends is where she has lived with her father since June 2012 was that of her babysitter, not her residence. The December 2012 restraining order barring Student's father from coming within 100 yards of Student is strongly suggestive that, at least from December 2012, Student has not lived with her father. For these reasons, Student has failed to meet her burden of establishing that she lives with her father for purposes of claiming her father's residency within the District as a basis for stay put placement at a District school.

Student alternatively contends, but does not provide legal authority for the contention, that because Mother and Grandparent have temporarily relocated pending litigation, she is homeless for purposes of the McKinney-Vento Act. Whether or not a temporary home meets the definition of "homeless" for purposes of the McKinney-Vento Act, that act sets forth its own dispute resolution process, and the California Department of Education maintains a

[3] Ms. Gomez explained that she attached only the first page of the 150 page due process hearing request, which page contains the residency allegations for that pleading.

process for resolving McKinney-Vento Act disputes. OAH has no jurisdiction to resolve Student's claim that she is entitled to attend a District program under the McKinney-Vento Act, and this claim will not support a stay put placement within District.

Lastly, Student claims that equity compels a stay-put placement at Washington High because it is near the end of the school year. As an initial matter, stay put is not determined by the equities, but by a determination of the last implemented and agreed upon IEP from in the student's district of residence. Student analogizes to a stay put order in *Student v. Fremont Unifies Sch. Dist.*, Cal.Offc.Admin.Hrgs. Case No. 2011040320 (June 21, 2010), and the cases cited in that order, holding that a stay put placement may be ordered maintained through expiration of an interdistrict transfer. District contends that equity should not apply here, where Student was already attending Washington High under stay put pursuant to her March 2013 due process hearing request, but failed to timely amend her request after it was found insufficient by OAH, resulting in a dismissal of that matter. There is a substantial difference between extending the responsibility of a District under an interdistrict placement voluntarily undertaken, and imposing responsibility on a District to provide an educational program to a Student who, based upon the only admissible evidence submitted on this motion, has not accurately represented her residency for the past year. Student has not demonstrated that stay put requires her to be returned to a District placement.

## ORDER

Student's motion for stay put is denied.

Dated: May 15, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings