

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: H.S.

Date of Birth: [redacted]

Date of Hearing:

August 28, 2012

CLOSED HEARING

ODR Case # 3413-1213KE

Parties to the Hearing:

Parent

Northwestern School District
100 Harthan Way
Albion, PA 16401

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

George Joseph, Esq.
Quinn, Buseck, et.al.
7222 W. Grandview Boulevard
Erie, PA 16506

August 28, 2012

September 3, 2012

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Name redacted] (“student”) is a [teen-aged] student residing in the Northwestern School District (“District”) who is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. The parties do not dispute that the student qualifies for special education and related services under the IDEIA. The parties dispute whether or not the student resides in the District. Particularly, parent claims that the student is homeless and that, under the terms of the McKinney-Vento Homeless Assistance Act of 1987 (“McKinney-Vento”)², the District is responsible for providing the student’s special education programming. The District counters that the Pennsylvania Department of Education (“PDE”) has determined that, under the terms of McKinney-Vento, the student has a fixed, regular, and adequate residence outside of the District and, furthermore, that its investigation subsequent to the determination and prior to the hearing continues to support that conclusion.

For the reasons set forth below, I find that the student does not reside in the District and, therefore, the District is not responsible for the student’s special education programming.

¹ It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. See also 22 PA Code §§14.101-14.162.

² 42 U.S.C.A. §§11431-11435.

ISSUE

Does the student reside in the District, such that the District is responsible for the student's special education programming?

FINDINGS OF FACT

1. At the outset of the 2011-2012 school year, the student resided in, and was provided educational services by, the District. (Notes of Testimony ["NT"] at 39).
2. In November 2011, the regional coordinator of programs servicing homeless children, whose duties include issues of education of homeless students across multiple intermediate units in the area, was contacted by the student's mother. The student and mother were residing in a hotel after leaving a homeless shelter. (NT at 36, 39-40).
3. The shelter and hotel were both located in a school district outside of the District ("SD #2"), but the District, under the terms of McKinney-Vento, continued to provide educational services, including transportation, to the student. (Parent Exhibit ["P"]-2; NT at 39-40, 53-54).
4. In January 2012, the student and mother moved from SD #2 and began to reside in a third school district ("SD #3"). The District

- continued to provide educational programming and transportation for the student. (P-3; School District Exhibit [“S”]-1, S-2, S-3; NT at 38-40, 62).
5. The District was transporting the student to an address in SD #3. (S-3).
 6. In July 2012, the District determined that, based on the information the District had regarding the student’s residency, the student no longer resided in the District. (S-4; NT at 54-55, 62).
 7. The student’s mother disputed the determination and appealed the District’s decision to the state-level coordinator at PDE regarding homeless children. (Hearing Officer Exhibit [“HO”]-1 at exhibit A; NT at 54-57).
 8. The state-level coordinator affirmed the determination of the District that the student no longer resided in the District. (S-6; NT at 40-41).
 9. On July 25, 2012, parent filed a special education due process complaint that led to these proceedings.
 10. Over August 20-22, 2012, the District ascertained by photographic evidence that the vehicle it understood to be, and identified as, mother’s vehicle was parked at various hours—early morning, mid-day, and early evening—at the address which the District understood was the residence of the student and mother in SD #3, the address where the District had arranged for

transportation for the student in the 2011-2012 school year. (P-3; S-7; *see* NT at 62, 71-92).

11. The student's mother disputes that, under the terms of McKinney-Vento, she and the student reside in fixed, regular, and adequate housing. (NT at 33, 65-66, 78, 83-84, 87-89, 111-115, 117-121).

DISCUSSION AND CONCLUSIONS OF LAW

Under the terms of the IDEIA, for a school district to be responsible for the provision of special education and related services to a student with a disability, the student must reside within the school district. (34 C.F.R. §§300.2, 300.111(a), 300.200-201, 300.323(a); *see also* 22 PA Code §§14.102(a)(2)(xxvii), §14.104(c), §14.121). Under the terms of McKinney-Vento, a school district that is informed of a student's homelessness during an academic school year must continue to provide educational services, including special education programming then in place, until the end of the school year. (42 U.S.C.A. §11432(g)(3)(A); 34 C.F.R. §300.19). PDE is responsible for making sure that students who qualify as homeless under McKinney-Vento are afforded special education due process rights. (34 C.F.R. §§300.149(a)(3), 300.153(b)(4)(iii), 300.508(b)(iv); 22 PA Code §§14.102(a)(2)(iv)(xxix), 14.102(3)).

Here, upon being informed in the middle of the 2011-2012 school year that the student had become homeless, the District continued to provide educational services to the student for the remainder of the academic year. (FF 1, 2, 3, 4). Pursuant to PDE policies regarding homeless students under the terms of McKinney-Vento, the District determined that the student no longer resided within the District and had established a fixed, regular, and adequate residence outside of the District. (FF 4, 5, 6; see also HO-4). The student's mother disputes that she and the student are no longer homeless under the terms of the McKinney-Vento. (FF 11).

The weight of the record, however, supports the conclusion reached by the state-level coordinator for educating homeless students, namely that the student no longer resides in the District under the terms of McKinney-Vento. (FF 4, 5, 6, 7, 8). Subsequent to this determination and the filing of the special education complaint that led to these proceedings, the District gathered evidence that further supported its determination. (FF 9, 10).

The student no longer resides in the District. Accordingly, the District is not responsible for the student's special education programming.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student no longer resides in the District. The District is not responsible for the student's special education programming.

The hearing session scheduled for September 28, 2012 is cancelled.

Any claim not addressed in this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

September 3, 2012