

BEFORE THE
IOWA DEPARTMENT OF EDUCATION

In re: G.L., a child,)	
)	
G.L.'s parents,)	Dept. Ed. Docket No. SE-391
)	(DIA No. 13DOESE004)
Complainants,)	
)	
vs.)	
)	Order – Dismissing Complaint
[An Iowa] Community School)	(Redacted for publication)
District and Mississippi Bend Area)	
Education Agency (AEA 9),)	
)	
Respondents.)	

Statement of the Case

[G.L.'s parents] filed a Request for Due Process with the Iowa Department of Education on August 7, 2013, on behalf of themselves and their son, [G.L.]. The Complaint alleges that the Individualized Education Program offered by the Respondent school district and area education agency on July 30, 2013, failed to provide a free appropriate public education as required by Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1420, et seq. As a remedy for the alleged violation the Petitioners seek an order directing the school district to pay the cost of educating [G.L.] in a school capable of providing the specially designed instruction, supports, and services to meet his needs.

The Respondents, [an Iowa] School District and Mississippi Bend Area Education Agency, jointly filed a Motion to Dismiss the Complaint on October 2, 2013. The motion alleged that [G.L.] and his mother were residing in the state of Pennsylvania and [G.L.] was enrolled in a public school in Pennsylvania, rendering the IDEA-based claims against [the Iowa District] and the AEA moot. The Complainants filed a resistance. During a telephone conference call on January 8, 2014, and through an Order issued the following day, the Motion was denied because it was based on facts beyond the scope of the allegations of the Complaint. The parties then agreed to participate in a preliminary hearing to address questions concerning the student's eligibility to receive services through the Respondent school district and AEA and the Complainants' right to maintain this action before proceeding to full hearing on the merits of the Complaint.

Hearing was scheduled and held on January 24, 2014, for the limited purpose of submitting evidence and arguments related to the student's continued eligibility to receive educational services through the Respondent school district and AEA. Representatives of all parties participated in the hearing. Complainant [G.L.'s mother] was present with her daughter, []. Attorneys Mikkie Schiltz and Sarad Bijanki appeared

as counsel for the Respondents. [The Iowa District] High School Principal [] and AEA Sector Coordinator Mary Cashman were also present. [G.L.'s mother], the Iowa District High School Principal, the principal's secretary, and an Assistant Superintendent of the [Pennsylvania District] testified. Complainants' exhibit 1 and Respondents' exhibits A, B, C, D1, D2, and E were admitted into the record without objection.

At the close of evidence, the parties agreed to submit briefs in lieu of closing statements. The briefing schedule was extended, at the Complainants' request, to allow a transcript of the hearing to be prepared and provided to the parties. The final reply brief was filed on March 31, 2014. The findings and conclusions that follow are issued after careful consideration of the evidence in the record and the arguments advanced by the parties.

Issue presented

The Complainants seek to challenge the adequacy of an Individualized Education Program (IEP) offered to by the [the Iowa] School District and Mississippi Bend Area Education Agency (AEA) for the 2013-2014 school year. The sole issue presented at this stage of the proceeding is whether the proceeding must be dismissed as moot because the student is no longer an Iowa resident for school purposes.

Findings of Fact

Background: This is the second IDEA due process proceeding [concerning G.L.] commenced by the Complainants. A brief review of the events leading to and outcome of the first proceeding provides useful context to understanding the current filing and the jurisdictional issue presented here.

[G.L.] was born [in early] 1996. [] are his parents. [G.L.] enrolled in high school at the [Iowa] district in August of 2010, at the beginning of his freshman year. [G.L.] and his family lived [outside of the district] when he enrolled at [the Iowa District] and he attended [the Iowa District] during the 2010-11 school year as a nonresident student on a tuition basis. The family moved to [the Iowa District] in the summer of 2011 and [G.L.] attended [the Iowa District] during his sophomore year, the 2011-12 school year, as a resident student.

[G.L.] is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD)-Predominantly Inattentive Type, Dysgraphia, and Nonverbal Learning Disorder. He entered [the Iowa District] with a section 504 accommodation plan. He was determined eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) following an educational evaluation in the spring of 2011 and an Individualized Education Plan (IEP) was developed. Over the course of the following year, [G.L.]'s parents became increasingly dissatisfied with implementation of his IEP. They filed an IDEA due process complaint in May of 2012.

Shortly before classes started at [the Iowa District] in the fall of 2012, [G.L.]'s parents withdrew him from classes at the [the Iowa district], so that he could pursue intensive training to address his learning disabilities at the [] Academy. [The Academy] is a non-

residential private program operating in [], Pennsylvania, which implements [a specialized brain-training] program.¹

The due process action went forward as a claim for reimbursement of tuition and costs associated with this private placement. A five-day hearing was held in January of 2013. A Decision issued on April 29, 2013, finding the Complainants did not prove either that [the Iowa District] and Mississippi Bend AEA failed to offer a free appropriate public education (FAPE) to [G.L.] or that the placement at [the Academy] was proper under the IDEA. The Respondents prevailed on all issues raised in that proceeding. *In re: [G.L.]*, Iowa Dept. of Ed. Docket No. SE-376 (4/29/13). The Complainants pursued judicial review of that decision, which to the best of my knowledge remains pending.

Events leading to current due process filing: [The Iowa District] school staff considered [G.L.] to be a legal resident of [the Iowa District] during the 2012-13 school year – even though he was living in Pennsylvania and attending [the Academy] program. In April of 2013, a representative of [the Iowa District] contacted [G.L.]’s parents to schedule an IEP team meeting to discuss potential programming for the 2013-14 school year. School staff worked through May and June of 2013 to refine [G.L.]’s IEP to be reflective of an evaluation conducted at the University of Iowa in the spring of 2012. IEP team meetings were held on May 1st and May 15th. [G.L.]’s parents were invited, but did not attend either meeting. A Prior Written Notice issued after the May 15th meeting includes details of the contact between the school and the parents while the IEP was being drafted. (PWN contained in Exhibit E)

[G.L.]’s mother and sister attended an IEP team meeting held on July 30, 2013, to discuss the IEP that [the Iowa District] and the AEA proposed for the 2013-14 school year. The parents found the IEP unacceptable, believing that it did not adequately incorporate recommendations from the University of Iowa evaluation. They filed the Request for Due Process initiating this proceeding on August 7, 2013.

Facts related to residency: [G.L.] was first enrolled in [the Academy] in late August or early September of 2012. His parents purchased a condominium in [], Pennsylvania, close to [the Academy] facility in September of 2012. [G.L.] moved to the condo, where he lived with his sister, [], from September of 2012 until after the first due process hearing was completed. [G.L.]’s sister, who is four years older than [G.L.], withdrew from college to stay with her brother in Pennsylvania. [G.L.]’s parents both remained at their home in [Iowa] until February of 2013, when his mother resigned from her job with the Mississippi Bend AEA and moved to [], Pennsylvania to live with [G.L.]. [G.L.] and his mother have continuously lived in [the Pennsylvania condominium] since that

¹ As described at hearing on the initial due process complaint, the [specialized] program is built upon the concept of neuroplasticity and the focus is on building cognitive capacity, rather than compensating for dysfunction, by building only on strengths and avoiding weaknesses. The program is designed to identify and address brain function in 19 cognitive areas. Once areas of weaker cognitive function are identified, the program is designed to stimulate and strengthen cognitive function in those areas. The Complainants believe this is an appropriate program for [G.L.].

time, with the exception of trips back to [Iowa] for holidays and summer vacation. ([G.L.'s mother] testimony)

After returning to Pennsylvania at the end of the 2013 summer vacation, [G.L.'s mother] contacted the local public school – the [Pennsylvania] School District – to explore options for [G.L.] to participate in activities with non-disabled peers. During August and September of 2013 she met with Assistant Superintendent [Mr. N.] several times to discuss available services and residency. [G.L.'s mother] discussed [G.L.]'s special education needs with Mr. [N.] and spoke with [Ms. M.], the Director of Special Services for the [Pennsylvania] district. ([G.L.'s mother & Mr. N.] testimony)

The [Pennsylvania] School District is a part of the Montgomery County public school system in suburban Philadelphia. The district serves approximately 5,000 students and has special education programs available for eligible students – slightly over 7% of the students have IEPs in place. Tuition-free enrollment in the district is available to residents of [] Township and the Borough of []. Proof of residency is required at the time of enrollment. ([Mr. N.] testimony & Exhibit D1) [G.L.'s mother] was interested in enrolling [G.L.] in band, which is available only as an extracurricular activity, and for choir, which is an academic course. Mr. [N.] told her that [G.L.] needed to be registered as a student to access these services. ([Mr. N.] testimony)

[G.L.'s mother] completed a [Pennsylvania] School District Student Registration Form for [G.L.] on September 11, 2013. She indicated that [G.L.] lived at [a local address], with his mother and stated that he moved to that address on September 22, 2012, after coming to Pennsylvania on September 1, 2012. [G.L.'s mother] provided a letter from US Bank confirming that she and her husband have a mortgage on Unit B5 at [the local address]; a copy of the property tax record showing they purchased the unit in September of 2012, and copies of a Comcast billing statement and a tax billing statement mailed to her at the [local] address. [G.L.] was admitted to the [Pennsylvania] district and enrolled in one chorus class. (Exhibit B)

Although [G.L.] initially enrolled in only one class at [the Pennsylvania district], as a resident of the district he is entitled to attend as a full-time student and to receive special education services from the district if he chooses, including an out of district placement if it is not possible for the district to meet his needs. The district offered an evaluation of the need for IDEA services to [G.L.'s mother]. She declined, expressing dissatisfaction with prior public school services and a preference for [G.L.] to continue in [the Academy] program. ([Mr. N.] testimony)

The Registrar of the [Pennsylvania] district sent a fax to the [Iowa District] high school on September 12, 2013, asking [the Iowa District] to send [G.L.]'s school records – including the IEP – to her. The request included a certification that [G.L.] entered the [Pennsylvania] School on that date. (Exhibit B) [Ms. T.], [the Iowa District] Principal's secretary, serves as registrar for the high school. Upon receipt of the request for transfer of [G.L.]'s records, Ms. [T.] emailed the [Pennsylvania district] registrar to confirm [G.L.]'s enrollment in that district and followed the standard process for a transfer of student records. ([Ms. T.] testimony & Exhibit C)

After learning that [G.L.] had been enrolled in another public school district, [the Iowa District] to steps took “un-enroll” him from [the Iowa District], so that [the Iowa District] would not continue to receive state funding for a student they were no longer serving. Entries were made into the district’s electronic student information system to remove him from the student roster and to close his special education services. A Prior Written Notice was prepared to notify the parents that because [G.L.] was enrolled in the [] School District in Pennsylvania, [the Iowa District] was exiting [G.L.] from special education in Iowa, effective September 12, 2013. ([Principal] testimony & PWN within Exhibit E)

Arguments presented: [The Iowa District] and Mississippi Bend AEA seek dismissal of the Complainants’ August 2013 due process filing. Respondents argue that because [G.L.] and one of his parents have physically moved to Pennsylvania and [G.L.] is enrolled in a public school in that state he can no longer claim Iowa residency for school purposes and the Iowa school district and AEA lack authority to provide services to him under the IDEA. They contend that, because [G.L.] has established residency in another state, he and his parents are not entitled to maintain this due process action.

The Complainants resist dismissal, arguing that [the Iowa District] and the AEA have an ongoing responsibility to pay for [G.L.] to receive appropriate educational services. They assert that the move to Pennsylvania was caused by the failure of the Iowa district and AEA to offer an IEP providing FAPE and meeting [G.L.]’s needs and that [G.L.] has not given up his residency in [the Iowa district]. Complainants believe they are entitled to seek reimbursement for the costs of education and related services needed to compensate them for the Respondents’ past failure to offer FAPE.

Conclusions of Law

The current proceeding stems from a Request for Due Process filed on behalf of [G.L.], by his parents [], on August 7, 2013. The Complaint concerns only the IEP offered by the Respondent school district and area education agency on July 30, 2013, for the 2013-14 school year, which the Complainants assert does not provide for meaningful educational benefit in terms of the specially designed instruction [G.L.] needs for his post-secondary goals. The sole remedy proposed is an order directing [the Iowa District] to pay the cost of [G.L.]’s educational program in the alternative placement they have chosen.

This action is based upon the federal Individuals with Disabilities Education Act (IDEA) and the Iowa Department of Education rules implementing the federal Act. 20 U.S.C. §§ 1400 *et seq.*; 281 Iowa Administrative Code (IAC) ch. 41. The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *see Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.E.2d 690

(1982). Extensive procedural safeguards are built into the IDEA to ensure compliance with the requirements of the act.

The procedural safeguards mandated by the IDEA include the ability to file a complaint requesting an administrative due process hearing. 20 U.S.C. § 1415(b)(6). A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child. 34 C.F.R. § 300.507; 281 Iowa Admin. Code (IAC) 41.507(1)(a).

[T]he hearing process is in place to ensure that a “disabled child’s educational needs are being met by the student’s school district.” After all, “[t]he purpose of requesting a due process hearing is to challenge an aspect of a child’s education and to put the school district on notice of a perceived problem. Once the school district receives notice, it has an opportunity to address the alleged problem.”

C.N. v. Willmar Public School Ind. School Dist. No. 347, 591 F.3d 624, 631 (8th Cir. 2010), quoting *Thompson v. Board of Special School Dist. No. 1*, 144 F.3d 574, 578 (8th Cir. 1998) and *M.M. v. Special School Dist. No. 1*, 512 F.3d 455, 460 (8th Cir. 2008).

The duty to provide FAPE under the IDEA rests with the state and school district in which a child resides. A state must agree to make FAPE available to all qualifying children “residing in the state between the ages of 3 and 21” 20 U.S.C. §§ 1412(a)(1). Each local public school and education agency must provide for the education of children with disabilities “within its jurisdiction” in a manner consistent with the IDEA and state policies and procedures. 34 C.F.R. § 300.201; 280 IAC 41.201.

The rules governing special education proceedings in Iowa provide that a request or motion to dismiss made by the party opposing a due process appeal “shall be granted upon a determination by the administrative law judge that . . . [t]he issue raised is moot [or] [t]he individual is no longer a resident of the LEA [local school district] or AEA against whom the appeal was filed.” 41 IAC 41.1003(7)(b), (c). The questions presented here are whether the issue is moot and whether a child remains an Iowa resident for school purposes while the child is living with a parent in another state and receiving public school services as a resident of that state.

The IDEA does not attempt to define state residency or local school jurisdiction. “[T]he IDEA nowhere purports to allocate financial liability among the multitude of school districts housed within the fifty states” *Manchester School Dist. v. Crisman*, 306 F.3d 1, 10 (1st Cir. 2002). Rather, the IDEA “leaves the assignment and allocation of financial responsibility for special education cost of local school districts to each individual state’s legislature.” *Id.* Residency, for purposes of enrollment in the public schools, remains a matter controlled by state law.

Under Iowa law, primary responsibility is placed upon each public school district “to provide special education to children who reside in that school district” Iowa Code

§ 256B.2(4) (2013). This assignment of financial responsibility is consistent with each school district's obligation to allow "actual residents" of the district between the ages of five and twenty-one to attend the district "free of tuition." Iowa Code § 282.6(2). In contrast, tuition "shall be charged" to nonresident children desiring to attend a public school district in Iowa. Iowa Code § 282.1(1).

For purposes of school attendance,

"[R]esident" means a child who is physically present in a district, whose residence has not been established in another district by operation of law, *and* who meets any of the following conditions:

- a. Is in the district for purposes of making a home and not solely for school purposes.
- b. Meets the definitional requirements of the term "homeless individual" under 42 U.S.C. § 11302(1) and (c).
- c. Lives in a juvenile detention center or residential facility in the district.

Iowa Code § 282.1(2) (emphasis added). As a general rule, when a child is residing with one of the child's parents, the school district of the child's residence is the school district in which the parent and child both reside. 281 IAC 41.51(12).²

Similarly, under Pennsylvania law

A school age child is entitled to attend the public schools of the child's district of residence. A child's district of residence is that in which the parents or the guardian resides. When the parents reside in different school districts due to separation, divorce, or other reason, the child may attend school in the district of residence of the parent with whom the child lives for the majority of the time, unless a court order or court approved custody agreement specifies otherwise. . . .

22 Pa. Code § 11.11(a)(1). A Pennsylvania school district has no obligation to enroll a child until presented with "proof of the child's age, residence, and immunizations as required by law." 22 Pa. Code § 11.11(a)(2).

In this case, [G.L.] moved to [], Pennsylvania to attend [the Academy] in September of 2012. [The Academy] is a nonresidential program and [G.L.]'s parents purchased a condominium near the facility, where [G.L.] initially lived with his sister. In February of 2013, [G.L.]'s mother moved to [Pennsylvania] to join him. In early September of 2013, [G.L.] enrolled as a resident student at the [Pennsylvania] School District.

² Exceptions to the general rule apply to children who are living in a district other than the district of residence of the child's parent; living in a residential facility, foster care facility, or treatment facility; or who have been placed by the district court. 441 IAC 41.51(12)(a)-(f). None of the exceptions apply to [G.L.]'s situation in this case.

The arguments advanced by the Complainants in resistance to dismissal focus on why they opted to move [G.L.] to [the Academy], why his mother moved to join him; and why [G.L.] enrolled in the public school in Pennsylvania. They contend all these actions derive from a single cause – [the Iowa] district’s alleged failure to offer an appropriate education program to [G.L.] in his home district. By basing their arguments on motive and intent, the Complainants confuse residency with domicile.

“Domicile,” by definition, is “[t]he place at which a person is physically present and that the person regards as home;” or “a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” *Black’s Law Dictionary*, at p. 501 (7th Ed. 1999). “[R]esidence’ is distinguishable from domicile as residence indicates the *place of dwelling*, which may be either *permanent or temporary*.” *Root v. Toney*, 841 N.W.2d 83, 90-91 (Iowa 2013) (emphasis original); see also *Black’s Law Dictionary*, at p. 1310 (residence defined as the “act or fact of living in a given place for some time;” or the “place where one actually lives, as distinguished from a domicile”).

Residence, for purposes of school attendance in Iowa, is determined based upon the location where a student “is in fact residing.” See *Lakota Consolidated Ind. School v. Buffalo Center/Rake Comm. Schools*, 334 N.W.2d 704, 709 (Iowa 1983) (interpreting previous version of Iowa Code section 282.1). The same is true in Pennsylvania. *In re Residence Hearing before the Bd. of School Directors, Cumberland Valley School Dist.*, 744 A.2d 1272, 560 Pa. 366 (2000) (holding that by using “the term ‘resides’ rather than terms such as ‘has a primary residence’ or ‘is domiciled’ in the school district, the legislature did not require that parents do anything more than reside in a school district in order to enroll their children in the local public schools”).

There are limited situations in which a parent may maintain an IDEA due process action to seek reimbursement of the costs associated with the education after a child has been parentally placed in an educational program outside of the resident school district. See 20 U.S.C. § 1412(a)(10)(C)(ii). As discussed in detail within the first due process decision involving these parties, a Court and or hearing officers may order a school district to reimburse parents the costs of a unilateral private-placement only if (1) the public agency has not made a free appropriate public education available in a timely manner and (2) the private-school placement is appropriate under the Act. See *C.B. v. Special School Dist. No. 1, Minneapolis*, 636 F.3d 981, 988 (8th Cir. 2011), citing, *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 246, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009). When these criteria are met, reimbursement of tuition and costs may be allowed as a compensatory remedy for the past denial of FAPE, even though the child left the school district during the pendency of formal proceedings. *Independent School District, No. 294, Wyzatta Area Schools v. A.C.*, 258 F.3d 769, 774-75 (8th Cir. 2001), citing *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 4 n. 3, 113 S.Ct. 2462, 125 L.Ed.2d 1 (1993).

This authority supports the Complainants’ ability to maintain their judicial challenge to the first IDEA due process decision, which related to reimbursement of costs for the 2012-13 school year. See *Independent School Dist. 284 v. A.C.*, 258 F.3d 769, 774-75

(8th Cir. 2001) (refusing to dismiss IDEA reimbursement claim against prior district on mootness grounds, even though student had moved to another school district while action was pending and conceded that the prior district was not responsible for prospective relief, because the claim was for costs of placement during the time when the prior district was responsible for the student's education). But this authority does not provide a basis for avoiding the residency requirement in this case.

Once a student has enrolled in a new school district, the former school district is no longer responsible for providing the student with a FAPE; however, if the student continues to reside in the former school district, it is responsible for assuming the cost of providing a FAPE. Therefore, a student who requests a due process hearing but subsequently enrolls in another district is only entitled to compensatory remedies. Because the former school district is no longer responsible for assuring that an appropriate program is available for the pupil including the notice and hearing provision, the change in circumstances renders the need for prospective relief moot. [internal citations omitted].

Reinholdson v. School Bd. of Independent School Dist. No. 11, 44 IDELR 42, 2005 WL 1819976 (D. Minn. 2005), relying upon *Neshaminy School Dist. v. Karla B.*, 25 IDELR 725, 1997 WL 137197 (E.D. Penn. 1997) (holding that student's claim for prospective relief was moot because student had moved to and enrolled in another school district).³

The due process request in this case challenges only the IEP developed for the 2013-14 school year, which was not yet underway when the complaint was filed on August 7, 2013. The question of whether the IEP offered by [the Iowa] district on July 30, 2013 offered FAPE for the upcoming school year became moot when [G.L.] enrolled in public school in Pennsylvania for the 2013-14 school year, because the obligation to provide special education and related services under the IDEA from that point forward shifted to the new school district. All claims for relief based on the alleged inadequacy of the IEP for the 2013-14 school year are moot.

Ruling

[G.L.] is no longer a resident of Iowa for school purposes and all claims for relief related to the alleged failure of the Respondent school district and AEA to offer FAPE during the 2013-14 school year are moot. No other basis for relief is alleged in this case. Therefore, this proceeding is DISMISSED in its entirety.

³ The reason the student has transferred from the former school is not a factor in determining whether a claim for prospective relief against the former district is moot. *See C.N. v. Willmar Public Schools, Independent School District No. 347*, 591 F.3d 624, 630-32 (8th Cir. 2010) (holding that an IDEA claim was appropriately dismissed where the proceeding was initiated after the student left the public school and while the student was enrolled in another public school, even though parent alleged immediate transfer from the public school was necessary to protect the student's physical and psychological safety).

Issued on May 22nd, 2014.



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