

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

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SEP 09 2005

OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

OLYMPIA SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 2005-SE-0040

RECEIVED

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

SEP 13 2005

Superintendent of Public Instruction  
Administrative Resource Services

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Mattie Harvin Woode in Olympia, Washington, on May 25, 26, 27, June 2, 13, and July 29, 2005. The interested Parent<sup>1</sup> represented herself and was assisted by her lay advocate, Debbie Sorrells. Olympia School District (District) was represented by Phillip Thompson, Attorney at Law. Also observing the hearing at the request of the Parent were Loren Freeman and Carol Skinner. The following is hereby entered:

**STATEMENT OF THE CASE**

Parent filed a request for due process hearing on April 1, 2005, with the Office of the Superintendent of Public Instruction (OSPI). A Notice of Hearing and Notice of Prehearing Conference were mailed to all parties on April 1, 2005, setting a prehearing for April 11, 2005, and hearing for April 28, 2005. A prehearing conference was held on April 11, 2005. The hearing was continued and set for May 25, 26, and 27, 2005, and the 45-day deadline set at 30 days from the close of record. A prehearing conference was held on May 9, 2005, and on May 19, 2005. Additional hearing days were added beyond the originally scheduled hearing dates to complete the testimony.

At the conclusion of the hearing, the parties requested the opportunity to submit closing briefs in lieu of oral argument. The ALJ set August 11, 2005 as the close of record. Parent and the District submitted their closing briefs on August 11, 2005. The 45-day decision date is September 10, 2005.

**EVIDENCE RELIED UPON**

Exhibits Admitted:

Court exhibits: C1 through C7,

District exhibits: D100 through D118,

Parent exhibits: P201(tape side B only), P202, P203, P205, P206, P207, P210 through P225, P228 through P233, P235 through P245.<sup>2</sup>

<sup>1</sup> In the interests of preserving the family's privacy, this decision does not name the parent or student. Instead, they are each identified as "Parent", "Mother", and "Student".

<sup>2</sup> P245 is a letter from Parent dated June 23, 2005, which was erroneously marked during the hearing as P234 and admitted into the record. The ALJ has remarked the exhibit as P245. Exhibit No. P234 is a complaint from Parent dated February 11, 2005, which was not admitted into evidence.

Witnesses Heard: Claire McGibbon, Eric Green, Michelle Anderson, Barbara Carlson, Susan Sloan, Hans Landig, Jennifer Perri, John Jones, Patricia McQueen, Mark Kimble-Rehm, Camille Curry, Debbie Sorrells, and Mother.

### **ISSUES**

- a. Whether the District appropriately implemented the Student's IEP (including, but not limited to, the goals and objectives, accommodations, related services, behavior plan, and other supports provided within his IEP) during the 2004-2005 school year;
- b. Whether the Student's program, as provided by the District during the 2004-2005 school year, is in the least restrictive environment;
- c. Whether the District complied with its procedural obligation to provide Parent with Notice of proposed revisions to the Student's IEP;
- d. Whether the Parent is entitled to the requested remedies, or other equitable remedies, as appropriate; and
- e. The District also raises the jurisdictional issue of whether the Student was a resident of the District during the relevant period of time when Parent is claiming a denial of FAPE.

### **FINDINGS OF FACT**

1. During the 2004-2005 school year, the Student attended the tenth grade at High School which is in the Olympia School District ("District"). Parent filed a request for due process hearing on April 1, 2005, alleging the District denied the Student a FAPE during the 2004-2005 school year. The District asserts the Student and Parent did not reside within the boundaries of the District during the period of time when Parent alleges a denial of FAPE.

2. The issue of the Student's residency came to the attention of Michelle Anderson, assistant principal at High School, in April 2005 when she and another school employee noticed the Student's address was listed as being on Harrison Avenue, but she routinely saw him walking on Cleveland Avenue in the morning around the time he would be headed to school. That prompted Ms. Anderson to have the school registrar contact Parent to provide proof of residency. On April 8, 2005, after a prior telephone conversation with Parent, the registrar wrote Parent a letter in which Parent was asked to provide documentation to verify her physical residence. In response to the request regarding her physical residence, Parent provided documents to the registrar that listed Harrison Avenue as her address. The registrar then contacted Puget Power who confirmed that the listed address on Parent's power bill was a business address. Ms. Anderson drove to the Harrison Avenue address, which was a commercial mail center.

3. On April 22, 2005, Ms. Anderson sent Mother a certified letter informing her that the District had learned that the Harrison Avenue address was not Parent's residence but a postal business. In the letter, Ms. Anderson asked Parent to provide proof of the Student's residence in the form of a lease agreement or home ownership paperwork. Although Mother acknowledges that she received Ms. Anderson's letter (Exhibit P245 p.2), Mother did not respond to the letter.

Instead, Mother checked the District's boundaries and then leased an apartment within the District's boundaries on May 4, 2005, and moved in at the end of May 2005. Parent did not submit a nonresident student application for the Student during the time he attended school in the District.

4. During most of the 2004-2005 school year until the end of May 2005, the Student and Parent physically resided at a residence located at \_\_\_\_\_ Cleveland Avenue which is not located within the boundaries of the District, but is within the boundaries of the Tumwater School District. Although Parent asserts a portion of Cleveland Avenue curves back into the District's boundaries, the testimony by Hans Landig, the Director of Special Education, and a review of the District's boundaries map (Exhibits D115 and D116), confirm the Student's former address on Cleveland Avenue is not within the service boundaries of the Olympia School District.

5. The ALJ makes the following findings based upon the evidence and the weight given to Mother's testimony. Mother's testimony regarding her residence was not been credible throughout the hearing. Many of her answers upon cross-examination were non-responsive and evasive. For example, during cross-examination on June 2, 2005, Mother testified that at the end of May 2005, she and the Student moved to another address. When asked to identify the old address that they had just moved from (Cleveland Avenue), Mother testified that she did not even know the street name because she never used it. Throughout cross-examination by the District's counsel, and further inquiry by the ALJ, Mother continued to assert that she did not know the name of the street where she resided for at least three years, and moved from just weeks earlier, and that even in an emergency, she would not be able to give directions to a 911 operator. Mother's feigned lack of knowledge of her former address strains credibility. Mother's testimony reveals that she did in fact know her former address:

Q: So when did you become concerned about your address being a problem?

A: In April. Because all of a sudden now they are dinging me for my address. Then, on April the 22<sup>nd</sup>, Ms. Anderson sent a letter saying that my utility bill would not be proof enough and then was asking for a lease agreement, that type of thing. But my son was already out on medical leave. And once I had a chance to look at the boundaries and that type of thing for the school, and I became aware that there was a possibility that I was not in district, I made arrangements to move. I put deposits down in April and moved in May.

Mother's testimony, June 13, 2005, transcript p.73.

Mother had to be aware of her former address in order to look it up on the District's boundaries map in April, determine whether or not she lived within the District's boundaries, and make the drastic decision to change her residence.

6. While the Student attended school at \_\_\_\_\_ High School, Mother did not inform the District that she and the Student resided at the Cleveland Avenue address. Mother asserts that

when the Student was in fifth grade, she first informed an IEP team and later, other school personnel at Harrison Avenue High School, that Harrison Avenue was her "mailing" address. However, Mother did not clarify to the school that this was not her residential address, and did not give the District her actual residential address until ordered to do so by the ALJ.<sup>3</sup> On all of the Student's educational forms she used Harrison Avenue address, but did not tell the District her actual residential address. Mother asserts that for "safety reasons," no one, not even her advocate, had her actual residential address.

7. Mother was very resistant to providing her address to the District. At least by April 2005, Mother was on notice that the District wanted her actual physical address to confirm residency. During the May 19, 2005 prehearing conference, the District's attorney asked for information regarding Mother's physical residence.<sup>4</sup> In response to the District's request, Mother informed the ALJ that during the upcoming due process hearing, she would testify that she lived within the boundaries of the District. This statement to the ALJ was misleading because at the time, Mother had just signed a lease for a new residence, and did not inform the ALJ that she had just moved from a residence that was not in the District.

8. Mother attempted to conceal her address even after being ordered by the ALJ on May 20, 2005, to disclose her former address. By the start of the hearing on May 25, 2005, Mother had still not disclosed her address to the District and argued against showing her lease to anyone except the special education director, Hans Landig, and did not want him to be able to write the down address at an earlier meeting with Mr. Landig and the District's counsel. On the first day of hearing, Mother provided for the first time a redacted copy of her new lease (which did not give her new address), and for the first time informed the ALJ and the District that she had moved to a new address. She also asserted that she could not provide a copy of her old lease agreement (the proof of residency that the District had been requesting since April) because she had destroyed her old lease agreement when she moved to her new residence. On June 13, 2005, the ALJ ordered Mother to drive by her old residence, since she claimed she could not even remember the street name, and write down her former address and provide that to the District by June 20, 2005. Mother provided the information on June 23, 2005, after her petition to close the record and end testimony was denied by the ALJ.

9. Mother's testimony reveals that she purposely refused to provide the District with proof of residency until she "remedied" the situation by moving into the District:

Q: So you found - - so when they started questioning you, then you started checking on it because you thought you were in Olympia School District.

A: Correct . . .

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<sup>3</sup> Parent's advocate testified Mother did make the distinction, between her "mailing" address and her actual physical residence, at an IEP meeting in middle school. The ALJ does not find this testimony persuasive in light of Mother's testimony that she did not make this distinction.

<sup>4</sup> The issue of Parent's residency was raised in the prehearing conference by the District's counsel after the attempted delivery of the District's exhibits to the Harrison Avenue address by legal messenger was rejected by the commercial mail center.

Q: And so you remedied the situation?

A: Yes, I did.

Q: And you didn't give anybody anything until you remedied the situation?

A: Didn't give anybody anything?

Q: Of the physical address until you remedied the situation?

A: The only time the physical address was asked was in a second phone conversation by Mr. Thompson. And that's when he raised whether or not I lived in district. As I stated earlier, when he brought up that question and that was the very first time, in May the 19<sup>th</sup>, I said could go into court and testify under oath that I was, in fact, in the Olympia School District.

10. For all of these reasons, the ALJ finds a sufficient pattern of action to conclude that Mother intentionally concealed her actual address from the District.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. Section 1401 *et seq.* [Individuals with Disabilities Education Act (IDEA), formerly Education for All Handicapped Children Act], Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) 300 *et seq.*, and Chapter 392-172 Washington Administrative Code (WAC).

2. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Hendrick Hudson District Board of Education vs. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, had the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the state has complied with the obligations imposed by Congress and the courts can require no more.

*Id.* at 458 U.S. at 207; 103 S. Ct. at 3051.

#### *Residency in the District*

3. Before Parent's assertions regarding a denial of FAPE are addressed, the issue of the Student's residency must be resolved. WAC 392-137-115 defines residency as follows:

Student residence -- Definition. As used in this chapter, the term "student residence" means the physical location of a student's principal abode -- i.e., the home, house, apartment, facility, structure, or location, etc. -- where the student lives the majority of the time. The following shall be considered in applying this section:

- (1) The mailing address of the student -- e.g., parent's address or post office box -- may be different than the student's principal abode.
- (2) The student's principal abode may be different than the principal abode of the student's parent(s).
- (3) The lack of a mailing address for a student does not preclude residency under this section.

4. A student's "resident district" is defined as "the district in which the student's residence is located." WAC 392-137-120. Conversely, a "non-resident district" is defined as "the district in which the student is enrolled or is seeking entrance and in which the student's residence is not located." Therefore, the Student would only be a resident of Olympia School District if his actual physical place of abode was located within the boundaries of the District.

5. The evidence is clear that during the relevant period of time that Parent is alleging a denial of FAPE (September 2004 through April 2005), and at the time Parent filed her request for due process hearing on April 1, 2005, the Student and Parent lived at an address on Cleveland Avenue which was not within the boundaries of the District. Parent has not presented any credible evidence to rebut the District's evidence that the address where Student and Parent lived, through the end of May 2005, was not within the District. Therefore, the ALJ concludes that Student was not a resident of the District during the relevant period of time.

6. Having determined the Student was not a resident of the District, and was not accepted into the District through an authorized nonresident transfer, the issue then is whether a school district is liable for the provision of FAPE to a Student who was not a resident of the District, or admitted through a non-resident application, during the time of the alleged denial of FAPE, or at the time the due process hearing request was filed.

7. All of the legal authority reviewed by the ALJ indicates that a school district is generally responsible for providing FAPE only to those students with disabilities *residing within its jurisdictional boundaries*. That duty arises from actual residence in the district or an authorized non-resident student transfer.<sup>5</sup> Federal regulations to the IDEA state as follows:

The LEA [local educational agency], in providing for the education of children with disabilities *within its jurisdiction*, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §300.121-300.156.

34 C.F.R. § 300.220(a). (Emphasis added) Also, 34 C.F.R. §104.33(a) provides that a school district "shall provide a free appropriate public education to each qualified handicapped person *who*

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<sup>5</sup> Non-resident student transfers are governed by Chapter 28A.225 RCW and Chapter 392-137 WAC.

is in the [district's] jurisdiction, regardless of the nature or severity of the person's handicap." (Emphasis added).

8. State regulations reflect this same understanding, that a student will attend school in the district where the child resides. See RCW 28A.225.010(1). (Parents shall ensure that school-age child attends the public school of the district in which the child resides). Therefore, the federal and state statutory and regulatory framework are clear that a school district owes a duty of FAPE to the students who physically reside within that school district's boundaries.

9. The ALJ also has not located any law supporting the position that a school district is required to provide regular or special educational services to a nonresident student whose Parent has withheld information regarding the student's actual physical residence from the district, and who has not applied for or received a nonresident student transfer. To the contrary, the case of *Pestronk v. District of Columbia*, 150 F.Supp.2d 147 (2001), held that a student who does not reside within a district is not eligible to receive special education benefits under the IDEA from that district. See also *Thompson v. Special School District No. 1*, 144 F.3d 574 (8th Cir. 1998) (student's move from a school district and subsequent attempts to seek due process with regard to the sufficiency of the special education services provided in the school district mooted that claim – fact that student moved back into the district after due process appeal filed was irrelevant).

10. Parent also asserts, in a roundabout fashion, that the District accepted the Student into the District even though school staff knew that the Harrison Avenue was just her "mailing" address. Mother's assertion, that the District knew she lived at a different address, is without merit. Mother did not clarify in any way that her "mailing" address was different from her residential address and did not give the District her actual residential address.

11. Parent also asserts that she was not aware that she and the Student resided outside of the district boundaries. Parent's awareness is not material to the resolution of this matter. Even if it was, there is no equitable basis to find the District had a duty to provide services to the Student during the relevant time period. There is no credible evidence the District had actual or constructive knowledge that Parent and the Student lived anywhere other than Harrison Avenue, and certainly no evidence that the District knew the Student resided outside of the District's boundaries. It may have resulted in a different outcome if Parent had notified the District's administration of her actual address on Cleveland Avenue, and the District had continued to serve the Student knowing, or with reason to know, that he lived outside of the school boundaries. Perhaps under those circumstances, the District would have been equitably estopped from asserting it had no duty to provide FAPE to the Student. However, that is not the case here, and the evidence is clear: Parent actively concealed her actual residential address from the District even through the time of the due process hearing. Her reasons for doing so are not excusable. Even if Parent had "safety" concerns, the District still had a right to know her actual residential address. Therefore, there is no equitable basis to find that the District had a duty to provide FAPE to the Student.

12. On the basis of the above, the ALJ concludes by the weight of the evidence that the Student was not a resident of the District during the period at issue. Thus, the District had no obligation to provide educational services to Student. Accordingly, the Parent's FAPE issues raised are now rendered moot.

**ORDER**

1. The Student was not a resident of the District during the portion of the 2004-2005 school year when Parent was claiming a denial of FAPE.
2. Because the Student was not a resident of the District and not accepted through a nonresident student transfer, the District did not owe a duty to provide FAPE to the Student. Therefore, the Parent's FAPE claims are moot, and Parent's appeal is hereby DISMISSED.

Signed at Seattle, Washington on September 9, 2005.



Mattie Harvin Woode  
Administrative Law Judge  
Office of Administrative Hearings

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## Final Decision

### Further Appeal Rights: Information About Your Right To Bring A Petition For Reconsideration And Your Right To Bring A Civil Action.

#### RECONSIDERATION

This is a final decision. Pursuant to RCW 34.05.470, either party may file a petition for reconsideration within 10 days after the ALJ has served the parties with the decision. Service of the decision upon the parties is defined as the date of mailing of this decision to the parties. A Petition for reconsideration must be filed with the administrative law judge at his/her address and served on each party to the proceeding. A copy of the petition must be provided to OSPI, Administrative Resources Section. An order denying reconsideration is not subject to judicial review. The filing of a petition for reconsideration is not required before bringing a civil action under the appeal provisions of the Individuals with Disabilities Education Act (IDEA) that allow for the filing of a civil action.

#### RIGHT TO BRING A CIVIL ACTION

Pursuant to 20 U.S.C. § 1415(i)(c) of the IDEA, any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. *See also* WAC 392-172-360. The civil action must be filed in court and served on all parties of record within thirty days after the ALJ has mailed the final decision to the parties. If a petition for reconsideration is filed, this thirty-day period will begin to run after the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local and state or federal rules of civil procedure. The Superintendent of Public Instruction must also be served with a copy of the civil action.

CERTIFICATE OF MAILING

This certifies that a copy of the above Order was served upon the parties or their representatives on September 9, 2005, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Parent

Hans Landig, Director, Special Services  
Olympia School District  
1113 Legion Way SE  
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cc: Administrative Resource Services, OSPI  
Barb Cleveland, Executive Assistant, OAH  
Janice E. Shave, ALJ, OAH/OSPI Hearing Coordinator