BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF EDUCATION, DISCOVERY 2 CHARTER, AND SUNNYVALE SCHOOL DISTRICT.

OAH CASE NUMBER 2019090001

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING BIFURCATION, SETTING BRIEFING SCHEDULE, AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

MARCH 6, 2020

On March 6, 2019, Administrative Law Judge Cynthia Fritz, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge is called an ALJ; the Office of Administrative Hearings is called OAH; and a prehearing conference is called a PHC.

Attorney James Sibley appeared on behalf of Student. Attorney Tracy Petznich Johnson appeared on behalf of Santa Clara County Office of Education and Discovery 2 Charter. Attorney Matthew Tamel appeared on behalf of Sunnyvale School District. Attorney Kasmira Brough for Sunnyvale School District was also present for the PHC. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO BIFURCATE THE HEARING

On February 28, 2020, the parties filed a request to bifurcate this matter to resolve two preliminary issues related to the respondents' responsibilities to Student, and who was obligated to make an offer of a free appropriate public education. Additionally, the parties requested that if bifurcation is granted, the preliminary issues be addressed and decided through stipulated facts and evidence and without the need for an evidentiary hearing.

Federal and state laws pertaining to special education due process administrative proceeding do not contain specific reference to the procedure for bifurcating issues at trial. The ALJ has the discretion to bifurcate an issue raised in the pleadings, and hear it in a separate hearing, if doing so would be convenient, would result in judicial economy, or would avoid prejudice to a party. (Gov. Code, § 11507.3, subd. (b).

Here, the parties discussed extensively at the PHC the proposed preliminary issues. The ALJ and parties agreed that issue one would determine if Discovery 2 Charter and Santa Clara County Office of Education was the responsible local educational agency during the disputed time period.

The issue of who is the responsible local educational agency is a threshold issue which can be efficiently resolved through stipulated facts and evidence. Additionally, a determination of this issue may further promote judicial economy by disposing of one

or more parties, clarifying the presentation of claims against each party, and reducing the time to present the remaining claims in an evidentiary hearing. Thus, bifurcation is granted as to issue one as clarified at the PHC.

The ALJ and parties also agreed that issue two, depending on the outcome, could be a defense for each named respondent. Both the ALJ and Student's counsel expressed concerns about the ability to make a preliminary determination regarding this issue because of the factual nature of the dispute. Upon reconsideration, bifurcation of issue two is denied. Because of the nature of the dispute and fact intensive inquiries required to make a determination regarding issue two, judicial economy would not be promoted by bifurcating this issue. This ruling does not preclude the parties from presenting stipulated facts regarding this issue for the evidentiary portion of the hearing.

Accordingly, bifurcation is granted as to issue one, as clarified at the PHC.

ISSUE FOR BIFURCATION

Is Discovery 2 Charter and Santa Clara County Office of Education the local education agency responsible for Student's free appropriate public education from September 14, 2018, through March 10, 2020?

BRIEFING SCHEDULE

The briefing schedule for determination of the bifurcated issue is as follows:

March 10, 2020, at 5:00PM: Parties submit to OAH by mail a joint stipulation of facts and exhibits to the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, California 94612.

March 16, 2020, at 3:00PM: Student electronically submits his brief.

March 20, 2020, at 3:00 PM: Santa Clara County Office of Education, Discovery 2 Charter, and Sunnyvale School District electronically submit briefs.

March 24, 2020, at 3:00PM: Student electronically submits his reply brief.

The ALJ will publish a decision regarding the bifurcated issue before the continued due process hearing in this matter. The ALJ is not precluded from requesting further evidence from the parties and witnesses at any time before the bifurcated decision is published.

HEARING DATES AND TIMES

Based upon the ruling granting bifurcation in this matter, the prehearing conference and due process hearing regarding all other issues is continued. The current due process hearing dates are vacated. This matter will be set as follows:

The Prehearing Conference will take place on May 4, 2020, at 1:00PM.

The Due Process Hearing will take place on May 12, 13, and 14, 2020. The hearing shall begin at 9:30 AM on the first day and at 9:00 AM on all other days, unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

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Cynthia Fritz
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Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings