BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060459 ORDER DENYING DISTRICT'S MOTION TO DISMISS AND MOTION TO BIFURCATE

On June 9, 2017, Student filed a request for due process hearing (complaint) naming Berkeley Unified School District (District) as respondent. According to the complaint Student resided in the District and/or the District was otherwise responsible for Student during the 2 year statutory period prior to the filing of the complaint.

On September 1, 2017, District filed a motion to dismiss the complaint on the grounds District was not the local education agency (LEA) responsible to provide a free appropriate public education for Student because Student's mother was not a resident of District during the statutory period. Additionally, District alleged that a succession of placements outside District's boundaries had exempted District from educational responsibilities to Student during the same statutory period. The District alternatively sought to bifurcate the hearing and requested a separate evidentiary hearing on the issue of residency. Student filed an opposition on September 8, 2017, alleging that Student had resided within District during some or all of the statutory period. For the reasons set forth below District's motions to dismiss and to bifurcate the issue of residency are denied.

APPLICABLE LAW & DISCUSSION RE: MOTION TO DISMISS

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the local educational agency (LEA) involved in the educational decisions regarding the child. The determination of which agency is responsible to provide education to a pupil is determined by residency. (Ed. Code, §§ 48200, 56028; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.).)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure. Here, Berkeley's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, and in

particular residency. The issue of residency requires factual findings to be made by an administrative law judge at hearing and is not appropriate for a motion to dismiss. Accordingly, the motion to dismiss is denied.

APPLICABLE LAW & DISCUSSION RE: MOTION TO BIFURCATE

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

The complaint alleges in pertinent part that District failed to provide Student with a free appropriate public education by failing to fully or adequately assess her, find her eligible for special education, offer an appropriate placement, and/or provide her with her complete educational records. Resolution of whether District was the LEA for the purposes of determining the issues presented depends upon whether District was involved in making educational decisions for Student and Student's residency at the time the decisions were made.

District argues that the issue of Student's residency should be bifurcated because Student cannot establish residency within District during the statutory period, and holding a hearing on residency only will shorten the time necessary for hearing. Student argues that the hearing should proceed without bifurcation.

In this case, bifurcation is not conducive to judicial economy or efficient and expeditious use of judicial resources. There is no reason to schedule a separate evidentiary hearing. It is a more efficient and expeditious use of judicial resources for, and it is within the discretion of, the administrative law judge hearing the matter to determine the issue of residency and Student's other claims in a single hearing on all issues. District's motion to bifurcate is denied. The matter will proceed in accordance with the prehearing conference order in this case.

IT IS SO ORDERED.

DATE: September 12, 2017

DocuSigned by:
Marian H. Tully
5BE88FB487454FC...

By for

TED MANN
Administrative Law Judge
Office of Administrative Hearings