BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT, GROSSMONT UNION HIGH SCHOOL DISTRICT, and DEHESA SCHOOL DISTRICT.	OAH Case No. 2017100067 ORDER DENYING MOTION TO DISMISS, AND GRANTING IN PART MOTION TO BIFURCATE.

On November 7, 2017, Student filed an amended request for due process (complaint) with the Office of Administrative Hearings naming San Diego Unified School District, Mountain Empire Unified School District, Grossmont Union High School District, and Dehesa School District. On the same date, Grossmont filed a motion to be dismissed from Student's complaint, or in the alternative to have the hearing on the issues pertaining to it bifurcated. Student filed an opposition to the motion, and the other parties did not respond.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency under the auspices of the state . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

In general, California law places the responsibility for providing special education and related services to eligible children on the local educational agency; usually the school district in which the parent of the child resides. (See, e.g., Ed. Code, §§ 56300, 56302, 56340, 56344 [describing local educational agency responsibilities].) Local educational agency is defined as "a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area." (Ed. Code, § 56026.3.)

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.

Federal and state law pertaining to special education due process administrative proceedings do not contain specific references 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).)

DISCUSSION

In the present matter, Student claims to have attended schools in each of the school districts named above at various times, with the exception of Grossmont. Student reached the age of 18 in June 2017. Student alleges that he resided with his paternal grandparents in the fall of the 2016-2017 school year, but it is unclear if he resided with them the entire school year. He was enrolled in Mountain Empire for the 2016-2017 school year, and in the other named school districts at various times during the two-year period at issue. Student attempted to enroll in a Grossmont high school, when he turned 18 in early June 2017. He was residing with the paternal grandparents at that time, and continued to do so until he was detained at the San Diego County Juvenile Detention Facility in the summer of 2017. Student signed over his educational rights to these grandparents when he turned 18, and they hold his educational rights. Student alleges that he registered at a Grossmont high school in June 2017, but the school refused to enroll him because he had completed four years of high school, even though he contends he only accumulated 122 credits for courses he attempted during those four years. If Student had successfully completed all of the courses he attempted during this time period, he would have accumulated 208 credits, according to his complaint.

Each school district offering a high school education determines the number of units required for graduation, based on the student completing certain required courses and electives. (Ed. Code § 51223.5.) The number of credits for a course may vary from school district to school district, as may the number of credits required for graduation. Many school districts award five units of credit for one semester of a course. These school districts often require at least 200 units, if not more for graduation. Other school districts may use a different method for awarding credits and a high school diploma.

Student claims he was assessed by Grossmont during the 2013-2014 school year, and was found not eligible for special education in November 2013.[1] In his complaint Student claims that Grossmont failed to meet its child find obligation when he registered in June 2017 and should have re-assessed him and found him eligible for an individualized education program for the fall of 2017. It also claims that Grossmont improperly refused to enroll him.

In its motion to dismiss, Grossmont claims that OAH does not have jurisdiction over a claim based on its refusal to enroll him. It also claims that when Student attempted to enroll in June 2017, that act did not impose on Grossmont a duty to assess him and it is not responsible for providing him with special education. Therefore it is an improper party since it is not responsible for providing him with a FAPE, and it should be dismissed from this matter. Grossmont also argues that Student's legal residency is an issue since he resided with Father at times during the two year period at issue. Student's residency or non-residency within the Grossmont boundaries is a jurisdictional issue of mixed fact and law. Student's residency is a matter that must be determined as to all parties. The same is true as to which school district/s had the responsibility for providing Student with a FAPE at the various time periods at issue. Grossmont's motion to dismiss is deemed a motion for summary judgment, and therefore must be denied. All dates currently set in this matter are confirmed.

As part of his motion to dismiss, Grossmont asks that if the motion to dismiss is denied, that OAH bifurcate the issue of it being a party from the case in chief, and determine whether Grossmont was responsible for child find and providing him with a FAPE in a separate hearing. Grossmont's request to bifurcate this matter is being granted, but not to conduct a bifurcated hearing with Grossmont as the only party so that Grossmont's responsibility to Student, if any, for providing him with a FAPE can be adjudicated.

Student's complaint and Grossmont's motion raise questions of where Student resided during the past two years, and which party/ies would be the local educational agency/ies responsible for provided him with a FAPE, and why. The complaint is unclear as to where and with whom Student resided during the two-year period at issue. Student is asking that hundreds of thousands of dollars for the cost of placement at a residential treatment center and compensatory education, be allocated among all of the school districts. Therefore, all

[1] Student is not making any claims for any period of time that precedes the two-year statutory timelines for filing a complaint. (Ed. Code § 56505, subd. (l).)

school districts may be required to participate in the first part of the bifurcated hearing to determine Student's residency and which school district/s had responsibility for providing Student with a FAPE at specific times. The Administrative Law Judge who conducts the telephonic prehearing conference currently set for December 22, 2017, will determine who will participate in the first part of the bifurcated hearing regarding the allocation of responsibility for providing Student with a FAPE, and at which time, based on Student's residence and any other relevant factors. At the time of the first PHC, the ALJ will work with the parties to determine when the second part of the bifurcated hearing will be held. The ALJ may also determine if other issues will be litigated in the first part of the bifurcated hearing.

ORDER

1. Grossmont's motion to dismiss it from this matter is denied.

2. Grossmont's motion to bifurcate this matter is granted in part in that the hearing will be bifurcated into two parts. The first part of the hearing will determine which school district had responsibility for provided Student with a FAPE at which time period at issue. This may require a determination of Student's residency at the various time periods at issue.

3. At the telephonic prehearing conference scheduled on December 22, 2017, at 10:00 a.m., the ALJ conducting the hearing shall determine whether additional matters will be litigated during the first part of the bifurcated hearing, and which parties will participate in this first part. Additional dates for the second part of this bifurcated matter, will be set at the PHC at the ALJ's discretion.

IT IS SO ORDERED.

DATE: November 16, 2017

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings