BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MT. DIABLO UNIFIED SCHOOL DISTRICT AND CONTRA COSTA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2019030484 ORDER DENYING MOTION FOR BIFURCATION WITHOUT PREJUDICE

On March 12, 2019, Student filed a Request for Due Process Hearing with the Office of Administrative hearing, naming Mt. Diablo Unified School District.[1]

On March 25, 2019 Mt. Diablo filed a Motion for Bifurcation of Issues in Student's complaint which requested a bifurcation of the issue of Student's residency within the jurisdictional boundaries of Mt. Diablo Unified School District.[2] Mt. Diablo raises as a defense in its Response to the complaint that Mt. Diablo is not Student's local educational agency, and therefore, Mt. Diablo has no obligation to provide Student a free appropriate public education.

On March 25, 2019, Student filed a Response to Mt. Diablo's Motion to Bifurcate, contending the threshold issue against Mt. Diablo is whether Mt. Diablo is the current local educational agency responsible for providing Student a FAPE.

APPLICABLE LAW

[1] Contra Costa Special Education Local Plan Area was dismissed as a party to Student's complaint in a separate order issued on March 28, 2019.

[2] In its Motion for Bifurcation, Mt. Diablo also requested that an evidentiary hearing on the issue of residency be heard prior to determination of Student's request for Stay Put. Stay Put (Ed. Code, § 56505, subd. (d)) is a pre-hearing motion, for determination of special education placement and services pending hearing of the complaint, including defenses offered by the school district. As such, Student's Request for Stay Put is not subject to early or bifurcated hearing. Therefore, contentions regarding Student's Request for Stay Put were determined under a separate order issued concurrently with the above order.

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

OAH has previously granted bifurcation of issues where the determination of residency could be efficiently resolved in an evidentiary proceeding…which would potentially further judicial economy by reducing the number of witnesses, and time for witness examination and cross-examination on issues related to FAPE. (*see Student v. Manteca Unified School District, et al.* (July 21, 2011) OAH Case No. 2011060184.)

DISCUSSION

Mt. Diablo's Motion for Bifurcation of the issue of Student's residency is a procedural request best determined with the hearing ALJ as part of the Prehearing Conference. Mt. Diablo's Motion for Bifurcation is denied without prejudice as untimely, and may be raised again as part of Mt. Diablo's Prehearing Conference Statement for determination at that time.

ORDER

Mt. Diablo Unified School District's Motion to Dismiss is denied without prejudice, and may be raised as part of the Prehearing Conference on this matter.

The matter shall proceed as currently scheduled.

IT IS SO ORDERED.

DATE: March 28, 2019

DocuSigned by:
Judith Pasewark
D4B56EDF1903485...

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings