BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>LOS ANGELES UNIFIED SCHOOL DISTRICT, EL MONTE UNION HIGH SCHOOL DISTRICT, AND BIRMINGHAM COMMUNITY CHARTER HIGH SCHOOL. | OAH Case No. 2017070535<br><br>ORDER DENYING MOTION TO DISMISS AND GRANTING MOTION TO BIFURCATE |

On July 20, 2017, Los Angeles Unified School District filed a motion asking that it be dismissed from this matter because Student is not enrolled in the District. It also asked that Birmingham Community Charter High School, which Los Angeles charters, be dismissed on the same grounds. In the alternative, Los Angeles asked that this case be bifurcated with the issue of Student's residency for enrollment purposes heard first.[1] On August 4, 2017, El Monte filed a response to the motion to dismiss or bifurcate. On August 4, 2017, Student filed his opposition to the motion to dismiss or bifurcate.

## APPLICABLE LAW

*Motion to Dismiss*

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.

*Bifurcation*

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA of states, in part:

[1] The motion was embedded in Los Angeles's opposition to a motion for stay put filed by Student, so there was a delay in its being sent for ruling.

> (b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue….

California Education Code 56501, subdivision (a), provides that the appropriate party in a special education due process hearing is the local educational agency involved in the educational decisions regarding the child. That agency is determined by the residency of the student. (Ed. Code, §§ 48200, 56028.)

## DISCUSSION

*Motion to Dismiss*

Student, until the end of the 2016-2017 school year, was enrolled in the Rosemead School District, which serves students from kindergarten through eighth grade. Pursuant to his individualized education program with Rosemead, he has been placed at a school called Westmark pursuant to a settlement agreement between Parents and Rosemead dated December 9, 2015.[2] The settlement agreement stated that Student would be placed at Westmark at Rosemead's expense until the end of the 2016-2017 school year.

Parents are divorced and have been for several years. Father lives within the boundaries of Rosemead. El Monte is the high school district that serves students who live within Rosemead's boundaries and have matriculated to high school. Parents have joint custody, and have agreed in the past that he be enrolled as a pupil of Rosemead, based on Father's residence. Mother lives within the boundaries of Los Angeles, and Birmingham

[2] It is unclear whether Westmark is a private school, or a nonpublic school, or what its exact name is.

would be the high school that would serve Student based on Mother's residence. Mother holds Student's educational rights pursuant to a court order.

Student has completed the eighth grade, and is ready to matriculate to high school. It is unclear whether he has been enrolled as a student in Los Angeles, enrolled at Birmingham as a charter school pupil, or enrolled as a student in El Monte. It is also possible that he is not enrolled as a high school student anywhere. Mother filed this case with OAH seeking an order that Student continue to be placed at Westmark for the upcoming school year, which will be his ninth grade year. However, OAH in a separate order denied a motion that Westmark be designated as Student's stay put placement.

Los Angeles has asked that it be dismissed as a party since Student has not enrolled there, and that Birmingham also be dismissed. El Monte argues that Los Angeles should not be dismissed since it is the school district that should be serving Student now, based on Mother's residence. Los Angeles's motion to dismiss appears to be akin to a motion for summary judgment. There are clearly factual and legal issues to be decided in determining which school district, if any, is responsible for providing Student with a free appropriate public education for the 2017-2018 school year, and a hearing must be held and evidence received in order to decide this. Accordingly, Los Angeles's motion to dismiss is denied.

*Motion for Bifurcation*

The issue of which school district, if any, is responsible for providing Student with a FAPE is a threshold jurisdictional issue which can be efficiently resolved in an evidentiary proceeding. The prompt determination of this issue would potentially further judicial economy by reducing or eliminating the number of parties, witnesses, and issues. Therefore, Los Angeles's motion to bifurcate this matter is granted.

ORDER

1. Los Angeles's motion that Los Angeles and Birmingham be dismissed is denied.

2. Los Angeles's motion to bifurcate this matter is granted.

3. The prehearing conference on Friday, September 1, 2017 at 3:00 p.m. is confirmed. The only issue that will be heard is that of which school entity is responsible for providing Student with a FAPE for the 2017-2018 school year.

4. The due process hearing set to begin on September 7, 2017, at 9:30 a.m. is confirmed. This hearing shall only be concerned with determining which school district, if any, is responsible for providing Student with a FAPE for the 2017-2018 school year.

5. Dates for a PHC and hearing regarding the remaining issues shall be set after the hearing on the jurisdictional issue has ended.

IT IS SO ORDERED.

DATE: August 31, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings