

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
EXCEL ACADEMY CHARTER SCHOOL

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021110340

ORDER DENYING MOTION TO BIFURCATE AND
DISMISSING ISSUE 1A FROM
EXCEL ACADEMY CHARTER SCHOOL'S COMPLAINT.

DECEMBER 13, 2021

On November 12, 2021, Excel Academy Charter School filed a Request for Due Process Hearing, or complaint, with the Office of Administrative Hearings, also called OAH, naming Student as respondent. On November 18, 2021, Excel Academy filed a Motion to Bifurcate the issue of the whether Excel Academy is the local educational agency responsible for providing Student a free, appropriate public education, also called a FAPE.

On November 29, 2021, a prehearing conference was held. Parent, who is primarily a Romanian speaker, had not received documents translated into Romanian.

The prehearing conference and hearing were continued to provide translated documents. Parent's opportunity to respond to the Motion to Bifurcate was extended until after she received the translated motion. Parent was served with a Romanian translation of the Motion to Bifurcate on December 7, 2021. OAH did not receive a response to the motion.

Excel Academy alleges the case should be bifurcated to consider the issue of whether Student is enrolled in Excel Academy, or whether another local educational agency is responsible for providing Student a FAPE. Excel Academy asserts that after signing the Master Agreement required to enroll in Excel Academy Charter School. Student claimed he was "pushed" or "forced" to sign the Master Agreement. Excel Academy asserts that, if Student is correct, the Master Agreement signed by Parent is not valid. The charter argues that, without a valid Master Agreement, Student cannot be enrolled in Excel Academy and thus another local educational agency is responsible for providing a FAPE.

Additionally, Excel Academy asks that OAH consider Student's attendance in determining whether Excel Academy is responsible for providing FAPE. Excel Academy asserts that Student has not accepted the Individualized Educational Program or IEP offer from Excel Academy. The offered IEP requires Student's attendance in a program outside the confines of the Excel Academy Independent Study program, as Excel Academy believes Student's needs require a moderate-severe special education program that Excel Academy does not provide directly. Excel Academy argues that, as Student has not been attending any Excel Academy Charter School program, and the charter school is a school of choice, Excel Academy is not the responsible local educational agency and cannot be responsible for providing FAPE. Excel Academy

asserts that resolution of these issues in a bifurcated hearing would eliminate the need for a hearing and result in judicial economy.

MOTION TO BIFURCATE

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial. The Administrative Law Judge 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).) Generally, the Office of Administrative Hearings (OAH) will bifurcate a hearing where the resolution of the issue to be determined in the first hearing will determine whether the remainder of a hearing will be necessary.

CONTRACT ISSUE

In this case, Excel Academy asserts, without persuasive or binding authority, that resolution of the contract and attendance issues are dispositive. Prior OAH special education decisions and orders are not precedential authority. (Govt. Code § 11425.60; tit. 5, Cal Code Regs, § 3085.) Neither of these constitute a basis for bifurcation in this case.

The underlying contract formation issue is not a question within OAH jurisdiction. In a special education case, 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 free appropriate

public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Contract formation issues pertaining to enrollment in charter school programs are not within OAH's jurisdiction. Excel Academy has the right to seek review of that issue in a court of competent jurisdiction. However, for purposes of this OAH filing, Excel Academy's issue A1, asking whether its contract with parents is invalid therefore eliminating its obligation to provide a free, appropriate public education to Student, is dismissed for lack of jurisdiction.

ATTENDANCE

Excel Academy provides no binding or persuasive authority for the proposition that a local educational agency is never responsible for providing a free, appropriate public education or FAPE to a Student who does not attend classes. Regardless of the lack of dispositive authority at this juncture, questions of fact regarding Student's attendance remain, and could impact the issue of whether the IEP offered by Excel Academy offered Student a FAPE. As such, bifurcation would not serve judicial economy.

ORDER

1. Excel Academy Charter School's Motion to Bifurcate is denied.
2. Issue 1A of Excel Academy Charter School's Request for Due Process Hearing is Dismissed for lack of jurisdiction.
3. The matter shall proceed as scheduled in the Prehearing Conference Order of November 29, 2021.

IT IS SO ORDERED

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings