

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 GRANTING REQUEST FOR RECONSIDERATION
AND DENYING MOTION TO BIFURCATE AND REVERSE
DISMISSAL OF ISSUE 1A

DECEMBER 29, 2021

On December 13, 2021, the undersigned Administrative Law Judge issued an "Order Denying Motion to Bifurcate and Dismissing Issue 1a from Excel Academy Charter School's Complaint." On December 23, 2021, Excel Academy Charter School filed a Motion for Reconsideration.

RECONSIDERATION

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when

the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Excel Academy argues that reconsideration should be granted because Excel Academy was not given notice of OAH's intent to dismiss Excel Academy's claim that the signed charter master agreement was invalid. Excel Academy asserts it was entitled to notice and the opportunity to argue that OAH does have jurisdiction to hear Issue 1A, which was pled as a contract formation issue. While dismissal on the grounds of jurisdiction is generally allowable without notice, in this case, the proffered arguments in Excel Academy's motion for reconsideration have been considered. Therefore, the motion for reconsideration is granted.

NOTICE OF DISMISSAL

The original order dismissed issue 1A, of Excel Academy's complaint on the grounds that contract formation issues are outside OAH's jurisdiction. The complaint alleged that Excel is not the responsible LEA because Parents asserted they were forced into signing a master agreement for Student to attend school. Thus, according to Excel, if the contract is invalid, it does not owe Student a FAPE.

Contract formation, upon which this issue rests, is not within the jurisdiction of the Special Education Division of the Office of Administrative Hearings or OAH.

OAH was not required to offer Excel Academy notice of its intention to dismiss an issue on jurisdictional grounds. "While a party is entitled to notice and an opportunity to respond when a court contemplates dismissing a claim on the merits, it is not so

when the dismissal is for lack of subject matter jurisdiction. It has long been held that a judge can dismiss *sua sponte* for lack of jurisdiction. The [court's] power to dismiss under such circumstances, however, is not unlimited. All of the circumstances must be considered in determining whether the absence of notice as to the possibility of dismissal or the failure to hold an adversary hearing renders the dismissal void. (*Scholastic Entertainment, Inc. v. Fox Entertainment Group, Inc.* (9th Cir. 2003) 336 F.3d 982, 985. Internal citations omitted.) Here, Excel Academy's motion for reconsideration included its arguments against dismissal and those have been considered. However, the arguments are not persuasive and the issue will still be dismissed.

CONTRACT FORMATION ISSUES OUTSIDE OAH JURISDICTION

In its original request for bifurcation and in its request for reconsideration, Excel Academy argues that OAH has jurisdiction to determine whether a contract is valid and that OAH has an obligation to make such a determination in a bifurcated hearing so that it can then decide whether it has jurisdiction to proceed with a hearing on the underlying IDEA claims. Excel Academy, however, provides no persuasive or binding authority for its assertions that OAH always has jurisdiction over contract formation disputes or that the question of jurisdiction always requires a hearing.

Excel Academy relies on a several OAH decisions and a district court case, none of which were on point. Prior OAH special education decisions and orders are not precedential authority. While they can be considered as persuasive, the authority cited in this case is not persuasive as the particular cases cited were distinguishable. (Govt. Code § 11425.60; tit. 5, Cal Code Regs, § 3085.)

Excel Academy analogizes this case to prior OAH cases in which breaches of settlement agreements were asserted as denials of FAPE. Citing to *Pedraza v. Alameda*

Unified School District, (N.D. Cal. 2007) 2007 WL 949603.) Excel Academy argues that “deciding whether there was a breach addresses the fundamental issue of whether Excel has an obligation to offer the Student a FAPE.” (*Motion for Reconsideration*, p. 8, L.15-17.) However, the situation presented in the Pedraza case was not similar to Excel Academy’s situation. This pre-2005 IDEA amendments case involved a settlement agreement reached during mediation. The school district did not comply with its obligations under the settlement agreement and Parents sought enforcement. Courts did not have unfettered jurisdiction to hear cases involving settlement agreement breaches prior to the 2005 amendments. The *Pedraza* court held that courts have jurisdiction over cases involving the breach of a settlement agreement if that breach constitutes a denial of FAPE. (*Pedraza, supra*, at p. 7.)

This is a Charter School filed case in which Excel Academy acknowledges there is a signed contract between Student and the charter in its pleadings. This is not a case in which Student is asserting that a breach of a settlement agreement resulted in a denial of FAPE. Nor does Excel Academy assert there has been a breach of contract.

Excel Academy asserts in its complaint, “[h]ere, Parents allege they were forced to sign the master contract.” Excel Academy is arguing that, if it is found to have coerced Parent into signing the Master Agreement, Excel Academy would be relieved of its obligation to provide FAPE to Student. However, setting aside the equitable concerns of such a position, the fundamental contract formation question is not one governed by the IDEA. Thus, the question of the validity of the contract is not within OAH’s jurisdiction.

Excel Academy further argues, by analogy, that determining Student’s residency for purposes of determining the responsible LEA is also outside the confines of IDEA subject matter but is often an issue resolved in Requests for Due Process in order to

determine the responsible LEA. Excel Academy asserts, here, the entitlement to attend the charter is determined based on the contract, as opposed to residency, and thus should be resolved just as a residency question is resolved to determine the LEA responsible for providing FAPE. In this case, however, Excel Academy has alleged the signed contract exists. Therefore, there is no question that Student is enrolled in the charter school.

Residency can be a threshold jurisdictional question in determining which LEA is responsible for providing Student a FAPE. Residency, in a particular case, is tied directly to FAPE, and thus within OAH's jurisdiction. Here, Excel Academy acknowledges an executed master contract exists. Therefore, the potential jurisdictional question for determining which LEA owes Student a FAPE is not in dispute. Rather, Excel Academy seeks a determination regarding the legal validity of the contract. Whether that contract was validly executed is outside of OAH's jurisdiction.

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).) Excel Academy's argument that the original order "improperly conflates the holding of *Wyner* with Education Code section 56501(a)." is not persuasive. The *Wyner* court itself cited to California Education code section 56501(a) in determining that OAH's jurisdiction was limited to the subjects specified therein, specifically,

"(1) a proposal to initiate or change the identification, assessment,
or educational placement of the child or the provision of a free,
appropriate public education to the child.

(2) a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child.

(3) a Parent's refusal to consent to an assessment of the child."

(Wyner ex rel. Wyner v. Manhattan Beach Unified School. Dist. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

The question of whether there was coercion in the formation of a signed charter school contract, thereby invalidating it, does not fall within these identified subjects. OAH is not required, as Excel Academy suggests, to "provide a forum" for issues that fall outside its jurisdiction.

ORDER

1. On reconsideration, Excel Academy's request to bifurcate the hearing for OAH to consider the issue of whether its contract with Student is invalid is denied.
2. On reconsideration, Student's issue 1A is dismissed for lack of jurisdiction.
3. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings