BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. K12, INC., and GILROY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018010953 ORDER GRANTING REQUEST FOR RECONSIDERATION, GRANTING K12, INC.'S MOTION TO BE DISMISSED, AND DENYING THE MOTION FOR COST-SHIFTING OR SANCTIONS

On March 14, 2018, the undersigned administrative law judge issued an order that denied K12, Inc.'s motion to be dismissed as a party in this matter, or to bifurcate the issue of its standing, and denied K12 and Student's requests for cost shifting or sanctions. On May 16, 2018, K12 filed a motion for reconsideration and made a new motion for cost-shifting or sanctions.

APPLICABLE LAW

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. (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.)

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 . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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.).

OAH has the power to shift costs from one party to another, when it finds a party has acted in bad faith. (Govt. Code § 11455.30.)

DISCUSSION

Reconsideration

K12 provides additional documentation and sworn declarations with its motion for reconsideration of the order denying its motion to be dismissed, or that the issue of whether OAH has jurisdiction over it should be bifurcated. It also provides an explanation as to why the motion for reconsideration was submitted two months after the order denying the motion to be dismissed, or in the alternative to bifurcate the issue standing, was issued. It further establishes why K-12 did not submit the information it is now submitting with the original motion, and explains that it took K-12 several weeks to gather the information attached to its motion for reconsideration. Therefore the motion to be dismissed will be reconsidered.

Motion to be Dismissed

The additional information provided by K12 with its motion for reconsideration establishes that K12 is not a public agency which provided educational services to Student during the 2015-2016 school year. Rather, it is a private corporation that provided curriculum and administrative services to a charter school Student attended during the 2015-2016 school year, that closed in the summer of 2016. K-12's legal status was not established in its original motion to be dismissed in that it appeared that there was a factual dispute as to whether K12 was a public agency providing educational services to Student. Since it is now determined that K12 is not a public agency that provided educational services to Student, OAH does not have jurisdiction over K12 in this matter, and its motion to be dismissed as a party is granted.

Motion for Cost-Shifting or Sanctions

The basis for K12's motion for cost-shifting or sanctions appears to be Student's refusal to voluntarily dismiss it from this action either during mediation held on April 7, 2018, or after K12 notified Student on May10, 2018, that it would be filing the motion for reconsideration if Student would not voluntarily dismiss it from this action. Student's counsel responded via email on May 11, 2018, that it would not dismiss K12 because he believed the motion for reconsideration would be denied.

Based on the information provided by Student in his original opposition to the motion to be dismissed, and the May 11, 2018 email from Student's counsel, attached to K12's motion for reconsideration, it appears that there was a genuine legal dispute between Student and K12 as to whether OAH had jurisdiction over K12. K12 fails to establish that Student showed bad faith when he took the position he did in opposing the original motion to dismiss, not voluntarily dismissing K12 at mediation in April 2018, or on May 10, 2018,

when K12 provided Student with its new documentation and legal argument that would be made in the motion for reconsideration. Accordingly, K12's motion for cost-shifting or sanctions is denied.

ORDER

1. K12's motion for reconsideration is GRANTED.

2. K12's motion to be dismissed as a party in this matter is GRANTED. K12 is dismissed from this case as a party.

3. K12's motion that its costs for filing the motion for reconsideration be shifted to Student, or that sanctions be imposed against Student, is DENIED.

IT IS SO ORDERED.

DATE: May 17, 2018

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings