BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GILROY UNIFIED SCHOOL DISTRICT, MORGAN HILL UNIFIED SCHOOL DISTRICT, and K12, INC.	OAH Case No. 2018010953 ORDER DENYING MOTION TO DISMISS, DEFERRING REQUEST FOR BIFURCATION TO THE PREHEARING CONFERENCE, AND DENYING REQUESTS TO SHIFT COSTS

On January 24, 2018, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings naming Gilroy Unified School District, Morgan Hill Unified School District, and K12, Inc. Student claims K12 provided him with educational services during the 2015-2016 school year when he attended Silicon Valley Flex Academy, a charter school allegedly operated by K12.

On March 7, 2018, K12 filed a motion asking that it be dismissed as a party, claiming it was not a local education agency providing educational services to Student during the 2015-2016 school year. In the alternative K12 asks that OAH bifurcate the matter so that the issue of whether it is a proper party to this matter is determined first. K12 also asks that OAH order Student to pay the costs it incurred filing the motion to dismiss.

On March 12, 2018, Student filed an opposition to the motion to dismiss, providing information that, if true, establishes that K12 is a proper party to be named in this matter. Student does not oppose the request for bifurcation. Student also asks that OAH order K12 pay the costs he incurred in responding to the motion to dismiss. Gilroy and Morgan Hill have not filed a response to the motion to dismiss.

APPLICABLE LAW

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.). However, special education law does not provide for a summary judgment procedure.

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:

> (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 . . . .

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

K12 argues that it should be dismissed as a party because it did not provide educational services to Student. Rather, it claims it provided the curriculum that was used by Silicon Valley as a charter school. In essence, K12 has filed a motion for summary judgment.

In his opposition Student claims that K12 operated Silicon Valley, and therefore is a proper party. Both K12 and Student support their claims with sworn declarations and supporting documentation, and raise disputed factual issues that must be determined by an administrative law judge after hearing testimony and reviewing the documentary evidence. K12's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

In regards to bifurcation, both parties agree that this may be a matter in which bifurcation of the issue of whether K12 is a proper party should be heard first. However, this

would be better decided by the ALJ assigned to the hearing at the prehearing conference, currently set for May 21, 2018. Therefore, ruling on bifurcation is deferred until the PHC.

K12 has asked that OAH shift the costs it incurred in filing the motion to dismiss to Student, and Student has asked that OAH shift the costs he incurred in responding to the motion to dismiss to K12. However, neither party has established that the other party acted in bad faith. Each party has made a reasonable argument on its behalf, and appears to have acted in good faith. Accordingly, the motions to shift costs are denied at this time.

ORDER

1. K12's motion to dismiss is denied. All previously scheduled dates shall remain on calendar.

2. K12's request for bifurcation is deferred to the PHC on May 21, 2018.

3. K12's request to shift costs to Student is denied.

4. Student's motion to shift costs to K12 is denied.

IT IS SO ORDERED.

DATE: March 13, 2018

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