

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010060835

ORDER DENYING WITHOUT
PREJUDICE DISTRICT'S MOTION TO
BIFURCATE HEARING

On June 15, 2010, Student filed a due process request (complaint) in the above-captioned matter naming the Los Angeles Unified School District (District). In her complaint, Student raises two issues. First, that the District developed an individualized education program (IEP) for her for the 2008 – 2009 school year but then would not permit her to enroll at the school indicated on the IEP. Second, that the District's proposed IEP for the 2009 – 2010 school year denied her a free appropriate public education.

On July 16, 2010, the District filed a motion to bifurcate the issue of whether Student was a resident of the District during the time period covered by the complaint. The District contends in its motion that it has reason to believe that Student was not a resident during the relevant time period.

Student filed an opposition to the District's motion on July 19, 2010. Student contends that the District has not provided any legal authority in support of its motion to bifurcate. She also asserts that her mother (Mother) has obtained a court order deeming Student's and Mother's home address confidential based upon domestic violence issues. Student states that Mother provided a copy of the confidentiality order to the District and that Mother offered to provide proof of residency as long as copies of the documentation were not made. Student contends that the District did not accept this offer but instead did not allow Student to enroll in a District school. Student contends that she has resided within the boundaries of the District since birth and that Mother is also employed within those boundaries. Finally, Student contends that a motion to dismiss would have been the proper vehicle for addressing this issue rather than a motion to bifurcate the proceedings.

DISCUSSION

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the public educational agency involved in the educational decisions of the child. That agency is determined by the

residency of the pupil. (Ed. Code, §§ 48200, 56028.) If the District is not the district of Student's residency, the action has been brought against the wrong party.

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure of bifurcating issues for trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Contrary to Student's contention, there is Office of Administrative Hearings (OAH) precedent for bifurcation of the issue of residency when a triable issue of fact exists as to whether a student resides in a school district named as a respondent in a complaint. For example, in *Student v. Vallecito Union School District, et al.*, Cal.Offc.Admin.Hrngs Case No. 2007100140 (Order dated April 30, 2008), OAH ordered the matter bifurcated because it found that a triable issue of fact existed as to when the student in question had moved out of the boundaries of the respondent school district.

However, in the instant case, the District has not yet raised a triable issue that warrants bifurcation of the proceedings. The District's motion states that it has "reason to believe" that Student does not reside in its boundaries although it admits that Student's Mother works within its boundaries and even though it has apparently previously found Student eligible for special education and services, formulated an individualized education program for her, and previously offered her a placement. The District offers no declaration or other evidence in support of its belief that Student no longer resides within its boundaries. The District does not even state in its motion what facts gave rise to its belief that Student has moved. The lack of any stated factual basis for its belief is even more significant given the fact that Student's entire issue one in her complaint contends only that the District refused to enroll her in school because it did not believe she continued to reside within District boundaries. Determining whether Student resided within those boundaries during the 2008 – 2009 school year will therefore be the primary matter for decision with regard to issue one. Therefore, without more to support the District's belief that Student is no longer a resident of the District, bifurcation is not warranted at this time.

ORDER

The District's motion to bifurcate the proceedings is denied without prejudice.

Dated: July 22, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings