

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

MARTINEZ UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013090004

ORDER DENYING DISTRICT'S  
MOTION TO BIFURCATE

On August 28, 2013, Student filed a request for due process hearing (complaint) naming Martinez Unified School District (District) as respondent. According to the complaint Student is over the age of 18 and resides within District.

On September 9, 2013, District filed a motion to dismiss or, in the alternative, notice of insufficiency (NOI) on the grounds District was not the local education agency (LEA) responsible to provide a free appropriate public education for Student because Student's mother had moved out of District boundaries. On September 10, 2013, OAH issued an order denying the motion to dismiss/NOI because OAH has jurisdiction to determine residency disputes and to determine whether District denied Student a FAPE.

On September 27, 2013, District filed a motion to bifurcate and requests a separate evidentiary hearing on the issue of residency. Student filed an opposition on October 2, 2013. For the reasons set forth below District's motion to bifurcate the issue of residency is denied.

APPLICABLE LAW

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the local educational agency (LEA) involved in the educational decisions regarding the child. The determination of which agency is responsible to provide education to a pupil is determined by residency. (Ed. Code, §§ 48200, 56028; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.)

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure for bifurcating issues at 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).)

## DISCUSSION AND ORDER

The first issue presented in the complaint is whether District denied Student a free appropriate public education (FAPE) by failing to provide Student an appropriate placement because Student's mother moved out of the District. The second issue alleges that District previously did not provide a proper placement for Student. Resolution of whether District was the LEA for the purposes of determining the issues presented depends upon whether District was involved in making educational decisions for Student and Student's residency at the time the decisions were made.

District argues that the issue of Student's residency should be bifurcated because mother has moved out of the District. Even though Student (who is over 18 years old) lives within the District, District contends that under Education Code section 56041, the responsible LEA is the one in which the parent resides, not the one in which the adult pupil resides.

District relies upon Education Code 56041. Education Code section 56041 places the responsibility for pupils between ages 18 to 22 on the "district of residence." The Section states in relevant part:

Except for those pupils meeting residency requirements for school attendance specified in subdivision (a) of Section 48204, and notwithstanding any other provision of law, if it is determined by the individualized education program team that special education services are required beyond the pupil's 18th birthday, the district of residence responsible for providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, shall be assigned, as follows:

(a) For nonconserved pupils, the last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.

Student relies upon Education Code section 48204 subdivision (a).<sup>1</sup> Section 48204 subdivision (a)(3) provides in relevant part:

Notwithstanding Section 48200 [which applies to children between ages 6 and 18], a pupil complies with the residency requirements for school attendance in a school district, if he or she is any of the following: [...]

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<sup>1</sup> Section 48204 has been repealed but remains operative until July 1, 2017. The new Section, effective July 1, 2017, contains the same provision quoted above.

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

In this case, bifurcation is not conducive to judicial economy or efficient and expeditious use of judicial resources. There is no reason to schedule a separate evidentiary hearing. It is a more efficient and expeditious use of judicial resources for, and it is within the discretion of, the administrative law judge hearing the matter to determine any residency defense by the District in a single hearing on all issues. District's motion to bifurcate is denied.

IT IS SO ORDERED.

Dated: October 04, 2013

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings