

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT AND RIALTO UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010120141

ORDER DENYING MOTION TO
DISMISS AND ORDER GRANTING
MOTION TO BIFURCATE

On December 3, 2010, Student filed a Request for Due Process Hearing (complaint) against the Pasadena Unified School District (PUSD) and Rialto Unified School District (RUSD). On December 9, 2010, PUSD filed a Motion to Dismiss, alleging that Student was no longer a resident of PUSD after the Los Angeles Department of Children and Family Services placed her in foster home within the boundaries of RUSD on September 29, 2009. PUSD also contends that the matters against it and RUSD should be bifurcated as the matters involve distinctly different time periods, facts, witnesses and questions of law. On December 10, 2010, Student filed an opposition to PUSD's Motions to Dismiss and Bifurcate.

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.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

Although there is no special education law or regulation that addresses bifurcation of issues, the Office of Administrative Hearings generally looks to civil cases and the California

Administrative Procedure Act (APA) 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....

DISCUSSION

Motion to Dismiss

Student's complaint contains four issues for hearing and only Issue Four concerns PUSD. Student alleges that PUSD did not comply with its child find duties because it did not timely assess Student and make her eligible for special education services from December 2008 through September 2009. The complaint contains sufficient allegations to create a triable issue for hearing that Student resided within PUSD during this period. Accordingly, PUSD's Motion to Dismiss is denied.

Bifurcation

Student's complaint alleges distinct violations against PUSD and RUSD during two separate time periods. Student's claims against PUSD allegedly occurred between December 2008 through September 2009, when PUSD found Student eligible for special education services. Student's claims against RUSD allegedly occurred from June 2010 through the present regarding RUSD's offer of services and placement and failure to assess Student. The claims against PUSD and RUSD will involve different witnesses and factual contentions. Therefore, PUSD's motion is granted because bifurcation is appropriate as the claims against the two school district involve different claims, witnesses and evidence.

ORDER

1. PUSD's Motion to Dismiss is denied.
2. PUSD's motion to bifurcate is granted.
3. Student's due process request against PUSD shall proceed with Mediation on January 11, 2011, the Prehearing Conference on January 24, 2011, at 10:00 a.m., and the Due Process Hearing on January 31, 2011, at PUSD's district office.

Dated: December 13, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings