

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011100843

ORDER DENYING STUDENT'S
MOTIONS TO EXPEDITE AND
BIFURCATE HEARING, FOR
ADDITIONAL HEARING DAYS, AND
FOR CHANGE OF HEARING
LOCATION

Student filed a due process complaint on October 21, 2011, alleging that the Bonita Unified School District (District) had procedurally and substantively violated his rights to a free and appropriate public education (FAPE) over three school years. The Office of Administrative Hearings (OAH) issued a Scheduling Order in this matter on October 26, 2011, setting this matter for a prehearing conference on December 7, 2011, and for a due process hearing on December 15, 2011.

On November 7, 2011, Student filed a pleading in which he makes three motions. First, Student requests that OAH set one day of hearing sometime during the last two weeks of November to address his issue C(7), which alleges that the District failed to provide him a FAPE because it did not offer positive behavioral supports and services, including supports for Student's participation in the December 2012 fifth grade Science Camp. In effect, Student wishes to bifurcate this issue from the rest of his complaint and hold an expedited hearing on one issue in his complaint. Student contends that since Science Camp will take place starting December 13, 2011, two days before the hearing in this matter is scheduled, he will be unduly prejudiced if OAH does not hear (and presumably rule on) this issue before the camp is scheduled to be held. Student requests that OAH thereafter issue a minute order specifying a remedy for him should he prevail on this issue.

Secondly, Student moves for four additional hearing dates consecutive to the presently set hearing date of December 15, 2011. Finally, Student moves for a change of hearing location to an OAH office.

The District filed an opposition to Student's motions on November 10, 2011. On November 14, 2011, Student filed a reply to the District's opposition. In his reply, Student clarifies that he is seeking to change the location of the hearing to the OAH Special Education offices in Van Nuys, California. Student clarifies that the reason he requests the

change of location is due to the deteriorating relationship between his parents and District staff and their resulting discomfort in having to have this matter heard at the District rather than at a neutral location.

For the following reasons, Student's motions are denied.

Expediting of Student's Hearing

Student requests to expedite the date for hearing on one issue in his multi-issue complaint because he wishes to have a decision and a remedy before his fifth grade Science Camp begins on December 13. Student offers no legal basis for expediting this type of issue in a special education matter. Title 34 Code of Federal Regulations part 300.532(c) provides the only basis for expediting a due process hearing: either where a student's parents disagree with an interim alternative educational setting decision or where a parent disagrees with a district's manifestation determination. Student's issue C(7) does not involve either situation. Student's placement has not been changed due to misconduct, and there is no allegation that the District has held a manifestation determination for him based on misconduct.

Furthermore, Student's request for a remedy to be provided in a minute order is not supported by citation to any statute or case law that would provide authority for OAH to render a decision through a minute order. Rather, OAH is charged with producing a written reasoned decision, not a minute order when rendering a decision on a due process complaint. (Ed. Code, 56505, subd. (f)(3).) Student's request for an expedited hearing is therefore denied.

Bifurcation of the Hearing

Student's motion for an expedited hearing on his issue C(7) is also a request to bifurcate this issue from the remainder of his complaint. 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).) Generally, OAH will only bifurcate a hearing where the resolution of a threshold question will determine whether the remainder of a hearing will be necessary. For example, OAH will bifurcate the issue of whether a student is or was a resident of a school district named as a respondent in a complaint to determine if the district was appropriately named as a party. In that and similar situations, bifurcation furthers judicial economy by potentially dismissing a named respondent from a complaint, or by finding that no cause of action exists against a respondent due to the student's lack of residency in a named district.

Here, Student's request to bifurcate his issues increases rather than decreases potential hearing time. Student's issue C(7) is merely one allegation of several concerning the District's offer of placement and services to Student during the 2011-2012 school year.

Bifurcation of the issues would require duplicative hearings, with witnesses being required to testify at both hearings. Student's motion to bifurcate issues is therefore denied.

Request to Change Hearing Location

Student seeks a change of venue for the due process hearing in this matter on the basis that the relationship between District staff and Student's parents has been deteriorating and that parents will be extremely uncomfortable and intimidated in the District's offices. Therefore, Student requests that the hearing be held in a "neutral venue," the OAH offices in Van Nuys, California. The District opposes the motion because of the disruption to its staff in having to commute over 40 miles each way through traffic in order to testify at a hearing held in Van Nuys. The District further states that it will be a hardship to staff to have to travel that distance for a hearing.

Federal and state law provides that a due process hearing must be held in a place "reasonably convenient" to the student and parents. (34 C.F.R. § 300.511(d); Ed. Code § 56505(b).) "Reasonably convenient does not mean that the hearing may be located anywhere that the parent decides is convenient....To be reasonable, there must be some balance of interest between what is convenient for the parent and child on one side and what is efficient for the district or other parties on the other side. Due process hearings are generally scheduled at either the office of the school district or at those of the SELPA. The school district that the student attends is likely to be reasonably convenient for the parents and the child since the child and at least one parent will generally live within the district's coverage area Additionally, most of the representatives and witnesses in a case involving a school district will be close at hand if the hearing is located at that district." (*Ocean View Elementary School District, et. al.*, SEHO Case No. SN 97-00069 (February 10, 1997).

Although Student's parents may feel discomfort at the District's offices, there is no reason to believe that OAH will permit any unprofessional conduct at the hearing. Additionally, although parents may feel that the District's main offices do not provide a neutral hearing setting, there may be other locations available for the hearing, such as Student's school of residence that would address many of the concerns raised by Student in his motion. Therefore, Student's request to change the hearing location is denied without prejudice. Student may raise the issue again with the administrative law judge at the prehearing conference in this matter.

Request for Additional Hearing Days

In his motion, Student fails to state whether he met and conferred with the District regarding the amount of time needed for this hearing and, if more than one day is needed, whether the District is available on the additional dates Student requests for the hearing. There is a form available on the OAH website where parties may stipulate to continuances or changes in hearing dates. If the parties are unable to reach an agreement, Student may move separately for a continuance or change in hearing dates, or may raise the issue at the prehearing conference in this matter.

ORDER

1. Student's motion to expedite and bifurcate issue C(7) of his complaint is denied.
2. Student's motion for a change in location of the hearing is denied without prejudice.
3. Student's motion for additional hearing dates is denied without prejudice.

Dated: November 15, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings