

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTRAL SCHOOL DISTRICT.

OAH Case No. 2014080284

ORDER DENYING MOTION TO  
DISMISS ISSUES AND BIFURCATING  
RESIDENCY ISSUE

On August 8, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming the Central School District. On August 13, 2014, Student filed with OAH an Amended Request for Due Process Hearing (complaint), which was deemed a motion for leave to file an amended complaint also naming Central as respondent. On August 19, 2014, OAH issued an order granting Student leave to file the complaint.

Student's complaint contains three issues. Issue one alleges that Central denied Student a free appropriate public education by failing to design an educational program to meet Student's unique needs since August 2012. Issue two alleges that Central has failed to properly assess Student in all areas related to his suspected disabilities. In issue three, Student alleges that Central failed to provide Student's parents a full and complete copy of Student's educational records when requested on May 6, 2014. Student also avers in issue four that Central failed to provide parents prior written notice in reference to Central's refusal to provide accommodation and services from Student's regional center program at the December 17, 2014 Individualized Education Program meeting.

On January 6, 2015, Central filed a motion to limit issues based on Student no longer living within the Central geographical boundaries since March 6, 2013. Central seeks to have OAH issue an order to dismiss all claims occurring on and after March 6, 2013. Thus, Central's motion is actually a motion to dismiss the majority of Student's claims.

In support of its motion, Central attaches to its motion a declaration by Susan Kohn, Director of Special Education-Pupil Personnel of Central; a copy of the December 12, 2012 IEP, which was Student's initial IEP; Attendance Record for Student for school year 2012-2013; Student's Emergency Card dated March 6, 2013; and an email exchange between Central and Student's mother in 2014.

APPLICABLE LAW AS TO MOTION TO DISMISS ISSUES

Although 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.....), special education law does not provide for a summary judgment procedure. Here, the 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.

#### APPLICABLE LAW AND DISCUSSION AS TO BIFURCATION

In support of its motion to dismiss, Central attaches to its motion a declaration by Ms. Kohn; a copy of the December 12, 2012 IEP, which was Student's initial IEP; Attendance Record for Student for school year 2012-2013; Student's Emergency Card dated March 6, 2013; and an email exchange between Central and Student's mother in 2014. The facts alleged are that Student had moved from the boundaries of Central on or before March 6, 2013.

Federal and state laws pertaining to special education due process administrative proceedings do 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 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. OAH has also bifurcated specific legal issues such as the statute of limitations because a determination of that issue may reduce or eliminate issues and determine whether the remainder of the hearing will be necessary. Bifurcation limiting parties or issues furthers judicial economy by dismissing a named respondent from a complaint, or by finding that no complaint exists against a respondent due to the student's lack of residency, or that the issue is barred by the statute of limitations.

Here, determination of Student's residence would reduce or eliminate issues alleged in the complaint. Student's claims involve actions which occurred from August 2012 to present. Bifurcation would greatly limit the time period involved resulting in the reduction and elimination of issues to be determined at hearing.

Accordingly, upon motion of the ALJ, the issue of residency will be bifurcated.

#### ORDER

1. Central's Motion to Dismiss to dismiss claims occurring after March 6, 2013, is denied.

2. The issue as to residency will be bifurcated.
3. The matter will proceed as scheduled.

IT IS SO ORDERED.

DATE: January 9, 2015

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings