

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

FORTUNA UNION HIGH SCHOOL
DISTRICT, KELSEYVILLE UNIFIED
SCHOOL DISTRICT, AND KONOCTI
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014080602

ORDER DENYING WITHOUT
PREJUDICE MOTION TO BIFURCATE

On August 11, 2014, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, against Fortuna Union High School District, Kelseyville Unified School District and Konocti Unified School District. On August 20, 2014, Student filed a motion to bifurcate the issue of Student's residency during the period at issue to determine the responsible school district from whether any of the school districts denied him a free appropriate public education. On August 21, 2014, all three school district filed a response to join Student's motion to bifurcate the issue of Student's residency from whether he was denied a FAPE. The parties also request that OAH set a trial conference to set a timeline for the parties to brief the issue of residency if the bifurcation request is granted.

APPLICABLE LAW

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

OAH also has the obligation to move cases to hearing expeditiously. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless there is a 30-day statutory resolution period or an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

While the parties raise several compelling arguments why OAH should grant the bifurcation motion, the request is premature. The appropriate time to raise the request is at the September 29, 2014 prehearing conference. At that time, the assigned ALJ can consider the request and if the request to bifurcate is granted, discuss with the parties any scheduling issues. Accordingly, the parties' bifurcation request is denied without prejudice to permit the parties to discuss the bifurcation request with the ALJ assigned to hear this matter at the PHC.

ORDER

The motion to bifurcate is denied without prejudice.

DATE: August 25, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings