

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH  
SCHOOL DISTRICT AND SAN  
BERNARDINO COUNTY  
SUPERINTENDENT OF SCHOOLS.

OAH Case No. 2015110095

ORDER DENYING MOTION TO  
BIFURCATE DUE PROCESS  
HEARING

On October 29, 2015, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Victor Valley Union High School District and San Bernardino County Superintendent of Schools. The complaint alleges, among other things, that District and County failed to timely assess Student in a number of areas, including occupational therapy, language and speech, assistive technology, physical therapy, academics, career aptitude, augmentative alternative technology and psycho-educational. One of Student's proposed resolutions for the alleged failure to assess is publically funded independent educational evaluations in the areas listed.

On January 5, 2016, Student filed a Motion to Bifurcate the Due Process Hearing. District and County filed an opposition on January 7, 2016. Student filed a reply to District's and County's opposition on January 11, 2016. The motion was addressed on January 29, 2016, during a prehearing conference. For the reasons set forth on the record during the PHC and as set forth below Student's motion to bifurcate is denied.

Student's motion to bifurcate seeks an order requiring all of the requested independent educational evaluations be at public expense and completed before the due process hearing begins. Student contends the independent educational evaluations are necessary before the hearing begins because District has not assessed Student and there are no current assessments upon which an ALJ would be able to fashion a remedy.

Student's theory is that any remedy for past violations for the failure to assess Student must be factually based on individualized assessments. While it is true that a remedy must be based upon evidence, Student has yet to call a witness and Student's right to any remedy has not been proven. Moreover, Student contends that the hearing should be continued to an unspecified unknowable date in the future, after the requested independent assessments have been completed.

Federal law provides that “[i]f a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.” (34 C.F.R. § 300.502(d)(2011).) State law allows an ALJ who is presiding at a special education administrative proceeding to “order that an impartial assessment, including an independent educational assessment of the pupil be conducted for purposes of the hearing and continue the hearing until the assessment has been completed.” (Ed. Code, § 56505.1, subd. (e); see also *Ojai Unified School Dist. v. Jackson* (9th Cir. 1993) 4 F.3d 1467, 1470, [hearing officer ordered assessment during the course of a due process hearing].) The cost of such assessment falls with the state Department of Education. (*Ibid.*)

Under Federal and state law, an ALJ may order assessments during a hearing for the purpose of the hearing. Accordingly, in this case, the ALJ may order any assessments necessary to fashion an appropriate remedy if the ALJ has determined that Student is entitled to a remedy that would require an assessment. (See *Student v. Fresno Unified School District* (January 23, 2014) OAH Case Nos. 2012100242 and 2012100291.) The ALJ has discretion to continue the hearing to allow time for the assessments ordered to be completed. The law does not permit a party to obtain prehearing expert assessments and opinions at public expense and to delay the due process hearing for an indefinite and likely very lengthy period of time.

Student’s motion to bifurcate is denied. All dates set forth in the PHC Order dated January 29, 2016, are confirmed.

IT IS SO ORDERED.

DATE: January 29, 2016

/s/  
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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings