BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017031066
v.	ORDER DENYING MOTION TO CONSOLIDATE; GRANTING MOTION TO BIFURCATE; AND DENYING MOTION TO CONTINUE WITHOUT PREJUDICE
LAFAYETTE SCHOOL DISTRICT.	

On March 21, 2017, Parent on Behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2017031066 (Student's Case), naming Lafayette School District.

On March 21, 2017, Student's sibling filed a Request for Due Process Hearing in OAH case number 2017031065 (Sibling Case), naming Lafayette.

On April 19, 2017, Counsel on behalf of Student and Student's sibling and Lafayette filed a joint Motion to Bifurcate Residency Issue and to Consolidate Student's Case with Sibling Case for a residency hearing, and to continue the current due process hearing dates.

APPLICABLE LAW

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Bifurcation

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….

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the local educational agency involved in the educational decisions regarding the child. That agency is determined by the residency of the student. (Ed. Code, §§ 48200, 56028.)

Continuance

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).)

DISCUSISON

Lafayette contends that it is not the responsible local educational agency as to either Student or Student's sibling since January 2016, because neither Student nor Student's sibling resided within its jurisdictional boundaries. The parties assert that consolidation is warranted as Student's Case and Sibling's Case involve a common question of law and fact as to the issue of residency and whether Lafayette is the responsible local educational agency. Consolidation is within the sound discretion of the administrative law judge. OAH declines to consolidate these two matters which, aside from the issue of residency, involve separate and distinct issues regarding two individual students.

In light of this order denying consolidation, the parties' request to continue this matter is denied without prejudice. The parties may re-submit a request for a continuance after considering the scheduling issues involved in proceeding to hearing separately as to the Student's Case and Sibling Case.

The issue of residency is a threshold jurisdictional issue which can be efficiently resolved in an evidentiary proceeding. The prompt determination of the issue of residency would potentially further judicial economy by reducing or eliminating the number of witnesses and issues if Lafayette is determined not to be the agency responsible for providing a free appropriate public education during all or a portion of the school years at issue. Therefore, the parties' motion to bifurcate is granted. The parties shall be prepared to discuss a bifurcated hearing scheduled at the time of the prehearing conference which remains calendared for May 8, 2017, at 1:00 p.m.

ORDER

1. The parties' Motion to Consolidate is denied.
2. The parties' Motion to Continue is denied without prejudice. All dates previously set for hearing in this matter shall remain as scheduled.
3. The parties' motion to bifurcate the issue of residency is granted. The ALJ will discuss a bifurcated hearing schedule with the parties at the time of the prehearing conference.

IT IS SO ORDERED.

DATE: May 1, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings