BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT I, v. CORONADO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013020662 (Primary)
PARENT ON BEHALF OF STUDENT II v. CORONADO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020663 ORDER GRANTING MOTION TO CONSOLIDATE AND DEFERRING RULING ON MOTION TO BIFURCATE RESIDENCY ISSUE S

On February 19, 2013, Parent on behalf of Student I filed a request for due process hearing (complaint) in OAH case number 2013020662 (First Case), naming the Coronado Unified School District (District).

Also on February 19, 2013, Parent filed a complaint on behalf of Student II, a sibling of Student I, in OAH case number 2013020663 (Second Case), naming District.

The complaint in the First Case alleges that Student I was denied a free appropriate public education (FAPE) due to District's failure to honor a settlement agreement. The complaint in the Second Case alleges that District denied Student II a FAPE by disenrolling Student II and failing to implement his individualized education program (IEP). District brought motions to dismiss in both cases raising as a defense that Student I and Student II (collectively Students) are not residents of District, both of which were denied as improperly seeking summary adjudication on an issue that requires a factual inquiry at hearing. Both the First Case and the Second Case, and both cases are at issue.

On March 26, 2013, Students filed a motion to bifurcate and consolidate the residence issues in both cases. District did not file a response to the motion.

APPLICABLE LAW

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].)

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. The determination of which agency is responsible to provide education to a pupil is determined by residency. (Ed. Code, §§ 48200, 56028; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.).) With some exceptions not relevant here, children between the ages of 6 and 18 must attend school in the district "in which the residency of either the parent or legal guardian is located." (Ed. Code, § 48200.)

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure of bifurcating issues for 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).)

DISCUSSION

Here, the First Case and the Second Case involve common questions of law and fact. Specifically, the issue of residency is a threshold jurisdictional issue in both cases. Consolidation furthers the interests of judicial economy because the respective cases will involve the same witnesses, documents and questions of law on the issue of District's residency defense, and consolidation will avoid the repetitive presentation of common evidence and prevent inconsistent rulings. Accordingly, consolidation is granted.

Whether or not the residency issue should be bifurcated and heard apart from the remainder of the cases for efficient and expeditious use of judicial resources lies within the discretion of the administrative law judge (ALJ) hearing the matter. Therefore, Students' motion to bifurcate the hearing of District's residency defense is denied as premature, and without prejudice to renewal of this motion before the hearing ALJ at the time of the prehearing conference (PHC) on the consolidated matters.

ORDER

1. Students' motion to consolidate is granted. OAH case number 2013020662 (First Case) is designated the primary case in these consolidated matters.
2. All dates previously set in OAH case number 2013020663 (Second Case) are vacated.
3. Student's motion to bifurcate is denied, without prejudice to renewal at the PHC.
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH case number 2013020662 (First Case).

Dated: April 05, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings