BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT AND LAKE ELSINORE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060510 ORDER 1) GRANTING STUDENT'S MOTION TO AMEND COMPLAINT; AND 2) DENYING LAKE ELSINORE UNIFIED SCHOOL DISTRICT'S MOTION TO BIFURCATE, CHANGE VENUE AND SET NEW DATES FOR HEARING

On June 11, 2013, Student filed a Request for Due Process Hearing (complaint) naming San Luis Coastal School District (San Luis) and Lake Elsinore Unified School District (Lake Elsinore). The complaint stated two issues. Issue One alleged San Luis and Lake Elsinore denied Student a free appropriate public education (FAPE) during the 2011-12 school year and the extended school year (ESY) by failing to provide an appropriate program in a number of areas including development of Student's individualized education program (IEP), and providing adequate services and appropriate placement. Issue One further alleged Lake Elsinore failed to timely provide an assessment plan, make a clear offer of ESY services, to conduct appropriate assessments, and to include parental concerns in the IEP. Issue One further alleged San Luis failed to implement Student's IEP and to conduct occupational therapy and functional behavior assessments. Issue Two alleged San Luis denied Student a FAPE during the 2012-13 school year and failed to offer Student a FAPE for the 2013-14 school year.

On July 1, 2013, Lake Elsinore filed a motion to bifurcate Issue One, change venue of the bifurcated issue and set new dates for the bifurcated hearing. Lake Elsinore contends the matter should be bifurcated and the venue changed because Issue One relates solely to Lake Elsinore and Lake Elsinore is more than 375 miles from San Luis.

On July 2, 2013, San Luis filed a response to Lake Elsinore's motion. San Luis opposed bifurcation but did not oppose a change of venue or the request for new hearing dates. San Luis opposed bifurcation because Issue One is alleged as to both respondents, involves common questions of law and fact and there will be a substantial overlap in witnesses and evidence.

On July 2, 2013, Student filed an opposition to the motion to bifurcate on the grounds Issue One is not solely related to Lake Elsinore because Lake Elsinore participated in

Student's initial IEP team meeting with San Luis on February 2, 2013, and Student's IEP was developed by both districts. Student argues that the witnesses and evidence will be similar, two separate hearings would be prejudicial to Student, and the costs would be overwhelming.

On July 2, 2013, Student also filed a motion to amend Student's complaint on the grounds Student recently obtained Student's educational records from Respondents which raised additional issues. Neither district responded to Student's motion to amend.

Motion to Amend Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)1 The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order.

Motion to Bifurcate

No Federal or state law pertaining to special education due process administrative proceedings reference the procedure for bifurcating issues or the standard to be applied in deciding a motion to bifurcate special education cases. However, California law offers, by analogy, a standard appropriate to special education cases. Government Code section 11507.3, subdivision (b), provides that an administrative law judge "may" order separate hearings when to do so would be "in the furtherance of convenience or to avoid prejudice: or when separate hearings will be conducive to expedience and economy..."

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. OAH has also consolidated matters that involve a

1 All statutory citations are to Title 20 United States Code unless otherwise indicated.

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].) Accordingly, where matters involve common questions of law and fact, overlapping witnesses and evidence, and a single hearing will serve judicial economy, it is within an administrative law judge's discretion to deny a motion to bifurcate.

Issue One involves common questions of law and/or fact and the same parties. To conduct a separate or bifurcated hearing on the issues as requested by Lake Elsinore would unnecessarily prolong the hearing and delay the case. To do so would not be in the interests of expediency or judicial economy. Contrary to Lake Elsinore's argument, bifurcation will likely result in additional hearing days to hear evidence applicable to both respondents that could have been presented in a joint proceeding. Bifurcation of the issues would require duplicative hearings, with some witnesses being required to testify at both hearings. Lake Elsinore's motion to bifurcate issues is therefore denied. Logistics, such as possible telephonic testimony or other accommodations, can be resolved by the administrative law judge at the pre-hearing conference.

Motion for a Change of Venue and New Hearing Dates

A due process hearing must be held in a place "reasonably convenient" to the student and parents. (Ed. Code § 56505(b).) "Reasonably convenient does not mean that the hearing may be located anywhere that the parent decides is convenient….To be reasonable, there must be some balance of interest between what is convenient for the parent and child on one side and what is efficient for the district or other parties on the other side. Due process hearings are generally scheduled at either the office of the school district or at those of the SELPA. The school district that the student attends is likely to be reasonably convenient for the parents and the child since the child and at least one parent will generally live within the district's coverage area …. Additionally, most of the representatives and witnesses in a case involving a school district will be close at hand if the hearing is located at that district." (*Ocean View Elementary School District, et. al.,* SEHO Case No. SN 97-00069 (February 10, 1997).)

At least one parent and Student reside within San Luis. The IEP at issue concerns the 2013-14 school year placement in, and services to be provided by, San Luis. Although consideration has been given to the possible inconvenience that might be caused by a hearing at San Luis, Lake Elsinore has not offered any evidence it will actually be prejudiced by a hearing in San Luis. Therefore, Lake Elsinore's request to change the hearing location is denied without prejudice. Lake Elsinore may raise the issue again with the administrative law judge at the pre-hearing conference in this matter.

Lake Elsinore's request to set new dates for the due process hearing is moot. Student's amended complaint will result in new hearings dates based upon the date of this order.

ORDER

1. Student's Motion to Amend Complaint is granted. The amended complaint is deemed filed as of the date of this Order. OAH will issue a scheduling order with the new dates.

2. Lake Elsinore's motion to bifurcate is denied.

3. Lake Elsinore's motion for a change in location of the hearing is denied without prejudice.

Dated: July 08, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings