

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CYPRESS SCHOOL DISTRICT.

OAH Case No. 2016040461

ORDER DENYING WITHOUT
PREJUDICE CYPRESS'S MOTION
TO BIFURCATE

Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings on April 8, 2016, naming the Cypress School District. On April 19, 2016, Cypress filed a motion to bifurcate the proceedings. Cypress contends that Student is not and has not been a resident within its boundaries during the time period covered by Student's complaint. Cypress moves to bifurcate the issue of Student's residency from the issues raised in Student's complaint. Cypress contends that Student's residency is a threshold issue that should be heard first as a determination that Student was not and is not a resident within Cypress's boundaries would result in dismissing the allegations Student has raised against Cypress.

On April 22, 2016, Student filed a response to Cypress motion in which he objected to the bifurcation. Cypress filed a reply to Student's response on April 25, 2016.

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

In his complaint, Student contends that Cypress has failed to provide him with a free appropriate public education since April 8, 2014. In addition to disputing that it failed to offer Student a FAPE, Cypress contends that Student was not a resident within its boundaries, and that, therefore, it was not required to provide Student with a FAPE.

In his response, Student asserts that he has been a resident within Cypress's boundaries during the entire time covered by his complaint. Both Cypress and Student attached documentation to their pleadings in support of their respective positions on the issue of Student's residency. Student's reply to Cypress's motion does not specifically address the propriety of bifurcating the case; rather, it addresses the substantive issue of whether Student has been a resident of Cypress.

The appropriate time to raise a request to bifurcate a matter is at the prehearing conference. At that time, the assigned administrative law judge can consider the request and if the request to bifurcate is granted, discuss with the parties any scheduling issues. (See, *Student v. Fortuna Unified School District, Kelseyville Unified School District, and Konocti Unified School District* (August 25, 2014) Cal.Offc.Admin.Hrngs. 2014080602).)

Accordingly, Cypress's motion to bifurcate is denied without prejudice to Cypress raising the issue at the prehearing conference with the assigned ALJ.

IT IS SO ORDERED

DATE: April 28, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings