

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2017020158

ORDER FOLLOWING PREHEARING
CONFERENCE, ORDER DENYING
MOTION TO BIFURCATE, AND
ORDER GRANTING LEAVE TO
AMEND; ORDER GRANTING
CONTINUANCE

On April 24, 2017, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Richard Peterson, Attorney at Law, appeared on behalf of Student. Meredith Reynolds, Attorney at Law, appeared on behalf of Pasadena Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion for Bifurcation. Student included in her Prehearing Conference Statement of April 19, 2017, a motion to bifurcate the hearing, asking that her claims of procedural violations by District be heard in a session to take place before an additional hearing term which would weigh her claims of substantive denial of a free and appropriate public education. District opposed the motion by a filing on April 24, 2017.

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at 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).)

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.

Student's justification of request for bifurcation is not that resolving a threshold issue may eliminate the need for further proceedings. Instead, she argues that bifurcation is necessary to allow her to obtain information she needs to press her claims of substantive denial of FAPE. She believes she will only be able to present evidence necessary to prove those claims after she has data from the independent educational evaluations ordered as remedy for the procedural violations she has alleged. A party's lack of proof is not justification for bifurcating a hearing. The request to bifurcate the hearing is denied.

2. Motion for Leave to Amend. After resolution of the motion to bifurcate, Student made an oral motion for leave to amend her complaint. Student's counsel noted that, because of personal matters, he would need until May 8, 2017, to prepare the amended complaint. Counsel for District stated that District did not oppose the request for leave to amend or the timeline for filing the amended 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).) 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 unopposed. District does not object to allowing Student additional time to prepare the complaint. The proposed due date of May 8, 2017 for filing the amended complaint does not represent excessive delay. Student's request for leave to prepare an amended complaint is granted. The amended complaint must be filed by May 8, 2017. OAH will then issue a scheduling order setting out new dates. If an amended complaint is not timely filed, the continued prehearing conference will be held on that date and hearing will be held thereafter. Accordingly, all current dates in this matter are vacated and continued to the following schedule:

Prehearing conference: May 8, 2017, at 3:00 p.m. The telephonic prehearing conference will be initiated by call by an administrative law judge. The parties may, but need not, file new prehearing conference statements.

Hearing: Hearing will begin on May 16, 2017, at 9:30 a.m. at the OAH offices at 15350 Sherman Way, Van Nuys, CA. Subject to changes ordered by the ALJ at the prehearing conference, additional days of hearing will be held on May 17 - 18, 2017, and shall continue day to day at the discretion of the ALJ. All days of hearing after the first shall commence at 9:00 a.m. each day.

3. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the

scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

4. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: April 26, 2017

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings