

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021070741

ORDER DENYING MOTION TO BIFURCATE HEARING

SEPTEMBER 10, 2021

On September 9, 2021, Student moved to bifurcate the hearing in this matter so that the Administrative Law Judge, called the ALJ, can order an independent assessment of Student. Los Angeles has not yet filed a response, but a prompt ruling is needed because the hearing begins on September 14, 2021.

APPLICABLE LAW

Section 56505.1, subdivision (e) provides that the hearing officer may "order that an impartial assessment, including an independent educational assessment of the pupil be conducted for purposes of the hearing and continue the hearing until the assessment has been completed."

DISCUSSION

Student contends that the ALJ should exercise his discretion to bifurcate the upcoming hearing, to consider liability first and then remedy, to order an independent assessment of Student under subdivision (e) of section 56505.1 of the Education Code, and to continue the second part of the hearing until the results of that assessment have been obtained.

Student offers two grounds for his motion. First, he argues that he is in the tenth grade, and struggles with self-regulation and a poor attention span, and that Los Angeles has failed entirely to provide him a program of special education and related services to address these deficits. These allegations echo the allegations of the complaint. Apparently Los Angeles has not yet decided that Student is eligible for special education. Student asserts that the District's failures, which include a failure to assess him, are so egregious that the ALJ should, in advance of the hearing, order an independent assessment and await its results.

The motion is unpersuasive on this ground. It is untimely, as this ground has been apparent since long before the prehearing conference. It is also without merit, because it constitutes an attempt to obtain a partial summary judgment prior to hearing that Los Angeles has committed at least some of the violations Student alleges. OAH has no authority to grant summary judgments. Student's allegations are denied by Los Angeles in its response and raise contested issues that must be addressed at hearing.

In addition, the motion is premature. It has not been established in an adversary proceeding that Student needs an assessment, that Los Angeles has failed to provide him an assessment, or even that Student is eligible for special education. Nor has it been established that, if Student needs an assessment, it should be an assessment

ordered by the ALJ as opposed to an assessment by District staff or by an independent assessor funded by the District. Those issues must also be resolved at hearing, not before it.

The second ground for Student's motion is that he has just learned that Los Angeles has nearly completed an initial assessment of Student and has invited Parent to an individualized education program, called an IEP, team meeting for September 15, 2021, to discuss the assessment and Student's possible eligibility. Student's moving papers do not address why Los Angeles might try to schedule the meeting to conflict with the hearing, whether Parent has accepted the invitation, or whether Parent has sought to have the IEP team meeting rescheduled.

Made on this ground, the motion is not untimely, because Student establishes through a declaration of counsel that he has just learned of the near-completion of the assessment and the scheduling of the meeting. However, this ground for the motion also lacks merit. The only relief Student seeks is bifurcation. He does not seek to invoke any other procedure. Student does not explain how bifurcation is an appropriate remedy for responding to these new developments, how it would relate to the upcoming IEP team meeting, or how it could address the apparent scheduling conflict.

Student's motion to bifurcate the hearing is DENIED.

IT IS SO ORDERED.

Charles Marson

Charles Marson

Administrative Law Judge

Office of Administrative Hearings