

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

V.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100313

ORDER DENYING MOTION TO AMEND AND MOTION TO
BIFURCATE AND TRIAL BY BRIEF

FEBRUARY 15, 2022

On October 11, 2021, Student filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing, naming Capistrano Unified School District. On November 22, 2021, OAH granted the request by Capistrano Unified for a continuance of the hearing from December 7, 2021 to January 25, 2022 because its counsel had a hearing in another matter.

On January 6, 2022, OAH granted Student's motion to amend the complaint and scheduled the prehearing conference, or PHC, for February 14, 2022 and the hearing for February 23 and 24, 2022. The first amended complaint sets forth 13 issues.

On February 10, 2022, Student filed a motion to amend, along with a second proposed second amended complaint. By the amendment, Student seeks to add Issue 14 regarding whether Capistrano Union's failure to include cognitive-based assessments denied Student a free appropriate public education, or FAPE. On February 11, 2022, Capistrano Unified filed a notice of non-opposition to the motion to amend.

On February 10, 2022, Student filed a motion to bifurcate and trial by brief. Student contends that Issue 14 should be decided first in a separate hearing through briefing instead of a full evidentiary hearing. Student argues that Issue 14 impacts six of Student's 13 other issues and that an evidentiary hearing on Issue 14 is unnecessary.

On February 11, 2022, Capistrano Unified filed opposition to the motion to bifurcate. Capistrano Unified argues that bifurcation of Issue 14 would result in two trials because a decision on Issue 14 cannot dispose of all 13 of Student's issues, and thus, bifurcation does not promote judicial economy or serve the interests of justice. Capistrano Union also contends that Issue 14, as framed, is not appropriate to be tried by briefing because it contains contested allegations and requires resolution of factual disputes.

On February 14, 2022, the PHC was held. The parties argued both motions after being informed that the tentative ruling was to deny both motions. The ALJ took the motions under submission.

MOTION TO AMEND

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before 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).)

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the due process notice, unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

The proposed second amended complaint contains the identical 13 issues which were in the first amended complaint. The proposed second amended complaint also adds one other issue labeled Issue 14. Issue 14 reads, "Whether District was permitted to comprehensively reassess Student using cognitive based testing, among other assessment tools as requested and consented to by his Parents during the 2019-2020, 2020-2021 and 2021-2022 school years?" However, the claim in Issue 14 is already included in Student's first amended complaint at Issues 5, 8 and 11, which Student conceded during the oral argument at the PHC and is evidenced in the written argument made in the motion to bifurcate. In other words, Issue 14 is not a new claim. As such, Student has failed to establish a proper basis for granting a motion to amend. Further, notwithstanding the arguments made by Student's counsel during the PHC, the motion to amend appears to be a disguised attempt to obtain a continuance of the hearing scheduled to begin on February 23, 2022 without establishing the requisite good cause for a continuance. The motion to amend is denied.

BIFURCATION/TRIAL BY BRIEF

Although no special education law or regulation addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 provides that an administrative law judge on the judge's own motion or on motion of a party may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy. Code of Civil Procedure section 598 contains a similar provision for civil trials. The court may make an order that the trial of any issue or any part thereof shall precede the trial of any other issue when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted.

On occasion, OAH has issued decisions based on a stipulated record without an evidentiary hearing where the ALJ determined it appropriate. (E.g., *Placentia-Yorba Linda Unified School District v. Student* (OAH August 7, 2012) Case No. 2012051153; *Student v. Santa Clara County Office of Education, et al.* (OAH April 10, 2020) Case No. 2019090001.)

Here, the interests of justice and judicial economy is not served, litigation efficiency is not promoted, and the mandate of speedy resolution of claims under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) cannot be met, by bifurcation or a hearing of certain issues based solely on briefing. Bifurcation in this matter will result in an unnecessary delay of the full disposition of Student's claims. The complaint was filed in October 2021 and the hearing date has already been moved twice. Bifurcation cannot resolve all of Student's claims and will result in further delay of the evidentiary hearing. Moreover, bifurcation and trial by briefing proposed by Student

would deprive Capistrano Unified of due process, and specifically, the opportunity for a full evidentiary hearing on all issues. The issue Student seeks to bifurcate based on briefing alone contains factual allegations that will require adjudication or factual findings. As such, a hearing based on briefing alone and bifurcation for the purpose of a hearing based on briefing is inappropriate. Finally, and most importantly, the motion to amend permitting Student to add Issue 14, the issue Student seeks to have heard first in a bifurcated hearing, has been denied. Accordingly, the motion to bifurcate/trial by brief is moot.

ORDER

1. Student's Motion to Amend is denied.
2. Student's Motion to Bifurcate and Trial by Brief is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings