BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. BUCKEYE SCHOOL DISTRICT,	OAH CASE NO. 2013051083
BUCKEYE SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013060905 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO BIFURCATE

On May 24, 2013, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (Student's complaint), naming the Buckeye School District (District) as the respondent.

District challenged Student's complaint in two motions. On May 30, 2013, the District filed a motion for partial dismissal, which OAH granted in part on June 4, 2013, as to any claims made pursuant to Section 504 of the Rehabilitation Act, and any other claims unrelated to the IDEA. OAH denied District's motion to dismiss issue five regarding Student's allegation that he was wrongfully promoted, rejecting District's claims that promotion of a regular education pupil s not an IDEA claim. On June 7, 2013, District filed a Notice of Insufficiency (NOI), claiming that issue one was outside the two year statute of limitations, issues two, three and four, were contrary to District's understanding of the facts regarding its performance of its child find obligations, and issue five regarding Student's promotion should be dismissed. On June 7, 2013, OAH denied District's NOI because, as to issues one through four, District raised factual challenges to Student's complaint in its NOI that had to be resolved at hearing, and were not appropriate for resolution through the NOI process. OAH repeated its rejection of District's challenge to Student's issue five regarding promotion, now restyled as an NOI.

On June 24, 2013, District filed a Request for Due Process Hearing (DPH) in OAH case number 2013060905 (District's complaint), naming Student. District's complaint contains eight issues, many of which appear to be either redundant or defenses to issues raised in Student's case. In issue one, District requests a determination that Student is not

eligible for special education and related services. In issue two, District requests a determination that District was never required to assess Student, or offer her a FAPE during her sixth and seventh grade school year, (within the statute of limitations), May 24, 2011, through the end of the 2011-2012 school year. Issue three requests a determination that District was not required to assess or to offer Student a FAPE, during her eighth grade year, from August 8, 2012, through the end of the 2012-2013 school year. Issue four and five requests a determination of whether Student was voluntarily privately placed and whether District was responsible for assessing Student or providing her a FAPE during the time she was allegedly privately placed. Issue 7 requests a determination of whether District met its obligations once it suspected a disability around February 2013. Issue 8 requests a determination of whether District must reimburse Parents for Student's expenses related to her private placement.

OAH issued a scheduling order for District's complaint, setting the mediation for July 9, 2013, the prehearing conference (PHC) for July 19, 013, and the due process hearing for July 23, 2013, continuing day to day, Monday through Thursday, at the discretion of the ALJ.

On June 24, 2013, District requested a continuance of Student's complaint in part because it filed its own complaint and intended to request consolidation, and that a short continuance was appropriate, and not prejudicial to Student, in part, because after the end of the 2012-2013 school year, Student was no longer a resident of the District, and District would not be required to provide services for the next school year. Student opposed District's motion to continue.

On June 26, 2013, OAH granted District's Motion to Continue Student's complaint. Student's case was continued as follows: the PHC was continued to August 5, 2013, and the due process hearing was continued to August 13, 14, and 15, 2013, continuing day to day, Monday through Thursday, at the discretion of the ALJ.

On July 3, 2013, District filed a Motion to Consolidate Student's complaint with District's complaint, and bifurcate the issue of Student's eligibility. District contended that consolidation is appropriate to further judicial economy to avoid duplication of issues, witnesses and evidence. District also contends that bifurcating the eligibility issue would further judicial economy because the remaining claims in both cases are driven by a determination of whether Student was eligible for special education.

Student opposed District's Motion to Consolidate on the following grounds: District had no standing to challenge Student's eligibility as it claims that Student is now no longer a resident of the District; eligibility is not ripe for determination because District has not completed its assessments at the time it filed its complaint; District's claims which are similar to Student's claims, will be moot after Student's complaint is heard; many of District's claims are affirmative defenses to Student's claims; and Student will be deprived of her right to a speedy resolution of her case.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a 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].)

Here, Student's complaint and District's complaint involve a common question of law or fact, specifically, whether District failed to fulfill its child find obligations and duty to assess, and whether District is obligated to provide any, some, or all, compensatory remedies, including tuition reimbursement. Contrary to Student's contention, District does have standing to seek a determination of whether it was obligated to assess, and to provide a FAPE, during the relevant statutory time period when Student resided in the boundaries ofhe District. In addition, Student will not be prejudiced by the consolidation because the consolidated action will be set for the continued dates OAH set for Student's complaint, as further set forth in the order below. Further, the dates currently set for Student's complaint provide the statutory required time to prepare for District's complaint. A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Accordingly, consolidation is granted.

Bifurcation

District's request to bifurcate the issue of eligibility is denied without prejudice. At this stage of the pleadings it is premature to determine whether it would be more efficient to hear one issue before any other issue. From the pleadings it does not appear that much, if any, efficiency would be obtained from hearing the issue of eligibility first, in terms of the number of witnesses, expenditure of hearing time, or a two-phase decision. Contrary to District's contention, Student's case does not rely solely upon a determination of whether Student is eligible. Student's complaint requests a determination of whether District followed its child find procedural obligations to "seek and serve" Student. Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1196. ("*Cari Rae S.*"); *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031.) District's child find obligation could, under some circumstances, result in an award of a remedy, such as assessments, even if Student was not ultimately eligible. (See *Letter to Anonymous*, (OSEP 1992) 19 IDELR 498.)

Accordingly, District's Motion to Bifurcate is denied without prejudice.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates in District's matter are vacated. The PHC and DPH dates for District's complaint are continued to the PHC and DPH dates for Student's complaint. All other dates assigned to Student's complaint shall apply to the consolidated cases including: (1) August 5, 2013, PHC date; and (3) August 13, 14, and 15, 2013 DPH date, continuing day to day, Monday to Thursday, at the discretion of the ALJ.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2013051083, Student's complaint
4. The parties shall use the consolidated caption for all future filings with OAH. Student's complaint shall be the primary case, and all filings for the consolidated action shall be maintained in the primary case.
5. District's Motion to Bifurcate is denied without prejudice to being raised at the PHC.

Dated: July 11, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings