BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LAFAYETTE SCHOOL DISTRICT.	OAH Case No. 2017031065 ORDER GRANTING MOTION FOR BIFURCATION

On March 21, 2017, Parent on Behalf of Student filed with the Office of Administrative Hearings a request for due process hearing. On May 2, 2017, Lafayette School District filed a motion to bifurcate the hearing on the issue of residency. Student did not file a response.

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….

California Education Code 56501, subdivision (a), provides that the appropriate party in a special education due process hearing is the local educational agency involved in the educational decisions regarding the child. That agency is determined by the residency of the student. (Ed. Code, §§ 48200, 56028.)

DISCUSSION

On April 19, 2017, the parties filed a joint motion to consolidate Student's case with that of his sibling (whose case has now been dismissed). The parties also requested that both matters be bifurcated so that OAH could first determine where Student and his sibling resided. OAH denied the motion to consolidate the two cases, but ordered bifurcation on the issue of residency. However, the order was only issued in the sibling's case, OAH Case No. 2017031066. Therefore, Lafayette is renewing its motion for bifurcation in the instant case.

Lafayette is asking for bifurcation because Parents are divorced and Lafayette claims that Student lives with Mother within its boundaries only on weekends, every other Sunday, and vacations. According to Lafayette, Father now resides in Portola Valley, which is outside the boundaries of Lafayette, near the nonpublic school Student attends, and Student resides with him during the week, and has done so since January 2016.

The issue of residency is a threshold jurisdictional issue which can be efficiently resolved in an evidentiary proceeding. The prompt determination of the issue of residency would potentially further judicial economy by reducing or eliminating the number of witnesses and issues if Lafayette is determined not to be the agency responsible for providing a free appropriate public education during all or a portion of the school years at issue. Therefore, Lafayette's motion to bifurcate is granted. The parties shall be prepared to discuss a bifurcated hearing schedule at the time of the prehearing conference which is now calendared for August 21, 2017, at 10:00 a.m.

ORDER

1. Lafayette's motion for bifurcation of the issue of residency is granted.

2. The ALJ will discuss a bifurcated hearing schedule with the parties at the time of the prehearing conference.

IT IS SO ORDERED.

DATE: May 25, 2017

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings