

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

OXNARD SCHOOL DISTRICT.

OAH Case No. 2018090070

DECISION

Student filed a Due Process Hearing Request on August 30, 2018, with the Office of Administrative Hearings, State of California, naming Oxnard School District.

Administrative Law Judge Clifford H. Woosley heard this matter in Oxnard, California, on October 31, 2018.

Attorneys Janeen Steel and Melissa Riess appeared on behalf of Student. Mother attended the hearing. Attorneys April Navarro, Lawrence Joe, and Faatima Seedat represented Oxnard. Director of Special Education Services, Amelia Sugden, and Manager of Special Education, Katrina Madden, attended on behalf of Oxnard. OAH provided a Spanish language interpreter.

The matter was submitted for decision on October 31, 2018.

ISSUE¹

Did Oxnard School District fail to meet its child find duty to identify, locate, and

¹ The ALJ has authority to redefine a party's issues, so long as no substantive

evaluate Student as to her need for special education services due to her suspected disability?²

SUMMARY OF DECISION

As a result of stipulated facts at the hearing, Student prevails on the sole issue. Oxnard failed to meet its child find duties and refer Student for special education assessment as of October 31, 2016.

FACTUAL FINDINGS

1. At hearing, Oxnard stipulated that Oxnard's child find duty was triggered as of October 31, 2016. Further, Oxnard stipulated that it did not refer Student for special education as of October 31, 2016.

2. Oxnard representatives acknowledged and consented to the factual stipulations on the record. Student accepted the factual stipulations.

3. Student acknowledged that the complaint does not allege facts entitling Student to a tolling of the two-year statute of limitations.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA

1. This hearing was held under the Individuals with Disabilities Education Act

changes are made. (*J.W. ex rel. J.E.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442–443.)

² Student's complaint did not allege that she was eligible for special education nor that she was, therefore, entitled to a free appropriate public education. Accordingly, FAPE is not at issue in this hearing.

(IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)³ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.)

3. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

³ All subsequent references to the Code of Federal Regulations are to the 2006 version.

(20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (1).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student carries the burden of persuasion.

CHILD FIND

4. The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a).

5. A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 ("Cari Rae S.").) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)⁴ The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or

⁴ In a footnote in an unpublished decision, the Ninth Circuit Court of Appeals noted that it has not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified Sch. Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1.)

had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

6. Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process which is used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to determine the child's eligibility for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.)

DISCUSSION

7. Student alleges that Oxnard failed to meet its child find obligation by not identifying, locating, and referring Student for evaluation in all areas of suspected disability.

8. Oxnard stipulated that its child find duty was triggered as of October 31, 2016, two years before the filing of Student's complaint. Oxnard further stipulated that it did not refer Student for special education evaluation as of October 31, 2016.

9. Student has acknowledged that her complaint does not allege facts entitling her to a tolling of the two-year statute of limitations. Therefore, October 31, 2016 is the earliest date for which Student may later seek relief from Oxnard for its child find failure.

10. Student has prevailed on the sole issue. Oxnard failed to meet its child find duty and refer Student for special education evaluation as of October 31, 2016.

ORDER

District failed to meet its child find duty and refer Student for special education evaluation as of October 31, 2016.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed in the sole issue.

RIGHT TO APPEAL THIS DECISION

This was a final administrative Decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

DATED: November 13, 2018

_____/s/_____
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings