BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEW HAVEN UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013010236 ORDER DENYING MOTION TO LIMIT ISSUE FOUR OR TO BIFURCATE

On May 20, 2013, the New Haven Unified School District (District) filed with the Office of Administrative Hearings (OAH) a Motion to Limit Issues or Bifurcate. The District contends that Student's Issue Four may be read as an attempt to pierce the statute of limitations for all substantive issues and therefore, Student's Issue Four must be limited solely to the procedural issue alleged. In the alternative, the District contends that should OAH determine that Student's statute of limitations argument applies to other allegations of a denial of a free appropriate public education (FAPE), the issue of any exception to the statute of limitations should, in the interests of efficiency and judicial economy, be bifurcated and determined as a preliminary matter. OAH has not received a response from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) So too, the issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Federal and state law pertaining to special education due process administrative proceedings do not contain specific references to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

DISCUSSION

Student's original complaint alleges under Issue Four an exception to the statute of limitations, namely, that the District has not consistently provided an interpreter to Parent such that her procedural rights were violated and she was unable to participate in individualized education program (IEP) team meetings. Student's original Issue Five alleges the District violated Parent's right to participate in IEP team meetings from 2008 through March of 2011, because it failed to provide a sign language interpreter, and thereby predetermined Student's placement. The April 9, 2013 Order after Prehearing Conference (PHC) further clarifies Student's Issue Four as follows:

> Issue 4: From January 2008 through March 2011, did the District fail to provide Parent with a sign language interpreter for the individualized education program team meetings, which violated Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process.

The PHC Order further notes that a triable issue for hearing exists whether the statute of limitations is tolled because Parent was prevented from knowing her procedural rights because the District failed to provide her a sign language interpreter, which would constitute the local educational agency's withholding of information from the parent that it was required to provide to the parent.

The District asserts that Student's complaint is inartfully pled and that it is unclear to the District whether Issue Four is limited to its own wording or whether Student is attempting to pierce the two-year statute of limitations with respect to other issues of FAPE. However, the District never filed a notice of insufficiency. Additionally, there is no ambiguity in Student's claim or in the wording of the Issues after the PHC, so there is no need to further limit Issue Four to its own words. Finally, if Student proves that the statute of

limitations is tolled and he is allowed to reach beyond the two-year limitation as to this issue, and if he proves that Parent was denied meaningfully participation in the decision-making process, this would constitute an automatic denial of FAPE and no further FAPE analysis is required.

The District is in effect asking OAH to limit Student's Issue Four to that which is alleged in Issue Four. Student is limited to the issues raised in his original complaint and as framed in the PHC Order. No further limitation is necessary. The District's further request to bifurcate the statute of limitations issue is not necessary as OAH is not determining that Student's statute of limitations argument applies to other allegations of a denial of FAPE. If OAH determines that Student has proved an exception to the statute of limitations such that he may pursue his claim dating back to 2008, the only FAPE denial to be determined is that related to Student's claim that Parent was denied meaningful participation.

ORDER

1. The District's motion to limit Issue Four is denied.

2. The District's motion to bifurcate is denied.

Dated: May 24, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings