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 2022120076

ORDER CLARIFYING ISSUES FOR DUE PROCESS HEARING BY VIDEOCONFERENCE

JUNE 28, 2023

On June 27, 2023, Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings, commenced the due process hearing. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH.

Parents appeared on behalf of Student. Daniel Harbottle, Attorney at Law, appeared on behalf of Capistrano Unified School District, referred to as Capistrano.

Pursuant to OAH's June 19, 2023 Prehearing conference order, the parties presented oral arguments on whether Issues on to five should be dismissed as being outside of the two-year statutory period pursuant to Education Code section 56505, subdivision (l); whether the two tolling agreements entered into by the parties were

valid exceptions; and whether recent settlement agreements precluded any current issues at hearing. The ALJ admitted the relevant tolling agreements and settlement agreements. The ALJ took the matter under submission and continued the hearing to June 28, 2023.

The ALJ commenced the second day of hearing on June 28, 2023. Parents appeared on behalf of Student. Daniel Harbottle, Attorney at Law, appeared on behalf of Capistrano Unified School District.

The ALJ ruled that tolling agreements are not enumerated exceptions to the statute of limitations. The parties presented oral argument that OAH accepts tolling agreements on a case by case basis, but did not present evidence of those OAH Orders and Decisions. The ALJ allowed Parent to present argument and evidence whether Capistrano engaged in conduct within the two enumerated exceptions. Parent did not present evidence or oral argument as to that issue. Parent requested reconsideration of the ALJ's Order.

Based upon discussion with the parties, the ALJ issues the following order:

RULING AND CLARIFIED ISSUES

TOLLING AGREEMENTS

The California Education Code section 56505, subdivision (l) provides for two exceptions to the two-year statute of limitations:

(1) When a local education agency made specific misrepresentations that it resolved the problem forming the basis of the due process hearing request; and

(2) When a local education agency withholds information from the parent that is was required to provide.

The parties were represented by counsel experienced in special education law and entered into two tolling agreements on February 18, 2022 and May 11, 2022 which purported to extend the statute of limitations beyond the two-year limit to allow the parties to continue settlement negotiations.

However, these mutually agreed upon tolling agreements are not valid exceptions to the two-year statute of limitations established by Education Code section 56505, subdivision (l).

At the present hearing, Student did not present other evidence or legal precedent establishing that Capistrano engaged in conduct that triggered the exceptions in Education Code section 56505, subdivisions (l)(1) and (2) as to Issues one through five. Therefore, they are dismissed.

OAH has consistently determined that tolling agreements have no binding legal authority supporting their use as an exception to the statute of limitations in special education cases. (March 11, 2021 Decision 2020070598, Parents v Palos Verdes Peninsula Unified School District; Decision December 30, 2021, 20221080012/2021080052, in the Consolidated matters involving Parents and Irvine Unified School District.)

While orders and decisions in special education due process hearing proceedings may be cited as persuasive, they are not binding authority. (Cal. Code Regs., tit. 5, § 3085.) While Student contends that he would be prejudiced if OAH does not enforce the parties' agreement, common law or equitable exceptions to the statute of limitations

do not apply to IDEA cases. (*D.K. v. Abington. Sch. Dist.* (3rd Cir. 2012) 696 F.3d 233, 248.)

If Congress had intended for there to be additional exceptions to the two-year statute of limitations, and to allow the parties' to toll the statute through a mutual agreement, then Congress could have done so when they reauthorized the IDEA in 2004. Instead, "the legislative and regulatory history of the 2004 amendments to the IDEA make clear that only the enumerated statutory exceptions may exempt a plaintiff from having his claims time-barred by the statute of limitations. (*D.K. v. Abington. Sch. Dist.*, supra, at p. 248.) Moreover, where "Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of a contrary legislative intent." (Ibid., citing Andrus v. Glover Constr. Co., (1980) 226 U.S. 608, 6-16-617.)

The California legislature did not intend to create additional exceptions to the two-year statute of limitations, as it could have done so when it amended the California Education Code in 2005 to align with the IDEA's 2004 amendments. Rather, the California legislature restricted the three-year statute of limitations period to the two-year statutory period. The California legislature did not include additional exceptions such as tolling the statute of limitations through private agreements.

The parties did not cite any binding authority allowing OAH to enforce the parties' tolling agreements. Further, Student did not establish Capistrano misrepresented it had resolved a problem forming the basis of the complaint. Student did not establish the misrepresentation exception to the statute of limitations applies.

Student did not establish Capistrano withheld statutorily required information from Parents.

SETTLEMENT AGREEMENTS

The September 9, 2022 settlement agreement resolved the issues alleged in OAH case number 2022040063, whether Capistrano denied Student a free and appropriate public education by proposing to cognitively assess Student using tests of memory and learning rather than using standardized IQ tests, as part of its proposed assessment plans starting February 2021, consistent with *Larry P. v Riles*, (9thCir.) (1984) 793 F.2D 969. Student is African American. The settlement agreement resolves the issue of Capistrano's obligation to provide Student with cognitive assessments in that case up to and including the date of execution. The settlement agreement also reimbursed Parent for independent educational evaluations. Capistrano may present that evidence in their defense as it is relevant to remedies in the current case.

Therefore, the issues at the due process hearing are dismissed and clarified by the ALJ as follows:

ISSUES

1. Did Capistrano deny Student a free and appropriate public education, known as a FAPE, by failing to convene an annual IEP team meeting in December 2020?
2. Did Capistrano deny Student a FAPE, by failing to hold an IEP team meeting in response to January 2021 emails from Parents regarding their concerns?
3. Did Capistrano deny Student a FAPE by failing to include comprehensive assessments, excluding cognitive assessments, of Student in its February 1, 2021 assessment plan?

4. Did Capistrano deny Student a FAPE by failing to file for due process when Parents did not consent to the February 1, 2021 assessment plan?
5. Did Capistrano deny Student a FAPE by failing to hold an IEP team meeting in response to the September 10, 2021 letter from Parents' counsel regarding their concerns?
6. Did Capistrano deny Student a FAPE by failing to include appropriate assessments, excluding cognitive assessments, of Student in its September 22, 2021 assessment plan?
7. Did Capistrano deny Student a FAPE by failing to file for due process when Parents did not consent to the September 22, 2021 assessment plan, excluding cognitive assessments?
8. Did Capistrano deny Student a FAPE by failing to convene an annual IEP team meeting in December 2021?
9. Did Capistrano deny Student a FAPE by failing to develop an interim IEP pursuant to Parents' request on August 17, 2022?
10. Did Capistrano deny Student a FAPE by using a modified discrepancy model in the September 2022 assessment plan, excluding cognitive assessments, such that it failed to address all areas of unique need?
11. Did Capistrano deny Student a FAPE in the November 15, 2022 and December 16, 2022 IEPs by failing to offer appropriate.
    a. Goals:
    b. Accommodations:
    c. Services; and
    d. Placement?
12. Did Capistrano deny Student a FAPE by failing to facilitate meaningful parent participation in the November 15, 2022, IEP process?

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings