BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HERMOSA BEACH CITY SCHOOL DISTRICT.	OAH Case No. 2017060038 ORDER GRANTING IN PART AND DENYING IN PART DISTRICT'S MOTION TO DISMISS AND DENYING DISTRICT'S MOTION TO BIFURCATE

On May 31, 2017, Student filed a request for a due process hearing against Hermosa Beach City School District. On October 27, 2017, District filed a Motion to Dismiss Student's issues A-F, H, I, and K as outside the statute of limitations and/or outside of the jurisdiction of the Office of Administrative Hearings. In the alternative, District sought an Order bifurcating the case to determine the statute of limitations issue(s). On November 2, 2017, Student filed an opposition. District filed a reply on November 6, 2017.

APPLICABLE LAW & DISCUSSION RE: MOTION TO DISMISS

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.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure.

Here, District's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead effectively seeks a ruling on the merits. Accordingly, the motion is denied to the extent that District seeks a ruling on the merits on issues A-F, H, I, and K, except to the extent that issue A raises issues that lie outside the jurisdiction of the Office of Administrative Hearings. Issue A alleges District discriminated against Student

based upon his disability. Thus, the motion is granted to the extent that Student raises issues and seeks remedies beyond those afforded Student for a denial of his rights to a free appropriate public education under either the IDEA or the California Education Code.

District's motion to dismiss Student's issues A-F, H, I, and K as outside the statute of limitations is, essentially, a motion for summary judgment. District contends Student failed to establish that Student did not know or should not have known the facts underlying the allegations in the complaint prior to May 31, 2017. The facts underlying the issues alleged in Student's complaint cannot be determined by this summary procedure.

APPLICABLE LAW & DISCUSSION RE: MOTION TO BIFURCATE

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference 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).)

The complaint alleges, generally, that District failed to provide Student with a free appropriate public education by failing to provide appropriate goals, placement, services, and/or implementation of same. Of particular concern to District, Student pleads issues that date back more than two years from the date of filing of the due process request.

District argues that the issue of the statute of limitations for Student's issues should be bifurcated because Student cannot maintain claims more than two years prior to the date of filing and/or Student was on notice of the existence of claims more than two years prior to the filing of the due process request, and holding a hearing on the applicability of the statute of limitations only will shorten the time necessary for hearing. Student argues that the hearing should proceed without bifurcation because bifurcation will run the risk of duplicating testimony and exhibits, and lead to a longer hearing. Student also argues that not only is the statute of limitations not a true threshold issue, but the factual issues are too intertwined to allow bifurcation.

In this case, bifurcation is not conducive to judicial economy or efficient and expeditious use of judicial resources as many of the same witnesses and exhibits will likely be relevant to the statute of limitations and to the FAPE issues, and there is significant comingling of the issues. Also, several issues are not subject to statute of limitations arguments, and holding a separate evidentiary hearing will not eliminate the need for a second phase of the hearing, even were District to prevail completely on the statute of limitation argument(s).

Thus, there is no reason to schedule a separate evidentiary hearing. It is a more efficient and expeditious use of judicial resources, and it is within the discretion of the administrative law judge hearing the matter, to determine the issue of the applicability of the

statute of limitations and Student's other claims in a single hearing on all issues. District's motion to bifurcate is denied.

IT IS SO ORDERED.

DATE: November 13, 2017

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings