

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040776

ORDER FOLLOWING PREHEARING
CONFERENCE CONDITIONALLY
GRANTING MOTION TO DISMISS
ISSUES AND GRANTING MOTION
TO AMEND COMPLAINT

On May 30, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings. Attorney Daniel Shaw appeared on behalf of Student and Parents. Attorneys Cathy S. Holmes and Maria E. Gless appeared on behalf of the Elk Grove Unified School District.¹ The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Motion to Dismiss Issues Outside of Statute of Limitations: On May 27, 2014, District filed a motion to dismiss all issues in Student's request for due process that are outside of the applicable two-year statute of limitations. Since Student's complaint was filed on April 15, 2014, his earliest problem within the statute of limitations would be an issue arising on or after April 15, 2012. However, Student's complaint begins with the 2008 – 2009 school year. On May 30, 2014, Student filed an opposition to the motion. At the outset of the PHC, the parties argued the motion.

On its face, Student's complaint does not set forth sufficient factual allegations in support of a waiver of the two-year statute of limitations due to either specific misrepresentations by District that it had solved the problem forming the basis of a due process hearing request, or District's withholding of information that was required to be provided to Parents. Nor does the complaint anywhere state that Parents were thereby prevented from requesting a due process hearing in 2011, or at any time prior to April 2012. (See Ed. Code, § 56505, subd. (l).) Therefore, District's motion to dismiss all issues in the complaint prior to April 15, 2012, was granted during the PHC. However, Student then made a motion to amend the complaint, discussed below, and the motion is granted. If Student timely files an amended complaint, District's motion to dismiss issues will be

¹ Heather Burke, administrative assistant to Ms. Holmes, was also present.

rendered moot. However, if Student does not file an amended complaint, District's motion to dismiss is granted.

2. Motion to Amend: During the PHC, Student moved to amend his complaint to set forth in detail factual allegations to support his claim of a waiver of the statute of limitations as described above, regarding either intentional misrepresentation and/or withholding of information, and preventing Parents from filing a complaint. District opposed the motion.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i); Ed. Code, § 56502, subd. (e).) The filing of an amended complaint restarts the applicable timelines for the due process hearing unless the parties waive application of that requirement. (20 U.S.C. § 1415(c)(2)(E)(ii).)

Hearing in this case is set to begin on June 10, 2014. Student's motion is timely, and provides the ALJ with sufficient time to issue a ruling more than five days prior to the commencement of the hearing. Student's motion is reasonable, and in the best interests of justice and judicial efficiency. Accordingly, Student's motion to amend his complaint is granted, as ordered below.²

ORDER

1. Student's motion to amend his due process complaint is granted. All previously scheduled dates shall be vacated.
2. The amended complaint shall be filed by close of business on Friday, June 6, 2014.
3. All applicable timelines shall recommence as of the date Student's amended complaint is filed.
4. On the filing of the amended complaint, OAH shall issue a new rescheduling order.

² This ruling does not limit Student's right to file an amended complaint to add other issues. However, Student shall file a cover letter with the amended complaint providing notice to District and OAH of the nature of the amendments. In addition, District retains the right to file any appropriate motions pertaining to the amended pleading.

5. If Student does not timely file an amended complaint, District's motion to dismiss all issues outside the statute of limitations is granted. OAH shall then schedule new dates to proceed in this case as to all issues within the applicable two-year statute of limitations only.

DATE: May 30, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings