

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014100006

ORDER DENYING STUDENT'S
MOTION TO BIFURCATE ISSUE

On September 29, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Montebello Unified School District as respondent. The complaint contains five issues, identified as A through E.

On October 14, 2014, Montebello filed a motion to dismiss Issue A on the basis that the allegations are barred by the applicable statute of limitations.

On October 17, 2014, Student filed an opposition to Montebello's motion and a motion to bifurcate the statute of limitations issue. On October 22, 2014, Montebello filed a reply to Student's opposition and an opposition to Student's motion to bifurcate issue.

On October 22, 2014, OAH denied Montebello's motion to dismiss.

APPLICABLE LAW

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA states, in part:

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue....

OAH also has the obligation to move cases to hearing expeditiously. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless there is a 30-day statutory resolution period or an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

Student's request is premature. The appropriate time to raise the request is at the prehearing conference. At that time, the assigned ALJ can consider the request and, if the request to bifurcate is granted, discuss with the parties any scheduling issues. Accordingly, Student's bifurcation request is denied without prejudice to permit the parties to discuss the bifurcation request with the ALJ assigned to hear this matter at the PHC.

ORDER

The motion to bifurcate is denied without prejudice.

DATE: October 27, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings