

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MILPITAS UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014090329

ORDER DENYING MILPITAS
UNIFIED SCHOOL DISTRICT'S
MOTION TO BIFURCATE

BACKGROUND INFORMATION

Student filed an amended request for due process (amended complaint) on October 3, 2014, naming the Milpitas Unified School District. Student's amended complaint raises two primary issues. First, whether Milpitas denied Student a free appropriate public education prior to sometime in 2011 by failing to adhere to the Deaf Children's Bill of Rights because Milpitas allegedly failed to provide Student with instruction in American Sign Language, her chosen method of communication. Second, whether Milpitas has denied Student a FAPE beginning in 2010 and continuing to date by failing to provide Student with promised compensatory educational services.

On November 17, 2014, the Office of Administrative Hearings granted the parties' joint request to continue the proceedings, setting the hearing to begin on February 10, 2015. On December 31, 2014, Milpitas filed a motion to bifurcate the issue of whether Student can prove that any exception to the two-year statute of limitations applies to the allegations of her amended complaint. Milpitas argues that the majority of Student's allegations concern issues beyond the two-year statute of limitations and therefore whether Student can prove an exception to the statute is a threshold issue underlying the substance of Student's amended complaint. Milpitas contends that judicial economy favors of bifurcation since the hearing issues will be greatly reduced, if not totally obviated, if Student cannot prove an exception to the statute of limitations.

Student has not filed an opposition or other response to Milpitas's motion.

APPLICABLE LAW AND DISCUSSION

Statute of Limitations

The statute of limitations in California is consistent with federal law, two years. (Ed. Code, § 56505, subd. (l); see 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 a student's 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. These two narrow exceptions to the Individuals with Disabilities Education Act's statute of limitations require factual determinations that can only be made after giving parties an opportunity to develop the record.

Expeditious Hearings

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored.

Bifurcation of Issues

Federal and state law pertaining to special education due process administrative proceedings does 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).)

Generally, OAH will bifurcate a hearing where the resolution of a threshold question will determine whether the remainder of a hearing will be necessary. For example, OAH has bifurcated specific legal issues such as the statute of limitations because a determination of that issue may reduce or eliminate issues and determine whether the remainder of the hearing will be necessary. Bifurcation limiting parties or issues may further judicial economy.

Discussion

Here, bifurcation will not serve the interests of judicial economy. Student filed her original complaint on September 5, 2014. She filed her amended complaint on October 3, 2014. OAH has already granted the parties' request for a continuance. This matter is over four months old and will be over five months old by the time hearing begins. In its motion, Milpitas offers no explanation as to why it waited until three months after Student filed her amended complaint, and six weeks after the parties requested a continuance, to file its motion to bifurcate. If the matter is bifurcated, hearing on any remaining substantive issues in Student's complaint would be delayed until after the hearing and after the assigned Administrative Law Judge issued his or her decision on the statute of limitations issues. Bifurcation on the issue of the statute of limitations therefore would result in an additional delay of the hearing on the remaining substantive issues in Student's complaint to well over six months from the filing of Student's initial complaint. This would be considerably beyond the 45- day decision time line established by the IDEA.

Accordingly, Milpitas's motion to bifurcate is denied. At the prehearing conference in this matter, Milpitas may raise the issue of how the assigned ALJ will treat the statute of limitations issues in the context of the parties' presentations of their respective cases.

IT IS SO ORDERED.

DATE: January 8, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings