

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAMONT ELEMENTARY SCHOOL
DISTRICT AND KERN HIGH SCHOOL
DISTRICT.

OAH Case No. 2015050842

ORDER DENYING MOTION TO
DISMISS CLAIMS AND GRANTING
MOTION TO BIFURCATE

On May 11, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Request naming the Lamont Elementary School District and the Kern High School District as respondents. On June 11, 2015, Student filed a First Amended Complaint (complaint) naming Lamont and Kern. The First Issue of the Complaint alleges that (1) Lamont has denied Student a free appropriate public education from April 29, 2002 through August 21, 2011, and (b) Kern has denied Student a FAPE since August 22, 2011. In Issue Two, Student contends that Kern has denied Student a FAPE since August 22, 2011, by failing to provide appropriate transition plans. Issue Three alleges that Kern has denied Student a FAPE by failing to have general education teachers in attendance at Individualized Education Program team meetings on December 4, 2014 and December 12, 2014.

On July 13, 2015, Kern filed a motion to dismiss all claims alleged on Issues One and Two which occurred prior to May 11, 2013; or in the alternative to bifurcate the statute of limitations issue.

Student filed an opposition to the motion on July 15, 2015. Kern filed a reply to Student's opposition on July 17, 2015. Lamont has not responded to the motion.

Kern's Motion to Dismiss all Claims Prior to May 11, 2013

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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.)

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C))

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 the 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.

“Misrepresentation of facts and withholding of information are narrow exceptions that require that the local education agency's actions be intentional or flagrant rather than merely a repetition of an aspect of determining whether a student received a FAPE. ‘The statutory requirement that the misrepresentation or withholding prevented (the parent) from requesting the hearing further evidences the stringency, or narrowness, of these exceptional circumstances.’ (*Parents v. Saddleback Valley Unified School District* (July 11, 2008) OAH Case Number 2007090511, at p. 11, citing *School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5, 108 LRP 13930.)

Here, Student contends that the two year limitations period should be tolled. Student's opposition contains over three pages of facts concerning Lamont's failure to provide information or to assert that Student's issues were remedied. In the factual support section of the opposition, Student fails to state one fact relating Kern. The only allegation against Kern in the opposition occurs in the argument section that it, like Lamont, never gave to Mother her procedural rights, which it purportedly was required to provide, so as prevent Mother from knowing she could request an IEP.

Thus, Student has raised an evidentiary issue, which must be determined by the taking of evidence.

Kern's Motion to Bifurcate

Federal and state laws pertaining to special education due process administrative proceedings do 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).)

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 will bifurcate the issue of whether a student is or was a resident of a school district named as a respondent in a complaint to determine if the district was appropriately named as a party. OAH has also 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 furthers judicial economy by dismissing a named respondent from a complaint, or by finding that no complaint exists against a respondent due to the student's lack of residency, or that the issue is barred by the statute of limitations.

However, the determination whether to bifurcate the statute of limitations applicability is best determined at the prehearing conference as to whether bifurcation would be conducive to judicial economy and make an expeditious use of judicial resources. Therefore, Kern's motion to bifurcate whether Student's claims made against it prior to May 11, 2013, should be dismissed is denied without prejudice.

ORDER

1. Kern's motion to dismiss all claims prior to May 11, 2013 is denied.
2. Kern's motion to bifurcate whether Student's claims prior to May 11, 2013, is barred by the statute of limitations is denied without prejudice, and may be raised at the prehearing conference.
3. All dates to remain as calendared.

DATE: July 22, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings