

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024030094

ORDER FOLLOWING PREHEARING CONFERENCE,
DENYING LONG BEACH'S MOTION TO BIFURCATE,
DEFERRING LONG BEACH'S MOTION TO DISMISS, AND
CONTINUING PREHEARING CONFERENCE AND DUE
PROCESS HEARING

SEPTEMBER 13, 2024

On September 13, 2024, Administrative Law Judge Claire Yazigi, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Bruce Bothwell, Attorney at Law, appeared on behalf of Student. Meagan Kinsey, Attorney at Law, appeared on behalf of Long Beach Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

**LONG BEACH'S MOTION TO BIFURCATE STATUTE OF LIMITATIONS:
DENIED.**

In Student's Amended Complaint, Student argued that issues dating back to March 8, 2021, should not be subject to the statute of limitations because misrepresentations Long Beach made to Parents prevented them from filing a due process complaint within the two-year statutory period. On August 20, 2024, Long Beach filed a Motion to Bifurcate Student's Issues One through Six as set forth in the Amended Complaint to determine whether the statute of limitations should be extended on those issues. On August 22, 2024, Student filed an opposition to the motion, arguing that judicial economy required that the statute of limitations questions be heard and decided as part of the regular hearing and decision in this matter.

At PHC, after hearing from both parties on this motion, the undersigned denied Long Beach's motion to bifurcate. The statute of limitations question will be addressed as follows:

On the first day of hearing, Student, then Long Beach, will be given an opportunity to call witnesses and introduce evidence addressing the limited question of whether Student should be permitted to bring claims earlier than two years prior to the date of filing, specifically, Issues One through Six. The parties anticipate needing approximately two days for this phase of hearing, given Parents' need for interpretation.

Once the parties have rested, the parties will be given an opportunity to make brief oral argument on the statute of limitations question, and the ALJ will take this question under submission. Upon reconvening, the ALJ will make a verbal ruling on the record as to applicable statute of limitations. The case will then proceed on the scope defined. The legal analysis supporting the determination will be included as part of the written Decision after conclusion of the hearing.

LONG BEACH'S MOTION TO DISMISS ISSUES SEVEN THROUGH THIRTEEN: DEFERRED.

On August 20, 2024, Long Beach filed a Motion to Dismiss Student's Issues Seven through Thirteen, on the basis that those issues were time-barred. Specifically, Long Beach argued the following:

Student's complaint should have been filed by March 3, 2024, to be timely. Because March 3, 2024, was a Sunday, Student's complaint was deemed filed on Monday, March 4, 2024. Since Student did not raise any exception to the statute of limitations for Issues Seven through Thirteen, those issues should be dismissed as outside of the statutory period and time-barred.

On August 22, 2024, Student filed an opposition to this motion, arguing that federal law essentially establishes that, when the last day of a filing period falls on a Sunday, the filing period extends to the next business day. As such, Student argued that the complaint is still considered within the statutory filing period.

If Student is successful in extending the statute of limitations, then Long Beach's motion will become moot, as those issues will necessarily not be time-barred.

Long Beach's Motion to Dismiss is deferred to after the ALJ's verbal ruling on the statute of limitations issue. If the statute of limitations is not extended, the parties will be given an opportunity to make oral argument on the motion to dismiss Issues Seven through Thirteen at that time, and the ALJ will make a verbal ruling thereon.

CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING

At PHC, the undersigned, on behalf of OAH, continued PHC and hearing due to internal operational need. Specifically, Parents require a Spanish interpreter for the duration of hearing, and OAH will need additional time to make such arrangements. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE: October 11, 2024, at 10:00 AM.

DUE PROCESS HEARING: October 22, 23, and 24, 2024.

All other prehearing matters shall be addressed at the October 11, 2024, PHC. All prehearing motions must be filed three business days before the PHC.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Claire Yazigi".

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings