BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050338 ORDER DENYING REQUEST TO JOIN A PARTY AND PARTIALLY GRANTING MOTION TO STRIKE

On May 04, 2017, Student filed a request for a due process hearing (complaint)[1] naming Bellflower Unified School District. On May 22, 2017, Bellflower filed a notice of representation which included a request to join Norwalk-La Mirada Unified School District as a party and a motion to strike: events prior to May 4, 2015, allegations as to non-Individuals with Disabilities Education Act claims, and allegations as to the California Department of Education compliance.

On May 22, 2017, Norwalk-La Mirada filed a motion to deny Bellflower's request for joinder.

On May 22, 2017, Student filed a response to Bellflower's request for joinder and motion to strike.

APPLICABLE LAW

Joinder

Regarding joinder of a party, the Office of Administrative Hearings considers the requirements of the Code of Civil Procedure. Under that Code, a "necessary" party may be joined upon motion of any party. Section 389, subdivision (a) of the Code of Civil Procedure defines a "necessary" party as follows:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Motion to Strike

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There are no provisions governing a motion to strike in special education hearings. Therefore, OAH looks to the California Code of Civil Procedure for guidance. Section 436 authorizes a court to strike "any irrelevant, false, or improper material inserted in any pleading . . . or any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court." Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure.

The statute of limitations in California is two years for IDEA claims. (*M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 859; Ed. Code, § 56505, subd. (l); see also 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 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.

DISCUSSION

Joinder

Bellflower's Motion to join District is denied. Code of Civil Procedure section 389 is inapplicable to an IDEA due process hearing. That section is located within Part 2 of the Code, entitled "Of Civil Actions," and by its own terms refers to parties to the "action" in question. "Action" is defined in Code of Civil Procedure section 22 as follows: "An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."

Special education due process hearings, by contrast, are not actions in courts of justice governed by the Code of Civil Procedure. Instead, they are governed by Education Code, Title 2 ("Elementary and Secondary Education"), Division 4 ("Instruction and Services"), Part 30 ("Special Education Programs"), Chapter 5 ("Procedural Safeguards"), as supplemented by the California Code of Regulations, Title 5 ("Education"), Division 1 ("California Department of Education"), Chapter 3 ("Handicapped Children"), Subchapter 1 ("Special Education"), Article 7 ("Procedural Safeguards.") These govern, among other procedural matters, the content of the notice, the time for response, rules regarding amending the complaint, rights to exchange of information prior to the hearing, and the time frame for decisions (Ed. Code, § 56505), all of which are not governed by the Code of Civil Procedure. The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. (Government Code section 111415.10.) No statutory authority exists for the proposition that state rules of civil court procedure apply to IDEA due process hearings.

In contrast to the intent of Code of Civil Procedure section 389, the IDEA specifically exempts parents from any requirement that they file all possible issues at one time in the same due process complaint. Instead, the IDEA permits a parent to file separate due process complaints on separate issues, even if a due process complaint is already on file. (see 20 U.S.C. § 1415(o); Ed. Code, 56509.) Thus, both the IDEA and the state laws implementing it, expressly reject the principle that a party must obtain all possible relief in one proceeding. In sum, Code of Civil Procedure section 389 has no application to IDEA due process hearings.

Although Student does not oppose Bellflower's request to join Norwalk-La Mirada, Student does not allege any claims against Norwalk-La Mirada in her complaint. Student may amend her complaint to include Norwalk-La Mirada if she so wishes.

Accordingly, Bellflower's request to join Norwalk-La Mirada as a party is denied.

Motion to Strike

Bellflower contends the complaint contains allegations that are time-barred by the two-year statute of limitations. However, on the face of the complaint it does not appear that Student is claiming anything more than the two year statute of limitations. Bellflower fails to point to any authority that would require OAH to strike portions of the factual background that provide information beyond the two year statute of limitations. Accordingly, District's motion to strike allegations outside the statute of limitations is denied.

Bellflower requests that OAH strike all references to the California Department of Education complaint. However, Bellflower does not provide any authority or argument for such a request. As such, Bellflower's motion to strike references to the Department of Education complaint is denied.

Bellflower contends Student's Issue 4 is improper because OAH lacks jurisdiction to hear the claim. OAH's jurisdiction is limited to disputes arising out of the IDEA and the California implementing laws, including those relating to the 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.

Student's Issue 4 contends that Bellflower's actions resulted in a denial of her rights under Section 504, the American's with Disabilities Act, and state civil rights laws. This issue does not allege a denial of FAPE or provide any information how a denial of FAPE might have occurred. OAH lacks jurisdiction to entertain Student's Issue 4 because the issue fails to allege any violation under IDEA or the California special education laws. Therefore, Issue 4 is dismissed.

ORDER

1. Bellflower's request to join Norwalk-La Mirada Unified School District as a party is denied.

2. Bellflower's motion to strike allegations prior to May 5, 2015, is denied.

3. Bellflower's motion to strike allegations as to CDE is denied.

4. Bellflower's motion to strike Issue 4 is granted.

5. All previously scheduled dates are confirmed.

DATE: May 31, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings