

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090223

ORDER DENYING DISTRICT'S
MOTION TO DISMISS ISSUE ONE;
ORDER DENYING DISTRICT'S
MOTION TO BIFURCATE; AND
ORDER DENYING STUDENT'S
MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION

On September 4, 2013, Student filed a Due Process Hearing Request] (complaint), naming Los Angeles Unified School District (District). On November 29 2013, District filed a motion to dismiss the complaint's Issue One asserting that it was barred by the two-year limitation. On December 3, 2013, Student filed a Motion to Amend the Due Process Hearing Request, as to Issue One; OAH granted and the proposed amendment was deemed filed (amended complaint). OAH denied District's motion to dismiss as moot.

On January 21, 2014, District again filed a motion to dismiss Issue One because of the applicable two-year filing limitation. In the alternative, District seeks that the hearing be bifurcated to hear evidence and determine the applicability of the two-year limitation. On January 22, 2014, Student filed a motion/request for additional time within which to file opposition; on January 23, 2014, District filed an opposition to Student's request for extension of time.

For the reasons stated below, the District's motion to dismiss Issue One is denied, the District's motion to bifurcate the hearing is denied, without prejudice, and the Student's motion for an extension of time to oppose the motion to dismiss is denied as moot.

APPLICABLE LAW

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. A summary judgment requires the submission and consideration of evidence. In a special education due process filing, evidence regarding issue determination is received at hearing.

The statute of limitations in California is two years, consistent with federal law. (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

District's motion to dismiss asserts that Issue One is barred because the individualized education program meetings (IEP's), which Student claims did not provide a free appropriate public education (FAPE), occurred more than two years before the complaint's filing. Student's amended complaint, however, asserts facts that could support a finding that the statute of limitations may be tolled because of the statutory exceptions. Accordingly, a determination of the statute of limitation's applicability to Issue One requires the consideration of controverted evidence. Given that special education law does not provide a summary judgment procedure, the applicability of the limitations must be determined at hearing. The District's motion to dismiss is denied.

District's motion to bifurcate determination of the statute of limitation's bar of Issue One is denied, without prejudice, because bifurcation requires an informed discussion and consideration of documentary and testimonial evidence. Therefore, District may make this request of the administrative law judge (ALJ) at the prehearing conference. At that time, the parties and the ALJ can discuss whether bifurcation would be appropriate.

ORDER

1. District's motion to dismiss Issue One is denied.
2. District's motion to bifurcate the statute of limitation's bar of Issue One is denied, without prejudice
3. Student's motion for extension of time, within which to file opposition to District's motion to dismiss, is denied as moot.

Dated: January 24, 2014

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings