

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SULPHUR SPRINGS SCHOOL  
DISTRICT.

OAH CASE NO. 2013100027

ORDER (1) DENYING JOINT MOTION  
TO BIFURCATE HEARING AND (2)  
GRANTING JOINT REQUEST FOR  
CONTINUANCE OF PHC AND  
HEARING

On September 30, 2013, Student filed a due process hearing request (complaint) naming Sulphur Springs School District (District).

On November 13, 2013, Student and District filed a joint stipulation to bifurcate hearing, which will be treated herein as a joint motion to bifurcate. District asserts that Student's claim will be barred by the statute of limitations unless Student can establish that exceptions to the statute apply.

Included in the joint motion was a joint request for continuance of the prehearing conference and hearing to mutually agreeable dates in the near future.

*Joint Motion for Bifurcation*

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 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 furthers judicial economy.

The statute of limitations for IDEA due process complaints in California is two years prior to the date of filing the request for due process. (Ed. Code § 56505, subd. (1); 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 (1), establish exceptions to the statute of limitations, including where (i) the parent or student 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 (ii) the local educational agency's withheld information from the parent or student that was required to be provided to the parent or student. These two narrow exceptions to the statute of limitations require factual determinations that can only be made after giving the parties an opportunity to develop the record.

Here, Student's claim arose only a few weeks prior to the filing of his complaint, and clearly is not barred by the two-year statute of limitations.

Student's complaint was filed September 30, 2013. It alleges that Student requested an independent educational evaluation (IEE) from District, his former elementary school district, on September 13, 2013, and District did not respond. The sole issue set forth is whether District violated Student's procedural rights under the IDEA by "declining to respond" to Student's IEE request.

Student's claim challenges District conduct occurring well within two years from the filing of the complaint. While the statute of limitations may potentially play a role in resolving Student's issue, the fact remains that Student's issue, as phrased, concerns recent conduct by the District. Therefore, bifurcation does not resolve a threshold question that will determine whether the remainder of a hearing will be necessary and does not further judicial economy. Accordingly, the parties' motion for bifurcation is denied.

#### *Joint Motion for Continuance*

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. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference: December 2, 2013 at 1:00 PM

Due Process Hearing: December 11-12 and 16-17, 2013 at 9:30 AM, except December 16, 2013 at 1:30 PM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

[Note date change. OAH calendars hearings on consecutive days, Monday through Thursday.]

Dated: November 18, 2013

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings