

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015110491

ORDER DENYING MOTION TO TOLL
THE STATUTE OF LIMITATIONS

On February 16, 2016, Student filed a motion to toll the statute of limitations. Student seeks to have the statute of limitations apply to a case she filed and then later dismissed prior to filing the instant case. The Orange Unified School District filed an opposition to Student's motion on February 18, 2016.

APPLICABLE LAW

Tolling of the Statute of Limitations

California law provides that a request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code § 56505, subd. (1); see, *Miller, etc. v. San Mateo-Foster City Unified Sch. Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860-61.) The two-year statute of limitations expressly does not apply if the parent was prevented from requesting the due process hearing by either of the following: (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) the withholding of information by the local educational agency that was required to be provided to the parent. (Ed. Code § 56505, subd. (1).)

Relation-Back Doctrine

The relation-back doctrine is used in the context of litigation to preserve causes of action joined by amendment of a complaint after expiration of the statute of limitations. The doctrine considers a later-filed pleading to have been filed at the time of an earlier complaint that met the applicable statute of limitations period. For the doctrine to apply, "the amended complaint must (1) rest on the same general set of facts (2) involve the same injury, and (3) refer to the same instrumentality, as the original one." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1278, 45 Cal.Rptr.3d 222.)

DISCUSSION

Student filed a request for due process (complaint) with the Office of Administrative Hearings on September 21, 2015 in OAH Case Number 2015090928. The case alleged that District violated procedural and substantive protections of the Individuals with Disabilities Education Act and denied Student a free appropriate public education for several stated reasons. On November 6, 2015, Student filed a motion to dismiss Case Number 2015090928 without prejudice.¹ On the same date, Student filed the instant complaint. This second complaint originally contained the issue raised in Student's first case, but added an additional issue contended that Student was entitled to an independent educational evaluation at District's expense because District failed to either provide one upon request of Student's parent or file for due process to defend its own evaluation.

For unknown reasons, Student did not move to amend her first case. Rather, she dismissed the first case and filed a new complaint. While the case law Student cites in her motion to toll the statute of limitations correctly supports the proposition that an amended complaint relates back to the filing of the original complaint where the amended complaint is based on the same general set of facts, that law is not applicable to the present set of circumstances. Student fails to cite any case or reference any authority that supports her proposition that the relation-back doctrine is applicable to a situation, as here, where a case is dismissed and then refiled, rather than amended.

Neither state nor federal special education statutes or regulations nor the California Administrative Procedures Act specifically address the relations-back doctrine. However, OAH has previously relied by analogy to either the Code of Civil Procedure or the findings of state appellate courts in addressing procedural issues not specifically addressed in special education regulations or statutes. In a previous case with a similar set of facts, OAH found that the relation-back doctrine does not apply to a case that was withdrawn and later refiled. (*Student v. Long Beach Unified School District* (Order Determining Due Process Case Sufficient, June 5, 2012) Cal.Offc.Admin.Hrngs. 2012051019, at p. 4).

Student does not argue in her motion that District had misrepresented to her that it had solved the problem forming the basis of her complaint or that District withheld information that it was required to provide to Student's parents. Therefore, neither of the exceptions to the statute of limitations applies in this case.

¹ OAH dismissed the complaint in Case Number 2015090928 on December 17, 2015.

Student's motion to toll the statute of limitations or otherwise apply the relation-back doctrine to OAH Case No. 2015090928 is therefore denied. The applicable statute of limitations in the instant case began on November 6, 2013, two years before Student filed the instant complaint on November 6, 2015.

IT IS SO ORDERED.

DATE: February 19, 2016

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings