

WEBINAR FOR N.Y. IMPARTIAL HEARING OFFICERS (IHOS)

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STATUTE OF LIMITATIONS FOR FILING FOR THE HEARING

Purpose of this Webinar

Familiarize IHOs with the various issues and standards for applying SOL to typical cases

IHO Significance

- SOL seems to be a technical adjudicative issue
- But, it has major practical effects on the parties
- And it has major consequences for the IHO

Overall Organization

- Review of case scenario
- Definition and purposes of SOL
- Triggering date of SOL
- Exceptions to the triggering date
- Other issues – e.g., admission of prior proof
- Discussion applying these sub-issues to the case scenario
- Review and revision of practice pointers

Case Scenario

- 1994 (kgn.) – reevaluation – SLD classification – sp. ed. class
- 2005 (gr. 10): change of placement to alternate assessment program at career development center – ongoing attendance problems

Case Scenario (cont.)

- 2008 (age 19): discharged from program due to continued truancy and parent's lack of response
- 2009-10 (ages 20 & 21): no IEPs or services
- May 2010: private neuropsychological evaluation
- June 2010 (a few weeks after 21st birthday): K.H. filed for an impartial hearing

Case Scenario (cont.)

- District response: 1) parents' case is untimely based on the IDEA's SOL, and, 2) the scope of evidence and liability is limited to the last two years
- Parent counters that the district is liable for the entire period since 1994 based on 1) one or both of the two explicit exceptions in the IDEA, 2) the implicit exceptions of equitable tolling or continuing violations, or 3) the underlying violation, or action.

SOL Definition/Purposes

- a legislative expression of policy that prohibits litigants from bringing claims after a period of time to:
 - avoid staleness
 - allow for stability (i.e., "repose")
- procedurally, an affirmative defense

IDEA's SOL Provisions

“Timeline for requesting hearing”:

- within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint

“Type of procedures – the complaint”:

- not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint

Triggering Date

- “knew or should have known” (KOSHK) date - then counting forward to date of filing
- the necessary facts for the “alleged action” that forms the basis of the complaint

Exceptions

Explicit exceptions:

- Misrepresentation
- Information withholding

Other, asserted exceptions:

- equitable tolling
- minority tolling
- continuing violations

Duration and Effect

- Is the period, per the two statutory provisions, a maximum of 2 years after the KOSHK or a maximum of 2 (for filing) + 2 (for underlying action) years?
- If timely filed, what is the time outer limit, back in time, for (a) the alleged action denial of FAPE) and (b) the remedy?

Other Issues

- meaning of “accrual”
- admission of evidence for prior period
- prehearing procedures

Practice Pointers

- If the district duly raised the issue of SOL, make your expectations clear to parties early in the IHO process as to the KOSHK, alleged action, and any factors at issue.
- If the triggering date is at issue, make sure the evidence as to the KOSHK is sufficiently specific.
- If exceptions are at issue, recognize their judicially construed narrowness.

Practice Pointers (cont.)

- If you determine that the parents timely filed one or more claims, recognize that the period for the denial of FAPE and its remedy may (or may not) extend back beyond the KOSHK.
- Make extra efforts for thorough fact finding and legal conclusions for SOL determinations.
