

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009020671

ORDER GRANTING MOTION TO
DISMISS ISSUES

On February 23, 2009, attorneys David Tollner and Susan Hunt-McArthur filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Parents and Student, naming San Jose Unified School District as the responding party.¹

On February 24, 2009, OAH issued a Determination of Sufficiency of Due Process Complaint, which dismissed the complaint's Issue One due to insufficiency. On March 10, 2009, OAH received Student's amended due process hearing request (amended complaint).

On March 20, 2009, OAH received from attorney Rodney Levin, on behalf of the District, a motion to dismiss Student's issues concerning Section 504 of the Rehabilitation Act and concerning time periods prior to the two year statute of limitations. OAH has not received any response on behalf of Student to the District's motion to dismiss.

APPLICABLE LAW

Under the Individuals with Disabilities Education Improvement Act (IDEA), parents have the right to file a special education due process 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).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504). (29 U.S.C. § 701 et seq.).

¹ Student served the complaint on District on or about February 9, 2009, but did not file with OAH until February 23, 2009. District served and filed a Notice of Insufficiency (NOI) on February 20, 2009, but the NOI was not deemed filed until the date OAH received Petitioner's complaint, February 23, 2009.

Effective October 9, 2006, the statute of limitations for special education due process claims is two years, consistent with federal law. (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 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. The complaint must affirmatively allege these issues as part of the Student's case. (*P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.* (E.D. Pa. 2008) 557 F. Supp.2d 648, 661.)

DISCUSSION

Student's amended complaint lists nine issues, identified as "Violations." Violation 8 alleges that the District "did not follow the 504 Accommodation Plan, including failing to provide counseling with the school counselor." Because OAH's jurisdiction for special education matters does not include jurisdiction to hear Section 504 claims, this issue must be dismissed due to lack of jurisdiction.

The amended complaint's remaining violations generally refer to the time periods at issue as "2007 and 2008." Student does not specifically allege that any exceptions to the two-year statute of limitations apply. There are no specific allegations claiming that the District made specific misrepresentations that it had resolved the problem or that it withheld information required to be provided, which prevented Parents from filing a complaint.

Therefore, to the extent that the amended complaint is raising claims for time periods prior to February 23, 2007, those claims are dismissed as outside the two-year statute of limitations.

ORDER

1. Student's Section 504 claim, contained in Violation 8 of the amended complaint, is dismissed.
2. Student's claims for time periods prior to February 23, 2007, are dismissed.

Dated: April 15, 2009

/s/

SUZANNE B. BROWN
Administrative Law Judge
Office of Administrative Hearings