

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. 2009050860

ORDER DENYING MOTION TO  
DISMISS

On May 22, 2009, Nicole Hodge, Esq. filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) on behalf of Student (Student) naming the Los Angeles Unified School District (District) as the respondent.

On June 9, 2009, Stephanie Bowick, Esq. filed on behalf of District a motion to dismiss Student's complaint due to (1) Student does not reside within the district; (2) Student's complaint goes beyond the statute of limitations; (3) Student has not been determined eligible for special education services; and (4) OAH does not have jurisdiction to provide Student with his requested remedy. No response has been received by Student or his attorney to the District's motion to dismiss.

APPLICABLE LAW

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now 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 purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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.)

## DISCUSSION

1. Residency of Student: The District contends that Student is no longer a resident of the District, as the Juvenile Court has placed Student in a group home outside the District. There is no dispute that Student’s parents reside within the District, and that Student, when not in juvenile custody, resides with his parents. Further, Student’s issues regarding child find, failing to assess, and denial of FAPE arise during the period of May 2007 through October 20, 2008, prior to his juvenile placement. As such, the District’s request for dismissal based upon Student’s residency is denied.

2. Statute of Limitations: The District contends that Student’s claims are barred by the statute of limitations. California law provides for exception to the two year statute of limitations in special education matters (1) in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency, or (2) in cases where the local educational agency’s withholding of information from the parent that was required to be provided to the parent. Student’s complaint factually alleges exceptions to the two year statute. Therefore, determination of the statute of limitations is an issue of fact to be determined at hearing. The District’s request for dismissal based upon the statute of limitations is denied.

3. Student has not been determined eligible for special education services: A finding of denial of FAPE is not predicated upon a prior determination of eligibility for special education services. Student’s issues involve the District’s duty under child find statutes and procedural violations of the IDEA which allegedly denied Student a FAPE. Student’s current ineligibility is not at issue.

4. OAH has no jurisdiction to provide Student with his requested placement. While OAH may not currently provide Student with non-public school placement as a

remedy, the Administrative Law Judge does have jurisdiction to provide compensatory education and assessments in all areas of Student's needs, as well a provide equitable relief to ensure that a child receives a FAPE. As such, OAH has jurisdiction to determine the issues presented by Student. The District's request for dismissal based upon lack of jurisdiction is denied.

ORDER

GOOD CAUSE APPEARING, the District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

It is so ordered.

Dated: June 15, 2009

/s/

---

JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings