

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060808

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On June 16, 2009, attorney Kathleen M. Loyer, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Irvine Unified School District (District). On July 2, 2009, the Office of Administrative Hearings (OAH) granted in part the District's Notice of Insufficiency, and granted Student 14 days to submit an amended complaint.

On July 1, 2009, attorney Daniel Harbottle, on behalf of the District, filed a Motion to Dismiss Student's claims that occurred before June 16, 2007, for being outside the two year statute of limitations. The District also requested that OAH dismiss Student's claims under Section 504 of the Rehabilitation Act (Section 504) and Section 1983 of title 42 United States Code (Section 1983). Student did not submit a response. On July 9, 2009, OAH granted the District's motion to dismiss for claims that occurred before June 16, 2007, and Student's Section 504 and Section 1983 claims.

On July 15, 2009, Student filed an amended complaint, which includes allegations that occurred before June 16, 2007 and Section 504 and Section 1983 claims. On July 27, 2009, the District filed a motion to dismiss Student's claims that occurred before June 16, 2007, and Student's Section 504 and Section 1983 claims. On July 29, 2009, Student filed a response to the District's motion to dismiss.

APPLICABLE LAW

The statute of limitations for due process complaints in California is two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (l); 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 (l), establish exceptions to the statute of limitations. Exceptions to the statute exist where 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.

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

The District asserts that Student's claims in the amended complaint that occurred before June 16, 2007, must be dismissed for being outside the two-year statute of limitations. The amended complaint includes new allegations to address the deficiencies noted in the July 9, 2009 Order and Student contends that the claims that occurred before June 16, 2007, are not subject to the two-year statute of limitations because the District withheld required information from Student's parents.

Regarding Issue 1(a), Student's amended complaint alleges that the District failed to perform its child find duties by not assessing Student for eligibility for special education services before September 2001, despite its knowledge that Student might need special education services beginning in the 1999-2000 school year. Student's amended complaint does not contain sufficient information that the District withheld information that it was required to provide Student's parents. Student's parents never requested that the District assess Student. Additionally, the amended complaint only alleges that the District should have known that Student might be eligible for special education services, not that the District withheld information from Student's parents that Student might be eligible for special education services. Therefore, Issue 1(a) is barred by the two-year statute of limitations.

Regarding Issue 1(b), Student's amended complaint alleges that the District found Student eligible to receive special education services on September 18, 2001, under the criteria of speech and language impairment. Student's individualized educational program (IEP) included speech and language services. Student asserts that the District did not implement these services. Student's amended complaint includes sufficient information for an exception to the two-year statute of limitations because Student alleges that the District failed to provide Student's parents with the required notice of parental rights. (*El Paso Ind. Sch. Dist. v. Richard R.* (W.D. Tex. 2008) 567 F.Supp.2d 918, 943-946.) The District did not present any evidence in its motion to dismiss that it provided Student's parents with the

required notice. Therefore, a triable issue for hearing exists whether Issue 1(b) is barred by the two-year statute of limitations.

Regarding Issues 2 and 3, other than the September 18, 2001 IEP, as discussed above, Student's complaint does not contain sufficient information to create a triable issue for hearing that before June 16, 2007, the District withheld information from Student's parents or misrepresented information that prevented Student's parents from filing a due process request. As to the any other IEP or parental request that the District assess Student that occurred between September 18, 2001, and June 16, 2007, Student's amended complaint does not include any contentions that the District failed to provide Student's parents with the required notice of parental rights.

In this matter, Student alleges in all issues for hearing that the District denied him a FAPE under the Individuals with Disabilities Education Act, and that the District violated Section 504 and Section 1983. Because OAH does not have jurisdiction to hear Student's claims that the District violated Section 504 and Section 1983, these claims are dismissed.

ORDER

1. The District's Motion to Dismiss is granted as to Issue 1(a).
2. The District's Motion to Dismiss is granted as to Issues 2 and 3 that occurred before June 16, 2007, except for claims related to the September 18, 2001 IEP.
3. The District's Motion to Dismiss is denied as to Issue 1(b).
4. Student's allegations in all Issues that the District violated Section 504 of the Rehabilitation Act and Section 1983 of title 42 United States Code, are dismissed.
5. The matter shall proceed as to Issue 1(b) and Issues 2, and 3 related to claims regarding the September 18, 2001 IEP and claims that occurred on or after June 16, 2007, in which Student alleges District denied him a FAPE.

Dated: August 13, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings