

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010101156

ORDER ON DISTRICT'S MOTION IN  
LIMINE RE: STATUTE OF  
LIMITATIONS

On July 11, 2011, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Gary A. Geren (ALJ), Office of Administrative Hearings (OAH). David Tollner, Attorney at Law, appeared for Parents on behalf of Student (Student). Matthew Juhl-Darlington, Attorney at Law, appeared on behalf of Morgan Hill Unified School (District).

During the PHC it was agreed that District's pending Motion to Dismiss filed on January 27, 2011, shall be treated as a motion in limine and that the ALJ would rule on this motion prior to the commencement of the hearing. The parties further agreed that the ALJ's ruling on this matter will be based on the briefs previously filed by the parties on the issue, and their supporting papers attached thereto, as well as upon the transcript of a meeting held on November 4, 2008.<sup>1</sup>

District contends Student's complaint challenges District's finding Student ineligible to receive special education and related services. District alleges its determination was made following an individualized education program (IEP) team meeting held on April 14, 2008 and that if Student wanted to challenge that determination, it needed to file a timely complaint. Since the April 2008 determination falls outside of the Statute of Limitations, District alleges Student's complaint must be dismissed. District further contends that a meeting held on November 4, 2008, a date within the Statute of Limitations,<sup>2</sup> was not, in fact, an IEP team meeting and, therefore, District's actions or inactions at this meeting fails

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<sup>1</sup> Counsel represented that copies of the transcript are contained in their respective evidence binders prepared for hearing, and thus neither party objected to the ALJ reviewing the transcript when considering this motion. Mr. Tollner filed a copy of the transcript with OAH immediately after the conclusion of the PHC.

<sup>2</sup> Student's complaint was filed on October 25, 2010, thus any challenges Student makes to District's alleged failures under the Individuals with Disabilities in Education (IDEA) relating to District's failure to provide Student with special education supports and services must have occurred within three years of the filing of the complaint, which is to say, not before October 24, 2008.

to provide the basis for Student to file a complaint under the Individuals with Disabilities in Education Act (IDEA).

## DISCUSSION

On April 14, 2008, an IEP team meeting was held where Student's eligibility for the receipt of special education supports and services was comprehensively reviewed. At that meeting, Student was found by District to be ineligible to receive special education services.

On November 4, 2008, at Parents' request, a meeting was held between Student's mother and her educational advocate (Advocate), and various District personnel. Student contends that this meeting was, in fact, an IEP team meeting. District contends that this meeting was "incorrectly and mistakenly referred to as an IEP meeting in the notes by school staff," and that the "meeting was not intended to be an IEP meeting because [Student] did not qualify for special education services at the April 14, 2008 IEP meeting," and finally, that the meeting should not be considered to be an IEP team meeting because the it merely "involved reviewing the same information that was reviewed at the April 14, 2008 IEP meeting."

On October 3, 2008, Parents served District with a letter requesting that an IEP team meeting be held; on October 20, 2008, District responded to Parent's letter by serving a "Notice of Meeting, Individualized Education Program," which states:

An Individualized Education Program (IEP) Meeting has been scheduled for your child. Your participation is important in the development of an appropriate education for your child.

[¶...¶]

You may bring someone with you to the meeting.

**You are requested to attend this meeting as a participating member of the team.**

The Notice states the IEP team meeting was scheduled for Tuesday, November 14, 2008; on November 14, 2008 the meeting was held by as scheduled in the Notice.

A District employee who attended the meeting prepared notes. The notes are titled "[Student] IEP, 11/04/2008." These notes, as well as the transcript of the meeting, shows that the attendees included Student's mother and her Advocate; Student's school principal; Student's third grade teacher; a District speech and language pathologist; and a District resource program (RSP) teacher. The notes and transcript also show that the attendance of the District's special education director could not be gained because of his "prior legal commitment." In response to the special education director's absence, the Advocate initiated a discussion memorialized in the transcript as follows:

Principal: Let's note that [the special-education director] couldn't make it today. He was scheduled to come today. He is actually in a court hearing. But we called [Mother] and she was fine to go ahead without him being here.

Advocate: Okay, just as long as we have the legally required team members.

RSP Teacher: I'm legal. She's legal. She's legal. And [school principal] can represent as the administrative designee.

Advocate: Okay

The transcript shows that the Advocate's question about the legal sufficiency of the meeting was addressed in the RSP teacher's response. Her response reasonably conveyed to Mother and Advocate that the meeting was, indeed, a "legal" IEP team meeting. Had District intended that the meeting be something other than the IEP team meeting it noticed, then it was incumbent on the District to have expressly stated so at the onset of the meeting, particularly when the nature of the meeting was brought into question.

The meeting notes and transcript also show that new information beyond what was reviewed by them at the April 2008 IEP was presented for the District members of the team to consider. For example, Student's mother and Advocate believed Student's academic struggles had worsened. They also presented to the District members of the team new evaluations prepared by independent evaluators. Mother and Advocate believed these evaluations supported Student being made eligible to receive special education supports and services, and they conveyed this to the District.

## CONCLUSION

District's contention that the November 4, 2008 meeting was something other than an IEP team meeting is without merit. Parents requested an IEP team meeting; District responded with a formal IEP team meeting notice setting an IEP team meeting; an IEP team meeting was held pursuant to that notice; the meeting included District staff usually associated with attending IEP team meetings; the District confirmed at the onset of the meeting that the necessary District participants were in attendance to conduct an IEP team meeting; and under any objective standard, Mother and Advocate were correct to assume the meeting was, indeed, therefore, an IEP team meeting.

Additionally, because new information was presented to District at the November 4, 2008 meeting, District's contention that the purpose of this meeting was to merely clarify its previous findings, and thus was not a genuine IEP team meeting, is without merit. Student presented additional information for the IEP team to consider at the November 4, 2008 meeting.

Student's complaint properly raises issues that fall within the period delineated by the Statute of Limitations; therefore, it shall not be dismissed.

ORDER

District's Motion to Dismiss Student's Complaint is denied.

Dated: July 12, 2011

/s/

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GARY GEREN  
Administrative Law Judge  
Office of Administrative Hearings