

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON  
BEHALF OF STUDENT,

v.

WEST SONOMA COUNTY UNION HIGH  
SCHOOL DISTRICT.

OAH CASE NO. 2011030425

ORDER GRANTING IN PART  
DISTRICT'S MOTION TO DISMISS

On March 8, 2011, the Holder of Educational Rights on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming West Sonoma County Union High School District (District) as the respondent. On March 21, 2011, the District filed a Motion to Dismiss parts of Student's complaint. On April 6, 2011, Student filed a response.

The District's motion presents three separate grounds for dismissal.

1. Student's Issues 5, 6, 9,10, 13, 14, 17, 19, 22, 23, 26, 27, 30, 31, 34, 35, 38, 39, 42, 43, 46, 47, 50, 51, 54, 56, 57, 62, 65, 74, 75, 79, and 80 are beyond the two year statute of limitations.

APPLICABLE LAW

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.

## DISCUSSION

Student agrees to the dismissal of Issues 5, 9, 13, 17, 18, 22, 26, 30, 34, 38, 42, 46, 50, 6, 74 and 79. Student contends that the remaining Issues 6, 7, 14, 19, 23, 27, 31, 35, 39, 43, 47, 51, 54, 57, 62, 6, 75, and 80 should not be dismissed as they contain partial issues within the statute of limitations. Here, the issue of the statute of limitations is not limited to factual matters outside of OAH jurisdiction, and instead the District seeks a ruling on the merits. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure. The District's motion to dismiss the contested Issues is denied.

2. OAH lacks jurisdiction to decide Issues, 13, 14, 15, 16, 17, 18, 19, 20, 21, 50, 51, 52, 53, 56, and 57 as they pertain to Section 504 of the Rehabilitation Act of 1973.

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.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) Section 1983 of Title 42 United States Code.

## DISCUSSION

Student acknowledges that OAH does not have jurisdiction to decide Section 504 matters. Each of the above referenced issues make reference to a denial of FAPE and a violation of Student's rights under Section 504 of the Rehabilitation Act of 1973. Therefore, as OAH does not have jurisdiction to entertain claims based upon Section 504, all references to Section 504 of the Rehabilitation Act of 1973 in the above referenced issues are dismissed and stricken from Student's complaint.

3. Student's Issues 6-7 and 17-18 are identical and duplicative.

## APPLICABLE LAW

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as civil rights claims, section 504 claims, enforcement of settlement agreements, and incorrect parties. Clerical error or mistake also may be corrected.

## DISCUSSION

As currently stated in the complaint, Student's Issues Six and Seven are identical. Student contends that Issue Seven is not duplicative of Issue Six, but it contains a typographical error in the IEP date. Student indicates that the correction should read, "...throughout the development of the 2009-2010 IEP..." This requested correction however creates a new issue, which procedurally must be obtained through an amended complaint. Issue Seven, as currently written is dismissed as duplicative. Issues 17 and 18 have previously been dismissed under the ALJ ruling regarding the statute of limitations above.

## ORDER

1. The District's request to dismiss Student's Issues 5, 9, 13, 17, 18, 22, 26, 30, 34, 38, 42, 46, 50, 6, 74 and 79 is granted.
2. The District's request to dismiss Student's Issues 6, 14, 19, 23, 27, 31, 35, 39, 43, 47, 51, 54, 57, 62, 6, 75, and 80 is denied without prejudice.
3. The District's request to dismiss references to Section 504 of the Rehabilitation Act of 1973, in Issues 13, 14, 15, 16, 17, 18, 19, 20, 21, 50, 51, 52, 53, 56, and 57, is granted.
4. The District's request to dismiss Issue 7 is granted.

IT IS SO ORDERED.

Dated: April 06, 2011

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings