

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011070195

ORDER DENYING MOTION TO
DISMISS

On November 15, 2011, the Office of Administrative Hearings (OAH) issued an order granting leave for Parents on behalf of Student (Student) to file an amended complaint. On November 28, 2011, the Paso Robles Joint Unified School District (District) filed a Response to the amended complaint which included a Notice of Insufficiency (NOI) and a Motion to Dismiss. On November 28, 2011, OAH issued an order finding the amended complaint is sufficient. On November 29, 2011, Student filed an opposition to the District's motion to dismiss.

In its motion, the District seeks to dismiss on grounds that (a) OAH does not have jurisdiction of any claims made pursuant to Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act of 1990, and all other federal laws protecting the rights of children with disabilities; and (b) any claims which would fall prior to two years before the filing of the complaint.

OAH lacks jurisdiction of all claims made by Student

Student opens his amended complaint summarizing his claims thusly:

The District has failed to offer and/or provide Student with a FAPE [free appropriate public education], within the meaning of the IDEA [Individuals With Disabilities Education Act], 20 U.S.C. §§ 1440 et seq. and concomitant provisions of the California Education Code §§ 56000 et seq.

The amended complaint contains three issues, all of which are pled as violations of the IDEA. Thus, the District's first ground of its motion is without merit.

Statute of Limitations

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.

Although the first issue alleges that the District committed substantive and procedural violations of the IDEA during school year 2009-2010, Student cites facts beginning on October 30, 2009, when the District provided Student's parents with an initial assessment plan as Student was turning three and services were to begin with the District. One of the subissues contained in the first issue is the appropriateness of the District's assessment. It is unclear from the complaint or the motion when the assessment occurred or when the limitations period may be in effect. It appears from the amended complaint, that the District presented the assessment within the two year limitations period at the initial IEP team meeting in December 2009. This would fall within two years of the filing of when the original complaint was filed. Thus, there is not enough evidence to determine whether the statute of limitations has been violated.

ORDER

The District's Motion to Dismiss is denied without prejudice

IT IS SO ORDERED.

Dated: November 30, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings