

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070922

ORDER DENYING MOTION TO
DISMISS

On July 26, 2011, Student filed a Request for Due Process Hearing (complaint) which alleged, in pertinent part, as follows: Student's Parents reside within District. Student attended school within District from 1998 until August 2009, during which time District provided Student with accommodations under Section 504 of the Rehabilitation Act of 1973, but did not find him eligible for special education. In August 2009, Parents placed Student unilaterally at a private school in Utah, which he attended until February 2011, when he re-enrolled in District and graduated with his class in June 2011. The complaint alleged that during the entire time period, District failed appropriately to assess Student or find him eligible for special education and related services, and denied him a free appropriate public education (FAPE).

On August 5, 2011, District filed a Motion to Dismiss, arguing that Office of Administrative Hearings (OAH) lacks jurisdiction over the complaint because: (1) Student's claims pre-date the two year statute of limitations; (2) Student's claims arise under Section 504 of the Rehabilitation Act of 1973, not the Individuals with Disabilities Education Act (IDEA); and (3) pursuant to Federal regulations, while Student attended private school in Utah, his special education was the responsibility of the district where the private school was located, rather than this District where Parents reside.

On August 9, 2011, Student filed an Opposition to District's Motion to Dismiss. As explained below, the Motion is denied.

APPLICABLE LAW

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a 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.).

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).)

DISCUSSION

District's three arguments in its Motion to Dismiss are unpersuasive. First, Student's complaint explicitly states that factual allegations prior to the two year statute of limitations are for foundational purposes only. Since the allegations continue beyond the two year limitations period beginning July 26, 2009 into the present, District's argument that the entire complaint is time-barred is unmeritorious.

Second, Student's allegations regarding his Section 504 accommodations are background to his allegations that District failed to assess and find him eligible for special education and related services. Thus, District's arguments that the complaint arises under Section 504 and that OAH lacks jurisdiction, are groundless.

Finally, the delineation of responsibility between this District where Parents reside, and the out-of-state district where Student attended school from August 2009-February 2011, does not dispose of the complaint on jurisdictional grounds. Even if meritorious for the time period when Student resided out of state from August 2009-February 2011, District's argument does not dispose of the time periods during which Student attended school within District. Further, the application of the cited Federal regulations to the facts at issue cannot be resolved by motion practice. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: August 9, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings