

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012040851

ORDER GRANTING/DENYING  
MOTION TO DISMISS

On April 19, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Fresno Unified School District (District) as the respondent. The complaint contains a single issue: “District discriminated against Student by denying him access to a FAPE [free appropriate public education] when they failed to monitor him according to his 504 Plan<sup>1</sup> and failed to reevaluate him when it was evident he was not being successful in his education.”

On May 24, 2012, the District filed a motion to dismiss the complaint alleging that (1) the Office of Administrative Hearings (OAH) lacks jurisdiction over the issue; and (2) that Student’s claim is barred by the applicable two year statute of limitations.

On May 31, 2012, Student filed an opposition which only addressed the District’s contention that OAH lacks jurisdiction of the matter.

APPLICABLE LAW

*Jurisdiction*

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

---

<sup>1</sup> “504 Plan refers to programs implemented pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

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].

Student's single issue is comprised of two parts. The first part is the alleged failure of the District to implement Student's 504 plan. These claims under Section 504 are beyond the jurisdiction of OAH and are dismissed.

The second part is the failure of the District to reevaluate Student in light of his continuing academic problems even with the interventions under the 504 Plan. This is essentially a child find issue and falls within the IDEA. Thus, this part of Student's claim is within the jurisdiction of OAH, and the District's motion is denied as to the child find claim.

#### *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. (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 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.

In the complaint, Student alleges that he was exited from special education by the District and received a 504 Plan on May 30, 2008. Student transferred from the District to the Acton-Agua Dulce Unified School District for the 2011-2012 school year. The District contends in its motion that Student's claim is barred by the two year statute of limitations. Since Student filed his complaint on April 20, 2012, any claims brought beyond two years would be barred unless covered by an exception to the limitations statute.

Student has not alleged any exceptions to the statute of limitations in his complaint. He also failed to address the statute of limitations issue in his opposition. Student is permitted to allege any claims two years prior to his filing, which is April 20, 2010. Thus, Student's claims prior to April 20, 2010 are barred. The District's motion to dismiss is granted as to any claims prior to April 20, 2010, and the motion is denied as to claims which accrued after April 20, 2010.

ORDER

The District's Motion to Dismiss is granted in part and denied in part as follows:.

1. District's motion is granted as to all claims made under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), which are hereby dismissed.
2. District's motion is denied as to Student's claim as to child find.
3. District's motion is granted as to all claims which accrued prior to April 20, 2010, which are hereby dismissed.
4. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: June 01, 2012

/s/

---

ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings