

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013090535

ORDER GRANTING IN PART
DISTRICT'S MOTION TO DISMISS

On September 16, 2013, Student filed a Due Process Hearing Request¹ (complaint) naming Lincoln Unified School District (District). On September 18, 2013, District filed a Notice of Insufficiency. On September 20, 2013, the Office of Administrative Hearings (OAH) issued an order finding the first 13 issues in Student's complaint insufficient and permitting Student to file an amended complaint within 14 days. OAH dismissed issues 14 through 33 with prejudice.

On October 8, 2013, Student filed an amended complaint. On October 10, 2013, District timely filed a Notice of Insufficiency (NOI) and a Motion to Dismiss for Failing to Timely File an Amended Complaint. On October 16, 2013, OAH denied the Motion to Dismiss and on October 18, 2013, OAH denied the NOI. OAH's October 18, 2013 order on District's NOI articulated the issues that could be determined from the Amended Complaint, and limited the hearing to those issues.

On October 28, 2013, District filed a motion to dismiss the complaint in its entirety on the ground that the issues raised in the complaint, as articulated in the OAH NOI order of October 18, 2013, were barred by the two-year statute of limitations, and because issues in the complaint are outside of OAH jurisdiction. Student did not file an opposition.

APPLICABLE LAW

The Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, such as civil rights claims, section 504 claims, or claims that are barred on their face by the statute of limitations.

The statute of limitations for special education due process claims in California is two years from the date the party initiating the request knew or had reason to know of the facts

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

underlying the basis for the request, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) This rule does not apply if the parent was prevented from requesting a due process hearing: 1) because of specific misrepresentations by the local education agency that it had solved the problem forming the basis for the request, or 2) the local education agency withheld information from the parent that was required to be provided. (Ed. Code, § 56505, subd. (1)(1) & (2), 20 U.S.C. § 1415(f)(3)(D).)

In the absence of the exceptions described above, a parent may not bring a due process claim challenging the appropriateness of an educational program or the failure to provide an educational program based on facts falling outside the statute of limitations. (See *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269 (*Ambridge*).) As explained by the regulations from Secretary of the Department of Education implementing the IDEA, with respect to the two-year time period, it is “clear that a due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew, or should have known, about the alleged action that forms the basis of the due process complaint.” (71 F.R. § 46540-01 at 46697 (August 14, 2006).)

DISCUSSION

Student alleges he is over the age of 18 and first became eligible to receive special education services in April 2010 under the category of Specific Learning Disability (SLD) due to a mild reading disorder attributable to a deficit in phonemic awareness. The problems alleged in the first amended complaint stem from an incident on May 23, 2011, at Lincoln High School that resulted in Student’s expulsion following a manifestation determination. The manifestation determination was appealed through an expedited due process hearing (OAH case number 2011090998) and a decision was issued on November 30, 2011.² Student alleges in his amended complaint, among other things, that District failed to provide him with any educational program after his expulsion, and repeatedly alleges facts related to the District’s expulsion proceedings during the summer of 2011.

OAH identified the following three issues in its order denying District’s NOI:

² Student’s request for relief from the manifestation determination that his conduct was not caused by or related to his disability, or was the direct result of District’s failure to implement his IEP was denied. The ALJ further found Student did not meet his burden to show the conduct that led to his expulsion was caused by his being emotionally disturbed, and by District’s failure to have an IEP in place that listed Student as being ED eligible.

1. Whether Student was denied a free appropriate public education for the 2011-2012 school year because he was denied a placement and services based on a disciplinary rehabilitation plan that was developed without consideration of Student's unique needs, a report from Student's IEP team, parental input, and Student's status as qualifying for mental health services under chapter 26.5 (See Complaint Subparts A, E, F, G, and I);

2. Whether Student was denied a free appropriate public education (FAPE) for the 2011-2012 school year because there was no offer of placement and services, including mental health services under chapter 26.5 (See Complaint Subpart B);

3. Whether Student was denied a free appropriate public education for the 2011-2012 school year because the school board, in conducting its expulsion review did not:

- A. follow board policies (See Complaint Subpart C);
- B. consider that there were requests for assessment pending (See Complaint Subpart D);
- C. grant Father's request for a continuance of the expulsion hearing (See Complaint Subpart H).

Issues 1 and 3 pertain to Student's expulsion and related rehabilitation plan in May 2011, the subsequent expulsion hearing, and manifestation determination, all of which occurred before the two-year statute of limitations in this case began on September 16, 2011. Student has alleged no facts in his voluminous complaint that support a finding that any exception to the two-year statute applies. In addition, these issues fall outside of OAH jurisdiction as they do not related to the identification, evaluation, and educational placement of the Student, but instead challenge school discipline procedural matters that are not decided by OAH. Therefore, Issues 1 and 3 will be dismissed as time-barred and outside of OAH jurisdiction.

Issue 2, on the other hand, does allege violations of the Individuals with Disabilities Education Act (IDEA) that fall within the statute of limitations. Specifically, Issue 2 may go to hearing on the narrow issue of whether, from September 16, 2011 through the end of the 2012 regular school year, District had a duty to provide a FAPE while Student was expelled, and whether District did not meet that duty. At hearing, Issue 2 shall not include anything related to the school board's actions regarding Student's expulsion, or the rehabilitation plan arising from the expulsion, as both issues are barred by the statute of limitations and additionally are outside of OAH jurisdiction.

ORDER

1. District's motion to dismiss is granted as to Issues 1 and 3, which are dismissed.

2. District's motion to dismiss as to Issue 2 is denied. The matter may proceed to hearing on the narrow issue of whether, from September 16, 2011 through the end of the

2012 regular school year, District had a duty to provide a FAPE while Student was expelled, and whether District did not meet that duty.

3. All dates previously set are confirmed.

Dated: November 1, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings