

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015070848

ORDER DENYING MOTION TO SET
ASIDE DISMISSAL AND REOPEN
CASE

On July 8, 2015, Student filed the instant matter, alleging denials of a free appropriate public education for District's alleged failures to assess Student during the 2014-15 school year, failing to timely respond to Parent's requests for independent educational evaluations since February 2015, failing to hold an individualized education program team meeting during the 2014-15 school year to determine services and supports for Student's home hospital placement, and making an inappropriate offer of FAPE at the April 2015 IEP meeting for the 2015-16 school year.

On August 21, 2015, Student dismissed the above captioned matter, because the parties had entered into a purported settlement agreement.

When disputes about the settlement agreement later arose, a new matter was filed in OAH Case Number 2015100314, in which Student sought to enforce the terms of the settlement agreement. That matter resulted in a Decision dated March 14, 2016, in which Administrative Law Judge Elsa Jones found that there had been no effective settlement agreement entered into by the parties. The Decision also found that the dismissal had been without prejudice.

Thereafter, on March 23, 2016, Student filed the instant motion seeking to set aside the dismissal of Case No. 2015070848, and re-open it. On March 29, 2016, District opposed. On April 1, Student replied. For the reasons set forth below, the Motion is denied.

APPLICABLE LAW DISCUSSION

California law permits a party to move to set aside a request for dismissal on the grounds of mistake, inadvertence, surprise, or excusable neglect under Code of Civil Procedure section 473, subdivision (b).

The statute of limitations for claims under the Individuals with Disabilities Act is two years. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) 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 states no cognizable grounds for setting aside the dismissal. In the context of addressing the existence of, or consideration for, the settlement agreement, ALJ Jones' Decision stated that on or around August 21, 2015, Student's counsel

could have moved forthwith to set aside the request for Dismissal and re-open the case. For example, California law permits a party to move to set aside a request for dismissal on the grounds of mistake, inadvertence, surprise, or excusable neglect under Code of Civil Procedure section 473, subdivision (b), and, OAH, as a matter of practice, considers motions to set aside a request for dismissal and reopen a case. Alternatively, instead of moving to set aside its Request for Dismissal, Student could have immediately refiled the case, as it would not be barred by the two year statute of limitations contained in Education Code section 56505, subdivision (1).

No justification has been stated for waiting until March 23, 2016, to seek to set aside the dismissal or seek to re-open the case. Under these circumstances there is no mistake, inadvertence, surprise or excusable neglect justifying the delay. To the extent that the statute of limitations on Student's claims has elapsed, no justification exists for tolling it. To the extent the statute of limitations has not expired, since the dismissal was without prejudice, no barrier exists to Student filing a new action on the claims that are not time-barred. For these reasons, the motion is denied, the dismissal is not set aside, and this matter remains closed.

IT IS SO ORDERED.

DATE: April 6, 2016

DocuSigned by:
June Lehrman

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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings