

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060808

ORDER GRANTING DISTRICT'S  
MOTION FOR RECONSIDERATION  
AND ORDER GRANTING MOTION  
TO DISMISS

On June 16, 2009, Student filed a Due Process Hearing Request (complaint) against the Irvine Unified School District (District). On July 2, 2009, the Office of Administrative Hearings (OAH) granted in part the District's Notice of Insufficiency, and granted Student 14 days to submit an amended complaint.

On July 15, 2009, Student filed an amended complaint, which included allegations that occurred before June 16, 2007. On July 27, 2009, the District filed a motion to dismiss Student's claims that occurred before June 16, 2007. On July 29, 2009, Student filed a response to the District's motion to dismiss. On August 13, 2009, OAH granted in part and denied in part the District's motion to dismiss. The August 13, 2009 Order dismissed Student's claims that occurred before June 16, 2007, except for Student's claims related to the September 18, 2001 individualized educational program (IEP).

On August 24, 2009, the District filed a motion for reconsideration, and included copies of IEPs that were not included in its original motion to dismiss. On August 27, 2009, Student filed an opposition to the District's motion. On August 31, 2009, OAH issued an Order that required Student to submit by September 8, 2009, additional evidence regarding the District's purported failure to provide the required information at the September 18, 2001 IEP meeting. Student did not submit the required evidence.

APPLICABLE LAW

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

The statute of limitations for due process complaints in California is two years prior to the date of filing the request for due process. (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 where 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.

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 free appropriate public education (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.)

## DISCUSSION

In Issue 1(b) of the amended complaint, Student alleged that the District found him eligible to receive special education services on September 18, 2001, and the District made an IEP offer of services and placement. Regarding the September 18, 2001 IEP, Student also alleged in Issues Two and Three that the District denied him a FAPE by failing to adequately assess him and violating his parents' procedural rights. Student alleges an exception to the two-year statute of limitations because the District purportedly failed to provide Student's parents with the required notice of procedural rights.

The District, in its motion for reconsideration, offers new evidence not in the original motion to dismiss, including a copy of the September 18, 2001 IEP, in which the District stated that it provided Student's parents with a copy of the required notice of procedural rights. Student, in his opposition, restates the allegations contained in the amended complaint that the District did not provide Student's parents with an adequate explanation of their procedural rights.

The District provided documentary evidence that Student's parents received a copy of the notice of procedural rights at the September 18, 2001, and at subsequent IEP meetings. Student failed to present any evidence to establish an exception to the statute of limitations, beyond the allegations in the amended complaint, such as a sworn declaration from one of Student's parents that the District failed to provide them with the required information at the relevant IEP team meetings. Therefore, Student failed to establish an exception to the statute of limitations regarding the claims in Issue 1(b) and Issues 2 and 3 regarding the

September 18, 2001 IEP. Therefore, based upon the new information provided by the District, the District's motion for reconsideration is granted. Upon reconsideration, the motion to dismiss is granted as to Issue 1(b) and as to allegations in Issues 2 and 3 that occurred before June 16, 2007, including any issues related to the September 18, 2001 IEP.

ORDER

1. The District's motion for reconsideration is granted.
2. The District's motion to dismiss is granted as to Issue 1(b) and any allegations in Issues 2 and 3 that occurred before June 16, 2007, including the September 18, 2001 IEP.

Dated: September 24, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings