

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL DISTRICT; ANAHEIM UNION HIGH SCHOOL DISTRICT; AND ORANGE COUNTY HEALTH CARE AGENCY.

OAH CASE NO. 2010060427

ORDER GRANTING MOTION TO DISMISS ORANGE COUNTY HEALTH CARE AGENCY

On June 10, 2010, Parent on behalf of Student (Student) filed a request for due process hearing with the Office of Administrative Hearings (OAH) naming Garden Grove Unified School District, Anaheim Union High School District, and Orange County Health Care Agency (OCHA).

On June 16, 2010, OCHA filed a response to the due process hearing request and a motion to be dismissed from the action. OCHA alleges that any claims Student may have against OCHA are barred by the statute of limitations. The motion was served on all parties.

OAH has received no response to the motion to dismiss from Student or any other party.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

A student who has been determined to be an individual with exceptional needs or is suspected of needing mental health services may, after the Student’s parent has consented, be referred to a community mental health service in accordance with Government Code section 7576 when the student meets criteria for referral specified in California Code of Regulations, title 2, section 60040, and the school district has, in accordance with specific requirements, prepared a referral package and provided it to the community mental health service. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 2, § 60040, subd. (a).)

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. (1); 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 (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's due process request contains four issues to be decided at the hearing.¹ The third issue is the only issue that contains allegations against OCHA. The issue states generally that OCHA denied Student a free appropriate public education (FAPE) when it failed to find him eligible for mental health services "[f]or the entire period of the statute of limitations...."

Despite the general allegation, the only facts alleged against OCHA involve an assessment report from March 2007. Student's due process hearing request was filed on June 10, 2010, over three years after the events alleged. Student alleges no facts to show that an exception to the statute of limitations applies or that OCHA had any involvement with Student after March 2007. Student's case against OCHA is barred by the two-year statute of limitations.²

ORDER

1. The Orange County Health Care Agency's motion to dismiss is granted. The Orange County Health Care Agency is dismissed as a party in the above-entitled matter.
2. The matter will proceed as scheduled against the remaining parties.

Dated: July 7, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

¹ The fourth issue is identified as "Issue #6" but it appears that the designation as such was a typographical error since there are no issues four or five in the due process request filed with OAH.

² OCHA requests monetary sanctions against Student's counsel for filing a frivolous due process request. OCHA has not made a sufficient showing of bad faith to warrant sanctions. The request for sanctions is denied.

