

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CULVER CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011020121
CULVER CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. REVISED ORDER DENYING MOTION TO LIMIT ISSUES TO TWO YEARS PRIOR TO DATE OF FILING AND DENYING MOTION TO DISMISS ISSUE FOUR

On March 11, 2011, District filed a Motion to Limit Issues to Two Years Prior to the Date of Filing and Motion to Dismiss Issue Four for lack of jurisdiction. Specifically, District contends that in Student's Case, OAH Case Number 2011020121, Student has failed to allege an exception to the two-year statute of limitations and has no basis to argue that she was unaware of her rights to request a hearing based on her history of filing due process hearing requests as early as 2005. As to Issue Four, District contends that OAH lacks jurisdiction because the claim actually seeks enforcement of a settlement agreement, despite being labeled a FAPE issue.

On March 21, 2011, Student filed a request for extension of time until March 23, 2011 to file an opposition and other documents. The undersigned ALJ ruled on District's motion without having reviewed Student's opposition and issued an order on March 29, 2011, granting the Motion to Limit Issues, but denying the Motion to Dismiss Issue Four. On March 30, 2011, the undersigned ALJ became aware that Student's opposition had been filed with the request for extension of time. Student's opposition has since been reviewed, and this Order now supercedes the March 29, 2011 order.

Student's opposition alleged Student is entitled to an exception to the two year statute of limitations on the ground that by providing related services while Student was in a unilateral placement, District misrepresented the need for parent to obtain relief through a due process hearing. Phrased another way, Student alleges that she would have sought relief through a due process hearing in the past had District acted differently. Student also alleges

that she is entitled to an exception because she was deprived of school records. Student's contentions also make references to settlement agreements during the period Student now alleges is at issue, raising the factual question of whether FAPE questions for past years are barred by settlement agreements as well.

As discussed below, the District's Motions will be denied. However, the denial of District's Motion to Limit Issues is not a finding that Student is entitled to an exception to the statute of limitations. Instead, Student shall have an opportunity to prove as part of the due process hearing that an exception to the statute of limitations applies.

Motion to Limit Issues to Two Years Prior to Filing

District contends that although Student has alleged issues in her complaint dating back to 2005, Student's issues for hearing are limited to those dating back to January 31, 2009, two years prior to the date she filed her current complaint. Student disagrees, alleges that she meets the exceptions under either the misrepresentation exception or failure to provide information exceptions. As discussed below, District's Motion will be denied at this time, but will be addressed as an issue for hearing.

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).) 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.

Here, Student's complaint on its face alleges no facts showing that an exception to the statute of limitations applies. In support of its Motion, District has demonstrated that Student had filed for a due process hearing in May of 2005 and August of 2007. In addition, a review of OAH's docket shows that Student filed for due process under the following case numbers in 2007: 2007030328, 2007080201, 2007080649, and 2007080948. However, in her opposition, Student has made numerous factual allegations that if true, might meet an exception to the statute of limitations.

Under these circumstances, where Student in opposition has alleged facts that possibly prove an exception to the statute of limitations, a limitation on the issues is not appropriate at this time. Instead, the proper procedure is to allow Student to proceed to hearing, at which time, as part of the hearing, Student will be given an opportunity to prove the existence of one of the exceptions. A hearing on whether an exception to the statute of limitations applies may be part of the due process hearing or done separately, at the discretion of the ALJ conducting the hearing. Although District's Motion is denied at this

time, this Order shall not be construed as a finding that Student has met her burden of proving an exception to the statute of limitations.

Motion to Dismiss Issue Four

District contends that Issue Four of Student's complaint must be dismissed for lack of jurisdiction because OAH does not have jurisdiction independent of IDEA to enforce settlement agreements. Specifically, District contends that although Student has alleged a denial of FAPE, Student has done so merely to avoid the jurisdictional bar. As discussed below, District's Motion to Dismiss Issue Four must be denied.

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [holding that OAH's predecessor, SEHO, did not have jurisdiction to hear a claim seeking to enforce a SEHO order].) Subsequently, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure. At least one United States District Court has found that OAH has jurisdiction over issues related to enforcement of a settlement agreement of IDEA claims that was reached outside of mediation. (See *S.L. v. Upland Unified School Dist.* (C.D. Cal. Aug. 24, 2010) CV-08-4936-GAF ("Memorandum and Order Regarding Appeal of Administrative Decision".))

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment or summary adjudication procedure.

Here, Issue Four on its face alleges a denial of FAPE, which is an issue within OAH's jurisdiction. To the extent District contends Student's issue as pleaded is actually a pure enforcement claim, and not a FAPE issue, OAH will not entertain a motion for summary adjudication. Accordingly, the motion to Dismiss Issue Four is denied.

ORDER

1. District's Motion to Limit Issues to Two Years Prior to the Date of Filing in OAH Case Number 2011020121 is denied.

2. Nothing in this Order shall be construed as a ruling that Student has demonstrated an exception to the two-year statute of limitations. Whether Student is entitled to an exception to the two-year statute of limitations is a factual issue for resolution by the ALJ at hearing based on the evidence.

3. District's Motion to Dismiss Issue Four for lack of jurisdiction is denied.

Dated: March 30, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings