

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011030139

ORDER GRANTING IN PART AND  
DENYING IN PART DISTRICT'S  
MOTION TO DISMISS AND STRIKE  
PORTIONS OF STUDENT'S  
COMPLAINT

On March 2, 2011, Student filed a Request for Due Process Hearing (complaint), naming the Irvine Unified School District (District) as the respondent.

On March 16, 2011, the District filed a consolidated pleading moving to dismiss and/or strike portions of Student's complaint, as well as alleging that Student's complaint was insufficient. The District's Notice of Insufficiency has been addressed in a separate order. This order will address the District's motion to dismiss those portions of Student's complaint alleging violations of Student's rights under Section 42 United States Code, section 1983 (section 1983), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq., herein Section 504), as well as the District's motions as they pertain to allegations by Student which are beyond the applicable two-year statute of limitations for issues brought under the Individuals with Disabilities Education Act (IDEA). The District also moves to strike a portion of Student's complaint alleging that the District purposely withheld records from Student. Student has not filed a response to the District's motions.

*Jurisdiction to Hear Claims Brought Pursuant to Section 1983 and Section 504*

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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 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.)

OAH does not have jurisdiction to entertain claims based on Section 504 or Section 1983. Student contends that he has no other forum under which to bring these claims in order to exhaust his administrative remedies. However, even if true, the lack of another forum does not create jurisdiction with OAH to hear the claims. The District's motion to dismiss all claims in Student's complaint regarding or referencing Section 1983 and Section 504, are therefore granted with prejudice.

#### *Claims beyond the Two-Year Statute of Limitations*

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.

In support of its motion to dismiss Student's issue one, requesting a waiver of the statute of limitations, the District states that it provided Student's parents with a copy of their procedural safeguards in late 2010, and that it was not obligated to provide it to parents prior to that date. The District also appears to contend that since Student's own independent assessment found that he did not qualify for special education, there is no basis for a waiver of the statute of limitations. However, neither argument presented by the District supports its motion to dismiss. Whether the District was required to provide parents with a notice of procedural prior to 2010 can only be determined through evidence presented at hearing. It will be Student's burden to prove whether the statutory exceptions to the statute of limitations apply to the facts of this case. The District's motion to dismiss Student's issue one as it relates to the request to waive the statute of limitations is therefore denied.

#### *Motion to Strike Two Lines of Student's Complaint*

The District contends that Student's assertion that the District has purposely withheld Student's educational records from him is not supported by any facts. The District thus requests that the two lines of Student's complaint making this assertion be stricken. The District offers no authority for its request.

Student's complaint does not contain any issue alleging that a failure to provide him with records is a violation of his rights. Therefore, it is not relevant whether his assertion as to his records is supported by any facts. Student makes many factual assertions in his

complaint that do not form the basis of a separate issue for hearing. Whether these assertions are correct or relevant to this case will be determined by the administrative law judge at hearing. The District's motion to strike lines 10-11 of page 13 of Student's complaint is denied.

#### ORDER

1. The District's motion to dismiss all contentions in Student's complaint regarding alleged violations of Student's rights under Section 1983 and Section 504 is granted with prejudice.
2. The District's motion to dismiss issue one of Student's complaint as it relates to the request to waive the statute of limitations is denied without prejudice.
3. The District's motion to strike lines 10-11 of page 13 of Student's complaint is denied with prejudice.

Dated: March 21, 2011

/s/  
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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings