

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT AND EL MONTE UNION
HIGH SCHOOL DISTRICT.

OAH CASE NO. 2011110490

ORDER GRANTING IN PART AND
DENYING IN PART ALHAMBRA
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On November 11, 2011, Student filed a due process hearing request (complaint), naming Alhambra Unified School District (AUSD) and El Monte Union High School District (EMHUSD) as the respondents. On February 22, 2012 the AUSD filed a motion to dismiss Issue One and to dismiss or strike allegations made in Issues Two through Four under Section 504 of the Rehabilitation Act of 1973, the Civil Rights act under 42 U.S.C. § 1983, No Child Left Behind, and any other related State and Federal Civil Rights Laws alleged in the complaint. AUSD also moves for dismissal of claims made beyond the two-year statute of limitations. Student did not file an opposition. For the reasons set forth below, AUSD's Motion is granted in part and denied in part.

Issue One

The AUSD contends that OAH lacks jurisdiction to hear Issue One because it seeks an order from OAH compelling the production of records from the respondents and that OAH lacks jurisdiction to hear Issue One because it does not allege an issue relating to the criteria set forth under Education Code Section 56501, subdivision (a), but rather is a compliance issue to be decided by the California Department of Education (CDE).

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.)

Here, Issue One of the complaint alleges that District violated the IDEA and related special education statutes, when it failed to provide parent with a full copy of educational records. OAH has jurisdiction to entertain claims that procedural violations of the IDEA resulted in a denial of FAPE. Accordingly, District's motion must be denied.

Issues Two-Four

Issues Two through Four allege violations under the IDEA and under Section 504 of the Rehabilitation Act of 1973, the Civil Rights act under 42 U.S.C. § 1983, No Child Left Behind, and any other related State and Federal Civil Rights Laws alleged in the complaint.

Generally, OAH will entertain motions to dismiss allegations that are facially outside of OAH jurisdiction. For example, civil rights claims, discrimination claims are the types of claims that are amenable to dismissal without the need for testimony or witness credibility determinations. OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.)/Section 1983 of Title 42 United States Code. OAH does not have jurisdiction to hear and decide these allegations. In this case, to the extent Issues Two to Four of the complaint allege violations falling outside of the IDEA those allegations are dismissed.

Allegations Outside of the Statute of Limitations

AUSD further contends that the complaint contains allegations that are time-barred by the two-year statute of limitations. As discussed below, the District may raise this defense at a time when the factual record is developed and not as a prehearing motion.

The statute of limitations for IDEA claims is two years unless 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 withheld information from the parent that was required to be provided to the parent. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C) & (D).) Here, on the face of the complaint it does not appear that Student is claiming anything more than the two year statute of limitations. AUSD fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on the statute of limitations without giving the petitioner the opportunity to develop a factual record regarding the exceptions, if any. Accordingly, the AUSD's statute of limitations arguments are rejected at this time, although they may be raised as a defense at hearing if Student is claiming an exception.

ORDER

1. AUSD's Motion to Dismiss Issue One is denied.
2. AUSD's, Motion to Dismiss Issues Two through Four to the extent they allege violations of Section 504 of the Rehabilitation Act of 1973, the Civil Rights act under 42 U.S.C. § 1983, No Child Left Behind, and any other related State and Federal Civil Rights Laws is granted for lack of jurisdiction. This matter will proceed as scheduled as to the remaining issues.
3. AUSD's Motion to Dismiss allegations beyond the two-year statute of limitations is denied.

Dated: February 27, 2012

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings