

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030126

ORDER GRANTING IN PART
DISTRICT'S MOTION TO DISMISS

On March 5, 2012, Tania Whiteleather, attorney at law, on behalf Student (Student) filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Long Beach Unified School District (District) as respondent. On March 15, 2012, District filed a response and motion to dismiss Issues One, Two and Four of Student's complaint. District contends that Issue One fails to state a claim, Issues One and Two are barred by the statute of limitations, and that OAH lacks jurisdiction over Issue Four. On March 20, 2012, Student filed an opposition to dismiss Issues One and Two.

APPLICABLE LAW

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 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 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), claims pursuant to the Americans with Disabilities Act (ADA), or claims under the Unruh Civil Rights Act.

The statute of limitations in California for special education claims, effective October 9, 2006, is 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

District contends that Student's Issue One must be dismissed because it is not related to a FAPE denial, and involves a request for documents produced prior to the statutory time frame at issue. In Issue One, Student alleges that District violated the IDEA when it failed to provide Parents with a full copy of Student's educational records including the initial assessment of Student in the area of speech and language, the individualized education program developed after the December 2007 assessments, letters and communications between the District and outside agencies regarding Student, and the final behavior plan for Student. Parents of a special education pupil have the right to examine their child's educational records. (20 U.S.C. § 1415(b)(1); Ed. Code § 56504.) Here, Student asserts that the violation of that procedural right has resulted in a denial of FAPE. Whether a procedural violation rises to the level of a substantive denial of FAPE is an appropriate issue for a due process hearing. District's request to dismiss this issue for failure to state a denial of FAPE is denied.

Student contends that his parents requested such records in writing, but fails to state the date of such request. With respect to the time period addressed by this claim, it appears that Student is reaching beyond the statutory two-year period. However, Student clarifies in his opposition that the District's failure to provide educational records occurred within the past two years. Accordingly, the claim of a denial of FAPE due to a failure to provide educational records is limited to the two-year period preceding the filing of Student's complaint. Parties can further clarify this issue at the prehearing conference, if necessary.

Issue Two alleges District's failure to fully assess Student in the area of speech and language. District maintains Issue Two alleges a failure to provide assessments and records from 2007, and that any attempt to claim a denial of FAPE in this area is time barred. In framing the issue as "whether the District has *ever* fully and appropriately assessed Student in speech and language," Student incorporates time periods barred by the statute of limitations. Student acknowledges in his opposition that the issues in the complaint do not clearly delineate that all claims solely incorporate the two years preceding the filing of the complaint, from March 6, 2010, forward. Student clarifies in his response that he does not seek to raise issues for periods outside of the statutory time period for this complaint. To the

extent Student's Issue Two raises claims beyond the statute of limitations, that portion of Issue Two is dismissed.

District asks OAH to dismiss Student's Issue Four, which alleges violations of Student's civil rights pursuant to the ADA, Section 504, and the Unruh Civil Rights Act. In the complaint, Student acknowledges that he raises this issue for purposes of exhaustion of administrative remedies and anticipates that OAH will not exercise jurisdiction over this issue. Student does not oppose District's request to dismiss Issue Four. OAH does not have jurisdiction to decide claims of violations of state and federal civil rights laws. Therefore, Issue Four is dismissed.

District's Motion to Dismiss is granted in part as to Issues One and Two, and granted as to Issue Four. The matter will proceed as scheduled as to the remaining issues.

ORDER

1. The District's motion to dismiss Issue One is granted in part. All claims related to the failure to provide educational records are limited to the two years preceding the filing of Student's complaint.
2. The District's motion to dismiss Issue Two is granted in part. All claims prior to the commencement of the statute of limitations on March 6, 2010, are dismissed.
3. The District's motion to dismiss Issue Four in the complaint is granted for lack of jurisdiction.
4. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Dated: March 24, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings