

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012090209

ORDER PARTIALLY GRANTING
MOTION TO DISMISS

On September 18, 2012, District filed a motion (Motion) to dismiss Student's due process complaint on the grounds that 1) claims alleged in the complaint fall outside the applicable statute of limitations and 2) Student alleges claims outside of jurisdiction of the Office of Administrative Hearings (OAH). Student filed an opposition on September 20, 2012.

APPLICABLE LAW

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 procedure.

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. (l); 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 (l), 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.

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.). 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 a 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.)

DISCUSSION

Here, in part, District's Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, and specifically whether any of Student's claims fall within the applicable statutory period. Student argues in her opposition that she is not making claims that extend beyond the statutory period. These matters are appropriately decided by the hearing judge after the parties have been afforded an opportunity to establish an evidentiary record. Accordingly, the Motion is denied as to Student's claims relating to the statute of limitations.

The Motion is granted as to Student's claims alleging violations of Section 504 of the Rehabilitation Act of 1973, and the American with Disabilities Act because those claims are outside of OAH jurisdiction.

ORDER

1. Student's claims alleging violations of Section 504 of the Rehabilitation Act of 1973 and the American with Disabilities Act are dismissed.
2. The matter shall proceed on the remaining issues.
3. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: September 21, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings