

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. 2013030018

ORDER DENYING MOTION TO
DISMISS

On February 27, 2013, Student filed a Due Process Hearing Request¹ (complaint) naming Long Beach Unified School District (District) as the respondent.

On March 8, 2013, District timely filed a Notice of Insufficiency (NOI), and a Motion to Dismiss Student's complaint. March 11, 2013 OAH issued an Order finding the complaint sufficient. The Motion to Dismiss was reserved for separate ruling. Student has not filed opposition to the motion.

The motion to dismiss is a thinly veiled NOI. Essentially District makes the same contentions as asserted in the NOI dated March 8, 2013. The only difference between the NOI and Motion to Dismiss is District's brief contention in the conclusion of the motion that the complaint fails to allege any specific omissions or acts by District within the statutory time frame alluding to the statute of limitations. As discussed below District's motion to dismiss is denied.

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 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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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.)

The statute of limitations in California is 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.

DISCUSSION

Student alleges specifically District failed to offer a free appropriate public education (FAPE) at the IEP meetings of January 7, 2013 and January 28, 2013 by failing to offer appropriate behavioral services, occupational therapy services, appropriate placement and extended school year. Student also contends that District denied Student a FAPE by failing to make a timely offer of placement, and by failing to have in attendance a general education teacher, special education teacher, and administrator. The complaint also alleges a failure to assess Student in the areas of behavior and occupational therapy in connection with the same IEP meetings. Finally, Student's proposed resolutions allege relief related to the January 2013 IEP meetings.

District has failed to specifically identify any claim in the complaint outside of the two-year statute of limitations. The motion unnecessary and is therefore denied.

ORDER

1. District's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

Dated: March 18, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings