

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013030198

ORDER PARTIALLY GRANTING
DISTRICT'S MOTION TO DISMISS

On March 5, 2013, Student filed a Request for Due Process Hearing (complaint), naming Capistrano Unified School District (District) as the respondent.

On March 15, 2013, District filed a Partial Motion to Dismiss. District moves to dismiss Student's first, second and third issues on the grounds OAH does not have jurisdiction over claims for violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Civil Rights Act (42 U.S.C. § 1983), and No Child Left Behind (20 U.S.C. § 6368(7)II). District also moves to dismiss Student's first issue in its entirety on the ground the issue is barred by the statute of limitations.

On March 18, 2013, Student filed an Opposition to District's Motion to Dismiss.

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 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.), the Civil Rights Act (42 U.S.C. § 1983), or No Child Left Behind (20 U.S.C. § 6368(7)).

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.

DISCUSSION OF SECTION 504, SECTION 1983 AND NCLB

Student's complaint states three issues. Each issue alleges District violated the IDEA, and that District violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Civil Rights Act (42 U.S.C. § 1983), and No Child Left Behind (20 U.S.C. § 6368(7)) within the statute of limitations. Student's first issue alleges District failed to properly assess Student. Although issues related to Section 504, the Civil Rights Act and No Child Left Behind are not within OAH's jurisdiction, the IDEA claim District failed to properly assess Student is within OAH's jurisdiction. Student's second issue alleges District failed to develop a comprehensive IEP in eight particular areas relating to Student's eligibility under the category of emotionally disturbed, identification of Student's unique needs, present levels of performance, goals and objectives, appropriate accommodations, transition, and appropriate placement in the least restrictive environment. Here again, violation of Section 504, Section 1983 and No Child Left Behind are not within OAH's jurisdiction, however, the claim District failed to develop an appropriate IEP is within OAH's jurisdiction. Student's third issue alleges District failed to include Student's parent (guardian) in the development of an appropriate assessment plan and the resulting IEP, and to provide an explanation of parental rights. In sum, Student's first, second and third issues are partially based upon the IDEA, and therefore within OAH's jurisdiction. To the extent Student's complaint also alleges violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Civil Rights Act (42 U.S.C. § 1983), and No Child Left Behind (20 U.S.C. § 6368(7)), District's Partial Motion to Dismiss those claims is granted and only those claims are dismissed.

DISCUSSION OF STATUTE OF LIMITATIONS

District seeks dismissal of Issue One on the ground that it believes the facts at hearing will show the only District assessments occurred outside the limitations period. Student's complaint alleges she was found eligible for special education services under the category of specific learning disability (SLD) in February 2010. The first issue in her complaint alleges District denied Student a FAPE when it failed to appropriately assess Student in all areas of suspected disability and to assure her assessors were highly trained personnel capable of appropriately interpreting assessment results so as to properly identify and address Student's

needs and to develop an appropriate individualized education program (IEP). Student's complaint specifically states that Student's issues are "regarding all IEP's in place and/or developed during" the statute of limitations period. Thus, on the face of the complaint Student's claims do not involve matters outside the limitations period. However, although District contends that the claim about assessments within the limitations period is not supported by the facts, OAH will not dismiss claims that require factual determinations at hearing. Accordingly, District's motion to dismiss can only be granted in part, to bar Issue One from addressing claims outside the limitations period.

Should Student seek to allege claims in Issue One beyond the statute of limitations, Student may move to amend her complaint and allege facts pertaining to whether an exception applies under title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1).

ORDER

1. District's Partial Motion to Dismiss Student's claims for violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Civil Rights Act (42 U.S.C. § 1983) and No Child Left Behind (20 U.S.C. § 6368(7)) is granted. The matter will proceed as scheduled as to Student's claims for violation of IDEA and related California law.

2. District's motion to dismiss Issue One in its entirety is denied, however, District's motion is granted in part, such that Student's Issue One allegations are limited to the two year statute of limitations period.

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: March 19, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings