

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT & WESTSIDE INNOVATIVE
SCHOOL HOUSE CHARTER
ELEMENTARY SCHOOL.

OAH CASE NO. 2013090557

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On October 29, 2013, Westside Innovative School House Charter Elementary School (WISH) filed a Motion to Dismiss (Motion), seeking to dismiss the due process complaint (Complaint) filed by Parents and Student (collectively, Student). Specifically, WISH's Motion is based upon the grounds that certain allegations of the Complaint are barred by the two-year statute of limitations of 20 U.S.C. § 1415(f)(3)(C) and of Education Code, section 56501, subd. (1). WISH also contends that, since the Complaint alleges not only violations of the Individuals with Disability Education Act (IDEA) and the Education Code, but also violations of 29 U.S.C. § 794 (a) (Section 504); the Americans with Disability Act of 1990 (42 U.S.C. § 12132 (ADA)); civil rights statutes; and the First Amendment to the Constitution of the United States; and that OAH has no jurisdiction over these claims. On November 5, 2013, Student filed an opposition to the Motion, contending that his Complaint alleged statutory exceptions to the statute of limitations, and that even though his Complaint alleged that District violated Section 504, the ADA, the Constitution and other civil rights statutes, the Complaint did not seek relief under any civil rights statutes.

Statute of Limitations

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 2006, and is now 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.

Student's Complaint alleges facts which, Student contends, constitute exceptions to the statute of limitations under 20 U.S.C. § 1415(b)(6)(B), and Education Code section 56505, subd. (l). WISH contends that the facts alleged are not sufficient to establish the exceptions to the statute of limitations, and therefore certain of Student's claims are barred by the statute of limitations. Whether the facts that Student has alleged are sufficient to establish the applicability of any exceptions to the statute of limitations is a question of fact to be determined by a hearing. Although, as is further explained below, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment or summary adjudication procedure to determine the merits of a matter or of any issues alleged in a Complaint. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits of Student's allegations regarding the applicability of the exceptions to the statute of limitations. Accordingly, to the extent the Motion is based upon the statute of limitations, the Motion is denied.

OAH Jurisdiction

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 or resolve other claims such as, for example, those based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) (ADA); the First Amendment of the United States Constitution; or other "civil rights statutes," all of which claims Student alleges on page 3 of his Complaint. Additionally, the remedies Student alleges in his Complaint include remedies for pain and suffering and emotional distress allegedly suffered by Student's parents, which are not available under the IDEA and the Education Code sections which Student contends District violated, but which may be available under the civil rights claims which are the subject of the Motion. Therefore, the Motion is granted as to the Student's Section 504, ADA, "civil rights statutes," First Amendment claims, and all alleged remedies related to them such as relief for pain and suffering and emotional distress. All issues other than IDEA issues and remedies available under the IDEA are dismissed.

The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: December 5, 2013

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings