

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  IRVINE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014010299
IRVINE UNIFIED SCHOOL DISTRICT,  v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013060803  ORDER GRANTING MOTION TO DISMISS ISSUES

On January 10, 2014, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Irvine Unified School District (District) as the respondent.<sup>1</sup> Student's complaint contains four issues. In the first issue, Student contends that the District deprived Student of a free appropriate public education (FAPE) by failing to fund Individual Educational Evaluations requested by Student. In issue two, Student contends that the Individualized Education Programs (IEP) for school years 2011-2012, 2012-2013, and 2013-2014 are not appropriate. In issue three, Student contends that the District has violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. In the fourth issue, Student contends that the District has violated the Unruh Civil Rights Act, a California state law.

On January 15, 2014, the District filed with OAH a motion to dismiss issues three and four. The District also seeks dismissal of all claims in issue two which are beyond the relevant statute of limitations. The District also seeks to strike Student's demand for money damages as a remedy under issue four.

OAH received no response to the District's motion from Student.

APPLICABLE LAW AND DISCUSSION

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<sup>1</sup> On January 21, 2014, Student's complaint was consolidated with an earlier filed case by the District (OAH Case Number 2013060803).

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. Thus, Student’s third issue must be dismissed.

OAH also lacks jurisdiction to hear claims under the Unruh Civil Rights Act (Civil Code § 51.). Thus, Student’s fourth issue must be dismissed.

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. (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. Here, Student’s complaint was filed on January 10, 2014 and issue two contains claims which existed more than two years from the date of the filing of the complaint. Student fails to allege any exceptions to the two year limitation period in the complaint and has failed to file a response to the motion. Accordingly, the District’s motion to dismiss all claims beyond January 10, 2012, the two year period, must be granted.

#### ORDER

1. Irvine Unified School District’s Motion to Dismiss Issues is granted.
2. All claims alleged prior to January 10, 2012 in issue two are dismissed.

3. Issues three and four are dismissed.
4. The District's motion to strike the resolution for issue four is denied as it is moot.
5. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: January 21, 2014

/s/  
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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings