

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050361

ORDER GRANTING IN PART
DISTRICT'S MOTION TO DISMISS

On May 9, 2014, Student filed a Request for Due Process Hearing (complaint) naming Pasadena Unified School District (District). On May 27, 2014, District filed a motion to dismiss portions of Student's complaint. On May 30, 2014, 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.)

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.

DISCUSSION

In the present matter, District contends that Student's Issues Three and Four should be dismissed in their entirety and Issues One and Two should be dismissed in part because their alleged factual support is beyond the statute of limitations. Student filed his complaint on May 7, 2014, and has not alleged any exceptions to Education Code section, 56505, subsection (1). As a result, the applicable statute of limitations is effective as of May 7, 2012. Additionally, the parties entered into a written settlement agreement on January 9, 2013, in which Student waived his educational rights, including due process claims, through that date.

Student contends that the issues should not be dismissed, as the factual contentions prior to January 13, 2013, are included as historical background on Student. Student does not contend the applicable timelines asserted by District are incorrect.

Student has filed a 32 page complaint alleging Student's educational difficulties commencing at age three to the present time at age 12. Student goes to great lengths to describe factual minutiae occurring prior to January 9, 2013, which represents approximately two-thirds of his complaint. Hidden amongst the historical recitation are several factual allegations which relate to events after January 9, 2013.

Therefore, Student's Issues One and Two shall remain as presented by Student; however the issues are limited to assessments, IEP's and other events occurring after January 9, 2013.

Student's Issue Three contends a failure to implement Student's 2011 IEP, which is clearly prior to both the statute of limitations and waiver of due process claims. Therefore, Issue Three is dismissed.

Student's Issue Four is a request for reimbursement of Student's private placement. Student commences his request with his placement in 2008 through the present date. Issue Four is dismissed, as it is a remedy, not a denial of a free appropriate public education. Further, seeking reimbursement as a remedy is dependent on the determinations of Issue One and Two, which are limited by the applicable timelines.

ORDER

1. District's motion to dismiss is granted as to Issues Three and Four in their entirety.
2. Based upon the undisputed statute of limitations and Student's prior waiver of due process rights, Student's Issues One and Two commence as of January 9, 2013. Those

portions of Student's complaint which reference prior information unrelated to applicable issues are included in Student's complaint for historical background only.

3. The matter will proceed as scheduled as to the remaining issues.
4. Student may amend his complaint without prejudice.

IT IS SO ORDERED.

DATE: May 30, 2014

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings