

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, ABC UNIFIED SCHOOL
DISTRICT, AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH Case No. 2015020992

ORDER PARTIALLY GRANTING
AND PARTIALLY DENYING
LOS ANGELES UNIFIED SCHOOL
DISTRICT'S MOTION TO BE
DISMISSED AS TO CERTAIN TIME
PERIODS

On February 11, 2015, Student filed a Request for Due Process Hearing, naming Los Angeles Unified School District, ABC Unified School District, and California Department of Education as the respondents. On August 18, 2015, Student filed an Amended Request for Due Process Hearing (amended complaint), naming Los Angeles Unified School District, ABC Unified School District, and California Department of Education as the respondents.

On October 5, 2015, Los Angeles Unified School District filed a Motion to Be Dismissed as to Certain Time Periods (Motion). Los Angeles Unified seeks to dismiss Student's claims against it for any time prior to February 11, 2013, due to Student's failure to allege any facts that would establish an exception to the two year statute of limitations under the IDEA and California Education Code, and for any time between March 1, 2013, and January 8, 2015, on the basis that by operation of law, Los Angeles Unified had no responsibility to Student during the time period he was in College Park Hospital before there was any recommendation that he be released from the hospital.

On October 7, 2015, ABC Unified School District filed an opposition. On October 8, 2015, Student filed an opposition. On October 9, 2015, California Department of Education filed an opposition.

DISCUSSION

Claims Arising prior to February 11, 2013

The statute of limitations in California is 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 withheld information from the parent that was required to be provided to the parent.

Student's amended complaint does not allege any exception to the two year statute of limitations. Student has not alleged, and has not established any triable issue for hearing, that Parent was prevented from filing a request for due process due to specific misrepresentations by Los Angeles Unified that it had resolved the problem forming the basis of the complaint, nor has Student alleged that Los Angeles Unified withheld information from Parent that Los Angeles Unified was required to provide Parent. Therefore, Student has not alleged facts that would permit Student to pursue claims against Los Angeles Unified that arose prior to February 11, 2013. Los Angeles Unified's motion to dismiss claims against it as to any time prior to February 11, 2013, is granted.

Claims Arising between March 1, 2013 and January 8, 2015

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. Education Code section 56167, subdivision (a), provides an exception to the usual rule of residency and states that a student who is placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes is the educational responsibility of the local educational agency in which the hospital or facility is located. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

While Los Angeles Unified provides cursory argument and authority for the assertion that it could not have had any legal responsibility to provide Student a free appropriate public education after his admission to College Park Hospital and Student provides cursory argument and authority for the assertion that Los Angeles Unified retained responsibility to provide educational services to Student even after he was admitted to College Park Hospital, Department of Education contends that it is informed and believes that Student has not continuously resided at College Hospital since March 1, 2013, but there have been a series of multiple, separate admissions. Department of Education states it is awaiting further information regarding the gaps and did not provide any information regarding when, between March 1, 2013, and the present, Student might not have resided at College Park Hospital or where he was during any gaps.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, which requires a determination of

facts about which there appears to be dispute, specifically, whether Student was or was not continuously residing in College Park Hospital from March 1, 2013, through at least January 8, 2015. Accordingly, Los Angeles Unified's motion to dismiss claims against it as to any time between March 1, 2013, and January 8, 2015, is denied, as a triable issue exists for hearing.

IT IS SO ORDERED.

DATE: October 12, 2015

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings