

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEVADA JOINT UNION HIGH SCHOOL DISTRICT, GRASS VALLEY SCHOOL DISTRICT, and NEVADA CITY SCHOOL DISTRICT.

OAH Case No. 2015030003

ORDER GRANTING IN PART AND DENYING IN PART DISTRICTS' MOTION TO DISMISS

On February 23, 2015, Student filed a Request for Due Process Hearing (complaint), with the Office of Administrative hearings naming the Nevada Joint Union High School District, the Grass Valley School District, and the Nevada City School District as respondents.

On March 25, 2015, the three school districts filed a joint motion to dismiss specific allegations of Student's complaint. The school districts moved to dismiss Student's fifth allegation, which alleges violations of his rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.). The school districts further moved to dismiss all allegations in Student's complaint that occurred prior to the applicable two-year statute of limitations.

Student filed an opposition to the school districts' motion on March 31, 2015.

APPLICABLE LAW AND DISCUSSION

*OAH Jurisdiction*

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" 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 therefore does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act. Student acknowledges this lack of jurisdiction in his opposition to the school districts' motion to dismiss, and agrees that his fifth issue is subject to dismissal. The school districts' motion to dismiss Student's fifth issue is therefore granted.

### *Statute of Limitations*

The statute of limitations for due process proceedings in California is two years, which is consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), however, 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.

In this case, Student contends that his father requested Nevada City School District assess Student for eligibility under the IDEA in 2006. He contends that Nevada City declined to assess him, choosing instead to provide him with an accommodations plan under Section 504. Student further alleges that that Nevada City failed to provide his father with a copy of parents' procedural safeguards at the time of the request for assessment, or at any time subsequent to the request. Student further alleges that his father requested that Grass Valley assess Student in 2009, but that Grass Valley declined to conduct the assessment. Student also alleges that Grass Valley failed to provide his father with a copy of parents' procedural safeguards in 2009, or at any subsequent time. Student maintains that as a result of Nevada City's and Grass Valley's failure to provide his father with procedural safeguards, his father was not aware that he could file for due process based on the failure of these two districts to assess Student. Student therefore contends that his allegations satisfy the requirements of the second exception to the statute of limitations because the two districts were required to provide his father with a copy of the procedural safeguards at the time they declined to assess Student and failed to do so. Student contends that as a result, his father was unaware of his right to file for due process on Student's behalf at the time.

The school districts contend that Student has failed to demonstrate that his father was unaware of his procedural rights at the time the districts allegedly declined to assess Student. They contend that because Student's father was aware of his procedural rights under Section 504, he should have been aware of his rights under the IDEA. However, the fact that

Student's father may have been aware of his rights under one federal statute does not *ipso facto* demonstrate that he was aware of his rights under the IDEA.

Student has raised a factual dispute as to two issues. First, whether either Nevada City or Grass Valley provided his father with a copy of the procedural safeguards under IDEA at any time prior to February 23, 2013, when the two-year statute of limitations began. Secondly, there is a factual dispute as to whether Student's father was aware of his rights under the IDEA to file for due process irrespective of receiving the procedural safeguards when Nevada City and Grass Valley allegedly declined to assess Student. Resolving the factual disputes inherent in Student's contention that his father was unaware of his procedural rights within two years of the alleged district failures to assess in 2006 and 2009 can only be resolved through an evidentiary hearing.

Therefore, due to the factual disputes that exist regarding whether an exception to the two-year statute of limitation exist in this case, the school districts' motion to dismiss issues prior to the two-year statute of limitations is premature, and not proper for adjudication at this time without a hearing. Accordingly, the motion to dismiss all claims that fall outside of the two-year statute of limitations is denied without prejudice.<sup>1</sup>

#### ORDER

1. The school districts' motion to dismiss Student's fifth issue pertaining to Section 504 is granted.
2. The school districts' motion to dismiss issues concerning allegations that arose prior to February 23, 2013, is denied without prejudice.

DATE: April 1, 2015

/s/  
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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> The issue of the applicability of the two-year statute of limitation shall be addressed during the due process hearing with the assigned ALJ.