

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT
and CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2010120931

ORDER GRANTING MOTION TO
DISMISS

On December 29, 2010, Student filed a request for a due process hearing complaint with the Office of Administrative Hearings (OAH). On January 10, 2011, the District filed a request for dismissal of some of the claims in the complaint. On January 13, 2010, Student filed an opposition. The California Department of Education filed no response to the District's motion.

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.) 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.[section 504]) or section 1983 of Title 42 United States Code [section 1983].)

The statute of limitations for due process complaints in California is two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (l); 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 (l), establish exceptions to the statute of limitations. Exceptions to the statute exist where 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.

After July 1, 2005, the IDEA provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a) (2006).) There is no provision in either State or federal law that district personnel explain the notice of procedural safeguards to a parent in the absence of an affirmative request by the parent.

DISCUSSION

The District asks that OAH dismiss Student's claims that it violated Student's rights pursuant to section 504 and section 1983. In his opposition, Student does not oppose this request for dismissal. OAH does not have jurisdiction to decide claims of violations of section 504 and section 1983. Therefore, these claims are dismissed.

Student's complaint contains four issues. Each issue alleges violations of sections 504 and 1983. Student has two subissues in Issue One. The second subissue, is a claim that the District failed to provide Parents with information concerning procedural safeguards pursuant to the IDEA. Issue Two, also alleges violations of sections 504 and 1983, as well as an allegation concerning the same violation of IDEA stated in the second subissue of Issue One. No other claims are alleged in Issue Two. The District asks that OAH dismiss Student's Issue two, because it is duplicative of most of Issue One. The District is correct in this regard, and Student does not oppose this request. Accordingly, because Issue Two is duplicative of most of Issue One, Issue Two is dismissed.

Much of the District's request for dismissal is related to Student's request that he be permitted to present claims for time periods prior to the beginning of the statute of limitations, December 29, 2008. In the complaint, Student generally alleges that the District failed to provide parents with information about their rights pursuant to the IDEA. The District alleges that it provided Parents with notices of procedural safeguards when Student was eligible for special education between the years of 2002 and 2004, and further claims that Parents were aware of their IDEA rights because they have other children in special education. In his opposition, Student challenges this argument by noting that the IDEA was

reauthorized by Congress with changes in 2004, and the new IDEA became effective July 1, 2005. Therefore, notices of procedural safeguards provided to parents prior to the reauthorization might not contain accurate information. Student is correct. Further, there is no evidence, other than statements in the District's motion, that Parents received this information when they were engaged in activities related to their other children, so this ground will not be considered. Accordingly, dismissal of claims prior to the statute of limitation on these grounds is not warranted.

The District also contends that dismissal is warranted because Student does not provide specific facts as to how the District either misled Parents, or withheld required information from them. In his opposition, Student claims that Parents requested that Student be assessed on several occasions, and the District refused to do so. The IDEA requires that Parents be provided with notice of their procedural rights when they request an assessment. However, Student does not provide any facts in his complaint that confirm this new claim of multiple requests for assessment that is now being made in his opposition. Further, Student claims that the District misled Parents by telling them repeatedly that Student would not qualify for special education if he was assessed. Once again specific facts relating to this allegation are not contained in the complaint. Accordingly, Student's claims prior to December 29, 2008, when the statute of limitations took effect, are denied.

ORDER

1. The District's motion to dismiss is granted.
2. All claims pursuant to sections 504 and 1983 are dismissed.
3. Issue Two in the complaint is dismissed.
4. All claims prior to the commencement of the statute of limitations on December 29, 2008, are dismissed.

IT IS SO ORDERED.

Dated: January 20, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings