

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060808

ORDER GRANTING MOTION TO
DISMISS

On June 16, 2009, attorney Kathleen M. Loyer, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Irvine Unified School District (District). On July 2, 2009, the Office of Administrative Hearings (OAH) granted in part the District's Notice of Insufficiency as to Issues 1(a) and 3(a) through (d) and (h) through (k), and granted Student 14 days to submit an amended complaint.

On July 1, 2009, attorney Daniel Harbottle, on behalf of the District, filed a Motion to Dismiss Student's claims that occurred before June 16, 2007, for being outside the two years statute of limitations. The District also requested that OAH dismiss Student's claims under Section 504 of the Rehabilitation Act (Section 504) and Section 1983 of title 42 United States Code (Section 1983). OAH received no response from Student to the Motion to Dismiss.

APPLICABLE LAW

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 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.

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.) and Section 1983 of Title 42 United States Code.

DISCUSSION

The remaining issues for hearing, Issues 1(b), 2, and 3(e), (f) and (g), all contain contentions that the District denied Student a free appropriate public education (FAPE) before June 16, 2007. While Issues 2, and 3(e), (f) and (g) contain allegations that occurred on or after June 16, 2007, Issue 1(b) only alleges violations that occurred during the 2001-2002 school year. Student does not allege any facts in the complaint that would toll the two-year statute of limitations. The complaint contains no language providing the District with due process notice of any allegation that the District made specific misrepresentations that it had resolved the problem or that it withheld information required to be provided, which prevented Parents from filing a complaint. Therefore, Student's claim in Issue 1(b), and claims in Issues 2 and 3(e), (f) and (g) that occurred before June 16, 2007, are outside the two-year statute of limitations. (*Student v. Pleasanton Unified School District, Alameda County Office Of Education, and Alameda County Behavioral Health Care Services* (2007) Cal.Ofc.Admin.Hrngs. Case No. 2007030300.)

In this matter, Student alleges in all issues for hearing that the District denied him a FAPE under the Individuals with Disabilities Education Act, and that the District violated Section 504 and Section 1983. Because OAH does not have jurisdiction to hear Student's claims that the District violated Section 504 and Section 1983, these claims are dismissed.

ORDER

1. The District's Motion to Dismiss is granted as to Issue 1(b).
2. The District's Motion to Dismiss is granted to Issues 2 and 3(e), (f) and (g) that occurred before June 16, 2007.
3. Student's allegations in all Issues that the District violated Section 504 of the Rehabilitation Act and Section 1983 of title 42 United States Code, are dismissed.
4. The remainder of the Issues 2, and 3(e), (f) and (g) that occurred on or after June 16, 2007, in which Student alleges District denied him a FAPE, are not dismissed, and the matter shall proceed as to those issues.

Dated: July 9, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings