

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080278

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS

Student filed a request for due process hearing (complaint) on August 6, 2010. On September 14, 2010, the San Diego Unified School District (District) filed a motion to dismiss Student's complaint. Student filed an opposition to the District's motion on September 20, 2010. For the following reasons, the District's motion is granted in part and denied in part.

APPLICABLE LAW

Under the Individuals with Disabilities Education Improvement Act (IDEA), parents have the right to file a special education due process 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).) The jurisdiction of the Office of Administrative Hearings (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 hear claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504). (29 U.S.C. § 701 et seq.).

Effective October 9, 2006, the statute of limitations for special education due process claims is two years, consistent with federal law. (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. The complaint must affirmatively allege these issues as part of the Student's case. (*P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.* (E.D. Pa. 2008) 557 F. Supp.2d 648, 661.)

Finally, 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.

DISCUSSION

Student's complaint contains seven issues for hearing. In issue one, Student contends the District should have found him eligible for special education in 2007 (clarified in Student's discussion of background facts as March 2007) under the categories of emotional disturbance and/or other health impaired and that its failure to do so has denied him a free appropriate public education (FAPE) since then. The District contends that this allegation must be dismissed as it is beyond the two-year statute of limitations applicable to special education matters under California law. Student replies that the District withheld some of his assessment scores from his mother which prevented her from being able to determine if eligibility under the emotionally disturbed category was at issue. However, Student's parent was aware at the time that the District had found Student ineligible. Student's parent was also aware of her rights as a parent, including the right to file a due process request, as far back as 2000. Student's complaint contains a copy of Student's individualized education plan from 2000 where he was first found ineligible for special education. Student's parent signed the document stating she had received a copy of the procedural safeguards and they had been explained to her. In 2007, parent could have filed a due process complaint contesting the failure to find Student eligible, but she did not. Student's issue number one is therefore dismissed insofar as it references a time frame prior to August 6, 2008, two years prior to the filing of Student's complaint. However, Student also alleges in issue one that the District has denied him a FAPE since 2007 because it failed to find him eligible. Student's issue one therefore encompasses the two-year period prior to the filing of his complaint and may proceed to hearing as to that time frame.

In issue two Student alleges that District staff at his middle school acted out of compliance with state and federal statutes as well as District procedures by failing to protect him from bullying throughout the 2009-2010 school year. Student contends that this violated District policy and his civil rights since he has a disabling condition as acknowledged by the fact that he has a Section 504 plan. However, as stated above, the jurisdiction of OAH to hear matters is limited to those raising issues with respect to matters relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. OAH does not have jurisdiction to determine if a student's civil rights were violated, if his Section 504 plan was violated or not properly implemented, or if a school district failed to follow its own internal policies or procedures. Therefore, the District's motion to dismiss Student's issue two is granted.

Student's issue three contends that the District failed to initiate a special education assessment for him after he was involved in a serious behavioral incident on June 7, 2010. Student basically contends that the incident should have put the District on notice that he might be a child with a disability and that it therefore should have begun the assessment

process for him at that time. Student also contends that the assessment process should have been completed no later than two weeks after the start of the new school year. The District responds that this issue is not ripe for adjudication because a completed assessment would not have been due until 30 days subsequent to the start of the District's 2010-2011 school year on September 7, 2010. While the District's reference to the appropriate timelines for assessments is well-taken (see, Ed. Code, §§ 56321 and 56344), determining the validity of Student's allegation involves making evidentiary determinations outside information alleged in Student's complaint. As stated above, California special education law does not provide for a summary judgment procedure. The District's motion to dismiss issue three is therefore denied.

In issue four, Student contends that all of Parent's attempts to work with District staff since July 2010 have failed "in that no staff would offer a venue for meeting for conflict resolution, nor for initiating a special education assessment and IEP meeting prior to the start of the 2010/2011 school year." To the extent that Student raises issues concerning the District's failure to initiate an assessment of him on or about June 7, 2010, that issue is already included in issue three. To the extent that Student contends that his rights were violated somehow because the District did not offer a venue for conflict resolution before he filed a due process complaint, that issue is not within the jurisdiction of OAH because it does not involve a matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. The District's motion to dismiss issue four is therefore granted.

Student's issue five contends that the District's failure to initiate an assessment of him or to refer him to the District's Hearing and Appeals resulted in the District's failure to provide him with an appropriate and safe placement for the 2010-2011 school year. Student contends that as a result, his Parent unilaterally placed him in a non-public school and that she is entitled to reimbursement for the costs of the unilateral placement. To the extent that Student again alleges that the District failed to initiate an assessment of him on or about June 7, 2010, that issue is already addressed in issue three. To the extent Student alleges that the District violated his rights by failing to refer him to Hearing and Appeals that issue is not within the jurisdiction of OAH. To the extent that Student is requesting reimbursement for a unilateral placement, such a request is a request for a remedy and not a cause of action for a complaint. Student includes a request for reimbursement in the section of his complaint stating his proposed resolutions. The District's motion to dismiss issue five is therefore granted.

In issues six and seven, Student again merely states remedies he is requesting for the District's alleged violations of his rights. As such, they are not appropriately included as reasons for a due process request. The District's motion to dismiss these latter two issues is therefore also granted.

ORDER

1. The District's motion to dismiss Student's issue one with regard to any events prior to August 6, 2008, is granted.
2. The District's motion to dismiss Student's issues two, four, five, six, and seven, is granted.
3. The District's Motion to Dismiss Student's issue three is denied.

Dated: September 22, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings