

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CULVER CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011020121
CULVER CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011030971 ORDER GRANTING MOTION TO LIMIT ISSUES TO TWO YEARS PRIOR TO DATE OF FILING AND DENYING MOTION TO DISMISS ISSUE FOUR

On March 11, 2011, District filed a Motion to Limit Issues to Two Years Prior to the Date of Filing and Motion to Dismiss Issue Four for lack of jurisdiction. Specifically, District contends that in Student’s Case, OAH Case Number 2011020121, Student has failed to allege an exception to the two-year statute of limitations and has no basis to argue that she was unaware of her rights to request a hearing based on her history of filing due process hearing requests as early as 2005. As to Issue Four, District contends that OAH lacks jurisdiction because the claim actually seeks enforcement of a settlement agreement, despite being labeled a FAPE issue.

On March 21, 2011, Student filed a request for extension of time until March 23, 2011 to file an opposition. No opposition was ever received from Student.

As discussed below, the Motion to Limit Issues to Two Years Prior to the Date of Filing will be granted and the Motion to Dismiss Issue Four will be denied.

Motion to Limit Issues to Two Years Prior to Filing

District contends that although Student has alleged issues in her complaint dating back to 2005, Student’s issues for hearing are limited to those dating back to January 31, 2009, two years prior to the date she filed her current complaint. As discussed below, District’s Motion will be granted.

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, 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), 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.

Here, Student's complaint on its face alleges no facts showing that an exception to the statute of limitations applies. In support of its Motion, District has also demonstrated that Student had filed for a due process hearing in May of 2005 and August of 2007. In addition, a review of OAH's docket shows that Student filed for due process under the following case numbers in 2007: 2007030328, 2007080201, 2007080649, and 2007080948. Under these circumstances, where Student has not alleged any basis for an exception to the statute of limitations and has repeatedly filed for due process before, it is appropriate to limit the issues to the period from January 31, 2009 through the date of filing. If Student desires to argue that an exception to the statute of limitations applies, she should file a request to amend the complaint to include allegations showing an exception to the two-year statute of limitations applies.

Motion to Dismiss Issue Four

District contends that Issue Four of Student's complaint must be dismissed for lack of jurisdiction because OAH does not have jurisdiction independent of IDEA to enforce settlement agreements. Specifically, District contends that although Student has alleged a denial of FAPE, Student has done so merely to avoid the jurisdictional bar. As discussed below, District's Motion to Dismiss Issue Four must be denied.

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [holding that OAH's predecessor, SEHO, did not have jurisdiction to hear a claim seeking to enforce a SEHO order].) Subsequently, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure. At least one United States District Court has

found that OAH has jurisdiction over issues related to enforcement of a settlement agreement of IDEA claims that was reached outside of mediation. (See *S.L. v. Upland Unified School Dist.* (C.D. Cal. Aug. 24, 2010) CV-08-4936-GAF (“Memorandum and Order Regarding Appeal of Administrative Decision”.)

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 or summary adjudication procedure.

Here, Issue Four on its face alleges a denial of FAPE, which is an issue within OAH’s jurisdiction. To the extent District contends Student’s issue as pleaded is actually a pure enforcement claim, and not a FAPE issue, OAH will not entertain a motion for summary adjudication. Accordingly, the motion to Dismiss Issue Four is denied.

ORDER

1. District’s Motion to Limit Issues to Two Years Prior to the Date of Filing in OAH Case Number 2011020121 is granted. The only issues for hearing are those that occurred between January 31, 2009 and the date of filing. If Student wants to raise issues that occurred prior to January 31, 2009, she must seek leave to amend her complaint to allege specific factual allegations that if true would demonstrate that an exception to the two-year statute of limitations applies.

2. District’s Motion to Dismiss Issue Four for lack of jurisdiction is denied.

Dated: March 29, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings