

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011061433

ORDER PARTIALLY GRANTING
MOTION TO DISMISS

On July 5, 2011, District filed a motion to dismiss. Student did not file a response. District’s motion seeks to dismiss Student’s claim that District violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq., and any claims that fall outside of the two-year statute of limitations. For the reasons discussed below, the motion is granted in part and denied in part.

APPLICABLE LAW

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.

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.) 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.)

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).) However, 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.

DISCUSSION

Here, Student alleges in his June 29, 2011 complaint that District failed to address Student's disabilities by failing to comply with section 504, and that District violated its child find obligations under IDEA, including by failing to assess Student in order to determine eligibility for special education services. As a remedy, Student seeks an order compelling District to assess Student for eligibility and for compensatory education. He does not seek any specific remedy associated with a section 504 violation.

District's motion will be granted to the extent the complaint seeks a finding that District violated section 504, which is outside of OAH's jurisdiction.

However, District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Whether some portion of Student's claims are subject to the statute of limitations requires evidentiary findings by the hearing officer and is therefore not appropriate for a motion to dismiss. Accordingly, the motion to dismiss as to claims that may fall outside of the statute of limitations will be denied.

ORDER

1. District's motion to dismiss Student's Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) claim is granted.
2. District's motion to dismiss Student's claims on the ground that they are barred by the statute of limitations is denied.
3. The matter will proceed on the remaining issues.
4. All dates currently set in this matter are confirmed.

Dated: July 14, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings