

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH CASE NO. 2011081122

ORDER PARTIALLY GRANTING
MOTION TO DISMISS

On August 29, 2011, District filed a Motion to dismiss issues barred by the statute of limitations and outside of OAH’s jurisdiction. Student filed an opposition on September 2, 2011. District filed a reply on September 7, 2011. For the reasons discussed below, the motion is partially granted.

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 a 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

Section 504 Claims

Student's complaint alleges that District denied Student a FAPE by violating Section 504 of the Rehabilitation Act of 1973. District contends that OAH has no jurisdiction to hear such claims. Student argues in its opposition to District's motion that the definition of FAPE is the same or similar under both IDEA, California law, and Section 504, and therefore OAH has jurisdiction to hear Section 504 claims.

However, aside from citing to a footnote in an unpublished decision, Student has offered no persuasive authority that OAH has jurisdiction to hear Section 504 claims. To the contrary, it is well-established that absent a statutory mandate, OAH's jurisdiction is limited to claims arising out of violations of IDEA only, as discussed above. Therefore, District's motion to dismiss will be granted to the extent the complaint seeks a finding that District violated section 504.

Statute of Limitations

District seeks an order dismissing all issues relating to claims prior to August 25, 2009. 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 or not some portion of Student's claims is subject to the statute of limitations, or may fall within the exceptions, 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. District may assert the statute of limitations as a defense at hearing instead.

ORDER

1. District's motion to dismiss Student's claims arising out of alleged violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) is granted.
2. District's motion to dismiss claims that may fall outside of the statute of limitations is denied.
3. The matter shall proceed to hearing as scheduled.

IT IS SO ORDERED.

Dated: September 12, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings