

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012060585

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

On June 14, 2012, Student filed a request for a due process proceeding (complaint), naming various parties, including the Los Angeles Unified School District (District) as respondents. All other respondents have been voluntarily dismissed by Student, and District is the sole remaining respondent in this proceeding.

On September 25, 2012, District filed a motion to dismiss Student's complaint on the grounds that it fails to raise an issue against District under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) On September 28, 2012, Student filed opposition to District's motion.

On October 1, 2012, the parties presented oral argument on the motion at the prehearing conference (PHC).

APPLICABLE LAW

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 IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

A complaint sufficiently alleges an IDEA claim against a party if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) A complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of

receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

## DISCUSSION AND ORDER

The claims in Student's complaint directed at District, include: (1) whether District denied Student a free appropriate public education (FAPE) for the 2010-2011 school year by failing to offer (a) special education and related services based on peer-reviewed research, (b) trained and qualified one-on-one aide support, (c) appropriate speech and language services, and (d) appropriate social skills support; and (2) whether District violated the procedural requirements of the IDEA and deprived Student of a FAPE by (a) failing to provide Student's parents with prior written notice of its refusal, on Parents' request during the 2009-2010 school year, to provide Student with (i) a highly trained and highly qualified one-on-one behavioral aide to implement applied behavior analysis (ABA) methodology throughout the school day to address Student's behaviors, (i) social skills training, and (iii) speech and language services, and (b) failing to respond to a request, dated January 27, 2012, for copies of Student's educational records.

District contends that the allegation in the complaint that Student attended District schools through the end of the 2009-2010 school year bars any claim against District regarding the offer or provision of a FAPE for the 2010-2011 school year, and that the two-year statute of limitations bars any claims arising before June 14, 2010. Student contends that District improperly seeks summary judgment, that District was required to offer Student a FAPE for the 2010-2011 school year even if it was not required to provide a FAPE for that year, that whether appropriate extended school year (ESY) services were offered for 2009-2010 extended school year is encompassed in Issue (1), and that a determination of whether District's failure to provide copies of educational records deprived Student of a FAPE by depriving his parents of a meaningful opportunity to participate in the individualized education program (IEP) process is within OAH's jurisdiction.

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. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. A factual inquiry will be required into whether, and to what extent, District is responsible for an offer of FAPE that was arguably superseded by the offer and provision of FAPE by the school district of attendance for 2010-2011, and into how the statute of limitations applies to the facts regarding procedural issues presented in the complaint.

Student's argument that a reference to the 2010-2011 "school year" encompasses a claim for either (i) calendar year 2010 or (ii) summer instruction in 2009-2010 is unpersuasive. ESY is by definition the "extension" of the prior school year. (see 34 C.F.R. § 300.309(a); *N.B. v. Hellgate Elementary School District* (9th Cir. 2008) 541 F.3d 1202, 1211-1212.) The plain meaning of the term "2010-2011 school year," which was expressly

used by Student in the complaint, can only be read to refer to an academic program and not a calendar year or extension of the 2009-2010 school year.

Lastly, Student's claims are squarely within OAH jurisdiction, and OAH is required to treat the allegations of an IDEA violation as sufficient against District because District did not file a timely notice of insufficiency.

District's motion to dismiss Student's complaint is denied.

IT IS SO ORDERED.

Dated: October 02, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings