

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. 2015050313

ORDER DENYING MOTION TO
DISMISS

On Monday, April 27, 2015, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Los Angeles Unified School District.

On September 1, 2015, District filed a Motion to Dismiss issue one of the Prehearing Conference Order. On September 3, 2015, Student filed opposition to District's motion.

For the reasons set forth below, District's Motion to Dismiss is denied.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," 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 statute of limitations for due process complaints in California is two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).)

When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. (Govt. Code, § 6707.) The time in which any act provided by the Education Code is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded. (Ed. Code, § 9.) In California, “holidays” include Sundays. (Govt. Code, § 6700, subd. (a)(1).) Code of Civil Procedure section 12a(a) provides that “[i]f the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.” This section also defines “holiday” to include Sundays. (Govt. Code, §§ 135, 6700.) Government Code section 12a applies to “all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this [Government Code] or any other code or statute, ordinance, rule, or regulation.” (Govt. Code, §12a(b).)

Student’s complaint alleges that District denied Student a FAPE when it made multiple offers of placement in the April 26, 2013 individualized education program which resulted in Student’s inappropriate placement. At the prehearing conference on August 31, 2015, this issue was designated as the first issue for hearing.

District’s motion seeks dismissal of Student’s first issue on the grounds that Student filed his complaint one day after the expiration of the two-year statute of limitations. Specifically, District argues that the deadline for filing a challenge to the April 26, 2013 IEP was Sunday, April 26, 2015, but Student’s complaint was not filed until Monday, April 27, 2015. District claims there is no extension of the time period when the last day to file a due process complaint falls on a Sunday, and that Sundays are not holidays because they are not defined as school holidays under Education Code sections 37220 through 37223.

Relying on Government Code sections 6700 et seq., Education Code section 9 and California Code of Civil Procedure section 12a, Student maintains his complaint was timely filed. Student argues that because the last day to file his complaint fell on a Sunday, which is defined as holiday under Government Code sections 135 and 6700 subdivision (a)(1), Student had until the following business day, or April 27, 2015, in which to file his complaint with OAH.

Here, Student’s complaint as to issue one was timely filed. Although Student filed his complaint more than two years after the April 26, 2013 IEP at issue, because the last day of the two-year period fell on a Sunday, Student was permitted to file his complaint on the next business day. To hold otherwise would violate the two-year statute of limitations period mandated by Education Code section 56505, subdivision (1), because it would reduce Student’s time for filing his complaint to a period less than two years. Petitioners are entitled to the full statutory period in which to bring an action. Furthermore, Education Code sections 37220, et seq., relied upon by District pertain to the dates schools may be closed, not the calculation of filing deadlines which are specifically addressed in the authorities cited by Student. Accordingly, District’s motion to dismiss is denied.

IT IS SO ORDERED.

DATE: September 4, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings