

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014040553

ORDER PARTIALLY GRANTING
AND PARTIALLY DENYING
MOTION TO DISMISS

On April 10, 2014, Student filed a Due Process Hearing Request (complaint) naming Orange Unified School District (District). The complaint alleges that District failed to identify Student as a child with a disability who should have been assessed for eligibility for special education and related services, failed to appropriately assess Student in all areas of suspected disability, failed to develop an appropriate individualized educational program (IEP) with goals, placement, and services designed to meet Student's unique needs, and failed to include Student's parents in the IEP process, all in violation of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title 42 United States Code section 1983. The complaint also alleges that District failed to inform Student's parents of their rights under the IDEA and that the two year statute of limitations should therefore not bar Student's claims, which include allegations of actions and inactions of District dating back to January 2010.

On April 22, 2014, Orange Unified School District (District) filed a Motion to Dismiss (Motion), seeking to dismiss Student's Sections 504 and 1983 claims and to dismiss Student's claims beyond the two year statute of limitations. In support of its Motion, District asserts that it provided Student's parents with information about their parental rights and procedural safeguards, as evidenced by Student's father's signature on a form acknowledging receipt. On April 28, 2014, Student filed an opposition.

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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on either Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code.

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); 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 (l), 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.

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. District contends Student's allegation that District failed to provide Student's parents with notice of their rights is demonstrably false based on Student's father's signature on a form acknowledging receipt of notice of his rights. Although part of District's Motion seeks to dismiss matters that are facially outside of OAH jurisdiction, the Motion also seeks a ruling on the factual merits relating to the statute of limitations exception. Accordingly, the motion is granted with respect to Student's claims under Sections 504 and 1983 for lack of jurisdiction, but is denied with respect to the issue of the statute of limitations. All dates currently set in this matter are confirmed.

ORDER

1. District's Motion to Dismiss is granted as to the claims under Section 504 of the Rehabilitation Act of 1973 and Section 1983 of Title 42 United States Code.

2. District's Motion to Dismiss claims based on the statute of limitations is denied without prejudice to District raising a factual defense at the hearing.

IT IS SO ORDERED.

DATE: April 29, 2014

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings