

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REDWOOD CITY SCHOOL DISTRICT  
AND BELMONT-REDWOOD SHORES  
SCHOOL DISTRICT.

OAH Case No. 2015070264

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

PROCEDURAL HISTORY

On June 13, 2015, Student filed a Request for Due Process Hearing (complaint), naming Redwood City School District and Belmont-Redwood Shores School District as the respondents.

On August 4, 2015, Belmont-Redwood Shores filed a Motion to Dismiss, asserting that it is an improper party to Student's due process case on the basis that Student never resided within the boundaries of Belmont-Redwood Shores; that Office of Administrative Hearings lacks jurisdiction; and that claims prior to June 12, 2013 are barred by the statute of limitations.

On August 7, 2015, Redwood City filed an opposition to Belmont-Redwood Shores' motion to dismiss. On August 12, 2015, Belmont-Redwood Shores filed a reply to Redwood City's opposition.

On August 11, 2015, Student's request for an extension of time to file his response to Belmont-Redwood Shore's motion was granted. On August 24, 2015, Student's timely opposition to the motion to dismiss was filed. Student's opposition indicated that Student is not asserting any allegations earlier than June 13, 2013.

Student's complaint alleges six claims against Belmont-Redwood Shores. None of Student's six claims identifies the alleged time period for the alleged violations. However, in the body of Student's complaint, Student indicates that Parents initially made contact with Belmont-Redwood Shores in April 2013.

## FACTS

The follow information was provided in Student' complaint. Student was initially found eligible for special education while living in New York. Student's family then moved to California. During the summer of 2013, Student was parentally-placed at Charles Armstrong School, a private school located in Belmont, California. As of the date of Student's response to Belmont-Redwood Shores' motion, Student remained parentally-placed at Charles Armstrong.

Student's allegations against Belmont-Redwood Shores in his complaint are as follows<sup>1</sup>:

1. Belmont-Redwood Shores has procedurally violated Student's right to a free appropriate education by utilizing dilatory tactics, which repeatedly obstructed Parents' ability to secure a FAPE for Student.
2. Belmont-Redwood Shores failed to formulate an individualized service plan<sup>2</sup> immediately and to ensure that Redwood City made an offer of FAPE under the Individuals with Disabilities Education Act (IDEA), as well as, under the San Mateo Memorandum of Understanding.
3. Belmont-Redwood Shores denied Student access to an immediate FAPE by ordering Redwood City to conduct a prolonged assessment per its Child Find obligations.
4. Belmont-Redwood Shores procedurally violated Student's right to a FAPE by not informing Parents of the existence of the Memorandum of Understanding in San Mateo County, which would have saved Parents much time and effort while they waited for Student to be assessed.
5. Belmont-Redwood Shores procedurally violated the IDEA by furnishing Student with insufficient prior written notices.
6. Belmont-Redwood Shores procedurally violated the IDEA by failing to obtain and transfer Student's records, including Student's existing New York individualized education plan (IEP) and evaluations.<sup>3</sup>

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<sup>1</sup> The issues listed below have been slightly reworded, but have not been substantively changed.

<sup>2</sup> An individualized service plan is a written document which delineates the services a student, who has been found eligible for special education, may receive when the student attends a parentally-placed private school.

<sup>3</sup> Student also named Redwood City as a party in this allegation.

## DISCUSSION

The purpose of the 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)). 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.)

### *Statute of Limitations*

The statute of limitations for due process complaints is two years. (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. Student has clarified that he is limiting allegations against Redwood-Shores to the time period beginning June 13, 2013. Therefore, the motion to dismiss based upon the statute of limitations is denied.

### *Individualized Service Plan*

“No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” (34 C.F.R. § 300.137(a)(2006); see also 20 U.S.C. § 1412(a)(10)(A); Ed. Code, §§ 56170, 56174.5, subd. (b).)

Instead, under the Individuals with Disability Education Act, local educational agencies “only have an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the local educational agency has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities.” (71 Fed.Reg.46595 (Aug. 14, 2006); see also 20 U.S.C. § 1412(a)(10)(A)(i)(I); 34 C.F.R. §§ 300.132(a), 300.137(b)) The school district or local educational agency where the private school is located has the responsibility for providing the parentally-placed private school child with such equitable services. (34 C.F.R. § 300.133 (2006); Ed. Code, § 56172, subd. (a).) The responsible school district must provide equitable services to a parentally-placed private school child through a service plan. (34 C.F.R. § 300.138(b) (2006); Ed. Code, § 174.5, subd. (b).)

A dispute regarding the “formulation” of an individualized service plan that provides equitable services to a parentally- placed private school child is properly the subject of State complaint procedures. (34 C.F.R. § 300.140(c)(2006).) Such a dispute is not governed by the due process provisions that apply with regard to disagreements regarding the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to such child. (34 C.F.R. § 300.140(a)(2006).) Accordingly, OAH does not have the authority to hear and decide allegations where a parent raises a dispute regarding the failure to create service plan for a parentally-placed private school child. (Ed. Code, § 56501, subd. (a); *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Accordingly, Student’s Issue 2, as referenced above, is dismissed.

### *Residency*

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, Belmont-Redwood Shores’ motion to dismiss it as a party is based on the argument that OAH does not have jurisdiction to decide Student’s allegations because Student was never resided within the school district’s boundaries. Belmont-Redwood Shores’ jurisdictional argument is tantamount to a motion for summary judgment, seeking a ruling on the merits. The allegations pled against Belmont-Redwood Shores are not matters that are facially outside of OAH jurisdiction, therefore, Belmont-Shores motion to dismiss the remainder of the issues is denied. All dates currently set in this matter are confirmed.

### ORDER

1. Student’s Issue 2 is dismissed.
2. All dates remain on calendar with no changes.

DATE: September 21, 2015

/s/

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B. ANDREA MILES  
Administrative Law Judge  
Office of Administrative Hearings