

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015110389

ORDER GRANTING MOTION TO  
DISMISS ISSUE TWO AND  
ALLEGATIONS OUTSIDE OF OAH  
JURISDICTION

On November 4, 2015, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Murrieta Valley Unified School District. On November 11, 2015, District filed a Motion to Dismiss Issue, alleging that Student's issue two was barred by the two-year statute of limitations. District also seeks to dismiss all allegations that fall outside the scope of OAH's jurisdiction.

On November 12, 2015, Student filed an opposition. District filed a reply brief on November 13, 2015.

APPLICABLE LAW

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).) 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.)

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 Americans with Disabilities Act, or Section 1983 of title 42 United States Code.

The statute of limitations for due process complaints 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.

## DISCUSSION

### *Non-IDEA Claims*

OAH does not have jurisdiction over claims brought under Section 504, the ADA, or Section 1983. District's motion to dismiss Student's non-IDEA claims for lack of jurisdiction is granted.

### *IDEA Claims*

Student's second issue involves whether District's October 21, 2013 IEP provided her with a FAPE, and specifies allegations how this IEP failed to address Student's unique needs to prevent her from making meaningful education progress. District correctly asserts that Student's claim regarding the October 21, 2013 IEP, is barred by the two-year statute of limitations, because Student submitted his complaint on November 4, 2015.

Student argues that issue two, which alleges that she was denied a FAPE for the 2013-2014 school year because her education program provided only de minimis educational benefit, continues past the October 21, 2013 IEP, during a time which falls within the statute of limitations. However, Student's issue two does not allege that District failed to implement Student's October 21, 2013 IEP, or that District should have called an IEP team meeting to amend Student's IEP at any time during the two-year statute of limitations.<sup>1</sup> A parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations in the absence of an implementation issue, although the IEP document was in effect within the statute of limitations. Special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (*J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269.) Student is therefore barred from challenging District's offer of FAPE included in the October 21, 2013 IEP.

Finally, Student's complaint and briefs in opposition to District's motion to dismiss do not allege any exception to the two-year statute of limitations. District's request to dismiss Student's issue two is therefore granted.

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<sup>1</sup> Student properly alleges in issue one of her complaint that District should have called an addendum IEP team meeting following the October 21, 2013 IEP, due to a lack of anticipated progress.

ORDER

1. District's motion to dismiss Student's non-IDEA claims is granted.
2. District's motion to dismiss Student's issue two is granted.
3. The matter shall proceed to hearing on the remaining issue as scheduled.

DATE: November 17, 2015

/s/

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PAUL H. KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings