

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLUMAS UNIFIED SCHOOL DISTRICT,  
PLUMAS COUNTY OFFICE OF  
EDUCATION AND PLUMAS SPECIAL  
EDUCATION LOCAL PLANNING AREA.

OAH CASE NO. 2011120543

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS CLAIMS BEFORE  
DECEMBER 16, 2008.

On December 16, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Plumas Unified School District (District). On December 30, 2011, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) granted the District's NOI on January 4, 2012, and gave Student 14 days to file an amended complaint.

Student filed an amended complaint January 18, 2012,<sup>2</sup> and a corrected amended complaint on the same day, which was substantially similar to the originally received amended complaint, against the District, Plumas County Office of Education (PCOE) and Plumas Special Education Local Planning Area (SELPA). On January 31, 2012, the District, PCOE and SELPA timely filed a Notice of Insufficiency (NOI) as to Student's amended complaint. On February 2, 2012, OAH issued an order that found Issues 3, 4 and 6 of Student's amended complaint to be sufficient, and Issues 1, 2, 5 and 7 to be insufficient.

On January 31, 2012, the District, PCOE and SELPA filed a motion to dismiss Student's claims that occurred before January 18, 2010, for being outside the two-year statute of limitations. On February 2, 2012, Student filed an opposition. Because Issues 1, 2, 5 and 7 were insufficient, this order only addresses Issues 3, 4 and 6.

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> OAH received the completed amended complaint after 5:00 p.m. on January 17, 2012, so it is deemed filed as of the next business day.

## APPLICABLE LAW

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); 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 (1), 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

Student is correct that the two-year statute of limitations commenced when he filed the original complaint on December 16, 2011, and not when he filed the amended complaint in January 2012. The District, PCOE and SELPA provide no legal support that the two-year statute of limitations runs from the date of the amended complaint, January 18, 2012. Therefore, the analysis of this order is whether the two-year statute of limitations bars any of Student's three outstanding issues that occurred before December 16, 2009.

Issue 3 contains allegations that numerous individualized education programs (IEPs) from October 2008 through October 2011, failed to provide Student with a free appropriate public education (FAPE). In Issue 4, Student contends that the District, PCOE and SELPA denied him a FAPE in the October/November 2008 and May 2010 IEP by failing to develop an individualized transition plan. Issue 6 involves whether the District, denied Student a FAPE by failing to implement the January 6, 2010 settlement agreement.

Student contends that he should be permitted to prosecute claims that occurred before December 16, 2009, because the District's conduct in failing to implement the parties' January 6, 2010 settlement agreement for OAH Case Nos. 2009100925 and 2009110449, attached to the amended complaint. Student asserts that the District's conduct prevented him from raising these issues as the District mistakenly assured Student and Parent that the issues had been resolved with the settlement agreement. PCOE and SELPA were not parties to the actions that resulted in the January 6, 2010 settlement agreement. If the District misrepresented that it had resolved the claims in Issues 3 and 4 through the settlement agreement, Student could establish that the two-year statute of limitations is tolled. Accordingly, a triable issue of fact for hearing exists if Student was prevented from filing a hearing request because the District represented that it had resolved the problems with the settlement agreement, but then it failed to implement the settlement agreement. However, because PCOE and SELPA were not parties to the settlement agreement, and Student does not contend that they made any specified misrepresentations that prevented the filing of a hearing request, Student's claims that occurred before December 16, 2009, are dismissed against PCOE and SELPA.

ORDER

1. The District's Motion to Dismiss is denied.
2. PCOE's and SELPA's Motion to Dismiss claims before December 16, 2009, is granted.

Dated: February 3, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings