

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BERRYESSA UNION SCHOOL
DISTRICT.

OAH CASE NO. 2012060201

ORDER GRANTING MOTION TO
DISMISS AND GRANTING LEAVE TO
AMEND COMPLAINT

On May 31, 2012, Student filed a Due Process Hearing Request (complaint) against the Berryessa Union School District (District).

On June 7, 2012, District filed a Motion to Dismiss Student's Issues 1(a) through 1(d) based on the applicable two-year statute of limitations. On June 12, 2012, Student filed an Opposition to District's Motion to Dismiss (Opposition) acknowledging the existence of some defects in the complaint, particularly its failure to allege the date of Student's initial assessment report. Student sought leave to amend to clarify the gravamen and timeliness of Issues 1(a) through 1(d). Although Student did not attach a copy of the proposed amended complaint, he explained his proposed amendments in the Opposition. On June 13, 2012, District filed a Reply in Support of Motion to Dismiss (Reply) stating that although it did not oppose Student's Motion for Leave to Amend, it was still entitled to dismissal of Issues 1(a) through 1(d), based upon the complaint "as currently written."

APPLICABLE LAW

The Individuals with Disabilities Education Act allows states to determine the time by which a request for due process hearing must be filed. (20 U.S.C. § 1415(b)(6)(B).) California law provides that a request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (1); see, *Miller, etc. v. San Mateo-Foster City Unified Sch. Dist.* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860-61.)¹ However, title 20 United States Code section 1415(f)(3)(D) and Education Code section

¹ In 2006, the Legislature amended the statute to reduce the existing three-year limitations period to two years. The change went into effect on October 9, 2006, and affected all requests for due process hearing filed after that date. (See, Ed. Code, § 56505, subd. (1)(text of section operative until October 9, 2006).)

56505, subdivision (l), provide exceptions to the statute of limitations. Exceptions to the statute exist where 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 due to the local educational agency's withholding of information from the parent that was required to be provided to the parent.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(f)(1)(B).)

DISCUSSION

Issue 1(a)

Student's Issue 1(a) alleges that "[t]he District failed to timely provide a proposed assessment plan in response to the parental referral for assessment," and that "District failed to act in a timely manner to assess Student." District contends that Issue 1(a) should be dismissed because it is expressly based on Student's parents' (Parents) March 18, 2010 referral and District's May 12, 2010 initial assessment plan and assessment. Because Student filed his complaint on May 31, 2012, District asserts this claim is barred by the two-year statute of limitations.

Student's Opposition did not raise any exception to the statute of limitations. Instead, Student explains that Issue 1(a) "should be read to say that the District failed to comprehensively assess Student...until [further] testing [recommended in the June 1, 2010 initial assessment report] was completed and reported at the September 2010 IEP meeting."

According to Student's complaint, Parents verbally referred him for a special education assessment on March 18, 2010. In addition, Student claims the initial assessment was on May 12, 2010, at the same time as an assessment plan was offered. These events are beyond the statute of limitations cut-off date of May 31, 2010. Based on the alleged timelines, this claim, as written, is barred by the statute of limitation. Thus, District's motion to dismiss Issue 1(a) is granted.

Student filed his request to amend the complaint more than five days prior to the hearing date. Student's proposed amendment to Issue 1(a) is supported by facts alleged elsewhere in the complaint. For example, Student claims District's May 12, 2010 initial assessment of Student was rushed and incomplete. The appropriateness of this assessment is beyond the statute of limitations unless Parents did not know or have reason to know of the facts underlying their claim until after May 31, 2010. If, as Student represents, District issued its initial assessment report on Student on June 1, 2010, then Parents may not have discovered the assessment's alleged inadequacies before that date. Because the statute of limitations runs from the date

Parents knew or had reason to know of the facts underlying the basis for the complaint, the statute of limitations may not bar a claim based on alleged inadequacies of District's initial assessment of Student. Student should therefore be provided an opportunity to amend his complaint to articulate a problem within the statute of limitations. While Student did not submit a proposed amended complaint, he described his proposed amended issues sufficiently to give District notice of them and District does not oppose the motion to amend. Accordingly, Student's motion to amend is granted.

Issues 1(b) through 1(d)

District similarly contends that the statute of limitation bars Issues 1(b) through 1(d) because they are based on the alleged May 12, 2010 initial assessment date rather than the June 1, 2010 initial assessment report date. District's objection is well taken. Thus, District's motion to dismiss Issues 1(b) through 1(d) is granted for the same reasons as found above for Issue 1(a).

However, if as Student represents, District issued its initial assessment report on June 1, 2010, then this could be the probative date at which both District and Parents knew of the assessment's findings, and recommendations for further assessment. Thus, Student should be given the opportunity to amend these issues to show how they fall within the two-year statute of limitations. Therefore, Student's timely and unopposed request for leave to amend is granted.

ORDER

1. District's motion to dismiss Issues 1(a) through 1(d) is granted.
2. Student may file an amended complaint within 14 days of the date of this order. If he does not, the matter will proceed on the currently scheduled dates as to Issues 2 and 3 in his original complaint only.
3. Upon the filing of the amended complaint, all applicable timelines shall be reset, and the Office of Administrative Hearings will issue a scheduling order with the new dates.

Dated: June 18, 2012

/s/

JOAN HERRINGTON
Administrative Law Judge
Office of Administrative Hearings