

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060835

ORDER GRANTING DISTRICT'S
MOTION TO PARTIALLY DISMISS
STUDENT'S COMPLAINT

On June 19, 2012, Student, through his parent, filed a Request for Due Process Hearing (complaint), naming the Burbank Unified School District (District) as the respondent.

On June 29, 2012, the District filed a motion to dismiss those portions of Student's complaint that allege claims arising outside the applicable two-year statute of limitations. On July 5, 2012, Student filed a response to the District's motion.

APPLICABLE LAW

The statute of limitations in California is two-years, effective October 9, 2006, when California amended the statute of limitations in due process matters to be 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

In his response to the District's motion to dismiss, Student states that he is requesting that the statute of limitations start on May 18, 2010.

Student first reiterates issue four of his complaint. Student states that his attorney requested the District to provide Student's educational records on May 18, 2012, but that the District failed to provide them within the five-day statutory time frame. Student alleges that the District did not provide the records until June 7, 2012. This issue falls within the applicable two-year statute of limitations; it is therefore unclear why Student references it in

his response to the District's motion to dismiss issues arising prior to June 19, 2010, when the statute began to run.

In issue one of his complaint, Student alleges that the District denied him a free appropriate public education (FAPE) because it failed to draft appropriate goals in his individualized education programs that would address his behavior and allow him to access his education. In issue two, Student alleges that the District failed to assess Student in all areas of disability. In issue three, Student contends that the District denied him a FAPE from some undetermined time in 2010 by: failing to provide prior written notice to Student's parent of its refusal to assess Student in all areas of suspected disability; failing to design a behavior intervention plan or behavior support plan for Student; and by failing to provide Student with a one on one aide. In his response to the District's motion to dismiss, Student clarifies that he is alleging these claims as of May 18, 2010. Student requests that the statute of limitations be extended to that date for this case.

Student filed his complaint with the Office of Administrative Hearings on June 19, 2012. The two-year statute of limitations therefore applies to any claim that Student has that might have arisen prior to June 19, 2010. Neither Student's due process complaint nor his response to the District's motion to dismiss contain any justification for permitting claims that arose prior to June 19, 2010. In his response to the District's motion, Student requests that the statute of limitations begin on May 18, 2010. However, Student does not allege that either of the exceptions to the statute of limitations applies to him and provides no facts that would support finding that an exception exists. The mere fact that Student wants to extend the statute because he has claims that arose prior to June 19, 2010, is not justification for finding that an exception exists.

The District's motion to dismiss all of Student's claims which arose prior to June 19, 2010, is therefore granted. Issues one, two, and three of Student's due process complaint are hereby amended to state claims that arose on or after June 19, 2010.

IT IS SO ORDERED.

Dated: July 10, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings