

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013040892

ORDER GRANTING MOTION TO
DISMISS ALL CLAIMS PRIOR TO
APRIL 18, 2011

On April 18, 2013, Parents on behalf of Student (Student) filed a Due Process Request (complaint) naming the San Jose Unified School District (District) as respondent. The Complaint alleges that the District denied Student a free appropriate public education (FAPE).

On April 29, 2013, the District filed a motion to dismiss all claims beyond April 18, 2011. Student has not responded to the District's motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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.)

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now 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

In his complaint, Student alleges three issues. Issue "A" alleges that the District failed to implement the April 18, 2011 plus "all IEPs (Individualized Education Programs) prior to and including the IEP of April 18, 2011." Issue "B" alleges that the District violated the IDEA when it failed to offer Student a free appropriate public education (FAPE) during his tenure at the Bret Harte Middle School, or at the April 18, 2011 IEP or in the District's Prior Written Notice of June 2, 2011. Issue "C" alleges a procedural violation of the IDEA when a general education failed to attend the April 18, 2011 IEP meeting.

Student alleges that he has attended the Bret Harte Middle School since Fall of 2009. Thus, Issues "A" and "B" include actions of the District beyond the two year limitations period. Student has failed to allege in his complaint any facts to support an exception to the applicable statute of limitations. Thus, Student is barred from alleging any IDEA violations which may have occurred prior to April 18, 2011. As to Issue "C," Student's allegation falls within the limitations period.

ORDER

1. The District's Motion to Dismiss as to dismiss all claims beyond April 18, 2011, the date of filing the complaint, is GRANTED.
2. The matter will proceed as scheduled as to all claims made since December 6, 2009.

IT IS SO ORDERED.

Dated: May 06, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings