

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015020949

ORDER GRANTING MOTION TO
DISMISS CLAIMS OUTSIDE THE
STATUTORY PERIOD

On February 12, 2015, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) naming Mount Diablo Unified School District. On March 30, 2015, Student filed an amended complaint. On April 8, 2015, the Office of Administrative Hearings granted Student's request to amend his complaint.

On April 3, 2015, Mount Diablo filed a Motion to Dismiss Amended Complaint. Mount Diablo's motion is a motion to partially dismiss Student's Issue Number Two to the extent it raises claims outside the statute of limitations.¹ OAH has not received a response from Student.

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.

¹ Mount Diablo filed its Motion to Dismiss after business hours on April 2, 2015. It is deemed filed on the next business day.

DISCUSSION

In Issue Two, Student alleges that from 2011 through the present, Mount Diablo denied him a free appropriate public education when it failed to provide him with adequate physical therapy services and failed to implement his individualized education program with respect to the provision of physical therapy. Mount Diablo correctly points out that because Student's original complaint was filed with OAH on February 12, 2015, the two-year statute of limitations only allows Student to bring claims based on allegations that allegedly arose on or after February 12, 2013, absent an exception. Student does not allege in his complaint that either exception to the statute of limitations applies in this case, nor has Student filed an opposition to Mount Diablo's motion that would place either exception at issue.

Accordingly, Student's claims arising outside of the two-year statutory period are barred by the statute of limitations.

If Student desires to argue that an exception to the statute of limitations applies, he may file a further request to amend the complaint to include allegations showing an exception to the two-year statute of limitations.

ORDER

Mount Diablo's motion to dismiss all allegations of the amended complaint arising prior to February 12, 2013, is granted. The matter will proceed as scheduled as to the remaining issues.

DATE: April 9, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings