

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW-LOS ALTOS UNION  
HIGH SCHOOL DISTRICT AND  
MOUNTAIN VIEW WHISMAN SCHOOL  
DISTRICT.

OAH Case No. 2016040285

ORDER GRANTING MOTION TO  
DISMISS CLAIMS BEFORE  
MARCH 29, 2014

On March 29, 2016, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) naming Mountain View-Los Altos Union High School District and Mountain View Whisman School District. On April 11, 2016, the High School District filed a Motion to Dismiss all of Student's claims arising before March 29, 2014, on the stated basis that any such claims occurred during the 2013-2014 school year, over two years before the complaint was filed, and the complaint did not allege an exception to the statute of limitations. Office of Administrative Hearings has not received a response from Student.

APPLICABLE LAW

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).) The two-year limitations period does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*; 20 U.S.C. § 1415(f)(3)(C)(D).) Invoking the exceptions to the statute of limitations requires a showing that the school district's misrepresentation or withholding of information caused the failure to file the due process complaint on time. Thus, where the evidence shows that the parents were fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those options. (*D.K. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d 233, 246-247.)

## DISCUSSION

Student alleges that Mountain View denied Student a free appropriate public education during the 2013-2104 school year due to Mountain View's failure to:

- a. Offer or provide Student with adequate accommodations;
- b. Offer or provide Student with direct instruction in executive functioning;
- c. Offer or provide Student with measurable goals in all areas of need;
- d. Offer or provide Student adequate counseling services;
- e. Offer or provide adequate behavioral services;
- f. Offer or provide Student individualized intensive instruction in written expression;
- g. Offer or provide Student with adequate assistive technology services, hardware, software, equipment and applications;
- h. Adequately respond to bullying and keep Student safe at school;
- i. Convene an individualized education program team meeting when she was not making anticipated progress;
- j. Develop an appropriate plan to return Student to a school setting;
- k. Provide an adequate educational program;
- l. Make a clear written offer; and,
- m. Offer extended school year placement and services.

In a footnote in Student's complaint, Student alleges that "Student does not bring any claims outside the statute of limitations."

High School District contends that all of Student's claims with respect to matters prior to March 29, 2014, should be dismissed because any such claims arose more than two years before the filing of the complaint, and that Student alleged no facts to show that High School District engaged in any conduct which would toll the statute of limitations.

While Student alleges various procedural and other errors by High School District with respect to the implementation of Student's individualized education program for the school year 2013-2014, such violations in and of themselves, unless directly related to a misrepresentation or withholding of information of the type that could extend the time period, cannot serve to extend the filing period as will be discussed below.

The errors which Student claims occurred in her individualized education program process in the school year 2013-2014 are facts which Student knew, or should have known at that time. Student's complaint alleges no facts which support a finding that any errors in Student's individualized education program were the result of specific misrepresentations by High School District or the withholding of information that it was required to provide to the parent under special education law. Student must allege facts to support the tolling of the statute of limitations, which Student has not done.

Therefore, High School District's motion is granted. All of Student's claims arising prior to March 29, 2014 are dismissed, and matter to proceed on all claims on or after March 29, 2016.

IT IS SO ORDERED.

DATE: April 18, 2016

DocuSigned by:  
*Vernon Boggy*  
CA1B14BFC99447E...

---

VERNON BOGY  
Administrative Law Judge  
Office of Administrative Hearings