

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

PLEASANTON UNIFIED SCHOOL
DISTRICT, ALAMEDA COUNTY OFFICE
OF EDUCATION, and ALAMEDA
COUNTY BEHAVIORAL HEALTH CARE
SERVICES,

Respondents.

OAH CASE NO. N 2007030300

**ORDER GRANTING RESPONDENT
PLEASANTON UNIFIED SCHOOL
DISTRICT'S MOTION TO DISMISS
CLAIMS BEFORE MARCH 8, 2005**

On March 8, 2007, attorney Monica B. Wegner filed a request for a due process hearing (Complaint) with the Office of Administrative Hearings (OAH), on behalf of Petitioner (Student), which named the Pleasanton Unified School District (District), the Alameda County of Education (COE), Alameda County Behavioral Health Care Services (ACBHCS) as Respondents. Student filed an Amended Complaint on April 11, 2007. On June 5, 2007, OAH received from attorney Karen E. Samman, on behalf of the District a Motion to Dismiss issues in the Amended Complaint that occurred before March 8, 2005, for being outside the two-year statute of limitations. On June 8, 2007, OAH received an opposition brief from Student.

APPLICABLE LAW

Education Code section 56505, subdivision (1), establishes a two-year statute of limitations within which to file a Complaint. This time period shall not apply if the parent was prevented from requesting the due process hearing due to either specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

The dispute between the Student and District regards primarily whether the District failed to properly designate Student eligible for special education services as emotionally disturbed, and not as a Student with a specific learning disability. Student asserts that the two-year statute of limitations do not apply to Student's claims before March 8, 2005, because the District withheld information from Mother regarding available services to meet Student's social-emotional needs. Specifically, Student contends that the District did not inform Mother of available counseling services from August 2000 through the March 10, 2005 Individualized Education Program (IEP) meeting despite the District's knowledge of Student's behavioral problems. Additionally, Student contends that issues that occurred before March 8, 2005, are not barred by the statute of limitations as the District's conduct in denying Student a Free and Appropriate Public Education (FAPE) constituting a continuing violation.

The District is required to provide Student with related services to meet Student's needs once Student qualifies for special education services. The District could be required to provide Student with counseling services to meet his social-emotional needs, even if Student is eligible for services under the criteria of specific learning disability. Student alleges in paragraph 7 of the Amended Complaint that a District school psychologist stated that the District has a policy of omitting psychological services as a related service. If Student can prove at hearing that the District has a policy of not providing counseling as a related service, Student's claims before March 8, 2005, related to the District failure to provide counseling services might not be barred by the statute of limitations as the District withheld this information based on a blanket policy.

However, Student's claims that the District denied Student FAPE by not finding Student eligible for special education services under the criteria of emotionally disturbed are barred by the two-year statute of limitations. The Amended Complaint does not contain a comparable contention that the District has a blanket policy of not qualifying student for special education under the criteria of emotionally disturbed. The Amended Complaint does not contend that the District withheld information regarding Student's eligibility, rather that the District erred in not qualifying Student with the criteria of emotionally disturbed.

Student's contention that his claims are not outside the statute of limitations because the District committed a continuing violation is contrary to the intent of the Individuals with Disability Education Improvement Act for a speedy resolution of claims. Student's position would allow petitioners to sit on a continuing claim, which would lead to the harm of the student because the alleged violation was not being remedied in a timely fashion. (*Vandenberg v. Appleton Area School District* (E.D. Wisc. 2003) 252 F. Supp. 2d 786, 789-793.) Therefore, Student's claims that the District failed to properly determine that Student was eligible for special education services under the criteria of emotional disturbed before March 8, 2005, are barred by the statute of limitations.

ORDER

1. The District's Motion to Dismiss Petitioner's Complaint is granted as follows:
 - A. Student's claims that the District failed to properly determine that Student was eligible for special education services under the criteria of emotional disturbed before March 8, 2005, are barred by the statute of limitations and are dismissed.

2. The District's Motion to Dismiss Petitioner's Complaint is denied as follows:
 - A. Student's claims that the District failed to offer counseling as a related services before March 8, 2005, are not barred by the statute of limitations.

DATED: June 11, 2007

PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings