

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009030073

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS

On March 2, 2009, attorney Susan Foley, on behalf of Student, filed a due process hearing request (complaint) against the Morgan Hill Unified School District (District).

On March 27, 2009, attorney Elizabeth A. Estes, on behalf of District, filed a motion to dismiss. Student did not file a response.

APPLICABLE LAW

The statute of limitations for due process complaints in California is two years prior to the date of filing the request for due process. (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.

A school district is required to conduct an IEP meeting for a special education student at least annually "to review the pupil's progress, the [IEP], including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions." (20 U.S.C. § 1414(d)(4)(A)(i); Ed. Code, § 56343, subd. (d).)

DISCUSSION

The District asserts in its motion to dismiss that Student's claims in Issue One are barred by the two-year statute of limitations, and that Student does not state a claim in Issue

Two because the District was not required to hold an Individualized Educational Program (IEP) meeting because Student's parents had unilaterally placed him in a private school.

Student alleges in Issue One that the District's March 2006 annual IEP did not provide Student with a free appropriate public education (FAPE), which caused Student's parents to unilaterally place him in a private school at some time, which is not specified in the complaint, before his next scheduled annual IEP. Student does not allege any facts in the complaint that would toll the two-year statute of limitations. The complaint contains no language providing the District with due process notice of any allegation that the District made specific misrepresentations that it had resolved the problem or that it withheld information required to be provided, which prevented Parents from filing a complaint. Therefore, Student's claims in Issue One are outside the two-year statute of limitations. (*Student v. Pleasanton Unified School District, Alameda County Office Of Education, and Alameda County Behavioral Health Care Services* (2007) OAH Case No. 2007030300.)

Student asserts in Issue Two that the District failed to convene timely annual IEP meetings in March 2008 and 2009. The District asserts that it did not need to convene an annual IEP meeting either year because Student's parents disenrolled him from the District when they placed him in a private school. However, the fact that Student was not enrolled in a District school does not automatically mean that the District was excused from convening an annual IEP meeting. (*Student v. San Mateo Unified High School District and San Mateo County Mental Health* (2008) OAH Case No. 2007110023, pp. 33-34.) Therefore, Student alleges a cognizable claim in Issue Two that the District purportedly denied Student a FAPE by failing to convene timely annual IEP meetings.

ORDER

1. The District's Motion to Dismiss Issue One is granted.
2. The District's Motion to Dismiss Issue Two is denied.

Dated: April 21, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings