BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2011010277 ORDER DENYING MOTION TO DISMISS

On January 10, 2011, Student filed a Request for Due Process Hearing (complaint), naming District as the respondent.

On January 21, 2011, District filed a filed a Motion to Dismiss all claims prior to January 10, 2009, alleging that Student raised claims beyond the statute of limitations, and that the general misrepresentation alleged was not sufficiently pleaded to include them. On January 26, 2011, Student opposed the motion. On February 1, 2011, District replied to the opposition. On February 2, 2011, Student opposed District's reply.

APPLICABLE LAW

The statute of limitations in California was amended, effective October 9, 2006, and is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) 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 the present matter, Student's complaint alleges that during the 2007-2008, 2008-2009, and 2009-2010 school years, District denied Student a FAPE by failing:
to identify and assess Student in all areas of suspected disability; to timely conduct assessments and hold IEP meetings; to offer an appropriate transition plan, which included measurable goals and accurate present levels of performance; and to offer an appropriate placement in the least restrictive setting with supports and services, including a 25 hour per week ABA behavioral program with speech, occupational and physical therapy.

The complaint further alleges that the District misrepresented material terms during the IEP and resolution session process, which justifies extending the statute of limitations to include all claims. Finally, the complaint seeks compensatory education and reimbursement.

District contends that the alleged specific misrepresentation was not about solving the problem forming the basis of the due process hearing request, as required by Education Code section 56505, subdivision (l).

In application of the authority cited above, Student's complaint alleges a general misrepresentation made by the District during IEP and resolution sessions. That allegation is sufficient for the statute of limitation issue to remain in the complaint and proceed to trial.

ORDER

District's Motion to Dismiss all claims prior to January 10, 2009 is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: February 4, 2011

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings