

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RED BLUFF UNION ELEMENTARY
SCHOOL DISTRICT, RED BLUFF UNION
HIGH SCHOOL DISTRICT, ANTELOPE
ELEMENTARY SCHOOL DISTRICT,
TEHAMA COUNTY DEPARTMENT OF
EDUCATION AND TEHAMA COUNTY
MENTAL HEALTH.

OAH CASE NO. 2011031548

ORDER GRANTING TEHAMA
COUNTY DEPARTMENT OF
EDUCATION'S MOTION TO DISMISS
CLAIMS BEFORE MARCH 29, 2009

On March 29, 2011, Student filed a Request for Due Process Hearing (complaint) against the Red Bluff Union Elementary School District, Red Bluff Union High School District, Antelope Elementary School District, Tehama County Department of Education (TCDE) and Tehama County Mental Health. On April 1, 2011, TCDE filed a Motion to Dismiss Student's claims that occurred before March 29, 2009, for being outside the two-year statute of limitations. On April 11, 2011, Student filed a response, contending an exception to the two-year statute of limitations. On April 11, 2011, TCDE filed a reply brief.

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.

Notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process

hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a) (2006).)¹

A school district must provide written notice to the parents of a pupil whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the pupil, or the provision of a free appropriate public education to the pupil. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The notice must contain: 1) a description of the action refused by the agency; 2) an explanation for the refusal, along with a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the refusal; 3) a statement that the parents of a disabled child are entitled to procedural safeguards, with the means by which the parents can obtain a copy of those procedural safeguards; 4) sources of assistance for parents to contact; 5) a description of other options that the IEP team considered, with the reasons those options were rejected; and 6) a description of the factors relevant to the agency's refusal. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b).) A district's failure to provide adequate prior written notice is a procedural violation of the Individuals with Disabilities Education Act.

DISCUSSION

TCDE asserts that Student's claims in the complaint that occurred before March 29, 2009, must be dismissed for being outside the two-year statute of limitations. The complaint alleges that TCDE violated its child find duty to assess Student for special education eligibility because Student attended a charter school operated by TCDE and TCDE should have reasonably suspected that Student needed to be assessed based on Student's conduct and information from Student's parent. Student asserts that the statute of limitations should be tolled because TCDE should have provided Parents with notice of procedural safeguards based on TCDE's knowledge that it should assess Student.

However, Student did not provide sufficient factual or legal support to create a triable issue for hearing that the two-year statute of limitations should be tolled. The declaration attached to Student's opposition brief and the complaint do not establish any triable facts that Parents requested that TCDE assess Student or that TCDE withheld information that it was required to provide. Neither the opposition brief or complaint assert that TCDE informed Parents at any time before March 29, 2009, that Student should be assessed for possible special education eligibility. Further, Student does not provide any legal authority that TCDE needed to provide Parents with any notice of procedural safeguards before March 29, 2009. Therefore, Student did not establish any exception to the two-year statute of limitations as to TCDE, and accordingly all claims in the complaint against TCDE that occurred before March 29, 2009 are barred by the two-year statute of limitations.

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

ORDER

TCDE's Motion to Dismiss to dismiss claims against it that occurred before March 29, 2009 is granted.

Dated: April 18, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings