

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050355

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On May 9, 2011, Student filed a Request for Due Process Hearing (complaint) against the San Juan Unified School District (District). On May 16, 2011, the District filed a Motion to Dismiss Student's claims in Issue One that occurred before May 9, 2009, for being outside the two-year statute of limitations. On May 19, 2011, Student filed an opposition.

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 individualized education program (IEP) team 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 moves to dismiss claims in Issue One of Student's complaint that occurred before May 9, 2011, which consists of Student's claims that the District procedurally and substantively denied Student a free appropriate public education (FAPE) at

the March 12, 2008 IEP team meeting, failed to fully assess Student's speech and language deficits, and did not hold timely IEP team meetings. Student contends that these allegations fall within an exception to the two-year statute of limitations because the District withheld information that it was required to provide regarding placement options for Student and other areas of suspected disability that it needed to assess, and that the failure to hold required IEP team meetings prevented Parent from receiving information that would have led to her to file a request for a due process hearing.

Student asserts that the District withheld from Parent information about the continuum of placement options at the March 12, 2008 IEP team meeting by not informing her of the possibility of placing Student in a day treatment or non-public school program. Student asserts that he established an exception to the two-year statute of limitations because the District was required to discuss at the IEP team meeting the continuum of placement options and withheld this information.

However, Student reads too broadly the exceptions to the two-year statute of limitations as the exceptions are to be interpreted narrowly so that the exceptions do not swallow the rule. (See *El Paso Ind. Sch. Dist. v. Richard R.* (W.D. Tex. 2008) 567 F.Supp.2d 918, 942-943.) The exception for failure to provide parent with required information involves primarily a school district's requirement to provide a parent with notice of procedural rights. (*El Paso Ind. Sch. Dist. v. Richard R.* (W.D. Tex. 2008) 567 F.Supp.2d 943-946.) In this action, Student does not allege that the District did not provide Parent with notice of procedural rights, or otherwise prevented Parent from filing a request for a due process hearing. Accordingly, Student's claims before May 9, 2009, that the District denied Student a FAPE at the March 12, 2008 IEP team meeting are barred by the two-year statute of limitations.

However, Student's claims that the District failed to convene a required IEP team meeting after the completion of the District's speech and language assessment, failure to properly assess Student's speech and language deficits and failure to convene Student's annual IEP team meeting are not barred by the two-year statute of limitations. As to the speech and language assessment, the District is required to convene an IEP team meeting within 60 days of Parent's consent to the assessment,¹ which Student alleges did not occur. Because the District purportedly did not convene the required IEP team meeting to present the findings of the speech and language assessment, the District failed to present Parent with notice of procedural rights which would inform Parent of her right to file a request for a due process hearing as to any IEP proposed by the District based on information in the assessment. Additionally, because the District failed to convene the required IEP meeting to discuss the speech and language assessments, Parent was prevented from discussing the assessment and requesting further assessments.

¹ Education Code, sections 56043, subdivisions (b) and (c), and 56344, subdivision (a).

Additionally, even though Parent, according to the complaint, removed Student from school, the District might still have a legal duty to convene annual IEP team meetings. (*Student v. San Mateo Unified High School District and San Mateo County Mental Health* (2008) Cal.Ofc.Admin.Hrngs. Case No. 2007110023, pp. 33-34.) Because the District purportedly did not convene the required meeting, the District did not inform Parent of her rights, as set forth in the notice of procedural rights. Therefore, Student's claims in Issue One that the District allegedly failed to convene an IEP team meeting to review its speech and language assessment, failure to fully assess Student's speech and language deficits and convene Student's annual IEP team meeting are not barred by the two-year statute of limitations because the District purportedly failed to give Parent information it was required to provide, which prevented Parent from timely filing a due process hearing request.

ORDER

1. The District's motion to dismiss Student's claims in Issue One that occurred before May 9, 2009, that the District denied Student a free appropriate public education at the March 12, 2008 IEP team meeting is granted.

2. The District's motion to dismiss Student's claims in Issue One that the District failed to convene an IEP team meeting to discuss the results of the District's speech and language assessment, failure to fully assess Student's speech and language deficits and failure to convene Student's annual IEP team meeting are denied.

Dated: May 20, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings