

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070523

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On July 15, 2011, Student filed a Request for Due Process Hearing (complaint) against the San Juan Unified School District (District). On July 21, 2011, the District filed a Motion to Dismiss Student's claims that occurred before July 15, 2009, for being outside the two-year statute of limitations. On July 26, 2011, Student filed an opposition.

APPLICABLE LAW

The statute of limitations for due process complaints in California is two years, consistent with federal law. (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.

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,

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

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

Student alleges that the District denied him a free appropriate public education by failing to perform its child find to seek out and assess him as a child who might require special education services and misleading Parents when the District did assess Student. The District seeks an order that dismisses Student's claims that occurred before July 15, 2009, as Student has not established any exception to the two-year statute of limitations. Student asserts that an exception exists as when the District assessed him during the 2003-2004 school year (SY) for special education eligibility, the District presented Parents with misleading information. Additionally, Student contends that Parents requested that the District assess Student in SY 2006-2007 and SY 2008-2009 for special education eligibility, which the District refused to perform and it failed to provide Parents with written notice of why it refused to assess Student.

Regarding Student's contention as to SY 2003-2004, he does not assert in the complaint or opposition brief that the District failed to provide Parents with a copy of their notice of procedural safeguards at the individualized education program (IEP) team meeting in which the District found Student not eligible for special education services. Student does not assert that the District misrepresented information that it resolved the problem that formed the basis of the complaint, Student's eligibility for special education services, which prevented Parents from filing a due process complaint. Therefore, Student did not establish an exception to the two-year statute of limitations for SY 2003-2004.²

As to SY 2007-2008, Student alleges that the District was on notice that it needed to assess Student for special education services based on his lack of progress. However, Student does not allege any exception to the two-year statute of limitation.

² Student does not make any allegations for SY 2004-2005 or SY 2005-2006.

In contrast, for SY 2006-2007 and SY 2008-2009, Student established triable issues for hearing. Student alleges for SY 2006-2007 that Parents requested that the District reassess Student for special education eligibility and that the District did assess Student, but never gave Parents a copy of the assessment report. The complaint allegation infers that the District did not hold an IEP team meeting to discuss the assessment findings, nor provide Parents with written notice why Student was not eligible for special education services. Therefore, Student established an exception for the two-year statute of limitations for SY 2006-2007 because of the District's purported failure to provide Parents with a copy of its assessment and written notice why Student was not eligible for special education services.

For SY 2008-2009, Student asserts that Parents made a request to the District special education coordinator to assess Student. However, the special education coordinator dissuaded Parents from continuing with the assessment process because she informed Parents that it was too late to develop an IEP because Student was in the tenth grade. Because Parents allegedly did not follow through on their assessment request due to the District's purported misrepresentation that it was too late to develop an IEP for Student, an exception to the two-year statute of limitations exists.

Therefore, Student did not establish any exception to the two-year statute of limitations for any claim that occurred before SY 2006-2007 and during SY 2007-2008 as Student did not allege that the District failed to provide the proper written notice or notice of procedural safeguards or that it made misrepresentations that it resolved the problem that prevented Parents from requesting a hearing. However, during SY 2006-2007 and on or after SY 2008-2009, Student established an exception to the two-year statute of limitations based on the District's purported failure to provide Parents with written notice as to why it believed Student not to be eligible for special education services and dissuading Parents from continuing their request for the District to assess Student.

ORDER

1. The District's motion is granted in part as Student's claims that occurred before SY 2006-2007 and during SY 2007-2008 are dismissed.
2. The District's motion to dismiss is denied in part as to Student's claims that occurred during SY 2006-2007 and on or after SY 2008-2009.

Dated: July 27, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings