

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MENIFEE UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2011110338

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On November 7, 2011, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Request (complaint) naming the Meniffee Union Elementary School District (District) as respondent. The complaint contains four issues and factual allegations starting in 2007. The first issue claims that the District failed to meet its child find obligations, while issue three contends that the District failed to offer Student an appropriate educational program to meet her unique needs. Issue two alleges that the District's has failed to appropriately assess Student since November 2009. Issue four alleges that the District has infringed on Student's procedural rights under the Individuals With Disabilities Education Act (IDEA) by failing to provide a copy of Student's educational records pursuant to a request by Student's parent in September 2011.

On November 17, 2011, the District filed with OAH its response to the complaint which included a motion to dismiss claims beyond the statute of limitations. Student has not filed a response to the motion.

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now 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. Here, the complaint fails to allege any facts which would establish an exception to the two year statute of limitations.

Issues two and four allege claims which occurred within two years of the filing of the complaint. Thus, these claims are within the two year limitations period.

Issue one and three allege claims which commenced beyond the two year limitations period but also extend to within the limitations period. Those claims which arose prior to November 7, 2009, are beyond the two year limitations period.

ORDER

District's Motion to Dismiss is granted only as to Student's claims in issues one and three which arose prior to November 7, 2009. Those claims which arose prior to November 7, 2009 are dismissed. District's motion as to issues two and four is denied. The matter should proceed as scheduled.

IT IS SO ORDERED.

Dated: November 28, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings