

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090802

ORDER GRANTING, IN PART,
DISTRICT'S MOTION TO DISMISS
CLAIMS OUTSIDE THE STATUTE OF
LIMITATIONS

On September 24, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming Santa Clara Unified School District (District) as respondent. On October 4, 2012, the District filed a Motion to Dismiss Student's claims outside the two year Statute of Limitations (motion). On October 8, 2012, the District sent a Letter of Clarification extending its definition of issues covered by the Statute of Limitations. Student has filed no response or opposition to the District's motion.

APPLICABLE LAW

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. (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.

DISCUSSION

There is no dispute that the exceptions to the statute of limitations have not been alleged in this matter. Student's Issue One alleges the District denied Student a free appropriate public education (FAPE) by offering and implementing the September 10, 2010 Individualized Education Plan (IEP). Student acknowledges the September 10, 2010 IEP is outside the two year statute of limitations. While Student has filed no response to this motion, it appears that Student is disguising a pre-statute claim that the 2010 IEP constituted a denial of FAPE, as an ongoing claim for denial of FAPE arising within the statute of

limitations. In some instances an allegation of a subsequent violation may be a legitimate pursuit, i.e., a claim that a District *failed to implement* the terms of an IEP developed outside the statute of limitations. In this matter, Student makes no such allegation, and contends that the sheer act of implementing the statutorily barred IEP constitutes a denial of FAPE. Student's claim, however, has left the station so to speak, and Student may not reopen claims directed at the validity of an IEP whose time has passed. As a result, Student's Issue One is dismissed as outside the two year statute of limitations.¹ Student's remaining two claims address issues arising from the February 28, 2011, and January 31, 2012 IEP's, both well within the statute of limitations.

ORDER

1. Santa Clara Unified School District's Motion to Dismiss Student's complaint is granted, in part, as to Issue One.
2. Student's complaint shall proceed as scheduled on the remaining two issues which arose within the statute of limitations.

IT IS SO ORDERED.

Dated: October 09, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

¹ Student, however, is not precluded from evidencing the September 10, 2010 IEP, if relevant, to support subsequent claims of denial of FAPE occurring within the statute of limitations.