

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012090847

ORDER OF DISMISSAL FOLLOWING  
STATUS CONFERENCE AND  
TOLLING STATUTE OF  
LIMITATIONS

The due process hearing request in this matter was filed in September of 2012. By January 25, 2013, the parties informed OAH that they had reached a settlement of the IDEA issues raised and requested that the hearing not proceed in order to obtain school board approval of the settlement terms. Three status conferences were scheduled, with the most recent one occurring on May 8, 2013, before Presiding ALJ Richard T. Breen. Attorney Mark Woodsmall appeared for Student, and attorney Adam Newman appeared for District. The May 8, 2013 status conference was not recorded with permission of the parties.

At the May 8, 2013, status conference, the parties represented that the settlement had yet to be approved because Student, District, and a third party were also in civil litigation in state superior court and that the settlement of this IDEA due process hearing was being settled as part of a global settlement of all claims. The settlement of the IDEA due process claim addressed all of Student's claims regarding denial of a free appropriate public agency. At the time of the status conference, a hearing on approval of a minor's comprise with the third party was scheduled to be held in July of 2013, but neither party could be certain when the global settlement would ultimately be signed by the third party, such that the IDEA settlement could be presented to the school board as part of the global settlement.

Although Student's counsel represented that he was prepared for hearing, the parties agreed that under the circumstances, it was not in Student's or District's interest to do so and that the parties wished to preserve the settlement. The parties agreed that the rights of both Student and District would be preserved if this matter was dismissed without prejudice with an order that expressly addressed the statute of limitations consequences of dismissal, in the possible, but unlikely, event that the global settlement is not executed and approved by the District's Board.

A request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, sub. (I).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) Specific misrepresentations by the local educational agency that it had solved the problem forming

the basis of the due process hearing request; or 2) The withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*, see 20 U.S.C. § 1415(f)(3)(D).) Here, as of the date of the status conference, all indications are that both parties are acting in good faith to achieve a settlement in their mutual interests. However, in the event the IDEA settlement is ultimately not approved by the District's board, the circumstances would meet the first exception to the statute of limitations, i.e., that even though not intended to be deceptive or for an improper purpose, District had made specific misrepresentations in the settlement agreement that it had solved the problem underlying the due process hearing complaint. Thus, in the event Student needs to refile the due process hearing request on the same issues for the same time periods, the statute of limitations will be tolled.

Accordingly, this matter is ordered dismissed without prejudice to Student refiling the same complaint if for some reason the global settlement is not finalized and/or approved by District's board. In that event, OAH will construe the statute of limitations as having been tolled from the date of filing in this case, such that in the event of refiling, Student's claims will go back two years from the date of filing of the due process hearing request in this matter.

IT IS SO ORDERED.

Dated: May 10, 2013

/s/

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RICHARD T. BREEN  
Presiding Administrative Law Judge  
Office of Administrative Hearings