

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090803

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS, IN PART

On September 24, 2013, Student filed a Request for Due Process Hearing (complaint), naming Montebello Unified School District as the respondent (District).

On October 9, 2013, Respondent filed a Motion to Dismiss portions of Student's complaint, alleging that Student states facts and conduct in support of assertions that District denied Student a free appropriate public education which predate the applicable two-year limitation. OAH received no response from Student to District's motion.

APPLICABLE LAW

The statute of limitations 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.

DISCUSSION

District's motion generally asserts that "portions of the Complaint improperly exceed the applicable statute of limitations" which "improperly addresses and incorporates alleged actions or omissions by District prior to the statutory time period, i.e., April 2011 through September 2011." District therefore asks that those "portions" of the complaint be "barred as his complaint raises issues that are outside of the statute of limitations, without raising a valid exception . . ." District does not identify the specific allegations or portions which it wants dismissed.

Student asserts three issues in his complaint. Issue One contends that District denied Student a FAPE because the District failed to meet its "child find" obligations (20 U.S.C. §

1413(a)(3)(A)) from April 2011 to May 2013. In support of Issue One, the complaint alleges that Student is 11 years old and was first found eligible for special education placement and related services at an individualized educational program (IEP) team meeting of May 15, 2013. Student also alleges a chronology of events and conduct, beginning when Student was in first grade through the May 2013 IEP, which includes review of Student's academic performance, various assessments of which District was allegedly aware, and a April 2011 IEP meeting. Many of these factual allegations precede the two-year limitation.

Issue Two contends that District failed to provide Student a FAPE because it did not properly assess Student since September 2011. Issue Three asserts that the May 15, 2013 IEP does not provide a FAPE.

Issue One is the only issue that seeks to hold District culpable for failing to provide a FAPE before the two-year limitation. Student does not contend that he is entitled to a statutory exception to the two-year limitation and does allege facts in support of such a contention. Therefore, District's motion to dismiss is granted to the extent that Issue One seeks determination that District failed to provide a FAPE before September 24, 2011 (two years before the complaint's filing).

However, District's complaint to dismiss or "bar" Student's allegations that predate September 24, 2011 is denied. Though such allegations cannot support a finding against District for a denial of a FAPE prior to the two-year limitations, such factual assertions may be pertinent to District's alleged knowledge of Student as of the commencement of the two-year limitation, which is arguably relevant to the District's fulfillment of its "child find" duties and obligation to assess, within the two-year limitation.

ORDER

1. District's Motion to Dismiss is granted to the extent that Issue One of Student's complaint seeks determination that District failed to provide a FAPE before September 24, 2011 (two years before the complaint's filing).

2. District's complaint to dismiss or "bar" Student's allegations of fact that predate September 24, 2011 is denied.

Dated: October 16, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings