

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAMPBELL UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015050611

ORDER GRANTING MOTION TO
DISMISS ISSUE

On May 3, 2015, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming the Campbell Union High School District.

On May 20, 2015, OAH determined that Student had sufficiently pled two issues in his complaint. Student's first issue asserts that his April 23, 2013 Individualized Education Program did not meet his individual needs for speech and language therapy. In his second issue, Student asserts that District failed to offer him a transition plan for post-school activities.

On May 26, 2015, District filed a motion to dismiss claims which fall outside of the statute of limitations. OAH received no response to the motion from Student.

APPLICABLE LAW AND DISCUSSION

Both federal and state law contain a two year statute of limitations for special education administrative actions. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2) (2006); Ed. Code, § 56505, subd. (1).) The state statute provides as follows: "A request for due process hearing arising under subdivision (a) of Section 56501 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 of the request. In accordance with Section 1415(f)(3)(D) of title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following: (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 that was required under this part to be provided to the parent." (Ed. Code, § 56505, subd. (1).)

The statute of limitations therefore operates to bar claims outside of the two-year period. (*J.W. v. Fresno*, *supra*, 626 F.3d at pp. 444-445; *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) Here, Student has not alleged in his complaint that either of the two exceptions to the two year statute of limitations applies in this case. To the contrary, in his complaint, Student states that he is not seeking any remedy which predates the statute of limitations. Moreover, Student has not filed an opposition to District's motion that would put the exceptions at issue. Therefore, Student's issues are limited to those arising during the two-year statute of limitations.

District also correctly asserts that any allegations of continuing violations stemming from Student's April 23, 2013 IEP, are foreclosed in the instant due process proceeding. Both federal statute and subsequent case law inform that continuing violations are not cognizable in due process proceedings. In its commentary on the 2006 version of the Code of Federal Regulations that were written in response to the reauthorized Individuals with Disabilities Education Act, the United States Department of Education directly addressed the issue of continuing violations. A commenter to the proposed 2006 regulations suggested that the regulations should allow extensions of the statute of limitations when a violation is continuing. The United States Department of Education rejected the suggestion, stating "Section 615(f)(3)(D) of the Act [IDEA] provides explicit exceptions to the timeline for requesting a due process hearing. Section 300.511(f) [of the then proposed regulations] incorporates these provisions. These exceptions do not include when a violation is continuing Therefore, we do not believe that the regulations should be changed." (71 Fed.Reg. 46697 (Aug. 13, 2006).)

To the extent that a student alleges that a school district failed to implement the student's IEP, courts have found that "an IEP is a program, consisting of both the written IEP document, and the subsequent implementation of that document. While we evaluate the adequacy of the document from the perspective of the time it is written, the implementation of the program is an ongoing, dynamic activity, which obviously must be evaluated as such." (*O'Toole v. Olathe Unified School Dist. No. 233* (10th Cir. 1998) 144 F.3d 692, 702.) Student here has not, however, alleged that District has failed to implement his IEP. For all other circumstances, the cases primarily hold that special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (See, e.g., *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269).

Student's issue one alleges that District denied him a free appropriate public education by failing to offer him adequate speech and language services and goals in his April 23, 2013 IEP. Applying the foregoing authority, Student's issue one is barred by the statute of limitations, along with any allegation of continuing violations stemming from the April 23, 2013 IEP, relating to District's offer of speech and language goals and services. District's motion as to Student's issue one is therefore granted.

Student's issue two alleges that District denied him a FAPE by failing to offer a transition plan for post-school activities. This claim arose within the last two years and is therefore not barred by the statute of limitations.

ORDER

1. District's motion to dismiss claims which fall outside of the statute of limitations is granted as to Student's issue one.

2. The matter will proceed as scheduled as to the remaining issue.

DATE: June 11, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings