

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015070319

ORDER GRANTING MOTION TO DISMISS ALL CLAIMS PRIOR TO JUNE 30, 2013 AND MOTION TO STRIKE PORTIONS OF PROPOSED RESOLUTION ONE, AND DENYING MOTION TO STRIKE PROPOSED RESOLUTION FOUR

On June 30, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Request (complaint) naming the Fresno Unified School District. The complaint contains ten issues involving school years 2010-2011 through 2014-2015 and the extended school year.

On July 7, 2015, Fresno filed a motion to dismiss all claims beyond June 30, 2013. Fresno is also moving to strike portions of Proposed Resolution One and Proposed Resolution Four. On July 10, 2015, Student responded to the District's motion.

On July 8, 2015, Fresno filed with OAH a Notice of Insufficiency as to all issues of the complaint except Issues Two and Six. On July 13, 2015, OAH granted Fresno's NOI. Thus, this order is applicable to the two remaining issues, Two and Six.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 (1) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (2) the local educational agency's withholding of information from the parent that was required to be provided to the parent. Here, parents are claiming that Fresno withheld information that was required to be provided.

In his opposition to the motion, Student states that Fresno “misrepresented [S]tudent’s progress, lack of progress and withheld [S]tudent’s records as identified and noted in the due process hearing request.” For the school years prior to June 2013, Student contends that Fresno failed to provide or review progress reports as to Student’s annual goals. Student makes no demonstration that he was prevented from filing a request for due process hearing.

Education Code section 56505 subsection (l) is clear that the statute of limitations does not apply only when the “parents are prevented from requesting the due process hearing.” Here, Student has not made such a showing.

Accordingly, any claims beyond two years from the date of filing are barred. Fresno’s motion to dismiss all claims occurring prior to June 13, 2013, is granted. Since Proposed Resolution One contains requests for compensatory education for the time period prior to June 30, 2013, Fresno’s request to strike those portions of the resolution is granted.

Fresno also requests that Proposed Resolution Four be struck. Resolution Four requests that the Parents be reimbursed for all out of pocket expenses associated with this Due Process Hearing. Fresno fails to cite any authority in support of its request to strike Proposed Resolution Four. Accordingly, Fresno’s motion to strike Proposed Resolution Four is denied without prejudice.

ORDER

1. Fresno’s Motion to Dismiss as all claims beyond June 30, 2013, is GRANTED. The matter will proceed as scheduled as to all claims arising since June 30, 2013.

2. Fresno’s Motion to Strike all claims for compensatory education arising prior to June 30, 2013, in Proposed Resolution One, is granted.

3. Fresno's Motion to Strike Proposed Resolution Four is denied without prejudice.

IT IS SO ORDERED.

DATE: July 15, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings