

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF
SCHOOLS AND PANAMA-BUENA VISTA
UNION SCHOOL DISTRICT,

OAH CASE NO. 2012010845

KERN COUNTY SUPERINTENDENT OF
SCHOOLS AND PANAMA-BUENA VISTA
UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011120395

ORDER GRANTING MOTION TO
DISMISS ISSUES PRIOR TO TWO
YEARS STATUTE OF LIMITATIONS

The Kern County Superintendent of Schools and the Panama-Buena Vista Union School District (hereafter “District”) filed its complaint in this matter on December 8, 2011.

Student filed a complaint on January 26, 2012. Student’s complaint alleged, in pertinent part, that Student was denied a free appropriate public education (FAPE) for the 2008-2009, 2009-2010, 2010-2011, and 2011-2012 school years. The Office of Administrative Hearings (OAH) consolidated the cases on February 7, 2012, on Student’s motion.

On March 15, 2012, the District filed a motion to dismiss issues arising prior to the two-year statute of limitations. Student did not file a response to the motion.

APPLICABLE LAW and DISCUSSION

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. §1415(f)(3)(C).) 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 education agency that it had resolved the problem forming

the basis of the complaint, or the local education agency's withholding of information from the parent that was required to be provided to the parent. Student has not alleged that any exception applies in this case, and as such, Student's issues must be limited to the two-year statute of limitations.

The District's Motion to dismiss issues prior to the two-year statute of limitations is granted. The two-year statute of limitations in this case is January 26, 2010, as a request for a due process hearing must 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. Student has not asserted that the statute of limitations was tolled in this case. Therefore, the issues raised in Student's complaint must be evaluated from January 26, 2010 onward.

Accordingly, the District's Motion is granted.

ORDER

1. The District's Motion to dismiss issues prior to the two-year statute of limitations is granted.

2. Student's Issue Number 4, is dismissed, as it only alleged facts and violations that occurred outside the two-year statute of limitations.

3. Unless another period is specified within the two-year statute of limitations, all of Student's issues, and particularly, Student's Issues Numbers 1, 2, 3, 5, 8, 10 and 11 shall be evaluated from January 26, 2010 onward.

IT IS SO ORDERED.

Dated: March 26, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings