

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020249

ORDER DENYING MOTION TO
DISMISS

On February 8, 2012, Student filed a Request for Due Process Hearing (complaint), naming the Montebello Unified School District (District). On February 17, 2012, the District filed a motion to dismiss Student's claims that occurred before February 8, 2010, for being outside the two-year statute of limitations. Student did not submit a response.

APPLICABLE LAW

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).) 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

The District contends that claims against the District that occurred before February 8, 2010, are barred by the two-year statute of limitations. Student's complaint contains one issue for hearing¹ alleging that the District's February 10, 2010 individualized education program (IEP) denied Student a free appropriate public education by failing to timely assess Student, not providing Parent with a copy of assessment reports, not providing Parent a Spanish translated IEP, and that the IEP failed to meet Student's unique needs.

¹ Issue 2 in the complaint is Student's proposed resolutions.

Student's complaint does contain factual allegations that occurred before February 10, 2010, however these allegations relate to specific violations that purportedly occurred as to the February 10, 2010 IEP team meeting. A factual determination of issues that occurred before February 10, 2010, is needed to determine whether by the February 10, 2010 IEP team meeting had the District had timely assessed Student and provided Parent with required assessment reports. Additionally, facts that occurred before February 8, 2010, are needed to determine Student's unique needs and whether the District's February 10, 2010 IEP provided Student with a FAPE. Accordingly, the District's motion to dismiss is denied because Student's complaint only alleges procedural and substantive violations as to the February 10, 2010 IEP team meeting, which is within the two-year statute of limitations.

ORDER

The District's Motion to Dismiss is denied.

Dated: February 28, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings