

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012090687

ORDER GRANTING MOTION TO
DISMISS ISSUES PRIOR TO TWO-
YEAR STATUTE OF LIMITATIONS

Parents on behalf of Student (Student) filed this complaint with Office of Administrative Hearings (OAH) on September 24, 2012.¹ Student's complaint alleges, in pertinent part, that he was denied a free appropriate public education (FAPE) from at least March 27, 2010, and particularly through his individualized education program (IEP) offers dated September 13, 2010 and October 12, 2011, among others.

On October 4, 2010, District filed the motion to dismiss all issues arising prior to the two-year statute of limitations (Motion). On October 8, 2012, Student responded to District's motion clarifying that he only seeks remedy within the two-year statutory period.² As discussed below, District's motion is granted.

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: 1) specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint, or 2) the local education agency's withholding of information from the parent that was required to be provided to the parent.

¹ It appears that the complaint was received at OAH on September 22, 2012, a Saturday. Thus, the complaint is deemed filed on Monday, September 24, 2012.

² District's motion is not about limiting the remedy, but about the preclusion of all issues outside the statutory period.

In Student's October 8, 2012's response to the instant motion, 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 two-year statute of limitations in this case is September 24, 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. Thus, the issues raised in Student's complaint must be evaluated from September 24, 2010 onward.

While Student's complaint asserts that the District failed to offer Student a FAPE in the September 13, 2010 IEP, in various areas of need, the complaint does not clearly set out continued violations of Student's right to a FAPE, from September 24, 2010, through October 12, 2012. The issue of whether Student has continued violation claims that survive this Order can be addressed further at the prehearing conference in this matter.

Accordingly, the District's motion to dismiss all issues outside of the two-year statutory period is granted. All claims contained in Student's complaint that are based on any allegations or violations that allegedly occurred prior to September 24, 2010 are hereby dismissed.

ORDER

1. The District's motion to dismiss issues prior to the two-year statute of limitations is granted.
2. All of Student's issues relating to the September 13, 2010 IEP offer is dismissed, as it only alleged facts and violations that occurred outside the two-year statute of limitations.³

IT IS SO ORDERED.

Dated: October 10, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

³ Further, Students alleges violations from at least March 27, 2010, and particularly contends that the September 13, 2010 IEP was not calculated to provide him educational benefit in the least restrictive environment, and that the IEP failed to offer him occupational therapy services. These issues are barred by the statute of limitations.