

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012120567

ORDER DENYING MOTION TO
DISMISS ALL CLAIMS OUTSIDE OF
THE TWO-YEAR STATUTORY
PERIOD

On December 17, 2012, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH), naming the Los Angeles Unified School District (District). On January 30, 2013, Student filed an amended complaint and added the Los Angeles County Office of Education (LACOE). OAH granted Student's motion to amend on February 8, 2013.

On February 21, 2013, District filed a motion to dismiss all of Student's issues based on allegations arising prior to the two-year statute of limitations.

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).) 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. As discussed below, District's motion is denied, at this time, without prejudice.

DISCUSSION

In this case, Student raises a total of eight issues against District. In Issue One, Student asserts that, from January 1, 2005 through April 5, 2010, District denied Student a free appropriate public education (FAPE) because District failed to meet its child find

obligation through identification and special education services. In Issue Two, Student alleges that, from January 1, 2005 through the present school year, District failed to conduct a neuropsychological assessment, functional behavioral assessment and social behavioral assessments. Thus, Student argues that he was denied a FAPE because District failed to assess him in all areas of suspected disability.

Student's Issue Three alleges a denial of FAPE, from January 1, 2005 through the present school year, because District failed to offer Student school-based counseling, mental health assessment and a one-to-one aide. Issue Four in Student's complaint alleges that, from January 1, 2005 through April 5, 2010, District denied Student a FAPE because District failed to design and implement a behavioral intervention plan.

Student's Issue Five asserts that, from January 1, 2005 through the present school year, District denied Student a FAPE because District failed to draft appropriate and measurable individualized educational program goals and objectives to meet Student's unique needs. Student's Issue Six argues that District denied Student a FAPE because District failed to timely assess him in all areas of suspected from January 1, 2005 through the present school year.

In Issue Seven, Student contends that District denied him a FAPE from January 1, 2005 through the present school year, because District placed Student in a general education classroom and disregarded Student's special needs. Lastly, Student's Issue Eight contends that District denied Student a FAPE during the 2010-2011 and 2011-2012 school years because District failed to assess Student for occupational therapy service.

In its motion to dismiss (motion), District pointed out that because Student's complaint was filed with OAH on December 17, 2012, the two-year statute of limitations only allows Student to bring claims based on allegations/violations that allegedly occurred on or after December 17, 2010. Thus, District contends that any and all of Student's claims arising outside of the two-year statutory period are barred by the statute of limitation and, as such, those claims should be dismissed.

District is correct that, generally, the statute of limitations for due process complaints in California is two years, and if applied in this case, would preclude Student from bringing any claim for adjudication based on any alleged violations occurring prior to December 17, 2010. However, as provided in the law, exceptions do apply, and claims may be allowed beyond the statutory period if Student's Parents (Parent) is prevented from filing a request for due process due to specific misrepresentations by District that it had resolved the problem forming the basis of the complaint, or when District withheld from Parent, information that District was required to provide.

In his complaint, Student acknowledges that the statutory prior is two years. However, Student contends that an exception to the statute of limitations applies in this case due to District's misrepresentation and "withholding of information" from his Parent.

District challenged Student's contention, and argued that grounds offered by Student as the basis for the application of the exceptions to the statute of limitation were inadequate.

Without addressing the merit of Student's contention regarding whether an exception to the two-year statute of limitation applies in this case or otherwise, it appears that factual disputes exist regarding the questions of whether such exception applies to toll the two-year statute of limitation period. Even though District has disputed that any exception applies in this case, at this stage, it is sufficient for Student to allege factual grounds for the application of the exceptions to the statute of limitations. Resolving the factual dispute would require an evidentiary hearing. Further, the question of whether adequate or proper grounds exist for the exception cannot, and should not be determined without an evidentiary hearing.

Therefore, due to factual disputes that exist regarding whether an exception to the two-year statute of limitation exist in this case, District's motion to dismiss issues prior to the two-year statute of limitations appears premature, and not proper for adjudication at this time without a hearing. Accordingly, the motion to dismiss all claims that fall outside of the two-year statute of limitations is denied without prejudice.¹

IT IS SO ORDERED.

Dated: February 28, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

¹ The issue of the applicability of the two-year statute of limitation shall be addressed during the due process hearing.