

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL
DISTRICT; TRI-VALLEY SPECIAL
EDUCATION LOCAL PLAN AREA.

OAH CASE NO. 2013020419

ORDER GRANTING THE DISTRICT'S
MOTION TO DISMISS ISSUES FROM
STUDENT'S DUE PROCESS
HEARING REQUEST

On February 11, 2013, Student's parents, acting on behalf of Student (Student), filed a request for due process hearing (complaint), naming the Pleasanton Unified School District (District) and the Tri-Valley Special Education Local Plan Area as the respondents.

On March 13, 2013, the District filed a motion to dismiss portions of Student's complaint on the basis that they were barred by the statute of limitations and that one of the claims was beyond the jurisdiction of OAH.

On March 18, 2013, Student filed an opposition to the motion.

APPLICABLE LAW

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 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.

Student's complaint alleges 24 separate issues for hearing. Several of the issues explicitly involve conduct that occurred more than two years before the complaint was filed in February 2013. Issues two, three, four, five, six, seven, and eight all involve events that occurred prior to February 2011, and are therefore beyond the two-year statute of limitations. Unless one of the exceptions applies, those allegations must be dismissed.

Student's issue nine is not really an issue, but is an explanation for why Student contends an exception applies to the statute. That issue states:

The Statute of Limitations of two years does not apply to the causes of action regarding the assessments, due process violations and IEPs in 2008, 2009 and 2010 because the District withheld from the parents information required to be provided to them regarding their rights to Due Process, Prior Written Notice and to an IEE. 20 U.S.C. section 1415(f)(3)(D), 34 C.R.F. section 300.511(f)(2).

Student's "issue nine" provides no factual basis for the claims that an exception to the statute of limitations applies. In Student's opposition to the motion to dismiss, Student admits that Student's parents received their notice of procedural safeguards in 2008, 2009 and 2010. Student contends that the District's failure to send prior written notice to Student's parents "*a reasonable time before* meetings it conducted with the parents" creates an exception to the statute of limitations. Student cites to no case authority supporting Student's claim that failure to give prior written notice before a meeting creates an exception to the statute of limitations.

Student's other arguments are equally defective. Student alleges violations by the District of various special education procedures. Student contends that Student's parents did not know the District's conduct constituted procedural violations until they consulted with an attorney. However, that is not a basis for an exception to the statute of limitations. It is clear from the complaint that Student's parents were aware of the actions taken by the District with respect to Student's education at all times in this matter. They received notice of their procedural safeguards and could have taken action at any point in the process. There is nothing in either Student's complaint or opposition that demonstrates the type of egregious misrepresentation or withholding of information by a school district that gives rise to an exception to the statute of limitations. Misrepresentation of facts and withholding of information are narrow exceptions that require that the local education agency's actions be intentional or flagrant rather than merely a repetition of an aspect of determining whether a student received a FAPE. (See *Parents on Behalf of Student v. Brea Orinda Unified School District* (2008) OAH case number 2008050301.)

The District also seeks to dismiss Student's issue 22, which alleges that the District discriminated against Student pursuant to Section 794(a) of title 29 of the United States Code and Section 1983 of title 42 of the United States Code. That allegation is beyond the jurisdiction of OAH.

ORDER

1. The District's motion to dismiss is granted.
2. Issues 2, 3, 4, 5, 6, 7, 8, 9 and 22 are dismissed from Student's complaint.

3. The matter will proceed as scheduled on the remaining issues.

Dated: March 20, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings