

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013120278

ORDER GRANTING MOTION TO
DISMISS CLAIMS BARRED BY THE
STATUTE OF LIMITATIONS

On December 2, 2013, Student filed a due process hearing request¹ (complaint) naming the East Side Union High School District (District). On December 12, 2013, District filed a Motion to Dismiss claims that are time barred by the two year statute of limitations.² Student did not respond to the motion.

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. (1); 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 (1), 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

Student's complaint raises four issues. District disputes the timeliness of issues two and three. Issue Two alleges that District denied Student a free appropriate public education (FAPE) from June 2011 through June 2013 by failing to assess Student in all areas of

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² In a footnote to the motion District states that Student filed this complaint alleging the same causes of action dismissed by OAH barring claims outside of the statute of limitations in a prior complaint. District also reserved its right to move for sanctions which requires a separate written motion and will not be addressed in this Order.

suspected disability, and failing to perform a Functional Analysis Assessment, Functional Behavioral Assessment, a Neuropsychological and a Social Behavioral Assessment. Issue Three alleges District denied Student a FAPE from June 1, 2011 to the present by failing to give prior written notice to parent of its refusal to perform assessments in all areas of suspected disability, failing to design and implement a Behavioral Intervention Plan, and/or Behavior Support Plan, and failing to offer Student school-based counseling, an AB3632 Assessment, a one-to-one aide, and a non-public school placement.

Nowhere in the complaint does Student allege either of the exceptions to the statute of limitations in support of its claim for relief outside of the two years. Accordingly, Student's is entitled to relief for FAPE violations from December 2, 2011 to the date of filing of the complaint. All other claims prior to December 2, 2011 are barred by the statute of limitations.

ORDER

1. District's Motion to Dismiss is granted as to Issues Two and Three for claims for relief prior to December 2, 2011.
2. The matter will proceed as scheduled as to the remaining issues.

Dated: December 18, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings