

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030215

ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION
TO STRIKE

Student filed a request for due process (complaint) with the Office of Administrative Hearings on February 25, 2016, naming the Capistrano Unified School District.

On March 7, 2016, Capistrano filed a motion to dismiss portions of Student's complaint. Capistrano moves to dismiss allegations of Student's complaint that appear to raise issues beyond the applicable two-year statute of limitations. Capistrano moves to dismiss Student's proposed resolution six, which requests that Capistrano be ordered to pay Student's attorney's fees if she prevails on all or part of her complaint at hearing. Capistrano also moves to strike those portions of Student's complaint that Capistrano contends reference confidential informal dispute resolution discussions between the parties.

Student has not filed an opposition or any other response to Capistrano's motions.

APPLICABLE LAW AND DISCUSSION

Statute of Limitations

The statute of limitations in California is 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.

Student's issue one alleges that Capistrano failed to offer her an appropriate placement and services. In issue three, Student alleges, in pertinent part, that Capistrano denied her a free appropriate public education by failing to administer a functional behavior

assessment prior to October 19, 2015. Student does not state a specific time frame in either issue, although the factual portion of her complaint covers her education back to 2011.

Student's complaint does not raise any exceptions to the statute of limitations. To the extent that Student alleges claims arising prior to February 25, 2014, those allegations are dismissed.

Proposed Resolution Six

OAH does not have jurisdiction to award attorney's fees. Capistrano's motion to dismiss Student's resolution six is granted.

Motion to Strike

Capistrano asserts that Student's references on pages 12 and 13 of her complaint regarding an offer by Capistrano to place Student at a non-public school should be stricken because the discussion occurred during a confidential informal dispute resolution meeting between the parties.

Student's complaint does not state the context during which the offer was allegedly made. Capistrano asserts that it was during a confidential discussion, but has not included a declaration in support of its assertion. There is no indication or evidence as to when the discussion occurred, who participated in the discussion, what the context was, and whether the parties agreed orally or in writing that the discussions were confidential. Since Capistrano has failed to provide support for its motion, the motion to strike is denied.

ORDER

1. Capistrano's motion to dismiss allegations in Student's complaint arising prior to February 25, 2014, is granted.
2. Capistrano's motion to dismiss resolution six of Student's complaint requesting an award of attorney's fees, is granted.

3. Capistrano's motion to strike references to an alleged offer of placement to Student at a non-public school on pages 12 and 13 of Student's complaint is denied.

DATE: March 21, 2016

DocuSigned by:

Darrell Lepkowsky

DARRELL LEPKOWSKY

A228F8201132499...
Administrative Law Judge

Office of Administrative Hearings