BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015030220 ORDER GRANTING IN PART AND DENYING IN PART DISTRICT'S MOTION TO LIMIT ISSUES AND MOTION TO STRIKE ISSUES AND PROPOSED RESOLUTIONS

On March 3, 2015, Student, through his parents, filed a Request for Due Process Hearing (complaint), naming the Fresno Unified School District as the respondent. Student's complaint contains nine issues, with several sub-issues, and several proposed remedies.

On March 11, 2015, Fresno filed a motion to limit and motion to strike issues and resolutions in Student's complaint. In effect, Fresno moved to dismiss allegations that were beyond the applicable two-year statute of limitations. Fresno also moved to dismiss Student's issue nine, which contends that Fresno fabricated illegal individualized education program documents for Student. Fresno further moved to strike Student's proposed resolution for issue nine that requests the Office of Administrative Hearings to sanction Fresno for the alleged fabrication of documents.

On March 16, 2015, Student filed a motion to dismiss Fresno's motions, which is, in effect, an opposition to Fresno's motion to strike or limit issues.

APPLICABLE LAW

Statute of Limitations

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 withheld information form the student's parent that it was required to provide to them.

Student filed his complaint on March 3, 2015. The applicable statute of limitations therefore permits him to allege issues going back to March 3, 2013. Student's complaint

alleges nine issues for hearing. Issues one, three, four, six, seven, and nine allege that Fresno denied Student a free appropriate public education since August 2011, when Student began ninth grade. Student alleges that Fresno has denied him a FAPE for various reasons from August 2011 to August 2014, encompassing the entire four years Student has been in high school.

In his complaint, Student states that he delayed filing it because there was a death in the family in the days following his IEP team meetings in August 2014, and that his parent suffered health issues because of that, which prevented her from pursuing due process at the time. However, as difficult as that situation was for Student and his family, personal issues such as these are not a statutory basis for tolling the statute of limitations. Even if they were, Student gives no reason for failing to file for due process prior to August 2014.

In his opposition to Fresno's motion, Student reiterates his claim that Fresno has denied him a FAPE since August 2011. Student also states that Fresno misrepresented Student's needs when it attempted to exit Student from special education, and therefore, the statute of limitations should be tolled. Student's argument, however, is flawed for several reasons. First, Student fails to state when Fresno attempted to exit him from special education. Second, there is no allegation that Fresno actually did exit Student. Based upon the information in Student's complaint, Fresno has continued to hold IEP team meetings for Student from August 2011 to the present, and has continued to offer Student special education instruction and services. There is no information in Student's complaint to support a finding that Fresno misrepresented that it had resolved the problems that are the basis for Student's present complaint.

Student also contends that the second exception to the statute of limitations applies because Fresno withheld information from his parents when Fresno did not timely conduct Student's triennial assessment. Student contends the assessment was not completed until after March 1, 2013, although it was due by December 28, 2012. However, Student fails to state why this delay prevented him from filing a due process complaint within the statute of limitations. There is no allegation that Fresno misrepresented that it had completed the triennial when it had not, or that it failed to provide Student's parents with the assessment report once the report was completed. To the contrary, Student's complaint and opposition reference the fact that Fresno wanted to exit Student from special education based upon the results of the triennial assessment and that the results were discussed at an IEP team meeting. Student's parents disagreed with the recommendations in the assessment and requested Fresno to fund an independent educational evaluation. Fresno agreed to do so. It appears that as a result of the independent evaluation, Fresno no longer pursued its recommendation to exit Student from special education. There is thus no basis for tolling the statute of limitations based upon Student's allegation that Fresno withheld information concerning the completion of Student's triennial assessment about two months later than it was due.

Student also contends that the statute of limitations should be tolled because Fresno did not provide his parents with a copy of his February 6, 2014 speech and language

assessment until February 18, 2015. However, since these alleged acts occurred within the two-year statute of limitations, they are not a basis or reason to toll the statute.

For these reasons, Fresno's motion to dismiss Student's issues to the extent they allege violations of his right to a FAPE prior to March 3, 2013, is granted.

OAH Jurisdiction

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Student's issue nine contends that all of Student's IEP documents written after Student's August 29, 2014 IEP team meeting are "illegally fabricated student records written illegally by the District." Fresno contends that the issue is beyond the jurisdiction of OAH because it does not address any of the criteria indicated above.

Student's issue nine is not clear. Student does not indicate how Fresno allegedly fabricated his IEP documents, or the nature of the fabrication. However, to the extent that Student contends that the alleged fabrication denied him a FAPE, that allegation would be within the purview of OAH. Therefore, Fresno's motion to dismiss Student's issue nine is denied.

However, as a proposed resolution to issue nine, Student requests that OAH "sanction" Fresno for fraud if OAH finds that it fabricated Student's IEP documents. OAH does not have jurisdiction to sanction parties for fraud. Therefore, Fresno's motion to strike this proposed resolution is granted.

ORDER

1. Fresno's motion to dismiss Student's allegations that pertain to the period prior to March 3, 2013, is granted. This matter shall proceed on Student's issues only as they relate to the time from March 3, 2013, to March 3, 2015.

2. Fresno's motion to dismiss Student's issue nine is denied to the extent that Student contends that the alleged fabrication of his IEP documents denied him a FAPE.

3. Fresno's motion to dismiss Student's proposed resolution that OAH sanction it for fraud if OAH finds Fresno fabricated Student's IEP documents is granted, since such a resolution is beyond the jurisdiction of OAH.

DATE: March 20, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings