

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF
EDUCATION EARLY START.

OAH CASE NO. 2013010169

ORDER GRANTING MOTION TO
DISMISS CLAIMS PRIOR TO
JANUARY 7, 2011

On January 7, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming the Santa Clara County Office of Education (COE) as respondent. On January 17, 2013, COE filed a Notice of Insufficiency (NOI) challenging the sufficiency of the complaint. Also on January 17, 2013, COE filed this motion to dismiss all claims which occurred prior to January 7, 2011. OAH issued an order granting and denying the NOI on January 18, 2013. OAH determined that part of Issue One and Issues Two and Three were insufficiently pled; while part of Issue One and Issue Four were sufficiently pled. Student was granted 14 days to file an amended complaint should he choose.

Currently pending as the issues in Student's complaint are a portion of Issue One and Issue Four. The first issue avers that COE deprived Student of a free appropriate public education by failing to properly assess Student in all areas of suspected disability since September 2010. Student specifically alleged that COE failed to assess Student in the areas of occupational therapy (OT), assistive technology (AT), behavioral, health and academics.¹ Issue Four alleges a procedural violation of the Individuals with Disabilities Education Act (IDEA) when COE failed to provide Student's parents with a full copy of is education records following requests on September 21 and 27, 2011.

Student has not filed a response to COE's motion to dismiss.

APPLICABLE LAW AND DISCUSSION

The purpose of the 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

¹ OAH found that the only portion of Issue One sufficiently pled related to OT and AT.

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.)

Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Dry Creek Joint Elementary School District et al* (2011) O.A.H. case 2010110717; *Student v. Saddleback Unified School District* (2007) O.A.H. case 2007090371; *Student v. Vacaville Unified Sch. District* (2004) S.E.H.O case SN 04-1026, 43 IDELR 210, 105 LRP 2671, quoting *Alexopoulos v. San Francisco Unified Sch. District* (9th Cir. 1987) 817 F.2d 551, 555.)

California implements the IDEA through its special education laws. (*Miller v. San Mateo-Foster City Unified Sch. District* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Education Code section 56505, subd. (l) provides that any request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.² (See also, *Draper v. Atlanta Ind. Sch. System* (11th Cir. 2008) 518 F.3d 1275, 1288, 20 U.S.C. §1415(f)(3)(c).) The two year limitations period does not apply if the parent was prevented from filing a due process request due to either (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or (2) the local educational agency withheld information from the parent which is required to be provided to the parent.³ (See also, *J.L. v. Ambridge Area Sch. District* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, *23-24.) Here, Student has failed to allege in the complaint that any of the exception to the two year limitations period apply.

² Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years. Effective October 9, 2006, California amended the statute of limitations to be consistent with the federal limitations period of two years.

³ The two year statute of limitations and exceptions were added when the IDEA was revised and signed into law in December 2004, becoming effective July 1, 2005. (20 U.S.C. § 1415(f)(3)(C)-(D).) By its terms, section 56505, subdivision (l) sets forth the two exceptions in accordance with part 300.516(c) of title 34 of the Code of Federal Regulations. Thus, California has in effect adopted the IDEA statute of limitations and its two specific exceptions.

Here, Student alleges in Issue One that COE failed to properly assess Student in the areas of OT and AT since September 2010. Since the complaint was filed on January 7, 2013 and the limitations period is two years prior to the filing of the complaint, Student is barred from seeking any remedy for COE's failures to properly assess Student prior to January 7, 2011.

ORDER

COE's motion is GRANTED and any claims which arose prior to January 7, 2011, are dismissed

Dated: January 24, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

Dated: January 24, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings