

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DAVIS JOINT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013080810

ORDER PARTIALLY GRANTING
MOTION TO DISMISS

On September 30, 2013, Student filed a second amended complaint. On October 16, 2013, OAH found Student's complaint to be sufficient. On November 1, 2013, the District filed this motion to dismiss that portion of Student's complaint which occurred prior to the statute of limitations. Student has not filed an opposition or response to the District's 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.

DISCUSSION

While Student's complaint has withstood the requirements for sufficiency, the complaint fails to specify a time frame for its issues, and fails to specifically define which Individualized Educational Plan(s) (IEP) allegedly denied Student a free appropriate public education (FAPE), when specifically the District allegedly failed to assess Student, and for what period of time Student seeks reimbursement. The factual allegations in the complaint describe actions in 2010 through 2013. There are no allegations supporting any of the exceptions to the statute of limitations. Therefore, the applicable statute of limitations in this matter commenced two years prior to the filing of Student's second amended complaint, specifically, September 30, 2011.

As indicated above, it is impossible to determine from the complaint whether Student's issues violate the statute of limitations. Recitation of the 2010-2011 factual allegations may be relevant in a limited scope (e.g., evidence of prior knowledge); however, alleged violations of FAPE prior to September 30, 2011 are clearly beyond the scope of the statute of limitations.

ORDER

1. The District's motion to dismiss is partially granted on all three issues as they relate to denial of FAPE or other IDEA violations prior to September 30, 2011. Student's complaint will proceed as scheduled on all three issues as they pertain to causes of action arising after September 30, 2011.

2. Student shall be prepared to further define and specify the time frame of his issues within the statute of limitations in his Pre-hearing Conference Statement and Prehearing Conference prior to hearing.

IT IS SO ORDERED.

Dated: November 18, 2013

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings