

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.

OAH CASE NO. 2014050251

ORDER GRANTING MOTION TO
DISMISS CLAIMS OUTSIDE THE
STATUTE OF LIMITATIONS

On May 5, 2014, Student's parent on behalf of Student filed a request for a due process hearing (complaint), naming the Modesto City Schools (Modesto). On May 30, 2014, Modesto filed a motion to dismiss the portions of the complaint which arose prior to the two-year statute of limitations. On June 4, 2014, Student filed an opposition to that 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

Because Student's complaint was filed on May 5, 2014, the two-year statute of limitations would normally bar any issues which arose prior to May 5, 2012. Student acknowledges this is true, but contends that an exception exists to the statute of limitations based on specific misrepresentations made by Modesto to Student's parent.

Student's complaint contains a long paragraph setting forth the misrepresentations that Student claims were made. The main provisions of that paragraph are as follows:

The District lead the Parent to believe that the District was taking the necessary steps to deal with Student's issues due to SST meetings and other related forms of academic aid. The District specifically misrepresented that the SST meetings and other related forms of academic aid were designed to address Student's needs. This specific misrepresentation was supported by the District's intentional grade advancement of Student despite the fact that [Student] has consistently performed lower than grade levels and failed core classes. Finally, by retaining [Student] to repeat first grade but advancing him in subsequent grades despite his failure to perform at grade levels, the District created a reasonable belief in the Parent that despite low grades the student was achieving some academic benefit from the District's interventions. By informing the Parent that the District was taking the necessary steps to address Student's needs via SST meetings and other related academic aid and perpetuating the image that the District's actions are indeed addressing Student's specific needs by advancing Student to subsequent grades, the District took distinct and specific steps to misrepresent to the Parent that the District did recognize that the Student exhibited signs that would require assessments for special needs and was taking steps to address those needs.

Despite Student's contentions, that paragraph does not allege sufficient facts to show a possible exception to the statute of limitations based on specific misrepresentations. First, there are no specific misrepresentations listed in that paragraph at all. Instead, Student merely alleges that Modesto attempted interventions and told Student's parent that the interventions were designed to address Student's needs. That is far different than a specific misrepresentation that Modesto had "resolved the problem forming the basis of the complaint." Likewise, Modesto did not make any misrepresentations merely by advancing Student from grade to grade, even if Student had been retained during Student's first grade year.

Second, it is doubtful that a school district's actions in performing general education interventions and advancing a child from grade to grade could ever be the type of "specific misrepresentation" contemplated by the law. School districts often attempt general education interventions when pupils have difficulties in school. For example, the "response to intervention" portion of the law refers to general education interventions prior to a finding of special education eligibility. To equate educational interventions with specific misrepresentations would make the statute of limitations meaningless. Any parent could claim that the interventions "lead the Parent to believe" that steps were being taken to assist the child.

Student has not alleged a valid exception to the statute of limitations. To the extent that Student's complaint raises claims which arose prior to May 5, 2012, those claims must be dismissed.

ORDER

1. Modesto's motion to dismiss claims which arose prior to May 5, 2012 is granted.
2. Any claims which arose prior to May 5, 2012, are hereby dismissed from Student's case.
3. The matter will proceed as scheduled as to the remaining claims.

DATE: June 5, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings