

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BRENTWOOD UNION SCHOOL
DISTRICT.

OAH Case No. 2015050567

ORDER PARTIALLY GRANTING
MOTION TO DISMISS CLAIMS
PURSUANT TO THE STATUTE OF
LIMITATIONS.

On May 5, 2015, Student filed a request for due process hearing (complaint) naming Brentwood Union School District (Brentwood). On June 8, 2015, Brentwood filed a motion asking OAH to dismiss claims in Issues 2, 4, 5, and 6 that occurred before the day the two year statute of limitations for filing a complaint began, May 6, 2013. On June 16, 2015, Student filed an opposition to the motion to dismiss, and District filed a reply to Student's opposition on June 18, 2015.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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," 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.)

The statute of limitations in California for the filing of a request for due process is 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

Student was found eligible for special education and related services in February 2015. In his complaint, Student claims that Brentwood did not meet its “child find” obligation (Issue 2), did not assess him in all areas of suspected disability (Issue 4), did not provide him with an appropriate behavior intervention plan (Issue 5), and did not provide him with a mental health assessment and counseling (Issue 6). Student alleges that these claims began with Student's kindergarten year, the 2008-2009 school year. In a section entitled “Statute of Limitations,” Student claims that the two year statute of limitations should be waived because Brentwood “misrepresented and withheld [Student]'s behavioral needs to Parent (*sic*)”

In its motion to dismiss, Brentwood argues that the complaint does not contain facts to support any misrepresentations, or withholding of information. Student does not plead facts to support misrepresentation, withholding of information, or failure to provide procedural safeguards in his complaint. Student, in his opposition, claims that the misrepresentation occurred when Parents met with the kindergarten teacher before the beginning of the 2008-2009 school year to alert her that he might present with behavioral issues. However, Brentwood's only response was to change Student's kindergarten teacher. Student claims that this constituted a “misrepresentation.” The withholding of information allegedly occurred in 2011 when an individualized educational program meeting was held. Parents claim they saw the IEP from that meeting for the first time in April 2015. Further, Student claims in the opposition that Brentwood failed to provide Parents with procedural safeguards, but the opposition does say when this occurred. Further, the complaint does not contain this allegation. In its reply to Student's opposition, Brentwood claims that Student cannot raise new facts in its opposition to support his contention that the statute of limitations should be extended, and, even if he could, that Student has failed to provide any specific facts that would warrant an extension.

The complaint has been reviewed and Brentwood is correct; the complaint is devoid of any facts that affirmatively show any misrepresentation, withholding of information, or

failure to provide procedural safeguards that would fit the exceptions for extending the statute of limitations beyond two years. Further, information found only in the opposition to the motion to dismiss cannot now form the basis for justifying extending the statute of limitations. In any case, the information provided is not sufficient to support such an extension. Accordingly, all claims in Issues 2, 4, 5, and 6 prior to May 6, 2013, are dismissed.

IT IS SO ORDERED.

DATE: June 25, 2015

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings