

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015100793

ORDER GRANTING MOTION TO
DISMISS

On October 21, 2015, at 5:09 p.m., Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Murrieta Valley Unified School District. On October 27, 2015, District filed a Motion to Dismiss, alleging that Student's claims regarding the October 21, 2013 individualized educational program were barred by the two-year statute of limitations because the filing date of Student's complaint was in fact October 22, 2015. On October 29, 2015, Student filed an opposition that asserted that the complaint was filed on October 21, 2015, and that also the complaint contains allegations that occurred within the two-year statute of limitation. District filed a reply brief on October 30, 2015, which Student responded to that day.

APPLICABLE LAW

The statute of limitations for due process complaints in California 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.

Documents faxed to OAH after business hours, 8:00 a.m. through 5:00 p.m., are deemed filed on the next regular business day. (1 C.C.R. § 1006, subd. (h).)

DISCUSSION

Student's case complaint involves whether District's October 21, 2013 IEP provided her with a FAPE, and specifies particular allegations how this IEP failed to address Student's unique needs to prevent her from making meaningful education progress. District asserts that since OAH received Student's facsimile transmission at 5:09 p.m., on October 21, 2015, that Student complaint was filed on October 22, 2015, and therefore Student's claims as to the October 21, 2013 IEP are barred by the two-year statute of limitations.

Student's complaint and briefs in opposition to District's motion to dismiss do not allege any exception to the two-year statute of limitations. Further, Student's complaint does not allege that District failed to implement Student's October 21, 2013 IEP or District should have called an IEP team meeting to adjust Student's IEP at any time during the two-year statute of limitations. Therefore, the issue to be determined in deciding District's motion to dismiss was when was Student's complaint filed.

Student does not dispute by way of declaration or proof by way of a facsimile transmission document that Student's complaint was not faxed to OAH or District until after 5:00 p.m., on October 21, 2015. Pursuant to California Code of Regulations, title 1, section 1006, subd. (h), documents sent to OAH by facsimile transmission after 5:00 p.m., are deemed filed on the next business day. Student's contention that the Federal Rules of Civil Procedure are applicable and that Student's complaint was filed on October 21, 2015, is without any legal support. Finally, while Student contends that granting District's motion to dismiss would be a miscarriage of justice, Student does not provide any factual or legal support for this contention. (See, *Abers v. Rohr*. (2013) 217 Cal.App.4th 1199, 1210-1211, relief from case dismissal pursuant to Code of Civil Procedure 473 not applicable to dismissal for statute of limitations.) Accordingly, Student's complaint is dismissed for being outside the two-year statute of limitations.

ORDER

District's Motion to Dismiss is granted. The matter is dismissed.

DATE: November 3, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings