

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.
OAH CASE NUMBER 2021070856

ORDER DENYING MOTION TO DISMISS FOR
STATUTE OF LIMITATIONS

JANUARY 19, 2022

On July 27, 2021, Parent on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Etiwanda School District.

On January 4, 2022, Etiwanda filed a motion to dismiss issues one, two and fifteen, alleging the issues are precluded by the two-year statute of limitations. On January 5, 2022, Student filed an opposition.

APPLICABLE LAW

The statute of limitations 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.

DISCUSSION

Student alleges fifteen issues in the complaint. Student's issue one alleges that Etiwanda's November 1, 2018 psychoeducational assessment denied him a free appropriate public education, called FAPE, by not assessing in all areas of suspected disability. Issue two alleges Etiwanda denied Student a FAPE by failing to provide prior written notice in response to Parents' January 7, 2019 request for an independent educational evaluation. Issue fifteen asserts Etiwanda denied Student a FAPE by denying him access to an independent educational evaluation that was agreed to by Etiwanda on January 7, 2019, and requested by Parents in December 2018. Etiwanda correctly points out that each of these issues exceed the two-year statute of limitations.

However, Student's complaint asserts that Parents were unable to request a due process hearing for these issues within the two-year statute of limitations because of misrepresentations by Etiwanda that it had resolved the problem forming the basis of the issues. Specifically, that Etiwanda would fund the requested independent educational evaluation. Consequently, Student alleged an exception to the two-year

statute of limitations. Whether the exception is applicable to these issues is a factual question that requires a determination by an Administrative Law Judge following the presentation of evidence. It is therefore premature to dismiss Student's issues one, two and 15.

ORDER

Etiwanda's motion to dismiss issues one, two and fifteen is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.


Paul H. Kamoroff (Jan 19, 2022 14:27 PST)

Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings