BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016060613 ORDER GRANTING DISTRICT'S MOTION TO DISMISS STUDENT'S COMPLAINT WITHOUT PREJUDICE

On June 6, 2016, Student filed a Request for Due Process Hearing complaint with the Office of Administrative Hearings, naming Temecula Valley Unified School District.

On June 20, 2016, District filed a Motion to Dismiss Student's complaint on the grounds that Issue One was moot, and the remaining three issues were outside the statute of limitations.

On June 23, 2016, Student filed an opposition to District's motion. On June 24, 2016, District filed a reply to Student's opposition. On June 27, 2016, Student filed a response to District's reply.

APPLICATION OF LAW AND DISCUSSION

Parents have 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); see also Ed. Code, § 56501, subd. (a).) 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 [hereafter *Wyner*].)

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.

Two factual determinations are undisputed by the parties; (1) Student graduated from high school with a regular diploma on June 6, 2014; and (2) Student filed her complaint herein on June 6, 2016.

In her Issue One, Student contends that from June 15, 2014, through January 15, 2015, District denied Student a free appropriate public education by failing to provide and/or review comprehensive assessments in the areas of post-secondary transition. District contends that the alleged time frame is after Student graduated with a diploma on June 6, 2014, therefore Student's right to special education and services had terminated as of that date, rending Student's Issue One moot.

In her opposition to District's motion, Student raises exceptions to the statute of limitation. In review of Student's initial complaint, however, none of these allegations or exceptions was raised. Based upon the content of Student's initial complaint, there is no factual dispute Student graduated with diploma prior to the time period addressed in Student's Issue One. Further, Student has not alleged any exceptions to the statute of limitations which would allow for determination of issues prior to June 6, 2014. Therefore, Student's Issue One is dismissed. Student may elect to refile a complaint alleging sufficient facts to support an exception to the statute of limitations.

Student's Issue Two alleges District committed procedural violations which prevented Parent from meaningfully participating in Student's January, February and March 2014 individualized education program meetings. District contends Student raises an issue outside the two-year statute of limitations. Each of the IEP team meetings alleged by Student occurred prior to the June 6, 2014 statute of limitation. Student's complaint alleges no factual basis for an exception to the statute of limitations. Student's Issue Two is dismissed. Student may elect to refile a complaint alleging sufficient facts to support an exception to the statute of limitations.

Student's Issue Three contends District failed to provide Student a FAPE in its January 15, 2014 IEP by failing to provide an appropriate post-secondary transition plan and related services. As indicated above, Student's January 2014 IEP was crafted prior to the June 6, 2014 statute of limitation. While Student's opposition argument references reliance on District representations, no such exceptions to the statute of limitations are pled in Student's initial complaint. Therefore, Student's Issue Three is dismissed. Student may elect to refile a complaint alleging sufficient facts to support an exception to the statute of limitations.

Student's Issue Four contends District denied Student a FAPE by failing to: (1) convene an IEP team meeting prior to graduation and termination of servicers to develop a summary of performance; (2) provide a prior written notice before exiting Student from special education; (3) consider outside post-secondary transition evaluation contracted through District; and/or (4) provide services outlined in the January 14, 2014 IEP. Student's Issue Four is vague as to time, however Student graduated with diploma on June 6, 2014, and District provided no special education or related services to Student after that date. Again,

Student opposition to dismissal relies on an implied exception to the statute of limitations, which is not expressly averred in her complaint as currently pled. Student's Issue Four is dismissed. Student may elect to refile a complaint alleging sufficient facts to support an exception to the statute of limitations.

ORDER

1. District's Motion to Dismiss Student's complaint in its entirety is granted.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II) that appropriately alleges any claim(s) of exception to the statute of limitations, which shall restart the applicable timelines for a due process hearing.

3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, Student's complaint shall be dismissed.

IT IS SO ORDERED.

DATE: June 30, 2016

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings