BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019081052

ORDER DENYING MOTION TO DISMISS

On August 27, 2019, Parent on behalf of Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, naming Turlock Unified School District and Modesto City Schools. The Office of Administrative Hearings is referred to as OAH.

On September 16, 2019, Student filed an Amended complaint. On September 27, 2019, Modesto City Schools filed a Motion to Dismiss, alleging that portions of the amended complaint are time-barred. On October 1, 2019, Student filed an opposition. On October 1, 2019, Modesto City Schools filed a reply. Turlock Unified has not filed a response or joinder.

APPLICABLE LAW

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, such as civil rights claims, section 504 claims, enforcement of settlement agreements, or issues relating to incorrect parties, special education law does not provide for a summary judgment procedure.

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.

The Ninth Circuit characterized the IDEA's statute of limitations statute as a "discovery rule" statute, rather than an "occurrence rule" statute because it looks to what a party knew or should have known before filing a due process claim. (*Avila v. Spokane Sch. Dist. 81* (9th Cir. 2017) 852 F.3d 936, 939-945.) Although California's statute of limitations is also a discovery rule statute, its wording is slightly different from that in the IDEA, and has a history of interpretation by California courts that focuses on knowledge of facts, rather than awareness of claims, upon which the due process request is based. The California statute requires that a due process request be filed "within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l) (emphasis added)), (*M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012) 2012

WL 398773, ** 17 – 19), affd.in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist., et al* (9th Cir. 2014) 767 F.3d 842, 859.)

DISCUSSION

In her amended complaint, Student has alleged that Turlock Unified and Modesto City Schools failed to provide Student a free appropriate public education, referred to as a FAPE, as well as other special education services. Student alleges these violations go back to the 2014 to 2015 school year. Modesto City Schools argues that these alleged violations are beyond the two-year statute of limitations of August 27, 2017. Student contends that whether or not Parents knew or should have known about the facts underlying the basis of Student's request is an issue for the trier of fact at hearing.

Student alleges that Modesto City Schools representatives misrepresented facts to Parent at an October 2014 individualized educational program meeting, referred to as an IEP. Based upon this alleged misrepresentation, Parent "falsely believed" that Student could only receive limited services. Student also alleges that Modest City Schools misrepresented additional facts at an August 28, 2015 IEP meeting. Student alleges that Parent's reliance upon these alleged misrepresentations deprived Student of a FAPE.

Modesto contends that these allegations are conclusory and insufficient to establish the statutory exception to the two-year statute of limitations. However, both parties to this motion also conceded that OAH does not entertain motions for summary judgment. The issues raised in the complaint require findings of fact by the hearing officer at hearing and must be resolved at hearing.

ORDER

Modesto City Schools' Motion to Dismiss is denied. The matter shall proceed as scheduled. All dates are confirmed.

IT IS SO ORDERED.

DATED: October 07, 2019

DocuSigned by:

Brian H. Krikorian
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Administrative Law Judge
Office of Administrative Hearings