BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTHERN KERN SCHOOL DISTRICT.	OAH Case No. 2018090934 ORDER DENYING MOTION TO DISMISS

On September 25, 2018, Student filed a request for due process hearing. On October 9, 2018, Southern Kern School District filed a Motion to Limit Timelines and Dismiss Issues, asserting that any claims Student asserted occurred prior to two years before the filing of the request for due process hearing should be dismissed. Student filed her opposition to the motion on October 16, 2018. Southern Kern filed their reply to Student's opposition later that same day; and Student filed a response to Southern Kern's reply on October 17, 2018.

APPLICABLE LAW

Jurisdiction of OAH

The purpose of the Individuals with Disabilities Education Act (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.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…), special education law does not provide for a summary judgment procedure. Here, Student asserts claims of violations of the Individuals with

Disabilities Act, over which OAH has jurisdiction. However, some claims do seek redress for violations of the IDEA that occurred as early as the 2009-2010 school year.

Pleading Standard

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast,* (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387.] All that is required in a due process hearing complaint is a description of the nature of the problem of the child related to the proposed initiation or change; including facts relating to the problem and a proposed resolution of the problem to the extent known to the party at the time of filing. (Ed. Code §56502(c)(1)(C) and (D); 20 U.S.C. § 1415 (b)(7)(B)(iii).)

Statute of Limitations

When a state has its own statute of limitations pertaining to special education cases, that statute of limitations is applicable to cases filed in that state. *Avila v. Spokane School District 81* (9th Cir. 2017) 852 F. 3d 936, 941. California has such a statute which designates the statute of limitations as follows:

> " A request for due process hearing arising under subdivision (a) of section 56501 shall 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 section 56505 subd. (l).)

In order to raise claims that exceed the basic two-year statute of limitations Student must show that the claims were made within two years of the date Parents "knew or should have known about the alleged actions that form the basis of the complaint, (*Avila v. Spokane School District 91, supra,* 852 F. 3d at p. 945); or that one of the exceptions to the application of the statute of limitations apply. There are two exceptions: 1) that parent was either 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 2) that Parents were prevented from filing a request for due process due to the local educational agency's withholding of information from the parent, that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D); Ed Code § 56505(l).)

OAH has already deemed this complaint sufficient. (*Order Finding Complaint Sufficient,* October 8, 2018). Student has pled sufficient facts to put Southern Kern on notice of its intent to seek remedies going back to 2009. The pleading standard applicable to special education proceedings does not require Student to plead all facts supporting their claims of a right to seek remedies beyond the basic two-year statute of limitations. All that is required is notice of their intention to prove their right to do so and Southern Kern has received such notice. Southern Kern has failed to cite to any authority that requires OAH to dismiss issues

facially outside the two-year statute of limitations for failure to provide all facts that allow them to pursue remedies sought.

In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded requests for due process should proceed to hearing. Student shall then have the burden of establishing that there is a legal basis for asserting claims that seek remedies for any period prior to September 25, 2016.

ORDER

Southern Kern School District's Motion to Dismiss Student's claims predating September 25, 2016 is denied. Nothing in this order prevents Southern Kern from presenting evidence contravening Student's asserted legal basis for pursuing claims predating September 25, 2016 at the time of hearing.

The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: October 25, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings