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 DENYING MOTION TO STRIKE AND MOTION TO DISMISS

On July 14, 2016, Student filed with the Office of Administrative Hearings an amended request for due process hearing (complaint) naming Temecula Valley Unified School District. On August 5, 2016, Temecula Valley filed a motion to dismiss the complaint on grounds that it was barred by the two-year statute of limitations stated in Education Code section 56505, subdivision (l). On August 10, 2016, Student filed an opposition to the motion to dismiss. On August 11, 2016, Temecula Valley filed a reply to Student's opposition.

APPLICABLE LAW

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.

OAH may dismiss a claim pursuant to section 504 of the Rehabilitation Act of 1973(29 U.S.C. § 701 et seq.), or the Americans with Disabilities Act (42 U.S.C. § 1201 et

seq.), because it does not have jurisdiction. However, there is no provision in special education law that would permit OAH to grant a motion for summary judgment that would result in a case over which it has jurisdiction being dismissed without an evidentiary proceeding.

DISCUSSION

Student filed the initial complaint in this matter on June 6, 2016. OAH dismissed that complaint after Temecula Valley filed a motion to dismiss the complaint because all of the claims were for acts or omissions that occurred prior to June 6, 2014, the date Student graduated from high school with a diploma. Student did not have factual allegations in her initial complaint that would establish the possibility that one or both of the exceptions to the statute of limitations existed in this case, although she mentioned some in her opposition to the motion to dismiss the initial complaint. In the order dismissing the initial complaint issued on June 30, 2016, Student was given permission to file an amended complaint within 14 days of the order, which she did.

Student's amended complaint contains a section titled "Tolling the Statute of Limitations." In this section Student makes factual allegations that might, if proven true at hearing, toll the statute of limitations. Although Temecula Valley argues in its motion that these are not "specific" to such a degree as to establish a tolling of the statute, this is not a sufficient ground for granting the motion to dismiss. Specificity is established during the hearing through the testimony of witnesses and documents admitted into evidence.

In its reply to Student's opposition, Temecula Valley asks that Student's amended complaint be dismissed because there was no order granting her leave to amend. However, the OAH order dismissing the initial complaint states that Student may file an amended complaint within 14 days of the date of the order, and that is precisely what Student did. There was no need for OAH to write a separate order allowing the amended complaint to be filed in this situation.

In its reply to Student's opposition, Temecula Valley argues that Student raises new grounds for tolling the statute of limitation in her opposition, and includes a declaration from Student that contains allegations that are not in the complaint. Therefore, it asks that the opposition be struck. The complaints filed with OAH pursuant to the Individual's with Disabilities Education Act (20 U.S.C. § 1400 et sec.) are not verified. There is no prehearing discovery allowed in these proceedings. Often parties receive previously unknown information about their cases when exhibits are exchanged five business days prior to the hearing, and when they begin to prepare witnesses to testify at hearing. The fact that Student's declaration attached to the opposition to the motion to dismiss the amended complaint contains information not contained in the complaint is not grounds to strike the opposition. Therefore Temecula Valley's request to strike Student's opposition is denied.

There is no motion for summary judgement available to the parties in special education law. Student is entitled to have a hearing in which evidence may be produced that is sufficient to establish that the statute of limitations should be tolled. Accordingly, Temecula Valley's motion to dismiss Student's amended complaint is denied.

ORDER

1. Temecula Valley's motion to strike Student's opposition is denied.

2. Temecula Valley's motion to dismiss Student's amended complaint is denied. All dates shall remain as set.

IT IS SO ORDERED.

DATE: August 11, 2016

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings