

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015060433

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On May 27, 2015, Student filed a complaint for due process hearing. On June 4, 2015, District filed a motion to dismiss that portion of Student's complaint which addressed issues prior to the statute of limitations. On June 8, 2015, Student filed an opposition to District's motion to dismiss.

APPLICATION OF LAW AND DISCUSSION

Effective October 9, 2006, the statute of limitations in California is now 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.

Student's complaint alleges denial of a free appropriate public education commencing on May 3, 2010, and continuing through the date of filing of his complaint. Although the two year statute of limitation commences on May 27, 2013, Student's complaint raises an exception to the two year rule in his complaint. Student further supports this exception with factual allegations regarding misrepresentations by District.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure.

Here, District's motion is not limited to matters that are facially outside of OAH

jurisdiction, but instead requires a ruling on the merits regarding an exception to the statute of limitations. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: June 16, 2015

/s/

JUDITH PASEWARK

Administrative Law Judge

Office of Administrative Hearings