

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.
OAH CASE NUMBER 2021090567

ORDER DENYING MOTION TO DISMISS

OCTOBER 11, 2021

On September 20, 2021, Parent on Student's behalf filed a Request for Due Process Hearing, referred to as a complaint with the Office of Administrative Hearings, referred to as OAH, naming Etiwanda School District. On October 7, 2021, Etiwanda filed a motion to dismiss Student's complaint, asserting that the claims in the complaint were outside of the statute of limitations. Parent filed an opposition on October 11, 2021.

OAH does not entertain summary judgment motions seeking to determine factual disputes before the finder of fact hears the evidence at a due process hearing. 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.

Here, Student asserts Parent contacted Etiwanda on November 11, 2019 asking why Etiwanda had not funded, or otherwise responded by filing for due process relating to, Parents 2018 request for independent educational evaluations in the areas of developmental vision and central auditory processing. Parent asserts Parent renewed Student's request for independent evaluations on November 11, 2019, which was within the two year statutory period. Etiwanda claims Parent's initial request for independent assessments pre-dated September 19, 2019, thus falling outside of the statute of limitations, rendering the complaint untimely.

A factual dispute exists over when Student's claims arose, requiring findings of fact by the hearing ALJ after considering witness testimony and other evidence presented by both parties at hearing. Therefore, Etiwanda's motion to dismiss is denied. All dates are confirmed unless otherwise ordered.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings