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OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050795
v.	ORDER DENYING MOTION TO DISMISS
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On May 16, 2017, Parent on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Francisco Unified School District and Antioch Unified School District. Parent dismissed claims against San Francisco on June 22, 2017.

On June 20, 2017, Antioch filed with OAH a motion to dismiss issues that predate the two-year statute of limitations, and issues that arose prior to July 14, 2015, on the grounds that applicable law does not recognize continuing violations. Student submitted an opposition on June 23, 2017.

APPLICABLE LAW

The statute of limitations in California is two years. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C); *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 859 (The Ninth Circuit has interpreted California's statute of limitations to be two years from the filing of a student's hearing request, unless one of the two tolling provisions apply.[1]).) 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.

[1] Recently, the Ninth Circuit concluded that Congress did not intend a strict rule regarding the two-year statute of limitations. (*Avila v. Spokane School District 81* (9th Cir. 2017) 852. F. 3d 936.) However, nothing in the federal statutes prevents states from adopting their own statutes of limitations to be two years from the filing of student's hearing request, unless one of the two tolling provisions apply. (20 U.S.C. § 1415 (f)(3)(C).)

DISCUSSION

Student's complaint alleges two issues against Antioch. Student first complains that, upon moving to Antioch in February 2015, Antioch failed to implement Student's individualized education program services. Student next complains that Antioch denied his Parents procedural rights regarding the development of his IEPs.

Student transferred from Antioch to San Francisco in August 2015. Student asserts that he first discovered that Antioch failed to deliver services in March 2017, when Student's attorney requested his school records from San Francisco and those records revealed the violation. Student argues Antioch withheld that information from Parents and that they were not aware that Antioch had failed to deliver services. On that basis, Student argues that an exception to the applicable two year statute of limitations exists.

District first asserts that Student should not be permitted to litigate claims that arose prior to May 16, 2015, based upon the two-year statute of limitations. However, Student has raised a factual dispute regarding whether an exception to the two-year statute of limitations exist in this case. That question requires a hearing. Antioch's motion to dismiss issues that predate the statute of limitations is therefore premature and is denied on that basis.

District next argues that Student's complaint should not include issues that arose prior to July 14, 2015, when Antioch's first held an IEP team meeting for Student, on the grounds that applicable law does not recognize continuing violations. 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, District's request is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the request is denied.

ORDER

1. District's Motion to Dismiss issues that arose prior to May 16, 2015, is denied without prejudice.

2. District's Motion to Dismiss issues that arose between May 16, 2015, and July 14, 2015, is denied.

3. The matter will proceed as scheduled.

DATE: June 26, 2017

DocuSigned by:
Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings