

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS on behalf of STUDENT,

OAH CASE NO. 2010021041

vs.

OAK PARK UNIFIED SCHOOL DISTRICT,

OAK PARK UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2010030981

vs.

PARENTS on behalf of STUDENT

ORDER DENYING STUDENT'S
MOTION TO DISMISS

On March 9, 2010, District filed a Request for Due Process Hearing (complaint), naming Student as the respondent. On or about March 29, 2010, this matter was consolidated with Student's due process case filed as OAH Case No. 2010021041. On March 19, 2010, Student filed a Motion to Dismiss District's complaint alleging that District's complaint was untimely because District did not file without unnecessary delay. Student's Motion to Dismiss is denied.

APPLICABLE LAW

A party who files an adequate complaint in a dispute under the Individuals with Disabilities in Education Act (IDEA) is generally entitled to a hearing on its claims. (20 U.S.C. § 1415(f)(1)(A); Ed. Code, §§ 56043(s), 56501(b)(4).).

A parent or agency shall request an impartial due process hearing within 2 years of the date of the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. §1415(f)(3)(iv)(C).

DISCUSSION

In the present matter, Student is not challenging the adequacy of District's complaint for due process hearing in its motion to dismiss. Instead, Student challenges whether District's complaint is timely, i.e., whether District acted "without unnecessary delay" in filing its complaint for due process, as provided for in 34 CFR 300.502(b). District's

complaint is timely because it was filed within the 2 year statute of limitations provided for by §1415(f)(3)(iv)(C).

ORDER

Student's motion to dismiss is DENIED.

Dated: March 30, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings