

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2011031369

ORDER DENYING MOTION TO
DISMISS

On March 23, 2011, Student filed a Due Process Hearing Request¹(complaint) alleging that District denied Student a free appropriate public education (FAPE) by: (1) failing to state appropriate goals and objectives in Student’s Individualized Educational Programs (IEPS); (2) failing to make appropriate offers of placement and services; and (3) failing to report accurately on Student’s progress or present levels of performance. The complaint’s factual allegations pertained to IEP meetings that occurred more than two years prior to the filing of the complaint on October 12, 2007, November 27, 2007, and April 15, 2008, as well as IEP meetings that occurred within the two years preceding the complaint from April 2, 2009 through December 2010. The complaint alleged that District had affirmatively misled Parents regarding Student’s progress on the goals in the 2007 and 2008 IEPs, and argued that because “Parents did not realize how little progress Student ha[d] made until he was privately assessed [in September and November 2010] the statute of limitations should be extended back to 2007.”

On April 15, 2011, District filed an “Opposition to Petitioner’s Request to Go Beyond the Statute of Limitation,” denying that Parents were misled, and containing extensive factual allegations and voluminous exhibits. On April 18, 2011, Student filed an “Opposition to District’s Motion to Dismiss Claims earlier than March 23, 2009,” contending that District’s filing constituted a motion to dismiss and raised factual disputes that should be ruled on at hearing.

The statute of limitations for due process complaints is two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (1); 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 (1), 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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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.

District's filing is appropriately characterized as a motion to dismiss Student's claims predating March 23, 2009. 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, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits on whether the factual predicates for exceptions to the statute of limitations existed here (i.e., whether 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). Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: April 22, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings