

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL MONTE CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2012030222

ORDER DENYING MOTION TO
DISMISS

On March 07, 2012, Student filed a Request for Due Process Hearing (complaint) naming El Monte City Elementary School District (District) as respondent.

On March 16, 2012, District filed its Notice of Representation, Motion to Dismiss Issue One, Notice of Insufficiency (NOI) and Response to Due Process Complaint. District contends that the first issue in the complaint is barred by the two year statute of limitations.

An order on District's NOI that found Student's complaint sufficient was entered on March 21, 2012.

Student filed Opposition to District's Motion to Dismiss on March 22, 2012.

APPLICABLE LAW

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (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 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.

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th

Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wynner*].) Although OAH has granted 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...., OAH will not dismiss claims that have otherwise been properly pleaded. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

DISCUSSION

The complaint alleges Student was found eligible for special education services as a student with Autistic-like behavior in February 2010. Student alleges the eligibility finding was based solely on the Kaufman Assessment Battery for Children-Second Edition (KABC-II) and that the KABC-II should have been supplemented and corroborated by other testing instruments and other methods. Student contends the February 2010 assessment failed to assess Student in all suspected areas of need. While the February 2010 assessment appears to have occurred more than two years before the complaint was filed, a determination of whether Student's issues related to this assessment are barred by the statute of limitations raises issues of fact that cannot be decided in a prehearing motion. Specifically, before the statute of limitations is applied as a bar, Student should be given an opportunity to develop a record as to whether an exception applies under title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l). Thus, because the District's motion is the equivalent of a motion for summary adjudication or motion for judgment on the pleadings, it must be denied.

ORDER

District's motion to dismiss is denied. District may raise the statute of limitations issue at the prehearing conference and hearing.

IT IS SO ORDERED.

Dated: March 20, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings