

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT,
FRUITVALE SCHOOL DISTRICT
BOARD MEMBERS, BOARD MEMBERS
OF KERN COUNTY SUPERINTENDENT
OF SCHOOLS, VALLEY OAKES
CHARTER SCHOOL, AND OUR LADY
OF GUADALUPE SCHOOL.

OAH CASE NO. 2012030900

ORDER DENYING MOTION TO
DISMISS

On May 4, 2012, Stacy L. Inman, on behalf of the Fruitvale School District (District), filed a Motion to Dismiss Second Amended Complaint with the Office of Administrative Hearings (OAH). OAH has not received a response from Parent on behalf of Student (Student).

District's sole contention is that the second amended complaint is time-barred by the two-year statute of limitations. As discussed below, District may raise this defense at a time when the factual record is developed and not as a prehearing motion.

APPLICABLE LAW

The statute of limitations for due process complaints in California was amended, effective October 9, 2006, and is now two years prior to the date of filing the request for due process, 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.

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.

DISCUSSION AND ORDER

Here, the Motion to Dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. District's motion is based on declarations that are outside of the four corners of the second amended complaint, rather than upon information alleged in the complaint. District's motion, therefore, is a motion for summary judgment rather than a motion to dismiss.

Student's second amended complaint does not provide much information as to what specific violations Student is alleging, against whom, nor the applicable time frame and relevant individual educational programs. While District has the right to file a Notice of Insufficiency, this Order simply addresses the allegation that the complaint is time-barred and does not address whether the second amended complaint is sufficiently pled. District fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on the statute of limitations, without giving Student the opportunity to develop a factual record regarding the exceptions, if any. Accordingly, District's statute of limitations arguments are rejected at this time, although they may be raised as a defense at hearing if Student is claiming an exception. Accordingly, the motion to dismiss based upon the issues being time-barred is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: May 10, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings