

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

CALAVERAS UNIFIED SCHOOL
DISTRICT AND CALAVERAS COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2012060827

ORDER DENYING MOTION TO
DISMISS

On June 14, 2012, Student filed a request for a due process hearing (complaint) naming Calaveras Unified School District (District) and Calaveras County Office of Education (SELPA) as respondents (Respondents). On June 25, 2012, Respondents filed a motion to dismiss claims from Student's complaint arising prior to June 14, 2010. Respondents' basis for the motion was that the complaint contained claims seeking relief that were outside of the applicable statute of limitations.

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.

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.

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Although District argues that Student does not assert any of the exceptions to the statute of limitations in the complaint, a determination of whether any applicable exceptions may apply requires evidentiary findings by the hearing judge. Because the applicability of exceptions to the statute of limitations require evidentiary findings that will be made at hearing, the motion must be denied.

ORDER

1. District's motion to dismiss is denied.
2. All dates currently set in this matter are confirmed.

Dated: July 11, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings