

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

NAPA VALLEY UNIFIED SCHOOL
DISTRICT

OAH CASE NO. 2009020274

ORDER DENYING MOTION TO
DISMISS

On February 06, 2009, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process hearing request naming Napa Valley Unified School District (District) as the respondent.

On February 20, 2009, attorney Sally Jensen Dutcher, General Counsel, filed on behalf of District a response to that request and a motion to dismiss. OAH has received no response from Student to District's motion to dismiss.

District generally contends that all allegations that precede February 6, 2007, are time-barred by the two-year statute of limitations. As discussed below, the District may raise this defense at a time when the factual record is developed and not as a prehearing motion.

The statute of limitations for IDEA claims is two years unless 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 withheld information from the parent that was required to be provided to the parent. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C) & (D).) The 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. Student's various allegations of "willful delay" and "pretending that nothing happened" are sufficient to require an evidentiary hearing as to whether an exception to the statute of limitations pertains.

Accordingly, the District's statute of limitations arguments are rejected at this time, although they may be raised as a defense at hearing.

ORDER

1. District's motion to dismiss is denied,

2. All previously set dates in this matter stand as calendared.

IT IS SO ORDERED.

Dated: March 4, 2009

/s/

ANN F. MACMURRAY
Presiding Administrative Law Judge
Office of Administrative Hearings