

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ALTOS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011090272

ORDER DENYING MOTION TO
DISMISS

Parent on behalf of Student (Student) filed a due process hearing request (complaint) on September 21, 2011 setting forth four issues for hearing. Those issues are: (1) Was Student denied a free appropriate public education (FAPE) for the period of September 2009 to the filing of the complaint based upon the deficiencies of the offer of FAPE contained in the February 24, 2009 IEP, (2) Did District deny Student a FAPE for the period of August 2009 to present by failing to provide the language and speech services set forth in Student's IEP, (3) Did District deny Student a FAPE by conducting a June 2009 psychoeducational assessment of Student without parental consent and failing to hold an IEP meeting to discuss the results of the assessment, and (4) Did District deny Student a FAPE by failing to convene annual IEP meetings by February 10, 2010 and February 10, 2011. As a proposed resolution, Student seeks reimbursement for all expenses paid by her parents for placement of Student at Los Altos Christian School for the period of September 2009 to present.

On September 21, 2011, District filed a Motion to dismiss issues 1, 2 and 3 of the complaint on the grounds that all three issues are outside of the two year statute of limitations set forth in the Individuals with Disabilities in Education Act (IDEA) and the California Education Code.

APPLICABLE LAW

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.) 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.....), however, 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. The allegations of Student's complaint acknowledge a two year statute of limitations. On the face of the complaint,

issues 1, 2 and 4 seek redress for matters occurring within the statute of limitation. It is not clear from the face of the complaint whether the allegations of issue 3 concerning the June 2009 assessment are within the statute of limitations because it is not clear when parents became aware of the assessment. A determination of whether the allegations of issue 3 of the complaint are outside the two year statute of limitations cannot be made from the face of the complaint. Student's complaint requests reimbursement for tuition and costs associated with placement at a private school for the two years prior to the complaint within the statute of limitations. Any further examination of facts or the veracity of the allegations beyond the face of the complaint would involve an inappropriate summary determination of facts. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

October 7, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings