

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. EXETER UNION SCHOOL DISTRICT,	OAH CASE NO. 2011110056
EXETER UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011100529 ORDER DENYING MOTION TO DISMISS

On November 01, 2011, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Exeter Union School District (District). On November 4, 2011, the District filed a Request for Due Process Hearing, naming Student, (OAH Case No 2011100529) which was consolidated with Student's complaint on November 4, 2011.

On November 11, 2011, the District filed a Motion to Dismiss Student's Issue Number Two, alleging that the factual basis of the claim is beyond the two year Statute of Limitations.

On December 1, 2011, Student filed an opposition to the District's motion.

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.

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

Student's Issue Number Two reads, "Has TCOE, and by extension, the District, denied Student a FAPE by refusing to allow Student's parents to communicate with the staff supervising Student's behavior program." While Issue Number Two is vague as to time, Student admits in his opposition that (1) the applicable Statute of Limitation is two years; and (2) the *issues* contained in his complaint fall within the statute. Student further argues that while some of the *facts* in support of his issue occurred or commenced prior to the statute of limitations, they are in support of a violation of the IDEA which is ongoing during the current statute of limitation.

Here, the Motion is not limited to issues that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: December 05, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings