

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT
AND FOOTHILL SELPA.

OAH CASE NO. 2012100337

ORDER DENYING DISTRICT'S
MOTION TO DISMISS PORTIONS OF
THE COMPLAINT

On October 08, 2012, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Burbank Unified School District (District) and Foothill Special Education Local Plan Area (Foothill SELPA) as respondents.

On October 17, 2012, District filed a motion to dismiss from Student's complaint all allegations predating October 18, 2012 as beyond the statute of limitations. Student filed opposition to District's motion on October 18, 2012.

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 IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 complaint alleges that, from 2006 through the present, District has denied Student a FAPE through: (1) failure to assess in all areas of suspected disability, (2) failure to offer and implement appropriate behavior supports, (3) failure to draft appropriate and measurable goals, (4) failure to place Student in the least restrictive environment, (5) predetermination of Student's placements, (6) failure to hold a six-month reevaluation IEP (May 2011 through November 2011), (7) failure to timely respond to an educational records request, (8) failure to give prior written notice of discontinuation of special education (from

January 2006 through August 2009), and (9) implementation of a 504 plan (January 2006 through August 2009) rather than special education and related services. The complaint also alleges that District failed to keep accurate records, or to provide Student's parent with complete documentation that would have made parent aware of District's denials of FAPE, which conduct tolled the running of the two-year statute of limitations.¹

District contends that the two-year statute of limitations of Education Code 56505(l) bars any claims arising before October 18, 2010. District argues that the exceptions to the statute of limitations contained at Education Code section 56505, subs. (l)(1) and (2) and Title 20 United States Code sections 1415(f)(3)(D)(i) and (ii) require misrepresentations of fact or withholding of information by the local educational agency, and that District's alleged failure to maintain or produce educational records was insufficiently flagrant to deny Student a FAPE or to prevent his parent from filing a timely due process complaint.

District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. A factual inquiry will be required to determine whether, and to what extent, District's conduct involved misrepresentations of fact or withholding of information that deprived Student's parent of an opportunity to timely challenge her child's educational program, and whether and to what extent such a determination would toll the statute of limitations. This inquiry will be made at the hearing, and District may argue the bar of the statute of limitations at that time.

District's motion to dismiss portions of Student's complaint is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: October 23, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹ This tolling allegation is included in the complaint as a request by Student that "OAH waive" the statute of limitations.