

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011090492

ORDER DENYING MOTION TO  
DISMISS

On September 12, 2011, attorney Mark Woodsmall, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) for Parent on behalf of Student (Student) naming Norwalk-La Mirada Unified School District as the respondent.

On September 30, 2011, attorney Robert Jacobsen, on behalf of District filed a motion to dismiss based upon expiration of the two year statute of limitations.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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).)

The statute of limitations for special education due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); 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 (l), 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.

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.

## DISCUSSION

Student's complaint references a number of events which occurred prior to September of 2009. Some of the references are made in a section of the complaint entitled "Student Background" and appear to be provided for context only. Other references appear throughout the complaint. The application of the statute of limitations requires a factual finding of when the claim arose and when the claim expired. In the instant case, it also requires a finding that there is no applicable exception to the statute of limitations. Because the determination of the application of the statute of limitations in this case requires a factual determination, it may not be determined from the face of the complaint. Accordingly, the motion to dismiss is denied.

## ORDER

District's motion to dismiss is denied.

Dated: October 10, 2011

/s/

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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings