

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT, ET AL.

OAH CASE NO. 2010110717

ORDER GRANTING PCOE'S MOTION
TO DISMISS ISSUES BARRED BY
THE STATUTE OF LIMITATIONS

On November 19, 2010, Student filed a due process hearing request (initial complaint). On December 9, 2010, Student filed an amended request for due process hearing (complaint or amended complaint), naming Dry Creek Joint Elementary School District, Placer County Office of Education (PCOE), and Placer County Children's System of Care.

On December 28, 2010, PCOE filed a motion to dismiss portions of Student's complaint on the basis that they are barred by the statute of limitations.

On December 30, 2010, Student filed an opposition to that motion. On January 3, 2011, PCOE file a reply.

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).) Education Code section 56505, subdivision (1), provides that any request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

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 solved 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.

Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Saddleback Valley Unified School*

District (2008) Office of Administrative Hearings (OAH) case number 2007090371; *Student v. Vacaville Unified Sch. District* (2004) SN 04-1026, 43 IDELR 210, 105 LRP 2671.)

The narrow exceptions of misrepresentation and withholding of information require that the local education agency's actions be intentional or flagrant rather than merely a repetition of an aspect of determining whether a student received a free appropriate public education (FAPE). "The statutory requirement that the misrepresentation or withholding prevented (the parent) from requesting the hearing further evidences the stringency, or narrowness, of these exceptional circumstances." (*Student v. Brea Orlinda Unified School District* (2008) OAH case number 2008050301, quoting from *School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5.)

DISCUSSION

Student does not contest that much of Student's amended complaint involves matters that occurred more than two years before the date of filing the complaint. Student also does not claim that either of the exceptions to the statute of limitations applies to Student's case.

Instead, Student relies upon the "knew or had reason to know" language of the statute. Student contends that Student's parents did not know or have reason to know about the qualifications and training of Student's teachers, so their case never accrued for statute of limitations purposes until they found out. Student's position is not well taken.

In *Miller v. San Mateo-Foster City Unified School District* (N.D. Cal. 2004) 318 F.Supp.2d 851 (*Miller*), the court provided guidance on when a parent has reason to know of the facts underlying the basis for the complaint. In that case, the hearing officer had dismissed part of the pupil's due process complaint based on the statute of limitations. The federal court upheld the dismissal, finding that the "knowledge of facts" requirement in the statute of limitations "does not demand that the plaintiff know the specific legal theory or even specific facts of the relevant claim; rather, the plaintiff must have known or reasonably should have known the facts underlying the supposed learning disability and their IDEA rights." (*Id* at p. 860.) Quoting the case of *Jolly v. Eli Lilly & Co.*, (1988) 44 Cal.3d 1103, 1111, the court went on to explain that:

"Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he] must decide whether to file suit or sit on [his] rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; [he] cannot wait for the facts to find [him]." Grant's parents knew such facts here. When Grant's parents became aware that he might have a learning disability but that the District assessed him otherwise, they knew or should have known the facts that would have given them the required "suspicion of wrongdoing."

(*Miller, supra*, 318 F.Supp.2d at pp. 860-861.)

Student attempts to distinguish the *Miller* case on the basis that it dealt with eligibility. Student argues that, in the instant case, the issues involved denial of a FAPE to a child who is already eligible for special education services. Student relies on an unpublished case in which the court found that a pupil's parents could not have known their child's individualized educational program (IEP) was not being implemented until they attended the IEP meeting, so that is when their claims began to accrue for statute of limitations purposes. (*M. v. William S. Hart Union High School District* (C.D. Cal. 2003) 2003 WL 25514791.)

The instant case is very different from the unpublished decision. In the instant case, the facts alleged in the amended complaint confirm that Student's parents were well aware at all times of Student's disability, ongoing problems, assessments, and their concern that he was failing to make progress in school. Student points out that a child's failure to make educational progress does not automatically mean the district denied a FAPE. That is true. However, if Student's parents are correct that there was a lack of progress, that lack of progress should have alerted Student's parents to investigate the situation. If they had done so, they could have learned about the teacher qualifications. Student's own due process complaint admits that the California Commission on Teacher Credentialing maintains a website available to the public which contains information on teacher qualifications. Student does not allege that the District had a duty to disclose information regarding teacher qualifications, made misrepresentations regarding this information or prevented Student's parents from obtaining the website information.

One administrative decision described the necessity for parental investigation as follows:

...the purpose of the statute of limitations is to require parents to actively and contemporaneously pursue claims on behalf of their disabled children, which would require due diligence in investigating their concerns. Given that MOTHER had continuing concerns about STUDENT's education, the mere act of investigating her concerns through an attorney or independent educational expert would have uncovered the information the Petitioner now relies on for his claims. However, she did not do so.

(*Student v. Vacaville Unified School District, supra*, (2004) SN 04-1026, 43 IDELR 210, 105 LRP 2671.)

If Student's arguments are correct that his parent's ignorance of teacher qualifications meant that none of his claims accrued until the attorney talked to the parents in October 2010, then the statute of limitations would become meaningless. Any parent could claim ignorance of some aspect of a school district's personnel or program long after events that should have given rise to a diligent investigation. Student's parents, for instance, might not have been informed by their counsel about the publicly-available information on the teacher credentialing website until Student was a senior in high school. They might be bringing

claims over 10 years old. Such a situation would fly in the face of Congress' intent to provide for a rapid hearing process for special education disputes.

Student's parents knew or had reason to know of the facts underlying the basis for their due process complaint during each of the years in question. The fact that their counsel told them about the public information in October 2010 does not mean their claims accrued at that time. Student has shown nothing in this case to warrant a late accrual of the statute of limitations or an exception to the statute of limitations. Any claims that Student has alleged against PCOE are dismissed to the extent that they are more than two years before the date of filing the initial complaint.

ORDER

PCOE's Motion to Dismiss is granted. Any claims that Student has alleged against PCOE that are more than two years before the date of filing the initial complaint on November 19, 2010, are hereby dismissed. The matter will proceed as to all remaining claims. All dates will remain on calendar as currently scheduled.

IT IS SO ORDERED.

Dated: January 7, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings