

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT  
AND LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011020212

ORDER GRANTING LAUSD'S  
MOTION TO DISMISS CLAIMS  
RAISED BEYOND THE TWO-YEAR  
STATUTE OF LIMITATION

Student filed his initial due process complaint on February 4, 2011, naming inter alia the Los Angeles Unified School District (LAUSD). On March 29, 2011, the Office of Administrative Hearings (OAH) granted Student's motion to amend his complaint. The amended complaint contains allegations that LAUSD denied Student a free appropriate public education since at least June 19, 2008.

On April 14, 2011, LAUSD filed a motion to dismiss those allegations of Student's amended complaint which allegedly occurred prior to February 4, 2009, two years prior to the filing of Student's initial complaint. Student has not filed an opposition to the District's motion or otherwise responded to it.

A 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." (Ed. Code, § 56505, subd. (1).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*; 20 U.S.C. § 1415(f)(3)(D).)

An IDEA claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action; that is, when the parent knows that the education provided is inadequate. (*M.D. v. Southington Bd. of Ed.* (2d Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that he or she has a legal claim. (See, *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.) In *Miller v. San Mateo-Foster City Unified School District* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860, the court held the cause of action accrued when parents received notice of their procedural rights in

connection with a school district's assessment of their child, even if the assessment's findings were later found to be incorrect

Here, Student's complaint on its face alleges no facts showing that an exception to the statute of limitations applies. Nor has Student raised any factual allegations which might give rise to the application of either exception by way of opposition or reply to LAUSD's motion. Under these circumstances, LAUSD's motion to dismiss any claims against it prior to February 4, 2009, is granted.

Further, it is unnecessary to determine if the relation back doctrine applies to Student's amended complaint. Although Student requested in his motion to amend that the allegations of his first amended complaint relate back to the filing date of his original complaint, LAUSD has conceded the issue in its motion to dismiss by asserting that the statute of limitation in this case began to run two years prior to the filing of Student's original complaint on February 4, 2011, rather than two years prior to the filing of Student's amended complaint on March 29, 2011.

#### ORDER

All issues relating to LAUSD alleged to have occurred prior to February 4, 2009, are dismissed.

Dated: April 29, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings