

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF  
EDUCATION, CUPERTINO UNION  
SCHOOL DISTRICT, AND STATE OF  
CALIFORNIA DEPARTMENT OF  
HEALTH CARE SERVICES.

OAH CASE NO. 2012080386

ORDER GRANTING MOTION TO  
DISMISS CLAIMS BEFORE  
AUGUST 13, 2010

On August 13, 2012, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Santa Clara County Office of Education (County), the Cupertino Union School District (District) and the California Department of Health Care Services (CCS). On August 23, 2012, the County and District filed a Motion to Dismiss to Student's claims that occurred before August 13, 2012, for being outside the two-year statute of limitations. On August 24, 2012, Student filed an opposition.

APPLICABLE LAW

In general, the law 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. ((Ed. Code, § 56505, subd. (l); see also, *Draper v. Atlanta Ind. Sch. System* (11th Cir. 2008) 518 F.3d 1275, 1288, 20 U.S.C. §1415(f)(3)(c).) In effect, this is usually calculated as two years prior to the date of filing the request for due process.

Both federal and State law establish exceptions to the statute of limitations where the parent was *prevented* from filing a request for due process due to: (1) specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the complaint, or (2) the LEA's withholding of information from the parent that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D); Ed. Code § 56505(l).) These narrow exceptions require that the LEA's actions be intentional or flagrant. "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.” (*School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5, 108 LRP 13930.)

A claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided is inadequate. (*M.D. v. Southington Board of Ed.* (2d Cir. 2003) 334 F.3d 217, 221; *M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09–4624, 10–04223 SI) 2012 WL 398773, \*\* 17 - 19.) 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 it has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

## DISCUSSION

Student’s complaint contains allegations that the County and District denied Student a free appropriate public education (FAPE) before August 13, 2010, as Student alleges that the March 8, 2010 individualized education program (IEP) did not contain adequate goals, services and placement to meet his unique needs. The County and District contend that claims against the County and District that occurred before August 13, 2010, are barred by the two-year statute of limitations. Here, since the appropriateness of the March 8, 2010 IEP must be evaluated at the time the offer was made,<sup>1</sup> the appropriateness of that IEP is beyond the statute of limitations unless an exception applies.

Student’s complaint and opposition brief do not contain any allegations that the County or District made specific misrepresentations that prevented the filing of a hearing request in the spring of 2010. Additionally, the complaint and opposition brief do not contain any allegations that the County or District withheld from Parent information that it was required to provide, such as notification of parental rights. Accordingly, Student’s claims in the complaint that occurred before August 13, 2010, are dismissed for being outside the two-year statute of limitations.<sup>2</sup>

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<sup>1</sup> The Ninth Circuit has endorsed the “snapshot rule,” explaining that “[a]n IEP is a snapshot, not a retrospective.” The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid*; *Christopher S. v. Stanislaus County Off. of Ed.* (9th Cir. 2004) 384 F.3d 1205, 1212; *Pitchford v. Salem-Kaiser School Dist. No. 24J* (D.Ore. 2001) 155 F.Supp.2d 1213, 1236.)

<sup>2</sup> In addition, because of the snapshot rule, it is not clear what remains of Student’s issues, as presently stated, for the 2010-2011 school year. Because Student is precluded from litigating the appropriateness of the March 2010 IEP, it is questionable whether Student has described whether there was any new information, changes, or District action or inaction after August 13, 2010, that would have given rise to a duty to revisit the March 8, 2010 IEP prior to an annual IEP.

ORDER

The County's and District's Motion to Dismiss all of Student's claims before August 13, 2010, is granted.

Dated: September 12, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings