

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UNION SCHOOL DISTRICT.

OAH CASE NO. 2013050110

ORDER GRANTING IN PART
DISTRICT'S MOTION TO DISMISS
BY LIMITING ISSUES TO TWO
YEARS PRIOR TO FILING DATE

On May 1, 2013, Parent on behalf of Student filed a due process hearing request (complaint) claiming that he was denied a free appropriate public education (FAPE) by the Union School District (District) in a series of individualized education program (IEP) offers from March 25, 2011 through the present.

On May 13, 2013, District filed a motion to dismiss Student's "claims barred by the two-year statute of limitations." District's motion improperly seeks partial dismissal of Student's multi-year claim, and therefore this motion will be treated as a motion to limit the issues at hearing to those arising within two years of the filing date of Student's complaint. Student has not filed opposition.

APPLICABLE LAW

The Office of Administrative Hearings (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.....).

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) 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 by the local educational agency's withholding of information that was required to be provided to the parent.

An individualized education program (IEP) for a disabled child is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Tracy N. v. Dept. of Educ., State of Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the “snapshot rule.” (*J.W. v. Fresno, supra*, 626 F.3d at p. 439.)

While the adequacy of the IEP document is evaluated from the perspective of the IEP team at the time it was written, “the implementation of the educational program is an ongoing, dynamic activity, which obviously must be evaluated as such.” (*O’Toole v. Olathe Unified School Dist. No. 233* (10th Cir. 1998) 144 F.3d 692, 702.) Incidents occurring within the statute of limitations for failure to implement an IEP as written, or of notice of the need to reassess or modify an IEP, will support a due process claim. However, a parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations in the absence of an implementation issue, although the IEP document is in effect within the statute of limitations, as special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (See *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269 (*Ambridge*)). As explained by the regulations from Secretary of the Department of Education implementing the IDEA, with respect to the two-year time period, it is “clear that a due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew, or should have known, about the alleged action that forms the basis of the due process complaint.” (71 F.R. § 46540-01 at 46697 (August 14, 2006).)

DISCUSSION

Student’s complaint claims that District denied him a FAPE in the IEPs of: (1) March 25, 2011, May 24, 2011, (2) March 12, 2012 and (3) March 26, 2013. In Issue 1, Student alleges that he required behavior therapy at the time of the March 25, 2011 IEP team meeting, but none was offered. Student seeks reimbursement for privately funded placement and services.

District contends that Student’s issues for hearing are limited to those arising on or after May 1, 2011, two years prior to the date he filed his current complaint. District argues that Student has failed to allege facts concerning a failure of District to implement the March 25, 2011 IEP, so does not fall within an exception to the two year statute of limitations.

Student’s Issue 1 challenges the appropriateness of the March 25, 2011 IEP. In accordance with *Ambridge*, the appropriateness of the IEP is determined as of the date of the IEP itself, and not as a continuing violation that can be challenged every day of the period it is intended to cover. Therefore, Student’s challenges to the insufficiency of behavior services offered in the March 25, 2011 IEP are outside the May 1, 2011 limitations period for Student’s complaint.

Student does not allege that District made misrepresentations that prevented Student's parents from timely filing a request for due process with regard to the March 25, 2011 IEP, nor that District failed to implement the March 25, 2011 IEP. Under these circumstances, where Student has not alleged any basis for an exception to the statute of limitations, it is appropriate to limit the issues to the period from May 1, 2011 through the date of filing.

If Student desires to argue that an exception to the statute of limitations applies, he may file a request to amend the complaint to include allegations showing an exception to the two-year statute of limitations.

ORDER

1. District's motion to limit issues to two years prior to the date of filing OAH case number 2013050110 is granted. The only issues for hearing are those that occurred between May 1, 2011 and the date of filing.
2. If Student wants to raise issues that occurred prior to May 1, 2011, he must seek leave to amend his complaint to allege specific factual allegations that, if true, would demonstrate that an exception to the two-year statute of limitations applies.

IT IS SO ORDERED.

Dated: May 20, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings