

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013070599

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS ISSUE ONE OF
STUDENT'S AMENDED COMPLAINT

PROCEDURAL BACKGROUND

Student filed his original complaint, naming the San Ramon Valley Unified School District (District), on July 12, 2013. In pertinent part, Issue One of Student's complaint alleged that the District failed to create or offer Student an individualized educational program (IEP) that met his unique needs in the IEP the District developed for Student on May 5, 2011. Student further alleged that the District had failed to convene an IEP meeting for Student since June 2011.

On September 23, 2013, the District filed a motion to dismiss all of Student's issues concerning allegations occurring prior to July 12, 2011. The District alleged that the applicable two-year statute of limitations precluded any issues occurring prior to that date. Student filed an opposition to the District's motion to dismiss on September 25, 2013. Student contended that although the IEP in question was developed by the District and offered to Student on May 5, 2011, outside of the two-year statute of limitations, the IEP was designed to begin offering a placement and services to Student in August or September 2011, within the two-year period prior to the filing of Student's complaint. Student did not provide any statutory or case law authority in support of his opposition to the District's motion to dismiss based upon the statute of limitations.

The undersigned Administrative Law Judge (ALJ) convened a prehearing conference in this matter on September 30, 2013. At that time she informed the parties that she was inclined to grant the District's motion to dismiss. However, she gave Student leave to file additional briefing to specifically provide supporting authority for Student's position that the alleged deficiencies in the District's May 5, 2011 IEP were continuing violations and therefore not subject to dismissal as being outside of the statute of limitations. The ALJ gave Student until October 3, 2013, to file the additional briefing if he chose to do so.

Rather than file additional briefing, Student instead filed an amended complaint on October 1, 2013. The Office of Administrative Hearings granted Student's motion to amend on October 4, 2013.

Student's amended complaint deletes any specific reference to the District's May 5, 2011 offer of a free appropriate public education (FAPE). Student has re-worded his issue to allege as follows in his Issue One: "The District denied [Student] a FAPE by failing to tailor an appropriate educational program to meet his individual and unique needs and violated his procedural rights by failing to offer FAPE from July 12, 2011 for the 2011-2012 school year."

On October 3, 2013, the District filed a motion to dismiss Student's Issue One. The District contends that even though Student has re-worded Issue One so that the allegations pertain only to the time period on or after July 12, 2011, the re-worded issue still, in essence, alleges a continuing violation based upon the District's May 5, 2011 IEP offer. Therefore, the District asserts that Issue One of Student's complaint is still outside the two-year statute of limitations and should be dismissed.

Student filed an opposition to the District's motion on October 4, 2013. Student contends that the District's motion to dismiss is moot because Student's timely amended complaint supersedes his original complaint. Student's argument is not persuasive as the District renewed its motion to dismiss specifically as to the new allegations in Student's amended complaint. The District's motion is therefore not moot.

APPLICABLE LAW AND DISCUSSION

An IEP for a child with special needs 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 Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439 (*J.W. v. Fresno*)). Under the snapshot rule, the decision concerning an IEP is not evaluated retrospectively or in hindsight. (*Ibid.*; *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801.)

The federal Individuals with Disabilities Act and state education law contain a two year statute of limitations for special education administrative actions. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2)(2006); Ed. Code, § 56505, subd. (1).) The state statute provides as follows: "A request for due process hearing arising under subdivision (a) of Section 56501 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 of the request. In accordance with Section 1415(f)(3)(D) of Title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following (1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process

hearing request; (2) The withholding of information by the local educational agency that was required under this part to be provided to the parent.” (Ed. Code, § 56505, subd. (l).)

The statute of limitations therefore operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno*, *supra*, 626 F.3d at pp. 444-445; *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.)

Student has not alleged in his complaint that either of the two exceptions to the two year statute of limitations applies in this case, and has not filed an opposition to the District’s motion that would put the exceptions at issue. Therefore, Student’s issues are limited to those arising during the two-year statute of limitations. The questions now posed by the Districts is whether Issue One of Student’s amended complaint alleges continuing violations based upon the District’s May 5, 2011 IEP offer, and, if so, whether Issue One is entirely foreclosed in the instant due process proceeding.

Both federal statute and subsequent case law inform that continuing violations are not cognizable in due process proceedings. In its commentary on the 2006 version of the Code of Federal Regulations that were written in response to the reauthorized Individuals with Disabilities Education Act (IDEA), the United States Department of Education directly addressed the issue of continuing violations. A commenter to the proposed 2006 regulations suggested that the regulations should allow extensions of the statute of limitations when a violation is continuing. The United States Department of Education rejected the suggestion, stating “Section 615(f)(3)(D) of the Act [IDEA] provides explicit exceptions to the timeline for requesting a due process hearing. Section 300.511(f) [of the then proposed regulations] incorporates these provisions. These exceptions do not include when a violation is continuing Therefore, we do not believe that the regulations should be changed.” (71 Fed.Reg. 46697 (Aug. 13, 2006).)

To the extent that a student alleges that a school district failed to implement the student’s IEP, courts have found that “an IEP is a program, consisting of both the written IEP document, and the subsequent implementation of that document. While we evaluate the adequacy of the document from the perspective of the time it is written, the implementation of the 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.) Student here has not, however, alleged that the Districts have failed to implement her IEP’s. For all other circumstances, the cases primarily hold that special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (See, e.g., *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269; *Student v. Saddleback Unified Sch. Dist.* (2012) Cal.Offc.Admin.Hrngs Case No. 2006120636.)

To the extent that Issue One of Student’s amended complaint is alleging that the District denied Student a free appropriate public education on or after July 12, 2011, based on deficiencies in the District’s May 5, 2011 IEP offer, Student is alleging a continuing

violation. Any issues contending that the May 5, 2011 IEP offer denied Student a FAPE should have been filed within two years of when that offer was made. The District's motion to dismiss allegations in Student's amended complaint that are, or may be based on the May 5, 2011 offer of FAPE, is therefore granted.

However, Student's Issue One also contends that the District failed to create or offer an appropriate and unique program individually designed to meet Student's unique needs from July 12, 2011 onward that would offer Student placement and services for the 2011-2012 school year. Student appears to be contending that the District had an obligation separate and distinct from its May 5, 2011 IEP offer, to convene an IEP meeting for Student on or after July 12, 2011, and to make another IEP offer to Student. This issue is different from Student's allegation that the District's May 5, 2011 IEP offer was inadequate or inappropriate. Therefore, the District's motion to dismiss Student's Issue One as it pertains to the District's obligation on or after July 12, 2011, is denied.

The ALJ's finding that a portion of Student's Issue One is not barred by the statute of limitations does not address the viability of those allegations.

ORDER

The District's motion to dismiss Issue One of Student's amended complaint is granted in part. Any and all allegations pertaining to the District's May 5, 2011 IEP offer are hereby dismissed. Issue One of Student's amended complaint shall only proceed as to Student's allegations that the District had a separate and distinct obligation to make a separate IEP offer to Student on or after July 12, 2011.

Dated: October 4, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings