

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIANS on behalf of STUDENT,

v.

SANTA CLARA COUNTY MENTAL
HEALTH.

OAH CASE NO. 2009060851

ORDER GRANTING SCCMH'S
MOTION TO DISMISS CLAIMS
BEFORE JUNE 15, 2007

On June 15, 2009, attorney Alison Fitzgerald Sayer, on behalf of Student, filed a Request for Due Process Hearing (complaint) against Santa Clara County Mental Health (SCCMH). On September 29, 2009, attorney Rima H. Singh, on behalf of SCCMH, filed a motion to dismiss Student's claims that occurred before June 15, 2009, for being outside the two-year statute of limitations.¹ SCCMH filed additional documents on October 8, 2009. On October 16, 2009, Student filed an opposition. On October 27, 2009, the Office of Administrative Hearings (OAH) issued an order that gave Student until November 2, 2009, to submit additional information regarding the statute of limitations, which Student did.

APPLICABLE LAW

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); 20 U.S.C. § 1415(f)(3)(C).) However, 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 complaint due to specific misrepresentations by the local educational agency that it had resolved 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.

An Individuals with Disabilities in Education Act (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,

¹ OAH's Order denied SCCMH's other motions to dismiss and to add a party.

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.

DISCUSSION

Student alleges in the complaint that SCCMH is liable for reimbursement for his Guardians' out-of-pocket expenses for placing him at Forest Heights Lodge (FHL) from June 2007 through June 2009, because SCCMH's failed to offer an appropriate residential placement to meet Student's unique needs during the 2006-2007 school year. SCCMH asserts that Student's claims for reimbursement based on its purported conduct during the 2006-2007 school year are outside the two-year statute of limitations.

Student asserts that his claims are within the two-year statute of limitations because his Guardians did not become aware that SCCMH's June 2006 offer of service and placement did not meet Student's unique needs until after June 15, 2007. However, according to Student's complaint, Guardians began researching placement alternatives after the June 2006 individualized educational program (IEP) meeting when SCCMH did not recommend either a day program or residential placement. (Complaint, p. 5.) Therefore, Guardians were aware soon after the June 2006 IEP meeting of facts regarding SCCMH's offer and that SCCMH's IEP offer might not meet Student's unique needs.

Student also contends that his claims fit within both exceptions to the two-year statute of limitations because SCCMH misrepresented that its June 2006 IEP offer provided Student with a free appropriate public education and withheld information regarding the possibility of a residential placement as a part of the continuum of possible placements. Regarding SCCMH's alleged misrepresentations, Student does not assert that SCCMH prevented Guardians from filing a due process action. According to the complaint, Guardians did not believe that SCCMH's June 2006 offer met Student's unique needs as they began researching alternative educational placements, and nothing in Student's briefs indicates that SCCMH prevented the Guardians from filing a due process action.

Regarding the possible exception because SCCMH purportedly withheld information, Student asserts that SCCMH was required at June 2006 IEP meeting to disclose the possibility of a residential placement, pursuant to Government Code section 7572.5, subdivision (b). However, Government Code section 7572.5 only requires SCCMH to consider whether a residential placement was necessary to meet Student's needs or for Student to benefit from educational services, and whether residential services are available to address Student's needs and ameliorate the conditions leading to Student being designated as seriously emotionally disturbed. It does not require that SCCMH fully discuss the possibility of a residential placement if SCCMH did not believe that Student required a residential

placement. Therefore, Student did not establish an exception to the two-year statute of limitations.

Finally, Student asserts that his claims are within the two-year statute of limitations because SCCMH committed a continuing violation in not offering a residential placement throughout the 2006-2007 school year. However, Student's reliance on *K.S. v. Fremont Unified Sch. Dist.* (N.D.Cal. 2007) 2007 WL 915399, for the proposition of a continuing violation applies to claims under the IDEA is misplaced because *K.S.* involved the statute of limitations for claims pursuant to Section 504 of the Rehabilitation Act and Section 1983 of title 42 United States Code. Neither statutory scheme has a specific statute of limitation, and each relies on the statute of limitations for personal injury claims. In contrast, the IDEA has its own specific two-year statute of limitations, which California adopted; therefore the continuing violation doctrine does not apply. (*Vandenberg v. Appleton Area School District* (E.D.Wisc. 2003) 252 F. Supp. 2d 786, 789-793; *Bell v. Board of Educ. of the Albuquerque Public Schools* (D.N.M. 2008) 2008 WL 4104070, p. 18.)

Therefore, Student did not establish any exception to the two-year statute of limitations or that his claims were within the two-year limitation period, and his claims that occurred before June 15, 2007, are dismissed.

ORDER

SCCMH's motion to dismiss all claims before June 15, 2007, is granted.

Dated: November 12, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings