

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2010110717

AMENDED ORDER GRANTING DRY  
CREEK JOINT ELEMENTARY  
SCHOOL DISTRICT'S MOTION TO  
DISMISS

On November 19, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing, naming Dry Creek Joint Elementary School District (Dry Creek), Placer County Office of Education (PCOE), and Placer County Children System of Care (PCCS) as respondents. On December 10, 2010, Student filed an amended complaint (complaint) naming the same respondents. In his complaint, Student alleges violations of the Individuals with Disabilities Education Act (IDEA) for school years 2005-2006 to 2010-2011.

On December 23, 2010, Dry Creek filed a Motion to Dismiss, alleging that part of Student's claims against it in issues one, two, three, and seven are barred by the applicable Statute of Limitations. (Ed. Code, § 56505, subd. (1).) Student did not file an opposition to the motion. On December 29, 2010, OAH, by ALJ Robert Helfand, issued an order granting Dry Creek's motion to dismiss all claims against Dry Creek arising prior to November 19, 2008.

On December 31, 2010, Student filed a motion for reconsideration. Dry Creek filed an opposition to the reconsideration motion the same day. On January 3, 2011, Student filed his reply to the opposition. The opposition and reply deal solely with the merits of whether Student is entitled to a reconsideration of the December 29, 2010 order. On January 7, 2011, ALJ Helfand granted Student's motion for reconsideration.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate

public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Saddleback Unified School District* (2007) O.A.H. case 2007090371; *Student v. Vacaville Unified Sch. District* (2004) S.E.H.O case SN 04-1026, 43 IDELR 210, 105 LRP 2671, quoting *Alexopulous v. San Francisco Unified Sch. District* (9th Cir. 1987) 817 F.2d 551, 555.)

California implements the Individuals with Disabilities Education Act (IDEA) through its special education laws. (*Miller v. San Mateo-Foster City Unified Sch. District* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Education Code section 56505, subd. (l), 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.<sup>1</sup> (See also, *Draper v. Atlanta Ind. Sch. System* (11th Cir. 2008) 518 F.3d 1275, 1288, 20 U.S.C. §1415(f)(3)(c).) The two year limitations period does not apply if the parent was prevented from filing a due process request 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 local educational agency withheld information from the parent which is required to be provided to the parent.<sup>2</sup> (See also, *J.L. v. Ambridge Area Sch. District* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, \*23-24.)

The “‘knowledge of facts’ requirement does not demand that the [party] know the specific legal theory or even the specific facts of the relevant claim; rather the [party] must have known or reasonably should have known the facts underlying the supposed learning

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<sup>1</sup> Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years. Effective October 9, 2006, California amended the statute of limitations to be consistent with the federal limitations period of two years.

<sup>2</sup> The two year statute of limitations and exceptions were added when the IDEA was revised and signed into law in December 2004, becoming effective July 1, 2005. (20 U.S.C. § 1415(f)(3)(C)-(D).) By its terms, section 56505, subdivision (l) sets forth the two exceptions in accordance with part 300.516(c) of title 34 of the Code of Federal Regulations. Thus, California has in effect adopted the IDEA statute of limitations and its two specific exceptions.

disability and their IDEA rights.” (*Miller, supra*, 318 F.Supp.2d at p. 861 (citing *Jolly v. Eli Lilly & Co.* (1988) 44Cal.3d 1103, 1111); *Ashlee R. v. Oakland Unified Sch. District Financing Corp.* (N.D. Cal. 2004) 2004 U.S. Dist. LEXIS 17039, p. 16.)

The narrow exceptions of misrepresentation and withholding of information require that the local education agency’s actions be intentional or flagrant rather than merely a repetition of an aspect of determining whether a student received a free appropriate public education (FAPE). “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].)

## DISCUSSION

Here, Student does not contest that much of Student’s amended complaint involves matters that occurred more than two years before the date of filing the complaint. Student also does not claim that either of the exceptions to the statute of limitations applies to Student’s case. Student relies upon the “knew or had reason to know” language of the statute. Student contends that Student’s parents did not know or have reason to know about the qualifications and training of Student’s teachers including that they did not possess proper credentialing, so their case never accrued for statute of limitations purposes until Student’s parents were informed of the lack of credentialing by Student’s counsel. Student’s counsel avers that he discovered that the teachers lacked appropriate credentials by checking the website of the California Commission on Teacher Credentials in October 2010. Thus, Student is not relying on the two above-described exceptions, but as to whether the Parents “knew or had reason to know of the facts underlying the basis for the request [for due process hearing].”

As stated above, the “knowledge of facts” requirement does not require that a party know the specific legal theory or specific facts of the relevant claim. What is required is that the parents know or should have known the facts underlying the supposed disability and their rights under the IDEA. (*Miller, supra*, 318 F.Supp.2d at p. 861.) Here, there is no allegation in the complaint that Parents were not aware of their IDEA rights. In reviewing the factual allegations in the complaint, there are numerous citations to Student’s behavioral problems, efforts by school officials to deal with these problems, and the continuing problems encountered by Student. Thus, Student’s parents were aware prior to the limitations period of the facts underlying Student’s learning disability. Therefore, Parents have not met the “knowledge of the facts” requirement and their claims before November 19, 2008 are barred by the two year statute of limitations.

The purpose of the statute of limitations in IDEA cases is to have disputes involving special education decided timely and appropriately. The statute requires parents to “actively and contemporaneously pursue claims on behalf of their disabled children.” This requires due diligence in investigating their concerns. (*Student v.*

*Vacaville Unified School District, supra*, (2004) SN 04-1026, 43 IDELR 210, 105 LRP 2671.)

Here, Student seeks to have the two year limitations period waived because Parents were ignorant of the lack of proper credentials for Student's teacher. In this matter, Student's parents were aware that Student was failing to make adequate progress in his education which should have alerted them to investigate the situation. Parents' investigation could have revealed the lack of credentialing of the teacher as it is public information and available on the California Commission on Teacher Credentialing public website. Student has failed to meet his burden to demonstrate that the two year limitation period should be waived.

ORDER

Dry Creek's Motion to Dismiss is granted as to Issues One, Two, Three, and Seven are they relate to Dry Creek occurring prior to November 19, 2008.

IT IS SO ORDERED.

Dated: January 07, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings