

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011010174

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On January 6, 2011, Matthew M. Pope, attorney for Student, filed a Request for Due Process Hearing (complaint), naming Norwalk-La Mirada Unified School District (District).

On January 19, 2011, Adam J. Newman, attorney for the District, filed a Motion to Dismiss some of the issues in the complaint.

OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

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. Los Angeles Unified School District et al* (2010) O.A.H. case 2010010284, 110 LRP 3448; *Student v. Saddleback Unified School District* (2007) O.A.H. case 2007090371, 108 LRP 45940; *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 (hereafter *Alexopulous*)). 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 (hereafter *Miller*)). 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. (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.

(See also, *J.L. v. Ambridge Area Sch. District* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, *23-24.)

“[A] cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury which is the basis of his action.” (*Miller*, supra, 318 F.Supp.2d at 861(quoting *Alexopulous*, supra, 817 F.2d at 554).)

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 disability and their IDEA rights.” (*Miller*, supra, 318 F.Supp.2d at 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

The District argues that any issues or remedies arising prior to January 5, 2009, should be barred pursuant to the two-year statute of limitations, and specifically Issues Two and Three of Student’s complaint should be dismissed.

Student does not allege that the District made any specific misrepresentations to Student that it had solved any problem forming the basis of the complaint, nor has withheld any information which it is required to be provided to parent. Accordingly, any claim arising prior to January 6, 2009, is barred.

Regarding Issues No. 2 and 3 of Student’s complaint, the extent of the time period is unclear; however, claims that occurred from January 6, 2009, are valid and Issues No. 2 and 3 not dismissed in their entirety. The 2008 vision assessment provided by the District may be used for background purposes to provide the basis for claims which occurred from January 6, 2009 to present.

ORDER

1. The District's Motion to Dismiss is granted as to any claim prior to January 6, 2009.
2. The District's Motion to Dismiss Issues Two and Three is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: January 27, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings