

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010522

ORDER DENYING MOTION TO
DISMISS

On January 19, 2011, Student’s parent on behalf of Student (Student) filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Montebello Unified School District (District). On February 8, 2011, the District filed a motion to dismiss portions of Student’s complaint. The basis for the District’s motion is that issues two and three of Student’s complaint are barred by the two-year statute of limitations. On January 9, 2011, Student filed an opposition to the motion.

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).)

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 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 (1), 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 the local educational agency’s withholding of information from the parent that was required to be provided to the parent. The determination of whether a parent “knew or should have known” about the conduct that is the basis for the complaint is a determination to be made on a case-by-case basis by the administrative law judge. (See 71 Fed.Reg. 46706 (August 14, 2006).)

DISCUSSION

The motion to dismiss involves issues two and three of Student's complaint. In the facts underlying those two issues Student alleges, in part, that Student was eligible for mental health services and was referred to the Department of Mental Health for assessment pursuant to the procedures established by Assembly Bill 3632 (AB3632). The complaint goes on to allege that "[i]n October 2010, Parent discovered that the referral was never completed because the school did not forward the signed IEP to the AB3632 Program."

Student alleges that the District failed to implement the IEP by failing to forward a copy of the signed IEP as part of the AB3632 referral. Student also alleges that the District failed to provide Student with prior written notice of its refusal to forward the signed IEP. Student alleges that this conduct denied Student a FAPE beginning on January 19, 2007.

The District argues that these two issues should be dismissed because they involve events that occurred outside the two-year statute of limitations period. Because Student's complaint was filed in January 2011, the statute of limitations would normally bar any issues arising before January 2009.

The parties dispute whether an exception to the statute of limitations applies under these facts. Student argues that an exception to the statute of limitations applies because Student's parents did not know that the District had failed to forward the IEP until they read about that failure in a later AB3632 referral made in 2010. The District argues that Student has not alleged a sufficient showing to come within an exception to the statute of limitations. The District contends that Student's parents were provided with their notice of procedural safeguards by the District, so there was no withholding of information that was required to be provided by the District.

For purposes of this motion to dismiss, it is not necessary to decide whether an exception applies to the statute of limitations. Instead, the real question is when the statute of limitations began to run under the facts of this case. A case only accrues for purposes of the statute of limitations when a party knows or has reason to know of the facts underlying the basis for the complaint. As will be explained below, under the circumstances of this case, it is not possible to decide that question on a motion to dismiss.

When the Congress and the California Legislature enacted the federal and state special education laws and regulations they established a procedure for a rapid hearing process to resolve disputes between parents and school districts. They did not contemplate a full civil law and motion practice. There is no authorization in either state or federal law for a motion for summary judgment in a special education due process proceeding. OAH will entertain motions to dismiss due process complaints in certain situations, such as matters that are outside the jurisdiction of an OAH proceeding (for example, when a student alleges a violation of Section 504 of the Rehabilitation Act of 1973).

OAH will also entertain motions to dismiss when the allegations of the complaint demonstrate that part or all of the complaint is barred by the statute of limitations. However, not every statute of limitations issue may be resolved by motion. In some situations, evidence and factual findings are necessary to determine if the statute of limitations applies.

This case presents a situation that cannot be decided by motion. The facts alleged in the complaint raise questions regarding when Student's parents "knew or had reason to know of the facts underlying" allegations of the complaint. What actions did the District take in 2007 during the AB 3632 referral process and what representations were made to Student's parent? Did Student's parent know or have reason to know of the actions the District took (or failed to take) as part of the referral process? These and similar questions require a more thorough evidentiary record than can be made on a motion to dismiss.

ORDER

The District's motion to dismiss is denied. The matter shall proceed as scheduled.

Dated: February 14, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings