

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT.

OAH CASE NO. 2012060243

ORDER GRANTING MOTION TO
DISMISS CLAIMS BARRED BY
STATUTE OF LIMITATIONS

On June 4, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming the Bakersfield City School District (District) as respondent. In the complaint, Student alleges six issues.¹ Issues 3, 4, and 5 involve allegations involving the years 2007-2011. Issues 1, 2, and 8 involve allegations within two years of filing.

On June 14, 2012, the District filed a response to the complaint. In its response, the District asserted the affirmative defense that the Student's claims prior to June 4, 2010, are barred by the applicable statute of limitations.

On July 30, 2012, the District filed a Motion to Dismiss Claims Barred by the Statute of Limitations, requesting that the Office of Administrative Hearings (OAH) issue an order dismissing those parts of claims 3, 4 and 5 which occurred prior to June 4, 2010, as being barred by the applicable statute of limitations. (Ed. Code, § 56505, subd. (1).)

On August 2, 2012, Student filed an opposition to the District's motion. Student contends that the District made misrepresentations as to Student's progress to Student's parent (Parent) and that the IEP goals would result in Student making progress academically and with his behavior.²

¹ The issues are numbered 1, 2, 3, 4, 5, and 8. The complaint does not include any issues numbered 6 and 7.

² Student alleges in his opposition that the District admitted in the motion that it had hid information from Parent. This is untrue as the District was merely repeating an argument made by Student in his complaint as to the inapplicability of the statute of limitations.

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. Dry Creek Joint Elementary School Dist., et al* (2011) O.A.H. case 2010110717; *Student v. Saddleback Unified School Dist.* (2007) O.A.H. case 2007090371; *Student v. Vacaville Unified School Dist.* (2004) S.E.H.O case SN 04-1026, 43 IDELR 210, 105 LRP 2671, quoting *Alexopolous v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 555.)

California implements the IDEA through its special education laws. (*Miller v. San Mateo-Foster City Unified School Dist.* (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.³ (*Draper v. Atlanta Ind. School 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.⁴ (*J.L. v. Ambridge Area School Dist.* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, *23-24.)

³ 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.

⁴ 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.

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 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.” (*Student v. Saddleback Unified School Dist.* (2007) OAH. Case No. 2007090371, quoting *School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5 [108 LRP 13930].)

DISCUSSION

Student also admits, in his opposition, that the District has demonstrated that the “knowledge of facts” requirement has been met. Student states on page five of his opposition:

Each year, Respondent assured Parent the goals in place would help improve Student’s behavior as well as his performance academically. Each year, Student remained stagnant, as evidenced in his subsequent IEPs.

As stated above, the “knowledge of facts” requirement does not demand that a party know the specific legal theory but must have known or reasonably should have known the facts underlying the supposed learning disability. Here, the fact that Parent was aware that Student was “stagnant” as demonstrated in the subsequent IEP’s meets this requirement.

In his complaint, Student contends that the two year statute of limitations should be tolled because the District “hid the true interpretation of Student’s assessments.” The basis for this contention is that an assessment in 2011 reached a very different result. In his opposition to the motion, Student now contends that the District withheld information from Parent in that the District IEP team members would help Student improve academically in

§ 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.

his behavior. Student fails to establish nor does he contend that the actions of the District was intentional or flagrant. Thus, the claims by Student predating June 4, 2010 are barred by the applicable statute of limitations.

ORDER

1. The District's motion to dismiss claims barred by the statute of limitations is granted.
2. Student's claims that precede June 4, 2010, in Issues 3, 4, and 5 are dismissed. Student's claims which occur after June 4, 2010, in issues 3, 4, and 5 are not dismissed.

IT IS SO ORDERED.

Dated: August 07, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings