

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013030123

ORDER GRANTING MOTION TO
DISMISS ISSUES OUTSIDE STATUTE
OF LIMITATIONS

On March 1, 2013, Student filed a Due Process Hearing Request (complaint) naming Stockton Unified School District (District) as the respondent.

On March 14, 2013, District filed a Motion to Dismiss claims outside the two-year statute of limitations. District re-filed the Motion on March 15, 2013. The Office of Administrative Hearings (OAH) has received no opposition to District's Motion. As discussed below, the Motion is granted. Student's claims, insofar as they relate to time periods prior to March 2, 2011, are hereby dismissed.

APPLICABLE LAW

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction.

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) 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 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 by the local educational agency's withholding of information that was required to be provided to the parent.

An individualized education program (IEP) for a disabled child is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149;

Tracy N. v. Dept. of Educ., State of Hawaii (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the “snapshot rule.” (*J.W. v. Fresno, supra*, 626 F.3d at p. 439.)

While the adequacy of the IEP document is evaluated from the perspective of the IEP team at the time it was written, “the implementation of the educational program is an ongoing, dynamic activity, which obviously must be evaluated as such.” (*O’Toole v. Olathe Unified School Dist. No. 233* (10th Cir. 1998) 144 F.3d 692, 702.) Incidents occurring within the statute of limitations for failure to implement an IEP as written, or of notice of the need to reassess or modify an IEP, will support a due process claim. However, a parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations in the absence of an implementation issue, although the IEP document is in effect within the statute of limitations, as special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (See *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269 (*Ambridge*) .) As explained by the regulations from Secretary of the Department of Education implementing the IDEA, with respect to the two-year time period, it is “clear that a due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew, or should have known, about the alleged action that forms the basis of the due process complaint.” (71 F.R. § 46540-01 at 46697 (August 14, 2006).)

DISCUSSION

Student’s complaint , filed March 1, 2013, states facts dating back to 2007, including allegations relating to assessments in October and November 2010 and individualized education programs (IEP’s) dated March 2, 2010, and November 3, 2010, all prior to the two-year statute of limitations. It also states facts relating to IEP’s dated November 28, 2011, and November 26, 2012. The complaint does not specify which facts are background, and which are part of Student’s four claims.

Student’s four claims allege: (1) Denial of a free appropriate public education (FAPE) by failing to properly assess from February 2011 to the present; (2) denial of a FAPE by failing to tailor an appropriate educational program; (3) procedural violation by failing to provide parents with full and complete educational records; (4) failing to translate IEP documents from February 2011 to the present.

District contends that Student’s issues for hearing are limited to those on or after March 2, 2011, two years prior to the date of the complaint filed March 1, 2013.

Under these circumstances, where Student has not alleged any basis for an exception to the statute of limitations, it is appropriate to limit the issues to the period from March 2, 2011, through the date of filing. Thus, facts alleged that predate the statute of limitations shall be treated as background. Student’s claims with regard to IEP’s that predate the statute

of limitations shall be limited in accordance with the legal authorities stated above. If Student desires to argue that an exception to the statute of limitations applies, he should file a request to amend the complaint to include allegations showing an exception to the two-year statute of limitations.

ORDER

1. District's motion to limit issues to two years prior to the date of filing is granted. The only issues for hearing are those that occurred between March 2, 2011, and the date of filing.
2. If Student wants to raise issues that occurred prior to March 2, 2011, he must seek leave to amend the complaint to allege specific factual allegations that, if true, would demonstrate that an exception to the two-year statute of limitations applies.

Dated: March 21, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings