

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. 2014100006

ORDER DENYING MOTION TO
DISMISS ISSUE A

On September 29, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Montebello Unified School District as respondent. The complaint contains five issues, identified as A through E.

On October 14, 2014, Montebello filed a motion to dismiss Issue A on the basis that the allegations are barred by the applicable Statute of Limitations.

On October 17, 2014, Student filed an opposition to Montebello's motion. On October 22, 2014, Montebello filed a reply to Student's opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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 Elem. School Dist.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2010110717 (*Dry Creek*); *Student v. Saddleback Unified School District* (2007) Cal.Offc.Admin.Hrngs. Case No. 2007090371 (*Saddleback*); *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 IDEA through its special education laws. (*Miller v. San Mateo-Foster City Unified Sch. Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Education Code section 56505, subd. (1), 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. (*Dry Creek, supra*; and *Saddleback, supra*.)

“[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 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 WL 1878214, p. 4; *Saddleback*.)

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.” (*Saddleback*, citing *School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5 [108 LRP 13930].)

DISCUSSION

Student's complaint alleges that in June 2009, he was found eligible for special education by his then school district, Los Angeles Unified School District. Student's Individualized Education Program placed him in a mixed preschool class with speech and language therapy services. In February 2010, Student moved within the Montebello school district boundaries. Parent contacted Montebello and provided it with a copy of Student's IEP from Los Angeles. After hearing no reply, Parent re-contacted Montebello several other times with no response. On February 28, 2014, Parent again contacted Montebello and requested an assessment of Student. On April 4, 2011, Montebello forwarded to Parent an assessment plan. Following completion of the assessment, Montebello held an IEP team meeting on June 8, 2012. This meeting was termed to be the "initial IEP meeting."

Issue A of Student's complaint states: "The Statute of Limitations should be extended to allow for claims that occurred from March 2010 to June 2011 because the District misrepresented information to, and withheld information from, Parent which prevented Parent from filing a timely due process complaint."¹

Student contends that (1) the two year limitations period did not commence until Parent was informed by Montebello, in its assessment, that Student was identified with autistic-like behaviors, (2) Montebello misrepresented to Parent that Student could only enroll in Montebello and receive special education services if there was an opening for him; (3) Montebello attempted to mislead Parent by labeling the June 8, 2014 IEP meeting as an "initial" meeting, and (4) Montebello withheld information to Parent by failing to issue a Prior Written Notice (as required by Ed. Code, §56500.4.).

In its motion, Montebello contends that Student's complaint fails to identify any misrepresentation or evidence of withholding of information to Student which would have prevented him from filing a due process complaint.

Date the Limitations Period Commenced

Parents knew, or should have known, their rights under the IDEA and the facts underlying Student's learning disability as early as March 2010. Parent was aware that Student had previously been found eligible for special education by Los Angeles. When Montebello failed to implement the Los Angeles IEP or take any further steps to assess Student or offer an interim IEP, Parent was aware of facts which placed them on knowledge that Montebello was failing to provide Student with a free appropriate public education.

¹ Issue A also contains the following subissues: failure to provide Student with comparable services as contained in his prior IEP from LAUSD; child find violation, and improperly exiting Student from special education.

In an analogous situation, it was held that a cause of action accrued when Parents removed their child from public school and enrolled the child in a private school because of lack of education progress. (*Moyer ex rel Moyer v. Long Beach Unified Sch. Dist.* (2013 C.D. Cal) 2013 WL 271686.)

Thus, Student's cause of action accrued prior to October 2012.

Misrepresentations by Montebello

Student contends that Montebello mislead Student by its statement that Student could not receive special education services until there was an opening in the program and labeling the June 8, 2012 IEP meeting as "initial."

The alleged misrepresentation that Student could not attend school until an opening was available, nor the labeling of the IEP meeting as "initial," are not the type of misrepresentation which is an exception to the limitations statute. The statute reads: "Specific misrepresentations by the local education agency that *it had solved the problem forming the basis of the due process hearing requested.*" (Emphasis added.)

Withholding of Information by Montebello

Student contends that Montebello withheld information from Student when it failed to respond to Parent's three requests to provide special education services similar to those from Los Angeles pursuant to his IEP. Student contends that Montebello had an obligation to respond by a Prior Written Notice as to their decision not to provide special education services to Student by providing an interim IEP. Additionally, Montebello would have provided to Parent a copy of procedural rights.

Student contends that whether Montebello's allegedly withheld information was intentional or flagrant is "a matter of fact that cannot be decided on the pleadings." Student goes on to state that this issue "requires a hearing with the opportunity to present evidence and question witnesses."

Student has cited sufficient grounds which may be an exception to the two year limitations period based on Montebello's purported withholding of information. Therefore, Montebello's motion is basically requesting a summary judgment as to Issue A as to whether it withheld information it was supposed to provide Parent. The issue as to whether Montebello withheld information, which prevented Student from filing for due process in a timely manner, necessarily raises an issue of fact.

ORDER

Montebello's Motion to Dismiss is denied based on whether Montebello withheld information required to be given to Parent.

IT IS SO ORDERED.

DATE: October 22, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings