

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH CASE NO. 2014100519

ORDER GRANTING MOTION TO
DISMISS CLAIMS BARRED BY
STATUTE OF LIMITATIONS

On October 10, 2014, Parent on behalf of Student filed a Request for Due Process Hearing naming the Santa Rosa Unified School District as respondent. After part of that complaint was found not sufficient by OAH, Student filed an amended complaint alleging eight issues occurring from February 2012 though present.

On November 12, 2014, Santa Rosa filed a Motion to Dismiss Claims Barred by the Statute of Limitations, requesting that the Office of Administrative Hearings issue an order dismissing Issue One and those parts of the remaining issues which occurred prior to October 10, 2012, as being barred by the applicable statute of limitations. (Ed. Code, § 56505, subd. (1).)

On November 17, 2014, Student filed an opposition to Santa Rosa's 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) [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 *Alexopulous 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, subdivision (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.¹ (*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.² (*J.L. v. Ambridge Area School Dist.* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, *23-24.)

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

¹ 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.

² 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. § 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.

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

In her amended complaint, Student contends that Santa Rosa denied her a free appropriate public education from February 2012 through October 10, 2014, by:

- 1) Failing to obtain appropriate informed consent from Student to her February 2012 IEP;
- 2) Failing to hold an IEP meeting for Student with all required IEP team members, and by failing to develop and offer to Student an appropriate individualized educational program, including an appropriate placement and services, to address her unique needs;
- 3) Failing to provide Student, or her educational rights holder, prior written notice including regarding eligibility and placement;
- 4) Failing to assess Student in all areas of suspected need in preparation for her 2013 triennial IEP;
- 5) Predetermining placement offers for Student without holding an IEP meeting, thereby depriving Student and her educational rights holder of the opportunity to meaningfully participate in the development of her educational program;
- 6) Failing to offer or provide Student with an appropriate transition plan;
- 7) Failing to identify and properly respond to Student’s seizures as a disability potentially requiring special education, which prevented Student from accessing her curriculum; and
- 8) Failing to properly respond to bullying and inappropriate treatment by others at school, which caused Student to suffer emotionally to the extent that she could not access her curriculum.

In her opposition to the motion, Student contends that the two year limitations should not apply because Santa Rosa made misrepresentations and withheld information. In Student’s long and rambling 14 page opposition to the motion, she contends that Santa Rosa misrepresented facts as it continually promised Individualized Education Programs up to an August 6, 2012 email. Student also contends that “we had been requesting IEPs (meetings) from March to August 2012.” (Opposition, p. 8.) Student has failed to demonstrate in what manner that this “misrepresentation” prevented her from filing a due process request.

Student has filed in excess of ten due process cases with OAH from 2007 through 2014. Since February 2014, Student has filed three other due process requests with OAH. In her opposition, Student admits: “We did not stop seeking redress from the OAH, but refiled cases on a regular basis.” (Opposition, p.7.) Student has failed to prove that the statute of limitations should not apply as she has failed to meet her burden to demonstrate that she was prevented from filing a timely due process request because of any misrepresentation from Santa Rosa.

Student contends that Santa Rosa had withheld information from Student. Student fails to make any demonstration that Santa Rosa withheld information which prevented Student from filing a timely due process request. Student contends that from March through May 2014, Santa Rosa withheld that an IEP meeting could be held telephonically and that Parent could assign Student’s educational rights to a third person. As noted above, Student filed three other cases in 2014. In the three 2014 cases, Student made similar allegations. OAH case number 2014030127 was filed on March 5, 2014. OAH case number 2014080675 was filed on August 18, 2014; while the third case (OAH case number 2014090161) was filed on September 10, 2014. Student requested to dismiss the first two of these cases. Student has filed in excess of 10 cases with OAH since 2007. This clearly demonstrates she was well aware of her right to seek a due process hearing. Student must then prove that the allegedly withheld information prevented her from filing a due process request timely.

In her opposition, Student admits that she repeatedly requested IEP team meetings which were refused. This demonstrates that Student had knowledge of the facts underlying the alleged violation by Santa Rosa. Student’s history of filing due process requests and her numerous demands for IEP team meetings demonstrate that Student had knowledge of her right to file a due process request. As to the failure to inform Parent that she could exercise an assignment of educational rights, Student admits in her opposition that Student had executed an assignment of education rights to Parent in the spring of 2012. (Opposition, p. 2.) This is clear evidence that Student’s parent was aware that educational rights could be assigned. Student has made no showing that she was prevented from filing a due process request timely. Thus, Student cannot demonstrate how this allegedly withheld information prevented Student from filing a due process request.

ORDER

1. District's motion to dismiss claims barred by the statute of limitations is granted. Accordingly, Issue One is dismissed in its entirety.

2. As to Issues Two through Eight, all claims that precede October 10, 2012, are dismissed. Student's claims which occur after October 10, 2012, are not dismissed.

IT IS SO ORDERED.

DATE: November 25, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings