

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

ALTA LOMA SCHOOL DISTRICT AND
WEST END SPECIAL EDUCATION
LOCAL PLAN AREA,

v.

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2011040395

PARENTS ON BEHALF OF STUDENT,

v.

ALTA LOMA SCHOOL DISTRICT AND
WEST END SPECIAL EDUCATION
LOCAL PLAN AREA.

OAH CASE NO. 2011050106

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS MATTERS
OUTSIDE THE TWO YEAR STATUTE
OF LIMITATIONS

On April 12, 2011, the Alta Loma School District (District) and the West End SELPA (SELPA) (jointly, District) filed a Request for Due Process Hearing (complaint) in OAH case number 2011040395 (First Case) naming Student.

On April 29, 2011, Student filed a complaint in OAH case number 2011050106 (Second Case), naming both District and SELPA.

On April 29, 2011, the parties filed a joint stipulation to consolidate the First Case with the Second Case, and to continue the due process hearing dates set in the consolidated matter to the dates parties have agreed to.

On May 9, 2011, District filed a Motion to Dismiss Issues and Remedies Beyond the Two-Year Statute of Limitations in Second Case.

On May 12, 2011, Student filed an Opposition to District's Motion to Dismiss.

On May 13, 2011, OAH granted the parties Motion to Consolidate.

On May 18, 2011, District filed a Reply to Student's Opposition.

On May 22, 2011, District renewed its Motion to Dismiss.

In her complaint, Student avers that the two year statute of limitations is extended to include the 2007-2008, 2008-2009, and the beginning of the 2009-2010 school year, due to District's failure to meet its child find obligations, to assess Student, and to make her eligible for special education. Student avers that she is entitled to press claims beyond the two year statute of limitations because the statute of limitations did not begin to run "until Parents received the District's Notice of Procedural Safeguards in January 2010."¹ Student explains that "[p]rior to that date, Parents could not have known about the alleged actions that form the basis of these claims because they were not aware of District's obligation to evaluate [Student] and provide her with special education and related services." Student avers that the statute of limitations is extended as a result of District's failure to review its Notice of Procedural Safeguards with Parents, and Parents ignorance of Student's educational rights "all of which are important and relevant factors for a finding that District violated child find."

District contends that Student's claims outside of the two year statute of limitations are time-barred.² District maintains that its failure to provide Parents notification of Student's procedural safeguards when Student was a general education pupil is not a cognizable exception to the two year statute of limitations imposed by the IDEA. In the alternative, District contends that Student had ample notice of Parents' procedural safeguards to file a complaint within the statutory period. With its Motion to Dismiss, District provides documentary support, undisputed by Student in her Opposition, that District provided Student with the required Notice of Procedural Safeguards, on November 17, 2009, and on four occasions thereafter. In view of the applicable law set forth below, Student's pleadings were considered, but not District's documents.

As discussed below, as a matter of law, the two-year statute of limitations bars Student's claims prior to April 29, 2009, because Student failed to allege a cognizable exception to the statute of limitations.

¹ In another section of the complaint Student says that the statute of limitations for District's failure to meet its child find obligations and provide Student a FAPE did not begin until October 2009.

² In District's moving papers, it stated that all issues and remedies relating to the time period prior to April 29, 2011, should be dismissed with prejudice. However, when viewed in context of the entire pleading, and District's reply papers, District intended to request dismissal of issues and remedies two years prior to April 29, 2011.

APPLICABLE LAW

Motion to Dismiss

With the exception of dismissing allegations facially outside of OAH's jurisdiction, OAH does not generally dismiss claims that have otherwise been properly pleaded. OAH's determination of a request to waive the two-year statute of limitations usually involves a fact-specific inquiry; generally, the relevant facts are subject to dispute, and an evidentiary hearing is required so that the ALJ can make factual findings from contradictory evidence. (See *J.L. v. Ambridge Area Sch. Dist.* (W.D. Pa. 2008) 622 F.Supp. 2d 257, 266; *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46706 (2006).) This well settled principle, however, does not apply, to matters where the request for waiver relies upon a legal theory that, as a matter of law, does not qualify as an exception to the two-year statute of limitations. Furthermore, deference to an evidentiary proceeding, does not apply, where the pleadings provide factual admissions from which a determination can be made. It is well settled that under the doctrine of "conclusiveness of pleadings," a pleader is bound by well pleaded material allegations or by failure to deny well pleaded material allegations. (4 Witkin, *Cal Procedure* (5th ed. 2008) Pleading, § 454, pp. 585,587, citing Code Civ. Proc., § 431.20 (failure to controvert material allegations) and *Brown v. Aguilar* (1927) 202 Cal. 143, 149 ("While a pleader is not bound by allegations of evidence or conclusions of law, he is concluded by material averments of his pleading, and may not, as a rule, prove facts contrary thereto").)

Statute of Limitations

A 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." (Ed. Code, § 56505, sub. (1).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing 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 withholding of information by the local educational agency (LEA) from the parent that was required to be provided to the parent under special education law. (*Ibid.*, see 20 U.S.C. § 1415(f)(3)(D).) Common law or equitable exceptions to the statute of limitations do not apply to IDEA cases. (*P.P. ex rel. Michael P. v. West Chester Area School Dist.* (E.D. Pa. 2008) 557 F.Supp.2d 648, 661, 662.) A claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided is inadequate. (*M.D. v. Southington Board of Ed.* (2d Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

Prior to July 1, 2005, the IDEA provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability at a minimum: 1) upon initial referral for assessment; 2) upon notice of an IEP meeting or reassessment of the child; or 3) when a request for due process was filed. (Former 20 U.S.C. § 1415(d)(1).) From September of 2003 through October 5, 2007, the Education Code provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability at a minimum: 1) upon initial referral for assessment; 2) upon notice of an IEP meeting or reassessment of the child; or 3) when a request for due process was filed. (Former Ed. Code, § 56301.) After July 1, 2005, the IDEA provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a) (adding that a notice must also be given when an eligible student's placement is changed for violating a code of conduct).) From October 7, 2005 through October 9, 2007, the Education Code provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (Former Ed. Code, § 56301, subd. (d)(2).)

In general, where a child was never identified as being eligible for special education and was not referred for special education assessment, a school has no duty to give the parents a notice of procedural safeguards. (*See Firth v. Galetton Area School Dist.* (M.D. Pa. 1995) 900 F.Supp. 706, 714.)

ANALYSIS

At the threshold, Student maintains that the Motion to Dismiss must be denied because as a matter of law, it can not be determined on pleadings, but requires evidence that can only be provided at the due process hearing. As stated above, dismissal without an evidentiary hearing, is generally not appropriate. Dismissal is appropriate where a determination can be made as a matter of law, based upon uncontroverted factual admissions in the pleadings. Here, Student relies exclusively on District's purported failure to provide Parents with a Notice of Procedural Safeguards to secure a waiver of the two year statute of limitations. Student pleaded that the statute of limitations did not begin to run until October 2009, or January 2010. Student's pleaded exemption to the statute of limitations applies to Student's claim that District failed to meet its child find obligations during the 2007-2008, 2008-2009, and 2009-2010 school years, Student's claim that District failed to assess Student in all areas of suspected disability and conduct sufficiently comprehensive assessments during the same school years, and Student's claim that District failed to make an appropriate offer of FAPE for the 2008-2009 school year (from February 2009 forward, including ESY 2009). Absent from Student's complaint are any other factual allegations that would exempt Student from the two year statute of limitation.

Specifically, Student fails to provide a basis for the first exemption to the two year statute of limitations. Student fails to allege that District made specific misrepresentations that it solved the problem forming the basis of the due process complaint. On the contrary, Student claims that District failed in its child find obligations; in other words, that District suspected Student had a disability, but did nothing, including providing Parents with a Notice of Procedural Safeguards.

Student argues that District's failure to meet its child find obligations fits squarely within the second exception to the two year statute of limitations, that District withheld information from Parent that it was required to provide under special education law. Student unambiguously alleges that beginning with the 2008-2009 school year, and until November 2009, Student was never referred for a special education assessment although District personnel suspected that Student had a disability, and that Parents did not request a special education assessment until November 2009. Student alleges that Parents were ignorant of their due process rights until they received the Notice of Procedural Safeguards.

Student is incorrect in stating that District is required under the IDEA to provide Parents a Notice of Procedural Safeguards without them asking at any time prior to Student being referred for assessment or special education. In *Compton Unified School District v. Addison* (9th Cir. 2010) 598 F.3d 1181, 1185.), the Court rejected the school district's argument that child find was not a cognizable claim under the IDEA. In support of its contention that child find was not cognizable, the school district cited the IDEA's notice requirements (20 U.S.C. § 1415(b)(3) & 34 C.F.R. § 300.503(a)), that LEAs provide written notice whenever the agency "proposes to initiate or change" or "refuses to initiate or change the identification, evaluation or educational placement of the child. The Court rejected the school district's argument that the notice provisions of the IDEA limited Student's right to file a claim unless the notice provisions specifically apply to the claim. (*Id.* at 1184.) The Court reasoned that the jurisdictional requirements for an IDEA complaint are clearly set out in title 20, United States Code section 1415(b)(6)(A), are distinct from the notice provisions, and are therefore, not limited by the notice provisions. (*Id.*)

Compton did not concern or consider whether school districts were required to provide written notices to Parents, including the Notice of Procedural Safeguards, as part of its child find obligations. Nor did *Compton* consider whether a school district's failure to provide the Notice of Procedural Safeguards was a basis for extending the IDEA's two year statute of limitations. Accordingly, *Compton* does not stand for the proposition that District was required to provide Student with a Notice of Procedural Safeguard prior to Student's referral for a special education assessment. District's obligation to provide the Notice of Procedural Safeguards during the timeline set forth in Student's complaint was triggered by a referral to special education, or the filing of a due process hearing request. Based upon the allegations in Student's complaint, District was not obligated to provide Student a Notice of Procedural Safeguards until, at the earliest, November 2009, when it provided Student with an assessment plan. Accordingly, District's failure to provide a Notice of Procedural Safeguards prior to that time does not constitute a basis for waiving the two year statute of limitation.

Student's claim that District failed to provide Student with procedural safeguards until the IEP in January 2010 does not provide support for an evidentiary hearing to determine whether the two year statute of limitations should be extended. Parents' failure to understand their rights is not a sufficient basis for waiving the statute of limitations. The statute of limitations runs from the time Parent was aware of the facts that support the claim, not when they learned of their legal rights. (*See El Pollo Loco, Inc. v. Hashim, supra*, 316 F.3d at p. 1039.) In IDEA cases, facts which support the claim include Parents' knowledge that Student's education is inadequate. (*M.D. v. Southington Board of Ed., supra*, 334 F.3d at p. 221.) Student's pleading plainly states that Student exhibited problems from an early age. Parents' retained her in preschool for an extra year, and she did not enter kindergarten until she was six years old. Student alleges that she had "noted" difficulties in District's kindergarten, the 2007-2008 school year. During the time Student attended first grade, in the 2008-2009 school year, "both Parents and the teacher" noted that she was "struggling with reading, and not grasping all the concepts and skills within her academic curriculum." By the beginning of the 2009-2010 school year, when Student was in second grade, Student alleges that her teacher noted her concerns and expressed to Parents that Student may require special education. Based upon the unambiguous statements in her pleading, Student was aware of the facts that supported her claims prior to April, 29, 2009, and Student had been referred for a special education assessment by November of 2009. Given that Student was not entitled to a Notice of Procedural Safeguards at any time prior to the referral for assessment, Student's argument that the statute of limitations should be extended fails as a matter of law. In sum, there is no exception to IDEA's two year statute of limitations for matters that may have arisen prior to April 29, 2009, as a matter of law.

ORDER

The Motion to Dismiss Student's claims arising prior to April 29, 2009 by operation of the two-year statute of limitations is granted.

IT IS SO ORDERED.

Dated: August 3, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings