

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2012021028

ORDER GRANTING MOTION TO
DISMISS CLAIMS BEFORE
FEBRUARY 24, 2010

On February 24, 2012, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Cupertino Union School District (District). On March 5, 2012, the District filed a Motion to Dismiss Student's claims that occurred before February 24, 2010, for being outside the two year statute of limitations. Student did not submit a response.

APPLICABLE LAW

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a complaint due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

A claim under the Individuals with Disabilities Education Act (IDEA) accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action; that is, when the parent knows that the education provided is inadequate. (*M.D. v. Southington Bd. 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 he or she has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1032, 1039.) In *Miller v. San Mateo-Foster City Unified School District* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860, the court held the cause of action accrued when parents received notice of their procedural rights in connection with a school district's assessment of their child, even if the assessment's findings were later found to be incorrect.

(See *M.M. & E.M. v. Lafayette School District* (N.D. Cal. February 7, 2012 Nos. CV 09-4624, 10-04223 SI) 2012 WL 398773, **17 – 19.)

DISCUSSION

Student alleges that the District failed to properly assess Student, going back to the Spring of 2005, and that the District's failure to assess Student prevented him from being timely found eligible for special education services and that when the District found Student eligible for services that Student did not receive adequate special education services to meet his unique needs. The District asserts that Student failed to allege any exception to the two-year statute of limitations.

Student contends in the complaint that the two-year statute of limitations does not apply because the District continually failed to adequately assess Student. However, the statute of limitations for IDEA claims under federal and California law does not recognize a continuing violation exception to the two-year statute of limitations. (*Vandenberg v. Appleton Area School District* (E.D. Wisc. 2003) 252 F. Supp. 2d 786, 789-793.) Additionally, Student does not allege that the District failed to provide Parents with copies of their notice of procedural rights during of the individualized education program team meetings or misrepresented to Parents that the District had resolved the problem forming the basis of this complaint. Accordingly, Student failed to establish an exception to the two-year statute of limitations, and claims that occurred before February 24, 2010, are dismissed.

ORDER

The District's Motion to Dismiss claims before February 24, 2010, is granted. The matter will proceed as scheduled as to the remaining issues that occurred on or after February 24, 2010.

Dated: March 9, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings