

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2012051153

DECISION ON STIPULATED RECORD

Administrative Law Judge (ALJ) Darrell Lepkowsky of the Office of Administrative Hearings (OAH), State of California, heard this matter by written stipulation and joint statement of facts presented by the parties. The parties also submitted joint exhibits attached to their stipulation and filed briefs according to the briefing schedule referenced below.

S. Daniel Harbottle, Attorney at Law, of the Harbottle Law Group, represented the Placentia-Yorba Linda Unified School District (District).

Timothy A. Adams and Drew Massey, Attorneys at Law, of Timothy A. Adams & Associates, APLC, represented Student and her Parents (hereafter collectively referred to as Student).

PROCEDURAL HISTORY

The District filed a request for due process hearing (complaint) on May 29, 2012, naming Student as the respondent. The District originally raised two issues in its complaint:

1. Has the District violated Student's procedural rights under the Individuals with Disabilities Education Act (IDEA) by declining to respond to Parents' independent educational evaluation (IEE) request in accordance with title 34 C.F.R. [Code of Federal Regulations] part 300.502(b)?

2. Is the District's multi-disciplinary assessment [of January 2010] appropriate?

The underlying basis for the District's first issue was that Student's request for an IEE is barred by the two year statute of limitation because the request was made some 28 months after the District completed its assessments. The underlying basis for the District's second issues was that its January 2010 multidisciplinary assessment of Student was legally appropriate and that it was therefore not required to provide an IEE to Student at public expense.

OAH scheduled a prehearing conference (PHC) in this matter for June 18, 2012. The District filed its prehearing conference statement on June 13, 2012. At the same time, the District filed a motion to bifurcate its two issues, requesting that OAH hear and decide issue one before hearing issue two. The District contended that a favorable decision by OAH on District's issue one would make moot the necessity of resolving issue two. Student did not file a response to the District's motion to bifurcate prior to the start of the PHC.

Student also filed her prehearing conference statement on June 13, 2012. Student simultaneously filed a motion to dismiss the District's issue one. Student contended that issue one was moot because the District had, in fact, filed for a due process hearing and therefore it had responded to Student's request for an IEE.

At the prehearing conference the ALJ heard argument from both parties as to their respective motions and as to their response to the other party's motion. Based upon that discussion, the District decided to withdraw its issue two and proceed solely

on issue one of its complaint. The withdrawal of issue one made moot District's motion to bifurcate and Student's motion to dismiss.

After further discussion with the parties, and based upon their respective legal positions, the ALJ determined that an evidentiary hearing as to issue one was unnecessary. There appeared to be no disputed issues of fact. Rather, the parties disagreed as to the legal issue of whether the two-year statute of limitations applies to a student's request for an IEE. The ALJ therefore determined that she would hear the remaining issue in the District's case by written stipulation and joint statement of facts presented by the parties, along with written argument and closing briefs submitted by each party, if the parties were able to reach a stipulation. In agreement with the parties, the ALJ revised the issue for hearing, which is defined below.

The parties timely filed their Joint Stipulated Statement of Facts and Evidence (Stipulation) on June 22, 2012. The parties attached five exhibits to the Stipulation, numbered A through E. The ALJ has marked the Stipulation and exhibits as follows, and admitted them into evidence as of June 22, 2012, the date the parties submitted the documents:

1. Joint Exhibit 1: Stipulation;
2. Joint Exhibit A: California Power of Attorney;
3. Joint Exhibit B: Multidisciplinary Psycho-educational Report, dated January 29, 2010;
4. Joint Exhibit C: Individualized Education Program (IEP), dated January 29, 2010;
5. Joint Exhibit D: Letter from Student's Counsel to the District, dated May 3, 2012;

6. Joint Exhibit E: Letter from the District to Student's Parents, dated May 25, 2012, with enclosures: 1) Parental Rights and Procedural Safeguards; and 2) Proposed assessment plan.

Student timely filed her Brief on June 29, 2012. The District timely filed its Brief on July 6, 2012, at which time the matter was submitted for decision.

ISSUE FOR HEARING

Is the District justified in failing to file for a due process hearing to determine the appropriateness of its January 2010 multidisciplinary assessment because the two-year statute of limitations applies to Student's May 3, 2012 request for an independent educational evaluation?

JOINT STIPULATED FACTS¹

1. Student was born on February 16, 1994, and is 18 years old.
2. On April 2, 2012, Student granted her parents (Parents) power of attorney for any decisions regarding her education.
3. Student is eligible for special education and services under the IDEA under the primary eligibility category of intellectual disability and the secondary eligibility category of autistic-like behaviors.
4. Student resides with Parents within the boundaries of the District.

¹ The ALJ has slightly re-worded the stipulated facts for clarity and to protect Student's right to privacy. None of the revisions alter the intent or import of the parties' original stipulation. For example, the ALJ has deleted the names of Student's parents, which the parties included in their original stipulation.

5. On January 29, 2010, the District completed a Triennial Multi-Disciplinary Assessment (Multi-Disciplinary Assessment) of Student.

6. The Multi-Disciplinary Assessment was presented and discussed at a Triennial IEP meeting the District convened for Student on January 29, 2010.

7. Through a letter from their attorney dated May 3, 2012, Parents informed the District that they disagreed with the Multi-Disciplinary Assessment, and requested an IEE at public expense.

8. On May 25, 2012, the District sent Parents a letter of prior written notice in accordance with title 34 Code of Federal Regulations part 300.503, in which the District declined to fund the IEE. The District also offered to conduct an early triennial evaluation of Student, and provided a proposed assessment plan for that purpose. The District enclosed with its letter a copy of Parent Rights and Procedural Safeguards and the proposed assessment plan. The Parent Rights and Procedural Safeguards has been unchanged since March 2009.

9. On May 25, 2012, the District filed a request for due process with the OAH to determine whether the District had complied with the IDEA in its response to Parents' request for an IEE.²

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The District, as the petitioner, has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*).)

² OAH opened the case on May 29, 2012.

REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

2. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1) (2006)³; Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question...." (34 C.F.R. § 300.502(a)(3)(i)). To obtain an IEE, the student must disagree with an assessment obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1), (2).)

3. The provision of an IEE is not automatic. Code of Federal Regulations, title 34, part 300.502(b)(2), provides, in relevant part, that following the student's request for an IEE, the public agency must, without unnecessary delay, either: (i) File a due process complaint to request a hearing to show that its assessment is appropriate; or (ii) Ensure that an independent educational assessment is provided at public expense, unless the agency demonstrates in a hearing pursuant to parts 300.507 through 300.513 that the assessment obtained by the parent did not meet agency criteria. (See also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

STATUTE OF LIMITATIONS

4. Both federal and state law contain a two year statute of limitations for special education administrative actions. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (l).) California implements the Individuals with

³ All subsequent references to the Code of Federal Regulations are to the 2006 version.

Disabilities Education Act (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 (*Miller*).) Education Code, section 56505, subd. (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. (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. (See also, *J.L. v. Ambridge Area Sch. District* (W.D. Pa. 2008) 622 F. Supp.2d 257, 268-269.)

5. The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010), 626 F.3d 431, 444-445; *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.) 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; *M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09-4624, 10-04223 SI) 2012 WL 398773, ** 17 - 19.)) 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.)

6. 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. (*Vacaville Unified Sch. Dist.* (SEA Calif. 2004) 43 IDELR 210, p. 4, 105 LRP 2671 (*Vacaville*), quoting *Alexopoulos v. San Francisco Unified Sch. Dist.* (9th Cir. 1987) 817 F.2d 551, 555.) “[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 p. 861(quoting *Alexopoulos, supra*, 817 F.2d at p. 554).)

7. 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) 44 Cal.3d 1103, 1111); *Ashlee R. v. Oakland Unified Sch. District Financing Corp.* (N.D. Cal. 2004) 2004 U.S. Dist. LEXIS 17039, p. 16.)

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

PARTIES’ CONTENTIONS

9. The District contends that the two-year statute of limitations for the filing of a due process claim under federal and state law applies equally to a parent’s request for an IEE. Therefore, barring an exception to the two-year statute, the District contends

that a parent must request an IEE no later than two years following a school district's assessment of a child. If the parent fails to make the request within the two years, the District assert its only legal obligation is to provide the parent with prior written notice of whether it will or will not provide the IEE at public expense. The District contends that it is not legally obligated to fund the IEE or file for a due process hearing to defend its assessments if the parent waits more than two years after the District's assessment to request the IEE. The District also contends that under the facts of this case, no exception to the statute of limitations applies as Student asserts. The District maintains that Parents were not prevented from requesting an IEE within the applicable two-year statute. Finally, the District contends that Parents were well-aware of the applicable two-year statute because their attorneys had been involved in prior cases where the issue had arisen.

10. Student contends that there is no federal or state statutory basis to apply the two-year statute of limitations to parental requests for IEE's. She contends that a request for an IEE is an ongoing right akin to an on-going request for records, which is not bound by the statute of limitations. Student contends that the ALJ should decline to follow *Letter to Thorne*, (OSEP, February 1990) 16 IDELR 606, discussed below, because it is not legal precedent, it involved a dissimilar fact pattern, and because it reached an incorrect result. Student contends that, in any case, there is no reason to apply the statute of limitations because it is unnecessary since school districts have an affirmative defense of laches available to them to counter a parent's arguably unreasonable delay in requesting an IEE. Finally, Student contends that even if the statute of limitations did apply to parental requests for IEE's, in this case, there is an exception to the statute because the District's procedural safeguards, which Parents received, do not specifically state that a parent must request an IEE within two years of the District's assessment.

Student therefore asserts that the District withheld necessary information from Parents, which supports a finding that an exception to the statute exists.

DETERMINATION OF ISSUES:

The Two-Year Statute of Limitations Applies to Parental Requests for IEE'S

11. The District's primarily supports its position that the two-year statute of limitations applies to an IEE request by citation to *Letter to Thorne (Thorne)*, issued by the United States Office of Special Education (OSEP) on February 1990 (16 IDELR 606), as well as to administrative cases which have followed the reasoning in *Thorne*. OSEP is the division of the United States Department of Education that is tasked with administering the IDEA and developing its regulations. In *Thorne*, OSEP addressed several questions regarding the provisions for IEE's under the Part B of the Education of the Handicapped Act, the predecessor to the IDEA. Although a question regarding how long a parent had to request an IEE was not specifically made to OSEP in the query underlying the response in *Thorne*, OSEP found it an important enough question to *sua sponte* address the issue. In *Thorne*, OSEP states

"The EHA-B regulations do not establish timelines regarding how long after receiving the results of a child's public agency evaluation a parent can wait to request reimbursement of an IEE. In the situation presented by your inquiry, however, it would not seem unreasonable for the public agency to deny a parent reimbursement for an IEE that was conducted more than two years after the public agency's evaluation. Therefore, it would not be necessary for the public agency to initiate a hearing in this situation."

(Thorne, supra, 16 IDELR 606, at p. 3.)

12. Contrary to Student's assertions, it is clear by OSEP's comments in *Thorne* that OSEP believed that it was appropriate for a school district to deny reimbursement where the IEE request was over two years old. Similarly, *Thorne* clearly states that the public agency would not have to initiate a hearing where the IEE request was made concerning a district assessment more than two years old.

13. Student is correct that there is a paucity of case law addressing this issue, either by direct citation to the statute of limitations or by citation to *Thorne*. Student relies on the one case found that specifically declines to follow OSEP's reasoning in *Thorne*. In *Student v. Capistrano Unified School Dist., et al.* (2007) Cal.Offc.Admin.Hrngs. Case No. N2006070729, et al. (*Capistrano*), OAH found that OSEP incorrectly decided *Thorne*. OAH stated that *Thorne's* reasoning directly contradicted the federal regulations, which unambiguously set forth a school district's options of either providing an IEE at public expense or filing for a due process hearing to prove that its own assessment was appropriate.

14. However, the other cases that have considered the issue have determined that the statute of limitations applies in the context of a parental request for an IEE. In *Lafayette Sch. Dist. v. Student* (2009) Cal.Offc.Admin.Hrngs. Case No. 2008120161 (*Lafayette*), OAH applied the affirmative defense of laches in finding that a wait by parents of 17 months in requesting an IEE was inappropriate and justified a reduction in the amount the parents should be reimbursed for an IEE where a district had failed to either fund the IEE or file a complaint seeking to validate its assessment. In so finding, OAH stated that:

"The IDEA allows states to determine the time by which a request for due process hearing must be filed. (20 U.S.C. §

1415(b)(6)(B.) California law provides that 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, subd. (l).) There is no more specific statutory limitation on the time in which a request for an IEE must be made."

(Lafayette, *supra*, Case No. 2008120161 at p. 16, emphasis added.)

15. OAH again made reference to the two-year statute of limitations in the case of *Student v. Fullerton School District* (2012)) Cal.Offc.Admin.Hrngs. Case No. 2011061318, at p. 4. In dicta, OAH found that there is no "statutory or regulatory time limit for requesting an IEE after a school district has conducted an assessment, other than the two year statute of limitations imposed by California law for the filing of a due process complaint."

16. There are at least two cases from other administrative jurisdictions that have also followed *Thorne*. In *Salem Keizer Sch. Dist. 24J* (SEA Oregon 2004) 109 LRP 65863, fn. 12, the Oregon State Educational Agency cited to *Thorne* in determining "To the extent that one of the two IEEs (sic) the parent obtained refers to this evaluation request, the Department finds that this reimbursement request, coming more than two years after the District's evaluation, is not timely."

17. More recently, in *Atlantic Public Schools* (SEA Georgia 2008) 51 IDELR 29, 108 LRP 52644, which is cited by the District in its brief, the Georgia State Educational Agency specifically found that the Student's request for an IEE was barred by the two-year statute of limitations.

18. Student urges the ALJ to give more weight to the OAH decision in *Capistrano* than to either of the OAH cases or to the cases from sister jurisdictions. However, the ALJ finds more persuasive the District's argument that OSEP decisions are entitled to deference, particularly in light of the OAH dicta in *Lafayette* and *Fullerton*, and the cited decisions from Georgia and Oregon, which all find that a two-year statute of limitations applies to parental requests for IEE's.

19. This finding is supported by the statutory purposes for permitting IEE's and for implementing statutes of limitations to foreclose stale legal claims. In *Schaffer*, the United States Supreme Court found that the IDEA ensures that parents have access:

[T]o an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the fire power to match the opposition."

(*Schaffer*, *supra*, 546 U.S. at pp. 60-61.)

Parents' right to an IEE is intended to equip them with a competing expert opinion to counter an assessment with which they disagree, and to ensure that both assessments are considered in crafting an IEP for their child. (*Lafayette, supra* at p. 16). The purpose of an IEE therefore is to permit a parent to challenge test results and recommendations on *present* district assessment findings where a district's assessment fails to meet minimum statutory requirements. It would serve no purpose to challenge an assessment so old that it no longer applied to a child because it no longer addressed the child's present abilities and unique needs. This is even more acute since a student's ability to challenge the viability of a district assessment or district placement offer is

bound by the two-year statute of limitations. If the assessment recommendations cannot be challenged, obtaining an IEE so far after initial assessment findings becomes an exercise in futility.

20. The public policy behind application of a statute of limitations is fairly obvious. A statute of limitations serves to assure that claims are not brought up years after they have become stale. (*Atlanta Public Schools* (SEA Georgia 2007) 107 LRP 59591.) It also serves to require parents to "actively and contemporaneously pursue claims on behalf of their children, which would require due diligence in investigating their concerns." (*Vacaville, supra*, 43 IDELR 210 at p. 4.)

21. Permitting a parent to request an IEE more than two years after a district presented its assessment would therefore thwart the statutory purpose of the statute of limitations and of the IEE's. The IEE would serve only to address stale issues and/or would fail to have any applicability to the original district assessment. *Letter to Thorne* and its progeny recognize these factors. Following Student's reasoning, no request for an IEE, no matter if based on an assessment years, if not decades old, would be barred. Districts conceivably would have to litigate the appropriateness of assessments long since superseded by more recent assessments and would have to face the potential of being unable to defend the assessment because the assessor was not available due to the passage of time.

22. There is no practical reason or public policy justification for permitting what could potentially be an absurd result. The California Supreme Court in *Renee J. v. Superior Court of Orange County, et al.*, (2001) 26 Cal.4th 735, 743, articulated that "a fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." Additionally, "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*Ibid.*) Where the

language is susceptible to two constructions, one of which will render it reasonable, fair, and harmonious, and the other of which would lead to absurd consequences, the former will be adopted. (*People ex rel Lungren v. Superior Court (American Standard. Inc.)* (1996) 14 Cal.4th 296. There is no evidence in the instant case that either Congress or the California legislature intended for parents to be able to request IEE's in perpetuity.

23. Nor has Student persuasively demonstrated that an exception to the statute of limitations applies in her case.⁴ As stated in paragraph 8 above of the Legal Conclusions, for an exception to the statute of limitations to apply, a school district's conduct must be flagrant and deliberate, and serve to prevent a parent from exercising her rights. Here, the District has persuasively argued that Parents were in no way prevented from requesting an IEE prior to the date of their actual request. Student has provided no evidence to the contrary. Nor has Student provided any support for her contention that the District was required to specifically include reference to the applicability of the two-year statute to IEE requests in its procedural safeguards. None of the cases applying the two-year statute to IEE requests reference such a requirement. Without more support for the argument, the ALJ declines to create a requirement here.

24. In conclusion, the District has met its burden of proof that the two-year statute of limitations for filing due process challenges applies equally to a parent's request for an IEE. Under the facts of this case, the District was not required to fund Student's request for an IEE or to file for due process to defend the appropriateness of its assessment. (Factual Findings 1-9; Legal Conclusions 1-24.)

⁴ In rejecting Student's contention that an exception to the statute of limitations applies in this case, the ALJ does not adopt the District's argument that Parents were uniquely well-informed in this case because they were represented by attorneys who had been involved in both the *Capistrano* and *Fullerton* cases cited above.

ORDER

The District is not required to fund an IEE at public expense for Student or file for due process to defend the appropriateness of its January 2010 multidisciplinary triennial assessment of Student.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The District has prevailed on the sole issue heard in this case.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: August 7, 2012

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings