

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014030700

ORDER GRANTING MOTION TO
DISMISS PORTIONS OF THE
COMPLAINT

On March 14, 2014, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Orange Unified School District (District) as respondent.

On March 24, 2014, District filed a Motion to Dismiss (Motion) portions of complaint, alleging that some of the issues are beyond the statute of limitations. On March 25, 2014, Student filed a response to the Motion. For the reasons set forth below, the Motion is granted.

APPLICABLE LAW

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *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.) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or by the local educational agency's withholding of information that was required to be provided to the parent.

An individualized education program (IEP) for a disabled child is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Tracy N. v. Dept. of Educ., State of Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the "snapshot rule." (*J.W. v. Fresno, supra*, 626 F.3d at p. 439.)

While the adequacy of the IEP document is evaluated from the perspective of the IEP team at the time it was written, "the implementation of the educational program is an

ongoing, dynamic activity, which obviously must be evaluated as such.” (*O’Toole v. Olathe Unified School Dist. No. 233* (10th Cir. 1998) 144 F.3d 692, 702.) Incidents occurring within the statute of limitations for failure to implement an IEP as written, or of notice of the need to reassess or modify an IEP, will support a due process claim. However, a parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations in the absence of an implementation issue, although the IEP document is in effect within the statute of limitations, as special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (See *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269 (*Ambridge*).) As explained by the regulations from Secretary of the Department of Education implementing the IDEA, with respect to the two-year time period, it is “clear that a due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew, or should have known, about the alleged action that forms the basis of the due process complaint.” (71 F.R. § 46540-01 at 46697 (August 14, 2006).)

DISCUSSION

Student’s complaint sets forth 11 issues. Issue 1 alleges District failed to offer a free and appropriate public education (FAPE) at the January 10, 2011 IEP meeting regarding physical therapy services. Issue 2 alleges District failed to offer a FAPE at the September 1, 2011 IEP regarding physical therapy services.

District contends Student’s Issues 1 and 2 must be dismissed because they are barred by the two-year statute of limitations and Student has failed to allege facts demonstrating an exception to the statute of limitations applies to either claim.

Student does not oppose dismissal of Issue 1. As to Issue 2, Student contends the September 1, 2011 IEP offered services within the two-year statute of limitations and is the basis for allegations within the two-year statute of limitations. Student seeks leave to amend if the motion to strike is granted.

District’s motion to dismiss is granted. Student has stipulated to the dismissal of Issue 1. Regarding Issue 2, Student’s allegations concern the September 1, 2011 IEP offer for physical therapy services and the complaint was not filed within two years of September 1, 2011. Student has not alleged an exception to the statute of limitations applies. As alleged, Issue 2 is barred by the two-year statute of limitations. Student’s request for leave to amend is denied. To the extent Student wants to seek leave to amend the complaint, Student may do so by a separate motion that must include a proposed amended complaint containing all issues and allegations Student seeks to have heard.

ORDER

1. District's Motion to Dismiss as to Issues 1 and 2 is granted.
2. Student's request for leave to amend is denied without prejudice to Student filing a separate motion to amend that includes a complete proposed amended complaint containing all issues and factual allegations for all issues.

DATE: April 08, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings