

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2014070187

ORDER GRANTING MOTION TO
DISMISS ISSUE

On June 30, 2014, Student filed a Due Process Hearing Request¹ (complaint) naming the Cupertino Union School District (District). The complaint lists disagreements with Student's IEP's beginning with the IEP dated June 8, 2012. On July 10, 2014, District filed a motion to dismiss Student's claims related to the June 8, 2012 IEP on the ground that the claims are barred by the applicable two-year statute of limitations. Student did not file an opposition to District's motion.

APPLICABLE LAW

A request for 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. (1).) This 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 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).)

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.)

Common law or equitable exceptions to the statute of limitation do not apply to IDEA cases. (*D.K. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d 233, 248.) In particular, the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

common law exception to the statute of limitations that applies when a violation is continuing is not applicable in IDEA cases. (*J.L. v. Ambridge Area School Dist.* (W.D. PA 2008) 622 F. Supp. 2d 257, 268-269 (*Ambridge*).) In finding the continuing violation doctrine to be inapplicable in an IDEA due process, the court stated in *Patrick B. ex rel. Keshia B. v. Paradise Protective and Agr. School, Inc.* (M.D.Pa. Aug 06, 2012) 2012 WL 3233036 (NO. 1:11-CV-00927) at page 20:

The same reasoning applies to Plaintiff's argument that dismissal of any claim is inappropriate because the complaint alleges a continuing course of conduct. Here again, courts have found that claims premised upon the IDEA are not subject to the continuing violation or equitable tolling doctrines, but instead can be extended only for one of the enumerated statutory exceptions. [Citations.]

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 *Ambridge, supra*, 622 F.Supp. 2d at 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, 455, pp. 585, 587, citing *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." [Citation.]").)

DISCUSSION

Student alleges he was denied a FAPE in the 2012-2013 school year because the IEP dated June 8, 2012, which offered Student a placement and services for the 2012-2013 school year, was deficient in three respects. First, Student alleges that the special day class Student was offered would have provided only 250 instructional minutes per day, four days per week, whereas the school's other students received 255 minutes of instruction per day, four days per week, and Student would have received 20 minutes per week less instructional time than his typically developing peers. Second, Student alleges he required a low student-teacher ratio of not more than six students per one teacher throughout his entire school day and that the special day class District offered exceeded that ratio. Finally, Student alleges that

District failed to assess Student and write goals in the areas of fine and gross motor skills and sensory integration, and did not offer Student any occupational therapy to address his needs. Student alleges that because of these deficits, in July 2012, Student's parents provided District with written notice of their intention to place Student in another school and to seek reimbursement from District.

Student's complaint was not filed within two years of June 8, 2012, and Student has not alleged any facts to support either statutory exception. Student's claim regarding the June 8, 2012 IEP attacks the formation of the IEP based on allegedly inadequate assessments leading up to it, the goals set forth in it, and the offer of placement and related services made on June 8, 2012. Student does not allege either that District misrepresented that it had resolved complaints Student's parents had about the June 8, 2012 IEP or that District withheld information from Student's parents that it was required to provide. Therefore, no exception to the statute of limitations applies.

ORDER

1. District's Motion to Dismiss is granted as to all issues alleged that are related to the June 8, 2012 IEP.

2. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: July 22, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings