

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

ROSEMONT HIGH SCHOOL AND
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021100144

ORDER DENYING MOTION TO DISMISS ROSEMONT HIGH
SCHOOL AND ISSUE ONE OF THE COMPLAINT
FOR LACK OF JURISDICTION

NOVEMBER 10, 2021

On October 4, 2021, Parent on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint with the Office of Administrative Hearings, referred to as OAH, naming Rosemont High School and Sacramento City Unified School District.

On November 9, 2021, Rosemont High School and Sacramento Unified School District filed a Motion to Dismiss Issue and Parties on the grounds Issue One of the Complaint alleges claims outside the two-year statute of limitations, and further that

Rosemont High School is not the lead educational agency responsible for providing Student a free appropriate public education, known as FAPE. OAH received no response to the motion to dismiss from Parent.

RESPONDENTS' REQUEST TO DISMISS ROSEMONT HIGH SCHOOL.

OAH has jurisdiction only over claims alleging the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called IDEA, or California special education laws were violated. The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

Under the IDEA, a party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The California Education Code permits a party the right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education or FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility. (Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in

any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

California law places the primary responsibility for providing special education to eligible children on the local educational agency; usually the school district in which the parent of the child resides. (See, e.g., Ed. Code, §§ 48200, 56300, 56340 [describing local educational agency responsibilities], 56344, subd. (c).) When a parent disputes the educational services provided to the child with a disability, the proper party to the due process hearing is the local educational agency. (See, e.g., Ed. Code, § 56502, subd. (d)(2)(B).) The local educational agency is responsible to identify children with disabilities, determine appropriate educational placements and services, and to provide special education and related services. (Ed. Code, §§ 48200, 56300, 56302, 56340, 56344, subd. (c).)

The complaint alleges that Rosemont High School and Sacramento School District allegedly failed to timely assess Student. Respondents contend that Rosemont High School is not the local educational agency responsible for providing Student a FAPE. Respondents’ motion is not supported by sworn declaration or documentary evidence establishing that Sacramento City Unified School District is the responsible local educational agency. Moreover, Rosemont High School filed a response to the due process complaint that did not state that it was not a responsible public agency. Accordingly, Rosemont High School’s request to be dismissed as a party is denied without prejudice to its ability to file a new motion supported by sworn declaration.

STATUTE OF LIMITATIONS

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 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 (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 the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Consequently, both federal and California law contain a two-year statute of limitations for special education administrative actions that requires a finding of when the parent knew of the facts which form the basis of the claim. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (l).) California, however, has adopted its own manner of applying this discovery rule. California has held that 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.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 (*M.M.*), *affd.* in part and *revd.* in part on other grounds by *M.M. v. Lafayette School Dist., et al.* (9th Cir. 2014) 767 F.3d 842, 859.) A statute based upon the discovery rule begins to run when a party is or should have been aware of the facts that would support a legal claim, not earlier, when the act occurred, and not later, when a party learns that it has a legal claim. (*M.M.* at *18).

It does not matter if the parent understood that the inadequacy was a legal claim, just that parents had knowledge of the problem. Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to

authorize the filing of claims for a denial of a FAPE many years after the alleged wrongdoing occurred. (*Alexopoulos v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 556.)

Issue One of the complaint alleges Parent requested a psychoeducational evaluation of Student on September 23, 2019 by email correspondence to Rosemont High School's principal. Issue One further alleges that respondents failed to timely assess Student following receipt of Parent's request for assessment. Respondents contend that because Parent allegedly requested the assessment on September 23, 2019, which date is outside the two-year statute of limitations that the entire issue should be dismissed.

A parent is entitled to receive a written proposed assessment plan within 15 days of the referral for an assessment, not counting days between the student's regular school sessions or terms or days of school vacation from the date of receipt of the referral, unless the parent agrees in writing to an extension. (Ed. Code, § 56321, subd. (a).) California has held that 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.M., supra*, 2012 WL 398773, ** 17 – 19.) A statute based upon the discovery rule begins to run when a party is or should have been aware of the facts that would support a legal claim, not earlier, when the act occurred, and not later, when a party learns that it has a legal claim. (*Id.* at *18).

Here, the complaint alleges Parent made the written request for assessment on September 23, 2019. Parent was therefore entitled to a written assessment plan within 15 days thereafter, which date was October 8, 2019. Assuming the allegations of the complaint are true for purposes of this motion, Parent should have been aware after respondents failed to provide Parents an assessment plan on October 8, 2019 of the

facts that would support a legal claim against respondents. Therefore, the two-year statute of limitations commenced on or around October 9, 2019. Parent's October 4, 2019 complaint therefore was filed within the two-year statute of limitations. (See *Independent School Dist. No. 283 v. E.M.D.H.* (8th Cir. 2020) 960 F.3d 1073, 1083-84.) Respondents' motion to dismiss Issue One is therefore denied.

ORDER

1. Respondents' Motion to Dismiss Rosemont High School as a party to this matter is denied without prejudice. Rosemont High School may refile a motion to dismiss supported by sworn declaration.
2. Respondents' Motion to Dismiss Issue One of the complaint on the grounds it falls outside the two-year statute of limitations is denied.
3. The matter shall proceed as currently scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings