

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

EAST SAN GABRIEL VALLEY SELPA.

OAH CASE NUMBER 2021120652

ORDER DENYING MOTION TO DISMISS –

SUMMARY JUDGEMENT

JANUARY 12, 2022

On January 7, 2022, East San Gabriel Valley Special Education Local Plan Area, called a SELPA, filed with the Office of Administrative Hearings, called OAH, a motion to dismiss Student's Second Amended Complaint. On January 11, 2022, Student filed an opposition. On January 12, 2022, East San Gabriel Valley SELPA filed a reply.

APPLICABLE LAW

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (j); 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 (j),

establish exceptions to the statute of limitations in cases in which the parent or adult student 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 or adult student that was required to be provided to the parent or adult student.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, referred to *Avila*, the Court found that the Individuals with Disabilities Education Act's statute of limitations, referred to as the IDEA, barred claims that were filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) The Court held that, in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id.* at pp. 939-945.)

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860. Consistent with the IDEA, California has held that a legal claim accrues for purposes of the statute of limitations when a parent or adult student learns of the underlying facts that form a basis for the legal claim. (Ed. Code, § 56505, subd. (j).) Knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*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, *affd.* in part & *revd.* in part (9th Cir. 2014) 767 F.3d 842, 858-859.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, such as civil rights claims, claims under Section 504 of the

Rehabilitation Act of 1973, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure.

DISCUSSION

East San Gabriel Valley SELPA asserts it was not the local educational agency responsible for providing Student a free appropriate public education and offers a declaration under penalty of perjury as evidence that it did not serve Student. Student attached to his opposition a single page of an individualized education program, which is "Notes" dated February 25, 2019, that bears a heading "East San Gabriel Valley." It is not possible to determine from the document Student attached to his opposition whether East San Gabriel Valley SELPA was or was not acting as a local educational agency responsible for providing Student a free appropriate public education at any time period, let alone within the statute of limitations.

Additionally, East San Gabriel Valley SELPA requests to dismiss Student's claim because it arose more than two years before Student filed his complaint. Student's complaint mentions an alleged failure to provide a prior written notice in June 2019, and Student did not file his complaint until more than two years later, in December 2021. Facially, it would appear Student's complaint was not timely filed. However, Student's complaint mentions an alleged failure to provide a prior written notice, which might be the kind of document that supports extending the statute of limitations where a parent or adult student could have been prevented from timely filing a claim based on a local educational agency's failure to provide the parent or adult student a written notice, explanation, or form specifically required by the IDEA.

East San Gabriel Valley SELPA's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

Accordingly, the motion to dismiss is denied, without prejudice to East San Gabriel Valley SEPLA asserting as defenses that it was not the local educational agency responsible for providing Student special education and related services and therefore had no liability to Student, and/or that Student's claim is untimely and not subject to either exception to the two-year statute of limitations. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings