

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021120667

ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS FOR STATUTE OF LIMITATIONS

JANUARY 14, 2022

On December 20, 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 Ventura Unified School District, referred to as Ventura.

On January 11, 2022, Ventura filed a Motion to Dismiss alleging that the claims are time barred by the two-year statute of limitations and further that the complaint fails to allege an exception to the two-year statute of limitations. On January 13, 2022, Student filed an Opposition to Motion to Dismiss.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) 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.) 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) [party has a 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 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].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, or claims that are barred on their face by the statute of limitations. However, special education law does not provide for summary judgment of claims. Accordingly, OAH will not dismiss claims that are not facially outside OAH’s jurisdiction and which require a ruling on the merits.

The statute of limitations for special education due process claim 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.)

However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (I), establish exceptions to the statute of limitations in cases in which either (i) 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 (ii) by the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Federal regulations implementing the IDEA provide 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, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law." (34 C.F.R. § 300.507(a)(2).) Based upon this authority, states are permitted to adopt their own statute of limitations for due process claims, and California has done so.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, the Ninth Circuit held that the IDEA's statute of limitations 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 claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (I).) 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.)

Special education law does not recognize the doctrine of continuing violations as an exception to the two-year statute of limitations. (20 U.S.C. § § 1415(b)(6)(B), (f)(3)(D); see also *E.F. v. Newport Mesa Unified School Dist.* (C.D. Cal., June 23, 2015, No. SACV 14-00455-CJC (RNBx) 2015 WL 3867982,* 8, fn. 6, *affd. on remand E.F. by and through Fulsang v. Newport Mesa Unified School District* (9th Cir. 2018) 726 Fed.Appx. 535; *J.L. v. Ambridge Area School Dist.* (W.D. Pa. 2008) 622 F.Supp.2d 257, 268-269 [finding that IDEA claims are not tolled under a continuing violation theory as the two exceptions specifically set forth in the statute are the exclusive exceptions to the statute of limitations].) A parent may not file a due process complaint challenging the appropriateness of an IEP that was created outside the statute of limitations, although the IEP was in effect within the statute of limitations. (*K.P., etc., v. Salinas Union High School Dist.* (N.D. Cal., April 8, 2016 No. 5:08-cv-03076-HRL) 2016 WL 1394377, ** 10-11 [student could not challenge development of IEP in effect outside two-year statute of limitations].)

DISCUSSION

Student's complaint alleges three issues. The three issues are discussed below. Here, Ventura does not allege that the complaint is insufficiently pled, nor did Ventura timely file a notice of insufficiency. (20 U.S.C. § 1415(b) & (c).) Instead, Ventura seeks to dismiss the complaint on the basis the facts pled fall outside the two-year statute of limitation.

Although OAH will grant motions to dismiss allegations that are facially outside OAH jurisdiction, special education law does not provide for a summary judgment

procedure. Therefore, OAH will not dismiss claims that on their face fall within its jurisdiction. Here, viewing the facts most favorably to Student, Issues One and Three allege facts within the two-year statute of limitations period, and Issue Two is time barred on its face.

Issue One alleges Ventura failed to offer Student individualized education programs, called IEPs, reasonably calculated to render educational benefit. The complaint does not state the date or academic years of the IEPs challenged by Student. Further, Student does not allege an exception to the two-year statute of limitations or any facts to as to how an exception to the statute of limitation applies. However, in viewing the facts most favorable to Student, the challenged IEP falls within the two-year limitation period. However, because Student's complaint was filed on December 20, 2021, and Student did not allege any facts supporting an exception to the two-year statute of limitation, Student's Issue One shall be deemed limited to Student's IEPs developed by Ventura on or after December 20, 2019.

As to Issue One, Ventura's motion to dismiss is not limited to matters that are facially outside OAH's jurisdiction, but rather seeks a ruling on the merits. Accordingly, Ventura's motion to dismiss as to Issue One as falling outside the two-year statute of limitations is denied.

Issue Two alleges Ventura assessed Student on December 10, 2019, as part of a triennial assessment and held an IEP team meeting to review a psychoeducational assessment. Issue Two further contends that Ventura failed to provide Student appropriate goals and services. The allegations in Issue Two on their face fall outside of the two-year statute of limitation. As discussed above, with the exception of implementation of an IEP, a student may not file a claim outside of the statute of limitations on the basis their IEP was in effect during the two-year statute of limitations

period. (*E.F. v. Newport Mesa Unified School Dist.*, *supra*, 2015 WL 3867982,* 8, fn. 6, *K.P., etc., v. Salinas Union High School Dist.*, *supra*, 2016 WL 1394377, ** 10—11.) Since December 10, 2019 is over two years from the December 20, 2021 filing of Student’s due process complaint, Issue Two is time-barred on its face as Student does not allege any facts showing an exception to the statute of limitations under either prong of title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l). Therefore, Issue Two is dismissed.

Issue Three alleges Parent notified Ventura on December 20, 2019, of Student’s areas of need. On its face, the facts alleged in Issue Three fall within the two-year statute of limitations. Therefore, Ventura’s motion to dismiss Issue Three is denied. Issue Three shall be limited to notifications from Parent to Ventura on or after December 20, 2019.

ORDER

1. Ventura’s Motion to Dismiss is Partially Granted in Part and Denied in Part. Ventura’s Motion to Dismiss as to Issue One is denied. Issue One shall be limited to IEPs developed by Ventura for Student on or after December 20, 2019.
2. Ventura’s Motion to Dismiss as to Issue Two is granted on the basis it is time barred by the two-year statute of limitations. Issue Two is hereby dismissed.
3. Ventura’s Motion to Dismiss as to Issue Three is denied. Issue Three shall be limited to notifications from Parent to Ventura from or after December 20, 2019.

4. This matter shall proceed as to Issues One and Three as currently scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings