

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090234

ORDER GRANTING MOTION TO DISMISS FOR STATUTE OF
LIMITATIONS

FEBRUARY 28, 2022

On September 8, 2021, Parents on behalf of Student, collectively, Student, filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Tahoe Truckee Unified School District.

On February 23, 2022, Tahoe Truckee filed a Motion to Dismiss, alleging that Student's Issue 1, which alleges deprivations of a free appropriate public education, referred to as a FAPE, since August 30, 2018, was barred by the statute of limitations to the extent that it alleges claims that arose prior to September 8, 2019. On February 24, 2022, Student filed an opposition to the motion.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act, referred to as the IDEA, and the California Education Code, 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 [FAPE] to such child.” (20 U.S.C. § (b)(6); Ed. Code, § 56501, subd. (a).) 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.)

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, such as civil rights claims and statute of limitations claims.

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. Significantly, the action which constitutes the basis for the IDEA claim itself cannot, absent more, satisfy an exception to the statute of limitations, otherwise, the exception would become the rule and the statute of limitations would be all but eliminated. (*I.H. v. ex rel. D.S. v. Cumberland Valley Sch. Dist.* (M.D. Pa. 2012) 842 F. Supp. 2d 762, 775.) (*Cumberland Valley*). Further, there is authority that to be excused from the statute of limitations due to a specific misrepresentation that the school district had resolved the problem, parents must show

that the school district intentionally misled them or knowingly deceived them. (*D.K. v. Abington Sch. Dist.* (3rd Cir. 2012) 696 F.3d 233, 245-246.) (*Abington*.)

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) (emphasis added).) Based upon this authority, states are permitted to adopt their own statutes of limitations for due process claims, and California has done so.

The Ninth Circuit characterized the IDEA's statute of limitations statute as a "discovery rule" statute, rather than an "occurrence rule" statute, because it looks to what a party knew or should have known prior to filing a due process claim. (*Avila v. Spokane Sch. Dist.* 81 (9th Cir. 2017) 852 F.3d 936, 939-945 (*Avila*).) The court interpreted and applied the federal statute in *Avila* because the case arose in the state of Washington, which had not adopted its own statute of limitations. Although California's statute of limitations is also a discovery rule statute, its wording is slightly different from that in the IDEA, and it has a history of interpretation by California courts that focuses on knowledge of the facts upon which the due process request is based, rather than awareness of claims,

That portion of the IDEA upon which *Avila* relied requires parents to file for due process "within 2 years of the date the parent or agency knew or should have known about *the alleged action that forms the basis of the complaint ...*" (20 U.S.C. § 1415(f)(3)(C) (emphasis added).) The California statute requires that a due process request 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. (l) (emphasis added).)

California has adopted its own manner of applying the discovery rule. California has held that a claim accrues for purposes of the statute of limitations when a party is aware of the underlying facts. (*M.M. & E.M. v. Lafayette Sch. Dist.* (N.D.Cal., Feb. 7, 2012) 2012 WL 398773, ** 17-19 (*M.M.*), *affd.* in part and *revd.* in part on other grounds by *M.M. v. Lafayette Sch. Dist., et al* (9th Cir. 2014) 767 F.3d 842, 859; ["The IDEA's plain language states that the limitations period is two years from the date that the parents knew of the complained of action, not two years from the date the parents knew the action was wrong," quoting *Bell v. Bd. of Educ. of the Albuquerque Pub. Schs.* (D.N.M.2008) 2008 WL 4104070, at *17].) In California, the "'knowledge of facts" requirement does not demand that the [party] know the specific legal theory or even the specific facts of the relevant claim; rather the [party] must have known or reasonably should have known the facts underlying the supposed learning disability and their IDEA rights." (*Miller v. San Mateo-Foster City Unified Sch. Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 861 (citing *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1111) (*Miller*); *Ashlee R. ex rel. Russell v. Oakland Unified School Dist. Financing Corp.* (N.D. Cal., Aug. 23, 2004, No. C 03-5802 MEJ) 2004 WL 1878214, at *5.)

In the case of *Fernandez v. Elk Grove Unified Sch. Dist.* (E.D. Cal., Mar. 31, 2020, No. 2:19-cv-00082-MCE-AC) 2020 WL 1532229 (*Fernandez*), the court recognized that, "for purposes of determining when parent "knew or had reason to know of the facts underlying the basis for [student's] request," it did not matter if student or her parents "understood that she had a particular legal claim. Instead, what mattered was whether parents or student had, or should have had, knowledge of the problem which formed the basis of the action. (*Id.* at *4)

DISCUSSION

In the present matter, Student alleges that Tahoe Truckee deprived Student of a FAPE in a variety of ways. In Issue 1 and its subparts, she asserts that Tahoe Truckee deprived her of a FAPE from August 30, 2018 through February 4, 2021, by failing in their child find obligations by failing to conduct an adequate initial assessment, failing to find Student eligible for special education services, and by a cascade of misdeeds that follow from those failures. The initial assessment referred to in Exhibit 1 was completed on May 29, 2019, and it is thus unclear why the issue encompasses the date of August 30, 2018, but both of those operative dates are beyond the two-year statute of limitations. In any event, the complaint alleges that Student had received a neuropsychological assessment from a psychologist in 2018 which recommended that she be found eligible for special education, that Parent gave the assessment to Tahoe Truckee and requested an assessment from Tahoe Truckee in 2018, and that Truckee declined to assess at that time. The complaint then alleges that on several occasions in early 2019 Student underwent psychiatric hospitalizations, and Student did not make adequate progress at school during that time. Ultimately Tahoe Truckee conducted an initial psychoeducational assessment of Student which was completed on May 29, 2019. The complaint further alleges that the assessment was not performed appropriately, for a variety of reasons, and apparently, based on the inappropriate assessment, Tahoe Truckee did not find Student eligible for special education. Therefore, Student alleges that Tahoe Truckee "misrepresented" to Parent that Student was not eligible for special education, and did not offer Student an individualized education program, referred to as an IEP, and a FAPE. Student does not even when the "misrepresentation" occurred, or who made the "misrepresentation." Student also alleges that Parent did not know that Tahoe Truckee "misrepresented Student's eligibility" until she consulted an attorney in July 2021.

Similar to the due process hearing request in *Fernandez*, Student's complaint does not allege any of the elements that constitute an exception to the statute of limitations. It does not allege Student was prevented from requesting the due process hearing due to a "specific misrepresentation by [Tahoe Truckee] that it had solved the problem forming the basis" of the complaint, or "the withholding of information by [Tahoe Truckee] from the parent that was required" to be provided to the parent, pursuant to title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l). Rather, the complaint uses the term "misrepresentation," but it alleges only a dispute as to whether the initial assessment of May 29, 2019, was appropriate and whether the IEP team should have found Student eligible for special education based on that assessment. That is the basis of Issue 1 and its subparts insofar as it refers to dates prior to September 8, 2019. As was stated in *Cumberland Valley, supra*, the action that constitutes the basis of the IDEA claim itself cannot satisfy the exception to the statute of limitations, but that is all that Student alleges here. Student does not allege any action of Tahoe Truckee that is independent of her claim itself that would constitute an exception to the statute of limitations. Nor does she allege that any misrepresentation was intentional or knowing on Tahoe Truckee's part. (*Abington, supra*.)

Further, the facts alleged on the face of the complaint show that Parent knew or had reason to know of the facts underlying the basis for Issue 1 before September 8, 2019, two years prior to the date Student filed the complaint. The allegations of the complaint reveal that Parent had obtained an expert's report in 2018 that recommended Student be found eligible for special education, she knew that Tahoe Truckee did not assess Student in 2018 when she asked for such an assessment, she knew that Student was having severe mental health difficulties and knew, or should have known, that Student was not progressing in school. The complaint also alleges that she knew that

Tahoe Truckee completed its initial assessment of Student on May 29, 2019, and that, based on the assessment, Tahoe Truckee did not find Student eligible for special education and an IEP. Parent may not have known that she had a legal claim, but, as of the time she alleges that Tahoe Truckee found Student ineligible for special education and an IEP, she knew, or should have known, that Tahoe Truckee's May 29, 2019, assessment differed from that of her private psychologist, that Student was continuing to have difficulties in school, and that Tahoe Truckee had not found Student eligible for special education such that she would not receive an IEP. These are facts that constitute the problems that are alleged in Issue 1. The allegation that Parent did not understand that she might have legal claims until years after Tahoe Truckee's actions may be based on the ruling of *Avila, supra*, which involved a decision that concerned the interplay of the IDEA and Washington state's law on the statute of limitations. In California, however, it is knowledge of the *facts*, not an understanding of legal claims, which triggers the running of the statute of limitations. The allegation that Parent did not understand that she had legal claims until she met with an attorney is of no consequence to the tolling of the statute of limitations. Nor does it matter that she did not have knowledge of all of the specific facts related to her claims. Here, Parent had knowledge of problems that are the basis of her claims in Issue 1 and should have filed her complaint within two years of such knowledge.

For each of these reasons, Tahoe Truckee's Motion to Dismiss Issue 1 and its subparts to the extent that they allege claims that arose prior to September 8, 2019, is granted.

ORDER

Student's Motion to Dismiss Issue 1 and all of its subparts to the extent that they allege claims that arose prior to September 8, 2019, is granted. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Elsa Jones".

Elsa H. Jones

Administrative Law Judge

Office of Administrative Hearings