BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MATEO-FOSTER CITY SCHOOL DISTRICT.	OAH Case No. 2016090418 ORDER GRANTING MOTION TO DISMISS AND: (1) DISMISSING ISSUES 1, 4 AND 5 IN THEIR ENTIRETY, AND (2) DISMISSING THOSE PORTIONS OF ISSUES 2 AND 6 BEYOND THE TWO-YEAR STATUTE OF LIMITATIONS

On September 6, 2016, Student filed a due process hearing request (complaint) naming San Mateo-Foster City School District.

On December 20, 2016, District filed a motion to dismiss those portions of Student's claims arising more than two years prior to the filing of Student's complaint, occurring when Student was enrolled in a different school district, raising issues outside of OAH jurisdiction, or barred by the doctrines of res judicata and collateral estoppel. District seeks to dismiss portions of Student's Issues 1, 2, 4, 5 and 6.

On December 27, 2016, Student filed an objection to District's motion as untimely made, and moved to strike the motion.

APPLICABLE LAW

The statute of limitations for special education due process claims 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 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) 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 (i) 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 that was required to be provided to the parent.

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.)

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).) 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 does not have jurisdiction to entertain discrimination claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504).

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen, supra*, 449 U.S. at p. 94; see *University of Tennessee v. Elliott* (1986) 478 U.S. 788, 798 [106 S.Ct. 3220, 92 L.Ed.2d 635.) While collateral estoppel and res judicata are judicial doctrines, they are also applied to determinations made in administrative settings. (See *Pacific Lumber Co. v. State Resources Control Board* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732.)

However, the IDEA contains a section that modifies the general analysis with regard to res judicata and collateral estoppel. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not.

DISCUSSION

District seeks to dismiss Student's claims, or portions of those claims, on the grounds that: claims arising before September 6, 2014, are barred by the statute of limitations; OAH lacks jurisdiction over claims not based on the Individuals with Disabilities Education Act; Student was not enrolled in District after November 3, 2014; and some part of Student's issue 5 is barred by the doctrines of res judicata and collateral estoppel.

Student objects to District's motion and moves to strike the motion on the grounds the motion is untimely under 20 U.S.C. § 1415(c)(2)(A) and (C). However, although a respondent must file a notice of insufficiency within 15 days from receiving a complaint or the complaint is deemed to give sufficient notice (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1)), there is no time limitation on a motion to dismiss for lack of jurisdiction. Lack of jurisdiction is such a fundamental defect that it can be raised at any time. (*Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1036-1037. Accordingly, Student's objection to the motion to strike as untimely is overruled and Student's motion to strike is denied.

Student's complaint, filed September 6, 2016, alleges that Student transferred into District in February 2014, and remained in District until November 2014. Student alleges that District offered continued placement in an inappropriate non-public school in individualized education programs dated May 1, May 14 and September 5, 2014, and insufficiently assessed Student prior to those IEP's. Student alleges that District failed to include Parent in preparation of referral packets provided to potential residential treatment centers, which resulted in false information being contained in the packets and in all contacted residential treatment centers declining to accept Student. Student claims that she was denied a FAPE because: (1) the May 1, May 14 and September 5, 2014 IEP's were procedurally and substantively defective; (2) District refused to include Parent in the preparation of the referral packets, and to remove inaccurate and false information from Student's record; (3) District predetermined the September 5, 2014 offer of placement; (4) Student was discriminated against on the basis of her disability in violation of Section 504; (5) District authorized or allowed non-public school employees to place false information into Student's IEP's, and to lie under oath at a prior due process hearing; and (6) District failed to fully implement the May 1, May 14 and September 5, 2014 IEP's. Student's complaint did not allege any exception to the two year statute of limitations.

As to Student's Issue 1, the alleged procedural and substantive defects in the IEP's of May 1, May 14 and September 5, 2014 IEP's occurred more than two years prior to the filing of Student's complaint in this matter. Student's complaint does not allege facts to establish exceptions to the statute of limitations, that is, that Parent was prevented from filing a request for due process due to (i) specific misrepresentations by District that it had resolved the problem forming the basis of the complaint, or (ii) by District withholding of information required to be provided to the Parent. Accordingly, Student's Issue 1 is dismissed.

Factual allegations in Student's Issues 2 and 6 include both events that occurred outside the limitation period and that may have been more recent. District's alleged refusal to remove inaccurate or false information from Student's educational records, and the failure to implement Student's IEP's, could have occurred on or after September 6, 2014. However, to the extent these issues allege claims beyond the limitation period, those portions of Issues 2 and 6 are dismissed. Issue 5 contains a claim that District permitted false information to be entered into the IEP documents, but as those documents were prepared at meetings outside the statute of limitations, that portion of Issue 5 is dismissed.

As to Issue 4, OAH does not have jurisdiction over claims brought for discrimination on the basis of disability in violation of Section 504. As to that portion of Student's Issue 5 not barred by the statute of limitations, that District authorized or allowed non-public school employees to make misrepresentations under oath in a due process proceeding, is not an issue with respect to any matter relating to the identification, evaluation, or educational placement of the Student, or the provision of a free appropriate public education to Student. Therefore, the remainder of Issue 5 is outside of OAH jurisdiction. Accordingly, Issues 4 and 5 are dismissed in their entirety.

District also contends that Issue 5 regarding the accuracy of Student's records is barred by the doctrine of res judicata, as District filed a due process complaint against Student on the same issues, which went to hearing and resulted in a final decision on the merits.[1] However, the decision in that prior proceeding was on issues different from those presented here, as District sought a determination that it's assessments were appropriate and Student was not entitled to an independent educational evaluation at public expense, that District had a right to conduct an updated educationally-related mental health assessment, and that District could send referral packets to prospective residential placements without "parental editing." The IDEA does not preclude Parent from filing a due process complaint on issues separate from those in District's prior proceeding.

ORDER

1. District's motion to dismiss portions of Student's claims is granted.

2. Issues 1, 4 and 5 are dismissed in their entirety.

3. Issues 2 and 6 are limited to conduct and events occurring on or after September 6, 2014.

4. This matter shall proceed as scheduled as to claims arising from conduct and events occurring on or after September 6, 2014 only.

DATE: December 30, 2016

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Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

[1] *San Mateo-Foster City School District v. Student*, OAH case number 2014100402 (December 10, 2014).