BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

G.L., by and through his Parent, Conservator, and Guardian, S.L.; M.L.; and S.L.,	:	
Plaintiffs,	:	**Docket No.: OSAH-DOE-SE-[redacted]Howells**
v.	:	
_____ COUNTY SCHOOL DISTRICT,	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER ON STATUTE OF LIMITATIONS

_____ County School District has raised the defense of statute of limitations and asserts that Plaintiffs' claims should be limited to alleged violations that occurred within the two years preceding their complaint. Plaintiffs assert that the two-year statute of limitations does not bar their older claims because they did not know and could not have known about the actions that form the basis of their complaint. Because a ruling limiting Plaintiffs to claims within the last two years would significantly change the presentation of evidence and, most likely, the length of the hearing, the hearing was bifurcated and a hearing only on the statute of limitations issue was conducted on August 20 and 21.[1] For the reasons that follow, the undersigned concludes that the Plaintiffs knew or should have known about the actions that form the basis of their complaint more than two years before they filed their complaint.[2]

Facts

G.L. attended H Middle School from 2004 to 2007. MP was his teacher while he attended H. During that time, Ms. L. (G.L.'s mother), observed bruises on G.L.[3] G.L.'s

[1] The record was held open until September 13, 2013, to allow the parties to submit written closing arguments.
[2] On September 23, 2013, during a telephone conference, the undersigned notified the parties of this ruling and that a substantive order would follow.
[3] When Ms. L. asked Ms.MP about the bruises, Ms.MP would tell her that they were caused by a fall or his self-

pediatrician also observed the bruises and did not think that they were related to his self-injurious behavior. (Tr. 57, 59, 63, 191; FCSD Ex. 1.)

While C.D. was attending Ms. MP's class, Ms. L. also observed that G.L. was having an increase in behaviors (i.e., screaming, crying, and hitting himself).[4] (Tr. 73, 79, 81.) On occasion, she also observed Ms. MP being rough with some of the other students in her class. Specifically, she observed Ms. MP "put her knee" in another student's back. (Tr. 58; FCSD Ex. 3, p. 86.)

J.M. had a son in Ms. MP's class between 2004 and 2007. In 2007, Ms. M. was notified of an incident involving her son. She was told by the social worker that her son had been left alone in a room by himself for at least 45 minutes, where he had a bowel movement and smeared feces all over himself. (Joint Ex. 1, p. 64; FCSD Ex. 2, p. 332.) As a result of this incident, an investigation ensued. The investigation was conducted by a consulting firm and led by Joe Umbarger. (Joint Ex. 1; FCSD Ex. 3, p. 4.)

As part of the investigation, several paraprofessionals, teachers, school personnel, and administrators were interviewed. The results of the investigation indicated that Ms.MP had been abusing several students in her special education class. Ms. M. received a copy of the report in 2007. (Tr. 156-57.) At that time, the names of the other children were redacted.

The Professional Standards Commission ("PSC") also launched an investigation regarding Ms. MP's treatment of the students in her class. Ms. M. obtained a copy of the PSC report in 2009. (Tr. 159.)

In July 2009, Ms. M. began calling the parents of students who were also in Ms. MP's class. (FCSD Ex. 2, p. 338.) Included in the group of parents that she contacted in July of 2009

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injurious behaviors. (Tr. 63.)

[4] Unfortunately, when Ms. L. asked Ms. MP about G.L.'s behaviors, Ms. MP would tell her that he calmed down once Ms. L. left the school. (Tr. 73-74.)

was the parent of G.L. (FCSD Ex. 2, pp. 336-338.)[5] She did this "to find out what the parents were doing" to obtain services for their children because she "knew the other kids had been harmed, as well." (FCSD Ex. 2, p. 336.) At the time Ms. M. called the parents of other students

[5] Ms. M. testified in *A.W. v.* _____ *County School District*, No. OSAH-DOE-SE-1135718-60-Schroer, on November 8, 2011. She testified as follows:

Q. Do you recall giving an interview to the AJC?

A. Yes.

Q. Okay. Do you recall saying in that interview that in 2009, upset with the _____ County School District, you began calling parents of other students in Ms. Pickens's class?

A. Upset with the School District?

Q. Uh-huh (affirmative).

A. I really couldn't get the necessary services for Jake, and knew that the other kids had been harmed, as well, so I called parent[s] to find out what they were doing?

Q. Who did you call?

* * *

A. **I did call the parents of these students, G.L., . . .C.M., A.H., and R.P.**

* * *

Q. **Do you remember when [in] 2009?**

A. **I would say July.**

Q. July. Do you remember if it was early July, late July, mid July.

A. **I think early July.**

Q. Early. **So early July 2009 was when you made those contacts?**

A. **(Nods head affirmatively.)**

(FCSD Ex. 2, pp. 336-338 (emphasis added).) At the hearing in this matter, Ms. M. recanted her previous testimony. She testified that she did not contact Ms. L. until July or August of 2011. The undersigned does not find Ms. M.'s most recent testimony to be credible. Rather, the undersigned finds Ms. M.'s testimony in the *A.W.* matter to be more credible, as it was closer in time to the events and the statute of limitations was not at issue for the L. family at that time, thus there was no motive to be untruthful about the date. Additionally, it seems unlikely that Ms. M. would have testified on November 8, 2011, in the *A.W.* matter that she contacted the parent of G.L. in 2009, if she had, in fact, only contacted her a few months before the November, 2011 *A.W.* hearing. Furthermore, at the hearing in this matter, Ms. M. appeared uncomfortable and less than confident in her testimony. Finally, Ms. M.'s most recent testimony that she began calling parents in 2009 and did not reach Ms. L. until two years later is simply not credible.

in the class, she had a redacted copy of the Umbarger report, the transcript of the associated witness statements and a copy of the PSC investigation and witness interview transcripts. (Tr. 159.)

When Ms. L. spoke to Ms. M. in 2009, Ms. M. told her that her (i.e., Ms. M.'s) son had been abused at H, and "it was possible that other children were [abused]." (Tr. 64, 129.)[6] The conversation was short because Ms. L. did not "want to revisit anything . . . to do with H." (Tr. 64.) Ms. L. "blew [Ms. M.] off." She did not believe, what Ms. M. was saying. She did not want to be involved with it or H. *Id.* Ms. L. told Ms. M. that "they" were verbally abusing G.L., that she was grateful to be out of H., and that she did not want to stir up more trouble. (Tr. 64-65.) After her conversation with Ms. M., Ms. L. took no actions. She did not follow up with anyone from the school district. She did not file an Open Records request or attempt to get a copy of the investigative report. (Tr. 65.) In fact, Ms. L. did nothing to follow up between 2009 and 2011. (Tr. 66.)

Ms. M. also contacted Mrs. W. in July of 2009 to discuss what happened at H.. (Tr. 24.) Mrs. W.' son was also in Ms. MP's class. Mrs. W. was shocked by the information she received from Ms. M. Ms. M. was very persistent in getting her to see the Umbarger report. Ms. M. gave Mrs. W. a redacted copy of the Umbarger report in July 2009. (Tr. 25.) In 2010, Mrs. W. obtained an unredacted copy of the report from the school district. (Tr. 26.)

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[6] On the first day of the hearing, Ms. L. testified regarding her brief conversation with Ms. M. in 2009. On day two of the hearing, Ms. L. repudiated her testimony from the day before, and asserted that she did not have an actual conversation with Ms. M. in 2009. Ms. L.'s testimony on day one of the hearing was clear and confident. She was able to relay information about two separate conversations and provide details about both. Her testimony on day two of the hearing contradicts the testimony she provided on day one of the hearing, as well as other evidence in the record. For these reasons, the undersigned credits the testimony Ms. L. provided on day one of the hearing and does not find her subsequent testimony on this issue to be credible. *Gibbons v. State*, 248 Ga. 858, 863 (1982) (the trier of fact has the opportunity to observe the witness as he varies or repudiates his former statement, and therefore is entitled to decide whether to believe the present testimony, the prior testimony, or neither).

In February 2011, Ms. M. filed a civil lawsuit against several parties concerning the alleged abuse of her son. (Tr. 177-179.) On June 16, 2011, Mr. and Mrs. W. filed a due process complaint against _____ County School District. *A.W. v.* _____ *Cnty. Sch. Dist.*, No. OSAH-DOE-SE-1135718-60-Schroer (OSAH Feb. 1, 2012).

Ms. M. contacted Ms. L. again in August of 2011. (Tr. 65, 146, 163.) Again, Ms. M. told Ms. L. that her son had been abused, other children in the class room had been abused, and Ms. L.'s son may have been abused. (Tr. 175-177.) Subsequently, Ms. M. asked Mrs. W. to call Ms. L.. Mrs. W. spoke with Ms. L. in August 2011. She told Ms. L. what had happened with her own son. Ms. L. did not want to speak with Mrs. W. After hearing what Mrs. W. had to say, Ms. L. said: "I can't believe that, I just can't believe that, I just don't want to believe it." (Tr. 48.) Mrs. W. subsequently met Ms. L. on September 2, 2011 and gave her an unredacted copy of the Umbarger report. (Tr. 51.)

On September 9, 2011, Ms. L. filed a police report with the _____ County Schools Police Department. She told the police that she had been advised by J.M. that her son G.L. may have been abused by a former teacher. (FCSD Ex. 4.)

An investigation by the _____ County Schools Police Department ensued. During the course of the investigation, on December 14, 2011, Ms. L. was interviewed by Officer Forbes and Officer Myrick. (FCSD Ex. 3, p. 86.) Ms. L. told the officers that she had seen bruises on her son's arm that she knew were caused by someone grabbing his arm too tightly. (Tr. 59, 63.) She told the officers that she learned that her son may have been abused through a phone conversation with J.M., "last year." (Tr. 110.)[7] Ms. L. told the officer that she did not want to speak with Ms. M. the first time she called because "she was glad that her son

[7] Because Officer Myrick interviewed Ms. L. in December of 2011, it is clear that Ms. L. learned about the alleged abuse before 2011.

was no longer going to H and she pretty much wanted to just push it away, push it aside." (Tr. 97.) In other words, she did not "want to deal with it." (Tr. 110.)

Analysis

The Individuals with Disabilities Education Act ("IDEA")[8] contains a two year statute of limitations. Specifically, it provides, as follows:

> A parent or agency shall request an impartial due process hearing 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, or, if the State has an explicit time limitation for requesting such a hearing under this part [20 USCS §§ 1411 et seq.], in such time as the State law allows.

20 U.S.C. § 1415(f)(3)(C) (emphasis added); *see also* 34 C.F.R. §§ 300.507(a)(2) & 300.511(e). Georgia's regulations also contain a two-year statute of limitations for due process complaints. Ga. Comp. R. & Regs. 160-4-7-.12(3)(a).

"Statutes of limitations, which 'are found and approved in all systems of enlightened jurisprudence' . . . represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that 'the right to be free of state claims in time comes to prevail over the right to prosecute them.'" *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (quoting *Wood v. Carpenter*, 101 U.S. 135, 139 (1879) and *Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 349 (1944)). Limitations periods strike a balance between giving plaintiffs a reasonable time to file their claims and protecting "defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *Kubrick*, 444 U.S. 111.

[8] In 2004, the act was reauthorized and renamed as the Individuals with Disabilities Education Improvement Act of 2004. 108 P.L. 446. For the sake of simplicity, the undersigned will continue to refer to the act at the Individuals with Disabilities Education Act (i.e., IDEA).

In the context of the IDEA, the statute of limitations has the added benefit of promoting the prompt resolution of disputes in furtherance of the "IDEA's goal of promptly resolving educational disputes."[9]

The Court of Appeals for the Eleventh Circuit has acknowledged the importance of bringing IDEA claims in a timely manner. In a case which predates the inclusion of a specific limitations period in the statute, the Eleventh Circuit determined that a short limitations period was necessary for judicial review under IDEA because a longer limitations period would lead to "appropriate remedies [being] delayed by potentially protracted litigation."[10] The Eleventh Circuit further noted that a longer limitations period would cause "an already disadvantaged child's education [to] stagnate" as the child is "awaiting placement decisions that may become obsolete even before implementation."[11]

IDEA provides two exceptions, which if established would toll the statute of limitations. The two-year statute of limitations will not bar a plaintiff's claims if the plaintiff was prevented from filing a due process complaint due to either of the following factors:

> (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
>
> (ii) the local educational agency's withholding of information from the parent that was required under this part [20 USCS §§ 1411 et seq.] to be provided to the parent.

20 U.S.C. § 1415(f)(3)(D); *see also* 34 C.F.R. § 300.511(f).

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[9] *Cory D. v. Burke Cnty. Sch. Dist.*, 285 F.3d 1294, 1300 (11th Cir. 2002); *see also Powers v. Indiana Dep't of Educ., Div. of Special Educ.*, 61 F.3d 552, 556 (7th Cir. 1995) (noting the "general policy under the IDEA to "resolve educational disputes as quickly as possible); *Nieuwenhuis by Nieuwenhuis v. Delavan-Darien Sch. Dist. Bd. of Educ.*, 996 F. Supp. 855, 868 (E.D. Wis. 1998) (holding the IDEA "requires prompt rather than protracted, resolution of disputes concerning the disabled student's education") (citing *Dell on Behalf of Dell v. Board of Educ., Township High Sch. Dist. 113,* 32 F.3d 1053, 1060 (7th Cir.1994)).

[10] *Cory D.*, 285 F.3d at 1299.

[11] *Id.*

The exceptions will toll the statute of limitations only if they prevented the plaintiff from filing a complaint. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 246 (3rd Cir. 2012). For the first tolling exception to apply, the Plaintiffs must prove that they were prevented from filing a complaint because the Defendant made a specific, intentional misrepresentation that it had resolved the problem forming the basis of their complaint. *Id.* at 245. For the second tolling exception to apply, Plaintiffs must prove that they were prevented from filing a complaint because the Defendant withheld statutorily mandated disclosures.[12] *Id.* at 246. If there was no requirement to provide the information referenced in the second exception, then Plaintiffs cannot establish the exception. *Id.*

Plaintiffs filed their due process complaint on May 22, 2013. Therefore, unless one of the enumerated exceptions applies, Plaintiffs are prohibited from pursuing claims they knew or should have known about prior to May 22, 2011. The evidence demonstrates that neither exception outlined in 20 U.S.C. § 1415(f)(3)(D) applies in the current case. Plaintiffs have not alleged that their failure to file a due process complaint sooner was the result of any "specific misrepresentation" that the District had resolved the issues which arose with G.L. was enrolled at H Middle School. There is also no evidence in the record that the District failed to provide the L. family with a written notice, explanation, or form required by the IDEA. Instead, Plaintiffs argue that because the District did not affirmatively inform them regarding what happened at H Middle School prior to May 22, 2011, they still do not have the knowledge necessary to trigger the start of the two year statute of limitations period outlined in the IDEA. Plaintiffs alternatively argue their claims related to the education G.L. received from 2004 until 2011 did

[12] When a parent requests an evaluation under IDEA, the school district must either perform the evaluation or provide the parent with prior written notice explaining why it refuses to conduct the evaluation. 34 C.F.R. § 300.301, 300.503(a)(2), (b)(2). Additionally, a copy of the procedural safeguards must be given to the parents, among other times, upon the parents' request for an evaluation. 34 C.F.R. § 300.504(a)(1).

not accrue until they learned specific information in the fall of 2011 about what allegedly happened to G.L. at H Middle School.

These arguments are not persuasive. The IDEA does not state that a family's claim accrues when the school district affirmatively informs the family of the event which is the basis of the family's claim. Likewise, the IDEA does not require that the family have actual knowledge of the event which triggers their due process claims. Instead, the IDEA looks to whether the family knew or *should have known* of the injury or event which is the basis of their claim.[13] Thus, because the L. family should have known about the alleged abuse that G.L. suffered when he was attending H Middle School before May 22, 2011, any claims for events occurring prior to May 22, 2011 are barred by the statute of limitations.

a. <u>The IDEA Does Not Require that the Family Learn of the Underlying Events from the School District.</u>

The L. family contends their claims should not be barred by the statute of limitations because the District never told them what happened to G.L. when he attended H Middle School. The District Court for the Middle District of Georgia rejected a similar argument in *A.B. v. Clarke County School District*, No. 3:08-CV-041CDL, 2009 U.S. Dist. LEXIS 27102 (M.D. Ga. Mar. 30, 2009). This decision was affirmed by the Eleventh Circuit in 2010.[14] In *A.B.*, the family of a disabled student waited more than two years to file a due process complaint regarding allegations that their child was sexually harassed by another student in the classroom.[15] The administrative law judge held that the family's claims were thus barred by the IDEA's two-year

[13] 20 U.S.C. § 1415(f)(3)(C) (emphasis added); *see also* 34 C.F.R. §§ 300.507(a)(2), 300.511(e); Ga. Comp. R. & Regs. 160-4-7-.12(3); *Mandy S.*, 205 F. Supp. 2d at 1366 (citing *Hall v. Knott Cnty. Bd. of Educ.*, 941 F.2d 402, 408 (6th Cir. 1991).
[14] *A.B. v. Clarke Cnty. Sch. Dist.*, 372 F. App'x 61 (11th Cir. 2010).
[15] *A.B.*, 2009 U.S. Dist. LEXIS 27102, at *20.

statute of limitations.[16] The family appealed this decision, arguing that previously they did not have sufficient information to file a due process complaint because the school district never told them "what really happened" regarding the sexual harassment, thus their claims should not be barred by the statute of limitations.[17] The Middle District of Georgia disagreed and found that the evidence revealed the family had "significant information" about the sexual harassment.[18] Thus, the court found the family "had all the information they needed to make a Due Process Request . . . within two years" and affirmed the administrative law judge's decision.[19]

In the current case, the L. family had reason to suspect that G.L. may have been abused when he was still attending H Middle School. G.L.'s treating physician observed bruises on G.L. when he was still attending H Middle School and noted the bruises "could not have been self-inflected." Ms. L. observed G.L.'s teacher "put her knee" in another child's back when G.L. was still enrolled at H Middle School. Ms. L. also admitted under cross-examination that G.L.'s teacher at H Middle School "grabbed [her] son too harshly, harder than [she] would have grabbed him, to make him go wherever she wanted him to go, or do whatever she wanted him to do." Finally, Ms. L. admitted that she received a call from Ms. J.M. in 2009, and Ms. M. told her that her (i.e., Ms. M.'s) son had been abused by G.L.'s teacher at H Middle School and she believed other children in the classroom may have been abused. This is consistent with Officer Myrick's testimony that J.M. told Ms. L. during their first telephone conversation that there was a possibility G.L. was abused at H Middle School. (Tr. 109:14-20.)

In light of this evidence, it is irrelevant to a statute of limitations analysis whether the school district specifically told the L. family that G.L. had been abused prior to May 22, 2011.

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[16] *Id.*, at *24-25.
[17] *Id.* at *10.
[18] *Id.*
[19] *Id.*, at *38.

Instead, the question is whether the family knew or should have known of the injury or event that forms the basis for their claim prior to May 22, 2011. Thus, because the evidence reveals the L. family had significant information about the events that transpired at H Middle School in 2009, the family's claims for events prior to May 22, 2011, are barred by the IDEA's two-year statute of limitations.

b. **The Evidence Reveals the Family Should Have Known – and Likely Did Know – About the Alleged Abuse G.L. Suffered at H Middle School Prior to May 22, 2011.**

The L. family argues that they did not know and could not have known about the abuse because the school district hid the abuse. While the undersigned in no way condones the behavior of those involved at H Middle School, Plaintiffs' position is an oversimplification and patently ignores the fact that at least two other families were diligent in finding out information and did, in fact, file matters related to the alleged abuse prior to the running of the statute of limitations. As noted above, Ms. M. filed a civil lawsuit in _____ County Superior Court in February 2011 and Mrs. W. filed a due process complaint in June 2011. The L. family further argues that their claims related to the education G.L. received at H Middle School did not accrue until the fall of 2011, when the L. family learned about specific allegations related to G.L. which related to his time at H Middle School. The record, however, clearly demonstrates the L. family should have known about the allegations surrounding H Middle School before May 22, 2011.

When Congress amended the IDEA in 2004, it determined the clock would begin running for parents under either of the following circumstances: (1) "actual knowledge of the action about which the parent complains;" and (2) "situations where a reasonable parent would have known about the action."[20] This standard is drawn from the duty of reasonable care under

[20] Lynn M. Daggett, *For Whom the School Bell Tolls but Not the Statute of Limitations: Minors and the Individuals with Disabilities Education Act*, 38 U. Mich. J.L. Reform 717, 772 (2005).

negligence law and "reflects Congress's understanding that parents of IDEA students not only have extensive rights vis-à-vis their child's special education program, but also corresponding responsibilities and duties including prompt initiation of the dispute resolution process."[21]

According to the Restatement of Torts, the term "should know" indicates "the actor is under a duty to another to use reasonable diligence to ascertain the existence or non-existence of the fact in question."[22] Thus, the question is whether a reasonable person could be expected to know or ascertain information about the underlying violation.[23] A two-part analysis answers this question:

> First, we consider whether a reasonable person in Plaintiffs' situation would have been expected to inquire about the cause of his or her injury. Second, if the plaintiff was on inquiry notice, we must next determine whether an inquiry would have disclosed the nature and cause of plaintiff's injury so as to put him on notice of his claim. The plaintiff will be charged with knowledge of facts that he would have discovered through inquiry.[24]

Accordingly, a plaintiff "must be diligent in discovering the critical facts" and "will be barred from bringing his claim after the running of the statute of limitations, if he should have known in the exercise of due diligence."[25] Furthermore, the "should have known" standard "does not

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[21] *Id.*

[22] Restatement (Second) of Torts § 12 (1965); *Ashcroft v. Randel*, 391 F. Supp. 2d 1214, 1224 (N.D. Ga. 2005) ("'A claim does not accrue when a person has a mere hunch, hint suspicion, or rumor of a claim, but such suspicions do give rise to a duty to inquire into the possible existence of a claim in the exercise of due diligence.'" (quoting *McIntyre v. United States*, 367 F.3d 38, 52 (1st Cir. 2004))).

[23] *Kach v. Hose*, 589 F.3d 626, 634 (3d Cir. 2009) (interpreting the "should have known" standard in a Section 1983 case as whether a "reasonable person should have known" about the underlying incident); *Hayman v. C.I.R.*, 992 F.2d 1256, 1261 (2d Cir. 1993) (interpreting the "should have known" standard in a tax evasion case as whether a "reasonably prudent taxpayer . . . could be expected to know that the return contained the substantial understatement"); *Agristor Fin. Corp. v. Van Sickle*, 967 F.2d 233, 241 (6th Cir. 1992) (interpreting the "should have known" standard in a fraud case as whether a reasonable person would have determined the cause of the underlying injury); *Braxton-Secret v. A.H. Robins Co.*, 769 F.2d 528, 531 (9th Cir. 1985) (interpreting the "should have known" standard in a products liability action as whether a reasonable person in the plaintiff's position should have known her injuries could have been caused by the medical device, even without any expert advice).

[24] *O'Connor v. Boeing N. Am., Inc.*, 311 F.3d 1139, 1150 (9th Cir. 2002) (citations omitted); *see also Ashcroft*, 391 F. Supp. 2d at 1224, *Abrams v. Ciba Specialty Chemicals Corp.*, 666 F. Supp. 2d 1267, 1274 (S.D. Ala. 2009); *Fisher v. Ciba Specialty Chemicals Corp.*, No. 03-0566-WS-B, 2007 U.S. Dist. LEXIS 76174 (S.D. Ala. Oct. 11, 2007); *LaBauve v. Olin Corp.*, 231 F.R.D. 632, 659 (S.D. Ala. 2005); *Great Rivers Co-op. of Se. Iowa v. Farmland Indus., Inc.*, 120 F.3d 893, 896 (8th Cir. 1997); *Chesney v. United States*, 632 F. Supp. 867, 869 (D. Ariz. 1985).

[25] *Abrams*, 666 F. Supp. 2d at 1274 (citing *Bibeau v. Pacific Northwest Research Foundation Inc.*, 188 F.3d 1105, 1108 (9th Cir.1999)).

permit a party to await certainty."[26] Nor must the party know the full extent of the injury, "because otherwise 'the statute would begin to run only after a plaintiff became satisfied that he had been harmed enough, placing the supposed statute of repose in the sole hands of the party seeking relief.'"[27]

In *Thomson v. Eagle-Picher Indus., Inc.*, 731 F. Supp. 239 (E.D. Mich. 1990), a janitor brought a products liability suit against an asbestos manufacturer, alleging the manufacturer's products caused his asbestosis. The manufacturer moved for summary judgment on the basis that the plaintiff's claims were not timely.[28] The plaintiff admitted he participated in a medical screening in 1974 and received a report which noted "parenchymal changes consistent with asbestos disease."[29] However, the plaintiff argued this report did not place him on notice that he had asbestosis, particularly in light of the fact that the letter from the physician who conducted the screening indicated the plaintiff's examination was "generally satisfactory" and the changes noted did "not seem at all worrisome."[30] Plaintiff further argued his lack of knowledge was evidenced by a note he wrote on the top of the physician's letter indicating he was not aware that he had symptoms consistent with asbestos disease.[31] The district court examined "whether a reasonable person in [the plaintiff's] position should have known he had asbestos disease in 1975" and determined that while the report the plaintiff received in 1975 was an "unexpected source of information," the plaintiff should have known that his medical screening indicated

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[26] *Vill. of Milford v. K-H Holding Corp.*, 390 F.3d 926, 932 (6th Cir. 2004).
[27] *Payne v. Arpaio*, No. CV09-1195-PHX-NVW, 2009 U.S. Dist. LEXIS 110553, at *21 (D. Ariz. Nov. 4, 2009) (quoting *Wallace v. Kato*, 549 U.S. 384, 388 (2007).
[28] 731 F. Supp. at 240.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 241.

changes consistent with asbestosis.[32] Thus, the court granted the manufacturer's motion for summary judgment and found the plaintiff's claims were barred by the statute of limitations.[33]

Similarly, in the instant case, the L. family should have known about the alleged abuse G.L. suffered at H Middle School in 2009. The L. family had reason to suspect that G.L. was being abused when he was still enrolled at H Middle School. Thus, when J.M. contacted Ms. L. in 2009 and indicated G.L. may have been abused at H Middle School, this was sufficient to trigger a duty to "use reasonable diligence to ascertain the existence or non-existence of the fact in question."[34] Indeed, a reasonable person in Ms. L.'s situation would have been expected to inquire whether G.L. had, in fact, been abused at H Middle School. Thus, the question becomes whether such inquiry would have placed the L. family on notice of the claims forming the basis of this due process complaint.[35]

The clear answer is yes. Ms. J.M. testified that she received a copy of the Umbarger Report in 2007, and she received a copy of the PSC investigation and the corresponding witness transcripts in 2009. Ms. M. shared the Umbarger Report with Mrs. Lisa W. in 2009, and Mrs. W. obtained an unredacted copy of the report from the District in 2010. (Tr. 25:12-16; 26:9-25.) Finally, Mrs. W. testified that she received a copy of the PSC Investigation in 2009. (Tr. 54:9-20.) In light of this evidence, it is clear that the L. family could have accessed information about the abuse G.L. allegedly suffered at H Middle School in 2009. Thus, because Plaintiffs did not exercise any diligence in discovering critical facts regarding what happened at H Middle School – despite actually witnessing inappropriate treatment of students at H., observing bruises on G.L. while at H that could not have been self-inflicted, and receiving notice of possible abuse from

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[32] *Id.* at 242.
[33] *Id.*
[34] Restatement (Second) of Torts § 12 (1965).
[35] *O'Connor v. Boeing N. Am., Inc.*, 311 F.3d at 1150.

J.M. as early as 2009 – they are barred from bringing claims related to events which happened prior to May 22, 2011.[36]

Order

IT IS HEREBY ORDERED THAT all of Plaintiffs' claims which relate to events occurring prior to May 22, 2011 are barred by the statute of limitations.

SO ORDERED, this 1st day of October, 2013.

STEPHANIE M. HOWELLS
Administrative Law Judge

[36] *Abrams*, 666 F. Supp. 2d at 1274 (citing *Bibeau v. Pacific Northwest Research Foundation Inc.*, 188 F.3d 1105, 1108 (9th Cir.1999)).