BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

T.J., by and through her parent, P.J.; and P.J.,	:	
Petitioners,	:	**Docket No.: OSAH-DOE-SE-** **Miller**
v.	:	
COUNTY SCHOOL DISTRICT,	:	
Respondent.	:	

MEMORANDUM OPINION AND ORDER ON STATUTE OF LIMITATIONS

I. OVERVIEW

The Petitioners in this case have filed a Complaint and Amended Complaint under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"), alleging claims against the County School District ("District"), Respondent herein, regarding T.J.'s education. The District has raised the statute of limitations as a defense, arguing that the Petitioners' claims must be limited to alleged IDEA violations that occurred within the two years preceding the filing of their original Complaint. 20 U.S.C. § 1415(f)(3)(C). The Petitioners, however, contend that the statute of limitations should be tolled based on the exceptions provided in 20 U.S.C. § 1415(f)(3)(D).

The parties presented evidence on this issue at a hearing on November 6, 2014.[1] After consideration of the record and for the reasons that follow, the undersigned concludes that the Petitioners failed to prove by a preponderance of the evidence that the statute of limitations should be tolled. Therefore, the Petitioners' claims are limited to alleged violations of IDEA that occurred within the two years preceding their original Complaint, which was filed on August 10, 2012.

[1] The record closed on November 21, 2014, when the transcript was received.

II. FINDINGS OF FACT

1.

T.J. was born on July 3, 1996. In August 1999, when she was three years old, she began attending school in the District and receiving special education services under IDEA. Her mother, P.J., was a member of her individualized education program ("IEP") team and participated in the development of her IEPs. (T. 17, 40-43; Exhibits J-1, J-2, J-3, J-4, J-5, J-6, J-7, J-9.)

2.

T.J. has been diagnosed with a profound intellectual disability, a speech and language disorder, and a seizure disorder that is resistant to medication. She is non-verbal and has difficulty communicating, although she is able to use some beginning sign language. She is not toilet-trained. T.J. is physically active and requires no assistive devices for mobility. At times, her behavior can be aggressive and dangerous to herself and others. (T. 17-18, 63-64, 91-92, 98-99; Exhibits J-15, J-23.)

3.

Beginning in August 1999, when T.J. enrolled in the District, she received special education services in a self-contained special education classroom for profoundly intellectually disabled ("PID") students. However, in the fall of 2007, she experienced a significant increase in seizure activity which coincided with a significant increase in her aggressive behaviors. These behaviors included screaming, biting, scratching, grabbing, and throwing objects. In addition, she required two-on-one support to prevent her from running out of the classroom, either into the hallway or outdoors. Because she behaved aggressively toward her classmates, she was often placed in a restraint chair when other children were present in the classroom. (T. 63-64, 91-93, 98-99; Exhibits J-2, J-3.)

4.

During an IEP meeting on January 17, 2008, T.J.'s IEP team decided that T.J.'s seizures and aggressive behavior had become so severe that her placement in the PID classroom was no longer appropriate. At that time, she was placed on home-based services pending the results of a clinical assessment conducted through the County Counseling Center. T.J.'s home-based services consisted of one hour per day of instruction at the home of her aunt, Patrina Fish. The home-based instruction continued through the end of the 2007-08 school year. (T. 23-25; Exhibits J-3, J-4.)

5.

On September 2, 2008, T.J.'s IEP team reconvened and determined that T.J.'s behaviors had continued in the home setting and caused her to make only "minimal progress" toward her IEP goals. As a result, the team decided that she should be placed in a modified-day program that would provide her with private instruction after the regular school day had ended. T.J. then transitioned from home-based services and began attending school from 3:15 p.m. to 4:45 p.m. in a two-on-one setting with a special education teacher and a paraprofessional. T.J. was the only student in her classroom. Following an IEP meeting on May 27, 2009, this placement was extended through the end of the 2009-10 school year,. (T. 25-26; Exhibits J-4, J-5.)

6.

During an IEP meeting on June 2, 2010, T.J.'s IEP team determined that she had shown only "marginal progress" toward her IEP goals, due both to her behavioral issues and to the short duration of instruction in the modified-day program. Therefore, the team decided to increase her instruction in the modified-day program from 1.5 hours per day to 3.25 hours per day for the 2010-11 school year. (Exhibit J-6.)

7.

Sometime in August or September 2010, P.J. requested that T.J. attend school for the full school day. In response to this request, T.J.'s IEP was amended on October 7, 2010, and she began attending school from 8:00 a.m. to 2:00 p.m. daily. She continued to receive intensive two-on-one instruction by a special education teacher and a paraprofessional in a private classroom. (T. 26-27, 75-76, Exhibit J-7.)

8.

Shortly after T.J. returned to school during the regular school day, P.J. became dissatisfied with the special education services T.J. was receiving. P.J. also became dissatisfied with the District's previous efforts to educate her daughter. At the evidentiary hearing on the merits of the Petitioners' Amended Complaint, the Petitioners plan to present evidence that the District failed to properly educate T.J. beginning in 1999, when she first entered school in the District. (T. 30-37.)

9.

In May 2011, P.J. submitted a formal, written complaint against the District to the Georgia Department of Education ("GaDOE"). GaDOE investigated the complaint in accordance with IDEA's state complaint process. By letter dated June 29, 2011, Deborah Gay, the Director of GaDOE's Division for Special Education Services and Supports, notified the parties that GaDOE had determined that the District was in compliance with IDEA. The letter further stated:

> All decisions arising from the complaint process are final. There is no appeal or reconsideration process. If you should have any questions, please contact Ms. Deborah Gay at dgay@doe.k12.ga.us or 404-657-9959.

(T. 48-49; Exhibit J-26.)

10.

On August 10, 2012, the Petitioners filed their original Complaint[2] in the present matter. (Court file.)

11.

At present, T.J. remains a student in the District and continues to receive special education services. She is currently placed in a self-contained PID classroom with a special education teacher, two paraprofessionals, and two other children. P.J. is satisfied with this placement and the services T.J. receives. (T. 38; Exhibit J-15; Court file.)

12.

From November 2006 through April 2014, P.J. participated in each IEP meeting that took place regarding her daughter and received a copy of each IEP. During each of these meetings, District personnel provided her a written explanation of her rights as the parent of a child with a disability ("parental rights notification"). This document, which was prepared by GaDOE,[3] specifically informed P.J. of the parental rights enumerated in 20 U.S.C. § 1415(d), including the right to examine T.J.'s educational records, the right to have T.J. educated in the least restrictive environment, and the right to present a complaint regarding T.J.'s education, either by requesting a due process hearing or filing a formal, written complaint for investigation by GaDOE. The parental

[2]The Petitioners' original Complaint was dismissed on November 7, 2012, and they appealed to the United States District Court for the Middle District of Georgia, naming both the District and GaDOE as defendants. The Petitioners also filed an Amended Complaint in the District Court, alleging defects in the administrative process and raising claims against both defendants. The District Court subsequently remanded the case for a hearing on the merits of the Petitioners' Amended Complaint. The undersigned has interpreted the District Court's order to require a hearing on the substantive allegations contained in both the Petitioners' original due process Complaint and their Amended Complaint filed in the District Court, to the extent the Amended Complaint raises claims against the District. (Exhibit J-27; Court file.)

[3] Between November 2006 and April 2014, GaDOE issued revised versions of its parental rights notification on three occasions. The substantive content of the document remained essentially the same. At each IEP meeting, District personnel provided P.J. with a copy of the parental rights notification that was effective at that time. (T. 40-43, 51, 55-60, 73-74, 87, 94, 99; Exhibits J-16, J-17, J-18, J-19.)

rights notification also provided P.J. with contact information for sources that could assist her in understanding her rights. (T. 40-43, 51, 55-60, 73-74, 87, 94, 99; Exhibits J-1, J-2, J-3, J-4, J-5, J-6, J-7, J-9, J-10, J-11, J-12, J-13, J-14, J-15, J-16, J-17, J-18, J-19.)

13.

District personnel did not offer P.J. any further explanation of her parental rights, beyond providing her with the notices prepared by GaDOE. However, P.J. did not ask any questions about her parental rights, and she did not express dissatisfaction with the educational services the District was providing to T.J. until 2010. (T. 88-89, 96, 101, 105.)

14.

P.J. was aware at all times of T.J.'s educational placement and the physical location where her educational services were provided. More specifically, P.J. was aware that from January until September 2008, T.J. received one hour per day of home-based services at Ms. Fish's home. P.J. was further aware that from September 2008 until September 2010, T.J. attended school for between 1.5 and 3.25 hours per day in a modified-day program that offered private instruction and took place outside of regular school hours. Finally, P.J. was aware that in October 2010, T.J. resumed attending school during the regular school day. (T. 23-28, 43-46, 50-51, 63, 65-66, 68-69, 75-76, 86-87.)

III. ANALYSIS

Congress has provided the following statute of limitations for impartial due process hearings held under IDEA:

> Timeline for requesting hearing. 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 . . . .

20 U.S.C. § 1415(f)(3)(C). In this case, the crux of the Petitioners' Complaint and Amended Complaint is that from January 2008 until the fall of 2010, the District inappropriately provided T.J.

with home-based and/or modified-day services, rather than in-school services during the regular school day. However, because P.J. was at all times fully aware of the location, duration, and content of the educational services provided to her daughter,[4] the Petitioners are limited to pursuing claims related to events that occurred within two years of the date of their original Complaint, unless an exception to the statute of limitations applies.[5]

The two-year statute of limitations may be tolled under either of two statutory exceptions, as follows:

> Exceptions to the timeline. The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—
>
> (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
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> (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). These exceptions will toll the statute of limitations only if they prevented the Petitioners from filing a due process complaint. D.K. v. Abington Sch. Dist., 696 F.3d 233, 246 (3rd Cir. 2012). The Petitioners bear the burden of proof to show that an exception to the statute of limitations applies. See Shaffer v. Weast, 546 U.S. 49, 56-62 (2005); M.M. v. Lafayette Sch. Dist.,

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[4] As noted in the Findings of Fact, above, P.J. took part in all IEP meetings and received copies of all of T.J.'s IEPs. Each IEP contains a detailed discussion of T.J.'s disabilities, her goals and objectives, her current level of academic and developmental functioning (including issues with her behavior), her educational placement and services provided, and the results of recent evaluations or assessments. P.J. also admitted that she had full knowledge of the District's actions. (T. 43-36; Exhibits J-1, J-2, J-4, J-5, J-6, J-9, J-10, J-11, J-12, J-13, J-14, J-15.)

[5] This case is unlike Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275 (11th Cir. 2008), where the Eleventh Circuit Court of Appeals allowed the plaintiffs to pursue IDEA claims based on actions of the school district that took place more than two years before the due process complaint was filed. In Draper, the child had received inappropriate services over a period of many years because his disability had been misdiagnosed by the school district. The two-year statute of limitations began to run only when a subsequent evaluation revealed the misdiagnosis, as the family did not have the information necessary to know that the child was injured by his misdiagnosis and misplacement until that time. Id. at 1288. In the present case, however, there is no evidence that the District has misdiagnosed T.J.'s disabilities or that P.J. otherwise lacked the information necessary to determine whether her child had been injured.

No. CV 09-4624, 2012 U.S. Dist. LEXIS 15631, at *62 (N.D. Cal. Feb. 9, 2012); see also D.K., 696 F.3d at 245-49. The Petitioners here contend that the statute of limitations should be tolled under both statutory exceptions. However, they did not meet their evidentiary burden.

A. Exception Based on Specific Misrepresentations

For the first tolling exception to apply, the Petitioners must prove that they were prevented from requesting a due process hearing because the District made a specific, intentional misrepresentation that it had resolved the problem upon which their complaint was based. D.K., 696 F.3d at 245. This exception does not toll the statute of limitations in the case at bar, for two reasons: first, because there is no evidence that the District made any misrepresentations; and second, because there is no evidence that any misrepresentation by the District could have prevented P.J. from filing a due process complaint.

First, the Petitioners presented no credible evidence that District personnel made any type of specific, intentional misrepresentation to P.J.[6] In fact, the only alleged misrepresentation identified by the Petitioners was made not by the District, but by GaDOE. More specifically, the Petitioners contend that Deborah Gay's letter of June 29, 2011, incorrectly stated that the GaDOE decision was "final" and that "[t]here is no appeal or reconsideration process." However, because the District played no part in this alleged misrepresentation, it cannot serve as grounds for the tolling of the statute of limitations under IDEA. Moreover, it appears that the Petitioners have misunderstood Ms. Gay's letter, which was issued as part of the state complaint process outlined in federal and state

[6] To the extent P.J. testified that she believed that "[i]t was like I had two choices—she either be on the home-bound program or I didn't get any service at all," the record contains no evidence to suggest that District personnel made any misrepresentations that led her to this conclusion. Rather, P.J. agreed with the home-based placement at the time and did not inquire regarding other alternatives. Similarly, P.J.'s testimony lacked credibility to the extent she suggested that Debra Patterson, the District's Director of Special Education from 1982 to 2011, told her that the District would increase T.J.'s instructional hours in the absence of an IEP amendment. (T. 24-25, 35-36, 50-51, 53, 63; Exhibits J-3, J-4.)

regulations. The state complaint process, unlike an impartial due process hearing, does not provide an avenue for appeal. 34 C.F.R. §§ 300.151-300.153; Ga. Comp. R. & Regs. 160-4-7-.12(1).

In addition, "[e]stablishing evidence of specific misrepresentations or withholding of information is insufficient to invoke the exceptions; a plaintiff must also show that the misrepresentations or withholding *caused* her failure to request a hearing or file a complaint on time." D.K., 696 F.3d at 246 (emphasis in original). As previously noted, the Petitioners' central allegation against the District is that T.J. was not permitted to attend school during the regular school day. Even if one assumes for the sake of argument that the District promised to resolve P.J.'s complaint by returning T.J. to school during the regular school day prior to the fall of 2010, P.J. would have known immediately that the District had failed to follow through with its promise. Given this knowledge, such a misrepresentation by the District could not have prevented the Petitioners from filing a due process complaint within the two-year statute of limitations. Accordingly, the first tolling exception cannot apply.

B. Exception Based on Withholding of Information

For the second tolling exception to apply, the Petitioners must prove that they were prevented from filing a due process complaint because the District withheld "information from the parent that was required under this part . . . ." 20 U.S.C. § 1415(f)(3)(D)(ii). This exception can be applied only where a school district has failed to provide statutorily mandated disclosures, i.e., "a written notice, explanation, or form specifically required by the IDEA statutes and regulations." D.K., 696 F.3d at 246. Here, the Petitioners' Amended Complaint alleges that the District "never gave [P.J.] a list of sources she could contact to obtain assistance in understanding the provisions of the IDEA which is a requirement of the IDEA." Amended Complaint ¶ 12; see 20 U.S.C. § 1415(c)(1)(D). The Amended Complaint further alleges that the District failed to provide P.J. with the procedural

safeguards notice required under 20 U.S.C. § 1415(c) and (d). Amended Complaint ¶ 25. However, because the evidence showed that the District provided P.J. with both of these IDEA-mandated disclosures,[7] the Petitioners failed to establish that the statute of limitations should be tolled based on the second exception.

IDEA requires a school district to provide the parents of a disabled child with prior written notice each time it:

> (A) proposes to initiate or change; or
>
> (B) refuses to initiate or change;
>
> the identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to the child.

20 U.S.C. § 1415(b)(3). The prior written notice must include, among other things, "sources for parents to contact to obtain assistance in understanding the provisions of this part . . . ." 20 U.S.C. § 1415(c)(1)(D). The evidence revealed that P.J. received this required information at each IEP meeting she attended. For instance, the parental rights notification that she received at the IEP meetings held in January 2008, September 2008, May 2009, and June 2010 stated as follows:

> If you would like a further explanation of any of these rights, you may contact _____, special education director, at the _____ School System, at _____, or by email at _____.

[7] The Petitioners failed to present specific evidence on these issues at the hearing, beyond arguing that that the District should have provided P.J. with more information and explained her rights in detail. To the extent the Petitioners attempted to raise new allegations that are not found in either their original Complaint or Amended Complaint, such allegations are barred. 34 C.F.R. § 300.511(d). Further, to the extent the Petitioners seek to raise claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, or the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., these matters lie outside the scope of an IDEA administrative proceeding. Atlanta Indep. Sch. Sys. v. S.F., 2010 U.S. Dist. LEXIS 141552, at *21 (N.D. Ga. Feb. 22, 2011). Finally, although the Amended Complaint alleges that the District violated federal regulations by failing to supply P.J. with information regarding free or low-cost legal services when she filed her 2011 state complaint with GaDOE, a school district is not required to provide this information in response to a state complaint. 34 C.F.R. § 300.507(b). Rather, the school district's obligation is triggered only when the parent specifically requests the information or files a due process complaint. Id.

> Or you may ask for assistance from the Georgia Department of Education, Division[] for Special Education Services and Supports, Suite 1870, Twin Towers East, Atlanta, Georgia 30334-5010, (404)656-3963 or http://public.doe.k12.ga.us, or the Georgia Learning Resource System (GLRS) at 1-800-282-7552, or visit their website at www.glrs.org.

Exhibit J-17.[8] Even if District personnel neglected to fill in the blank lines,[9] the document still listed two other sources that P.J. could contact for assistance and therefore complied with 20 U.S.C. § 1415(c)(1)(D).

Under IDEA, the District was also required, at least once per year, to provide P.J. with a procedural safeguards notice containing the following:

> . . . a full explanation of the procedural safeguards . . . available under this section and under regulations promulgated by the Secretary relating to—
>
> (A) independent educational evaluation;
>
> (B) prior written notice;
>
> (C) parental consent;
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> (D) access to educational records;
>
> (E) the opportunity to present and resolve complaints, including--
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> (i) the time period in which to make a complaint;
> (ii) the opportunity for the agency to resolve the complaint; and
> (iii) the availability of mediation;
>
> (F) the child's placement during pendency of due process proceedings;
>
> (G) procedures for students who are subject to placement in an interim alternative educational setting;
>
> (H) requirements for unilateral placement by parents of children in private schools at public expense;

[8] The parental rights notifications that the District provided to P.J. at other meetings contained substantially similar or identical information. See Exhibits J-16, J-18, J-19.

[9] The record is unclear on this point.

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (if applicable in that State);

(K) civil actions, including the time period in which to file such actions; and

(L) attorneys' fees.

20 U.S.C. § 1415(d)(1)(A), (d)(2). The District presented credible evidence at the hearing that its personnel provided P.J. with an updated, GaDOE-produced parental rights notification containing these required elements at each annual IEP meeting. Thus, the District was in compliance with 20 U.S.C. § 1415(d)(2).

As the record contains no credible evidence to support a finding that the District failed to supply P.J. with any IDEA-mandated disclosures, the second exception to the statute of limitations, as provided in 20 U.S.C. § 1415(f)(3)(D)(ii), is likewise inapplicable.

IV. ORDER

For the reasons stated herein, the Petitioners' IDEA claims relating to events that occurred prior to August 10, 2010, are barred by the two-year statute of limitations set forth in 20 U.S.C. § 1415(f)(3)(C).

SO ORDERED, this 2nd day of December, 2014.

KRISTIN L. MILLER
Administrative Law Judge