IDEA'S STATUTE OF LIMITATIONS

MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
IDEA ADMINISTRATIVE LAW JUDGE TRAINING
THURSDAY, SEPTEMBER 19, 2019

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I. INTRODUCTION

A. In 2004, Congress amended the IDEA to include a statute of limitations (SOL) for the first time.[1] The final bill, however, included conflicting language, with 20 U.S.C. § 1415(f)(3)(C) mandating "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." However, 20 U.S.C. § 1415(b)(6) allows for a complaint "which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint."[2] Taken together, the language can be reasonably understood to mean either of three interpretations: (1) the IDEA creates a two year buffer in which parents must file their due process complaint within 2 years from when the parents knew or should have known about the alleged action that forms the basis of the complaint but can only recover two years back from the date the parents filed the complaint; (2) the IDEA has a four-year SOL, i.e., two years prior and two years post the knew-or-should-have-known (KOSHK) date; or, (3) the SOL begins to run on the date the injury occurred.[3]

B. In 2015, in *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015), the Third Circuit analyzed the conflict – the first to do so – and held that "[t]he legislative history is thus crystal clear that Congress intended to impose a single statute of limitations, but otherwise not to limit a court's power to remedy the deprivation of a free appropriate education."[4] Other

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[1] *See* 20 U.S.C. §§ 1415(f)(3)(C), 1415(b)(6). A State may adopt a different timeline but the exceptions to the timeline set forth in the IDEA must also apply. *Id. See also* 34 C.F.R. §§ 300.507(a)(2) and 300.511(e).

[2] *Id.*

[3] *See G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015).

[4] *Id.*

courts have since adopted *G.L.'s* rationale.[5]

II. FORWARD-LOOKING DISCOVERY RULE

A. As noted above, though the ambiguous language in § 1415 would suggest looking backward in time from the KOSHK date to determine the timeliness of the filing or to limit redressability to the two-year period that precedes the KOSHK date, the textual ambiguity between § 1415(b)(6) and § 1415(f)(3)(C) resulted from an error in reconciling the House and Senate drafts of a 2004 IDEA amendment.[6] Ultimately, Congress settled on the Senate version but the drafters simply failed to change the House's backward-looking framework to the Senate's forward-looking framework.[7]

B. As such, IDEA's SOL requires courts and hearing officers to apply the discovery rule (i.e., when the parent discovers, or reasonably could have discovered, his/her claim) without limiting redressability.[8]

C. Absent a permissible exception under IDEA, however, the mere fact that the parent is unaware that s/he has a right to request an IDEA due process hearing is of no significance.[9] IDEA's plain language states that the SOL begins to run from when the parent knew of the complained-of action and not when the parent becomes aware that the school district's [in]actions are actionable.[10]

III. EXCEPTIONS

A. The SOL does not apply to a parent if the LEA made specific misrepresentations to the parent that it had resolved the problem forming the basis of the complaint or it withheld information from the parent that it was required to provide to the parent (e.g., procedural safeguards).[11]

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[5] *See*, *e.g.*, *Ms. S. v. Regional Sch. Unit 72*, 916 F.3d 41, 73 IDELR 223 (1st Cir. 2019); *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936 (9th Cir. 2017); *N.D.S. v. Academy for Science and Agriculture Charter Sch.*, 73 IDELR 114 (D. Minn. 2018); *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35 (D.D.C. 2016); *T.B. v. Prince George's Cnty. Bd. of Educ.*, 70 IDELR 47 (D. Md. 2016), *aff'd,* 897 F.3d 566, 72 IDELR 171 (4th Cir. 2018).

[6] *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936 (9th Cir. 2017) *citing G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015).

[7] *Id.*

[8] *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936 (9th Cir. 2017).

[9] *See J.P. v. Enid Pub. Sch.*, 53 IDELR 112 (W.D. Okla. 2009).

[10] *Id.*

[11] 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f).

B. The IDEA does not define the term "misrepresentation." Some courts, however, have construed its meaning narrowly.[12]

C. The IDEA requires that a copy of the procedural safeguards notice be given to the parent upon initial referral or parental request for evaluation and at least one time per school year thereafter. The procedural safeguards notice must also be given upon receipt of the first state complaint and due process complaint in a school year; at the time a decision is made to make a disciplinary removal that constitutes a change in placement; and, upon the request of the parent.[13] Failure to provide the notice is considered the withholding of information.[14]

D. Though a parent must be provided with actual notice of the procedural safeguards, IDEA does not require that a school district explain to the parent what specific changes were made to a subsequently revised procedural safeguards notice.[15]

E. The failure to include key personnel in an IEP team meeting has been held to excuse the SOL.[16]

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[12] *See*, *e.g.*, *Ms. S. v. Regional Sch. Unit 72*, 65 IDELR 140 (D.C. Maine 2015), 916 F.3d 41, 73 IDELR 223 (1st Cir. 2019) (suggesting that the parent would need to show an intentional misrepresentation by the school district); *D.K. v. Abington Sch. Dist.*, 696 F. 3d 233, 59 IDELR 271 (3d Cir. 2012) (holding that, in order to be excused from the SOL under misrepresentation exception, parents must show that the school district "intentionally misled them or knowingly deceived them regarding their child's progress"); *Coleman v. Pottstown Sch. Dist.*, 983 F. Supp. 2d 543, 62 IDELR 105 (E.D. Pa. 2013), *aff'd*, 581 F. App'x 141, 64 IDELR 33 (3d Cir. 2014) (unpublished) (same).

[13] 34 C.F.R. § 300.504

[14] *See*, *e.g.*, *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 50 IDELR 256 (W.D. Tex. 2008) *aff'd El Paso Indep. Sch Dist. v. Richard R.*, 591 F.3d 417, 53 IDELR 175 (5th Cir. 2009) (failure to provide parents with the procedural safeguards and prior written notice resulted in school district withholding information from the parents); *D.G. v. Somerset Hills Sch. Dist.*, 559 F. Supp. 2d 484, 50 IDELR 70 (D.N.J. 2008) (setting aside SOL for withholding procedural safeguards notice after parent's repeated request for evaluation).

[15] *See*, *e.g.*, *Natalie M. v. Dep't of Educ., State of Hawaii*, 47 IDELR 301 (D. Haw. 2007) (finding that the school district telling the parent that one procedural safeguard statement replaced another, without more, did not result in the withholding of any information). *Cf. R.M. v. Dep't of Educ., State of Hawaii*, 47 IDELR 99 (D. Haw. 2007) (remanding to the hearing officer to determine whether the school district withheld procedural safeguards information from the parents when an administrator remarked to the parents that the "laws remain 'basically the same'").

[16] *S.H. v. Plano Indep. Sch. Dist.*, 54 IDELR 114 (E.D. Tex. 2010) (holding that the state's SOL did not apply because the school district withheld requisite information

IV. EVIDENTIARY EFFECT

A. The SOL operates only to bar claims accrued outside the time limitation. Relevant evidence that is necessary to establish claims that accrued within the time limitation is generally admissible.[17]

B. Information of events outside the limitations period is admissible at the discretion of the hearing officer to provide context.[18]

V. PROCESS TO DECIDE

A. When the SOL is raised as an affirmative defense, the hearing officer must first determine the KOSHK date for each claim in which the KOSHK date is in dispute. Each party should be consulted as to what s/he believes the KOSHK date to be and asked to explain why.

B. Establishing the KOSHK date is not the end of the inquiry. The IDEA permits two exceptions to the SOL – i.e., local educational agency (LEA) misrepresented that it resolved the problem that forms the basis of the complaint or the LEA withheld information IDEA requires be provided to the parent[19] – if it is determined that the claim(s) fall outside the SOL. If so, and an exception is alleged, then the fact disputes regarding each exception alleged should also be specifically identified.

C. To resolve such fact disputes will require the making of a record, usually by a recorded or transcribed telephone conference call. Given the need to make this determination as soon as possible (i.e., to know whether the claim is even hearable and limit unnecessary preparation), arrangements for a limited hearing should be made during the prehearing conference, including setting the date and time for the limited hearing, discussing necessary witnesses and documentary evidence, and establishing the disclosure deadline.

D. Finally, the hearing officer should also set a date by when the parties can expect his/her decision on the applicability of the SOL. Because it should be rendered sooner than later to allow the parties to adequately prepare for the hearing, the hearing officer should consider providing the parties with his/her conclusion(s) as to whether the claim(s) is/are hearable, but advising the parties that detailed factual findings and conclusions of law will be set forth in the final decision.

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from the parent, denying the parent the availability of important input regarding the student's need for services).

[17] *See*, *e.g.*, *J.Y. v. Dothan City Bd. of Educ.*, 63 IDELR 33 (M.D. Ala. 2014).

[18] *See*, *e.g.*, *Dep't of Educ. v. E.B.*, 45 IDELR 249 (D. Haw. 2006)

[19] 34 C.F.R. § 300.511(f).

VI. REDRESSABILITY

A. The IDEA's "limitations period functions in a traditional way … as a filing deadline that runs from the date of reasonable discovery and not act as a cap on a child's remedy for timely-filed claims that happen to date back more than two years before the complaint is filed."[20] Should a parent file a timely complaint and liability is proven, the student would be "entitled to compensatory education for a period equal to the period of deprivation." *Id.*

B. With *G.L.* and other courts clarifying that "IDEA's broad equitable remedies are tied more closely to the child's needs than to specific deprivations he suffered or when they were suffered,"[21] the fashioning of a compensatory education services remedy may become even more difficult.[22] Here are but a few matters to consider and discuss with the parties, as appropriate:

1. What effect would subsequent IEPs have on fashioning a remedy if the subsequent IEPs addressed to some extent the harm of which the parent complains?

2. How do variations in the student's rate of progress over the entire period of denial – a factor to consider under *Reid's*[23] qualitative approach – will be quantified?

3. How do private services provided by the parent addressing the harm factor into the overall remedy? Should the parent be made

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[20] *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015).

[21] *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35 (D.D.C. 2016).

[22] In *G.L.*, where the issue giving rise to an alleged violation of the IDEA is more than two years old, the claim is barred if the parent did not file the due process complaint within two years of the KOSHK date, unless an exception applies. However, where the alleged violation is ongoing to the previous two years, and the parent timely files a due process complaint within two years from when the parent reasonably discovered the violation, the Third Circuit suggests that a hearing officer or court may remedy the entire period of the violation however far back it dates. In essence, in the Third Circuit and in those jurisdictions that follow its lead, where the parent neither knew nor reasonably should have known of the special needs of their child or of the school district's failure to respond appropriately to those needs, *G.L.* places as much of a burden on the school district to identify within a reasonable time period any educational failures resulting from an inappropriate IEP or placement and to work with the parent and the IEP team to expeditiously design and implement an appropriate program. The failure of the school district to take appropriate and timely action may result in greater liability for the school district that extends beyond the two years prior to the KOSHK date.

[23] *Reid v. Dist. of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

whole?

4. If a substantial award, how should it be implemented to avoid educationally overloading the student (e.g., online education, summer camp, summer classes, or specialized private schooling)?

5. Should the remedial order read "make available" rather than "provide" compensatory services to avoid complications arising from the student not being able to receive the services or just refusing to obtain/accept the services?

THIS OUTLINE IS INTENDED TO PROVIDE WORKSHOP PARTICIPANTS WITH A SUMMARY OF SELECTED STATUTORY PROVISIONS AND SELECTED JUDICIAL INTERPRETATIONS OF THE LAW. IN USING THIS OUTLINE, THE PRESENTER IS NOT RENDERING LEGAL ADVICE TO THE PARTICIPANTS.