BEFORE THE
IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 983)

In re: A.W.	)	
	)	Dept. Ed. Docket No. SE-418
[J.W., J.W. & A.W.],	)	(DIA No. 15DOESE013)
	)	
Complainants,	)	
	)	
v.	)	
	)	**Order Granting**
[ ] Community School District and	)	**Motion to Dismiss**
Keystone Area Education Agency,	)	
	)	
Respondents,	)	
	)	

Background Proceedings

On May 19, 2015, [J.W. & J.W.] filed a due process complaint with the Iowa Department of Education, pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1420, et seq.

On June 4, 2015, the Respondents filed a motion to dismiss, alleging that the Complainants lack legal standing to pursue this action because their child is now an adult ([A.W.] attained 18 years of age in [ ] 2013), who is not the ward of any guardianship. The motion also alleges that the two year statute of limitations in the IDEA expired on May 26, 2015, and that no violations of the IDEA were alleged after May 26, 2013.

By order of June 8, 2015, this administrative tribunal – over the objection of the Respondents – granted leave to the Complainants to file an amended due process complaint to expand on any "alternative theory" of standing. In response, an amended due process complaint was filed on June 19, 2015. In addition to adding [A.W.] as a Complainant, the amended complaint expanded on the Complainants' argument as to why the two year statute of limitations is inapplicable here.

The motion to dismiss was set for hearing before the undersigned on June 25, 2015. All three Complainants appeared with their attorneys, David Roston and Mary Jane White. Attorney Beth Hansen appeared on behalf of the Respondents, as did the special education director of the [ ] Community School District ("LEA"), [ ]. No testimony was taken. The oral arguments in support of and opposing the motion to dismiss were digitally recorded. Following the closing of the hearing, Mr. Roston submitted a "short letter addressing …[why the] original complaint was not made by [A.W.]" The

Respondents objected to the supplementation of the record with this letter after the undersigned stated that the record was closed. The letter is disregarded as tardy.

Findings of Fact

Complainants are the biological parents of [A.W.], who was born in [ ] of 1995. Thus, [A.W.] was 20 years old when his parents filed the complaint initiating this action. A.W. graduated from Respondent LEA on May 26, 2013. (Redacted LEA transcript filed with motion to dismiss) In his senior year, [A.W.] was a member of the National Honor Society. (*Id.*)

During the whole of his enrollment at the LEA, [A.W.] was not identified as a child with a disability in obtaining an education, also known as an "eligible individual." *See* 441—Iowa Administrative Code (IAC) 41.8. Thus, [A.W.] never has had an Individualized Education Program or IEP. 441—IAC 41.22. There is no evidence that he was ever evaluated for purposes of ascertaining whether he was an eligible individual.

[A.W.] is now an independent adult. He has no court-appointed guardian.

The relief sought in the original complaint was compensation to [A.W.] for ongoing anxiety and PTSD (post-traumatic stress disorder), payment for ongoing counselling, and for "all the educators to be held accountable." The relief sought in the amended complaint (that does not duplicate the request in the original complaint) was compensatory education and damages for the "actual and consequential damages which [A.W.] suffered because of respondents' actions and omissions in their behavior toward [A.W.]"

A.W. was diagnosed with a [ ] disorder in 2006, at which time [A.W.] was in junior high school. (Amended due process complaint) The amended complaint alleges, and it is assumed true for the sake of argument, that [Ms. W.] provided this information to the LEA in 2006. It is also assumed *arguendo* that [Ms. W.] informed the LEA in the spring of 2012 that [A.W.] suffered from [ ].

[A.W.] was the target of extreme bullying throughout his years at the LEA, staring in elementary school and continuing through the first semester of his senior year. He completed his final semester of high school by taking online courses at home, for which the LEA granted him credit. Because of his anxiety, the Complainants allege that [A.W.] did not learn social skills that would help him cope with the bullying. They aver that [A.W.] could not learn these social skills without specially designed instruction "outside of the general education environment." (Paragraph 7, Amended Due Process Complaint)

In the spring of 2012, the LEA began to develop a Section 504 plan for [A.W.], which was finalized prior to his senior year. (Paragraph #25, amended due process complaint) The 504 plan addressed [A.W.'s] reaction to emotionally upsetting situations, allowing him to "leave the building when he is experiencing a stress reaction." (*Id.*, Paragraph #26)

Conclusions of Law, Analysis

[Mr. & Mrs. W.] base this action upon the federal Individuals with Disabilities Education Act (IDEA), its federal regulations, and the Iowa Department of Education rules implementing the federal Act, although they refer also to Section 504 of the Rehabilitation of Act of 1973. 20 U.S.C. §§ 1400 *et seq.*; 34 CFR Part 300; 281—Iowa Administrative Code (IAC) chapter 41. ["Respondents never told [A.W.] or his parents about IDEA, Child Find, special education, IEPs, Section 504 of the Rehabilitation Act of 1973 or Section 504 plans prior to the spring of 2012." [(Paragraph #24, amended due process complaint)]

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); *see Board of Education of Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 102 S.Ct. 3034, 73 L.E.2d 690 (1982).

A due process complaint "must allege a violation that occurred not more than two years before the date the parent…knew or should have known about the alleged action that forms the basis of the due process complaint" with two exceptions discussed under "Statute of Limitations." 281—IAC 41.507(1)"b"; 20 U.S.C. § 1415(f)(3)(C).

The bases of the motion to dismiss are twofold: standing and the statute of limitations.

Standing

This complaint was filed when [A.W.] was no longer a minor. [A.W.] is not the subject of a guardianship. The right of his parents, among other things, to file a due process complaint, transferred to [A.W.] when he attained the age of majority (18 years) in [ ] 2013. 20 U.S.C. § 1415(m)(1); 281—IAC 41.520.

Once a transfer of rights occurs, absent a guardianship where the former child is a ward, the parents no longer have standing to file a due process complaint. *See, e.g., Ravenna School Board of Education v. Williams*, 2012 WL 3263258 (N.D. Ohio) (child turned 18 on 8/6/10; due process complaint filed by mom on 5/12/11; held that hearing officer erred in not dismissing complaint). *Accord, Loch v. Edwardsville School District No. 7*, 327 Fed. Appx. 647, 2009 WL 1747897 (7th Cir. 2009). Even where the due process complaint is filed before the child attains age 18, it cannot survive if the child turns 18 during the pendency of the action. *See Brooks v. District of Columbia*, 841 F.Supp.2d 253 (D. D.C. 2012) (student turned 18 during pendency of lawsuit); *Neville, et al. v. Dennis, et al.*, 2007 WL 2875376 (D. Kan. 2007)(due process complaint filed six days before child turned 18).

[Mr. & Mrs. W.] have not asked for relief specific to themselves, such as tuition reimbursement. *See, e.g., Latynski-Rossiter v. District of Columbia*, 928 F.Supp.2d 57 (D. D.C. 2013). They argued that they are the ones who "worried about [A.W.'s] rights

all along," and thus, have a claim for damages to their family. The IDEA does not permit compensatory damages for emotional injuries. *See, e.g., Smith ex rel. Wells v. Detroit Sch. Dist.*, 62 IDELR 80 (E.D. Mich. 2013); *Butler ex rel Estate of Butler v. Mountain View Sch. Dist.*, 61 IDELR 290 (M.D. Pa. 2013). [Mr. & Mrs. W.] have no standing to be complainants in this matter.

The amended complaint adds [A.W.] as a party-complainant, and [A.W.] confirmed at the hearing on the motion to dismiss that he desires to be a complainant herein. He has standing. The question now turns to whether the complaint, as amended, alleges any allegations that withstand the limitation of actions under the IDEA.[1]

Statute of limitations

20 U.S.C. § 1415(f)(3)(C) provides that a complainant shall request an impartial due process hearing within two years of the date the complainant "knew or should have known about the alleged action that forms the basis of the complaint." It does not toll, as averred by the Complainants here, when they knew or reasonably should have known that they had a right to file a due process complaint. (Paragraph 42, Amended Due Process Complaint)

There are two statutory exceptions to the two year statute of limitations, which apply if the complainant was prevented from requesting a hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint or if the school district withheld information from the parent that was required to be provided. 20 U.S.C. s 1415(f)(3)(D)(i & ii).

In the normal course of a due process action, the statute of limitations would be tolled two years after [A.W.] graduated from the school district. The graduation date was May 26, 2013; the original complaint was filed May 19, 2015. Thus, the actionable period was May 19 – 26, 2013. However, the Complainants allege that the statute of limitations was not tolled in this case because the LEA withheld information from the parent – specifically, the notice of transfer of rights provided for in 20 U.S.C. § 1415(m); 281—IAC 41.520.

The notice of transfer of rights is one of the procedural safeguards instituted by Congress "to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by [school districts and area education agencies]." 20 U.S.C. § 1415(a). The safeguards also include written prior notice to parents of an identified child designed to fulfill the foregoing purpose. However, these safeguards are predicated on a child being identified as an eligible child. *E.g., Amanda J. ex rel. Annette J. v. Clark County School Dist.,* 257 F.3d 877 (9th Cir. 2001); *M.M. v. Lafayette School Dist.,* 767 F.3d 842 (9th Cir. 2014), 2014 WL 4548725.

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[1] For the sake of argument, it is assumed that the amended complaint relates back to the filing of the original complaint, May 19, 2015.

281—IAC 41.8 (as well as 34 CFR § 300.8) defines a child with a disability as a person under the age of 21 who "has a disability in obtaining an education." The Iowa rule further states, "In these rules, this term is synonymous with 'child requiring special education' and 'eligible individual.' 'Disability in obtaining an education' refers to a condition, identified in accordance with this chapter, which, by reason thereof, causes a child to require special education and support and related services."

281—IAC 41.39 and 34 CFR § 300.39 define "special education" as "specially designed instruction" that adapts the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and ensures access of the child to the general curriculum so that the child can meet the educational standards within the LEA's jurisdiction that apply to all children. "Related services" are distinguished from special education and include "such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education." 281—IAC 41.34; 34 CFR § 300.34. The enumerated related services include speech-language pathology and audiology, interpreting, psychological services, physical and occupational therapy, and counseling services. This is not an exhaustive list.

34 CFR § 300.8*(a)(2)*(i) specifies that a child who "only needs a related service and not special education…is not a child with a disability… ."

Taking the assertions in the complaint and amended complaint at face value, [A.W.] needed only related services and not special education. Accordingly, [A.W.] was not a child with a disability. The procedural safeguards did not apply to [A.W] or his parents.

Because [A.W.] was not an eligible individual and, thus, the procedural safeguards had no application in this matter, this appeal is distinguished from the cases cited by the parties, making it unnecessary to determine whether a statutory exception to the IDEA statute of limitations applies.

281—IAC 41.1003(7)"*d*" mandates the granting of a motion to dismiss when the relief sought "is beyond the scope and authority of the administrative law judge to provide." Here, the sole person with standing, [A.W.], has no claim that falls within the two year statute of limitations. There is no relief that this tribunal can provide.

Summary

[Mr. & Mrs. W.] have no standing in this matter as Complainants. [A.W.] has standing as a Complainant, but presents no claim that is not time-barred.

Therefore, the Due Process Complaint and the Amended Due Process Complaint must be dismissed in their entirety. This ruling does not by any means condone the bullying experienced by [A.W.] However, the Due Process Complaint and the Amended Due Process Complaint filed herein are impotent as a means to address any suffering brought about by the bullying.

Any allegation not specifically addressed in this ruling is either incorporated into an allegation that is specifically addressed or is overruled. Any legal contention not specifically addressed is either addressed by implication herein or is deemed to be without merit. Any matter considered a finding of fact that is more appropriately considered a conclusion of law shall be so considered. Any matter considered a conclusion of law that is more appropriately considered a finding of fact shall be so considered.

Issued this 30th day of June, 2015.

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