

STATE OF SOUTH CAROLINA)

)

COUNTY OF GREENVILLE)

L. H. on behalf of the minor child)

M.H.)

Petitioner)

)

v.)

)

Richland School District Two,)

)

Respondent)

**ORDER REGARDING RESPONDENT'S
MOTION TO DISMISS**

This matter was begun with a Request for a Due Process Hearing (DPHR) dated and received by the Respondent District June 18, 2019. The Respondent issued its Response to the DPHR June 24, 2019. On the same day, the Petitioner was sent a letter from this Hearing Officer providing information regarding her rights and responsibilities in a Due Process Hearing. In the Respondent's response, it made a Motion to Dismiss based on an allegation that the incidents that gave rise to the Petitioner's Complaint and DPHR occurred more than two (2) years ago and thus was in violation of the Statute of Limitations (SOL) as set forth in 34 CFR Sections 300.507 (a)(2) and 511(e) of the Regulations which govern the implementation of the Individuals with Disabilities Act (IDEA). On July 3, 2019, the Respondents submitted a Memorandum in Support of its Motion and several days later, the Petitioner submitted her response to the Respondent's Motion seeking an exemption to the SOL as provided in Sec. 300.511 (f) of said regulations.

On July 15, a teleconference was held with the Petitioner and counsel for the Respondent School District which produced an agreement to hold a Hearing on the Motion to Dismiss on July 23, 2019. That Hearing did occur with the Petitioner; Counsel for the Respondent,

Kimberly Blackburn; assistant Principal at Longleaf Middle School; Kathy Whaley, Special Education Director for the District; School Psychologist this Hearing officer; and the Court Reporter present. In addition, an affidavit from the Special Education Teacher was submitted without objection to the record. Prior to the Hearing the parties were given 3 days to exchange witness lists and potential exhibits to be introduced at the Hearing.

FACTS

1. During the 2015-2016 School Year, the child was a an 8th Grade student at Longleaf Middle School receiving Special Education Services under and IEP pursuant to the classification of Other Health Impairment.
2. IEP meetings were held on October 26, 2015 and April 11, 2016 in effort to provide a service plan for the child for the 2016-2017 school year. The Petitioner was present at both meetings and refused a copy of the District's Procedural Safeguards Manual.
3. At each meeting the child's behavior difficulties were discussed but the parties were unable to come to an agreement on a placement for the 2016-2017 school year at Westwood High School.
4. The Petitioner refused copies of the Procedural Safeguards Manual at the IEP's because she already had one and didn't believe she needed another copy. (Testimony of Petitioner).
5. The Petitioner refused the Westwood placement because the child had been regularly bullied and attacked by students at Longleaf who would also be attending Westwood. Said bullying and physical abuse had caused the child to act out himself, cut himself, talk about suicide and in general experience substantial psychological injury. (Testimony of the Petitioner).
6. In August 2016, the District received a request for records from a High School in Texas indicting that the child had transferred to that school.

7. Sometime in 2017 or 2018, the child was enrolled in Glenforest Academy in the Columbia area without any notice to the Respondent District.

DISCUSSION

From the testimony and evidence presented, it is clear that the Respondent District provided the Petitioner with a Procedural Safeguards manual and offered additional copies on at least 2 occasions. It is also evident that more than two (2) years have passed since the Petitioner knew or should have known that she needed to file a DPHR complaint and seek a Hearing on the District's responsibilities to her child under IDEA. In her response, to the District's Motion to Dismiss the Petitioner requested relief pursuant to the exceptions provided in the Regulations. The language in the Regulations is as follows:

"Sec. 300.511 (e). *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint; or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) *Exceptions to the timeline.* The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to –

[1] Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

[2] The LEA's withholding of information from the parent that was required under this part to be provided to the parent." (similar language is found in Section. 300.511 as to the requirement that the complaint must be provided within two years of the time the parent knew or should have know of the action that formed the basis for the due process complaint).

In this case, the Petitioner admitted that she had a Procedural Safeguards Manual but did not consult it because she was so distraught over her child's behavior and the environment he was exposed to at school. Apparently, in 2016, the child went to Texas to be with his father and attended school there. No DPHR was submitted at that time. While the date is not clear, some time subsequent to the Texas transfer the child returned to South Carolina and was enrolled

in Glenforest Academy. Again, no DPHR was filed seeking support for that placement.

There was no testimony or evidence submitted by the Petitioner that the District took any action that prevented her from filing a complaint by misrepresenting facts to her or by withholding information from her as to her rights and ability to file a complaint. In fact, she admitted that the District had provided her with the Procedures manual and offered it again on at least two occasions.

The Petitioner's testimony clearly showed that the incidents at Longleaf were traumatic for her and her child and as a result, she experienced emotional trauma causing her not to think clearly for a period of time, however, that is not included by the Statute and Regulations as an exception to the SOL. It appears that she relied on the assistant at least part of that period for assistance and comfort, but there is no indication that the assistant principal or any other school official in any way attempted to misrepresent to her that the problems her child was experiencing were solved or that she was not able to file a complaint should she desire to do so.

Dismissing an action pursuant to a violation of the SOL is a severe remedy and as a result, it was important that the parties were given an opportunity to submit testimony and evidence in support of their positions in this case. Prior to 2004 this option did not exist, but during IDEA's reauthorization that year, Congress added it to the statute. Thus, Congress determined that it was important that while school districts remained responsible to provide children with disabilities a Free and Appropriate Education (F APE), it did not believe that responsibility was open ended and thus they said that two years from the point in time when the action or incident arose which would give rise to a DPHR complaint was ample time for a parent to file. (See, Perry A. Zirkel & Peter J. Maher, *The Statute of Limitations under the Individuals with Disabilities Education Act*, 175 Educ. 1 Ref. 1 (2003).

In a recent Third Circuit case, *G. L. v. Ligonier Valley Scholl District Authority*, 802 F. 3rd 601 (3rd Cir 2015) a detailed discussion was provided about the implementation of the SOL and its implications for parents and school districts of invoking the SOL.

Obviously, the important date in this or any other action when the SOL is invoked is that when “the parent knew or should have known” that an action or incident had occurred that gave rise to the need for the filing of a due process action. It has been held that this date is when the incident of action occurred and not when the parent knew that the district’s actions were actionable. (*J.P. v. Enid Sch Dist*, 53 IDELR 112 (W.D. Okla 2009). Here, by the Petitioner’s own testimony, she knew or should have known that she was not going to accept the District’s placement offer on October 26, 2015, and at least on April 11, 2016. The fact that she did not file a DPHR at that time or within two years of those dates and only realized on June 18, 2019, that she could seek relief does not fall within the exceptions provided in the Statute and Regulations and thus the exception does not apply in this case.

DECISION

THEREFORE, it is Ordered that the Respondent’s Motion to Dismiss based on 34 CFR 300.511 is hereby granted and this matter is dismissed with prejudice. Should the Petitioner seek financial assistance for the child’s placement in a private school in the future, that action must be the result of a new set of facts that would give rise to the ability to file a Due Process Hearing Request and Complaint.

IT IS SO ORDERED.

Greenville, South Carolina
July 28, 2019



Douglas R. Dent
Local Hearing Officer

APPEAL

Should either party wish to appeal this decision they may do so by contacting the South Carolina Department of Education, Office of General Counsel, 1429 Senate Street, Columbia, South Carolina, 29201. (803) 734-3393 within ten (10) days from the date of receipt of this Order.