SIGNED: 2/26/04

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN T.,	:	**No. 3:03cv522**
Plaintiff	:	
	:	**(Judge Munley)**
v.	:	
	:	
THE LACKAWANNA TRAIL	:	
SCHOOL DISTRICT,	:	
Defendant	:	

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MEMORANDUM

Before the court for disposition is the defendant's motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The motion has been fully briefed and argued and is ripe for disposition. For the following reasons, the defendant's motion will be granted in part and denied in part.

Background[1]

Jonathan T. ("Jonathan") was born on July 16, 1981 and is now twenty-two years old. He attended the Lackawanna Trail School District ("school district") from 1986 through November 1999. Jonathan has been diagnosed with a specific learning disability, emotional disturbance and Attention Deficit Hyperactivity Disorder. Jonathan asserts that his disabilities were not appropriately identified or remediated by the school district. Jonathan withdrew from school on November 22, 1999, at the age of eighteen.

On May 2, 2002, at the age of twenty, Jonathan filed a request for an administrative

[1] The following facts are taken from the plaintiff's complaint.

special education due process hearing. On January 10, 2003, the Due Process Hearing Officer issued her Decision and Order dismissing the plaintiff's case as untimely filed outside the statute of limitations. A Special Education Appeals Panel also concluded that Jonathan's claims were barred by the statute of limitations.

Having exhausted his administrative remedies, Jonathan filed the instant complaint alleging the school district has violated (1) Section 504 of the Rehabilitation Act ("section 504"); (2) the Civil Rights Act, 42 U.S.C. § 1983 ("section 1983"); (3) the Fourteenth Amendment; (4) 42 U.S.C. § 1985 ("section 1985"); (5) the Individuals with Disabilities Education Act ("IDEA"); and (6) various provisions of the Pennsylvania administrative code. The school district has filed a motion to dismiss, bringing the case to its present posture.

Jurisdiction

The Court exercises jurisdiction over this dispute pursuant to its federal question jurisdiction, 28 U.S.C. § 1331, and supplemental jurisdiction, 28 U.S.C. § 1367. Pennsylvania law applies to those claims considered pursuant to supplemental jurisdiction. United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938)).

Discussion

Defendant school district contends that Jonathan's claims under section 1983, section 1985, and the 14th Amendment are barred by Pennsylvania's two-year statute of limitations. Jonathan does not dispute that these claims should be dismissed. Accordingly, the school

district's motion to dismiss Jonathan's claims under section 1983, section 1985, and the 14th Amendment will be granted as unopposed.[2]

Defendant school district further contends that Jonathan's claim under section 504 and IDEA should be dismissed for violating the statute of limitations. After careful review, we disagree.

The IDEA does not contain a statute of limitations. As a general rule, when a federal statute creates substantive rights but does not identify a statute of limitations, the courts borrow the most clearly analogous state statute of limitations. See Wilson v. Garcia, 471 U.S. 261, 266-67 (1985) (stating that if a federal statute does not specify a statute of limitations, courts apply the relevant statute of limitations of the forum state). The Third Circuit has expressly declined to choose a statute of limitations for IDEA actions. See Jeremy H. v. Mount Lebanon School District, 95 F.3d 272, 280 n. 15 (3d Cir. 1996) ("We . . . need not, and do not, decide between a two-year and a six-year limitations period."). The Third Circuit, however, did decide that the limitations period begins to run "once the state administrative process has run its course." Id. at 280. In the instant matter, Jonathon filed the instant complaint within two months after completion of the state administrative process. Accordingly, based on the criteria set forth in Jeremy H., Jonathon's claim is not barred by the statute of limitations.

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[2] In addition, Jonathan does not dispute the school district's assertion that the Pennsylvania Administrative law claims are unnecessarily duplicitous of the IDEA claims. Accordingly, Jonathan's claims under various provisions of the Pennsylvania administrative code will also be dismissed.

Defendant school district argues that Pennsylvania state and federal courts have concluded that since the IDEA is an equitable statute, an equitable limitations period of a minimum of one year from the date of issuance of the challenged IEP applies, and a maximum of two years with mitigating circumstances. See Bernardsville Board of Educ. v. J.H., 42 F.3d 149, 157-58 (3d Cir. 1994) ("We think that more than two years, indeed, more than one year without mitigating excuse, is an unreasonable delay"); Montour School District v. S.T. and His Parent, 805 A.2d 29 (Pa. Commw. Ct. 2002) (accepting the Bernardsville equitable statute of limitations for IDEA claims). Defendant school district further argues that Jonathan's complaint does not state any mitigating circumstances and that, even if it did, his claims would still be untimely.

The school district's reliance on Bernardsville is, however, misplaced. The plaintiffs in Bernardsville were seeking reimbursement of educational expenses. Here, however, the Jonathan is seeking compensatory education. This is a crucial difference that has been recognized by this court in Kristi H. v. Tri Valley School District, 107 F. Supp. 2d 628 (M.D. Pa. 2000). In Kristi H., we followed the Third Circuit's decision in Ridgewood Board of Education v. N.E., 172 F.3d 238, 250 n.11 (3d Cir. 1999), and rejected the school district's interpretation of the statute of limitations. As this court explained in Kristi H.,

> [w]e are unconvinced by the defendant's reliance on Bernardsville Board of Education v. J.H., 42 F.3d 149 (3d Cir. 1994). In Bernardsville, the parents removed their child from the public school and enrolled him in an out of district residential program they believed would provide an appropriate education. The parents then sought to be reimbursed by the school for the amount it cost to enroll the student in the alternate program. The court held that the parents had a duty to seek review of the

> IEP they were challenging within one year of the unilateral placement for which reimbursement was sought. Id. at 158. We find this case to be distinguishable as it applies to reimbursement of educational expenses as opposed to compensatory education. Defendant maintains that because both tuition reimbursement and compensatory education are equitable remedies, the same limitations period which applies to tuition reimbursement should also apply to compensatory education. While the defendant may be correct in claiming that both are equitable remedies, the Third Circuit treats the two remedies differently. Defendant's argument would have been more cogent had the Third Circuit not specifically addressed compensatory education in M.C. and Ridgewood.

Kristi H., 107 F. Supp. at 634.

Consistent with our opinion in Kristy H., we disagree with the school district's position that an equitable statute of limitations applies to Jonathan's claim for compensatory education. Instead, we follow Ridgewood, where the Third Circuit discussed whether a two year statute of limitations applied to claims for compensatory education and stated that the "failure to object to [a student's] placement does not deprive him of the right to an appropriate education." Ridgewood v. Board of Education v. N.E., 172 F.3d 238, 250 (3d Cir. 1999). Here, we similarly conclude that Jonathan's claim to compensatory education should not be barred by the two year statute of limitations.[3]

Under IDEA, children with disabilities are entitled to receive, and school districts are obligated to provide, special education services until age twenty-one. See Carlisle Area

[3] In Ridgewood, the parents were permitted to seek compensatory education for the years 1988-1996 even though they did not request a due process hearing until 1996. Id. at 245. Here, Jonathan filed a request for a due process hearing in 2002. At issue, is compensatory education for the years 1989-2002. In fact, Jonathon's entitlement to special education did not end until June 30 of the school year during which he turned twenty-one, i.e., June 30, 2003. See 24 PA. STAT. ANN. § 13-1301 ("[A] child who attains the age of twenty-one (21) years during the school term and who has not graduated from high school may continue to attend the public schools in his district free of charge until the end of the term.") Pursuant to Ridgewood, Jonathan's claim is not barred by the statute of limitations.

School v. Scott P., 62 F.3d 520, 536 (3rd Cir. 1995) ("IDEA requires school districts to provide disabled children with free, appropriate education until they reach the age of twenty-one.") The same is true under Pennsylvania law. 24 PA. STAT. ANN. § 13-1301 ("Every child, being a resident of any school district, between the ages of six (6) and twenty-one (21) years, may attend the public schools in his district, subject to the provisions of this act."). Therefore, the statute of limitations in special education matters should not begin to run against the child until he or she reaches the age of twenty-one. In this matter, Jonathan requested a timely due process hearing prior to turning twenty-one.[4]

Here, it is the child, Jonathan, who is raising a claim for continuing education and not his parents who are seeking tuition reimbursement. See Carlisle Area School v. Scott P., 62 F.3d 520, 536 (3rd Cir. 1995) ("An award of compensatory education extends the disabled student's entitlement to the free appropriate education beyond age twenty-one to compensate for deprivations of that right before the student turned twenty-one.") At the time Jonathan made his claim, he was entitled to receive special education services. Special education students are entitled to a free and appropriate public education until the age of twenty-one

[4] Defendant school district contends that the statute of limitations period should begin to run sooner because defendant voluntarily left school at the age of eighteen. However, the school district failed to get the approval of Jonathan's parents, which is required when a special education student wishes to withdraw. IDEA requires that states such as Pennsylvania that receive federal funding cannot change the program or placement of a disabled child without parental consent until the age of twenty-one. Although a state may transfer the procedural rights afforded parents under the IDEA to children with disabilities at the age of majority under state law, the parties do not dispute that Pennsylvania has not enacted such a transfer of procedural rights. See 20 U.S.C. § 1415(m); 34 C.F.R. § 300.517; Pa. Dep't of Educ. Act, Part B Policies and Procedures, July 1, 2002, p. 12 ("The age of majority is reached in Pennsylvania when the individual reaches 21 years of age. Likewise, for purposes of the Individuals with Disabilities Education Act, the age of majority is reached for both nondisabled students and students with disabilities when they reach 21 years of age. PA does not transfer rights at the age of majority to any student; therefore, rights under IDEA are not transferred to students with disabilities.")

and Jonathan was only twenty at the time he made his claim. See id. ("[A]dults (i.e., individuals over twenty-one) have a remedy for deprivations of their right to a free appropriate education during the period before they reached age twenty-one.") Accordingly, Jonathan's IDEA and section 504 claims are not barred by the statute of limitations.

Moreover, even if the operation of the most clearly analogous state statute would result in inequitable results, federal courts will provide for equitable tolling of the federal claim beyond the time recognized under state law. Lake v. Arnold, 232 F.3d 360, 370 (3d Cir. 2000). Since we have concluded that plaintiff's claim is not barred by the statute of limitations, we need not consider the defendant's equitable tolling argument. Nevertheless, if we were to consider the equitable tolling issue, we would decide that the Defendant school district cannot escape liability for its failure to educate Jonathan appropriately for many years. In this matter, the principle of equitable tolling of the statute mandate that the school district not benefit from its pervasive violations of the procedural safeguards and its failure to properly educate Jonathan. Accordingly, since we conclude that the operation of a statute of limitations would result in inequitable results, we would provide for equitable tolling and deny defendant's motion to dismiss Jonathan's section 504 and IDEA claims.

Conclusion

For the above stated reasons, the school district's motion to dismiss will be granted in part and denied in part. The school district's motion to dismiss Jonathan's claims under section 1983, section 1985, the 14th Amendment and the Pennsylvania administrative code

will be granted as unopposed. The school district's motion to dismiss Jonathan's IDEA and section 504 claims will be denied. Jonathan's IDEA and section 504 claims will be remanded to the administrative special education due process hearing officer so that the parties may proceed with discovery consistent with this opinion. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN T.,	:	**No. 3:03cv522**
Plaintiff	:	
	:	**(Judge Munley)**
v.	:	
	:	
THE LACKAWANNA TRAIL	:	
SCHOOL DISTRICT,	:	
Defendant	:	

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ORDER

AND NOW, to wit, this _____ day of February 2004, defendant's motion to dismiss (Doc. 4) is:

1) **GRANTED** with respect to plaintiff's 14th Amendment claim;

2) **GRANTED** with respect to plaintiff's section 1983 claim;

3) **GRANTED** with respect to plaintiff's section 1985 claim;

4) **GRANTED** with respect to plaintiff's claims under the Pennsylvania administrative code;

5) **DENIED** with respect to plaintiff's section 504 claim; and

6) **DENIED** with respect to plaintiff's IDEA claim.

7) Plaintiff's section 504 and IDEA claims are **REMANDED** to the administrative special education due process hearing officer to conduct discovery and make a decision based on the merits of plaintiff's claims.

8) The clerk of court is directed to mark this case **CLOSED**.

BY THE COURT:

_____
JAMES M. MUNLEY
United States District Court

FILED: 2/26/04