



EDUCATION

ALERT

PARENTS ABILITY TO EXTEND THE TWO -YEAR STATUTE OF LIMITATIONS UNDER THE IDEA HAS NOW BEEN SIGNIFICANTLY LIMITED BY THE THIRD CIRCUIT COURT OF APPEALS

By Timothy E. Gilsbach

The United States Court of Appeals for the Third Circuit, which includes Pennsylvania, has issued a decision that sets to rest a number of issues with respect to the two-year statute of limitations and its exceptions under the Individuals with Disabilities Education Act (IDEA). In 2004, when the IDEA was last re-authorized, a two-year statute of limitations on claims asserted by Parents was added, but so were two specific exceptions to that statute of limitations. There has been significant litigation before Pennsylvania's Special Education Hearing Officers and Federal District Courts over these exceptions since the were added to the IDEA. The Third Circuit, in *D.K. v. Abington School District*, has now provided clear direction on how to apply the exceptions that should significantly limit the number of cases in which parents will be able to establish that an exception to the two-year statute of limitations applies.

The *D.K.* Court started by finding that the first exception to the two-year statute of limitations, which requires a finding that the LEA made a "specific misrepresentation ... that it had resolved the problem forming the basis of the complaint", requires a showing that "the school intentionally misled [parents] or knowingly deceived [parents] regarding their child's progress." Pennsylvania Hearing Officers and the Pennsylvania District Courts were, prior to the *D.K.* decision, split on whether parents needed to establish that the specific misrepresentation had to be made intentionally or

negligently, with the latter being a much easier case for parents to prove. The *D.K.* Court's holding that the exception requires that an LEA must have "*knowledge* that its representations of a student's progress or disability are untrue or inconsistent with the school's own assessments" will likely limit the number of cases in which parents will be able to establish this exception.

Moving to the second exception to the statute of limitations under the IDEA, withholding of information, the *D.K.* Court explained that this applies "only to the failure to supply *statutorily mandated* disclosures" and goes on to explain that this would apply to the failure to supply procedural safeguards or issue a NOREP when required under the IDEA. Again, this appears to limit the number of cases in which this exception could apply and shuts down any argument that this exception should be applied to withholding information beyond these specific statutorily required documents.

Next, the *D.K.* Court explained that under the IDEA not only must a parent establish that one of the two exceptions is applicable, but "must also show that the misrepresentation or withholding *caused* [parent's] failure to request a hearing or file a complaint on time." Moreover, the *D.K.* Court explained that where, for example, "parents were already fully aware of their procedural options, that cannot excuse a late filing by pointing to the school's failure to formally notify them of

those safeguards.” In the *D.K.* case, the Court suggests that where there is evidence that the parents had some knowledge of their rights, which raises serious doubts about whether they can establish this causation element.

Overall, it is likely that the *D.K.* decision will significantly limit the number of IDEA cases in which an

exception to the two-year statute of limitations can be asserted, much less established.

If you should have any questions about the information contained in this Alert, please contact Timothy E. Gilsbach at 610.397.6511 or tgilsbach@foxrothschild.com or any member of Fox Rothschild’s Education Law Practice.



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