

## The Status Of The IDEA's Statute Of Limitations

By Jennifer Donaldson

Until recently, the Individuals With Disabilities Education Act ("IDEA") contained no statute of limitations. With IDEA-2004, Congress amended the IDEA to include a two-year statute of limitations on July 1, 2005. Specifically, Section 1415(f)(3)(C) of IDEA-2004 provides:

[a] parent or agency shall request an impartial due process hearing 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 complaint.

IDEA-2004 also permits each state to impose its own limitations period. However, to date, Pennsylvania has not created any legislation to create its own statute of limitations period for IDEA claims. Thus, the courts are left to interpret Section 1415(f)(3)(C) of IDEA-2004 to determine whether or not any claim is untimely and whether it can be dismissed as a matter of law.

Initially, this appeared to be a simple task, which resulted in applying IDEA-2004's statute of limitations to any due process request made on or after July 1, 2005 to thereby bar, as a matter of law, any claim based upon an action that occurred more than two years prior to the date the due process request was made. The only exceptions were the two explicitly written into IDEA-2004, which include if the delay in the parent requesting due process was caused by (1) a specific misrepresentation made to the parent by the local educational agency ("LEA") that the LEA had resolved the complained of problem or (2) a withholding of information by the LEA from the parent which the LEA was required to provide. In fact, as this issue first worked its way into the federal district court system, the courts likewise applied IDEA-2004's two-year statute of limitations to due process requests made after July 1, 2005, so as to bar any claim based upon conduct which took place more than two years prior to the date the due process hearing was requested, unless one of the two exceptions applied.

However, recently, a judge in the Eastern District of Pennsylvania issued a different decision, making the prior decisiveness of this issue now uncertain. In *Tereance D. v. School District of Philadelphia*, the judge found it be an improper retroactive application of IDEA-2004's statute of limitations to apply it to conduct that occurred prior to July 1, 2005, regardless of when the due process request was made. Rather, in *Tereance D.*, the judge used the date of the complained of conduct to determine which version of the IDEA was applicable, instead of the date the due process request was made. Thus, under *Tereance D.*, if the complained of conduct occurred when no statute of limitations was included in the IDEA, then IDEA-2004's statute of limitations could not be applied to bar the claim. For example, a due process request made on August 1, 2008 could assert claims regarding what occurred during the 2003-2004, 2004-2005, 2006-2007 and 2007-2008 school years, but not the 2005-2006 school year, unless an exception to IDEA-2004's statute of limitations applied to the claims regarding the 2005-2006 school year. More recently, two additional judges in the Eastern District of Pennsylvania have adopted *Tereance D.*'s analysis of the statute of limitations issue.

The result of *Tereance D.* blatantly contradicts yet a different judge in the Eastern District of Pennsylvania. Specifically, in *P.P. v. West Chester Area School District*, the judge found that IDEA-2004 made it absolutely clear that the date of the due process request was the triggering event in determining whether IDEA-2004's statute of limitations applies to the claims in question. In *P.P.*, the judge found that IDEA-2004's statute of limitations applied to any due process request made on or after July 1, 2005, regardless of when the complained of conduct occurred. This contradiction between the judges in the federal district courts can only be definitively answered by the Third Circuit Court of Appeals.

Currently, *P.P.* is before the Third Circuit, but it is unclear exactly when any decision will be issued. It is likely that, when the Third Circuit issues its decision in *P.P.*, it will also provide clarity on some additional disparities that have recently risen among the Hearing Officers regarding other issues surrounding the application of IDEA-2004's statute of limitations.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.