THE STATUS OF THE IDEA'S TWO-YEAR STATUTE OF LIMITATIONS: DOES 2 REALLY MEAN 4?

The IDEA was revised in 2004 to include an explicit statute of limitations period for complaining parties to initiate due process complaints. The relevant language of the IDEA is found in Section 1415(f)(3)(C) of the IDEA and states:

> "A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint..."

While this statutory language may seem to clearly establish a two year statute of limitations period, much litigation has ensued since the 2004 revision to stretch two years to mean more. Initially, as evidenced in federal cases such as *Steven I. v. Central Bucks School District*, 618 F.3d 411 (3d Cir. 2010), cert. denied, 131 S.Ct. 1507 (2011) and *P.P. v. West Chester Area Sch. Dist.*, 585 F.3d 727 (3d Cir. 2009), it seemed that the courts were in agreement that the IDEA provided a two year statute of limitations period. This barred parents from successfully litigating complaints about their school district's actions further back in time than two years prior to the date of the due process complaint. However, arguments have been accepted by some courts that two years really means four years. This is commonly referred to as a "2+2" argument, asserting that the IDEA's statute of limitations allows a complaining party to complain about actions two years after the "knew or should have known" date (commonly referred to as the "KOSHK" date), as well as actions that took place up to two years before the KOSHK date. This argument equates to allowing the scope of a due process hearing to total four years, rather than just two years.

The 2+2 argument gets its support from a different section of the IDEA, specifically Section 1415(b)(6)(B) which states:

> "The procedures required by this section shall include the following...(6) An opportunity for any party to present a complaint...(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint ..."

Recent federal cases have found that these two sections of the IDEA are read together to create a two year look forward and a two year look back period that amounts to a four year statute of limitations. These courts read these two sections of the IDEA as separate provisions, one setting a limitations period for the filing of claims and the other limiting the chronological scope of alleged violations—which makes 2 really mean 4.

This is important for school districts to realize, as it potentially doubles the time period that will be in question at a due process hearing. While going back in time 2 years can be complicated, going back 4 years will surely be even more complicated. Staff may have moved on and memories faded – both of which make preparing and defending a due process hearing more difficult. What is even more difficult is to assess the potential liability presented by a due process complaint due to the split between approaches to interpreting the IDEA's statute of limitations – some still stay 2 means 2, while others are saying 2 means 4. This legal question is currently pending before the Third Circuit Court of Appeals in G.L. v. Ligonier Valley School District Authority, 2013 WL 6858963 (W.D. Pa. 2013). It is unknown when a decision will be issued—or if any further appeal of the pending decision will be made.

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.

1. The PSEA has recently filed an appeal on this decision.