

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| JAY JAFFESS and PATRICIA WILKINSON, | : | |
| | : | CIVIL ACTION |
| Plaintiffs, | : | |
| v. | : | |
| COUNCIL ROCK SCHOOL DISTRICT, | : | No. 06-0143 |
| Defendant. | : | |

MEMORANDUM AND ORDER

Schiller, J.

June 19, 2006

Plaintiffs seek student accommodations and special education support for their son from Defendant Council Rock School District (“the District”). Plaintiffs have completed Pennsylvania’s administrative review process and now bring this action to pursue their claims under the Individuals with Disabilities Education Act (“IDEA”) and the Rehabilitation Act. Presently before the Court is the District’s motion to dismiss, which is denied for the reasons set forth below.

I. BACKGROUND

The Complaint presents the facts as follows. Plaintiffs have a sixteen-year old son who attends 11th grade at a high school in the District. (Compl. ¶ 5.) In 1999, the District determined that Plaintiffs’ son was both a child with special needs under the IDEA and a mentally gifted child under Chapter 16 of the Pennsylvania Code. (*Id.* ¶ 6.) Thereafter, the District provided Plaintiffs’ son with an individualized education program (“IEP”). (*Id.*) In late 2004, the District began a re-evaluation of Plaintiffs’ son, and in March 2005 it determined that he no longer needed specially-designed instruction. (*Id.* ¶ 13 & Ex. A (Hearing Officer Stengle’s Decision, Aug. 16, 2005) at 3.) The District recommended that Plaintiffs’ son return to a program of regular education with gifted support. (*Id.* Ex. A at 3.) Contrary to Plaintiffs’ wishes, the District stopped providing their son

special education services. (*Id.* ¶ 20.)

In March 2005, Plaintiffs filed a due process complaint with the Pennsylvania Department of Education's Office of Dispute Resolution. (*Id.* ¶ 21.) Hearing Officer Linda Stengle conducted administrative hearings on the matter on June 7, June 25 and July 26 of 2005. (*Id.*) On August 16, 2005, she issued a decision that: (1) upheld the District's determination that Plaintiffs' son was not eligible for special education and accommodations under the IDEA or the Rehabilitation Act; and (2) found that the District was not obligated to provide Plaintiffs' son with an IEP or a Service Agreement pursuant to § 504 of the Rehabilitation Act. (*Id.* ¶ 22 & Ex. A at 7.) Plaintiffs then appealed to the Special Education Appeals Panel of the Commonwealth Court of Pennsylvania ("Appeals Panel"), which affirmed Stengle's decision in its entirety on October 13, 2005. (*Id.* ¶ 23.)

On January 11, 2006, Plaintiffs filed this action, asking the Court to find Plaintiffs' son eligible for student accommodations and special education support under the IDEA and § 504 of the Rehabilitation Act. (*Id.* Counts I & II, *ad damnum* clauses.) Here, the District asserts that Plaintiffs' IDEA claim is barred by the statute of limitations and that the Rehabilitation Act claim is barred for failure to be preserved before the Appeals Panel. (Def.'s Mot. to Dismiss ¶¶ 12, 14.)

II. STANDARD OF REVIEW

The Court reviews the District's statute of limitations claim as a motion to dismiss for failure to state a claim upon which relief may be granted. In considering such a motion, courts must accept as true all factual allegations in the complaint and must draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). Courts, however, are not obligated to

credit a complaint's "bald assertions" or "legal conclusions." *In re: Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1429 (3d Cir. 1997) (citation omitted). A motion to dismiss for failure to state a claim will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

The Court reviews the District's claim that Plaintiffs failed to preserve the Rehabilitation Act claim as a challenge to this Court's subject matter jurisdiction. When a defendant challenges subject matter jurisdiction, the plaintiff bears the burden of persuasion to prove that the case is properly before the court. *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991) (citing *Mortenson v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). A claim that the court lacks subject matter jurisdiction may take the form of a facial attack, which attacks the complaint on its face, or a factual attack, which attacks the existence of jurisdiction in fact apart from the pleadings. *Mortenson*, 549 F.2d at 891. In a facial attack, the court must accept as true all allegations in the complaint and draw all reasonable inferences in favor of the non-moving party. *Id.* In a factual attack, a court "is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case No presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.*

III. DISCUSSION

A. Plaintiffs' IDEA Claim Is Not Time-Barred

In December 2004, Congress shortened the IDEA's statute of limitations for filing a civil

action to “90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.” 20 U.S.C. § 1415(i)(2)(B) (2006). The amended 2004 IDEA became effective July 1, 2005. *See* Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446, Title I, § 302. The District asserts that Plaintiffs’ IDEA claim is time-barred because the Complaint in this action was filed more than ninety days after Hearing Officer Stengle rendered a decision. (Def.’s Mot. to Dismiss ¶¶ 11, 12.) Plaintiffs counter that the ninety-day filing deadline does not apply to their case because Congress did not intend for the 2004 IDEA to apply retroactively. (Pls.’ Answer to Def.’s Mot. to Dismiss ¶ 12.)

Plaintiffs are incorrect that this case presents a question of retroactive application of the 2004 IDEA. In support of their contention, Plaintiffs cite cases, unlike the present case, in which the civil action complaint was filed prior to July 1, 2005 or the administrative decision was issued prior to that date. (Pls.’ Mem. in Opp’n to Mot. to Dismiss at 5 (*citing Lawrence Twp. Bd. of Educ. v. New Jersey*, 417 F.3d 368, 370 (3d Cir. 2005) (complaint filed in 2003); *P.S. v. Princeton Reg’l Sch. Bd. of Educ.*, Civ. A. No. 05-4769, 2006 U.S. Dist. LEXIS 252 at *1 (D. N.J. Jan. 5, 2006) (administrative decision issued on or about Dec. 3, 2004).) Although Plaintiffs began the initial due process proceedings prior to July 1, 2005, the Hearing Officer and Appeals Panel decisions were both issued after the 2004 IDEA’s effective date. (Def.’s Mot. to Dismiss ¶¶ 3, 6, 7.) Therefore, applying the ninety-day statute of limitations to this case is not a retroactive application.

Plaintiffs are correct, however, that their Complaint is timely under the 2004 IDEA because the ninety-day deadline is not triggered until the second tier of Pennsylvania’s two-tiered administrative review process has been exhausted. (Pls.’ Answer to Def.’s Mot. to Dismiss ¶ 12.)

Pennsylvania regulations provide for two tiers of state administrative review and an additional level of judicial review. *See* 22 PA. CODE § 14.162 (2006). The regulations specify that a hearing officer's decision may be appealed to an appeals panel, and the appeals panel's decision may be appealed to a court. 22 PA. CODE § 14.162 (o) ("The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken."). Thus, a court reviews the appeals panel's decision. *See Drinker v. Colonial Sch. Dist.*, 888 F. Supp. 674, 678 (E.D. Pa. 1995) (concluding court could only review issues considered by appeals panel and stating "[t]he language of the Pennsylvania Code allows [plaintiffs] to appeal only 'the panel's decision.'").

The IDEA requires a plaintiff to exhaust the state administrative review process before seeking relief in court. *See* 20 U.S.C. § 1415(l) ("[B]efore the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) [which call for a due process hearing and an appeal to the state educational agency] shall be exhausted to the same extent as would be required had the action been brought under this part."). Plaintiffs were required to submit an appeal to the Appeals Panel prior to filing their Complaint in this Court because Pennsylvania's administrative review process is not complete until the Appeals Panel has issued its decision. *See Millersburg Area Sch. Dist. v. Lynda T.*, 707 A.2d 572, 577 (Pa. Commw. Ct. 1998) ("[T]he Appeals Panel is the ultimate factfinder and charged with making an independent examination of the evidence in the record."); *Punxsutawney Area Sch. Dist. v. Kanouff*, 663 A.2d 831, 835 (Pa. Commw. Ct. 1995) ("Pennsylvania's implementation of the IDEA makes

the Appeals Panel the ultimate fact-finder.”). Therefore, the Court concludes that the IDEA requires that a party eligible to appeal a due process hearing decision to a higher level of administrative review must exhaust that administrative appeal prior to filing a civil action.¹

To promote internal consistency within the IDEA and to prevent conflict between the IDEA and Pennsylvania’s two-tiered administrative review process, this Court concludes that parties in Pennsylvania have ninety days from the date of the decision of the appellate hearing officers to bring a civil action. As Plaintiffs’ Complaint was filed within ninety days of the Appeals Panel’s decision, their IDEA claim is not time-barred.

B. Plaintiffs’ Rehabilitation Act Claim Was Properly Preserved

The District asserts that Plaintiffs failed to preserve their Rehabilitation Act claim on appeal before the Appeals Panel, and therefore this Court lacks subject matter jurisdiction over the claim. (Def.’s Mot. to Dismiss ¶ 14.) Neither party has provided the Court with a copy of Plaintiffs’ written appeal to the Appeals Panel. However, a review of the Appeals Panel decision indicates that the Appeals Panel affirmed the Hearing Officer’s ruling with respect to the Rehabilitation Act claim. (*See* Compl. Ex. B (Appeals Panel Decision, Oct. 13, 2005).) The Appeals Panel’s decision refers to the Hearing Officer’s determination that there was no evidence supporting protection under Chapter 15, a chapter of the Pennsylvania Code that addresses the requirements of § 504 of the

¹ The Department of Education has published proposed regulations to implement the 2004 IDEA. Though the proposed regulations are neither final nor binding on this Court, they suggest that the ninety-day deadline is triggered only upon a “final State administrative decision.” *See* 70 Fed. Reg. 35809 (June 15, 2005) (“[P]roposed Sec. 300.516(b) [on the time limitation for bringing a civil action] would be added to reflect the new requirement in section 615(i)(2)(B) of the Act that provides for a time limit of 90 days from the date of the final State administrative decision to file a civil action, or if the State has an explicit time limitation for bringing a civil action under Part B of the Act, in the time allowed by that State law.”).

Rehabilitation Act. (*Id.* Ex. B at 3; *see* 22 PA. CODE § 15.1(a) (Chapter 15 “implements the statutory and regulatory requirements of Section 504.”).) The background section of the decision fully incorporates the Hearing Officer’s order, in which the District’s determination that Plaintiffs’ son is ineligible for services under § 504 is described as appropriate. (Compl. Ex. B at 3.) The Appeals Panel denied Plaintiffs’ objections to the Hearing Officer’s decision and affirmed the “Decision and Order as written” in its entirety. (*Id.* Ex. B at 4, 8.) Accordingly, Defendant’s argument that Plaintiffs failed to preserve their Rehabilitation Act claim before the Appeals Panel is unfounded.

IV. CONCLUSION

Because Plaintiffs have properly preserved their Rehabilitation Act claim, the Court has subject matter jurisdiction over the claim. Furthermore, Plaintiffs timely filed their Complaint in this Court after properly exhausting Pennsylvania’s two-tiered administrative review process. Accordingly, the Court denies the District’s motion to dismiss, and an appropriate Order follows.

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ORDER

AND NOW, this 19th day of **June, 2006**, upon consideration of Defendant's Motion to Dismiss, Plaintiffs' response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. The motion (Document No. 3) is **DENIED**.
2. Defendant is directed to file an answer no later than **July 10, 2006**.

BY THE COURT:



Berle M. Schiller, J.