

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

**MR. and MRS. R., on their own behalf)
and on behalf of their son, SR,)**

Plaintiffs)

v.)

Docket No. 00-367-P-H

**MAINE SCHOOL ADMINISTRATIVE)
DISTRICT NO. 35,)**

Defendant)

**RECOMMENDED DECISION ON PLAINTIFFS' MOTION TO
DISMISS DEFENDANT'S COUNTERCLAIM**

The plaintiffs, who bring this action under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*; a provision of the Rehabilitation Act, 29 U.S.C. § 794; and state statutes, 20-A M.R.S.A. § 7001 *et seq.*, for themselves and on behalf of their son, move to dismiss the counterclaim filed by the defendant, which asserts claims under the IDEA and the state statutes invoked by the plaintiffs, Answer/Counterclaim (Docket No. 4) at 3, on the ground that it is barred by the statute of limitations applicable to IDEA claims. I recommend that the court deny the motion.

I. Applicable Legal Standards

The motion is brought pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim, etc. (“Motion”) (Docket No. 8) at 1. Rule 12(b)(1) addresses lack of jurisdiction over the subject matter and Rule 12(b)(6) is concerned with failure to state a claim upon which relief can be granted. When a party moves to dismiss pursuant to Rule 12(b)(1), the

opposing party has the burden of demonstrating that the court has jurisdiction. *Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991); *Lord v. Casco Bay Weekly, Inc.*, 789 F. Supp. 32, 33 (D. Me. 1992). The court does not draw inferences favorable to the pleader. *Hodgdon v. United States*, 919 F. Supp. 37, 38 (D. Me. 1996). For the purposes of a motion to dismiss under Rule 12(b)(1) only, the moving party may use affidavits and other matter to support the motion. The pleading party may establish the actual existence of subject-matter jurisdiction through extra-pleading material. 5A C. Wright & A. Miller, *Federal Practice and Procedure* ' 1350 at 213 (2d ed. 1990); see *Hawes v. Club Ecuestre el Comandante*, 598 F.2d 698, 699 (1st Cir. 1979) (question of jurisdiction decided on basis of answers to interrogatories, deposition statements and an affidavit).

“When evaluating a motion to dismiss under Rule 12(b)(6), [the court] take[s] the well-pleaded facts as they appear in the complaint, extending the plaintiff every reasonable inference in her favor.” *Pihl v. Massachusetts Dep’t of Educ.*, 9 F.3d 184, 187 (1st Cir. 1993). The defendant is entitled to dismissal for failure to state a claim only if “it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” *Roma Constr. Co. v. aRusso*, 96 F.3d 566, 569 (1st Cir. 1996); see also *Tobin v. University of Maine Sys.*, 59 F.Supp.2d 87, 89 (D. Me. 1999).

II. Factual Background

The complaint seeks review of the decision of a hearing officer appointed to consider the plaintiffs’ challenges to the Individual Education Plan (“IEP”) developed for the 2000-01 school year for their disabled son by employees of the defendant. Complaint (Docket No. 1) ¶¶ 3-8, 11, 13-18. The complaint alleges that the “[p]laintiffs prevailed at the hearing,” *id.* ¶ 10, but contends that certain aspects of the hearing officer’s decision violate the cited federal and state statutes. The hearing officer’s written decision is dated October 31, 2000, Special Education Due Process Hearing, Case # 00.225,R (“Hearing Officer’s Decision”) (Exh. 1 to Complaint) at 1, 11, and the complaint alleges that

the plaintiffs received a copy on November 1, 2000, Complaint ¶ 8. The complaint was filed in this court on November 20, 2000. Docket.

On December 22, 2000 the defendant filed its answer and counterclaim. Docket No. 4. The counterclaim (also called a “cross-appeal” by the defendants) alleges that the hearing officer erred with respect to certain specific conclusions and seeks reversal of certain portions of his decision. Answer/Counterclaim at 7-8.

III. Discussion

The plaintiffs refer only to the defendant’s IDEA claim in their memoranda of law, apparently assuming that the defendant’s state-law claim is subject to the same statute of limitations that applies to its IDEA claim. It is not necessary to address this issue because I conclude that the plaintiffs are not entitled to dismissal of the IDEA claim.

The parties agree that a 30-day statute of limitations, running from a party’s receipt of notice of the decision from which appeal is taken, applies to the IDEA claims in this case, although they differ as to the appropriate source of that limitations period. Motion at 4-6; Defendant’s Objection to Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim, etc. (“Defendant’s Objection”) (Docket No. 10) at 4-5. The IDEA itself sets no time limit within which a petition for review of an administrative hearing officer’s decision must be brought; “[c]ourts have looked to the most analogous statutes of limitations from the laws of the pertinent state, provided that those laws do not conflict with the federal policies inherent in the statute.” *Providence Sch. Dep’t v. Ana C.*, 108 F.3d 1, 2-3 (1st Cir. 1997). For the purposes of the instant motion, the precise source of the statute of limitations, the duration of which is not at issue, is irrelevant.

The parties also agree that the plaintiffs filed their complaint in this action within the 30-day period. The plaintiffs contend that the defendant filed its counterclaim beyond the 30-day period and

that it is therefore barred. Motion at 4. The counterclaim was filed within the 20-day period allowed by Fed. R. Civ. P. 12(a)(1) and 13(a), but apparently more than 30 days after the defendant received a copy of the hearing officer's decision.

Wright and Miller observe that “[t]he courts have not clearly resolved the question whether plaintiff, by instituting his action, tolls or even waives the defense of the statute of limitations with regard to a compulsory counterclaim that is asserted after the applicable period has expired.” 6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1419 (2d ed. 1990) at 151. The First Circuit has not addressed this question in a reported decision. Wright and Miller go on to state as follows:

[T]he majority view appears to be that the institution of plaintiff's suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim. This approach precludes plaintiff, when the claim and counterclaim are measured by the same period, from delaying the institution of the action until the statute has almost run on defendant's counterclaim so that it would be barred by the time defendant advanced it. Nor is plaintiff apt to be prejudiced by the tolling of the statute, since he presumably has notice at the time he commences his action of any counterclaim arising out of the same transaction as his suit. Moreover, the necessarily close relationship between the timely claim and the untimely counterclaim should insure that the latter is not “stale” in the sense of evidence and witnesses no longer being available; they should be as accessible for adjudicating the counterclaim as they are for the main action.

Id. at 152-53. *See also Burlington Indus., Inc. v. Milliken & Co.*, 690 F.2d 380, 389 (4th Cir. 1982).

The plaintiffs contend that the counterclaim is not compulsory, within the meaning of Rule 13(a), because “[i]n the context of an IDEA action, due to the already short 30-day limitations period, the compulsory counterclaim does not operate to cut short an otherwise valid claim.” Plaintiffs' Reply Memorandum in Support of Their Motion to Dismiss Defendant's Counterclaim (“Plaintiffs' Reply”) (Docket No. 11) at 5. The suggestion that the definition of a compulsory counterclaim which is set forth in Rule 13(a) may vary from state to state only in IDEA cases due to the variations among the

states in applicable statutes of limitations is without merit. The defendant's counterclaim in this case states a claim "which at the time of serving the pleading the pleader has against [the] opposing party" that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Fed. R. Civ. P. 13(a). It is a compulsory counterclaim. No further restrictions, specific to a single federal statute and with the potential to vary widely among the states, are appropriately read into the language of the rule on the ground asserted by the plaintiffs. Indeed, the fact that the applicable statute of limitations in this case provides such a brief window in which to obtain judicial review supports application of the view of the majority of federal courts that the applicable statute of limitations is tolled for compulsory counterclaims for the period of time allowed for filing such claims under the federal rules of civil procedure. *See also Kirkpatrick v. Lenoir County Bd. of Educ.*, 216 F.3d 380, 387-88 (4th Cir. 2000).

The parties devote considerable time and effort to arguments based on a state statute, 14 M.R.S.A. § 865, Motion at 7; Defendant's Objection at 5, 7-8; Plaintiffs' Reply at 2-3, but it is not necessary to reach this issue in order to rule on the pending motion.

IV. Conclusion

For the foregoing reasons, I recommend that the plaintiffs' motion to dismiss the counterclaim be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Date this 20th day of February, 2001.

David M. Cohen
United States Magistrate Judge

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behalf and on behalf of their
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