

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Keelin Banks, et al.

v.

Case No. 15-cv-07-PB

Opinion No. 2015 DNH 183

Shaun Carroll, Jr., et al.

O R D E R

Keelin and Daniel Banks filed their complaint in this case on January 8, 2015. Plaintiffs assert state and federal constitutional claims against the Sunapee School District and two school officials that are based on conduct that allegedly occurred during the 2008-09 school year. All of the claims arise from defendants' efforts to have Keelin Banks suspended from school.

Defendants argue in a motion to dismiss that plaintiffs' claims are barred by the applicable three-year statute of limitations. See generally, [King v. Town of Hanover](#), 139 N.H. 752, 754 (1995); [Gorelik v. Costin](#), 605 F.3d 118, 121-22 (1st Cir. 2010). Plaintiffs do not question defendants' contention that their claims are subject to a three-year statute of limitations. Nevertheless, they argue that the claims are timely because they did not accrue until January 9, 2012, when

plaintiffs completed their effort to administratively challenge Keelin's suspension.

I am unpersuaded by plaintiffs' argument. Constitutional claims ordinarily are not subject to an administrative exhaustion requirement. [Patsy v. Bd. of Regents of State of Fla.](#), 457 U.S. 496, 516 (1982). Accordingly, a statute of limitations is not tolled merely because the plaintiff is also pursuing an administrative remedy. [Smith v. McClammy](#), 740 F.2d 925, 927 (11th Cir. 1984); [Gudzelak v. Jurdan](#), 495 Fed. Appx. 217, 219 (3d Cir. 2012).

It is clear from a fair reading of the complaint that plaintiffs were well aware of their potential claims for more than six years before they filed their complaint. There is no reason why the applicable statute of limitations should be tolled. Accordingly, I agree with the defendants that plaintiffs' claims must be dismissed.

Defendants' motion to dismiss (Doc. No. 6) is granted.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

September 22, 2015

cc: Keelin Banks, pro se  
Daniel Banks, pro se  
Robert Joseph Dietel, Esq.  
Charles P. Bauer, Esq.