BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110049

ORDER DENYING MOTION TO DISMISS ISSUES 1 THROUGH 5, AND GRANTING MOTION TO DISMISS ISSUES 9 AND 10

NOVEMBER 30, 2023

On November 1, 2023, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Fremont Unified School District.

On November 14, 2023, Fremont filed a motion to dismiss Issues 1, 2, 3, 4, and 5 of Student's complaint, alleging they were outside the statute of limitations, and Issues 9 and 10, alleging they were outside OAH's jurisdiction. On November 17, 2023, Student filed an opposition regarding Issues 1 through 5, but consenting to dismissal of Issues 9 and 10, which assert claims under section 504 of the Rehabilitation Act of 1973.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), section 1983 of title 42 United States Code, the Americans with Disabilities Act (42 U.S.C. § 1201 et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

Since 2004, the IDEA has had a two-year statute of limitations period that is codified in two different provisions of the IDEA: title 20 United States Code sections 1415(b)(6)(B) and 1415(f)(3)(C). A due process complaint: "must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process

complaint under this part, in the time allowed by that State law." (34 C.F.R. § 300.507(a)(2).) Based upon this authority, states are permitted to adopt their own statute of limitations, and California has done so.

California implements the IDEA through its special education implementing statutes. (*Miller v. San Mateo-Foster City Unified School Dist*. (N.D.Cal. 2004) 318 F.Supp.2d 851, 860 (*Miller*).) Similar to the federal statute, Education Code section 56505, subdivision (*l*) provides that any request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

Consequently, both federal and California law contain a two-year statute of limitations for special education administrative actions that requires a finding of when the parent knew of the facts which form the basis of the claim. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (*l*).) The IDEA's statute of limitations applies a discovery rule, not an occurrence rule, because of the "knew of" language found in the federal statute. (*Avila v. Spokane Sch. Dist*. *81* (9th Cir. 2017) 852 F.3d 986, 939-945 (*Avila*).)

Avila interpreted the IDEA's statutory provisions; however, California has its own statute of limitations, and its wording is similar, but not identical, to the federal statute. *Avila* relied on the following portion of the IDEA: "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 …" (20 U.S.C § 1415(f)(3)(C).) California's statute of limitations states "within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (*l*).) That minor difference in wording does not support an interpretation that California uses an occurrence rule rather than a discovery rule. An occurrence rule is

inconsistent with the IDEA's remedial purpose, and California's special education implementing statutes must be interpreted as no less protective of the rights of disabled students than their federal counterparts. (Ed. Code, § 56000, subds. (d), (e).)

However, California has adopted its own manner of applying the discovery rule. California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided is inadequate; not when the claim actually occurred. (*M.M. & E.M. v. Lafayette School Dist*. (N.D.Cal., Feb. 7, 2012, Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19 (emphasis added) (*M.M.*), affd.in part and revd. in part on other grounds by *M.M. v. Lafayette School District, et al* (9th Cir. 2014) 767 F.3d 842, 859; see also, *M.D. v. Southington Board of Educ*. (2d Cir. 2003) 334 F.3d 217, 221.) In *M.M.*, the District Court made an evidentiary finding that "parents had sufficient knowledge of the educational goings-on inside and outside of the classroom to be put on notice of their underlying claims." (*M.M., supra,* at *18.) In other words, the statute of limitations begins to run when a party is aware of the underlying facts that would support a legal claim, not when a party learns that the action was wrong. (*M.M. supra,* at *18; see also *Bell v. Board of Educ. of the Albuquerque Public Schools.* (D.N.M.2008) 2008 WL 4104070, at *17.)

In California, the "'knowledge of facts' requirement … does not demand that the [party] know the specific legal theory or even the specific facts of the relevant claim; rather the [party] must have known or reasonably should have known the facts underlying the supposed learning disability and their IDEA rights." (*Miller, supra*, 318 F.Supp.2d at p. 861 (citing *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1111); *Ashlee R. ex rel. Russell v. Oakland Unified School Dist. Financing Corp.* (N.D.Cal., Aug. 23, 2004, No. C 03-5802 MEJ) 2004 WL 1878214, at *5 (*Ashlee*).)

It does not matter if the parent understood that the inadequacy was a legal claim, what is material is the fact that parents had knowledge of the problem. Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Brea Olinda Unified School District* (November 24, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009050815, quoting *Alexopulous v. San Francisco Unified School Dist*. (9th Cir. 1987) 817 F.2d 551, 555.) "[A] cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury which is the basis of his action." (*Miller, supra*, 318 F.Supp.2d at p. 861(quoting *Alexopulous, supra*, 817 F.2d at p. 554).)

In sum, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not earlier, when the act occurred; and not later, when a party learns that it has a legal claim. (*El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039) (discovery rules are designed to "protect those who are ignorant of their cause of action through no fault of their own").) The statute of limitations is triggered when "a plaintiff discovers, or reasonably could have discovered, his claim." (*O'Connor v. Boeing N. Am., Inc*. (9th Cir. 2002) 311 F.3d 1139, 1147.) In special education disputes, California has interpreted that trigger to occur when parents know the education is inadequate, not when parents knew that inadequacy was a legal claim. (*Miller, supra*, 318 F.Supp.2d at p. 861; *Ashlee*, *supra*, 2004 WL 1878214, at *5.)

The statute of limitations for special education claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (*l*); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (*l*), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due

process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

It has not been held that the two-year statute of limitations under the IDEA is jurisdictional, only that it operates to limit the recovery of the student/parent to claims filed within two years of the date on which the parent knew or should have known of the alleged action that forms the basis of the complaint, unless either of the two statutory exceptions are alleged and proved. (See, e.g., *M.G. v. New York City Dept. of Educ.* (S.D.N.Y. 2014) 15 F.Supp.3d 296, 304; see also *Somoza v. New York City Dept. of Educ.* (2d Cir. 2008) 538 F.3d 106, 111.) Several cases have concluded that the two statutory exceptions to the statute of limitations operate to prohibit common law equitable tolling, including the continuing violation doctrine. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 248; *D.C. and A.C. v. Klein ISD* (S.D.Tex. 2010) 711 F.Supp.2d 739, 746 (and cases cited therein).)

In the present matter, Student consents to dismissal of Issues 9 and 10 because they assert claims under section 504 of the Rehabilitation Act of 1973, which is outside OAH's jurisdiction. Issues 9 and 10 are dismissed.

Issues 1 through 5 of Student's complaint concern events that occurred on and after January 29, 2021, specifically within 15 days of January 29, 2021, as well as thereafter, and on and after March 4, 2021, specifically within 15 days of March 4, 2021, as well as thereafter. Student's complaint was filed on November 11, 2023, well over two years after the events forming the basis of Student's claims in Issues 1 through 5 occurred and were known to Parents. Specifically, Student alleged Parent requested Fremont assess Student for eligibility for special education and related services on

January 29, 2021, and Fremont did not timely provide Parent an assessment plan, did not timely provide Parent a prior written notice of any decision not to assess Student, and also did not provide Parent with a notice of procedural rights and safeguards.

Parent was aware more than two years before Student filed the complaint, on November 1, 2023, that Fremont had not given Parent an assessment plan in response to Parent's January 29, 2021 request for assessment and had not assessed Student in response to that request. However, Student alleged Fremont withheld information it was required to provide Parent after Parent's January 29, 2021 request for assessment, specifically the notice of procedural rights and safeguards. Similarly, Parent no doubt was aware more than two years before Student filed the complaint, on November 1, 2023, that Fremont had not given Parent an assessment plan within 15 days in response to Parent's March 4, 2021 request for assessment. However, Student again alleged Fremont withheld information it was required to provide Parent after Parent's March 4, 2021 request for assessment, specifically the notice of procedural rights and safeguards.

Student's complaint did not specifically address the statute of limitations. Student did not expressly acknowledge she might be asserting claims that accrued more than two years before she filed her complaint, and did not explicitly invoke either of the two statutory exceptions to the prohibition on filing claims more than two years after Parent knew or had reason to know of the facts underlying the basis for the request for due process hearing. Student also did not allege she intends to assert Parent did not know and had no reason to know of the facts underlying the basis for the request until less than two years before filing the complaint.

When Parent knew or should have known of the facts underlying the basis of Student's complaint for purposes of triggering the statute of limitations is a highly

factual determination. (E.g., *J.L. ex rel. J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 266, citing, 71 Fed. Reg. § 46540-01 at 46706 (August 14, 2006) [hearing officers are required to make determinations, on a case-by-case basis, of factors affecting whether the parent "knew or should have known" about the action that is the basis of the complaint].)

While it is apparent from the complaint Parent certainly was aware more than two years before Student filed the complaint, on November 1, 2023, that Fremont had not given Parent an assessment plan within 15 days in response to Parent's January 29 and March 4, 2021 requests for assessment, Student alleged Fremont did not provide Parent the required notice of procedural rights and safeguards, which would have informed Parent of the right to an assessment plan within 15 days, a prior written notice within 15 days, and need to request a due process hearing to contest any failure to timely provide an assessment plan and/or prior written notice within two years. Student has adequately pleaded a basis for a determining at a due process hearing when the statute of limitations began to run, that is, when Parent knew, or reasonably should have known, of the facts underlying Student's claims.

Further, Student has adequately pleaded a basis for determining at a due process hearing whether, if the date on which Parent knew, or reasonably should have known, of the facts underlying Student's claims was more than two years before November 1, 2023, Parent was prevented from requesting the due process hearing due to Fremont withholding information it was required to provide Parent, specifically the notice of procedural rights and safeguards.

Both of these inquires require an evidentiary hearing. Therefore, OAH shall determine at hearing if Student's claims in Issues 1, 2, 3, 4, and 5 were filed within two years from the date Parent knew or had reason to know of the facts underlying the basis

of these claims, or if Parent was prevented from requesting the due process hearing within two years of the date by which Parent knew or had reason to know of the facts underlying the basis of these claims due to Fremont withholding information it was required to provide Parent, specifically the notice of procedural rights and safeguards. Fremont's motion to dismiss Issues 1, 2, 3, 4, and 5 is denied without prejudice to Fremont asserting the statute of limitations as a defense at hearing.

ORDER

1. Fremont Unified School District's Motion to Dismiss is denied as to Issues 1, 2, 3, 4, and 5 of Student's complaint.
2. Fremont Unified School District's Motion to Dismiss is granted as to Issues 9 and 10 of Student's complaint.
3. All prehearing conference and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings