BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040283

ORDER GRANTING IN PART AND DENYING IN PART VENTURA UNIFIED SCHOOL DISTRICT'S MOTION TO DISMISS CLAIMS

JULY 7, 2021

On April 8, 2021, Parents on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint with the Office of Administrative Hearings, referred to as OAH, naming Ventura Unified School District, referred to as Ventura.

On June 28, 2021, Ventura filed a Motion to Dismiss Claims Outside of OAH's Jurisdiction and Claims Beyond the Two-Year Statute of Limitations. On July 2, 2021, Student filed an opposition to Ventura's motion.

DISMISSAL OF CLAIMS OUTSIDE OAH'S JURISDICTION

The purpose of the Individuals with Disabilities Education Act, referred to as IDEA (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 Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Student's complaint seeks damages and injunctive relief pursuant to 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 Disability Act (42 U.S.C. §§ 1201, et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51). Student does not oppose dismissal of these claims.

Accordingly, Student's complaint is limited to claims under the IDEA, and Student's claims and requests for damages and injunctive relief under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Unruh Civil Rights Act are hereby dismissed.

NO MOTIONS FOR SUMMARY JUDGMENT

The statute of limitations 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.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, referred to *Avila*, the Court found that the IDEA's statute of limitations barred claims that were filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) The Court held that, in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id.* at pp. 939-945.)

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860, referred to as *Miller*. Consistent with the IDEA, California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (l).) Knowledge that a student's

education is inadequate is sufficient for the statute of limitations to begin to accrue. (*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, affd. in part & revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859.)

Although as previously discussed OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure.

Ventura alleges that the complaint alleges claims dating back to 2012 but does not contain any specific allegations that it had resolved any problems forming the basis of the complaint, nor that it withheld information from Parents that it was required to provide relative to piercing the statute of limitations. Ventura does not allege that the complaint is insufficiently pled, nor did Ventura timely file a notice of insufficiency. (20 U.S.C. § 1415(b) & (c).)

Student has pled sufficient facts to support its request to pierce the statute of limitations, namely facts relating to the May 9, 20212 psychoeducational assessment report and it is therefore premature to determine when Parents knew, or reasonably should have known, the facts underlying Student's claims. Ventura's motion to dismiss Student's claims falling outside the two-year statute of limitations is not limited to matters that are facially outside OAH's jurisdiction, but rather seeks a ruling on the merits. Further, judicial economy would be served by OAH hearing first as a threshold matter whether some or all Student's claims are barred by the two-year statute of limitations, issuing a ruling on the record and then immediately proceeding to the remainder of the case. Accordingly, Ventura's motion to dismiss claims falling outside the two-year statute of limitations is denied. This ruling is without prejudice to Ventura

presenting evidence that Parents knew or should have known about the actions forming the basis for their complaint prior to the two-year statute of limitations.

ORDER

1. Ventura's motion to dismiss claims under 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 Disability Act (42 U.S.C. §§ 1201, et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51) is granted. The matter will proceed as scheduled as to the remaining issues.
2. Ventura's motion to dismiss claims falling outside the two-year statute of limitations is denied without prejudice. The parties may present evidence at the start of the due process hearing regarding whether grounds exist to pierce the two-year statute of limitations.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings