BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080342
v.	ORDER REGARDING STANDING AND STATUTE OF LIMITATIONS ISSUES
GOLETA UNION SCHOOL DISTRICT.	

Student's Guardians filed this action on July 27, 2017. They seek compensatory education and other relief based on the allegation that they discovered, in February 2017, that Goleta Union School District's failure to offer Student appropriate goals, services, and placement had deprived Student a free appropriate public education in the least restrictive environment since he enrolled in District in 2011. The complaint alleges no exceptions to the statute of limitations.

On November 17, 2017, the undersigned Administrative Law Judge convened a prehearing conference in this matter. At that time, the ALJ requested that the parties brief the following two issues: (1) The standing of Guardians to file and maintain this action; and (2) Whether, and to what extent, this action, and the relief sought by Guardians, is barred by the statute of limitations. On December 14, 2017, due to the wildfires that severely impacted Southern California, the parties jointly requested, and were granted, an extension of the briefing schedule.

The parties timely and simultaneously filed their briefs. Student contended that his grandparents were judicially appointed as his legal guardians on February 8, 2017, with educational decision-making authority. Student further contended that the two-year statute of limitations began to run from the date that Grandparents, as his legal guardians, knew or should have known of the actions giving rise to Student's claims. District contended that Guardians lack standing to maintain an action concerning any conduct by District prior to September 26, 2017, when Student's father[1] signed a document naming Grandparents as short-term Guardians of Student or, alternatively, February 8, 2017, if at all. District further asserts that neither the short-term guardianship nor the court ordered-guardianship explicitly granted Grandparents authority over the financial matters and legal claims of Student. District further asserted that Guardians may not seek relief for events prior to the date on which they obtained any educational authority or rights for Student. In the alternative, District contends that the applicable statute of limitations limits the issues in the Complaint to the two years prior to the filing of the Complaint.

[1] Student's mother is deceased.

APPLICABLE LAW AND ANALYSIS

Standing

Education Code section 56501, subdivision (a), provides that a variety of individuals, including a parent or guardian as defined in section 56028, may file a due process hearing complaint. Education Code section 56028, subdivision (a), defines parent as (1) a biological or adoptive parent of a child; (2) a foster parent, if the authority of the biological or adoptive parents to make educational decisions on the child's behalf has been specifically limited by court order in accordance with specified statutes; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child; (4) an individual acting in the place of a biological or adoptive parent, including a grandparent or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; and (5) a surrogate parent who has been appointed pursuant to specified statutes. Education Code section 56028, subdivision (b), provides that if a judicial decree or order identifies a specific person or persons in categories (1) to (4) to act as the parent of a child or to make educational decisions on behalf of a child, that that person shall be determined to be the child's parent for special education due process purposes.

On September 26, 2016, Father executed a document titled "Short-Term Guardian for Minor Child(ren) and Durable Healthcare Power of Attorney." The form named Grandparents and Student's uncle to serve as the short-term guardians over Student, and that the guardianship would expire on January 15, 2017. The form also stated that, to the maximum extent permissible under applicable law, the short-term guardians had the right "[t]o make all decisions, execute all documents, and grant permission regarding the children's education, including, but not limited to, school enrollment, school and extracurricular activities, school trips and school conferences." District contends that this form did not specifically grant Grandparents the right to initiate legal action on Student's behalf. However, this form authorized Grandparents to make educational decisions for the child, and, therefore, served to qualify Grandparents as "parents," pursuant to Education Code sections 56028, subdivision (a)(3) and 56501, and therefore able to initiate this due process hearing. Subsequently, on January 17, 2017, Grandfather executed a Verification of Residency of Student, which stated that it was sufficient to enroll Student in school, authorize school-related medical care, and could constitute a sufficient basis for determination of the minor's residency in the school district without the requirement of a guardianship or other custody order. The form also stated that it did not signify that the caregiver had legal custody of the minor. This form did not, by its terms, confer educational rights upon Grandparents.

Finally, on February 8, 2017, the Santa Barbara Superior Court appointed Grandparents as guardians of the person of Student. Guardians of the person of a minor have care, custody, and control of the minor, and are responsible for providing food, clothing, and education for the minor. (Judicial Council of Cal. Guardianship Pamphlet, Judicial Council Forms, form GC-205.) As such, Education Code sections 56501, subdivision (a), and 56028

recognize Grandparents as parents who have the authority to file the within special education complaint.

Based upon the documentation the parties presented to the ALJ in conjunction with their briefs, and the powers and responsibilities imposed upon Grandparents as Student's guardians, Grandparents had educational rights and standing to file this action from September 26, 2017 through January 15, 2017, during the tenure of the short-term guardianship, and from February 8, 2017 and onward, based upon their appointment as Student's legal guardians of his person. The parties shall formally present at hearing evidence as to Grandparents' status and standing to bring and maintain this action at hearing. If the evidence developed at hearing does not comport with the documentation the parties submitted with their briefs, then the ALJ will reconsider the issues as to Grandparents' standing to bring this action.

Statute of Limitations

Education Code section 56505, subdivision (l) provides that, with certain specific exceptions that are not pleaded here, a request for a special education 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." [2] In *M.M. v. Lafayette* (9th Cir. 2014) 763 F.3d 842 (*Lafayette*), the Ninth Circuit stated this statute precluded claims that "occurred" more than two years prior to the date of filing the request for due process. (*Id.* at 859.) However, Education Code section 56505, subdivision (l) contains similar discovery language to the IDEA at 20 U.S.C. § 1415 (f)(c)(3), which provides that "[a] parent or agency shall request an impartial due process hearing 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." In the case of *Avila v. Spokane School Dist. 81* (9th Cir. 2017) 852 F.3d 936 (*Avila*), the Ninth Circuit did not interpret the federal statute as an "occurrence" statute, which is triggered on the date the injury occurred, but rather stated the benchmark for the statute of limitations was when the parent knew or should have known about the alleged action that formed the basis of the complaint. (*Id.* at 942-943.)[3] The importance of the time at which the petitioning party discovered, or should have discovered, the alleged action that formed the basis of the complaint, was subsequently recognized in the recent case of *Student v. Compton Unified School Dist.* (C.D. Cal. 2017) (May 2, 2017, No. CV 16-04356-BRO)

[2] The quoted language also appears in Education Code section 56043, subdivision (r).

[3] The *Avila* court did not refer to its previous decision in *Lafayette* at any point, and, unlike *Lafayette*, *Avila* did not involve Education Code section section 56505, subdivision (l), or section 56043, subdivision (r). Further, title 20 United States Code section 1415 (f)(c)(3) specifies that a state may impose its own statute of limitations for requesting a due process hearing. Therefore, there is an issue as to which decision; *Lafayette* or *Avila*, is controlling with respect to the California statute of limitations. This issue need not be determined at this time.

2017 WL 2864945, in which the District Court remanded the matter to OAH to determine the date upon which Student discovered his claim for purposes of determining the statute of limitations.[4]

Based upon the foregoing, the parties should be prepared to present evidence at hearing as to when Guardians discovered, or should have discovered, the facts underlying the basis of their complaint.

Additionally, the *Avila* court, relying upon the case of *G.L. v. Ligonier Valley School Dist. Authority* (3rd Cir. 2015) 802 F.3d 601 (*Ligonier*) also held that the two-year period when the parent knew or should have known about the alleged action that formed the basis of the complaint governed only the time for filing the due process complaint. This two-year period did not apply to the remedies sought, and did not limit "redressability to the two-year period that precedes the date when 'the parent or agency knew or should have known about the alleged action that forms the basis of the complaint.' "(852 F. 3d at 943 [citing 20 U.S.C. §1415(f)(3)(C)].)

However, the inquiry as to the statute of limitations and its relationship to remedies has an added dimension in this case. *Avila*, *Ligonier*, and *Lafayette* only involved complaints filed by the actual parents of Student. They did not involve, as here, the filing of a complaint by guardians who hold Student's educational rights after such rights were initially held by Student's mother and father.

This distinction is significant, because it raises yet another issue that impacts the timeliness of Guardians' claims and the remedies they seek. If a party, who only obtained standing to sue after the biological or adoptive parents relinquished their standing, could file a complaint and obtain the remedy of compensatory education or other remedy that extended back to the period of time that the parent had the right to file a complaint for those remedies, *but parent had not so filed*, then the statute of limitations, and the right to obtain relief for a deprivation of a FAPE, could theoretically extend for years. Indeed, the *Ligonier* court considered and disapproved of the idea that parents could so sit on their rights, stating, ". . . claims that *are* known or reasonably should be known to parents must be brought within two years of that "knew or should have known" date, and parents may not, without satisfying one of the two statutory exceptions [which are not at issue in this matter] knowingly sit on their rights or attempt to sweep both timely and expired claims into a single "continuing violation" claim brought years later." (82 F.3d 601, 625 [citing *D.K. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d at 248.].) [Emphasis in original.] Common law or equitable exceptions to the statute of limitations, such as continuing violations, do not apply to IDEA cases. (*Ibid.)* Accordingly, courts have held that a subsequent education rights holder's claim may be time-barred if the claim could have been, but was not, timely asserted by a previous education rights holder. (*K.H. v. New York City Dept. of Ed., et al.* (E.D. N.Y., Aug. 6, 2014, No. 12–

[4] The parties settled this case before OAH issued any further decision on remand.

CV–1680 (ARR)(MDG).) 2014 WL 3866430); *Swope v. Central York School Dist.*(M.D. Pa. 2012, Jan. 3, 2012, No. 1:10-CV-2541) 2012 WL 10583.)

Therefore, in this matter, evidence of the dates upon which either Student's mother or father knew, or should have known, of the facts upon which Guardians' complaint is based, is also relevant as to the scope of the relief to which Guardians may be entitled. The parties should be prepared to present such evidence at hearing.

IT IS SO ORDERED.

DATE: February 1, 2018

DocuSigned by:
Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings