

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

INVICTUS LEADERSHIP ACADEMY.

CASE NO. 2025070683

DECISION

October 30, 2025

On July 18, 2025, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Invictus Leadership Academy and El Dorado County SELPA. On August 19, 2025, Student filed a second amended complaint. In the Order following the September 29, 2025, prehearing conference, El Dorado County SELPA was dismissed as a party. Administrative Law Judge Daniel Senter heard this matter by videoconference on October 7, and 8, 2025.

Parent appeared on behalf of Student. Attorneys Stacy Tolkin and Ashley De Vance represented Invictus. Dr. Latonya Derbigny, Invictus' executive director and founder, attended all hearing days on Invictus' behalf.

On October 8, 2025, the parties made oral closing arguments. The record was closed, and the matter was submitted on October 8, 2025.

ISSUES

1. Did Invictus deny Student a FAPE during the 2022-2023 school year by failing to:
 - a. offer Student speech and language services; and
 - b. perform in-person assessments of Student in the areas of speech, language, writing, and math?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case, Student had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was nine years old and in fourth grade at the time of hearing. Student attended Invictus, a charter school in Los Angeles, during the 2022-2023 school year. Student was eligible for special education under the categories of speech and language impairment and specific learning disability.

PROCEDURAL MATTERS

Generally, the statute of limitations for filing a due process request is two years. This means a party has two years from the date of an alleged violation to file for due process. In this matter, both of Student's issues alleged violations during the 2022-2023 school year, which for Student, ended on June 9, 2023. Student filed his original complaint on July 18, 2025, which is more than two years after the alleged violations. Therefore, Student needed to establish a legal basis to extend the two-year statute of limitations or both of his issues would be barred.

Invictus previously filed a Motion to Dismiss asserting Student's claims were time barred. The motion was denied because a mixed question of law and fact was presented requiring an evidentiary hearing. During the prehearing conference on September 29, 2025, the parties were informed that the first phase of hearing would be limited to evidence regarding the applicable statute of limitations. Thereafter, the ALJ would rule regarding the statute of limitations. If Student proved a legal basis to extend the two-year statute of limitations, the second phase would commence regarding Student's substantive issues. If the statute was not extended, Student's issues would be barred, and hearing would end. Either way, the legal analysis regarding the statute of limitations would be included in the final Decision.

Consistent with the prehearing conference Order, the hearing convened on October 7, 2025, with the parties' presentation of evidence as to whether the two-year statute of limitation should be extended. Student and Invictus presented evidence and argument. Thereafter, the ALJ took a brief recess to carefully considered the parties' evidence. The undersigned resumed hearing and orally ruled that the statute of limitations was not extended on October 8, 2025. The undersigned ALJ further ruled that because Student's issues against Invictus predated the two-year statute of limitations, Student was not entitled to phase two of the hearing. This Decision contains the analysis supporting the verbal ruling.

THE STATUTE OF LIMITATIONS WAS NOT EXTENDED TO INCLUDE CLAIMS DURING THE 2022-2023 SCHOOL YEAR

Student alleged FAPE violations during the 2022-2023 school year, which occurred more than two years before Student filed for due process. Student asserts three legal theories for extending the statute of limitations. First, Student contends

Invictus prevented him from filing for due process as the result of misrepresentations by Invictus that the problems had been solved. Second, Student asserts he was prevented from filing for due process due to Invictus' withholding of information that it was required to provide. Last, Student generally contends he could not have filed for due process earlier, because he did not have knowledge of his legal claims.

Invictus denies that it engaged in any misrepresentation or withheld any required information from Student. Invictus contends the two-year statute of limitations bars Student's claims, as Student had knowledge of the underlying facts of his legal claims prior to the statutory period.

As discussed more fully below, Student failed to establish that the statute of limitations should be extended under any of the three theories he asserted. Invictus argued the statutory period began on August 19, 2023, two years from Student's second amended complaint, rather than July 18, 2023, two years from filing. Student did not offer a position. Student's claims only include the 2022-2023 school year, which ended June 9, 2023, and did not include the extended school year. Accordingly, Student's claims both predate the beginning of the statutory period, whether that began July 18, or August 19, 2025. As it is irrelevant to this Decision, no finding is made regarding Invictus' argument.

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STUDENT FAILED TO PROVE HE WAS PREVENTED FROM FILING FOR DUE PROCESS DUE TO MISREPRESENTATION OR WITHHOLDING

Student contends Invictus misrepresented its 2023 online assessments as valid and withheld procedural safeguards and assessment documents. Therefore, Student asserts exceptions to the statute of limitations apply, and Student's claims are not barred.

Invictus asserts that it neither withheld information nor made any misrepresentation that prevented Parent from filing for due process. Accordingly, no exception applies, and Student's claims are barred by the statute of limitations.

The IDEA allows states to establish their own statute of limitations for special education cases. (20 U.S.C. § 1415(b)(6)(B) and (f)(3)(C).) In California, a 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." (Ed. Code, § 56505, subd. (l).) Federal law also includes a two-year statute of limitations to file a request for a due process hearing. (See 20 U.S.C. § 1415(f)(3)(C).)

The law contains two express exceptions to the two-year statute of limitations. Those exceptions apply in cases where the parent was prevented from filing a request for due process because of specific misrepresentations made by the local educational agency that it had resolved the problem forming the basis of the complaint, or because the local educational agency withheld information from the parent that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D)(i) & (ii); Ed. Code, § 56505, subd. (l)(1) and (2).) The Ninth Circuit reaffirmed this rule. (*Avila v. Spokane School Dist.* 81 (9th Cir. 2017) 852 F.3d 936 (*Avila*).

Invoking the exceptions to the statute of limitations requires a showing that the school district's misrepresentation or withholding caused the failure to file the due process complaint on time. (See *M.M. v. Lafayette School District* (9th Cir. 2014) 767 F.3d 842, 859.; *D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 246 (*D.K.*.) Thus, where the evidence showed that the parents were fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those options. (*D.K., supra*, at 246-247.)

NO EXCEPTION DUE TO ALLEGED MISREPRESENTATION THAT THE PROBLEM ABOUT WHICH STUDENT COMPLAINED WAS RESOLVED

Student asserted that Invictus misrepresented Student's assessment results as valid during the 2022-2023 school year, and that Parent did not learn until sometime later that they were invalid because they were conducted online. In her closing argument, Parent asserted that one of the tests administered to Student as part of the April 2023 IEP assessment was not approved for remote testing.

Whether or not conducting the assessments online was legally compliant was a substantive issue for phase two of this hearing. Parent's disagreement with how the assessments were conducted did not amount to misrepresentation in this case. Student failed to offer any persuasive evidence of misrepresentation by Invictus. For example, Student offered no evidence that Invictus said the assessments were conducted in-person, when Invictus knew they were conducted online. Nor did Student offer evidence that Invictus represented the assessments were valid, when Invictus knew that they were invalid because they were conducted online.

Moreover, Student did not offer any evidence that Invictus' alleged misrepresentation solved the problem forming the basis of the due process request or that it prevented Student from filing for due process. In fact, rather than presenting evidence of misrepresentation that Invictus had solved the problem, Student offered evidence that Invictus granted Student independent educational evaluations in September 2023.

For all these reasons, Parent failed to prove by preponderance of the evidence that Invictus made misrepresentations regarding the nature of the assessments or resolved a problem forming the basis of the complaint. Moreover, Student presented no evidence that any alleged misrepresentation prevented Student from filing a due process request.

NO EXCEPTION DUE TO ALLEGED WITHHOLDING

Student contends that Invictus withheld a complete list of independent educational evaluators and a hard copy of procedural safeguards, thus creating an exception to the statute of limitations. Invictus asserts that it did not withhold any information, as it provided Parent with multiple copies of procedural safeguards, in multiple forms, as well as a sufficient independent evaluator list.

Invictus conducted assessments in April 2023. Parent disagreed with some components and sought independent education evaluations. In September 2023, Invictus agreed, and provided Parent a copy of potential independent evaluators. Neither of the issues in this case expressly addressed independent evaluations. Thus, Student's argument that the statute of limitations should be extended is even more

attenuated here. However, even giving the most generous interpretation, Student failed to prove that Invictus withheld information that prevented Student from filing for due process.

Student asserted that Invictus' withheld a complete independent evaluator list because the list did not include the assessors' contact information. Parent asserted that the absence of this information delayed obtaining the results of the independent evaluations, and in turn, delayed her challenging the assessments. Invictus asserted that the independent evaluator list was complete, as it had "live links," which if clicked, led the user to the assessor's contact information. Invictus further suggested that if Parent had questions about the list, she could have contacted Invictus. Student failed to prove that an independent evaluator list, containing a specific format of contact information, was required to be provided and withheld. Even had Student proved such a list was withheld, Student failed to prove how that prevented Parent from timely filing for due process as to the specific issues pled in the complaint.

A copy of parental rights and procedural safeguards must be provided to parents of a child with a disability only one time a school year, except a copy must also be given:

- (1) on initial referral or parental request for evaluation;
- (2) upon receipt of the first state complaint;
- (3) upon receipt of the first due process hearing request;
- (4) when a decision is made for a removal that constitutes a change in placement, and
- (5) upon parent request. (20 U.S.C. § 1415(d); 34 C.F.R. § 300.504(a) (2007); Ed. Code, § 56301, subd. (d)(2).)

Student failed to establish that Invictus withheld procedural safeguards. At hearing, Parent conceded that she was familiar with the El Dorado County Office of Education procedural safeguards used by Invictus and that the safeguards had been sent to her by email. However, Parent maintained that Invictus failed to provide her with a hard copy of procedural safeguards, and such failure was sufficient to constitute an exception to the statute of limitations, given her requests for a hard copy.

The evidence established that Invictus provided Parent with procedural safeguards during the 2022-2023 school year. Dr. Derbigny, Invictus' founder and executive director, established that Invictus provided Parent with procedural safeguards as early as September 28, 2022, following Student's 30-day IEP meeting. Dr. Derbigny was the designated administrator at Invictus' IEP meetings. She was familiar with Student and Parent. She attended Student's IEP meetings during the 2022-2023 school year. Dr. Derbigny confirmed that Invictus used El Dorado County Office of Education's procedural safeguards, had a regular practice of providing safeguards and IEP documents to parents at IEP meetings, and explained the safeguards to parents at IEP meetings.

Documentary evidence was consistent with Dr. Derbigny's testimony. The November 4, 2022 IEP meeting notes indicated that Parent was sent a copy of the procedural safeguards by email. The March 6, 2023, assessment plan indicated that a notice of procedural safeguards was enclosed to Parent. The IEP meeting to review the assessments was held in two parts in May of 2023. The May 5, 2023 IEP meeting notes from the first meeting stated that the procedural safeguards were explained to Parent. The IEP dated May 30, 2023, established that Parent received a copy of the procedural safeguards.

Although Parent did not dispute that the safeguards were provided to her by email during the 2022-2023 school year, she asserted Invictus failed to provide a hard copy. The earliest evidence of Parent arguably requesting a hard copy of procedural safeguards was the May 5, 2023 IEP meeting notes, which indicated that Parent requested a hard copy of IEP documents, including assessment reports, to provide to an attorney. Because Parent attended the May 5, 2023 IEP meeting virtually, Invictus provided the IEP documents, including assessment reports, to Parent by email during the 2022-2023 school year. In addition, Invictus provided the procedural safeguards and assessment reports to Parent in hard copy, by sending them home in Student's backpack, during the 2022-2023 school year. Parent did not dispute that Invictus emailed her copies of the procedural safeguards or assessment reports during the 2022-2023 school year, but maintained she did not receive hard copies.

Whether or not the statute of limitations should be extended did not turn on whether a hard copy of the safeguards was provided. Student failed to establish that Invictus was required to provide a hard copy. Parent did not provide any legal authority that Invictus was required to provide Parent with a hard copy of the safeguards. Nor did Parent offer any evidence that Parent's specific needs necessitated a hard copy rather than a digital copy. Indeed, Parent's primary form of communication with Dr. Derbigny was email and Parent requested to appear virtually at Student's IEP meetings.

Moreover, even had Parent proved some deficiency regarding the digital safeguards, Parent failed to establish that would have prevented her from filing for due process. Parent filed for due process for another child during the 2022-2023 school year with the assistance of an attorney. Parent did not establish that she was unaware of Student's rights or her right to file for due process prior to the beginning of the

statutory period. Parent also did not establish how allegedly not receiving a hard copy of procedural rights, or any other IEP documents, prevented her from filing the complaint earlier.

For all these reasons, Parent failed to prove by preponderance of the evidence that the procedural safeguards were withheld or that Parent was prevented from filing for due process within the statutory period. Accordingly, no exception to the statute of limitations based on withholding applies.

STUDENT FAILED TO PROVE HE DID NOT HAVE KNOWLEDGE OF FACTS UNDERLYING HIS LEGAL CLAIMS PRIOR TO THE STATUTORY PERIOD

Student contends he could not have filed for due process earlier, because he did not have knowledge of his legal claims. Student generally asserts his speech claim is not time barred because his California Department of Education compliance complaint based on the inadequacy of Invictus' speech services was not timely enforced, and he did not know how to enforce it. Further, Parent generally contends she did not know prior to the beginning of the statutory period that the validity of Invictus' assessments was undermined by the fact that they were conducted online.

Invictus contends that Student's filing of a compliance complaint proves he had knowledge of the facts underlying the instant speech claim during the 2022-2023 school year. In addition, Invictus asserts that Parent's involvement in the IEP assessment process and refusal to sign Student's IEP demonstrates her knowledge of Student's assessment claims and disagreement with the assessments prior to the beginning of the statutory period.

The statute of limitations for the filing of due process requests is two years. (Ed. Code, § 56505, subd. (l); see 20 U.S.C. § 1415(f)(3)(C).) The Ninth Circuit has reaffirmed this rule, holding that in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Avila, supra*, at 939-945.). The Ninth Circuit found that the statute of limitations barred claims filed more than two years after the time parents, "knew or should have known about the action that forms the basis of the complaint." (*Id.* at pp. 937, 944.)

In *Avila*, which arose in Washington, the Ninth Circuit clarified the discovery rule applied, but did not analyze California's specific statute of limitations' language. In California, a 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." (Ed. Code, § 56505, subd. (l).)

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...." (*Miller ex rel. Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860; *M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012, Nos. CV 09- 4624, 10-04223 SI) 2012 WL 398773, * 18 (*M.M.*) *affd.* in part and *revd.* in part on other grounds by *M.M. v. Lafayette School Dist.* (9th Cir. 2014), *supra*, at 859) ["The 'facts underlying the basis' for the request were the educational activities of the District with respect to [student].".]) The two-year 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 [citing *Bell v. Board of Educ. of the Albuquerque Pub. Schs.*, (D.N.M. 2008) 2008 WL 4104070, * 17].)

Student did not establish that he lacked knowledge of his speech claim prior to the beginning of the statutory period. Parent filed a compliance complaint with the California Department of Education on May 9, 2023, regarding Invictus' speech services. Parent's filing of the compliance complaint established Parent knew or should have known the underlying facts of Student's instant speech claim during the 2022-2023 school year, as both complaints addressed the alleged inadequacy of Invictus' speech services during the same school year. Parent offered no evidence that, despite filing the compliance complaint, she was unaware of the facts of Student's speech claim against Invictus in the instant matter. Accordingly, Student failed to prove that he did not have knowledge during the 2022-2023 school year of the facts underlying his claim that Invictus failed to offer speech services.

Student also failed to prove he did not know the facts underlying his assessment claim prior to the beginning of the statutory period. Parent asserted that because she did not discover until later that the validity of Invictus' assessments was undermined by the fact they were conducted online, her claim was not time barred. Parent further suggested that because Student's May 5, 2023 IEP team meeting was brief, and because she did not receive hard copies of IEP documents, her discovery of the assessment claim was delayed. Parent's assertions were not persuasive.

The statute of limitations' "knowledge of facts" requirement does not require the party to know the specific legal claim. Accordingly, Parent did not need to know—as she alleges—that the assessments were potentially invalid because they were conducted online. The evidence established that parent was aware that Student's assessments were conducted online. Additionally, the evidence established that Parent had concerns that the assessments were conducted online by the end of the 2022-2023 school year, refused to sign the May 2023 IEP that was developed pursuant to the assessments, and

subsequently informed an attorney she wished to file for hearing and requested independent educational evaluations. Thus, Parent knew or should have known the facts underlying her assessment claim during the 2022-2023 school year.

Parent was involved in Student's assessment process, and therefore knew, or should have known, the facts underlying Student's assessment claim at the time of Invictus's assessment. Parent requested Student be assessed in January 2023 by Invictus. Parent was invited to, and attended, Student's May 5, 2023 IEP team meeting to review the assessments. At the IEP team meeting, Student's speech assessment—one of the assessments Parent asserts should have been conducted in-person—was reviewed with Parent.

The evidence established that the school psychologist attempted to present Student's psychoeducation report during the IEP team meeting. Parent did not want the report reviewed during the meeting. Accordingly, Parent was correct that the meeting was shorter than it otherwise would have been had the assessment report been reviewed with her at the meeting. However, what parent knew and when did not turn on the length of the meeting. The psychoeducation report included academic assessments to measure achievement in the areas of reading, math, written language, as well as other areas. The report expressly states, "It is important to note that testing was conducted virtually with parental consent during the COVID-19 adjustments period." Instead of having the report reviewed with her at the meeting, Parent requested a written copy.

As determined above, Invictus emailed Parent a copy of the report that notified Parent the assessment was conducted virtually. Even assuming Parent did not receive a hard-copy report, her refusal to have the report reviewed during the meeting and failure to read the emailed copy does not render her unaware of the facts underlying her claim.

Parent's primary method of communication with Invictus was email and her primary mode of participation at IEP meetings was virtual. Therefore, it was reasonable for Parent to have reviewed the IEP assessment information by the end of the 2022-2023 school year, and to know the facts regarding the assessments.

Indeed, though Parent suggested she never consented to the assessments being conducted online, she did not dispute that she was aware they were conducted online. Parent conceded she had an "issue" with Invictus' assessments at the end of the 2022-2023 school year. Parent generally confirmed that once the assessments had been completed, she was concerned that conducting the assessments online may have been improper.

Additionally, Parent's subsequent actions confirmed her prior concerns. Parent's July 18, 2023 email to an attorney indicated her disagreement by stating she wanted to file for hearing, even though she had not received hard copies of the IEP documents. Subsequently, on August 23, 2023, Parent requested speech and psychoeducation independent educational evaluations because she disagreed with the assessments. Parent's requesting independent evaluations established her disagreement, consistent with the law. (34 C.F.R. § 300.502(b)(1) [To obtain an independent educational evaluation, the parent must disagree with an evaluation obtained by the public agency and request an independent educational evaluation at public expense.])

Parent's subsequent expressions of disagreement with the assessments further established she had knowledge of the facts underlying her disagreement prior to this time. The evidence established that by the end of the 2022-2023 school year, Parent knew, or should have known, the facts underlying Student's assessment claim. Parent did not dispute at hearing that she was aware Student was assessed virtually. Moreover,

Parent testified that by the end of the 2022-2023 school year she had concerns with both the assessment and curriculum. Parent's own testimony established that she knew the underlying facts supporting her legal claim.

For all these reasons, Student did not meet his burden by preponderance of the evidence that he did not know, or should not have known, the facts underlying his speech or assessment claims prior to the beginning of the statutory period. Accordingly, Student's claims are time barred.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Here, Student failed to prove the two-year statute of limitations should be extended or that either of the two statutory exceptions applied. Because both Student's issues predated the statutory period in this case, Student's claims were both time barred.

ISSUE 1a:

Student did not establish an extension to the statute of limitations; thus, Student's claim that Invictus denied Student a FAPE during the 2022-2023 school year by failing to offer Student speech and language services was time barred.

Invictus prevailed on Issue 1(a).

ISSUE 1b

Student did not establish an extension to the statute of limitations; thus, Student's claim that Invictus denied Student a FAPE during the 2022-2023 school year by failing to perform in-person assessments of Student in the areas of speech, language, writing, and math was time barred.

Invictus prevailed on Issue 1(b).

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Daniel Senter

Administrative Law Judge

Office of Administrative Hearings