BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF

PARENT ON BEHALF OF STUDENT

v.

ARCADIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2018010695

ORDER DENYING MOTION TO DISMISS AND DENYING WITHOUT PREJUDICE MOTION TO BIFURCATE

On January 17, 2018, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Arcadia Unified School District.

On January 25, 2018, District filed a Motion to Dismiss on the basis that Student's complaint alleged issues beyond the two year statute of limitations and issues that are not yet ripe. District argues in the alternative to bifurcate the statute of limitations question.

On January 29, 2018, Student filed a response to District's motion, and District submitted a reply on January 30, 2018.

APPLICABLE LAW

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.

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662.) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148.)

DISCUSSION

STATUTE OF LIMITATIONS

In its motion to dismiss, District asserts that Student's issues A 1 a, A 1 b, A 1 c, A 1 d, and C 1 predate the two year statute of limitations therefore those issues should be dismissed.

Student alleges his complaint is within the two year statute of limitations because the assessments in question were discussed at multiple individualized education program team meetings but not finalized until the January 19, 2016 IEP team meeting.

The issue is whether, on the facts alleged, the two-year statute of limitations began to run on January 8, 2016, when the IEP team met to discuss the assessments, or on January 19, 2016, when the IEP team met again to continue the discussions and finalize the IEP.

This question was recently addressed by the Ninth Circuit Court of Appeal in *Avila v. Spokane Sch. Dist. 81* (9th Cir. 2017) 852 F.3d 936. In *Avila* a district court had dismissed as beyond the IDEA's two-year statute of limitation a parents' claim that a district had failed to determine their child's disability or assess him for autism in 2006 and 2007; parents had not filed for due process until April 2010. (*Id.* at pp. 937-938.) The Ninth Circuit reversed, holding in a case of first impression that the claim could only be dismissed if the action was 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.) It held that, in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule," and remanded so that the district court could determine when parents "knew or should have known" about the alleged action that formed the basis for their complaint. (*Id.* at pp. 939-945.)

Avila interpreted the IDEA's statutory provisions; it does not appear that the State of Washington had its own statute of limitations. California does, and its wording is slightly different from the federal statute. The portion of the IDEA upon which the *Avila* panel relied requires parents to file for due process "within 2 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).) The California statute uses the

phrase "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).)

However, that minor difference in wording does not require the conclusion that California uses an occurrence rule rather than a discovery rule. A strict occurrence rule – which is what District urges here – is inconsistent with the IDEA's broad remedial purpose. (*Avila, supra,* 852 F.3d at p. 943.) And the fundamental rule of construction for California's special education statutes is that they are to be interpreted as no less protective of the rights of disabled students than their federal counterparts. (Ed. Code, § 56000, subds. (d), (e).) In addition, the California language incorporates the same concept as the federal: the statute of limitations begins to run not when events occurred but when parents knew or should have known of the basis for their complaint. The California statute of limitations is therefore correctly interpreted as providing for the same time limitations as the federal statute interpreted in *Avila.*[1]

These conclusions require denial of District's motion to dismiss. Under *Avila, supra,* Parent must be given an opportunity to show that the date when she knew or should have known of the facts underlying the basis for her request was within two years of the date of the filing of her complaint. The allegation in Student's complaint adequately poses the possibility that his "knew or should have known" date may have been within two years of January 17, 2018, and that is an issue that can only be resolved based on evidence produced at hearing.

1Contra M.M. & E.M. v. Lafayette School District (N.D.Cal. February 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.

RIPENESS

District argues portions of Student's issues B and C should be dismissed as they are not ripe. Student's issue B alleges the IEPs for the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 school years do not state accurate present levels of performance, do not provide measureable annual goals, and deny Student a free appropriate public education. Student's issue C alleges District has failed to offer Student a FAPE for the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 school years. District argues the portions of both issues that cover the 2018-2019 school year are not ripe as the 2018-2019 school year has not yet begun, therefore Student's IEP for that year has not yet occurred. District also argues that no IEP offer has been made in the 2018-2019 school year, Student's needs may change before that, and because the school year has not begun no facts exist to support the claim that District denied Student a FAPE. Student asserts he is challenging the IEP developed on September 14, 2017, which covers part of the 2018-2019 school year. Student alleges that the September 14, 2017 IEP offered services, placement, and goals that would take place during the 2018-2019 school year, therefore, District has created an IEP and made an offer of FAPE for the 2018-2019 school year.

District made an offer of FAPE that covers the beginning of the 2018-2019 school year. To say that a student cannot challenge the appropriateness of an offer of FAPE until the school year begins would lead to illogical conclusions. Student could have framed the issue as the September 14, 2017 IEP denies Student a FAPE, which would mean Student is challenging District's offer of FAPE for the 2017-2018 school year as well as the first month of the 2018-2019 school year. Student chose to frame the issue to list the school years the IEPs cover instead of listing the IEPs themselves. Regardless of the way Student wrote the issue the time period is the same, Student is challenging

the IEP that covers part of the 2018-2019 school year. As such, District's motion to dismiss portions of issues B and C as not ripe is denied.

BIFURCATION

District's request for bifurcation is premature. The appropriate time to raise the request is at the prehearing conference. At that time, the Administrative Law Judge can consider the request and, if the request to bifurcate is granted, discuss with the parties any scheduling issues. Accordingly, District's bifurcation request is denied without prejudice, to permit the parties to discuss the bifurcation request with the Administrative Law Judge during the prehearing conference.

ORDER

1. District's Motion to Dismiss is denied.
2. District's motion to bifurcate is denied without prejudice.

DATE: January 31, 2018

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings