

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

NOTICE OF ISSUES DISCUSSED AND AGREED TO ON
OCTOBER 5, 2021; AND ORDER DISMISSING FACIALLY
INSUFFICIENTLY PLED MATTERS AND MATTERS
OUTSIDE OF OAH'S JURISDICTION

OCTOBER 8, 2021

On October 5, 2021, Administrative Law Judge Sabrina Kong, Office of Administrative Hearings, presided over the first day of hearing in this matter by videoconference. Administrative Law Judge is called ALJ. Office of Administrative Hearings is called OAH.

Attorney Andrea Marcus represented Student. Attorney Melissa Hatch represented Ventura Unified School District. Ventura Unified School District is called

Ventura. Upon extensive discussion and clarification of the issues stated in the September 24, 2021 Order Following Prehearing Conference, the parties agreed on October 5, 2021, at hearing that following issues are the only issues before OAH. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

ISSUES

1. Did Ventura deny Student a FAPE by failing to assess in all areas of disability, specifically:
 - a. autism and other health impairments in May 2012;
 - b. autism in March 2015;
 - c. autism in February 2018; and
 - d. autism, other health impairments, and pragmatic language from April 8, 2019 to August 10, 2021?
2. Did Ventura deny Student a FAPE by failing to offer appropriate goals in the following areas of need and in the IEPs from April 8, 2019 to August 10, 2021:
 - a. February 5, 2019 IEP: behavior, attention, work completion, adaptive skills, pragmatic language, social skills, atypicality, and fine motor;
 - b. January 15, 2020 IEP: behavior, attention, work completion, adaptive skills, pragmatic language, social skills, atypicality, and fine motor;
 - c. February 17, 2021 IEP: behavior, attention, work completion, adaptive skills, pragmatic language, social skills, atypicality, and fine motor?
3. Did Ventura deny Student a FAPE by failing to offer appropriate services in the following areas of need and in the IEPs from April 8, 2019 to August 10, 2021:
 - a. February 5, 2019 IEP: behavior, attention, work completion, adaptive skills, pragmatic language, social skills, atypicality, fine motor, and dyslexia;

- b. January 15, 2020 IEP: behavior, attention, work completion, adaptive skills, pragmatic language, social skills, atypicality, fine motor, and dyslexia;
 - c. February 17, 2021 IEP: behavior, attention, work completion, adaptive skills, pragmatic language, social skills, atypicality, fine motor, and dyslexia?
- 4. Did Ventura deny Student a FAPE by misrepresenting material facts to Parents regarding:
 - a. whether Student had autism and other health impairments as suspected disabilities in May 2012;
 - b. whether Student had autism as a suspected disability in March 2015, and February 2018;
 - c. whether Student had autism, other health impairment, and pragmatic language impairment as suspected disabilities from April 8, 2019 to August 10, 2021?
- 5. Did Ventura deny Student a FAPE by failing to implement:
 - a. the January 15, 2020 IEP, from April 13, 2020 through June 2021, during the COVID-19 school closure;
 - b. the February 14, 2017 IEP regarding an elective?
- 6. Did Ventura deny Student a FAPE by changing Student's placement outside the IEP process regarding an elective and a reduction in general education time in the February 14, 2017 IEP?

DISMISSAL OF INSUFFICIENTLY PLED CLAIMS OUTSIDE OF THE TWO-YEAR
STATUTE OF LIMITATIONS PERIOD AND CLAIMS OUTSIDE OF OAH'S
JURISDICTION ON OCTOBER 5, 2021

Student filed his due process hearing complaint on April 8, 2021. Student's amended complaint was deemed filed by OAH on August 10, 2021. Student alleged

claims outside of the two-year statute of limitations period in the amended complaint. Student also alleged claims and damages, including injunctive relief, under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, Section 1983 of Title 42 United States Code, and the Unruh Civil Rights Act in the amended complaint.

Student argued that all claims outside of the two-year statute of limitations period in the amended complaint should be heard by OAH. Ventura argued that all the allegations outside of the two-year statute of limitations period in the amended complaint should be dismissed because Student failed to allege that Ventura specifically misrepresented that it had solved the problem forming the basis of the amended complaint, or withheld information, as required under Education Code section 56506, subdivision (l).

The parties agreed that only Individuals with Disabilities Education Act, referred to as IDEA (20 U.S.C. § 1400 et. seq.) matters are before OAH at hearing.

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.

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) (emphasis added).) 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 law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860 (*Miller*).) Consistent with the IDEA, California has adopted its own discovery rule. 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 (*M.M.*), *affd.* in part & *revd.* in part (9th Cir. 2014) 767 F.3d 842, 858-859; see also, *M.D. v. Southington Bd. of Educ.* (2d Cir. 2003) 334 F.3d 217, 221.) 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. Bd. Of Educ. of the Albuquerque Pub. Schs.* (D.N.M.2008) 2008 WL 4104070, at *17.) Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. *Alexopoulos v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 555.)

Avila v. Spokane Sch. Dist. 81 (9th Cir. 2017) 852 F.3d 936 (*Avila*), 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.) *Avila* interpreted the IDEA’s statutory provisions

because the State of Washington does not have its own statute of limitations. California does, and its wording expands the IDEA wording to require either misrepresentation, or withholding of information by a school district to toll the two-year statute of limitations.

The purpose of the IDEA 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.)

Special education law does not provide for summary judgment procedure. However, OAH will dismiss allegations that are facially insufficient as pled and/or outside of its jurisdiction.

DISCUSSION

Student filed her initial complaint on April 8, 2021, and the statute of limitations bars claims that occurred before April 8, 2019, absent a statutory exception. Student’s issues of alleged FAPE denials by Ventura before the two-year statutory period of

April 8, 2019 to August 10, 2021 must be facially sufficient as pled in the amended complaint under Education Code section 56506, subdivision (l), before OAH may consider them.

Student's allegations of Ventura's FAPE denials before the two-year statutory period of April 8, 2019 to August 10, 2021, that are not stated in Issues one through six above are dismissed. Those allegations of Ventura's FAPE denials are dismissed because the amended complaint was facially insufficient as Student did not plead sufficient facts to support allegations of Ventura's specific misrepresentations, or the withholding of information, as required under Education Code section 56506, subdivision (l), permitting OAH to consider FAPE denials beyond the two-year period.

Student did not allege that Ventura made specific misrepresentations, or withheld information regarding the goals and services Ventura offered at the IEP team meetings predating April 8, 2019 that prevented Student from timely filing the due process complaint justifying a tolling the statute of limitations. Consistent with Education Code, section 56505, subdivision (l), the allegations on the face of the complaint showed that Student/Parent knew, or reasonably should have known, of the facts underlying the claims with respect to the goals and services offered at each of the IEP team meetings against Ventura within two years of the initial complaint. Further, Student did not allege that Ventura made specific misrepresentations that it had solved the other health impairments claims, or withheld information regarding other health impairment claims in 2015, or in 2018, as specifically required under Education Code, section 56505, subdivision (l), to toll the statute of limitations regarding other health impairments matters in 2015, or in 2018.

Therefore, allegations regarding other health impairment claims in 2015, and 2018, and Ventura's offer of goals and services predating April 8, 2019, are dismissed as

insufficiently pled on the face of the amended complaint under Education Code, section 56505, subdivision (l), justifying a tolling of the statute of limitations. Factual determinations of whether an exception to the statute of limitation applies regarding claims predating April 8, 2019, in Issues 1a, 1b, 1c, 4a, 4b, 5b, and 6, will be determined at hearing as they were sufficiently pled on the face of the amended complaint under Education Code, section 56505, subdivision (l), permitting OAH to consider them at hearing.

Further, Student's claims and damages, including injunctive relief, under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, Section 1983 of Title 42 United States Code, and the Unruh Civil Rights Act are dismissed because they are outside of OAH's jurisdiction. Accordingly, only Student's claims under the IDEA remain in Issues one to six above at hearing.

ORDER

1. Student's other health impairment claims in 2015, and 2018, and Ventura's offer of goals and services predating April 8, 2019, are dismissed as insufficiently pled on the face of the amended complaint under Education Code, section 56505, subdivision (l). The parties may present evidence at hearing regarding whether an exception to the statute of limitation applies to toll the two-year statute of limitations regarding claims predating April 8, 2019, in Issues 1a, 1b, 1c, 4a, 4b, 5b, and 6.

2. Student's 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) are dismissed. The parties may present evidence at hearing of Student's claims under the IDEA in Issues one to six above at hearing.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings