

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2023010055
OAH CASE NUMBER 2023010404

ORDER DETERMINING THE TOLLING AGREEMENT DID
NOT EXTEND THE STATUTE OF LIMITATIONS

AUGUST 29, 2023

THE PRIOR 2021/2022 CONSOLIDATED MATTER

On December 10, 2021, Saddleback Valley Unified School District filed a Request for Due Process Hearing, referred to as a complaint with the Office of Administrative Hearings, called OAH, naming Student, in OAH Case No. 2021120372. Saddleback Valley's complaint is referred to as Saddleback Valley's 2021 Complaint. Saddleback Valley's 2021 Complaint requested that OAH determine its November 2021 multidisciplinary assessment appropriate such that Parents were not entitled to independent educational evaluations.

On March 9, 2022, Student filed a Request for Due Process Hearing with OAH, naming Saddleback Valley, OAH Case No. 2022030418. Student's complaint is referred to as Student's 2022 Complaint. In Student's 2022 Complaint, Student alleged that Saddleback Valley denied Student a free appropriate public education, or FAPE, during the March 2020 COVID-19 related school closures, when Saddleback Valley failed to provide prior written notice and failed to implement Student's individualized education program, or IEP.

On March 22, 2022, OAH consolidated Saddleback Valley 2021 Complaint and Student's 2022 Complaint, called the 2021/2022 Consolidated Matter. On April 12, 2022, OAH granted a joint request for continuance of the consolidated hearing so the parties could participate in mediation. Student's counsel subsequently cancelled the mediation without explanation.

On July 5, 2022, OAH granted Student's motion to amend and reset the hearing for August 23 through 25, 2022. Student's 2022 Amended Complaint added claims that Saddleback Valley failed to make an appropriate offer in the October 2020 IEP and failed to file for due process when Parent failed to consent to the October 6, 2020 IEP, among others. OAH ordered that no further continuance or amendments would be permitted without a showing of good cause.

On August 11, 2022, OAH denied the parties' joint request for continuance because they failed to establish good cause, including failing to establish good cause for the delay in seeking a new mediation date or establishing why the consolidated matter should not proceed to hearing before the parties' other hearings in more recently filed matters. OAH confirmed that the hearing in the 2021/2022 Consolidated Matter would proceed as scheduled on August 23 through 25, 2023.

On August 15, 2022, the parties entered into a private tolling agreement. They agreed they would withdraw Saddleback Valley's 2021 Complaint and Student's 2022 Amended Complaint. They privately agreed they could refile the same claims within 30 days after an IEP team meeting was held to review Student's independent educational evaluations, and that Student's due process filing would be deemed filed as of March 9, 2022, for purpose of calculating the statute of limitations.

On August 15, 2022, Student filed a Notice of Withdrawal without prejudice of Student's 2022 Amended Complaint. The same day, Saddleback Valley filed a Request to Dismiss Saddleback Valley's 2021 Complaint without prejudice.

THE PENDING 2023 CONSOLIDATED MATTER

On January 4, 2023, Student filed with OAH a Request for Due Process Hearing, called Student's 2023 Case, naming Saddleback Valley, in OAH Case No. 2023010055. In the complaint in Student's 2023 Case, the first five claims are identical to the first five claims made in Student's 2022 Amended Complaint. Specifically, Student alleges Saddleback Valley denied Student a FAPE during the March 2020 COVID-19 related school closures, when Saddleback Valley failed to provide prior written notice, failed to implement Student's IEP, failed to make an appropriate offer at the October 2020 IEP, and failed to file for due process when Parent failed to consent to the October 6, 2020 IEP.

On January 17, 2023, Saddleback Valley filed a Request for Due Process Hearing, called Saddleback's 2023 Case, naming Student, in OAH Case No. 2023010404. As in the Saddleback Valley 2021 Complaint, the complaint in Saddleback Valley's 2023 Case requests that OAH determine its November 2021 multidisciplinary assessment appropriate such that Parents were not entitled to independent educational evaluations.

On January 25, 2023, OAH consolidated Student's 2023 Case and Saddleback Valley's 2023 Case, called the 2023 Consolidated Matter.

THE AUGUST 11, 2023 PHC

On August 11, 2023, OAH held a prehearing conference or PHC. Some of Student's issues appeared on their face to be barred by the statute of limitations. The ALJ announced a tentative ruling to dismiss the claims enumerated as Student's Issues No. 1 through 5 because they are barred by the statute of limitations. Student's counsel requested the opportunity to brief the issue. The effect of the tolling agreement on both parties' claims was also raised during the PHC. During the PHC, Student withdrew Issue 3 in Student's 2023 Case.

The ALJ ordered the parties to file and serve briefs addressing the following matters: First, Student was ordered to explain why the two-year statute of limitations did not bar Student's Issues 1, 2, 4 and 5. Second, Saddleback Valley was ordered to brief the effect, if any, on Saddleback Valley claim, called Issue 14, including the timeliness of the filing of Saddleback Valley's 2023 Case in the event the ALJ determines that the parties cannot extend the statute of limitations by a tolling agreement. The subsequent PHC Order stated that upon receipt of the parties' briefs, the ALJ may issue further orders prior to the first day of hearing without further argument by the parties.

On August 16, 2023, the parties filed briefs discussing the tolling agreement, and its effect on their respective claims in the 2023 Consolidated Matter. At the August 28, 2023 PHC, the parties presented additional argument.

THE CLAIMS IN STUDENT'S 2023 CASE

APPLICABLE LAW

There is no summary judgment procedure in special education cases. OAH will, however, dismiss allegations and cases not within its jurisdiction. 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 which sets forth an alleged 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 complaint, or in such time as State law allows. (20 U.S.C. §§ 1415(b)(6) & (f)(3)(C); 34 C.F.R. § 300.507(a); Ed. Code, §§ 56501, subd. (a), 56505, subd. (j).) OAH's jurisdiction is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Neither the Individuals with Disabilities Education Act, referred to as the IDEA, nor California law provide authority for OAH to enforce private tolling agreements.

Under the IDEA, a parent or agency is required to file a request for 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 or if the State has an explicit time limitation for requesting such a hearing under this part [20 USCS §§ 1411 et seq.], in such time as the State law allows. (20 U.S.C. §§ 1415 (b)(6)(B) & (f)(3)(C); 34 C.F.R. § 300.507(a)(2).)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. §§ 1415(b)(6) & (f)(3)(C); 34 C.F.R. § 300.507(a)(2).) In California, a request for due process hearing is required to 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. (I).) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

Under both federal and California law, the two-year limitations period does not apply to a parent if the parent was prevented from requesting the due process hearing because of either of the following:

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or

(2) The withholding of certain information by the local educational agency from the parent that was required to be provided to the parent.

(20 U.S.C. § 1415(f)(3)(D); Ed. Code § 56505, subd. (I); *M.M. v. Lafayette School Dist., et al* (9th Cir. 2014) 767 F.3d 842, 859.)

Thus, invoking the exceptions to the statute of limitations requires a showing that the school district's misrepresentation or withholding of information caused the failure to file the due process complaint on time. For example, where the evidence shows 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. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d 233, 246-247 (*Abington*).)

In *Abington*, as an alternative to these two statutory exceptions, plaintiff asserted that the common law doctrines of equitable tolling should apply. The *Abington* court disagreed. It held that although the statute was silent on the matter, legislative intent and the "doctrine of *exclusio unius*" precluded application of common law equitable

tolling principles to save claims otherwise foreclosed by the IDEA statute of limitations. (*Abington, supra*, 696 F.3d at p. 248.) The court's reasoning is instructive:

First, the legislative and regulatory history of the 2004 amendments to the IDEA makes clear that only the enumerated statutory exceptions may exempt a plaintiff from having his claims time-barred by the statute of limitations. (See S.Rep. No. 108–185, at 40 (2003) [“The committee does not intend that common law determinations of statutes of limitations override this specific directive. . .”]; (71 Fed. Reg. 46,540, 46,697 (Aug. 14, 2006) [“It is not necessary to clarify that common-law directives regarding statutes of limitations should not override the Act or State regulatory timelines, as the commenters recommended, because the Act and these regulations prescribe specific limitation periods which supersede common law directives in this regard.”]) (696 F.3d at p. 248.)

Second, “[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of a contrary legislative intent” citing, *Andrus v. Glover Construction Company* (1980) 446 U.S. 608, 616–617, 100 S.Ct. 1905, 64 L.Ed.2d 548 (*Andrus*). (696 F.3d at p. 248.)

Abington held that the IDEA plaintiffs could not escape the statute of limitations by invoking equitable tolling doctrines recognized under state law. They were limited to application of one of the two statutory exceptions. (*Abington, supra*, 696 F.3d at p. 248.) *Abington's* holding is consistent with other decisions which have considered tolling doctrines in IDEA cases. (See *Evan H. v. Unionville-Chadds Ford School District* (E.D.Pa., November 4, 2008, No. 07-4990) 2008 WL 4791634, at *5 [concluding that the IDEA statute of limitations “is not subject to the continuing violation or equitable tolling doctrines, but that instead, the limitations period can be extended only for one of the enumerated statutory exceptions.”]; *J.L. ex rel. J.L. v. Ambridge Area School District* (W.D.Pa. 2008) 622 F.Supp.2d 257, 269 (*Ambridge*) [“The Court agrees . . . that the

Regulations firmly establish that the two exceptions specifically set forth in the statute are the exclusive exceptions to the statute of limitations. . .”].)

Education Code section 56505 subdivision (f) was enacted before the 2004 amendments to the IDEA. It originally provided for a three-year statute of limitations. However, after the 2004 federal amendment, in 2005 the California legislature amended Education Code section 56505 subdivision (f) to be consistent with Title 20 United States Code section 1415(f)(3)(D). Specifically, the legislature took affirmative step to amend the statute of limitations in special education cases to reduce the formerly three-year statute of limitations of California Education Code section 56505, subdivision (f), to reflect the two-year statutory period in the 2004 IDEA amendments.

Statutes of limitations serve the policies of repose, elimination of stale claims and certainty about a plaintiffs’ opportunity for recovery and a defendant’s potential liabilities. (*Avila v. Spokane School District #81* (E.D.Wash., January 29, 2018, No. CV-10-00408-EFS) 2018 WL 616140, *7, citing *Young v. United States* (2002) 535 U.S. 43, 49, reversed and remanded on other grounds in *Avila v. Spokane School District #81* (9th Cir 2017) 852 F.3d 936.)

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

THE PARTIES' PRIVATE TOLLING AGREEMENT DID NOT TOLL THE STATUTE OF LIMITATIONS

In the present case, Student unpersuasively argues that a private tolling agreement can extend that statute of limitations for a specified period. In essence, Student requests OAH allow an equitable exception to the statute of limitations based on the parties' private tolling agreement. Student offers no logical argument why private tolling agreements should be permitted when it is clear the law does not permit equitable tolling of the statute of limitations in special education cases.

In cases involving special education matters, Student relies exclusively on other OAH decisions, none of which have precedential effect. (Cal. Code Regs., tit. 5, § 3085.) Notably, Student completely ignores OAH decisions which declined to allow the parties' private tolling agreements to extend the statute of limitations in special education cases. (See, e.g., *Parents v. Long Beach Unified School District* (February 22, 2019) OAH Case No. 2018050736; *Parents v Palos Verdes Peninsula Unified School Dist.* (March 11, 2021) OAH Case No. 2020070598; *Parents v. Irvine Unified School District, et al.* (December 30, 2021) OAH Case Nos. 2021080012/2021080052.) The only other two cases Student cites pertain to non-special education civil matters, neither of which involve the IDEA or Education Code section 56505, subdivision (j) at issue here. Both cases were civil actions brought under California civil law and are not analogous to special education administrative claims.

Significantly, Student does not mention, let alone treat with the relevant legislative and regulatory history which makes clear that the intent was to preclude additional exceptions to the statute of limitations. Nor does Student attempt to distinguish *Abington* or the other cases which have held that the enumerated exceptions to the two-year statute of limitations are the exclusive exceptions. Moreover,

Student fails to explain how permitting a private tolling agreement as a third exception does not contravene established principles of statutory construction as discussed in *Andrus* and *Abington*.

When interpreting a statute, guidance is provided by fundamental canons of statutory construction and begin with the statutory text. (*Avila v. Spokane, supra*, 852 F.3d at p. 941.) The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole. (*Ibid.*)

Here, there is no uncertainty in the language there are only two narrow exceptions to the two-year statute of limitations for filing due process hearing requests. In fact, both the IDEA and California law provide for only two explicit and narrow exceptions to the timeline for requesting a due process hearing. (20 U.S.C. § 1415(f)(3)(D); Ed. Code, § 56505, subd. (h).) Significantly, these exceptions do not include a private tolling agreement. If the California legislature intended to create additional exceptions to the two-year statute of limitations, they could have done so when they amended the Education Code in 2005 to align with the IDEA's 2004 amendments. The legislature could have included additional exceptions like tolling the statute of limitations through private agreement, but because it did not, the plain language of the statute governs, and the legislature is presumed to have meant exactly what it said. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1081 [In construing a statute, if the language contains no ambiguity, we presume the Legislature meant what it said, and the plain meaning of the statute governs.]; see also, *Andrus, supra*, 446 U.S. at p. 616.) Student points to no legislative intent endorsing additional exceptions to the statute of limitations in special education cases.

In construing a statute, a court may also consider the impact of an interpretation on public policy, for “[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. (*In re Dannenberg, supra*, 34 Cal. 4th at p. 1082, citing *Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) Here, there is no uncertainty in the language that there are only two narrow exceptions to the two-year statute of limitations in special education cases. Nonetheless, if Student’s position were adopted, the negative impact on public policy is obvious and in direct conflict with other provisions of special education law.

Unlike civil cases, the IDEA mandates that the hearing officer issue a decision in a student-filed case within 75 days from the filing of the due process complaint, unless the hearing officer grants a continuance based on a showing of good cause. (34 C.F.R. § 300.515 subd. (a) and (c); Ed. Code, § 56505, subd. (f)(3).) In district-filed cases, the period is even shorter, requiring OAH to issue a decision within 45 days of the filing of the complaint. (*Ibid.*) The clear intent of the IDEA and California law, and their directives to hearing officers, is to ensure that disputes involving children with special needs are adjudicated quickly. It is in that context both Congress and the California legislature have limited the statute of limitations in special education cases to two years and provided only two very specific and narrow exceptions.

The private tolling agreement the parties seek to have OAH enforce here, is not only at odds with the mandate of the IDEA and California law to resolve special education disputes quickly, but an impermissible attempt to obtain a continuance of the hearing without establishing good cause. The August 15, 2022 tolling agreement and subsequent dismissal and refiling of the parties’ claims had the effect of both circumventing OAH’s August 11, 2022 Order denying the parties’ continuance request after failing to establish good cause, and obtaining a continuance of the hearing without

first establishing good cause. Student's position, if taken to its logical extreme, would allow parties to privately extend the filing deadlines in special education cases for years. This is contrary to what the law intended.

As a matter of law, the private tolling agreement did not extend the statute of limitations on any of Student's claims. To allow the parties to extend the special education two-year statute of limitations through private agreement is contrary to special education law and is not supported by any persuasive legal authority. Student cites no convincing authority which permits the parties to confer jurisdiction on OAH by private agreement. Accordingly, Student shall not be permitted proceed on such theory or doctrine to toll the two-year statute of limitations.

Significantly, Student does not plead or argue that either of the enumerated statutory exceptions to the statute of limitations applies to any of Student's claims as further discussed in the August 28, 2023 Order Following Prehearing Conference. As such, Student's claims are limited to the two-year period proscribed by law.

Accordingly, to the extent Student's 2023 Case was filed more than two years from the date Parents knew or had reason to know of the facts underlying the basis of the claims in Issues 1, 2, 4 and 5, they are time barred and outside OAH's jurisdiction. (See 20 U.S.C. §§ 1415(b)(6) & (f)(3)(D); Ed. Code, § 56505, subd. (j).) However, when Parents knew or should have known of the facts underlying the basis of their complaint for purposes of triggering the statute of limitations is a highly factual determination. (E.g., *Ambridge, supra*, 622 F.Supp.2d at p. 266, citing, 71 Fed. Reg. § 46540-01 at 46706 (August 14, 2006)[Hearing officers are required to make determinations, on a case-by-case basis, of factors affecting whether the parent "knew or should have known" about the action that is the basis of the complaint.]) This factual determination requires an evidentiary hearing. As such, OAH shall determine at hearing if Student's claims in

Issues 1, 2, 4 and 5 were filed within two years from the date Parents knew or had reason to know of the facts underlying the basis of these claims.

THE CLAIM IN SADDLEBACK VALLEY'S 2023 CASE

APPLICABLE LAW

When a parent requests an independent evaluation at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the independent evaluation at public expense, unless the school district demonstrates at a due process hearing that the evaluation obtained by the parent did not meet its criteria. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

Whether the length of time that has passed before a district initiates a due process hearing or provides the independent evaluation at public expense constitutes "unnecessary delay" is a question of fact, based upon the circumstances of the particular case. (*J.P. v. Ripon Unified School Dist.* (E.D. Cal., Apr. 15, 2009, No. 207CV02084MCEDAD) 2009 WL 1034993.) The determination of "unnecessary delay" is a fact-specific inquiry. The facts of each case are therefore critical. (*Horne v. Potomac Preparatory P.C.S.* (D.D.C. 2016) 209 F.Supp.3d 146, 153-155.).)

THE TIMELINESS OF SADDLEBACK VALLEY'S 2023 CASE WILL BE DETERMINED AT HEARING

Saddleback Valley argues the statute of limitations does not impact its 2023 Case. It asserts it timely filed to defend its November 2021 assessments in January 2023, less than two years after it conducted its 2021 assessments. It also argues that whether the Saddleback Valley 2023 Case was filed without unnecessary delay is a factual inquiry. It

asserts it did not unnecessarily delay in filing because the parties were engaged in negotiations, and the purpose of the parties' private tolling agreement was to consider Student's privately obtained independent educational evaluations to determine if another resolution could be reached. It also asserts that regardless of whether the tolling agreement is determined enforceable, it reasonably relied on the tolling agreement in withdrawing Saddleback Valley's 2021 Complaint to consider Student's independent educational evaluations at an IEP team meeting.

Here, Saddleback Valley filed its 2023 Case within the applicable two-year statute of limitations set forth in Education Code section 56505, subdivision (f) and Title 20 United States Code sections 1415(b)(6) & (f)(3)(C).) However, whether it filed the Saddleback Valley 2023 Case "without unnecessary delay" is a factual matter requiring an evidentiary hearing. Accordingly, the timeliness of Saddleback Valley's 2023 Case will be determined at hearing.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Laurie Gorsline".

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings