BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

NEWPORT-MESA UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023020780

OAH CASE NUMBER 2023020844

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

SEPTEMBER 12, 2023

Prehearing conference, or PHC, was held on September 8, 2023. At PHC, counsel for both parties addressed a tolling agreement between them and argued that the Office of Administrative Hearings, or OAH, should uphold it. Specifically, the parties entered into a tolling agreement on January 26, 2023, whereby both parties agreed to dismiss their respective complaints in a prior consolidated case, without prejudice, to explore settlement. The tolling agreement permitted either party to re-file its respective complaint within 30 days of execution of the tolling agreement, essentially preserving the original claim period of the prior consolidated matter. The parties each re-filed their

respective cases, resulting in the present consolidated matter. At PHC, the undesigned took the issue of whether to uphold the parties' tolling agreement under submission, and issues this Order thereon. Based on the following, the parties' tolling agreement cannot be upheld and does not extend the statute of limitations in Student's complaint back to November 30, 2020.

THE PRIOR CONSOLIDATED MATTER

Student's and Newport-Mesa's respective complaints consistently describe the details of the prior consolidated matter as follows:

On November 30, 2020, Newport-Mesa completed a triennial multidisciplinary assessment of Student, resulting in a psychoeducational multidisciplinary assessment report. On June 14, 2022, counsel for Parents communicated to Newport-Mesa that Parents disagreed with the assessment and requested independent educational evaluations in all areas assessed by Newport-Mesa. On July 6, 2022, Newport-Mesa issued a prior written notice to Parents, declining to fund an independent educational evaluation. On July 18, 2022, Newport-Mesa filed for due process with OAH to defend its assessments in OAH Case No. 2022070452. Student filed for due process on November 29, 2022, alleging denials of a free, appropriate, public education, or FAPE, in OAH Case No. 2022120029. OAH consolidated the parties' cases on December 6, 2022, and granted Student's motion to amend Student's complaint on January 5, 2023.

The parties entered into a tolling agreement on January 26, 2023, whereby both parties agreed to dismiss their respective complaints without prejudice to explore settlement. The tolling agreement permitted either party to re-file its respective complaint within 30 days of execution of the tolling agreement.

THE PENDING CONSOLIDATED MATTER

On February 23, 2023, Student re-filed Student's complaint, OAH Case No. 2023020780, alleging denials of FAPE dating back to November 30, 2020. Student's new complaint consisted of issues identical to the issues in its prior complaint, except that the new complaint also included a claim regarding a December 13, 2022, individualized education program, or IEP. The new issue was within the current statutory period is unaffected by the validity of the parties' tolling agreement.

On February 24, 2023, Newport-Mesa re-filed its complaint with OAH to defend its November 30, 2020, triennial multidisciplinary assessment in OAH Case No. 2023020844. While Student's complaint characterized the tolling agreement as one that would allow "Student" to re-file (Student's Due Process Complaint, Feb. 23, 2003, p. 14 line 3), Student made no objection to the applicability of the tolling agreement to Newport-Mesa's re-filing.

STUDENT'S PRESENT CASE

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. (l).) 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. (l); 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. (l).) 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. (l); *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 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 make 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 (l) 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 (l) 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 (l), 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 law does not permit equitable tolling of the statute of limitations in special education cases. Relevant legislative and regulatory history make clear that the intent was to preclude additional exceptions to the statute of limitations; per *Abington*, the enumerated exceptions to the two-year statute of limitations are the exclusive exceptions.

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. (l).) 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.)

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 *Meija 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. Tolling agreements in the special education context is in contravention of public policy and 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 45 days from the filing of the due process complaint, or the

end of the resolution period, 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 tolling agreement is also an impermissible attempt to obtain a continuance outside of the law and motion process. If taken to logical extreme, tolling agreements would allow parties to privately extend the filing deadlines in special education cases for years, 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. Accordingly, the parties shall not be permitted proceed on such theory or doctrine to toll the two-year statute of limitations.

Significantly, Student's complaint does not plead that either of the enumerated statutory exceptions to the statute of limitations applies to any of Student's claims. As such, Student's claims are limited to the two-year period proscribed by law.

THE CLAIM IN NEWPORT-MESA'S CASE

In California, a request for due process hearing must 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).) 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.)

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. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

Newport-Mesa completed its triennial assessment of Student on November 30, 2020. Parents requested an independent evaluation on June 14, 2022. It was on June 14, 2022, then, and not November 30, 2020, that Newport-Mesa became aware of its obligation to agree to fund an independent educational evaluation or file a due process complaint to defend its assessment. This date is within the present statutory period, independent of the parties' tolling agreement. As such, Newport-Mesa's issue regarding its November 30, 2020, triennial assessment shall proceed to hearing.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings