BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA PAULA UNIFIED SCHOOL DISTRICT AND VENTURA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017041029 ORDER DENYING IN PART AND GRANTING IN PART VENTURA'S MOTION TO DISMISS

On April 18, 2017, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming the Santa Paula Unified School District and the Ventura Unified School District.

On May 2, 2017, Ventura filed a Motion to Dismiss itself from the proceeding, alleging that the statute of limitations bars any claim for relief against it, and that OAH lacks jurisdiction over several of Student's statutory claims. On May 5, 2017, Student filed an Opposition to the Motion to Dismiss. OAH received no response to the Motion to Dismiss from Santa Paula, which is not affected by the outcome of the motion.

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.

OAH does not have jurisdiction to entertain claims based on 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 Disabilites Act (42 U.S.C. §§ 1201 et seq.; or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Statute of Limitations

In its motion to dismiss, Ventura asserts that Student has not attended its schools since November 2014, when Student moved into the Santa Paula district, where he has been receiving special education and services since that date. As the complaint was filed in April 2017, Ventura argues that any relief against it is barred by the two-year statute of limitations.

Student's complaint alleges that November 10, 2014 was the last day that he was in Ventura district, and that he then moved to Santa Paula. He also alleges that in October and November 2014 Ventura conducted a psychoeducational assessment of him that failed to assess him for autism, ADHD, and other health impairment, and that Ventura told Parent he did not need such assessment. It further alleges that Parent now disagrees with Ventura's 2014 psychoeducational assessment because she has now had Student diagnosed by two different doctors and learned that he is autistic. The complaint continues: "[Parent] is saddened and disappointed that she waited so long to seek independent evaluation for her son, and instead, relied upon the District(s) assessment and assertions that [Student] did not need to be assessed for autism, and merely suffered from emotional disturbance."

The complaint thus adequately asserts that although Mother knew in November 2014 that Ventura had not assessed Student for autism, she did not know of the significance of that failure until more recently when she learned that he is autistic. The issue is whether, on the facts alleged, the two-year statute of limitations began to run in November 2014 when Mother learned Ventura did not assess for autism, or not until she learned additional information later.

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 Ventura 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.*

These conclusions require denial of Ventura's Motion to Dismiss insofar as it is based upon the statute of limitations. 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 that Parent waited "so long to seek independent evaluation for her son, and instead, relied upon the District(s) assessment and assertions that [Student] did not need to be assessed for autism, . . ." adequately poses the possibility that her "knew or should have known" date may have been within two years of April 18, 2017, and that is an issue that can only be resolved based on evidence produced at hearing.

Claims based on the Rehabilitation Act, the Americans with Disabilities Act, and the Civil Rights Acts

Student's complaint also asserts claims under the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, section 1983 of the Civil Rights Act, and the Unruh Civil Rights Act. OAH has no jurisdiction over these claims and they must be dismissed.

ORDER

1. Ventura's Motion to Dismiss all of Student's claims against it based on the statute of limitations is denied.

2. Ventura's Motion to Dismiss Student's claims against it under the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, section 1983 of the Civil Rights Act, and the Unruh Civil Rights Act is granted.

3. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: May 19, 2017

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings