BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. COLTON JOINT UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017060750
COLTON JOINT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017081086 CORRECTED ORDER PARTIALLY GRANTING DISTRICT'S MOTION TO DISMISS AND DENYING WITHOUT PREJUDICE MOTION TO BIFURCATE[1]

On June 15, 2017, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Colton Unified School District. On July 18, 2017, OAH granted Student's request to amend his case. On August 24, 2017, District filed a complaint with OAH naming Student. On August 28, 2017, OAH granted District's request to consolidate the two cases.

On August 30, 2017, District filed a Motion to Dismiss alleging that Student's complaint asserted claims barred by the statute of limitations and outside of OAH's jurisdiction. District argued in the alternative to bifurcate the statute of limitations question.

On September 5, 2017, Parties submitted a joint request to extend Student's time to file a response to District's motion. On September 11, 2017, Student filed a response to District's motion.

[1] This Order corrects typographical errors in the original order issued September 22, 2017. That Order incorrectly listed the date Student filed his complaint and misidentified District.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) 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 FAPE 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 Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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.) or the Americans with Disability Act (Title 42 U.S.C. §§ 12101, et seq.).

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.

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA of states, in part:

> (b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in

which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue….

DISCUSSION

Motion to Dismiss – Jurisdiction

Student alleged nine issues in his complaint. District moved to have issue nine dismissed as outside OAH's jurisdiction. Student's issue nine alleges District violated Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Education Code, section 58900, by failing to respond to students' bulling. Student's issue nine is outside OAH's jurisdiction.

Motion to Dismiss – Statute of Limitations

Issues one, two, and eight A of Student's complaint allege that District denied Student a FAPE for violations that occurred more than two years prior to the date Student filed his complaint. Issue one alleges violations that occurred during the 2013-2014 school year, issue two alleges violations that occurred during the 2014-2015 school year, and issue eight A alleges a violation on February 9, 2015. Although these alleged violations occurred more than two years before Student filed his complaint on June 15, 2017, Student argues an exception to the statute of limitations alleging District withheld information from Parent. Specifically, Student alleges there is no evidence that District provided Parent with the procedural safeguards and that District neglected to assess Student in all areas of disability therefore failed to provide accurate information regarding Student's disability. District acknowledges Student is asserting an exception, but argues the procedural safeguards were provided and that Parent should have been aware of Student's disability because he received treatment from Kaiser. This presents a factual dispute that requires an evidentiary hearing.

Student also argues Parent did not know, or should have known, about the facts and circumstances underlying the issues until August 2015, at the earliest because District did not assess in all areas of disability. This also creates a factual dispute as to when the statute of limitations began to run.

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.*[2]

These conclusions require denial of District's Motion to Dismiss as to 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 because of District's actions Parent was not aware of Student's issues, adequately poses the possibility that his "knew or should have known" date may have been within two years of June 15, 2017, and that is an issue that can only be resolved based on evidence produced at hearing.

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

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[2] Contra *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.

permit the parties to discuss the bifurcation request with the Administrative Law Judge during the prehearing conference.

ORDER

1. District's Motion to Dismiss issues outside OAH's jurisdiction is granted. Student's Issue nine is dismissed.

2. District's Motion to Dismiss Student's issues one, two, and eight A is denied.

3. District's motion to bifurcate is denied without prejudice.

IT IS SO ORDERED.

DATE: September 29, 2017

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings