17-2406

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

BOARD OF EDUCATION OF THE NORTH ROCKLAND CENTRAL SCHOOL DISTRICT,

Plaintiff-Counter-Defendant-Appellee,

—against—

C. M., On behalf of her child, P.G., Individually, P. G.,

Defendants-Counter-Claimants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR *AMICUS CURIAE*
COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.
IN SUPPORT OF DEFENDANTS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1 the following disclosure is made on behalf of these entities:

Council of Parent Attorneys and Advocates

1. No amicus is a publicly held corporation or other publicly held entity;
2. No amicus has parent corporations; and
3. No amicus has 10% or more of stock owned by a corporation.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization of parents of children with disabilities, their attorneys and advocates in forty- eight states and the District of Columbia who are routinely involved in special education advocacy and due process hearings throughout the country. COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties. COPAA does not undertake individual representation but provides resources, training, and information for parents, advocates and attorneys to assist in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act 20 U.S.C. § 1400, *et seq*. (IDEA). COPAA also supports individuals with disabilities, their parents and advocates, in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983) (Section 1983), Section 504 of the

[1] Pursuant to Fed. R. App. P. 29, *Amicus* certifies that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than *Amicus* and its members and counsel contributed money intended to fund the brief's preparation or submission.

Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq*. (ADA).

Because of COPAA's concern for the rights of students with disabilities and their parents and the experience of its members in advocating for their rights, COPAA offers a unique perspective on the statute of limitations for Section 504 claims. COPAA has extensive experience addressing the statute of limitations requirement and has long argued that consistent with the plain language of the statute, the IDEA sets out a "discovery rule" approach, wherein the statute of limitations period begins to run on the date the parents knew or should have known of the IDEA violation. Otherwise, students will be denied relief for denial of a free appropriate public education even in situations in which their parents were unaware of the violation and powerless to obtain timely relief. Adoption of the discovery rule as applied to IDEA claims by the Third and Ninth Circuits more appropriately effectuates Section 504's statutory purpose.

Defendant-Appellant has consented to the filing of this brief in support of reversal and Plaintiff-Appellees do not oppose the filing.

SUMMARY OF ARGUMENT

Assuming that the District court correctly determined the "knew or should have known" date, the question of whether the District Court correctly applied the statute of limitations is a legal question appropriate for decision by

this Court. In this case, both the state review officer and the district court erred in finding that the statute of limitations barred all Section 504 claims, even those that occurred within the three years prior to the filing of the request for a due process hearing on January 9, 2015. This Court should apply the discovery rule in accordance with recent decisions of the Third and Ninth Circuits in the IDEA context.

ARGUMENT

I. The District Court Misapplied the "Knew or Should Have Known" Standard

"Statutory interpretation . . . begins with the text." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016). "When . . . statutory 'language is plain, the sole function of the courts - at least where the disposition required by the text is not absurd - is to enforce it according to its terms.'" *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296-97 (2006) (quoting *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U.S. 1, 6 (2000)) (citations omitted). Thus, federal courts proceed with the understanding that, unless otherwise defined, statutory terms should be interpreted in accordance with their ordinary meaning. *Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013); *see also Octane Fitness, L.L.C. v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014).

At the same time, courts construe federal laws by not only reading the text, but also "considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Kasten v. Saint-Gobain Performance Plastics Corp*., 563 U.S.1, 7 (2011) (quoting *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006)). This approach makes "statutes into more coherent schemes for the accomplishment of specified goals than they might otherwise be." David M. Driesen, *Purposeless Construction*, 48 Wake Forest L. Rev. 97, 128 (2013).

The District Court held that it was measuring the timeliness of claims from the date his parents received notice of the adverse actions. *Op.* at 15. However, the District Court misapplied the statute of limitations by barring Section 504 claims that accrued *within* the limitations period. The District Court erred when it simply prohibited C.M. from pursuing claims and obtaining relief for Section 504 violations, even though those particular violations occurred within the three years that preceded the filing of the due process complaint.

The application of the "knew or should have known" standard in IDEA cases provides guidance. The Third Circuit was the first Court of Appeals to comprehensively analyze the statute of limitations for IDEA adopted in the 2004 amendments to IDEA. *See G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 604-26 (3d Cir. 2015). After thoroughly analyzing the statutory language,

Congressional intent, the U.S. Department of Education's interpretation, and the entire structure and purpose of IDEA, the Third Circuit held that IDEA's statute of limitations, "imposes a deadline on the filing of claims once they are reasonably discovered but does not limit the redress available for timely-filed claims." *Id.* at 612.

The Third Circuit thus held:

> [o]nce a violation is reasonably discovered by the parent, any claim for that violation, however far back it dates, must be filed within two years of the 'knew or should have known' date. If it is not, *all but the most recent two years before the filing of the complaint will be time-barred*; but if it is timely filed, then, upon a finding of liability, the entire period of the violation should be remedied.

Ligonier, 802 F.3d at 620-21 (emphasis supplied).

More recently, the Ninth Circuit, agreeing with the Third Circuit, held that 20 U.S.C. § 1415(f)(3)(C) requires courts to bar only claims brought more than two years after the parents or local education agency "knew or should have known" about the actions forming the basis of the complaint. Because the district court barred all claims "occurring" more than two years before the plaintiffs filed their administrative due process complaint, the panel remanded for the district court to determine when the plaintiffs knew or should have known about the actions forming the basis of their complaint. *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936, 937 (9th Cir. 2017).

In *Avila*, the court recognized that parents' knowledge of a *fact* does not equate to knowledge of the *legal harm.* The "knew or should have known" date "stems from when parents know, or have reason to know of, an alleged denial of a free appropriate public education under the IDEA, not necessarily when the parents became aware that the district acted or failed to act." *Avila*, 852 F.3d at 944 (citing *Somoza v. N.Y. City Dep't of Educ.*, 538 F.3d 106, 114 (2d Cir 2008) and *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1288 (11th Cir. 2008)).

That the IDEA language of "knew or should have known" indicates a discovery rule approach is consistent with court interpretations of other similar statutory provisions. The discovery rule applies, and the limitations period begins to run when the plaintiff knows the *injury* that is the basis of the action. *Lyons v. Michael & Assoc.*, 824 F.3d 1169, 1171 (9th Cir. 2016). In *Lyons*, a debt collector filed a suit against the plaintiff on December 7, 2011. The debt collector violated federal law when it filed the lawsuit, by suing the plaintiff in the wrong county so plaintiff learned of the lawsuit when she received service of process in mid-January of 2012. Plaintiff then filed her case against the debt collector within a year of being served with process. This Court rejected the debt collector's argument that the statute of limitations began running on the date of filing because the discovery rule controlled. The plaintiff did not know or should not have known of her injury (the

violation of federal law), until she received service of process, rendering her complaint timely. *Id.* at 1171-72.

Likewise, in *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010), in the securities law context, the Supreme Court explained what it means to "discover the facts constituting the violation." *Id.* at 638. In order to have a claim for securities fraud, a plaintiff must know that there was a misrepresentation ***and*** that the wrongdoer made the representation knowingly (with scienter). The Court reasoned that it would frustrate the very purpose of the discovery rule if the limitations period began to run regardless of whether a plaintiff had discovered *all* the facts necessary to prove the claim, including the mental state of the defendant, which "constitutes an important and necessary element of a [securities fraud] 'violation.'" *Id.* at 648. "A plaintiff cannot recover without proving that a defendant made a material misstatement *with an intent to deceive* – not merely innocently or negligently." *Id.* at 649 (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007).

The Court further explained:

> An incorrect prediction about a firm's future earnings, by itself, does not automatically tell us whether the speaker deliberately lied or just made an innocent (and therefore nonactionable) error. Hence, the statute may require "discovery" of scienter-related facts beyond the facts that show a statement (or omission) to be materially false or misleading.

Id. at 650. Thus, "the limitations period . . . begins to run once the plaintiff did discover or a reasonably diligent plaintiff would have 'discover[ed] the facts constituting the violation' – whichever comes first." *Id.* at 653.

None of these cases hold that the statute of limitations bars claims that accrued after the "knew or should have known" date. A parent cannot know in June 2011 that the school district will violate the law in January 2012. As in *Ligonier* and *Avila*, even if the "knew or should have known" date is June 2011, the most recent three years of claims are still actionable. Because the parent filed her request for impartial hearing on January 9, 2015, C.M. is entitled to recover for violations that occurred from January 9, 2012 through the date of filing.

II. The Decision in this Case Significantly Undermines Section 504's Broad Remedial Purpose

The District Court's failure to correctly apply the discovery rule in this case also undermines Section 504's goals. In prohibiting discrimination on the basis of disability, "Section 504 has the same type of broad, remedial goals as §§ 1981 and 1983." *Morse v. University of Vermont,* 973 F.2d 122, 126 (1992). The District Court's holding that the "knew or should have known" date bars claims that accrued *after* that date frustrates this statutory purpose.

Adoption of the discovery rule as applied to IDEA claims by the Third and Ninth Circuits more appropriately effectuates Section 504's statutory purpose. To illustrate, *Ligonier* gives a practical example – that of a school district that

unreasonably fails to identify a child's disability. *Ligonier*, 802 F.3d at 613-614. Assume a district's failure to identify a child's disability continues for more than two years. Once the parents reasonably discover the problem, IDEA allows them two years within which to file a complaint. 20 U.S.C. § 1415(f)(3)(C). Even is the parent files more than two years after the "knew or should have known" date, the student is still entitled to recover for injuries occurring within the two years prior to the filing. A rule limiting recovery of all claims, even unaccrued claims, is not consistent with the application of the discovery rule in any context. It is particularly troublesome in a case such as this one, which implicates the civil rights of a child with disabilities. *Cf. Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 237-38 (2009) ("In determining the scope of the relief authorized, [] absent any indication to the contrary, what relief is appropriate must be determined in light of the Act's broad purpose of providing children with a FAPE []").

In addition, this interpretation has a disproportionately negative impact on lower income families. Many of these families do not have the money to pay for services and seek reimbursement later. *See generally* Jennifer Rosen Valverde, *A poor IDEA: Statute of Limitations Decisions Cement Second-Class Remedial Scheme for Low-Income Children with Disabilities in the Third Circuit*, 41 Fordham Urb. L.J. 599, 605-24 (2013). Approximately two-thirds of special education eligible children live in households earning under $50,000 dollars per year. Half of these

children live at or below the federal poverty line. *See id.* at 604 (citing Mary Wagner et. al., *The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and their Households* at 29 (2002), *available at* http://www.seels.net/designdocs/SEELS_Children_We_Serve_Report.pdf (last visited 11/8/16). Unable to "front" the cost of an appropriate education and seek reimbursement later, these children rely on compensatory education to remedy FAPE denials. Therefore, limitations on the scope of relief further reduces their opportunity to perform commensurate with their non-disabled or wealthier peers, and contravenes controlling precedent and principles of fundamental fairness.

Accordingly, adoption of *Ligonier* and application of its reasoning in the Section 504 context protects the rights of lower income special education students, who most need the ability to obtain full relief for violations of their rights because these families lack financial resources.

CONCLUSION

For the foregoing reasons, COPAA respectfully requests that the Court hold that statute of limitations does not bar claims for Section 504 violations that occurred within the three year preceding the filing of the administrative hearing request.

Respectfully submitted,

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1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because:

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November 22, 2017

Respectfully Submitted,

/s/ Catherine Merino Reisman
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on the 22nd day of November 2017. I certify that all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to:

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