No. 25-334

United States Court of Appeals for the Ninth Circuit

J. R., a minor, by and through his mother, MARY PEREZ,

Plaintiff-Appellee,

– v. –

VENTURA UNIFIED SCHOOL DISTRICT,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR *AMICI CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., THE CALIFORNIA ASSOCIATION FOR PARENT-CHILD ADVOCACY AND DISABILITY RIGHTS EDUCATION AND DEFENSE FUND IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

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

COUNCIL OF PARENT ATTORNEYS AND ADVOCATES (COPAA)
THE CALIFORNIA ASSOCIATION FOR PARENT-CHILD ADVOCACY (CAPCA)
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND (DREDF)

1. No Amici is a publicly held corporation or other publicly held entity;
2. No Amici has parent corporations; and
3. Amici do not have 10% or more of stock owned by a corporation.

s/ Selene Almazan-Altobelli
Selene Almazan-Altobelli

Attorney for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Council of Parent Attorneys and Advocates (COPAA) is a national not-for-profit organization for parents of children with disabilities, their attorneys and advocates. 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) that children are entitled to under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA).[2] COPAA also supports its members in their efforts 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 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). COPAA brings the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has filed as *amicus curiae* in the United States Supreme Court, including in *A.J.T. v. Osseo Area Schs.*, 145 S. Ct. 1647 (2025);

[1] Pursuant to Fed. R. App. P. 29, *Amici* certify that no party's counsel in this matter 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 *amici* and their members and counsel contributed money intended to fund the brief's preparation or submission.

[2] The statute was originally named the Education of the Handicapped Act or EHA; it was renamed IDEA in 1990. *See Fry v. Napoleon Cmty. Schs*., 580 U.S. 154, 160 n.1 (2017). For the sake of simplicity, we refer only to IDEA in this brief. *Id.*

Perez v. Sturgis Public Schs., 598 U.S. 142 (2023); *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Bd. of Educ. v. Tom F.*, 552 U.S. 1 (2007); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005); and *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007), and in all the United States Courts of Appeal that frequently hear special education appeals.

The California Association for Parent-Child Advocacy (CAPCA) is a volunteer-based organization engaging in legislative and policy advocacy on matters of concern to students with disabilities in California. Members of CAPCA participate as professionals and/or as family members of students with disabilities, in Individualized Education Program (IEP) meetings, resolution sessions, mediations, due process hearings and appeals throughout California. CAPCA was founded in 2003 when parents and advocates came together to resist proposals in the California legislature to drastically shorten the statute of limitations in special education cases and to impose other restrictions on the exercise of parental and student rights.

Disability Rights Education and Defense Fund (DREDF) based in Berkeley, California, is a national nonprofit law and policy center dedicated to protecting and advancing the civil and human rights of people with disabilities. Founded in 1979

by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts. For more than three decades, DREDF has received funding from the California Legal Services Trust Fund (IOLTA) Program as a Support Center providing consultation, information, training, and representation services to legal services offices throughout the state as to disability civil rights law issues. DREDF is nationally recognized for its expertise in the interpretation of federal and California disability civil rights laws. DREDF has participated as amicus and amici counsel in numerous cases addressing the scope and meaning of California civil rights mandates. DREDF remains dedicated to advancing the human and civil rights of people with disabilities, including students with disabilities.

Amici's interest in this case stems from their commitment to ensuring that students with disabilities have access to a free appropriate public education in all areas of disability with programming reasonably calculated to result in academic and functional progress. The district court correctly determined that the statute of limitations is consistent with the statutory language and purpose of IDEA. This Court should affirm the ruling below.

Both parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

For nearly forty years, the Supreme Court has interpreted the IDEA broadly and advanced the position that Congress, in enacting the statute, did not intend to create a right without a meaningful remedy. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244-45 (2009); *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 532 (2007). The plain language of the statute makes clear that IDEA's statute of limitations starts to run when the parents knew or should have known about the facts which give rise to their cause of action (discovery rule), not when the events occurred (occurrence rule).

Application of the discovery rule fits within the larger context of IDEA's goal of ensuring appropriate education for all children with disabilities. School district personnel, with their expertise, are appropriately charged with knowing what it means to assess a child in all suspected areas of disability. When schools fail to comprehensively assess a student, the disturbing result is a delay in necessary interventions. Parents, by contrast, do not have the background to determine what evaluations should be administered. When parents rely upon a school to comprehensively assess their child, and the school fails, the parents cannot know what to do and the child suffers the loss of an appropriate education.

The approach used by *Amici* encourages school districts to vigorously pursue their obligation to assess in all areas of disability and ensure children with disabilities

have a full and meaningful remedy as Congress intended. The decision below appropriately fulfills the Congressional mandate in IDEA to "enabl[e] each child with special needs to reach his or her full potential." *G.L. v. Ligonier Valley Sch. Dist.*, 802 F. 3d 601, 626 (3d Cir. 2015).

ARGUMENT

I. IN CONSTRUING FEDERAL LAW, COURTS CONSIDER THE PLAIN MEANING OF THE STATUTE AS WELL AS STATUTORY PURPOSE

Federal courts must "apply faithfully the law Congress has written." *Perez* 598 U.S. at 150 (quoting *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79,89 (2017)) (internal citation omitted). Federal courts, when interpreting a statute, "are guided by the fundamental canons of statutory construction and begin with the statutory text." *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936, 941 (9th Cir. 2017). "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, 296-297 (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. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020); *Groff v. DeJoy*, 600 U.S. 447, 468 (2023).

At the same time, courts do not construe federal laws in a vacuum. "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 441 (2019) (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (2019)); *see also Sturgeon v. Frost*, 577 U.S. 424, 438 (2016); *Avila*, 852 F.3d at 943 (interpreting IDEA statute of limitations in light of law's wide-ranging remedial purpose intended to protect the rights of children with disabilities and their parents).

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)

As Professor Driesen notes:

> Coherence in turn helps legitimate law. To the extent we treat statutes as coherent schemes for accomplishing public ends, the law commands respect and obedience. Hence, when judges create rationales for statutory construction tying particular results to public objectives motivating congressional enactment, they increase the likelihood of faithful administration of the law, public acceptance of the law, and compliance with the law.

48 Wake Forest L. Rev. at 128. When the statutory language is unambiguous and the statutory scheme coherent and consistent, judicial inquiry ceases. *Sebelius v. Cloer*, 569 U.S. 369, 380 (2013).

Sturgeon, *supra*, interpreting the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3101 (ANILCA), *et seq.* is instructive. ANILCA set aside 104 million acres of land in Alaska for preservation. It also specified "that the Park Service could not prohibit on those lands certain activities of particular importance to Alaskans." 577 U.S. at 431. The plaintiff in *Sturgeon* challenged a National Park Service regulation banning the use of hovercraft on certain lands in Alaska. He argued that "ANILCA created an Alaska-specific exception to the Park Service's general authority over boating and related activities in federally managed preservation areas." *Id.* at 434. This Court held that the Park Service had the authority to enforce regulations on both "public" and "non-public" property in Alaska, as long as those regulations were nationally applicable. The Court rejected this interpretation.

The Court noted that the reading of the statutory phase adopted below "may be plausible in the abstract, but it is ultimately inconsistent with the text and context of the statute as a whole." *Id.* at 438. This is because the interpretation under review would preclude the Park Service from applying Alaska-specific regulations to non-public lands in that state. *Id.* However, ANILCA is full of Alaska-specific exceptions reflecting "the simple truth that Alaska is often the exception, not the rule." *Id.* at 440. "Yet the reading below would prevent the Park Service from recognizing Alaska's unique conditions." *Id.*

Similarly, in *Sebelius*, the Court rejected a statutory interpretation of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. 300aa-1, *et seq.* (NCVIA) based upon inconsistency with plain language and statutory purpose. The Court rejected the federal government's proposed definition of the term "filed," because it is commonly understood that a claim is "filed" when it is delivered to and accepted by the appropriate court. 569 U.S. 379. Further, the Court observed, the government's position would undermine the goals of the fee provision in the NCVIA. A stated purpose of the fee provision was to enhance the opportunity for individuals to present claims by making fee awards available for "non-prevailing good faith claims." 569 U.S. at 380 (citation omitted). The government's interpretation would have discouraged counsel from representing NCVIA petitioners, which would undermine the statutory purpose.

Following this precedent, in construing IDEA's statute of limitations [20 U.S.C. §1415(f)(3)(C)] and a school district's obligation to assess in all areas of suspected disability, federal courts must consider the plain meaning of the statute and the overall objective to ensure appropriate education for children with disabilities. As this Court explained in *Avila*:

> [T]he broader context of the IDEA shows that it has a wide-ranging remedial purpose intended to protect the rights of children with disabilities and their parents. One express purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them

> for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). As the Supreme Court stated, "[a] reading of the [IDEA] that left parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009). The broad purpose of the IDEA is clear and has been acknowledged repeatedly by our court. *See E.M. ex rel. E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings*, 758 F.3d 1162, 1173 (9th Cir. 2014) (citing *Forest Grove*, 557 U.S. at 244-45); *Michael P. v. Dep't of Educ.*, 656 F.3d 1057, 1060 (9th Cir. 2011) (same); *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1184 (9th Cir. 2010) (same). Cutting off children's or parents' remedies if violations are not discovered within two years . . . is not consistent with the IDEA's remedial purpose.

852 F.3d at 943.

II. TO ENSURE PROVISION OF AN APPROPRIATE EDUCATION TO ALL CHILDREN, IDEA CREATES CRITICAL DUTIES FOR SCHOOL DISTRICTS TO EVALUATE IN ALL AREAS OF SUSPECTED DISABILITY

IDEA has an indisputable and well-recognized statutory purpose. For decades preceding passage of IDEA, "school districts routinely denied children with disabilities an adequate education. They provided no educational assistance or accommodations to disabled children in school, 'warehoused' children in institutions thereby segregating them from their non-disabled peers, or excluded them from school altogether." Jennifer Rosen Valverde, *A Poor IDEA: Statute of Limitations Decisions Cement Second-Class Remedial Scheme for Low-Income Children in the Third Circuit*, 41 Fordham Urb. L.J. 599, 600-601 (2013). In the

1970s, Congress held hearings investigating the quality of educational instruction provided to children with disabilities. These hearings established that public school districts throughout the country had wholly excluded millions of children with a multitude of disabilities or placed those children in programs where they received no educational benefit.

Thus, IDEA "was designed to reverse a history of educational neglect" for children with disabilities. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1109 (9th Cir. 2016) (citing *Schaffer v. Weast*, 546 U.S. 49, 52 (2005)). "At the time of its passage, the need for institutional reform was pervasive: millions of children with a multitude of disabilities were entirely excluded from public schools, and others, while present, could not benefit from the experience because of undiagnosed – and therefore unaddressed – disabilities." *Id.* (citing 20 U.S.C. § 1400(c)(2)). IDEA attempts to remedy these systemic problems by ensuring a free appropriate public education for all children with disabilities between the ages of three and twenty-one. *Id.* at 1110. To that end, school districts have a critical responsibility to evaluate children in *all* areas of suspected disability, "so that the school district can begin the process of determining what special education and related services will address the child's individual needs." *Timothy O.*, 822 F.3d at 1110 (citing 20 U.S.C. §§ 1412(a)(7), 1414(a)-(c)).

Such evaluations must be done early, thoroughly, and reliably. "Otherwise, many disabilities will go undiagnosed, neglected, or improperly treated in the classroom." *Id.* (citing 20 U.S.C. § 1400(c)). To ensure timely and appropriate evaluation and re-evaluation, IDEA imposes numerous procedural requirements on school districts.

First, evaluations must not only determine whether a child has a disability but also collect relevant functional, developmental, and academic data to identify the child's specific educational needs in *all* areas. The failure to do so results in an incomplete evaluation and an inadequate understanding of the child's needs. *Id.* at 1111.

Second, the school district must notify the parents of any proposed evaluation procedures and explain the reasons for those decisions, as required by 20 U.S.C. § 1414(b)(1) and 34 C.F.R. 300.304(a). *Id.* In conducting evaluations, schools must use a variety of assessment tools and strategies, 20 U.S.C. §§ 1414(b)(2)(A) & (B), use "technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors," 20 U.S.C. § 1414(b)(2)(C), and "ensure that all assessments are conducted by trained and knowledgeable personnel, in accordance with instructions provided by the producer of the assessment, and for purposes which the assessments or measures are valid and reliable. 20 U.S.C. § 1414(b)(3)(A)." *Timothy O.*, 822 F.3d

at 1111. In short, "IDEA requires that, if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act." *Id.* at 1118-1119.

Early identification and services for Autism Spectrum Disorder is essential for improved long-term outcomes. *See* Guthrie, W., Wetherby, A. M., Woods, J., Schatschneider, C., Holland, R. D., Morgan, L., & Lord, C. E., The earlier the better: An RCT of treatment timing effects for toddlers on the autism spectrum. *Autism*, *27*(8), 2295-2309. https://doi.org/10.1177/13623613231159153 (2023) (last visited July 16, 2025); *see also:* Okoye, C. , Obialo-Ibeawuchi, C., Obajeun, O., Sarwar, S. , Tawfik, C., Waleed, M.S., Wasim, A.U., Mohamoud, I., Afolayan, A., Mbaezue, R., Early Diagnosis of Autism Spectrum Disorder: A Review and Analysis of the Risks and Benefits https://pmc.ncbi.nlm.nih.gov/articles/PMC10491411/pdf/cureus-0015-00000043226.pdf; (last visited July 16, 2025); Shaw KA, Williams S, Patrick ME, et al. Prevalence and Early Identification of Autism Spectrum Disorder Among Children Aged 4 and 8 Years — Autism and Developmental Disabilities Monitoring Network, 16 Sites, United States, 2022. MMWR Surveill Summ 2025;74(No. SS-2):1–22. DOI: http://dx.doi.org/10.15585/mmwr.ss7402a1 (Increased identification of autism, particularly among very young children and previously underidentified

groups, underscores the increased demand and ongoing need for enhanced planning to provide equitable diagnostic, treatment, and support services for all children with ASD)(last visited July 16, 2025). This Court recognized the importance of early identification and intervention for children with Autism over twenty years ago. *Amanda J. v. Clark County School District*, 267 F. 3d 877, 883 (9th Cir. 2001).

Communication and social skills are built very early in life, and research-based interventions are most effective when implemented during this formative period. The earlier treatment begins, the greater the potential for meaningful improvement in behavior, language, and adaptive skills. As this Court acknowledged in *Amanda J.*, "the available research strongly suggests that intensive early intervention can make a critical difference to children with autistic disorders." *Id.* (citing National Research Council, *Educating Children with Autism* 132 (Catherine Lord & James P. McGee, eds., National Academy Press 2001).

This Court has long held that when a district fails to notify a parent that they suspect the student has Autism or when a district fails to fully assess a child for Autism that the procedural violation rises to the level of a denial of FAPE because this type of harm is immeasurable. *Id.* at 894, *see also Timothy O.*, 822 F. 3d at 1118-19. The Court has recognized the harm to the student in such circumstances:

> This is a situation where the District had information in its records, which, if disclosed, would have changed the educational approach used for Amanda, increasing the amount of individualized speech therapy and possibly beginning the D.T.T. program much sooner. This is a

> particularly troubling violation, where, as here, the parents had no other source of information available to them. No one will ever know the extent to which this failure to act upon early detection of the possibility of autism has seriously impaired Amanda's ability to *894 fully develop the skills to receive education and to fully participate as a member of the community.

Amanda J. at 893-94.

The decision below correctly holds the school district, and not the parents, accountable for its failure to comply with its indisputable obligation to evaluate J.R. in all areas of disability. This ruling is consistent with the statutory language and advances the statutory purpose.

III. THE DISTRICT COURT CORRECTLY DETERMINED THE DATE THE PARENTS KNEW OR SHOULD HAVE KNOWN OF THE STATUTORY VIOLATION

Children with disabilities and their parents "face daunting challenges on a daily basis." *A.J.T. v. Osseo Area Sch. Dist.*, 2025 U.S. LEXIS 2279, at *14 (June 12, 2025). The district court correctly concluded that the challenges borne by parents do not include taking on the burden of ensuring that the school district complies with its statutory obligation to evaluate in all areas of suspected disability.

IDEA vests school district personnel "with responsibility for decisions of critical importance to the life of a disabled child." *Endrew F.*, 580 U.S. at 403. Thus, parents' awareness of the underlying facts does not necessarily mean that they knew or should have known of the basis of their claims, because some issues require

specialized expertise that a parent does not have and that school district personnel must have. *Avila*, 852 F.3d at 944.

In *Winter v. United States,* 244 F.3d 1088 (9th Cir. 2001), in a case analyzing the timeliness of a Federal Tort Claims Act cause of action, this Court refused to hold that the plaintiff had sufficient knowledge to trigger the running of the limitations period when even the doctor did not know that he had caused an injury. *See Id.* at 1091 ("the government asks us to hold that Winter, a layman with no medical knowledge, knew or should have known the cause of his injuries at this point, despite the uncertainty of Winter's own treating physician, a specialist in this area who had apparently rejected the electrodes as a possible cause); *see also Rosales v. United States*, 834 F.3d 799, 803-05 (9th Cir. 1987). It is just as problematic to impute knowledge of an injury to parents when school district personnel have failed to identify the relevant educational needs.

As the Supreme Court recognized in *Schaffer v. Weast*, 546 U.S. 49, 60-61 (2005), school districts have a "natural advantage" in information and expertise. This advantage "derives from the wealth of professionals from a variety of disciplines (e.g., teachers, school psychologists, social workers, occupational and physical therapists, learning disabilities teaching consultants, etc.) they employ, or with whom they contract, to teach, evaluate, provide therapies and services to, and consult regarding children with disabilities." Jennifer N. Rosen Valverde, *A Panoramic*

IDEA: Cabining the Snapshot Rule in Special Education Disputes, 55 Ariz. St. L. J. 1445, 1482 (2023). Parents, by contrast, "may lack the expertise needed to formulate an appropriate education for their child." *Lascari ex rel. Lascari v. Bd. of Educ.*, 560 A.2d 1180, 1188 (N.J. 1989). Indeed, in recognizing the importance of publicly funded independent educational evaluations, *Schaffer, supra*, emphasized that parents need access to experts "who can evaluate all the materials that the school must make available, and who can give an independent opinion." 546 U.S. at 60-61.

Consequently, J.R.'s mother was entitled to rely upon the expertise of school officials and to assume that they were discharging their duty under federal law to evaluate in all areas of suspected disability. She did not learn that Ventura, in fact, had not complied with its statutory obligation until she received the private evaluation in 2021 diagnosing him with autism. *J.R. v. Ventura Unified Sch. Dist.*, 668 F. Supp. 3d 1054, 1063 (C.D. Cal. 2023). She filed within two years of discovering this critical fact.

In *Amanda J.*, this Court found that the school's failure to disclose records suspecting Autism was a denial of FAPE. The Court's reasoning was clear:

> The IEP team could not create an IEP that addressed Amanda's special needs as an autistic child without knowing that Amanda was autistic. Even worse, Amanda's parents were not informed of the possibility that their daughter suffered from autism — a disease that benefits from early intensive intervention — despite the fact that the district's records contained test results indicating as much. Not only were Amanda's parents prevented from participating fully, effectively, and in an informed manner in the development of Amanda's IEP, they were not

> even aware that an independent psychiatric evaluation was recommended, an evaluation that Amanda's mother testified she would have had performed immediately. These procedural violations, which prevented Amanda's parents from learning critical medical information about their child, rendered the accomplishment of the IDEA's goals — and the achievement of a FAPE — impossible.

Amanda J., 267 F.3d at 894.

This underscores that schools often have information about a student that the parents do not and the importance of schools sharing information with parents and recognizing when a life-long disability, such as Autism, is part of the diagnostic picture of a student, it is critical to act on that early. The difference between *Amanda J.* and J.R's case is that Amanda's parents learned of the district's error within the defined statute of limitations. However, the immeasurable harm to the student is the same.

The decision below is consistent with *Avila*, as well as other cases interpreting statutes of limitation and the discovery rule. When raising a statute of limitations defense, the burden is on the defendant to demonstrate that a reasonably diligent plaintiff would have discovered the violations. *York Cnty. v. HP, Inc.*, 65 F.4th 459, 465 (9th Cir. 2023). To evaluate whether the complaint is time-barred, the court must identify the "critical date," that is, the date two years before the filing of the Complaint. *Id.* at 465-66. Next, the court must determine "which facts the complaint alleged occurred before and after that date." *Id.* at 466. Finally, the court must

evaluate whether the facts constituting the violation were discoverable prior to the critical date.

The claim is time-barred if the defendant "conclusively shows that either (1) the plaintiff could have pleaded an adequate complaint based on facts discovered prior to the critical date and failed to do so, or (2) the complaint does not include any facts necessary to plead an adequate complaint that were discovered following the critical date." *Id.* If any element of the claim was discovered after the critical date, then the claim is timely. *Id.* at 467.

In *York Cnty.*, the lead plaintiff, Maryland Electrical Industry Pension Fund (the Fund), alleged in the complaint that HP made all the false statements and misrepresentations in 2015 and 2016, well before the critical date. However, an SEC Order, issued at the end of September 2020, put HP's prior statements in a new context, "revealing that ostensibly innocuous statements were actually intentional misrepresentations." *Id*.

Because the Fund had alleged facts that occurred after the critical date, HP could establish a limitations defense in two ways. First, HP could demonstrate that The Fund could have based its claim solely on things that it knew or should have known prior to the critical date. In the alternative, HP could show that the SEC Order provided no information necessary to The Fund's claim. *Id.*

The Fund knew of the statements that HP made made prior to the critical date. However, the Fund had no reason to know that the statements were misleading until the SEC Order provided context. The Fund could not have pleaded scienter without knowledge provided by the SEC Order and had no reason to know that HP's statements were fraudulent. *Id.*

In this case, J.R.'s mother knew what District personnel had done prior to the critical date. However, as was the case with the Fund, she did not know the import of the District's action (or lack of action) until she received the 2021 evaluation. Because she filed within two years of the date of that evaluation, the claims were timely.

CONCLUSION

The district court's interpretation of the statute of limitations is consistent with the statutory language and purpose of IDEA. This Court should affirm the ruling below.

Dated: July 18, 2025

Respectfully submitted,
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s/Selene Almazan-Altobelli
Selene Almazan-Altobelli

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 Ninth Circuit by using the appellate ACMS system on the 18th day of July 2025. I certify that all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Selene Almazan-Altobelli
Selene Almazan-Altobelli