# *NOTES*

## EASING THE LIMITS OF THE STATUTE OF LIMITATIONS: A PATH TO A MORE EQUITABLE IDEA

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## INTRODUCTION

In 1990, Congress enacted a comprehensive remedial scheme governing state standards for providing special education services to students with disabilities. This scheme was the Education of the Handicapped Act Amendments of 1990, known today as the Individuals with Disabilities in Education Act (IDEA).[1] The goal of the IDEA was to ensure that students with disabilities received a free appropriate public education (FAPE) "designed to ... prepare them for further education, employment, and independent living."[2] In pursuit of this goal, the IDEA requires that schools provide "specifically designed instruction" that "meet[s] the unique needs of a child with a disability" at "no cost to parents."[3] If a parent disagrees with their child's educational placement, they may file a due process complaint challenging the school's decision.[4]

In 2004, Congress added a statute of limitations for filing complaints to the IDEA.[5] The amendment aimed to encourage timely remediation of students' educational plans and ensure that schools were directing their resources toward special education instruction rather than toward anticipating far-removed litigation.[6] In doing so, the drafters of the amendment set forth two seemingly conflicting provisions for the statute of limitations.[7] Section 1415(f)(3)(c) establishes a two-year statute of limitations from the date the parent or educational agency knew or should have known about the IDEA violation to request an impartial due process hearing.[8] However, § 1415(b)(6)(B) seems to create a look-back period that limits complaints to violations occurring no more than

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1. Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476; 20 U.S.C. § 1400(a).

2. 20 U.S.C. § 1400(d)(1)(A).

3. 20 U.S.C. § 1401(29).

4. See *infra* Part I.B for a discussion on special education due process claims.

5. 20 U.S.C. § 1415(f)(3)(C).

6. *See infra* Part II.

7. *See* 20 U.S.C. § 1415(f)(3)(C); *id.* § 1415(b)(6)(B).

8. *See* § 1415(f)(3)(C) ("A parent or agency shall request an impartial due process hearing 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, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.").

two years *before* the date when the parent or agency knew or should have known about the violation.[9] The seemingly conflicting statutory provisions created discrepancies in how courts applied the statute of limitations to the scope of parents' claims.[10]

In establishing the IDEA's statute of limitations, Congress also created two exceptions to the limitations period: (1) "specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint," and (2) withholding information required by the IDEA to a parent.[11] Under the first exception, the statute of limitations does not apply if the parent's delay in requesting a due process hearing was caused by the local educational agency's misrepresentation that it had solved the problem with the child's Individualized Education Program (IEP) or progress.[12] The standard for misrepresentation is intentionally knowing or misleading, and the burden is on the parent to prove the school's subjective intent.[13] This means that, if an educator offers an inaccurate or incomplete report of the child's progress to the parent, the statements will not fall under the misrepresentation exception unless the parent can prove the educator's intention to mislead rather than convey a sense of optimism.[14] The exception for withholding information only concerns the withholding of procedural safeguards such as written notices.[15] It does not include a school's withholding of "substantive information," such as available programs, educational progress, teacher observations, and other reports not mandated to be shared by the IDEA.[16]

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9. *See* 20 U.S.C. § 1415(b)(6)(B) ("The procedures required by this section shall include ... [a]n opportunity for any party to present a complaint ... which sets forth an alleged violation that occurred not more than 2 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.").

10. *See infra* Part II.B.

11. 20 U.S.C. § 1415(f)(3)(D)(i)-(ii).

12. 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, 652 (2013).

13. *Id.*

14. *See id.*

15. *Id.* at 653.

16. *Id.*

The narrow qualifications for both exceptions to the statute of limitations leave parents with limited recourse if their claim falls outside of the two-year statutory period, potentially leaving their child barred from relief entirely. The burden falls most heavily on children whose families do not have the means to access private services outside of school and must leave their child in an inadequate educational placement.[17]

This Note explores the statute of limitations as a gatekeeper to parental access to the due process claim system and its available remedies. It examines the discrepant statutory provisions embedded in the IDEA's statute of limitations and the various interpretations of the timing and scope of due process claims. This Note (1) argues that Congress should formally recognize the Third Circuit's interpretation of the IDEA's limitations period for bringing due process claims and (2) calls for a heightened judicial scrutiny of a school's obligation to provide information under the "withholding" exception to the statute of limitations.

First, Congress should resolve the two conflicting statutory provisions to reflect a single, two-year statute of limitations and eliminate the language in § 1415(b)(6)(B) that seems to create a look-back period and remedy cap. This legislative change would reflect the intent of the IDEA drafters to encourage timely due process claims and ensure that the child is made whole by expanding the scope of recovery for such claims. Such an amendment would also align with the construction of state special education law provisions that intend to mirror the two-year federal limitations period.

Second, courts should apply a heightened standard when evaluating whether a school has met its obligation to share information under the statute of limitations's "withholding of information" exemption. Courts should consider whether a school has shown a good faith effort to provide procedural safeguards that adequately inform parents of their rights and support their ability to understand the substantive nature of their child's educational program. This change would bolster a school's obligation to share

17. Ralph D. Mawdsley, *Post*-Forest Grove *Parental Reimbursement for Private School Placements: What About Parents Who Cannot Afford the Cost of Such Placements?*, 292 W.'S EDUC. L. REP. 1, 20 (2013).

knowledge with parents and expand access to the IDEA's remedial scheme for parents who fail to meet the two-year period but were not adequately informed of their rights or equipped with specialized knowledge of their child's education.

Part I discusses the special education framework, outlining the rights and obligations of parents and school systems created by the IDEA. Part II evaluates the IDEA's statute of limitations as the gatekeeping instrument of the due process complaint system and discusses the Third Circuit's reconciliation of the seemingly conflicting statutory provisions of the IDEA in *G.L. v. Ligonier Valley School District Authority*. Part III situates the implications of the *Ligonier* decision within the broader special education landscape, discussing other courts' adoption of or deviations from the Third Circuit's interpretation, interpretations of the "known or should have known" (KOSHK) standard, and the applicability of the withholding of information exception. Part IV offers solutions for amending the limitations period so that it aligns with the IDEA's legislative intent while making the burdens and obligations created by the IDEA more equitable between parents and school systems.

## I. THE SPECIAL EDUCATION LANDSCAPE: RIGHTS AND OBLIGATIONS

In *Schaffer v. Weast*, a landmark Supreme Court case that responded to a circuit split on which party bears the burden of proof in special education disputes, the Court discussed notions of fairness, holding that parents "are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition."[18]

Though the IDEA provides a realistic opportunity for parents to access the promises of the IDEA's special education scheme on behalf of their children, this opportunity is not equally accessible to all.[19] Unequal power dynamics between schools and families discourage parents from exercising their rights to oppose a school

18. 546 U.S. 49, 61 (2005).

19. *See* Claire S. Raj, *Rights to Nowhere: The IDEA's Inadequacy in High-Poverty Schools*, 53 COLUM. HUM. RTS. L. REV. 409, 415 (2022).

district's decision about their child's educational plan.[20] Underlying societal disparities such as race, socio-economic status, and language access problems restrict parents' abilities to capitalize upon the remedial scheme and maximize their child's educational opportunities.[21] Further, success rates for appealing special education placement decisions vary from state to state, making federal guidance particularly important in guiding states' implementation of the IDEA.[22] Part I of this Note walks through the special education landscape created by the IDEA and the ways in which the Act's promises have and have not been realized in application.

### *A. Safeguarding a Free Appropriate Public Education*

Unlike its legislative precedents, the IDEA was enacted under the Spending Clause, conditioning states' federal funding on their agreement to educate students with disabilities in compliance with the IDEA's terms.[23] Consequently, states must comply with the standards established by the remedial scheme to receive federal funding.[24]

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20. *See id.* at 440; U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-22, SPECIAL EDUCATION: IDEA DISPUTE RESOLUTION ACTIVITY IN SELECTED STATES VARIED BASED ON SCHOOL DISTRICTS' CHARACTERISTICS 22 (2019), https://www.gao.gov/assets/gao-20-22.pdf [https://perma.cc/X54X-KDXV].

21. *See* Claire Raj, *The Gap Between Rights and Reality: The Intersection of Language, Disability, and Educational Opportunity*, 87 TEMP. L. REV. 283, 331 (2015); Elisa Hyman, Dean Hill Rivkin & Stephen A. Rosenbaum, *How IDEA Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 20 AM. U. J. GENDER SOC. POL'Y & L. 107, 109-15 (2011); Janette Klingner & Beth Harry, *The Special Education Referral and Decision-Making Process for English Language Learners: Child Study Team Meetings and Placement Conferences*, 108 TCHRS. COLL. REC. 2247, 2272 (2006); Kaura Arundel, *Equity in IDEA: Why Racial Disparities Are Increasing in Special Ed Programs*, K-12 DIVE (July 31, 2023), https://www.k12dive.com/news/Schools-examine-racial-disparities-in-special-education/688716/ [https://perma.cc/Y5Q4-AYU2].

22. *See, e.g.*, Brad Kutner, *Parents Ask Supreme Court of Virginia to Force Attorney General to Investigate State's Special Needs Education System*, RADIO IQ (Dec. 11, 2023, at 4:23 ET), https://www.wvtf.org/news/2023-12-11/parents-ask-supreme-court-of-virginia-to-force-attorney-general-to-investigate-states-special-needs-education-system [https://perma.cc/WF9E-AX32] (explaining that the success rate for due process appeals in Virginia is only 1.8% compared to a rate of 30% among all other states).

23. *See* Raj, *supra* note 19, at 422.

24. *See* U.S. CONST. art. I, § 8.

The IDEA establishes several parameters to guide states in identifying students with disabilities and providing FAPE.[25] States have an obligation to identify, locate, and evaluate all children with disabilities who are in need of special education services, regardless of the severity of their disability.[26] This obligation is termed "child find" and operates as an assurance that states are making an effort to educate all children with disabilities.[27] Once identified, the school must evaluate the child and determine eligibility for special education services based on the outcome of the evaluation.[28]

Children found eligible for special education services are given an IEP.[29] An IEP is the centerpiece of special education law and is the vehicle for delivering FAPE.[30] The plan is developed by the school's multidisciplinary team, which evaluates the ways in which the child's disability adversely affects their "involvement and progress in the general education curriculum."[31] It describes the child's current educational and functional needs, targets specific and measurable annual goals, and lists the specialized instruction and related supports that will be provided so that a child can advance toward those goals.[32]

Two Supreme Court cases shaped the standards governing the quality and purpose of an IEP in delivering FAPE. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, the Court considered whether the duty to provide FAPE required a school to provide a sign language interpreter for a deaf child who was already receiving specialized services and excelling in her education.[33] The Court held that FAPE did not impose a substantive educational standard on states to maximize the potential of a child.[34] Rather, the obligation of FAPE only required that states provide an education no greater than necessary for the child to receive

25. 20 U.S.C. § 1415(a).
26. *See* 34 C.F.R. § 300.111 (2024).
27. *See id.*
28. *See* 20 U.S.C. § 1414(b)(4)(A)-(B).
29. *See id.* § 1414(d)(1)(A).
30. *See* Honig v. Doe, 484 U.S. 305, 311 (1988).
31. 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa).
32. *See id.* § 1414(d)(1)(A)(i)(I)-(II), (IV).
33. 458 U.S. 176, 184-85 (1982).
34. *See id.* at 189-90.

some benefit from the services and instruction provided.[35] The Court denied the plaintiff the right to a sign language interpreter, reasoning that she was already receiving an adequate education as measured by her advanced progress in school.[36]

The *Rowley* Court declined to create a bright-line rule for determining when a child with a disability is receiving sufficient educational benefits to satisfy the requirements of the IDEA.[37] Several circuits, including the Tenth Circuit, interpreted the *Rowley* decision to create a "de minimis" standard, which was the subject of the Court's reevaluation of the IDEA's standard for FAPE in *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*.[38] The Court rejected the implication created by *Rowley* that evidence of a child's advancement through their education demonstrates that they are receiving FAPE.[39]

Nonetheless, the Court held that when a child is capable of learning at grade level and is fully integrated into the regular classroom, a legally sufficient IEP need only ensure that the child progresses through the regular curriculum.[40] However, following *Endrew F.*, when a child is unable to progress at grade level due to their disability, states must now ensure that the goals of a child's IEP are appropriately ambitious in light of their individual circumstances rather than merely adequate.[41] Thus, *Endrew F.* created a heightened standard for the quality of an IEP, shifting how courts evaluate states' compliance with the obligation to provide children with disabilities FAPE.[42]

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35. *See id.* at 192.

36. *Id.* at 209-10.

37. Endrew F. *ex rel.* Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 390 (2017).

38. *Id.* at 397 (explaining that the Tenth Circuit incorrectly concluded that Endrew's IEP only needed to be "reasonably calculated to enable [him] to make *some* progress") (alteration in original)).

39. *Id.* at 402 n.2.

40. *See id.* at 401.

41. *Id.* at 400-02.

42. *See Questions and Answers (Q&A) on U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1*, U.S. DEPT. OF EDUC. (Dec. 7, 2017), https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf [https://perma.cc/HK2A-CBPR].

### *B. Parents as Advocates: Due Process Complaints*

In protecting the rights of children with disabilities, the IDEA enables parents to exercise their right to challenge their children's educational placement and advocate on their behalf.[43] The IDEA drafters created hearing rights to ensure that parents have the opportunity to be heard in special education disputes.[44] When a parent believes that the school has failed to provide their child with FAPE, the parent can file a due process complaint on behalf of his or her child.[45] The parent has an opportunity to present the complaint before an impartial hearing officer during an administrative hearing.[46] If a parent is dissatisfied with the result of that hearing, they may then file an action in court.[47]

The IDEA drafters implemented procedural due process measures throughout the special education process to ensure fairness and accuracy in making individual placement determinations.[48] One such procedural safeguard is the IDEA's notice requirement.[49] Once a year, a school must provide parents with a copy of the IDEA's procedural safeguards, which outlines their procedural rights in all aspects of the special education process.[50] "The procedural safeguards notice [must] include a full explanation of the procedural

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43. 20 U.S.C. § 1400(d)(1)(B), (C)(3); see *id.* § 1415(b) for a full list of formal dispute resolution tools including facilitated IEP meetings, mediation, state complaints, and due process petitions.

44. *See* Pennsylvania Ass'n for Ret'd Child. v. Commonwealth, 343 F. Supp. 279, 303-06 (E.D. Pa. 1972) [hereinafter PARC v. Pennsylvania] (outlining provisions for parental rights in the parties' stipulated plan for special education rights). *PARC v. Pennsylvania* was a foundational case in special education rights and served as a blueprint for the drafters of the Education for All Handicapped Children Act of 1975, reauthorized as the IDEA. *See Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania*, THE PUB. INT. L. CTR., https://pubintlaw.org/cases-and-projects/pennsylvania-association-for-retarded-citizens-parc-v-commonwealth-of-pennsylvania/ [https://perma.cc/J5MR-KKD3].

45. *See* 20 U.S.C. § 1415(b)(6)(A).

46. *See id.* § 1415(f)(1)(A); *see also* § 1415(f)(3)(A)(i)(I)-(II) (providing that an impartial hearing officer may not be an employee of the State or local educational agency or have a personal or professional conflict of interest).

47. *Id.* § 1415(i)(2)(A).

48. *See* PARC v. Pennsylvania, 343 F. Supp. at 293-95, 301-07 (establishing a right to due process for children with disabilities who face exclusion from regular classroom instruction); see also THE PUB. INT. L. CTR., *supra* note 44, for an overview of PARC v. Commonwealth's role in shaping federal special education law.

49. 20 U.S.C. § 1415(c).

50. *See id.* § 1415(d)(1)(A).

safeguards, written in the native language of the parents ... and written in an easily understandable manner."[51] The school must also provide a copy of procedural safeguards to the parents (1) at the time of referral or request for an evaluation, (2) the first time a parent files a due process complaint,[52] and (3) when a parent requests a copy of the safeguards.[53]

Given the advantage schools have in both information and expertise, the IDEA drafters intended these procedural safeguards to inform parents of their rights and provide parents with the opportunity to access specialized knowledge related to their child's educational plan.[54] Congress's provision of procedural safeguards through prior written notice formed the crux of the Supreme Court's justification for allocating the burden of proof on the party bringing the complaint in special education administrative hearings in *Schaffer v. Weast*.[55] The Court found that the obligation to share information with parents was a sufficient measure of fairness to bridge the power and knowledge differentials between the two parties, giving the school "no unique informational advantage."[56]

The Court also pointed to the IDEA's provision for parental participation rights during hearings, including their right to be accompanied by an attorney, the right to present evidence and prohibit the introduction of evidence, and the right to obtain an independent educational evaluation at the school's expense.[57] Though some states place the burden of proof on school districts

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51. *Id.* § 1415(d)(2).

52. This notice must answer the subject matter of the complaint in writing and provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision. *See id.* § 1415(c)(2)(B)(i)(I).

53. *Id.* § 1415(d)(1)(A).

54. Schaffer v. Weast, 546 U.S. 49, 61 (2005) ("[I]n 2004, Congress added provisions requiring school districts to answer the subject matter of a complaint in writing, and to provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision.... These protections ensure that the school bears no unique informational advantage.").

55. *Id.* at 60-61.

56. *Id.* at 61.

57. *See id.* at 60-61 ("[Parents] are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition."); 34 C.F.R. § 300.502 (2024).

rather than on parents,[58] *Schaffer* rejected the argument that the knowledge differentials in the context of special education disputes should shift the burden off of the party bringing the claim—most often the parent.[59]

After exhausting the administrative hearing process, a parent may appeal a hearing officer's decision and bring their complaint to court.[60] Though a court may overturn a placement decision made at the administrative level, judges will typically defer to administrative decisions, viewing the administrative process as the best way to meet children's needs through collaboration between parents and school districts.[61] Courts view educators as experts possessing specialized knowledge outside the scope of the court's expertise and tend to defer to their judgment in reviewing administrative decisions.[62] Consequently, though the IDEA's statutory scheme bolsters parents' rights to advocate for their children and aims to equalize access to specialized knowledge, courts tend to examine the administrative record with the perspective that the school's judgment on educational practice and policy is correct.[63]

For parents who do prevail on a due process claim, the IDEA awards only equitable forms of relief: compensatory education or tuition reimbursement.[64] An award of compensatory education aims to make the child whole by placing them in the same position they would have been if not for the school district's violations of the IDEA.[65] Compensatory educational rewards are measured by the hours and days of appropriate services denied and are typically delivered through after-school instruction or additional programming or services for students.[66] Where a family unilaterally decides

58. Christina A. Samuels, *Some States Shift IEP Burden of Proof to School Districts*, EDUCATIONWEEK (Jan. 28, 2008), https://www.edweek.org/teaching-learning/some-states-shift-iep-burden-of-proof-to-school-districts/2008/01 [https://perma.cc/64KS-A54V].

59. *See Schaffer*, 546 U.S. at 57-58.

60. 20 U.S.C. § 1415(h)(2)(A).

61. *See* Raj, *supra* note 19, at 450.

62. *Id.*

63. *See, e.g.*, Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982).

64. *See* 34 C.F.R. § 300.151(b) (2024).

65. *See* Miener v. Missouri, 800 F.2d 749, 753-54 (8th Cir. 1986) (expanding relief under the IDEA beyond tuition reimbursement to accommodate children who would not otherwise receive redress for denial of FAPE due to their family's inability to pay private school tuition).

66. *See* Valverde, *supra* note 12, at 628.

to enroll their child in private school, a court may order the public school to reimburse the costs of private school tuition if it is found to have failed to provide FAPE to the child prior to their enrollment in the private school.[67]

Parents who cannot afford to front the costs of private school education must rely only on compensatory education, resulting in prolonged denial of FAPE for children from low-income backgrounds.[68] Meanwhile, children whose families can afford to send them to private schools typically will start receiving the appropriate services immediately.[69] Notably, compensatory education was never officially codified in the IDEA.[70] Thus, schools are not required to include the availability of compensatory education in procedural notices to parents, leaving many ignorant of this form of relief.[71] Consequently, while the IDEA empowers parents to hold schools accountable and ensure that their child receives an appropriate education, inequities undergird the statutory scheme, resulting in only some children being able to benefit from the scheme to its fullest extent.[72]

## II. DEFINING THE SCOPE OF THE STATUTE OF LIMITATIONS

Like most legal claims, the IDEA includes a statute of limitations.[73] When appealing an administrative hearing decision, parents must bring their claims within two years of the date that they knew or should have known that their child's educational rights were violated.[74] Part II of this Note discusses the statutory construction of the IDEA's statute of limitations and how conflicting language between two provisions has created inconsistent standards

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67. 34 C.F.R. § 300.148(c); *see* Town of Burlington v. Mass. Dep't of Educ., 471 U.S. 359, 369-70 (1985) (holding that a parent may be awarded tuition reimbursement where they have demonstrated the inappropriateness of the school district's IEP and the appropriateness of the private school placement).

68. *See* Valverde, *supra* note 12, at 631.

69. *Id.* at 630.

70. *Id.*

71. *Id.*

72. *See* Terry Jean Seligmann & Perry A. Zirkel, *Compensatory Education for IDEA Violations: The Silly Putty of Remedies?*, 45 URB. LAW. 281, 296 (2013).

73. *See* 20 U.S.C. § 1415(f)(3)(C).

74. *See id.*

among courts that evaluate when claims accrue and how far back parents can recover on violations. This discussion centers on the Third Circuit's 2015 decision in *G.L. v. Ligonier School Valley District Authority*, which reconciled the two statutory provisions and set a precedent for a correct application of the statute of limitations.[75]

### *A. The IDEA's Statute of Limitations*

Prior to the reauthorization of the IDEA in 2004, the IDEA did not include a specific limitations period.[76] Rather, states borrowed limitations periods from analogous state laws.[77] With the reauthorization of the Act, Congress established a two-year statute of limitations for due process claims, which begins to run from the time that the party bringing the complaint knew or should have known about the alleged violation, referred to by courts as the "KOSHK" date or "discovery date."[78] The provision permits states to impose a different time limit if the corresponding state statute provides one.[79] Forty-four states have set the statute of limitations period at two years in accordance with the federal statute.[80] Among the remaining six states, "[f]ive states (Alaska, Louisiana, North Carolina, Texas, and Wisconsin) have restricted the statute of limitations period to one year, [and] only Kentucky has extended it to three years."[81]

When Congress added the statute of limitations, it was concerned that the focus of special education litigation had shifted from protecting the substantive rights of children with disabilities to

75. *See* 802 F.3d 601, 604-05 (3d Cir. 2015).

76. *See* Perry A. Zirkel & Peter J. Maher, *The Statute of Limitations Under the Individuals with Disabilities Education Act*, 175 W.'S EDUC. L. REP. 1, 1.

77. *Id.* at 2.

78. *See* H.R. REP NO. 108-77, at 116 (2003) (amending the IDEA to add a two-year statute of limitations); 20 U.S.C. § 1415(f)(3)(C).

79. 20 U.S.C. § 1415(f)(3)(C) ("A parent or agency shall request an impartial due process hearing 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, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.").

80. Jane R. Wettach & Bailey K. Sanders, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorneys*, 20 CONN. PUB. INT. L.J. 239, 244 (2021).

81. *Id.*

pinning liability on a school district for technical violations of the Act.[82] Congress also feared that far-removed litigation created distrust between parents and schools, jeopardizing a child's education and detracting from a school's ability to effectively provide appropriate educational services.[83]

Congress intended the two-year limitation on complaints to prevent instances in which a parent brings a claim alleging a FAPE violation that began in elementary school on behalf of their now high-school-age student.[84] The limitation period also aimed to prevent schools from wasting time and resources on documenting conversations in anticipation of far-removed claims.[85] Ultimately, the explicit limitations period imposed an obligation on parents to be vigilant advocates of their child's education and purportedly increased schools' capacities to focus their resources on providing FAPE for their students and to fulfill their obligations under the IDEA.[86]

### *B. Conflicting Interpretations*

In drafting the statute of limitations, Congress seemingly created two different statutory provisions: one setting forth a two-year limitations period and one creating a two-year look-back period.[87] The first provision allows a party to bring a claim during the two-year time frame from the date on which the parent knew or should have known of the violation (the "discovery date").[88] Under this provision, the discovery date defines a clear starting point from which to file a claim but does not limit recovery to violations that occur during the two-year period as long as the claim is timely filed.[89] The second provision implies a look-back period and

82. *See* H.R. REP NO. 108-77, at 85.
83. *Id.* at 115-16.
84. *Id.* at 115.
85. *Id.* at 115-16.
86. *See id.*
87. *See supra* notes 7-8 and accompanying text.
88. *See* 20 U.S.C. § 1415(f)(3)(C) ("A parent or agency shall request an impartial due process hearing *within* 2 years of the date the parent or agency knew or should have known about the alleged action.") (emphasis added).
89. *See infra* notes 139-49 and accompanying text.

seemingly limits the scope of claims that can be recovered on to those occurring up to two years before the discovery date.[90]

This discrepancy created disagreement among courts on how to apply the applicable limitations period. Some courts relied on § 1415(f)(3)(c) and upheld a two-year limitations period, while some courts applied both statutory provisions to create a "2+2" rule, allowing parents to bring claims within a four-year period.[91] Several courts relied on the express language in § 1415(b)(6)(B) and applied an "occurrence" rule rather than a discovery rule standard.[92] Under the occurrence rule approach, parties can only recover on claims occurring no more than two years before the *filing date*.[93] Consequently, the scope of viable claims ostensibly decreases each day that a party waits to file a claim.[94] Such confusion abated following guidance from the Third Circuit's ruling in *Ligonier*, discussed in the following section of this Note.[95]

Prior to *Ligonier*, two main camps of interpretation arose out of the statutory language of the IDEA provision: an occurrence rule standard and the 2+2 rule. Under the occurrence rule, courts abandon the KOSHK language and restrict the scope of claims to violations that occurred no more than two years before the date on which parents filed the complaint.[96] Under the 2+2 rule, courts read § 1415(f)(3)(C) to set a two-year limitations period for bringing the claim beginning with the "KOSHK" date and read § 1415(b)(6)(B) to extend the scope of claims that can be brought to up to two years before the KOSHK date.[97] The 2+2 rule was pervasive throughout judicial attempts to reconcile the two statutory provisions and can be best illustrated through the following case example.

In *Jana K. ex rel. Tim K. v. Annville-Cleona School District*, the United States District Court for the Middle District of Pennsylvania

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90. *See* 20 U.S.C. § 1415(b)(6)(B) ("An opportunity for any party to present a complaint ... which sets forth an alleged violation that *occurred* not more than 2 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.") (emphasis added).

91. *See infra* Part II.

92. Courts justify this approach under the language of § 1415(b)(6)(B). *See supra* note 90.

93. *See infra* notes 139-49 and accompanying text.

94. *See infra* notes 139-49 and accompanying text.

95. *See infra* Part II.C.

96. *See* G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 607 (3d Cir. 2015).

97. *See id.* at 612-13.

overruled the hearing officer's application of the statute of limitations on appeal and instead applied a two-year look-back period to the plaintiff's claims.[98] Jana's father filed a due process complaint on behalf of his daughter against the school district for its failure to identify Jana as a child in need of special education services and for its failure to provide FAPE.[99] He filed the complaint on July 9, 2012.[100] During the administrative hearing, the hearing officer held that the IDEA limited the plaintiff's claims to those occurring no more than two years before the filing of the due process complaint.[101]

On appeal, the school district argued for the 2+2 rule and claimed that the proper standard required the father to file a complaint within two years of the date he knew or should have known about the IDEA violation as long as the violations underlying the claims did not arise more than two years before that date.[102] The school district contended that the father should have known about the violation when he received a psychological evaluation report on May 26, 2010.[103] Using this date, the school district argued, his claims were time-barred, because he filed his complaint more than two years later.[104] However, the father claimed that he did not know about the violation until February 24, 2012, when he received a report "indicating that [his daughter] was in need of special education services."[105]

The court agreed with the school district's application of the IDEA's statute of limitations but held that February 24, 2012, was the correct discovery date.[106] Applying the 2+2 rule, the father could bring his claim, but Jana was entitled to compensatory education only for claims arising no earlier than February 24, 2010.[107] The 2+2 rule set the accrual of claims at the KOSHK date and contradicted the occurrence rule by applying both a forward-looking and

98. 39 F. Supp. 3d 584, 598 (M.D. Pa. 2014).
99. *See id.* at 593.
100. *Id.*
101. *Id.* at 597.
102. *Id.* at 598.
103. *Id.*
104. *Id.*
105. *Id.* at 600.
106. *Id.*
107. *See id.*

backward-looking two-year period from that date.[108] However, it also created a remedy cap, barring recovery on violations occurring more than two years prior to the KOSHK date.[109]

### *C.* G.L. v. Ligonier Valley School District Authority*: Reconciling the IDEA's Statutory Scheme*

In 2015, the Third Circuit resolved the language in the IDEA's statutory provisions and definitively rejected the 2+2 rule.[110] The issue in the pivotal *Ligonier* case rested on how § 1415(f)(3)(C) and § 1415(b)(6)(B) should be read together and on how that interpretation affects judicial authority to remedy IDEA violations through compensatory education.[111] In this case, the plaintiff presented claims that spanned multiple years but that were properly filed within two years of the date on which the student's parents knew or should have known about the basis of the claims.[112]

#### *1. The Dispute*

The special education dispute arose when G.L.'s parents brought due process claims for denial of FAPE and demanded compensatory education for September 2008 through March 2010—the time during which they alleged the school district denied their son FAPE.[113] Upon entering Ligonier Valley School District as a ninth grader in the fall of 2008, one of G.L.'s teachers notified his parents of his struggles in the learning environment, including distraction and lack of organizational skills.[114]

Acting on this information, G.L.'s parents repeatedly requested that the school evaluate him for special education needs.[115] The District denied their request on each occasion.[116] During this time,

108. *See id.*
109. *See id.*
110. *See* G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 604-05 (3d Cir. 2015).
111. *Id.* at 604.
112. *See id.* at 606.
113. *Id.*
114. *Id.* at 605.
115. *Id.*
116. *Id.*

G.L. was being severely bullied because of his sexual orientation, which exacerbated his academic struggles.[117] Because G.L. had been hiding his poor academic performance, his parents were not aware of the bullying or the extent of his academic struggles until the school district informed them that he had failed ninth grade.[118]

In the fall of 2009, the school finally agreed to evaluate G.L. for learning disabilities.[119] The evaluation revealed that G.L. presented learning disabilities in math, reading, and writing.[120] The relationship between the school and G.L.'s parents further deteriorated, as the parties could not agree on a set of educational goals for G.L.'s IEP.[121] G.L. stopped attending school in January 2010 due to the bullying, and in March 2010, his parents arranged for a psychological evaluation, which revealed a diagnosis of PTSD and an additional disability—both of which were caused by the ongoing bullying.[122] On March 8, 2010, G.L.'s parents removed him from school and enrolled him in an online charter school.[123]

*2. The Administrative Hearing Officer's Interpretation*

On January 9, 2012, G.L.'s parents filed their due process complaint against the school district and requested compensatory education for September 2008 through March 2010.[124] At the administrative hearing, the hearing officer determined that the KOSHK date was March 9, 2010—the day after G.L.'s parents withdrew him from school.[125] Thus, G.L.'s complaint was timely filed because it was filed within two years of the date they knew or should have known about the basis of their complaint.[126]

However, the hearing officer held that G.L. was only entitled to compensation for up to two years before the *filing date*.[127] Under this

117. *Id.* at 606.
118. *Id.* at 605.
119. *Id.* at 606.
120. *Id.*
121. *See id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *See id.* at 607.
126. *Id.*
127. *Id.*

approach, G.L. could recover only for violations that occurred between January 2010 and March 2010, as those were the months within the two-year window of filing the complaint that he attended school.[128] But between January and March 2010, the school *was* providing FAPE to G.L.[129] Had G.L.'s parents filed their claim by September 2010, G.L. would have recovered for the full period of compensatory education requested.[130] However, because his parents did not file until the end of the two-year filing window, G.L. was barred from recovery for the entire time period during which he experienced cognizable harm.[131] Consequently, the hearing officer determined that G.L. had no claim, because the school was properly fulfilling its obligation to provide FAPE during the window for which G.L. was entitled to compensatory education under the occurrence rule standard.[132]

*3. The District Court's Interpretation*

The United States District Court for the Western District of Pennsylvania disagreed with the hearing officer's interpretation and applied the 2+2 rule, which allowed for a maximum four-year period of compensation.[133] The court held that the IDEA's statutory period allowed recovery for up to two years *before* the discovery date and through the two-year filing window *following* the discovery date.[134] Under this approach, G.L. would be entitled to recovery for claims occurring between September 2008 and March 2010 if the court found the school had indeed denied him FAPE.[135]

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128. *Id.*

129. *Id.*

130. The two-year limitations period for G.L.'s claim was triggered by the March 9, 2010 discovery date. *See id.* To recover for harms occurring as early as September 2008, his parents would have had to file by September 2010, but they did not file the due process claim until January 9, 2012. *See id.*

131. *See id.*

132. *Id.*; *see supra* Part II.B.

133. *Ligonier*, 802 F.3d at 607.

134. *Id.*

135. G.L.'s parents discovered the violation on March 9, 2010, which would allow them to bring claims arising out of violations that occurred as early as March 9, 2008, under the 2+2 rule. *See id.* The hearing officer's approach barred all claims arising out of violations that occurred earlier than January 9, 2010. *See supra* notes 127-32 and accompanying text.

*4. The Third Circuit's Interpretation*

The United States Court of Appeals for the Third Circuit rejected the district court's argument that § 1415(f)(3)(C) and § 1415(b)(6)(B) set forth two distinct statute of limitations provisions: a two-year limitations period and a two-year look-back period.[136] Rather, the Third Circuit held that § 1415(b)(6)(B) was "simply an inartful attempt to mirror § 1415(f)(3)(C)'s two-year" statutory period.[137] Ultimately, the court concluded, "[Section] 1415(b)(6)(B) and § 1415(f)(3)(C) do indeed reflect 'the same' statute of limitations, which imposes a deadline on the filing of claims once they are reasonably discovered but does not limit the redress available for timely-filed claims."[138]

The court conducted a close reading of the statutory language to formulate its interpretation and bolstered its proposition by pointing to the legislative intent of the IDEA as a whole.[139] First, the Third Circuit analyzed the language of § 1415(b)(6)(B) and concluded that the provision was exactly the same as § 1415(f)(3)(C) apart from the language creating a timeframe "before, rather than after, the reasonable discovery date."[140] Emphasizing the distinct difference between the two statutory provisions, the court wholly rejected the school district's argument that the two provisions were identical and that they barred relief for injuries that occurred no more than two years before the filing of the complaint.[141] The court further held that the school district's interpretation failed because neither statute referred to an occurrence rule.[142] Both the statutory language and the intent of the IDEA unambiguously apply an

136. *Ligonier*, 802 F.3d at 604-05.

137. *Id.*

138. *Id.* at 612.

139. *See id.* at 611-12 ("[W]e consider below (1) the plain language arguments of the parties and amici; (2) the broader context of the statute; (3) the position of the DOE; and (4) the legislative history of the 2004 amendments, and we conclude that applying the plain language of the text would force us to give § 1415(b)(6)(B) a meaning that 'turns out to be untenable in light of the statute as a whole.'" (quoting King v. Burwell, 576 U.S. 473, 497 (2015))).

140. *Id.* at 612.

141. *See id.*

142. *Id.* at 613.

"explicit, twice-repeated discovery rule" to the statute of limitations.[143]

The court reasoned that a two-year remedy cap on violations occurring two years prior to the filing date would severely restrict the remedial purpose of the IDEA.[144] The court outlined a hypothetical example in which a parent reasonably discovers at the end of her daughter's third-grade year that the school district failed to identify her as a student with a disability.[145] The parent then files a claim against the school district for the deprivation of FAPE from first through third grade.[146] Under the occurrence rule standard, the child would be barred from recovering their lost educational opportunity for first grade as it would not fall within the two-year period prior to the date of filing the claim.[147] Moreover, for every day that the parent "conducted due diligence, explored settlement options, or prepared the complaint before filing" the claim, the child would be deprived of another day of compensatory education.[148] This framework, the court explained, was incompatible with the goals and legislative intent behind the creation of the IDEA to make children whole.[149]

The Third Circuit then turned to the context of § 1415 and the IDEA as a whole to interpret the ambiguous language in § 1415(b)(6)(B) that had led courts to apply a 2+2 rule.[150] The court evaluated § 1415 in its entirety and determined that Congress intended this statutory section to function as a list of all the procedural safeguards available to parents and their children under the IDEA.[151] Congress would be essentially hiding a fundamental change to the IDEA framework in the lengthy procedural safeguards

143. *Id.* ("Section 1415(b)(6)(B) makes reference to (a) injuries that occurred no more than two years before (b) the reasonable discovery date; § 1415(f)(3)(C) provides that (b) this reasonable discovery date must be no more than two years before (c) the filing of the complaint; but neither subsection references (a) injuries that occurred no more than two years before (c) the filing of the complaint.").

144. *Id.* at 614.

145. *Id.* at 613.

146. *Id.*

147. *Id.* at 613-14.

148. *Id.*

149. *See id.*

150. *See id.* at 616.

151. *See id.*

section if § 1415(b)(6)(B) were to be interpreted as a new provision limiting a court's power to award compensatory education to a twenty-four-month period.[152]

Further, the court upheld the principle "that identical words and phrases within the same statute [are] normally ... given the same meaning."[153] The court held that the identical language between both statutory provisions describing the IDEA's statute of limitations and exceptions indicate that § 1415(b)(6)(B) was merely intended to summarize § 1415(f)(3)(C)'s statute of limitations.[154] Any discrepancy between the two provisions was the result of poor drafting by Congress.[155]

The court then chronicled the proposed Senate and House bills that converged into the 2004 amendments to demonstrate that the discrepant terms were, in fact, a legislative oversight that resulted when the conference committee reconciled the two bills.[156] The House first introduced a bill proposing a statute of limitations that used a backwards-looking occurrence rule and a one-year limitations period.[157] The Senate, on the other hand, used a forward-looking discovery rule with a two-year limitations period in their proposed bill.[158] The conference committee decided to include both the House and the Senate's additions but conformed each material term in the House bill to match that of the Senate.[159] However, the conference committee failed to change the language that appears to imply a look-back period to the Senate's forward-looking provision.[160] Consequently, the decade-long confusion created by the conflicting provision was simply the product of legislative oversight

152. *See id.* at 616-17 ("As the Supreme Court 'ha[s] repeatedly said[,] ... Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."'" (quoting EPA v. EME Homer City Generation, L.P., 572 U.S. 489, 528 (2014) (Scalia, J., dissenting)) (alteration in original)).

153. *Id.* at 617 (quoting Powerex Corp. v. Reliant Energy Servs., Inc., 551 U.S. 224, 232 (2007)).

154. *Id.* at 618; *see also id.* at 621 (summarizing the Department of Education's guidance promulgating that the two statutes are the same).

155. *Id.* at 618.

156. *See id.* at 622.

157. *Id.*

158. *Id.*

159. *Id.* at 623.

160. *Id.*

rather than a substantive change to the IDEA's remedial framework.[161]

The Third Circuit's legislative interpretation struck down the theory that § 1415(b)(6)(B) established a remedy cap.[162] The court emphasized that the IDEA's purpose is to ensure that all children with disabilities are provided with FAPE that is designed to meet their needs.[163] Thus, the remedy mandated by the IDEA for denial of FAPE is to return that child to the educational path they would have traveled had the school provided them with FAPE.[164] Applying the statute of limitations to cut off remedies for timely filed claims, as proposed by G.L. and the school district, was not consistent with the IDEA's remedial purpose.[165]

The Third Circuit affirmed the District Court's decision that G.L.'s claims for compensatory education before March 2010 were not time-barred.[166] However, the Third Circuit reached this conclusion, not through the lower court's 2+2 rule, but in upholding the standard that there is no remedy cap for violations based in claims that are timely filed.[167] Because "G.L.'s claim was filed within two years of the date his parents knew or reasonably should have known of his injury," he had the right to recover for his denial of

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161. *See id.* at 624 ("In this reauthorization, we also include a 2-year statute of limitations on claims. However, it should be noted that this limitation is not designed to have any impact on the ability of a child to receive compensatory damages for the entire period in which he or she has been deprived of services. The statute of limitations goes only to the filing of the complaint, not the crafting of remedy. This is important because it is only fair that if a school district repeatedly failed to provide services to a child, they should be required to provide compensatory services to rectify this problem and help the child achieve despite the school's failings." (quoting 150 CONG. REC. S11851 (daily ed. Nov. 24, 2004) (statement of Sen. Tom Harkin))).

162. *Id.* at 618 ("Even if the structure, language, and context of the IDEA left room for doubt, we would be loath to interpret § 1415(b)(6)(B) as constricting the remedies available under the IDEA in view of the statute's broad remedial purpose.").

163. *Id.* at 620; *see* 20 U.S.C. § 1400(d)(1)(A).

164. *Ligonier*, 802 F.3d at 620.

165. *Id.* at 618-19 ("[A] child's right to compensatory education 'accrue[s] from the point that the school district knows or should know' of the injury to the child, and the child 'is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.'" (quoting M.C. *ex rel.* J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 396-97 (3d Cir. 1996))).

166. *Id.* at 626.

167. *Id.*

FAPE that began from the day the school failed to identify him as a child in need of special education instruction.[168]

## III. WHY *LIGONIER* MATTERS: THE STATUTE OF LIMITATIONS' KNOWLEDGE BURDEN

The *Ligonier* decision marked a pivotal moment in the special education landscape because it established a clear interpretation of the IDEA's statute of limitations. The statute of limitations defines the boundaries of access to IDEA litigation because a parent with an actionable claim on behalf of their child may be entirely barred from relief due to an untimely claim. The *Ligonier* decision was also critical in confirming that Congress did not intend a remedy cap for claims filed within the statute of limitations.

Subsequent decisions at the circuit and district court levels adopting the Third Circuit's approach have helped create clearer standards and expectations for hearing officers, parents, and school districts in evaluating whether claims have been timely filed and in determining the scope of available remedies. However, when courts continue to interpret § 1415(b)(6)(B) as a remedy cap to timely filed IDEA claims, these decisions create disparate outcomes among similarly situated children living in different jurisdictions.[169] As the Third Circuit explained in *Ligonier*, the severe limitations that the occurrence rule approach imposes on IDEA claims is contrary to the IDEA's legislative intent to make children whole for their lost educational opportunities and position all children for a successful future.[170]

Part III addresses federal court decisions that have affirmed *Ligonier*'s holding and takes note of courts that have not yet adopted the Third Circuit's interpretation. It also analyzes the knowledge burden that triggers the limitations period and discusses when the "withholding of information" tolling exception applies. Legal standards defining knowledge are central to determining when a claim is timely filed and a claimant is entitled to relief under the discovery rule standard upheld by the Third Circuit.

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168. *Id.* at 626.
169. *See infra* Part III.A.
170. *See supra* Part II.C.4.

### *A. Court Decisions Since* Ligonier

Since the *Ligonier* decision, several federal courts across the country have affirmed the Third Circuit's interpretation of the conflicting statutory provisions. In *Avila v. Spokane School District 81*, the Ninth Circuit overturned the administrative law judge's (ALJ) and district court's decisions to time bar the Avilas' claims on behalf of their child, G.A., using the occurrence rule.[171] In addition to several procedural claims, G.A.'s parents brought two substantive claims.[172] The first claim alleged that the school district denied G.A. FAPE "by failing to identify him as a child with a disability in 2006," while the second claim alleged that the district failed to assess him for autism in 2006 and 2007.[173] The ALJ ruled in favor of the District on all claims, applying the occurrence rule.[174] The district court affirmed the ALJ's decision.[175]

On appeal, the parents "argue[d] that the district court improperly applied the IDEA's statute of limitations to their two substantive claims."[176] "In a question of first impression for [the] court,"[177] the Ninth Circuit corrected the lower court's application of the statute of limitations and held that courts must apply a discovery rule rather than an occurrence rule to IDEA claims.[178] Under the discovery rule, courts should not apply a backward-looking limit on redressability for cognizable claims.[179] The court remanded the case back to the district court to reevaluate the claims based on the discovery rule standard.[180] As long as the parents did not know about the 2006-2007 violations before April 26, 2008, their pre-2008 claims should not have been barred.[181]

Two years after *Ligonier*, the *Avila* court's decision marked the Ninth Circuit's official adoption of the Third Circuit's interpretation

171. *See* 852 F.3d 936, 937 (9th Cir. 2017).
172. *Id.* at 938.
173. *Id.*
174. *See id.*
175. *Id.* at 939.
176. *Id.*
177. *Id.* at 937.
178. *Id.* at 944.
179. *Id.*
180. *Id.* at 937.
181. *Id.* at 944-45.

and application of the IDEA's statute of limitations. In addressing the question of applying the proper statute of limitations to G.A.'s due process claim, the Ninth Circuit conducted the same statutory analysis as the Third Circuit.[182] The case represents a movement among other federal courts to establish that the IDEA's statute of limitations entails a two-year discovery rule standard that does not bar redressability on timely filed claims.[183]

Federal district courts in the Eighth Circuit, on the other hand, continue to apply the statute of limitations to claims through principles inconsistent with the Third Circuit's ruling. In *Minnetonka Public Schools, Independent School District No. 276 v. M.L.K. ex rel. S.K. and D.K.*, the United States District Court for the District of Minnesota barred recovery on claims occurring more than two years before the date on which M.L.K.'s parents filed a due process complaint.[184] The ALJ determined that the KOSHK date occurred during M.L.K.'s second-grade year in August 2017 and applied the 2+2 rule to the claims, allowing the parents to bring claims from actions occurring during his kindergarten and first-grade education.[185]

The district court reversed the ALJ's decision and held that the 2+2 rule was erroneous and applied an occurrence rule, barring claims occurring more than two years prior to the filing date.[186] Because the parents filed their due process complaint on August 8,

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182. *Id.* at 941 ("The statutory text of the IDEA, including its language and context, persuade us that the Third Circuit's approach in *Ligonier* is correct and that the IDEA's statute of limitations requires courts to apply the discovery rule described in § 1415(f)(3)(C).").

183. *See, e.g.*, Ms. S. v. Reg'l Sch. Unit 72, 916 F.3d 41, 50 (1st Cir. 2019); Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 45 (D.D.C. 2016); *see also* Denise Marshall, *COPAA Files 6th Circuit Brief Urging the Court to Adopt the 3rd Circuit's Ligonier Approach*, COPAA (Nov. 21, 2017), https://www.copaa.org/news/375649/COPAA-Files-6th-Circuit-Brief-Urging-the-Court-to-adopt-the-3rd-Circuits-Ligonier-Approach-.htm [https://perma.cc/5FTY-B8E6] (summarizing an amicus curiae brief urging the Sixth Circuit to apply a discovery rule standard rather than an occurrence rule standard to due process claims); Denise Marshall, *COPAA Urges Second Circuit to Adopt Third Ligonier Standard in Section 504 Claims*, COPAA (Nov. 28, 2017), https://www.copaa.org/news/376300/COPAA-Urges-Second-Circuit-to-Adopt-Third-Circuit-Ligonier-Standard-in-Section-504-Claims.htm [https://perma.cc/V8LA-HN7W] (summarizing an amicus curiae brief stating that the Second Circuit inappropriately time-barred plaintiff's claims through an incorrect application of the discovery rule).

184. No. 20-1036, 2021 WL 780723, at *1, *6 (D. Minn. Mar. 1, 2021), *rev'd*, 42 F.4th 847 (8th Cir. 2022).

185. *Id.* at *6.

186. *See id.*

2019, the court determined that any claims based on actions taken by the school district prior to August 8, 2017, were untimely.[187] As a result, the parents could not recover compensatory education for any violations that occurred during kindergarten or first grade.[188]

Here, the court applied a backward-looking approach to the statute of limitations, limiting recovery on claims occurring more than two years before the filing date rather than barring claims arising more than two years after the KOSHK date.[189] Under the *Ligonier* approach, the plaintiffs should have been able to recover for compensatory educational services without a remedy cap as long as those violations stemmed from the actions that the parents had become aware of on the KOSHK date.[190] Instead, the *Minnetonka* court limited M.L.K.'s compensatory education to his second-, third-, and fourth-grade years even though issues with his educational placement and evaluations had begun as early as kindergarten.[191]

In *Jackson v. Pine Bluff School District*, the United States District Court for the Eastern District of Arkansas also applied a backward-looking occurrence rule and recovery cap on due process claims brought on behalf of an autistic child with "cognitive, speech, and language impairments."[192] The plaintiffs filed their due process complaint on August 7, 2015; therefore, the court held that they could bring only claims relating to conduct that occurred no earlier than August 7, 2013.[193] Instead of allowing the plaintiffs to recover for *all* violations that the parents became aware of by the KOSHK date (as per the Third Circuit's approach), the court limited recovery to events that occurred no more than two years before the filing date.[194]

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187. *Id.*

188. *See id.*

189. *Id.*; *cf.* Avila v. Spokane Sch. Dist. 81, 852 F.3d 936, 944-45 (9th Cir. 2017) (holding that the discovery rule applies).

190. *See* G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 620-21 (3d Cir. 2015).

191. *See Minnetonka*, 2021 WL 780723, at *1 ("Parents further contend that District did not identify Student's 'unmistakable indicators of dyslexia since kindergarten' and ultimately 'provided ineffective and misdirected educational services based on a fundamental misunderstanding of his disabilities and educational needs.'").

192. *See* No. 4:16CV00301, 2017 WL 2296896, at *1, *7 (E.D. Ark. May 12, 2017).

193. *Id.*

194. *See id.*

In both *Jackson* and *Minnetonka*, the district courts in the Eighth Circuit centered their analyses on occurrence rather than discovery and limited recovery for violations that spanned more than two years.[195] As a result, those parents were barred from securing complete compensatory education for their child's missed educational opportunities. Thus, children whose parents file due process complaints in certain jurisdictions in the Eighth Circuit receive different educational outcomes than they would if they had filed in the Third or Ninth Circuits.[196]

Federal courts must align with the Third Circuit's interpretation of the IDEA's statute of limitations. Occurrence rule decisions, such as those arising out of courts in the Eighth Circuit, compromise the remedial promise of the due process system by erroneously barring cognizable claims. Consequently, parents suffer costs incurred by pursuing litigation in federal courts, and their children continue to experience the compounding effects of an inadequate education.[197]

### *B. The Discovery Rule Standard: Knew or Should Have Known*

The statute of limitations under the *Ligonier* approach begins to run at the moment when a parent has knowledge of the violation.[198] However, the moment in which sufficient knowledge is acquired is not determined by the parent. Instead, third parties in the form of administrative hearing officers and judges evaluate the existence and application of procedural safeguards to establish whether the knowledge burden has been met. Often, parents do not know how to meaningfully invoke their due process rights because they cannot identify that there has been a problem in the special education process without specialized knowledge, which is typically acquired through an advocate or attorney.[199] Consequently, the statute of

195. *See Jackson*, 2017 WL 2296896 at *7; *Minnetonka*, 2021 WL 780723 at *6.

196. *Compare Ligonier*, 802 F.3d at 626, *with Jackson*, 2017 WL 2296896, at *7, *and Minnetonka*, 2021 WL 780723, at *6.

197. *See supra* Part I.B.

198. *See Ligonier*, 802 F.3d at 620-21.

199. *See* Hyman et al., *supra* note 21, at 135 ("To be successful, ... parents must be knowledgeable about their child and his disability. They must also be able to understand the proceedings of the IEP meetings, voice disagreement and seek clarification and be willing to utilize the [conflict resolution] processes. Successful decision-making and implementation require skills and knowledge beyond the reach of many.") (alteration in original).

limitations' role as gatekeeper to the IDEA's remedial scheme cannot be fully understood without examining how courts determine when a party has knowledge of a violation and when courts apply the tolling exceptions to the limitations period.

Courts have not established a uniform standard for determining the KOSHK date, but courts tend to center the burden on an awareness that arises out of everyday parental observations and not on an awareness that would require specialized knowledge. For example, courts agree that awareness for the purposes of KOSHK refers to an awareness that one's child is not receiving proper educational services and not to an awareness that the school failed to act.[200] The Second Circuit determined that awareness of inadequate educational services arose when the child's parent noticed a rapid improvement in their progress after starting a private educational program.[201] The Eleventh Circuit held that the parents of a child who was misdiagnosed and improperly placed in a restrictive classroom did not know of the violation until they received the results of his evaluation.[202] Though they filed their claim in 2004, the parents were allowed to recover for the misplacement that occurred from 1999 to 2002 because they did not receive the evaluation results until 2003—the KOSHK date.[203] In this case, the court based the standard for knowledge on tangible, retroactive evidence such as evaluation results rather than on an expectation that the parents should recognize that their child's placement decision was improper at the time it was occurring.[204]

The United States District Court for the District of Columbia held that a parent's awareness that their child was not making progress was insufficient to establish the requisite knowledge to trigger the limitations period.[205] The court reasoned that the child's lack of

200. *See* Somoza v. N.Y. City Dep't of Educ., 538 F.3d 106, 114-15 (2d Cir. 2008); Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1288 (11th Cir. 2008).

201. *See Somoza*, 538 F.3d at 114 (adding that the parent was placed on additional notice when a special education instructor at the private program suggested that the child may not have been receiving a proper FAPE).

202. *See Draper*, 518 F.3d at 1288 ("We decline the invitation of the School System to conclude, as a matter of law, that Draper's family should be blamed for not being experts about learning disabilities.").

203. *Id.*

204. *Id.*

205. *See* Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 46 (D.D.C. 2016).

progress could have been attributed to their aptitude rather than to inadequate educational services.[206] Thus, knowledge that would cause a claim to accrue did not arise until the child's mother received evaluation results that "demonstrated starkly the extent to which [the child] had fallen further behind his peers and the disparity between certain cognitive abilities and his alarmingly low achievement scores."[207] In other words, a parent's awareness that their child is performing poorly is not sufficient to establish knowledge under the discovery rule if the parent lacks a baseline with which to compare their progress.[208] This standard acknowledges that parents may not have sufficient knowledge to recognize that their child is experiencing a violation of FAPE at the time it occurs without additional expertise or guidance.

Parents who do not bring their claim within two years of acquiring sufficient knowledge of the violation may still bring claims if they can qualify under one of two exceptions: the withholding of information exception or misrepresentation.[209] The withholding of information exception is intrinsically tied to parents' knowledge burden.[210] Courts invoke the withholding of information exception when schools fail to provide the IDEA's procedural safeguards to parents, such as failure to provide notice to parents, denying parents the right to participate in a child's IEP meeting, or denying access to their child's records.[211] Notably, the exception does not apply to situations in which a school district withholds substantive information to parents, such as "available programs, the student's ... progress, teacher observations, and reports."[212] Schools are also not required to share information about compensatory education through procedural safeguards.[213] Consequently, when a school is found to have appropriately provided procedural safeguards, its

206. *Id.*
207. *Id.* at 46-47.
208. *See id.* at 46.
209. *See* 20 U.S.C. § 1415(f)(3)(D).
210. *See infra* Part IV.B.
211. See 20 U.S.C. § 1415 for a full list of procedural safeguards; *see also* Raj, *supra* note 19, at 440 ("Where a school can demonstrate that they are meeting procedural requirements of the IDEA, courts will all too quickly lay the blame for slow progress on children themselves, rather than attribute it to the instructional program.").
212. *See* Valverde, *supra* note 12, at 653.
213. *See id.* at 634.

failure to provide information outside of the IDEA framework does not relieve the parents of their knowledge burden.[214]

Courts use the exception sparingly and set a low bar for determining whether a school has met its burden under the withholding of information exception. In *N.J. v. NYC Department of Education*, the United States District Court for the Southern District of New York held that, although the plaintiffs did not receive procedural notice around the time that they filed their due process claim, they did not qualify for the withholding of information exception because they had received and signed a procedural notice two years earlier.[215] The court stated that the relevant inquiry into whether a parent qualified under the withholding of information exception depended simply on whether the parents knew their rights rather than if they received every procedural notice required by the IDEA.[216] Because the parents previously received and signed a procedural notice, the court determined that they were aware of their rights and time-barred their claim, even though they had not received an additional notice when filing their claim as required by the IDEA.[217]

The Third Circuit stated that a "procedural flaw is not actionable so long as it does not affect the student's right to [FAPE], significantly impede the parents' right[s] to participation, or cause a deprivation of benefits."[218] In *Colonial School District v. G.K. ex rel. A.K.*, the parents of an autistic student claimed that they qualified under the withholding of information exception because the school district did not ensure that they fully understood their son's IEP goals.[219] They claimed that the school excluded them from the IEP process because it did not facilitate the parents' complete

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214. *See* § 1415(f)(3)(D) ("The timeline ... shall not apply to a parent if the parent is prevented from requesting the hearing due to ... the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.").

215. *See* No. 18-CV-6173, 2021 WL 965323, at *1, *12 (S.D.N.Y. Mar. 15, 2021).

216. *Id.*; *see also* 20 U.S.C. § 1415(d)(1)(A) (requiring schools to provide a copy of procedural safeguards to parents every year and (1) upon referral or parental request for evaluation, (2) "upon the first occurrence of the filing of a complaint," and (3) "upon request by a parent").

217. *See NYC Dep't of Educ.*, 2021 WL 965323, at *12.

218. *See* Colonial Sch. Dist. v. G.K. *ex rel.* A.K., 763 F. App'x 192, 197 (3d Cir. 2019).

219. *Id.* at 197.

understanding of the process.[220] The parents argued that the meaningful participation safeguard required perfect comprehension by parents of all aspects of the student's IEP.[221] However, the court held that the procedural safeguard requiring meaningful participation was merely a procedural mandate to allow parental involvement in the IEP process rather than a substantive guarantee that parents fully understand "all of the pedagogical purposes in the IEP."[222] Consequently, the parents' claims were time-barred, despite their limited understanding of the IEP process.[223]

While parents may invoke an exception to the statute of limitations, these cases demonstrate that parents face a high bar to prove that a school district impeded their ability to acquire meaningful knowledge. In an environment in which schools do not have an obligation to provide specialized knowledge to parents, many parents are unaware that a school has failed to fulfill a legal obligation or that there is a problem with their child's educational progress. Even when parents are aware of a problem, they often do not know that they have an actionable claim unless they seek out that information independently or through experts.[224] As a result, viable claims can be time-barred when parents lack the knowledge to take legal action due to the minimal information provided by procedural safeguards.

## IV. FACILITATING EQUITY THROUGH THE STATUTE OF LIMITATIONS

The IDEA was designed to ensure that students with disabilities receive an education that appropriately challenges them through tailored goals and to incentivize schools to develop programming that sets those students up for long-term success.[225] However, the outcomes promised by the statute are not actualized equally among

220. *See id.* at 197-98.

221. *Id.* at 198.

222. *Id.*

223. *Id.* at 198-99.

224. *See* Jeannie F. Lake & Bonnie S. Billingsley, *An Analysis of Factors that Contribute to Parent-School Conflict in Special Education*, 21 REMEDIAL & SPECIAL EDUC. 240, 245, 249 (2000) ("You're sort of left out there hanging. It's all new to you, and unless you happen to hit on the right people to help you out, you're just lost. Just lost. You don't have a clue as to why your child is having a problem generally." (quoting an interview with a parent)).

225. *See supra* Part I.

parents and the children on whose behalf the claims are brought. This Note suggests two ways in which Congress can further facilitate equity among students with disabilities seeking to access the IDEA and receive compensation for lost educational opportunities.

First, Congress should resolve the two conflicting statutory provisions to reflect a single two-year statute of limitations and change the language in § 1415(b)(6)(B) to specify that there is no remedy cap for claims brought within the statutory period. Second, courts can facilitate equity by applying heightened scrutiny to the withholding of information exception, whereby the court would evaluate whether a school has failed to provide substantive information that ensures parents understand their rights and the complexities of their child's educational plan. This change would bolster a school's obligation to share knowledge with parents and expand access to the IDEA's remedial scheme for parents who fail to meet the two-year period but were not adequately equipped with substantive knowledge of their child's education.

### *A. Congressional Reconciliation of the Statute of Limitations' Statutory Provisions*

If—as courts following the Third Circuit's lead have established—§ 1415(f)(3)(C) and § 1415(b)(6)(B) of the IDEA are intended to mirror one another, Congress should change the wording to reflect that statutory interpretation. Given the persistence of the occurrence rule among court decisions regarding the viability of due process claims, this change in the statutory language would eliminate the possibility of courts, such as those in the Eighth Circuit, overlooking the discovery rule and time-barring claims.

This legislative change would also reflect the intent of the IDEA drafters to encourage timely due process claims and ensure that the child is made whole by expanding the scope of recovery for such claims.[226] Revising the statutory language would reflect what states,

226. *See* H.R. REP NO. 108-77, at 115-16 (2003) ("Prolonged litigation breeds an attitude of distrust between the parents and school personnel and has the effect of requiring school personnel to document conversations, rather than working cooperatively to find the best

such as New Hampshire, have done in drafting a single statutory period for the statute of limitations in their state code provision for due process hearing appeals.[227] The New Hampshire statute specifies a two-year statute of limitations accruing from the KOSHK date and eliminates the language in § 1415(b)(6)(B) that has led courts to improperly apply a backward-looking occurrence rule and remedy cap to due process claims.[228]

A change to the federal statute's language would level the playing field among parents and children bringing due process appeals in different jurisdictions. Though the IDEA allows for states to apply their own statutory *time* frame, the IDEA drafters did not intend for jurisdictions to apply fundamentally different statutes of limitations with distinct standards for the accrual and scope of claims that can be brought and recovered on.[229] A single, clear statute of limitations will create uniform standards for determining whether claims are time-barred and help equalize outcomes for children who, in jurisdictions with a standard contrary to the Third Circuit's interpretation, will have their remedy cut off prematurely, while other similarly situated children will receive the opportunity to be made whole.

### *B. Expanding Access to the IDEA's "Withholding of Information" Exception*

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education placement and services for the child."); G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 624 (3d Cir. 2015) ("Therefore, compensatory education must cover the entire period and must belatedly provide all education and related services previously denied and needed to make the child whole." (quoting 150 CONG. REC. S11851 (daily ed. Nov. 24, 2004) (statement of Sen. Tom Harkin))).

227. *See* N.H. REV. STAT. ANN. § 186-C:16-b-I (2021) ("Any action against a local school district seeking to enforce special education rights under state or federal law shall be commenced by requesting an administrative due process hearing from the department of education within 2 years of the date on which the alleged violation was or reasonably should have been discovered.").

228. *See id.*

229. *See* 20 U.S.C. § 1415(f)(3)(C) (allowing courts to apply the state limitations period instead of the two-year federal limitations period). While state special education laws may vary in the length of their applicable tolling periods, the application of the discovery rule versus the occurrence rule is what creates meaningful disparities in the scope of claims that can be brought and recovered on among jurisdictions. See also *supra* notes 79-81 and accompanying text for a discussion of state limitations periods.

The IDEA's statute of limitations establishes burdens and obligations for both schools and parents to fulfill. Schools are tasked with providing procedural safeguards and facilitating meaningful parental participation in their child's IEP meetings and educational plan. Likewise, the two-year statutory period requires parents to be vigilant advocates for their child's education by remaining invested in their programming and filing timely claims.[230] The obligation to bring claims within two years of discovering a violation relieves the school district, in turn, from unexpected litigation and enables schools to invest their time and resources in providing special-education services that comply with the IDEA.[231]

The obligation on schools to inform parents of their rights through procedural notices is underwhelming given the imbalance in knowledge and power between school districts and parents and the resulting loss a child will suffer if their parents are time-barred from bringing a viable claim.[232] The burden to provide knowledge about a child's education should be heightened to balance the burdens between parents and schools. Courts can achieve this by applying heightened scrutiny to the withholding of information exception. The inquiry into whether a parent qualifies for the tolling exception should not ask simply whether safeguards were provided and if the parent had a meaningful opportunity to participate, but rather whether the school took actions to ensure that the parents actually understood their rights and actually had the opportunity to fully participate in meetings.

Studies of parent-school dynamics in special education reveal that the ways in which schools implement the procedural safeguards requirement are woefully inadequate in informing parents of their rights.[233] Districts rarely comply with the requirement to ensure that the safeguard notices are provided in language that is easy to

230. *See supra* Part II.A.

231. *See id.*

232. *See* Tracy Gershwin Mueller, *Litigation and Special Education: The Past, Present, and Future Direction for Resolving Conflicts Between Parents and School Districts*, 26 J. DISABILITY POL'Y STUD. 135, 137 (2015).

233. *See* Lake & Billingsley, *supra* note 224, at 249 ("Parents questioned their ability to advocate for their children without proper knowledge in the categories of organizational knowledge, disability knowledge, judgmental knowledge, legal knowledge, and conflict management knowledge.").

read and accessible to parents without a college education.[234] Most procedural safeguard notices issued by school districts across the United States require high-level reading comprehension and include jargon that is not easily understood by the average person.[235]

Parents whose native language is not English are at a significant disadvantage when schools fail to provide procedural safeguards that adequately enable them to understand their rights. The IDEA requires schools to request parental consent and provide a procedural safeguards notice in the parent's native language before conducting evaluations, and parents must provide their consent in writing.[236] Yet, many schools will ask parents to sign permission forms without providing the appropriate documents in their native language.[237] Some school districts were found to include less information in procedural safeguard notices provided in non-English languages than in the notices provided in English.[238] Further, many districts used Google Translate or other unsophisticated translation tools to translate the notices into parents' native languages.[239] Thus, the fact that procedural safeguards were *provided* is not sufficient to establish that a parent knew their rights at the time.

Additionally, research into special education dynamics has demonstrated that meaningful participation of parents in special education services rarely occurs.[240] Barriers such as late notices, inflexible scheduling, limited time for conferences, and a focus on paperwork rather than participation result in parents having an inadequate understanding of their child's services even if those

234. *See* Hyman et al., *supra* note 21, at 134-35.

235. *See* Mueller, *supra* note 232, at 136; Beth Harry, Norma Allen & Margaret McLaughlin, *Communication Versus Compliance: African American Parents' Involvement in Special Education*, 61 EXCEPTIONAL CHILD. 364, 371 (1995) (revealing that while parents could read the documents, they did not understand most of the terminology).

236. *See* 20 U.S.C. §§ 1414(a)(1)(D)(I)(i), 1415(d)(2); MARIA DE LOURDES B. SERPA, AN IMPERATIVE FOR CHANGE: BRIDGING SPECIAL AND LANGUAGE LEARNING EDUCATION TO ENSURE A FREE AND APPROPRIATE EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT FOR ELLS WITH DISABILITIES IN MASSACHUSETTS 19 (ScholarWorks U. Mass. Bos. 2011).

237. *See* Klingner & Harry, *supra* note 21, at 2272.

238. *See id.*

239. *See* Erin Archerd, *An IDEA for Improving English Language Learners' Access to Education*, 41 FORDHAM URB. L. J. 351, 384-85 (2016).

240. *See generally* Harry et. al, *supra* note 235, at 364, 370-71 (detailing the imbalanced power dynamics between parents and schools during IEP meetings, such as pressure to sign informed consent documents with minimal understanding of their content).

parents are physically present for these meetings.[241] As with deficient procedural notices, non-English-speaking parents receive insufficient support during these meetings.[242] The federal regulation associated with the IDEA directs schools to provide an interpreter at the evaluation meeting if necessary, but schools often fail to comply with that requirement.[243] As a result, non-English-speaking parents face barriers to meaningful participation when schools fail to implement the procedures required by the IDEA in a way that truly ensures that parents understand their rights.[244] Because the IDEA allows states to decide whether to require parental consent to changes in IEP or placement, parents may not even have an opportunity to voice opposition to a change in placement unless it is done through a due process claim.[245] When parents do not know how to invoke their rights, they are powerless against schools to ensure that their child receives an education that properly meets their needs.[246]

When a parent attempts to invoke the withholding of information exception, courts evaluate only whether a school provided the procedural safeguards without examining the substance of that information.[247] Consequently, a school's bare minimum effort is enough to exclude a parent from invoking the tolling exception.[248] Courts impose a heavy burden of knowledge that often cannot be fully actualized and understood without further context and support by those with specialized knowledge. Thus, the judicial standard for the withholding of information exception reflects an imbalance between the burden on parents and obligation of schools to ensure an efficient due process system.

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241. *See* Mueller, *supra* note 232, at 136.

242. *See* Raj, *supra* note 21, at 331 ("Thus, although the IDEA mandates parental involvement, meaningful participation is often not achieved with parents of ELL students. Furthermore, studies show that schools which operate English-immersion language programs have the least parental involvement.").

243. 34 C.F.R. § 300.322(e) (2024); *see* Mueller, *supra* note 232, at 137; Klingner & Harry, *supra* note 21, at 2272.

244. *See* Raj, *supra* note 21, at 331.

245. *See* Hyman et al., *supra* note 21, at 145.

246. *See* Raj, *supra* note 21, at 331 ("When ELL parents are unable to serve as a check against school systems, it only increases the likelihood that their child's special education needs will go unnoticed and unserved.").

247. *See supra* Part III.B.

248. *See supra* notes 211-17 and accompanying text.

To remedy this imbalance, courts should heighten their scrutiny of whether a school has fulfilled their information-sharing obligation under the tolling exception. Courts should analyze the substantive nature of the procedural safeguards provided by schools to determine whether the school made a good-faith effort to ensure that parents fully understood their rights and their child's educational plan. Not only will a heightened standard expand access to the tolling exception, but the increased burden under the exception will also incentivize schools to provide more meaningful information to parents. As a result, parents—now equipped with an understanding of their due process rights and the nuances of their child's education program—will be better prepared to recognize when a violation occurs and, consequently, to file a claim on time.

## CONCLUSION

As demonstrated through this Note, the IDEA's statute of limitations and its knowledge burden are an entryway into the life of a due process claim. Parents experience disparate outcomes when faced with a school district's expertise, depending on their socioeconomic background, education level, and access to advocates and attorneys.[249] Two changes can be made to ease the difficulties parents face in acquiring sufficient knowledge about their child's education program and special education rights to invoke the due process system.

First, Congress should resolve the two conflicting statutory provisions to reflect a single two-year statute of limitations with a discovery rule and no remedy cap and eliminate the confusing language in § 1415(b)(6)(B). Twenty years following its establishment, the IDEA's statute of limitations is long overdue for a change in its language that conforms with court interpretations of the appropriate limitations standard and guidance from the Department of Education (DOE) affirming those interpretations.

Second, courts should undertake a more demanding analysis of the withholding of information tolling exception by examining whether a school has made a good-faith effort to provide procedural

249. *See supra* Parts III-IV.

safeguards that adequately inform parents of their rights and support their ability to understand the substantive nature of their child's educational program through participation in meetings. The current obligation on schools to fulfill the minimum expectation established by the IDEA places parents in a position in which they are deemed to have knowledge that they do not actually possess and are consequently unable to invoke an exception to the statute of limitations.[250]

These two changes to the statute of limitations will create more uniform outcomes among parents bringing claims in different jurisdictions and create more equitable burdens and obligations between parents and schools. Uniform and equitable standards will further the IDEA's goals of ensuring that children are made whole and that schools are not overburdened by litigation and can continue serving students with disabilities according to the standards set forth by the IDEA.

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250. *See supra* Part III.B.

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