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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

L.B., et al.,

Plaintiffs,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT, et al.,

Defendants.

Case No. [16-cv-04382-DMR](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

Re: Dkt. No. 19

Plaintiffs L.B. and M.B. are the parents of S.B., a former student. They appeal the May 15, 2016 administrative decision of the California Office of Administrative Hearings pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. Defendants West Contra Costa Unified School District and West Contra Costa Unified School District Special Education Local Plan Area move pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss Plaintiffs’ complaint. [Docket No. 19.] The court held a hearing on March 23, 2017. For the following reasons, Defendants’ motion is granted in part and denied in part.

I. BACKGROUND

Plaintiffs make the following allegations in their complaint, all of which are taken as true for purposes of this motion.¹ S.B. was born in 1994 and has multiple learning disabilities. By the time she graduated from high school in June 2015, she had been eligible for special education and related services since 2009, when she was in the eighth grade. At all relevant times, S.B.’s school district of residence was West Contra Costa Unified School District (the “District”). [Docket No.

¹ When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all of the factual allegations contained in the complaint.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted).

1 1 (Compl.) ¶¶ 12, 13.] S.B. is bilingual and speaks Spanish and English. Compl. Ex. 1 at 3.

2 On July 25, 2013, S.B. filed a due process complaint with the Office of Administrative
3 Hearings (“OAH”) alleging that the District had failed to provide her with a free and appropriate
4 public education (“FAPE”) for the 2011-2012 and 2012-2013 school years. Compl. ¶ 25. In
5 August 2013, while the due process proceeding was pending, S.B. began attending Bayhill High
6 School in Oakland, California. Id. at ¶¶ 27, 29. S.B. and her parents settled their due process
7 complaint with the District on November 17, 2013. As part of the settlement, the District finalized
8 S.B.’s placement at Bayhill High School with services including speech and language therapy and
9 mental health counseling. The parties also agreed that the District would provide S.B. with
10 “transportation to/from Bayhill in the form of reimbursement for one round-trip per day of
11 attendance at the current IRS rate.” Id. at ¶ 31. Plaintiffs allege that the agreement provided that
12 “[m]ileage reimbursement shall be provided within 30 days of the District’s receipt of properly
13 completed mileage reimbursement form(s),” and that “[m]ileage reimbursement must be submitted
14 by [S.B.] on a monthly basis.” Id.

15 Plaintiffs allege that after the settlement agreement was finalized, the District never
16 provided S.B. or M.B. with mileage reimbursement forms to complete. Id. at ¶ 32. In April 2014,
17 M.B. submitted mileage reimbursement to the District on forms created by her attorney for August
18 2013 through March 2014.² Id. at ¶ 38. She never received reimbursement for the mileage
19 claimed on these forms. Id. at ¶ 39. In June 2015, M.B. submitted mileage reimbursement forms
20 for August 27, 2013 through June 5, 2015. Plaintiffs allege the District never processed the forms.
21 Id. at ¶ 42. S.B. graduated from Bayhill High School on June 7, 2015. Id. at ¶ 12.

22 Plaintiffs further allege that at S.B.’s March 5, 2014 individualized education program
23 (“IEP”) meeting, her attorney requested that the District provide independent educational
24 evaluations (“IEEs”) in the areas of psychoeducation, speech and language, and occupational
25 therapy. Id. at ¶ 36. Plaintiffs allege that although the District advised that it would respond to the

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28 ² Plaintiffs assert in their opposition that they submitted a request for mileage reimbursement for
August 27, 2013 through April 30, 2014, not March 2014, and seek leave to amend to allege the
correct dates. Opp’n 1 n.1.

1 request “at a later time,” they never received a letter from the District regarding their request for
2 the three IEEs. Id. at ¶¶ 36, 40. Additionally, Plaintiffs allege that at the March 5, 2014 IEP
3 meeting, S.B.’s attorney requested District-provided transportation for S.B. because it was
4 burdensome for M.B. to make two round trips per day to transport S.B. to and from school.
5 According to Plaintiffs, the District responded that “it would only provide reimbursement pursuant
6 to the settlement agreement.” Id. at ¶ 37.

7 S.B. filed a due process complaint against the District on August 26, 2015, alleging that the
8 District had failed to provide her with a FAPE for the 2013-2014 and 2014-2015 school years by
9 failing to reimburse S.B. and/or her parents for round trip mileage to and from Bayhill High
10 School. Id. at ¶ 43. At a September 8, 2015 resolution session, the District informed S.B.’s
11 attorney that it could not accept the mileage reimbursement request previously submitted by M.B.
12 because the request was not submitted on District forms. S.B.’s attorney and her sister then
13 completed the District’s mileage reimbursement forms for the period August 27, 2013 to June 5,
14 2015. Id. at ¶ 44. M.B. signed the forms on October 9, 2015 and was told she would receive the
15 check within 30 days. Id. at ¶ 45.

16 S.B. amended her due process complaint in October 2015, alleging that the District had
17 failed to reimburse S.B. and/or her parents for round trip mileage to and from Bayhill High School
18 through May 5, 2014, failed to provide transportation to and from school for S.B. after Plaintiffs’
19 May 5, 2014 request³, and failed to provide the three IEEs following Plaintiffs’ counsel’s March 5,
20 2014 request. Id. at ¶ 47. The matter was scheduled for trial on March 22-24, 2016. Id. at ¶ 55.
21 At a March 11, 2016 prehearing conference, counsel for the District informed Plaintiffs’ counsel
22 for the first time that the District had notified M.B. that it had granted the request for the IEEs in a
23 letter dated March 27, 2014. Counsel further stated that the District had already mailed M.B. and
24 L.B. a check for the mileage reimbursement. Id. at ¶ 52. Plaintiffs never received a check in the
25 mail. Id. at ¶ 53. On March 23, 2016, the second day of trial, the District provided M.B. with a
26 check for mileage reimbursement from August 27, 2013 to June 5, 2016. Id. at ¶ 60.

27 _____
28 ³ It appears that Plaintiffs’ references to “May 5, 2014” in paragraph 47 of the complaint are typos,
and that the correct date is March 5, 2014, the date of the IEP meeting.

1 The Administrative Law Judge (“ALJ”) issued a decision on May 5, 2016. Compl. Ex. 1
2 (OAH Decision). In relevant part, the ALJ found that 1) OAH lacked jurisdiction over the issue of
3 whether the District denied S.B. a FAPE by failing to reimburse Plaintiffs for mileage for one
4 round trip per day from August 28, 2013 through March 5, 2014, since the reimbursement was
5 required by a settlement agreement and OAH lacks jurisdiction to enforce settlement agreements;
6 2) even if OAH had jurisdiction over the August 2013-March 2014 mileage reimbursement
7 dispute, the issue was moot because S.B. received full reimbursement on March 23, 2016; and 3)
8 S.B. did not establish that she was denied a FAPE based on the District’s failure to provide IEEs,
9 since S.B. had failed to pursue the IEEs after the District granted her request. *Id.*

10 Plaintiffs filed this action on August 3, 2016, alleging three claims challenging the ALJ’s
11 decision with respect to the three findings set forth above. Defendants now move pursuant to Rule
12 12(b)(1) to dismiss Plaintiffs’ first and second claims as moot, and pursuant to Rule 12(b)(6) to
13 dismiss Plaintiffs’ third claim as barred by laches.

14 **II. LEGAL STANDARDS**

15 **A. Rule 12(b)(1)**

16 A motion to dismiss filed pursuant to Rule 12(b)(1) is a challenge to the court’s subject
17 matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). A court will dismiss a party’s claim for lack of
18 subject matter jurisdiction “only when the claim is so insubstantial, implausible, foreclosed by
19 prior decisions of th[e Supreme] Court, or otherwise completely devoid of merit as not to involve
20 a federal controversy.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998) (citation
21 and quotation marks omitted); see Fed. R. Civ. P. 12(b)(1). The challenging party may make a
22 facial or factual attack challenging subject matter jurisdiction. *White v. Lee*, 227 F.3d 1214, 1242
23 (9th Cir. 2000). A facial challenge asserts that “the allegations contained in a complaint are
24 insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d
25 1035, 1039 (9th Cir. 2004). In contrast, a factual attack disputes “the truth of the allegations that,
26 by themselves, would otherwise invoke federal jurisdiction.” *Id.* at 1039. A factual challenge
27 permits the court to look beyond the complaint, without “presum[ing] the truthfulness of the
28 plaintiff’s allegations.” *White*, 227 F.3d at 1242 (citation omitted). Even the presence of disputed

1 material facts “will not preclude the trial court from evaluating for itself the merits of
2 jurisdictional claims.” *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (citations
3 omitted).

4 **B. Rule 12(b)(6)**

5 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in
6 the complaint. See *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

7 When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all
8 of the factual allegations contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)

9 (per curiam) (citation omitted), and may dismiss a claim “only where there is no cognizable legal
10 theory” or there is an absence of “sufficient factual matter to state a facially plausible claim to

11 relief.” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.

13 2001)) (quotation marks omitted). A claim has facial plausibility when a plaintiff “pleads factual
14 content that allows the court to draw the reasonable inference that the defendant is liable for the

15 misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged
16 must demonstrate “more than labels and conclusions, and a formulaic recitation of the elements of

17 a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (citing
18 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); see *Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir.

19 2001), overruled on other grounds by *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir.
20 2002).

21 **III. ANALYSIS**

22 **A. Claims 1 and 2**

23 Plaintiffs’ first and second claims for relief challenge the ALJ’s determinations regarding
24 S.B.’s request for mileage reimbursement for the period August 28, 2013 through March 5, 2014.

25 Plaintiffs’ first claim challenges the ALJ’s conclusion that OAH lacked jurisdiction over the issue
26 of whether the District denied S.B. a FAPE by failing to reimburse Plaintiffs for mileage for that

27 period of time. The ALJ concluded that the reimbursement was required by the parties’ November
28 2013 settlement agreement, and that OAH’s limited jurisdiction does not include jurisdiction over

1 claims alleging a school district’s failure to comply with a settlement agreement. OAH Decision
2 11-12. In their complaint, while acknowledging that it is “well established that OAH does not
3 have the authority to enforce settlement agreements,” Plaintiffs allege that OAH has “jurisdiction
4 to adjudicate claims alleging a denial of a FAPE as a result of a violation of a mediated settlement
5 agreement, as opposed to ‘merely a breach’ of the mediated settlement agreement.” Compl. ¶ 81
6 (citations omitted). Plaintiffs contend that transportation in the form of mileage reimbursement
7 was required to provide S.B. with a FAPE, and accordingly, the “District’s failure to honor the
8 settlement agreement was in fact a denial of [a] FAPE.” Id. at ¶ 84.

9 Plaintiffs’ second claim alleges that the ALJ erred in finding that even if OAH had
10 jurisdiction over the mileage reimbursement dispute, the issue was moot because S.B. received
11 full reimbursement on March 23, 2016. See OAH Decision 13. Plaintiffs assert that the dispute is
12 not moot because “mileage reimbursement is a recurring issue in Due Process proceedings.”
13 Compl. ¶ 87. In addition, Plaintiffs assert that the mileage paid by the District in this case was
14 “solely the result” of S.B.’s attorney having questioned a District witness at trial, resulting in his
15 agreement to provide payment to M.B. the same day. Id. Plaintiffs allege that they were required
16 to incur attorneys’ fees to obtain reimbursement that the District admitted that it owed. Id. at ¶ 88.

17 In their motion to dismiss, Defendants contend that the court lacks jurisdiction to hear
18 Plaintiffs’ first and second claims. They argue that both claims are moot because the District paid
19 the mileage reimbursement in full. According to Defendants, Plaintiffs therefore do not seek any
20 relief from the court on these claims, and instead solicit “an advisory opinion reversing legal
21 holdings they deem erroneous.” Mot. 7.

22 Mootness pertains to a federal court’s subject matter jurisdiction and is properly raised in a
23 motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). *White*, 227 F.3d at 1242.
24 “The jurisdiction of federal courts depends on the existence of a ‘case or controversy’ under
25 Article III of the Constitution,” *Pub. Utilities Comm’n of State of Cal. v. F.E.R.C.*, 100 F.3d 1451,
26 1458 (9th Cir. 1996) (quotation omitted), and “[a]n actual controversy must be extant at all stages
27 of review, not merely at the time the complaint is filed.” *Bernhardt v. Cty. of Los Angeles*, 279
28 F.3d 862, 871 (9th Cir. 2002). “No justiciable controversy is presented where the question sought

1 to be adjudicated has been mooted by developments subsequent to filing of the complaint.” M.M.
2 v. Lafayette Sch. Dist., 767 F.3d 842, 857 (9th Cir. 2014). If an event occurs that prevents the
3 court from granting effective relief, the court lacks jurisdiction and must dismiss the claim. Pub.
4 *Utilities Comm’n*, 100 F.3d at 1458. Where it is “impossible for the court to grant any effectual
5 relief whatever to [the] prevailing party . . . any opinion as to the legality of the challenged action
6 would be advisory.” *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000) (internal citations and
7 quotations omitted). The party asserting mootness bears the heavy burden of establishing that
8 there is no effective relief that the court can provide. *Forest Guardians v. Johanns*, 450 F.3d 455,
9 461 (9th Cir. 2006).

10 A party can avoid dismissal of a claim that would otherwise be moot if it fits into one of
11 three mootness exceptions. The first exception involves cases that are “capable of repetition, yet
12 evading review.” *Pub. Utils. Comm’n*, 100 F.3d at 1459. This applies only in exceptional
13 circumstances. *Id.* To fit within the exception, a controversy must meet two requirements: “(1)
14 the challenged action was in its duration too short to be fully litigated prior to its cessation or
15 expiration; and (2) there was a reasonable expectation that the same complaining party would be
16 subjected to the same action again.” *Id.* The second mootness exception addresses “voluntary
17 cessation.” “[V]oluntary cessation of allegedly illegal conduct does not deprive the tribunal of
18 power to hear and determine the case, i.e., does not make the case moot, unless there is no
19 reasonable expectation that the wrong will be repeated.” *Id.* at 1460 (citation and quotation
20 omitted). Finally, the “collateral legal consequences” exception to mootness “applies to situations
21 where a petitioner would suffer collateral legal consequences if the actions being appealed were
22 allowed to stand.” *Id.*

23 Here, Plaintiffs do not dispute that they have received payment in full for the mileage
24 reimbursement, but argue that the District’s payment of the reimbursement does not moot their
25 first and second claims. They assert that the “voluntary cessation” exception to mootness applies.
26 “It is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive
27 a federal court of its power to determine the legality of the practice.’” *Friends of the Earth, Inc. v.*
28 *Laidlaw Environmental Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v.*

1 *Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). “[I]f it did, the courts would be compelled to
2 leave “[t]he defendant . . . free to return to his old ways.” Id. (quoting *City of Mesquite*, 455 U.S.
3 at 289 n.10). “[T]he standard . . . for determining whether a case has been mooted by the
4 defendant’s voluntary conduct is stringent: [a] case might become moot if subsequent events made
5 it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.”
6 Id. (quotation omitted). Here, the “voluntary cessation” exception to mootness is inapplicable,
7 since Plaintiffs do not allege that they have unpaid claims for reimbursement against the District.
8 The fact of S.B.’s graduation means that there is no reasonable expectation that the “wrong,” i.e.,
9 the District’s alleged failure to timely reimburse Plaintiffs for their mileage, will be repeated. See
10 *M.M.*, 767 F.3d at 857 (finding parents’ claim under IDEA for reimbursement of cost of
11 evaluation was moot where school district had already paid cost in full); *Dep’t of Educ., State of*
12 *Haw. v. Rodarte ex rel. Chavez*, 127 F. Supp. 2d 1103, 1112-13 (D. Haw. 2000) (holding school
13 district’s appeal of IDEA administrative hearing decision awarding student compensatory
14 education was moot where student had already graduated from high school and received the
15 contested compensatory education award).

16 Plaintiffs also argue that their claims are not moot because they were forced to incur
17 attorneys’ fees and litigate the issue to hearing in order to obtain the mileage reimbursement from
18 the District. Opp’n 6; see Compl. ¶¶ 88, 89. Essentially, Plaintiffs argue that if they succeed in
19 reversing the ALJ’s determinations regarding mileage reimbursement, they will become the
20 prevailing parties and will be entitled to attorneys’ fees. According to Plaintiffs, this anticipated
21 attorneys’ fee award makes their underlying claim for mileage reimbursement a live controversy.
22 This argument is not persuasive. The Ninth Circuit has held that “[t]he existence of an attorneys’
23 fees claim . . . does not resuscitate an otherwise moot controversy.” *M.M.*, 767 F.3d at 857
24 (holding “attempt to recover prevailing party attorneys’ fees” did not render live an IDEA
25 reimbursement claim) (quoting *Cammermeyer v. Perry*, 97 F.3d 1235, 1238 (9th Cir. 1996)); see
26 also *United States v. Ford*, 650 F.2d 1141, 1143 (9th Cir. 1981) (noting that “a claim for
27 attorney’s fees does not preserve a case which has otherwise become moot on appeal”).

28 Similarly, the court in *Rodarte*, relying on the Ninth Circuit’s decisions in *Cammermeyer*

1 and Ford, determined that the question of attorneys’ fees in an IDEA action did not create
2 “collateral consequences” necessary to avoid mootness. 127 F. Supp. 2d at 1113-14; see also S–1
3 v. Sprangler, 832 F.2d 294, 297 n.1 (4th Cir. 1987) (rule that would “avert mootness of the
4 underlying action on the merits” based on a claim for attorneys’ fees “would largely nullify the
5 mootness doctrine with respect to cases brought under the myriad federal statutes that authorize
6 fee awards.” (citations and quotation omitted)). Here, the availability of attorneys’ fees under the
7 IDEA does not revive Plaintiffs’ otherwise moot appeal of the ALJ’s determination of the mileage
8 reimbursement issue. See *Marcus I. ex rel. Karen I. v. Dep’t of Educ.*, 434 Fed. Appx. 600, 602
9 (9th Cir. 2011) (“[if the student] were to succeed on appeal, he could be entitled to attorney’s fees,
10 but ‘a claim for attorney’s fees does not preserve a case which otherwise has become moot on
11 appeal.’” (citing Ford, 650 F.2d at 1143)).

12 Indeed, the Rodarte case addressed the very issue raised by Plaintiffs here. Rodarte held
13 that a court is not obligated to decide the merits of a plaintiff’s claim, despite its mootness, solely
14 for the purpose of determining whether the plaintiff should be the prevailing party on that claim
15 for purposes of attorneys’ fees. In Rodarte, the mother of an IDEA-qualified student pursued an
16 administrative complaint. Following a hearing, the hearing officer awarded the student three
17 months of compensatory education. 127 F. Supp. 2d at 1107. The school system, Hawaii’s
18 Department of Education (“DOE”), provided the compensatory education as ordered, and the
19 student graduated from high school. *Id.* at 1107-08. The mother subsequently filed a complaint in
20 federal court seeking attorneys’ fees in light of her status as the prevailing party in the
21 administrative proceeding. Shortly thereafter, the DOE filed a complaint appealing the hearing
22 officer’s award of three months of compensatory education, and seeking reversal of the hearing
23 award. *Id.* The court held the DOE’s appeal of the compensatory education award was moot,
24 finding “[t]here is no effective relief that this Court can grant to the DOE,” since the student had
25 already received the compensatory education and graduated from high school. *Id.* at 1112. The
26 court next turned to the mother’s attorneys’ fees claim, and examined the impact of the mootness
27 of the DOE’s appeal on the attorneys’ fees analysis. *Id.* at 1115. The court analyzed numerous
28 opinions both within the Ninth Circuit and without, and concluded that “once an appeal is found

1 moot, a court need not inquire into the correctness or erroneousess of the underlying court’s
2 decision to make an award of attorneys’ fees.” Id. (citing Ford, 650 F.2d at 1144 n.1 (“there is no
3 right to review or redetermine any of the issues in the underlying action solely for the purpose of
4 deciding the attorney’s fees question.”)). Here, the ALJ held that the District was the prevailing
5 party on S.B.’s claim for reimbursement for the period August 28, 2013 through March 5, 2014.
6 OAH Decision 19. Following the persuasive reasoning in Rodarte, the court holds that it should
7 not determine the merits of Plaintiffs’ otherwise moot claims solely for the purpose of determining
8 Plaintiffs’ potential entitlement to attorneys’ fees.

9 Finally, Plaintiffs argue that their claims are not moot because they challenge the ALJ’s
10 finding that she could not determine the reimbursement claim because she did not have
11 jurisdiction to enforce the settlement agreement. According to Plaintiffs, this finding was in error,
12 because they were not attempting to enforce the settlement agreement, but instead sought a finding
13 that the District’s failure to honor the settlement agreement was itself a denial of a FAPE. See
14 Compl. ¶ 84. Plaintiffs argue that allowing the ALJ’s erroneous ruling to stand would result in the
15 collateral consequence of creating confusing law that could negatively impact other parents.
16 However, the Ninth Circuit rejected a similar argument in M.M. In that case, the plaintiffs argued
17 that “as a collateral consequence, they and other parents [were] tainted by the ALJ’s erroneous
18 finding.” 767 F.3d at 857. The court found the argument “not well taken,” since “[the student’s]
19 parents bring their claims individually and . . . the mere existence of an adverse decision does not
20 revive a moot claim, lest the mootness doctrine would become meaningless.” 767 F.3d at 857-58
21 (quotation omitted). Moreover, Plaintiffs’ concern about the precedential value of the allegedly
22 erroneous ruling is unfounded, since orders and decisions rendered in special education due
23 process proceedings have no precedential value and are not binding in subsequent proceedings.
24 Cal. Code Regs. tit. 5, § 3085.

25 Accordingly, the court dismisses Plaintiffs’ first and second claims as moot.

26 **B. Claim 3**

27 Plaintiffs’ third claim challenges the ALJ’s determination that S.B. was not denied a FAPE
28 based on the District’s failure to provide IEEs. Plaintiffs allege that on March 5, 2014, Plaintiffs

1 requested that the District provide S.B. with IEEs in three areas, but never received a response to
2 their request. Compl. ¶¶ 36, 40. Defendants move to dismiss this claim on the ground that the
3 claim is barred under the doctrine of laches. According to Defendants, dismissal based on laches
4 is appropriate because Plaintiffs never followed up on their request at any point prior to S.B.’s
5 June 2015 graduation and did not amend their due process complaint to add this issue until
6 October 2015.

7 Laches is “an equitable defense that bars the claims of a plaintiff who with full knowledge
8 of the facts, acquiesces in a transaction and sleeps upon his rights.” *Kourtis v. Cameron*, 419 F.3d
9 989, 1000 (9th Cir. 2005), abrogated on other grounds by *Taylor v. Sturgell*, 553 U.S. 880, 904
10 (2008) (quotation omitted). “The defense of laches ‘requires proof of (1) lack of diligence by the
11 party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.’”
12 *Bratton v. Bethlehem Steel Corp.*, 649 F.2d 658, 666 (9th Cir. 1980) (quoting *Costello v. United*
13 *States*, 365 U.S. 265, 282 (1961)). Determining whether delay was unexcused or unreasonable and
14 whether prejudice ensued necessarily demands “a close evaluation of all the particular facts in a
15 case.” *Kling v. Hallmark Cards Inc.*, 225 F.3d 1030, 1041 (9th Cir.2000). For this reason, a claim
16 is not easily disposed of at the motion to dismiss stage based on a laches defense. See *Kourtis*,
17 419 F.3d at 1000 (holding laches defense was “premature” at the motion to dismiss phase because
18 of the difficulty of establishing such a defense based exclusively upon the factual allegations set
19 forth in the complaint); see also *Bratton*, 649 F.2d 658, 666–67 (“Laches questions are seldom
20 susceptible of resolution by summary judgment, because where laches is raised as a defense the
21 factual issues involved . . . can rarely be resolved without some preliminary evidentiary inquiry.”
22 (internal quotation omitted)).

23 In this case, it is clear that the laches defense will involve factual disputes about what
24 actions each party took with respect to Plaintiffs’ request for IEEs, and when they took them.
25 Defendants’ affirmative defense of laches is therefore inappropriate for resolution on a motion to
26 dismiss, and must be raised at summary judgment or trial. See, e.g., *Goldberg v. Cameron*, 482 F.
27 Supp. 2d 1136, 1152 (N.D. Cal. 2007) (denying motion to dismiss based on laches as premature).
28 Accordingly, their motion to dismiss Plaintiffs’ third claim is denied.

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C. Amendment

Finally, Plaintiffs request leave to amend the complaint to add a claim challenging the ALJ’s decision to award them “two-round trips per day from March 5, 2014 to June 5, 2015 instead of the actual cost of the transportation that the District would have paid.” Opp’n 3.

Plaintiffs’ request is denied without prejudice to filing a regularly-noticed motion for leave to file an amended complaint, should the parties be unable to stipulate to such an amendment. Any such motion shall comply with the Local Rules, including Local Rule 10-1, which requires any party moving to file an amended pleading to “reproduce the entire proposed pleading” and prohibits “incorporate[ing] any part of a prior pleading by reference.”

IV. CONCLUSION

For the foregoing reasons, Defendants’ motion to dismiss is granted in part and denied in part. The parties shall immediately meet and confer regarding a proposed briefing schedule on any motions, including a motion for leave to file an amended complaint and motion(s) for summary judgment. Within seven days of the date of this order, the parties shall file a stipulation regarding the proposed case schedule, including a date for a case management conference.

IT IS SO ORDERED.

Dated: April 3, 2017

