

Discussion

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3 Affirmative defenses, such as the statute of limitations, may be raised in a motion to
4 dismiss under Federal Rule of Civil Procedure 12(b)(6) so long as the “the facts establishing the
5 defense [are] clear ‘on the face of the plaintiff’s pleadings.’” Blackstone Realty LLC v. FDIC,
6 244 F.3d 193, 197 (1st Cir.2001) (quoting Aldahonda–Rivera v. Parke Davis & Co., 882 F.2d
7 590, 591 (1st Cir.1989)). Of course, a complaint must also “satisf[y] Rule 8(a)(2)’s requirement
8 of a short and plain statement of the claim showing that the pleader is entitled to relief.” Ocasio-
9 Hernández v. Fortuño-Burset, 640 F.3d 1, 11 (1st Cir.2011) (citing Fed. R.Civ. P. 8(a)(2)).
10 Although the plaintiffs need not demonstrate likelihood of success, their allegations must
11 nevertheless “suggest more than a sheer possibility that a defendant has acted unlawfully.”
12 García-Catalán v. United States, 734 F.3d 100, 102-103 (1st Cir.2013) (quoting Ashcroft v.
13 Iqbal, 556 U.S. 662, 678 (2009)).

14 Here, as said, the plaintiffs bring an IDEA claim for attorneys’ fees under 20 U.S.C. §
15 1415(i)(3)(B), and the defendants do not question that L.B.P. was a “prevailing party” within
16 the meaning of § 1415(i)(3)(B)(I); see Smith v. Fitchburg Pub. Sch., 401 F.3d 16, 17 (1st Cir.
17 2005) (noting that IDEA’s § 1415(i)(3) “provides for an award of attorneys’ fees to parents of
18 a student with a disability who is the ‘prevailing party’ in an action or proceeding brought under
19 the IDEA”). The parties also agree, as they must, that IDEA is silent about the appropriate
20 statute of limitations; nor do they dispute that the IDEA “borrow[s] the most analogous statute
21 of limitations from Puerto Rico law, provided that it does not conflict with federal law or
22 policy.” Nieves-Márquez v. Puerto Rico, 353 F.3d 108, 118 (1st Cir. 2003); Providence School
23 Dep’t. v. Ana C., 108 F.3d 1, 2-3 (1st Cir.1997). As in Nieves-Márquez, 353 F.3d at 119, the
24 parties’ quarrels boils down to which of the two prescriptive periods should govern this IDEA
25 action: The thirty-day limitations period for judicial review of administrative orders furnished

2 by the Puerto Rico Administrative Procedure Act, P.R. Laws Ann. tit. 3, § 2172, as urged by the
3 defendants – or, as the plaintiffs maintain, Article 1867 of the Puerto Rico Civil Code, which
4 supplies a three-year period within which “lawyers . . . can recover their charges and fees and
5 the expenses and disbursements incurred by them in the discharge of their duties or offices in
6 the matters to which the obligations refer.” P.R. Laws Ann. tit. 31, § 5297(1). The plaintiffs
7 have the better argument.

8 For starters, the parties’ disagreement implicates an antecedent divergence between the
9 Court of Appeals: Whether an attorneys’ fees action under the IDEA is “independent from the
10 underlying case resolving the conflict between the district and the child’s parents. B.D. ex rel.
11 Doucette v. Georgetown Pub. Sch. Dist., No. 11-1692, 2012 WL 4482152, *6-7 (D. Mass. Sept.
12 27, 2012) (Woodlock, J.) (discussing circuit split on this point and creating intra-district split);
13 compare id. at *7 (adopting 30-day period and rejecting “Judge Zobel’s approach”); with
14 Anthony F. v. Sch. Comm. of City of Medford, No. 10-610, 2005 WL 1262090, *2 (D. Mass.
15 Apr. 22, 2005) (Zobel, J.) (adopting three-year statute of limitations). As neatly explained by
16 the D.C. District Court:

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18 Courts that find an action for attorneys’ fees independent from the underlying
19 IDEA administrative proceedings assign a longer statute of limitations period,
20 often periods spanning several years, whereas courts finding an action for
21 attorneys’ fees ancillary to the underlying administrative proceedings assign
22 shorter statute of limitations periods comparable to a period applied to judicial
23 review of the administrative proceeding itself.

24 Wilson v. Gov’t of D.C., 269 F.R.D. 8, 16-17 (D.D.C. 2010) (borrowing three year statute of
25 limitations). Although the First Circuit avoided the issue in Nieves-Márquez, 353 F.3d at 119,
the consensus in this District – contrary to the District of Massachusetts – is in line with the
views espoused by the plaintiffs. In two thoughtful (and very recent decisions), my esteemed

2 colleagues, Francisco A. Besosa and Gustavo A. Gelpí, made it clear that in an IDEA action the
3 three-year statute of limitations “to claim attorneys’ fees contained in [A]rticle 1867 . . . applies
4 to plaintiffs’ attorneys’ fees claim.” Concepción-Torres v. Puerto Rico, No. 14-1494, ---
5 F.Supp.3d ----, 2014 WL 4628887, *4 (D.P.R. Sept. 17, 2014); see also id. (discussing and
6 adopting Puerto Rico persuasive caselaw holding that “while the 30-day limitations period may
7 be appropriate for an appeal of an administrative determination, it is too short to vindicate the
8 underlying federal policies associated with the fee-claims provisions of the IDEA”); accord
9 Martínez v. Puerto Rico, No. 14-1228, --- F.Supp.2d ----, 2014 WL 3513135, *6 (D.P.R. July
10 16, 2014) (Gelpí, J.) (adopting Article’s 1867 “three-year statute of limitations as the applicable
11 limitations period for attorney’s fees claims under § 1415(i)(3)(B),” reasoning that “a longer
12 statute of limitations is more reasonable considering it promotes bona fide negotiations between
13 parties, simultaneously avoiding the filing of premature claims”).¹

14 I agree fully with my colleagues’ sensible holding and adopt their persuasive reasoning,
15 as Article 1867’s three-year period is indeed the most analogous statute of limitations from
16 Puerto Rico law. Judge Besosa and Judge Gelpí reach this fair and sensible result by properly
17 balancing the “three IDEA policy goals: the parental interest in participation, the school’s
18 interest in speedy resolution of disputes, and the child’s interest in receiving educational
19 entitlement.” Nieves-Marquez, 353 F.3d at 119 (1st Cir. 2003) (citing Amann v. Town of Stow,
20 991 F.2d 929, 931-933 (1st Cir. 1993)). It bears emphasis that Judge Besosa’s decision relies

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22 ¹No other (present) judicial officer in this District appears to have taken a contrary stance. Judge
23 Raymond L. Acosta (Ret.), however, once held that “the courts borrow the most analogous state
24 provision applicable to personal injury actions.” Howard v. Feliciano, No. 05-1928, 2008 WL 3471295,
25 *7 (D.P.R. Aug. 8, 2008). But Howard omitted mentioning Article 1867, so it is afforded little
persuasive weight. In any event, this suit would still be timely under the one-year statute of limitations
adopted in Howard.

2 heavily on highly persuasive caselaw from the Puerto Rico Court of Appeals. See
3 Concepción-Torres, 2014 WL 4628887, *3 (noting that “the Puerto Rico Court of Appeals
4 [have] characterized IDEA’s attorneys’ fees claim as an independent cause of action” (citations
5 omitted)). By parity of reasoning, the defendants’ arguments are rejected for substantially the
6 same reasons limned in Concepción-Torres. (The defendants’ motion to dismiss is a carbon
7 copy of the one Judge Besosa denied – compare Docket # 6 with Docket # 6 in No. 14-1494.)
8 The defendants, in short, fall short of compelling a departure from the growing consensus that
9 Article 1867’s three-year statute of limitations governs IDEA actions to recover attorneys’ fees.
10 Concepción-Torres, 2014 WL 4628887, *4; Martínez, 2014 WL 3513135, *7. Given
11 Concepción-Torres and Martínez, it would serve no useful purpose to continue to cite book and
12 verse.

13 The Court now moves from the general to the specific, readily dispatching the
14 defendants’ statute-of-limitations defense. Suffice it to say that on September 12, 2013, an
15 administrative judge issued a decision favoring the plaintiffs; the defendants never appealed that
16 decision, so it became final. Docket # 1, ¶¶ 21-2. Because the plaintiffs brought this § 1415(i)(3)
17 suit on June 23, 2014, the same was obviously lodged less than three years after the
18 administrative proceedings ended. Accord Concepción-Torres, 2014 WL 4628887, *4;
19 Martínez, 2014 WL 3513135, *7. So it is timely, and the motion to dismiss is denied.

20 **Conclusion**

21 For the reasons stated, the defendants’ motion to dismiss is **DENIED**.

22 **IT IS SO ORDERED.**

23 In San Juan, Puerto Rico, this 19th day of September, 2014.

24 *s/ Salvador E. Casellas*
25 SALVADOR E. CASELLAS
U.S. Senior District Judge