

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016060613

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 6, 2016, naming Temecula Valley Unified School District. On July 14, 2016, Student filed an amended due process hearing request. OAH continued the matter for good cause on August 26, 2016 and bifurcated the hearing.

Administrative Law Judge Laurie Gorsline heard phase one of the bifurcated hearing in Temecula Valley, California, on September 28 and 29, and October 4 and 5, 2016.

During phase one of the bifurcated hearing, special education advocate Theresa Sester represented Student, assisted by special education advocate Imari Nicoloff, Ed.D. Student attended portions of phase one and Parent attended all phase one hearing days. Attorneys Sarah Sutherland and Amy Rogers represented District. District's Assistant Director of Special Education, Breck Smith attended the first two days of phase one, and District's Assistant Director of Special Education Ami Paradise attended the third and fourth days of phase one.

At the end of phase one, the hearing was continued to November 29, 2016, for phase two of the bifurcated hearing. OAH continued phase two of the hearing for good cause on November 14, 2016 and on December 12, 2016.

On November 28, 2016, portions of Student's case were dismissed because they were barred by the two-year statute of limitations. On February 15, 2017, the ALJ granted, in part, District's motion in limine and motion to quash. Student was precluded proffering evidence contradicting the findings made in the November 28, 2016 Order, or from otherwise re-litigating the issues determined in phase one.

The remaining claims proceeded to hearing in phase two in Temecula Valley, California, on February 22, 23, and 28, and March 1 and 2, 2017. Attorney Wendy Housman represented Student assisted by Ms. Sester. Student testified during phase two but did not otherwise attend. Parent attended the sixth through ninth days of due process hearing. Attorneys Ms. Sutherland and Ms. Rogers, represented District. Assistant Director of Special Education, Ms. Smith attended the fifth and sixth days of phase two and portions of the seventh and eighth days. Assistant Director of Special Education, Ms. Paradise attended portions of the seventh, eighth and ninth days of the due process hearing. Jess Caponigro, District's Program Specialist, attended a portion of ninth day of hearing.

At the close of hearing on March 2, 2017, the ALJ granted a continuance to March 21, 2017, for the parties to file written closing arguments. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision. The factual findings and legal conclusions in the November 28, 2016 Order are incorporated into this decision by reference.

ISSUES¹

1 and 2. In a November 28, 2016 order, the ALJ determined the statute of limitations barred Student's Issues 1 and 2 in their entirety.

3. Did District deny Student a free appropriate public education by failing to hold an individualized education program team meeting between June 4 and June 6, 2014² to discuss Student's Summary of Performance?

4. Did District deny Student a FAPE by failing to provide prior written notice between June 4 and June 6, 2014³ before exiting Student from special education?

5. Did District deny Student a FAPE by improperly awarding Student a high school diploma and exiting her from special education at the end of the 2013-2014 school year?

¹ Although Student was represented by a special education advocate, the amended complaint failed to clearly articulate the issues, and the prehearing conference order did not include all issues stated in the amended complaint. At the beginning of phase one, after a discussion with the parties and Student's clarification of the issues, the ALJ renumbered and rephrased the issues for clarity. Subsequently and at the request of Student's advocate, the ALJ issued an Order Restating Issues for Hearing. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

² The November 28, 2016 order barred Student's Issue 3 for the period of time prior to June 4, 2016.

³ The November 28, 2016 order barred Student's Issue 4 for the period of time prior to June 4, 2016.

SUMMARY OF DECISION

Student did not establish that she timely filed the claims alleged in Issues 1 and 2. Student knew or had reason to know of the facts forming the basis of Student's Issues 1 and 2 more than two years before her due process complaint was filed on June 6, 2016. At the time of the IEP team meetings for the January 2013 and January 2014 IEP's, Parent knew if and what services, plans and goals, were offered by District, and believed that District was not addressing Student's transition needs. Student also failed to establish that District made specific misrepresentations that it solved the problems forming the basis of her claims or that it withheld information, which prevented her from timely filing her claims. Student did not prove District misrepresented Student's status to graduate, or that Student was not meeting graduation requirements, or that District's alleged misrepresentations were that District solved the problems forming the basis of the claims which prevented Student from timely filing her claims. On many occasions prior to and at Student's exit IEP team meeting in January 2014, Parent was provided with procedural safeguards. In addition, Parent and Student were represented by a special education advocate and knew that Student would be graduating with a regular high school diploma in June 2014 and exited from special education.

In Issue 3, Student's claim for the period prior to June 4, 2016 was barred by the statute of limitations. Student knew or should have known more than two years prior to the filing of the due process complaint on June 6, 2016 that District never convened an IEP team meeting to discuss the Summary of Performance. Student failed to prove that an exception to the statute of limitations applied. In addition, Student did not establish that District denied her a FAPE by failing to convene an IEP team meeting to discuss the Summary of Performance on or after June 4, 2014 and before she graduated from high school on June 6, 2014. Neither the Education Code nor the Individuals with Disabilities Education Act required District to hold an IEP team meeting for that purpose, and

Student failed to prove either that District agreed to convene an IEP team meeting, or that Parent requested an IEP team meeting to discuss the Summary of Performance.

Although in the November 28, 2016 order, the ALJ determined that Student's claim in Issue 4 was only partially barred by the statute of limitations, after further analysis and hearing all the evidence, it is now held that this claim (that District denied her FAPE by failing to provide prior written notice regarding her graduation and exit from special education), is barred in its entirety. Since District's obligation was to provide prior written notice "a reasonable time" prior to Student's June 6, 2014 graduation, the statute of limitations had already expired by the time Student filed her complaint. Student failed to prove that an exception to the statute of limitations applied. Parent and Student knew or had reason to know that Student was being exited from special education upon graduation; yet Student waited until June 6, 2016 to file her complaint.

In Issue 5, Student failed to establish by a preponderance of evidence that District denied her a FAPE by improperly awarding Student a high school diploma and exiting her from special education at the end of the 2013-2014 school year. Student met all requirements for graduation and receipt of a diploma. Student was not, as she contended, required to take Geometry I to graduate, and the evidence failed to establish Student's grades or curriculum was based on modified standards or that she otherwise failed to meet the District's proficiency standards to qualify her for graduation with a regular high school diploma.

FACTUAL FINDINGS

BACKGROUND

1. Student was twenty years old at the time of both phases of the hearing. Student was eligible for special education and related services as a child with autism.

Student also had mild cerebral palsy and seizures. At all relevant times, Student resided with Parent in District. Parent held Student's educational rights until February 20, 2014, when Student turned eighteen. Student held her own educational rights as of February 20, 2014.

2. Student attended District's Great Oak High School in the 2010-2011 through the 2013-2014 school years. She received special education services and accommodations, which included a one-to-one aide throughout her high school career, was on a core curriculum, and on track to graduate with a regular high school diploma. Student attended all of her general education classes with the assistance of a one-to-one aide. Student worked hard, but struggled in math. Throughout high school, both Parent and Student knew and understood Student was on track to graduate in June 2014 with a high school diploma. Student understood she was held to the same standards, and did the same type and amount of work, as her classmates.

3. Terri Cooper was Student's high school case carrier at Great Oak from 2010 to 2014 and was employed with District until 2014. She has been a special education teacher for over 20 years and worked with high school students for approximately 11 years. She has a bachelor's degree in psychology, a master's degree in curriculum and instruction and a mild/moderate special education credential. A case carrier was a special education teacher who monitored and supported a caseload of students with IEP's, which included the implementation of IEP's and collaboration with school staff and parents. Part of Ms. Cooper's duties at Great Oak included attending Student's IEP team meetings, working with Student on her assignments, answering her questions and helping Student when she had problems at school. Ms. Cooper only worked with students working toward a diploma; she was not responsible for students working for a certificate of completion.

4. Wendy Ellis was Student's instructional assistant beginning in 2007, when Student was in junior high, and until Student graduated in 2014. At the time of the hearing, she had been employed by District for 14 years. She has the equivalent of a high school diploma which she received in the United Kingdom and has taken some college courses. Ms. Ellis helped Student stay focused and organized, helped her regulate her emotions and outbursts, and took notes for her in the classroom when Student was absent; Student was proficient in taking her own notes when she was in class.

2010-2011 SCHOOL YEAR: NINTH GRADE

5. In November 2010, Student's ninth grade English teacher filled out a classroom teacher observation report about Student. The teacher reported Student took more time than other students to complete assignments. The teacher accommodated Student, allowed her strengths to be her grade and did not allow her weaknesses to cause her to fail.

6. On January 11, 2011, as part of a triennial assessment, Ms. Cooper interviewed Student. The interview included questions about employment, community service, and Student's plans after high school and career goals. At hearing, Student claimed she only met Ms. Cooper once during her four years at Great Oak, during her freshman year. Her statement contradicted Ms. Cooper's testimony on the number of times she interacted with Student during the four-year period. Student also later denied ever meeting with Ms. Cooper during high school. Student inconsistently claimed Ms. Cooper implied Student would receive a scholarship when she graduated from high school but Student later asserted Ms. Cooper actually told her she would receive a scholarship. Student later claimed it was school staff "in general" who told her she would receive an automatic scholarship to the school of her choosing upon her high school graduation. Student also claimed District's counsel lied to her, but neither party offered

any evidence that Student ever met District's counsel prior to the first day of hearing. Student's testimony on these issues was unconvincing and inconsistent, and therefore, unpersuasive; this negatively impacted her overall credibility.

7. On January 24, 2011, District staff prepared a triennial assessment team report. Student was on a diploma track and she had not taken the California High School Exit Exam. The report referred to several other attached documents, including teacher observation reports. Parent's testimony at hearing that the observation reports were not attached to the assessment was not credible. The report noted Student's graduation plan was "standard diploma."

8. On January 25, 2011, District convened the first of several IEP team meetings to develop Student's triennial IEP. Parent and Student attended the IEP team meeting and District provided Parent with a notice of procedural safeguards during the meeting. The IEP team reviewed the January 2011 assessment report. Student's ninth grade English teacher explained that Student was capable of completing her assignments, but because Student felt overwhelmed by the length of assignment, the teacher "modified" the assignment by breaking it down into smaller pieces. District staff often used the term "modified" and "accommodated" incorrectly and interchangeably.

9. At hearing, Parent's testimony that Student never attended her IEP team meetings was not credible and Student's testimony on this issue was not persuasive. The IEP meeting notes reflect that Student was present on January 25, 2011 and shared some of her concerns. In addition, Ms. Cooper credibly testified that Student wandered in and out of her IEP team meetings which was consistent with Student's participation during phase one of the hearing. At hearing, Ms. Ellis also recalled that Student had attended some of her IEP team meetings. Parent's impeachment on this issue negatively impacted the credibility of her testimony.

10. On February 17, 2011, District reconvened another IEP team meeting. Parent attended and participated. The IEP team reviewed the January 2011 triennial assessment report. The team discussed Student's math skills, the various math classes and accommodations for taking the California Exit Exam. They also discussed the certificate of completion and diploma tracks; Parent stated her opinion to the IEP team that Student should be on a diploma track.

11. At hearing, Parent claimed Student's math teacher told her at this meeting that if Student remained on diploma track she could not have functional skills goals. Parent's testimony was not credible because, although Student was on diploma track throughout high school, she later had functional math goals in place. Parent appeared evasive when questioned about this inconsistency, which negatively affected her credibility.

12. On February 24, 2011, the IEP team reconvened to develop Student's triennial IEP. Both Parent and Parent's special education advocate, Ms. Sester, attended the meeting and participated. The IEP team shared teacher reports. The IEP team also discussed Student's math tests. Parent and advocate requested an independent educational evaluation in speech. District informed Parent that when Student turned 18 years old all of Student's educational rights would be transferred to Student, and Parent signed a form acknowledging that she was so advised.

13. Ms. Sester was Student's special education advocate during and after high school. She has been a special education advocate since approximately 1997, and has been self-employed as a special education advocate since 2007. She has an associate degree in social behavior science, completed one year of law school and has training in child advocacy. She has known Parent and Student since Student was in the seventh grade.

14. At hearing, Ms. Sester denied ever being an advocate for Student while Student was in high school. Parent also denied that Ms. Sester attended Student's IEP team meetings prior to Student's senior year. However, the IEP notes for Student's IEP team meetings unambiguously document that Ms. Sester attended Student's IEP team meetings as early as Student's freshman year. The preponderance of evidence was inconsistent with Ms. Sester's and Parent's testimony, and they were both impeached on these issues, which undermined their credibility.

15. Individual class assignment reports were available to Parent, which listed Student's assignments in class by due date and letter grade. One English assignment due on January 13, 2011 included a comment stating in part "modified grade; all vocabulary words are correct; [Student] has trouble with context clues and grammar portion of the test, but not the root/denotation." Student received an "F" grade on four of 20 English assignments due between January 7 and March 1, 2011.

16. On March 9, 2011, District held another IEP team meeting regarding Student's triennial IEP. Parent and Ms. Sester attended. The IEP team discussed community service, Student's classes, and diploma requirements. The IEP team provided Parent a High School Graduation Status Report, with a flow chart of the math classes District expected Student to take in high school. Geometry I was not on the flow chart. The IEP team explained to Parent that in 11th grade, Student had the option of taking Algebra I or Algebra Essentials to satisfy the Algebra I requirement for purposes of obtaining a high school diploma. Algebra Essentials was a general education class available to all students and satisfied District's Algebra I graduation requirement. Parent understood Student needed 220 credits to graduate and was concerned as to Student's ability to complete her math graduation requirements, but wanted Student to stay on the diploma track.

17. At hearing, Parent claimed she had no independent recollection of discussing the High School Graduation Status Report. That testimony was obtained through leading questions from Student's advocate and was unpersuasive. It was also inconsistent with other portions of Parent's testimony. Parent claimed she could not recall District explaining the Algebra Essentials graduation option to her at the meeting, but admitted receiving this report at an IEP team meeting in 2011, and admitted she understood the report's purpose was to provide her with information on the classes Student was required to take to graduate with a regular high school diploma.

18. On April 17, 2011, Parent signed a release authorizing the disclosure of Student's educational records to Ms. Sester. Although Parent's testimony about this document was evasive and her inability to recount the purpose and circumstances of signing this document negatively affected her credibility, it supported the conclusion that Parent's and Ms. Sester's testimony was not credible regarding Ms. Sester's status as Student's advocate during high school.

2011-2012 SCHOOL YEAR: 10TH GRADE

19. Student did not specifically rely upon any events during the 2011-2012 school year.

2012-2013 SCHOOL YEAR: 11TH GRADE

20. On January 30, 2013, District held the first of several annual planning and transitional planning IEP team meetings. Parent attended and District offered a notice of procedural safeguards. Parent wanted Student to stay on track to graduate. Student's Algebra Essentials teacher reported that Student was passing math, but he hoped that Student would keep doing more on her own rather than relying on her aide. An aide was still required for Student to progress in academics. Parent asked about work-related internship programs through school. The IEP team discussed Student's difficulties in

making change and counting money, and Parent shared her fears about Student's future because Student did not have these skills. The IEP team discussed Student's senior year classes, including having Student take consumer math in the 12th grade. The IEP team discussed the California Exit Exam and that Student would take the math portion of the exam in the spring. The IEP team continued the meeting to January 31, 2013.

21. The IEP team meeting reconvened on January 31, 2013. The IEP team offered a notice of procedural safeguards to Parent. The IEP team shared Student's present levels of performance and teacher reports with Parent. The team discussed Student's transition from high school. The team decided that Student would continue with her one-to-one aide. The aide would also continue to help monitor Student's behavior and work on Student's math skills. The IEP team continued the meeting to April 22, 2013. On April 12, 2013, Parent sent an email to Ms. Cooper requesting another copy of Student's IEP goals.

22. At the time of the January 2013 IEP team meeting, Parent knew District should have addressed Student's transition planning by February 20, 2012, the time Student turned 16 years old. Parent was concerned that Student would not be able to make transition to college and that District was not addressing Student's transition needs.

23. The IEP team reconvened another meeting on April 22, 2013. Parent discussed her concerns about Student's ability to transition after high school and her difficulties in counting money, and accessing public transportation. Parent was worried about Student's future and her ability to find employment and she discussed Student's lack of life skills and inability to tell time. The team discussed having Student attend a program called Bridge and a study skills class to work on Student's math skills. Bridge was a class which included bussing students into the community to work on functional life skills. The team created math goals to address money skills.

24. At hearing, Parent admitted that the IEP team discussed her concerns about Student's lack of money skills, life skills and inability to tell time at every IEP team meeting and Parent always worried about Student's math skills. She also admitted that Ms. Sester attended at least two IEP team meetings with Parent during the 2012-2013 school year, which further undermined Parent's and Ms. Sester's credibility as to Ms. Sester's status as Student's advocate.

25. The only IEP in evidence at the hearing for the 2012-2013 school year was a draft IEP which contained no signatures and contained an IEP date of February 12, 2012. The draft IEP contained no page numbers and appeared to be incomplete. The aids, services, accommodations, modifications and supports listed in the draft IEP did not include Student's use of notes on exams. Parent's testimony and the testimony of several other witnesses about the January 2013 IEP did not conclusively establish that the draft January 2013 IEP was Student's final IEP.

26. On April 23, 2013, Parent sent an email to Ms. Cooper expressing some disagreement with the Bridge program. At hearing, Parent explained that the Bridge class was inappropriate because the Bridge students were too low-functioning as compared to Student and that Student was unwilling to participate in the program. Ms. Cooper responded by email on the same date informing Parent that, as an alternative to the Bridge class, Student could work on her math goals in a study skills program, but this would require Student to rely more on her aide. On April 27, 2013, Parent signed an assessment plan for a post-secondary transition evaluation.

27. On May 7, 2013, Parent emailed Ms. Cooper, declining to place Student in the Bridge class. Ms. Cooper responded by offering to have Student work in a study skills program but warned Parent that the instruction could not be closely monitored and that this could impact Student's ability to meet her functional math skills goals.

28. Student completed and passed two semesters of Algebra Essentials in her junior year, satisfying her Algebra I graduation requirement in June 2013. By the end of Student's junior year in June 2013, Parent did not think District was addressing her concerns about Student's program, was very concerned that Student would not have the skills to make educational decisions when she turned 18 years old, and believed Student needed a transition plan.

THE 2013-2014 SCHOOL YEAR: 12TH GRADE

29. Ms. Ellis continued as Student's one-to-one aide during Student's senior year. She faded back and assisted other students if Student did not require her assistance, and District gradually reduced the number of hours Ms. Ellis provided one-to-one assistance over the course of Student's senior year to lessen Student's dependence on an aide. Ms. Ellis and Ms. Cooper regularly spoke to one another about Student over the course of Student's senior year.

30. In fall 2013, Student began working in the student store as part of her regional occupational program class, in part to give her practical experience working with money. Sometime around October 2013, a fellow classmate approached Student and told her that she could not handle the money any longer because Student's cash drawer was short ten dollars. Instead, Student spent her time stocking shelves and cleaning. Around the same time, Student reported to Parent that she was no longer working with money. Student's testimony that she never worked with money was not credible because it was inconsistent with her own testimony.

31. On August 24, 2013, Parent wrote a letter to District explaining that Student would soon be turning 18 years old, that District had not engaged any transition planning for Student and that Parent was requesting an assessment for training, employment, education, and independent life skills. On August 27, 2013, District sent Parent a letter informing her that it agreed to conduct a transition

assessment, enclosed an assessment plan, notice of procedural safeguards, and a prior written notice, outlining the proposed assessment.

32. On September 15, 2013, Parent sent the April 12 and 23, and May 7, 2013 emails between Parent and Ms. Cooper to Ms. Sester. Parent was frustrated with the District's failure to provide appropriate post-secondary transition planning and provided Ms. Sester with a written chronology of her efforts to obtain assessments from District. Parent notified Ms. Sester that District had agreed to conduct a post-secondary transition assessment on August 27, 2013 and that she had repeatedly inquired of District about the status that assessment.

33. On December 18, 2013, Parent consented to an IEP, and had received a copy of Student's assessment reports and IEP's. During phase one of this hearing, Parent appeared confused and testified inconsistently as to which IEP her consent pertained, and she was unable to persuasively identify the date of the last IEP to which she last consented. During phase two, Parent claimed that it was the January 2013 IEP to which she had last consented. Her testimony conflicted with some of her prior testimony as well as the allegations in Student's due process complaint. Parent also repeatedly stated throughout the hearing that she had trouble recalling dates. Parent's memory difficulties and multiple inconsistencies negatively affected her overall credibility.

Government Class – Senior Year

34. Student was required to complete one semester of government to receive a high school diploma. Brian Navarro was Student's general education government teacher during the first semester of the 2013-2014 school year. He has a bachelor's degree in history, a master's degree in education, and teaching credentials in history and social science. At the time of the hearing, Mr. Navarro had been employed by District for five years. He also taught high school economics classes at District. He did not maintain any copies of Student's records, tests or other work.

35. Mr. Navarro's government class curriculum followed California-based standards. The class required considerable oral participation, collaboration with peers, and homework. Mr. Navarro permitted use of notes if required by a student's IEP.

36. Mr. Navarro was aware that Student had an IEP, but he was not certain if he had seen Student's IEP or just a summary of Student's IEP at the time she was in his class. Mr. Navarro afforded Student more time for assignments as part of her accommodations, but he did not modify the course content or tests for Student. He held Student to the same standards as the other students. He had no recollection of allowing Student to use her notes. Student had no difficulty with any part of the curriculum and performed at a higher than average standard. She appeared to enjoy the class, was an active participant, and was well-respected by her fellow students. As of December 14, 2013, Student was receiving a passing grade of 83.2 percent based on Mr. Navarro's evaluation of her work product. She earned a grade of B- for the class at the end of the semester.

37. At hearing, Ms. Cooper recalled no occasion where she instructed Ms. Ellis to allow Student to use her notes during her government final exam. She also denied ever allowing Student to use her notes during exams. Ms. Cooper's testimony that Student may have had a study break to review her notes was not persuasive because her testimony was vague and she appeared to be speculating as to whether or when it occurred.

38. Student claimed that she took basic tests and a final exam on the benches outside of class and that she used her notes on final exam. She testified inconsistently as to whether other students used their notes. She testified that everyone used their notes, that she saw another general education student using his notes, and that she did not actually know if other students were using their notes. She also claimed that it was possible that she did not have her notes open at the same time she was answering the

exam questions. Her testimony was not convincing because it was inconsistent, and contradicted Ms. Cooper's and Mr. Navarro's more credible testimony.

39. Student attended her government class with Ms. Ellis. Ms. Ellis observed that Student was never exempted from taking any part of her government unit exams. Ms. Ellis did not recall Student ever failing any of those exams. She did not remember whether Student used her class notes to take her unit exams. Ms. Ellis' testimony was speculative as to whether allowing Student to use her notes during tests would have been an acceptable modification to Ms. Cooper, or whether she asked Mr. Navarro if Student could use her notes. Ms. Ellis' equivocal testimony on Student's use of notes was not reliable. Throughout her testimony, Ms. Ellis demonstrated that she neither had a fully accurate or distinct recollection of the events during the 2013-2014 school year, and her memory difficulties negatively affected her credibility.

English 12 Class – Senior Year

40. District required its students to complete two semesters of English 12 to graduate with a high school diploma. English 12 was a college preparatory class. Student completed two semesters of English 12 during her senior year. Preston Beach was Student's English 12 teacher for both semesters. He has a master's degree in education, and a public school teaching credential that allowed him to teach English in California to students through grade 12. He has been a teacher for 33 years; employed with the District for 22 years; and taught at Great Oak since 2005. He had on average about 200 students per year.

41. At hearing, Mr. Beach did not remember Student in class. He did not maintain any copies of Student's records, tests or other work. He did not recall if Student was able to use her notes on the final exam. He recalled no conversation with Ms. Cooper about the issue of using notes on her exams, but if Student had done so as a modification or an accommodation, it would have been documented. Because the

weight given on a final exam was small in terms of the overall semester grade, Student could have failed the final exam and still passed English 12. For the second semester of Student's senior year, the final exam was a senior project in which all students were permitted to use their notes.

42. Student received a B in both the first and second semesters of English 12. Nothing in Student's transcript indicates that her grades were based upon modified standards and Mr. Beach had no reason to believe he modified standards for Student. To allow notes as a modification was very rare, and if it happened he would have discussed it with the case carrier and the effect on the diploma. He explained that in his class a modification involved using a different standard to assess a student's ability or to assign a grade; whereas an accommodation is an adjustment to a learning style. As a teacher he had discretion whether to allow a student to use notes, but he was less likely to allow use of notes on a final exam. He has allowed the use of notes on a final exam when the final exam is a review of notes or on a final exam he designed where all students could use their notes, as opposed to a District-required final exam. Use of notes on final exams in Mr. Beach's class might also have depended on whether it was permitted by a student's IEP, or during exam study breaks to accommodate a particular memory processing disability.

43. At hearing, Ms. Cooper also denied ever allowing Student to use her notes during exams except where Mr. Beach allowed all students to use their notes for that exam.

44. Student found Mr. Beach adept at explaining the course material. During the second semester, her grammar significantly improved and she learned to write a proper essay. She had the same coursework as her classmates and took the same tests. She agreed that her final exam was a senior project. Although she claimed to use her notes on unit exams, her testimony was unclear and inconsistent as to how many exams

she took, and which, if any, were District-required unit exams. She could not recall how many unit exams she took during the first semester. During the second semester, she stated she had five unit exams and later contradicted herself by saying that she had none. She also testified that she had permission to use her notes because the other students used their notes, but also stated she did not know if other students could use their notes. These inconsistencies negatively affected the credibility of Student's testimony on her use of notes during her English 12 class.

45. Ms. Ellis was Student's one-to-one aide in English 12. She observed that Student was proficient and did not need much assistance or extra time in English 12. Student was not exempt from taking any part of an English 12 unit exam and Ms. Ellis did not recall Student ever failing a unit exam. Although, at hearing, Ms. Ellis claimed Student used her notes for District-required exams, her testimony was unconvincing because it was equivocal, fluctuating from "for sure" to "on occasion," "I think," and "I believe." She demonstrated uncertainty in recalling the specifics of whether and when Student relied on her English notes. She also had great difficulty recalling what happened as opposed to what might have happened. This made her testimony unreliable.

Economics Class – Senior Year

46. Student took economics during the second semester of her senior year. One semester of high school economics was required for students on a diploma track. Student's economics teacher did not testify. Ms. Ellis accompanied Student in her economics class. Student earned a grade of B- for the class at the end of the semester.

47. Student struggled in economics because the concepts were new and she had difficulty with the math. Student testified inconsistently about her use of notes on her economics unit exams. Although she testified she used her notes for her final and unit exams, she could not recall the number of unit exams she took and denied she took

unit exams. Her testimony also conflicted with the testimony Ms. Ellis, who had no recollection of Student using notes on exams, and the testimony of Ms. Cooper who never allowed Student to use her notes on exams. Student's testimony that she used her notes during exams was not persuasive.

48. Ms. Ellis observed there was a small amount of math in economics and that Student struggled to do the work even with assistance. She pulled Student out of class to clarify instructions and provide Student with additional time on exams. She could not recall if there was any math on Student's unit exams and had no recollection of Student being exempt from math work on the final exam. She did not modify Student's quizzes or unit exams, and had no recollection of Student failing any unit test. Although Ms. Ellis testified that one or two small modifications may have been made to Student's economics course, the modifications she was referring to were the accommodations stated in Student's IEP.

Geometry Course

49. Geometry I was a two-semester course. Student did not take Geometry I. Great Oak only offered one geometry class and Geometry and Geometry I meant the same thing. Geometry I was not required to graduate with a regular high school diploma.

STUDENT'S TRIENNIAL ASSESSMENTS AND JANUARY/FEBRUARY IEP TEAM MEETINGS

50. District assessed Student during the 2013-2014 school year in preparation for Student's January 2014 triennial IEP. The assessment included a review of records, observation of Student, teacher questionnaires/interviews, rating scales, screening and formal testing. As part of the triennial evaluation, among many other assessment tools utilized, District administered an academic assessment, the Wechsler Individual

Achievement Test-III. The assessment team included six classroom teachers, Ms. Cooper, the school nurse, the school psychologist, and the speech and language pathologist.

51. In December 2013, Student's teachers completed classroom teacher observation reports in preparation for Student's January 2014 triennial IEP. The classroom observation reports stated that the teacher's comments would be shared with the parents at the IEP team meeting. The reports asked for comments about Student's study skills and emotional development, work study skills, academic performance in terms of strengths and weaknesses and any specific concerns.

52. Mr. Navarro completed a teacher observation report for Student's triennial assessment. He documented that Student was passing her government course with a score of 83.2percent. In dealing with peers, Student was talkative and respectful. She was a constant participant, and sometimes asked for more time on assignments. Her strengths were her class participation, passion and attitude, although she was occasionally off-topic.

53. Mr. Beach completed a teacher observation report, which he provided to the school psychologist for Student's triennial assessment. He commented that Student's social skills were awkward or manic at times, that she was often unaware of others' reactions, and had occasional inappropriate rants. In work study skills, he noted that she was a very independent worker, but should self-advocate a bit more assertively; in academics, her strengths were her verbal communication and attention span, but had a tendency toward tangents or being off-topic. He also noted that Student was a pleasure to have in class and that she was doing well in managing her issues.

54. In the Student Success class, the December 2013 teacher observation report documented that Student was passing her class, could be very social, was always on task and academically focused, but could interrupt discussions.

55. A December 4, 2013 teacher observation report documented Student's progress in computer animation. Student was passing the class with a 97.2 percent score. She was excelling with a team project and had been doing a "great job" in communicating and being positive in the class. She was on task most of the time and generally completed her work, had good ideas, and was eager to participate in class. Her weakness was becoming too focused on a particular topic. At hearing, Student testified she only took computer animation for a couple of weeks at the beginning of the fall semester; however, her testimony conflicted with the contemporaneous written evidence, which was more persuasive and given greater weight.

56. In Student's regional occupational program class, the December 2013 teacher observation report stated that Student kept to herself, did all she was told, and struggled but tried hard.

57. The December 2013 teacher observation report for Student's drawing and painting class documented that Student was very happy and cheerful with others, and had a strong passion for the arts. She tended to draw what she enjoyed drawing, rather than what was being taught if she did not find it interesting, and lost interest in projects.

58. The January 10, 2014 computer printout of Student's English assignments for the period from January 8 through January 13, 2014, included handwritten notations with numerical scores and letter grades. There was no persuasive evidence of the relationship between these numerical scores and the letter grades, if any, or how they affected Student's graduation status.

59. District prepared an Assessment Team Report on January 14, 2014, detailing the results of the assessment: Student's verbal cognitive abilities and auditory perceptual skills were within average range and her nonverbal cognitive abilities and visual integration skills were in the below average range. Her academic scores were in the below average range in oral language, in the low range in mathematics and math

fluency, average in total reading, reading comprehension and fluency, and written expression, and above average in basic reading. Her spring 2013 performance levels were "basic" in English language arts, "proficient" in history and "far below basic" in Algebra I. Student passed the English language arts section of the California Exit Exam on March 13, 2012 with a score of 374. She took the math section of the California Exit Exam on May 15, 2013 and achieved a score of 328, which was below the passing score of 350 or higher. The January 2014 assessment also fairly summarized many of the teacher's comments about Student from the December 2013 teacher classroom observation reports, and the teacher observation reports were attached to the assessment report.

60. At hearing, Parent claimed she did not see the classroom observation reports until August 2016. Her testimony was not credible because the observation reports were attached to the assessment report. In addition, Parent claimed she had never seen the reports prior to August 2016 in response to leading questions from Ms. Sester, she was inconsistent as to when she first saw the classroom observation reports, and she could not recall if she recognized some of the reports.

61. On January 15, 2014, District began Student's triennial IEP team meeting, which also served as Student's annual and transitional planning IEP team meetings. District invited Student to the IEP team meeting. Although she may have attended part of the meeting, Student did not sign the attendance page. Parent, Ms. Sester, Ms. Cooper, the school psychologist and a general education teacher also attended the meeting. Ms. Sester's testimony at hearing that she did not attend this IEP meeting in the capacity of Student's special education advocate was impeached by the IEP team meeting sign-in sheet, which included her signature on the attendance page as "advocate." This inconsistency contributed to Ms. Sester's overall lack of credibility at hearing.

62. During the January 15, 2014 meeting, District offered Parent a notice of procedural rights and safeguards. The IEP team reviewed the January 14, 2014 Assessment Team Report and Student's graduation plan. The IEP informed Parent that Student was on track to graduate. Student's graduation plan was identified in the IEP as a high school curriculum leading to diploma, as opposed to high school curriculum leading to a certificate of completion. It identified Student's projected graduation date as June 15, 2014; Student had earned 210 of the 220 credits needed for graduation and that Student needed to complete an additional 10 credits to graduate; and Student passed her Algebra I requirement on June 6, 2013.

63. The January 2014 IEP included a transition plan which the IEP team reviewed and discussed at the IEP team meeting. The case carrier informed the IEP team that she conducted transition interviews with Student. The advocate stated she wanted a better transition assessment. Parent explained Student had difficulty with functional skills outside of school involving the calendar, time and money. The team discussed the possibility of shadowing opportunities in the student store and noted that Student was not working with money because her drawer was once short ten dollars. Ms. Cooper agreed to talk to the regional occupational planning teacher about different options. Parent requested an independent educational evaluation in assistive technology and post-secondary transition planning.

64. At hearing, Parent testified inconsistently as to whether she knew Student had stopped working with money at the time of the January 2014 IEP. Parent was impeached on this issue which negatively affected her credibility.

65. Mr. Beach attended Student's IEP team meeting. He reported that Student had a solid B in English 12. She was great in class, was an avid reader and provided considerable input in group conversations. His only concern was that she could get a little manic and ramble, but she was easily redirected.

66. During the IEP team meeting, Parent asked about teacher reports, and whether Student was doing well because of her aide's help or on her own. Ms. Cooper reported that Student was doing work on her own and taking her own notes. Parent admitted at hearing that at the time these comments were made she did not believe Student was taking her own notes or that Student was capable of multi-tasking. Ms. Sester asked about the Summary of Performance and Ms. Cooper told her it was routinely prepared later in the school year. Ms. Sester explained to Parent that there are some things that Parent may need to "jump ship" with and use what time was left in high school for focusing on other areas. The IEP team continued the meeting to January 22, 2014.

67. At hearing, Ms. Sester said she attended the IEP team meeting on January 15, 2014 because of Parent's concerns regarding Student's lack of independence and readiness for college. Ms. Sester testified that the Summary of Performance was discussed at length during this meeting. Ms. Sester also stated that the IEP team agreed to meet in the spring to discuss the Summary of Performance after completion of the Student's independent educational assessments in the areas of assistive technology and post-secondary transition. Ms. Sester's testimony was not believable. Her testimony was inconsistent with Parent's testimony that Ms. Cooper made these statements in the spring of 2014. In addition, the contemporaneous IEP team meeting notes did not mention convening an IEP team meeting to discuss the Summary of Performance and the notes are not consistent with Ms. Sester's testimony that a lengthy discussion about the Summary of Performance took place. The notes make only one passing reference to Ms. Sester inquiring about the Summary of Performance and advising Parent that it "is done later in the year." Ms. Sester also appeared nervous during her testimony, and testified inconsistently about her conversations with Parent as to when she first learned that District never held an IEP team meeting to discuss Student's Summary of

Performance, first claiming it was in 2015 or 2016 and later claiming it was in 2014. Ms. Sester's nervousness and inability to recall when exactly she first learned District failed to convene and IEP team meeting, negatively affected the credibility of her testimony about the Summary of Performance.

68. Ms. Cooper did not typically hold IEP team meetings to discuss a student's Summary of Performance. She did not prepare a summary of performance until all final grades had been submitted, and she verified that a student had passed their classes and otherwise met all diploma requirements. She both denied and could not recall ever agreeing to hold an IEP meeting to develop or discuss Student's Summary of Performance because that was inconsistent with her custom and practice.

69. On January 22, 2014, District reconvened Student's IEP team meeting. The team discussed Student progress, and that Student demonstrated growth in several areas and was becoming more aware. District reported on graduation requirements. Student was on track to graduate at the end of the school year with a high school diploma. This was reflected in the notes of the IEP which District provided to Parent. The IEP team continued the meeting to February 11, 2014.

70. At the time of the January 2014 IEP team meetings, Parent was worried that Student did not have the necessary life skills or ability to navigate her community after high school, and that Student's self-help and independent living skills would not be addressed before she left high school. Parent requested an independent educational evaluation at the January 15, 2014 IEP team meeting so that Student would have services in place before she graduated.

71. On February 11, 2014, the triennial IEP team meeting reconvened with Parent in attendance. The IEP team offered Parent a notice of procedural safeguards. The IEP team discussed Student's goals, including her goals in money counting, career and college awareness transition goals. Parent asked if Student could continue to work

in the student store. Student was on track to attend a junior college. Ms. Cooper would speak to Student about the SAT so she could get a good score. Student would be informed about the career fairs and a college awareness/transition goal of attending college information meetings was discussed. The team stated that Student might get discouraged in economics class due to the math component, so they discussed having the class "modified" for Student and allowing Student to use her notes for tests and quizzes and having visuals when available. The team agreed that an "accommodation" of using notes for economics class would be added, but the notes did not specify how or on which assignments or tests, if any, Student would be able to use her notes, and the FAPE page of the IEP did not add Student's use of notes as an accommodation or modification. The notes to the February 11, 2014 IEP do not reflect that any further IEP team meetings were to be scheduled.

72. At hearing, Mr. Navarro credibly explained that a student could pass high school economics without having math skills. Math is not necessarily part of the high school economics curriculum. A broad spectrum of math was not a required element to pass economics at the high school level.

73. Parent believed another IEP team meeting was required to review the teacher rating scales to complete Student's triennial review. District never convened and Parent never requested an IEP team meeting after February 11, 2014 during the 2013-2014 school year.

74. At hearing, Parent testified inconsistently as to whether she requested an IEP team meeting after February 11, 2014, first testifying she made requests on numerous occasions, then claiming she could not recall if she had made any request, and finally admitting she did not make any such request and could not recall when she last requested an IEP team meeting. Parent also claimed that she did not consent to the January 15, 2014 IEP, although Student alleged in her complaint that Parent had

consented to this IEP and based one of her claims on District's failure to implement the January 2014 IEP.⁴ Parent's evasiveness and inconsistencies negatively affected her credibility, as did the inconsistencies between Parent's testimony and the allegations in Student's pleadings.

75. On February 12, 2014, District sent Parent a letter agreeing to Parent's request for independent evaluations for post-secondary transition and assistive technology. District informed Parent that, because Student was expected to graduate at the end of the current semester, time of was of the essence. District attached to the letter copies of Notice of Procedural Safeguards and Parent's Rights, Prior Written Notice and the District's SELPA guidelines for independent educational evaluations, including a list of proposed assessors.

76. At hearing, Parent explained that she believed her concerns about Student's lack of transition skills were resolved with District's February 12, 2014 letter. Parent claimed that during an IEP team meeting Ms. Cooper told her that the results of the assessment would be reviewed at an IEP meeting and goals and services would be discussed at that time. Parent claimed she understood that the IEP could take place after Student's graduation. Parent's testimony was not convincing. Parent was evasive and appeared confused during her testimony on this issue. Parent could not identify the IEP team meeting in which Ms. Cooper made these statements. District did not hold any IEP team meetings after Parent received the February 12, 2014 letter. Parent testified inconsistently as to the method in which Ms. Cooper made this statement to her. Ms. Cooper credibly denied that she ever told Parent that District would convene an IEP

⁴ Student withdrew this claim during phase one.

team meeting after graduation or that any special education services would be available to Student after she was awarded her diploma.

77. During Student's senior year, District staff informed Student about some of her responsibilities as an adult once she turned 18 years old. Student turned 18 years old on February 20, 2014. Ms. Cooper met with Student frequently, working with her at least three or four times per week. She assisted Student with her transition goals. Ms. Cooper spoke to Student about her graduation from high school and leaving high school.

78. At hearing, Student denied receiving a copy of a notice of procedural safeguards during any meeting with Parent in attendance on or before her 18th birthday. Student did not establish that she understood about which document she was being questioned. No one asked Student if she received a notice of procedural safeguards at any other time. Student did not recall all of the documents she previously reviewed. For example, although she was shown her high school transcript during phase one and provided testimony about it, during phase two she denied she had ever seen it.

79. Parent testified that in spring 2014, Ms. Cooper told her that she wanted to have an IEP team meeting to discuss Student's Summary of Performance. This was not believable. Parent's testimony was incongruent with her earlier testimony, and inconsistent with Ms. Sester's testimony because Ms. Sester claimed Ms. Cooper made these statements at the January 15, 2014 IEP team meeting. It was also inconsistent with Parent's testimony that during spring 2014, Ms. Cooper specifically and repeatedly reminded her that Student would receive special education services until she was 22 years old, since Ms. Cooper only prepared a summary of performance for graduating seniors. Parent's testimony on these issues also conflicted with the contemporaneous documentary evidence, and Parent's conduct before and after Student graduated. Parent's testimony that Student would have received special education services until she

was 22 years old was incompatible with Ms. Cooper duties as case manager, which were limited to students on a diploma track. All of these inconsistencies made Parent's testimony implausible.

80. Student's social skills greatly improved during her second semester although she continued to blurt out inappropriate comments in class. She continued working on her issues with money during the second semester. Ms. Ellis had no concerns relating to Student's diploma track other than Student's struggles in math. Ms. Ellis never changed any of Student's exams or gave her the answers, and she never saw any teacher give her the answers.

81. Ms. Cooper was never concerned that Student would not graduate. At the time of her final examinations for the second semester, Student was doing well in school.

STUDENT'S GRADUATION, EXIT FROM SPECIAL EDUCATION, AND SUMMARY OF PERFORMANCE

82. Seniors took their final exams the last week of May 2014 and grades were due from teachers a couple of days prior to graduation. Teachers submitted students' grades to the registrar and a data clerk entered the grades into the District's system. All seniors were required to "check out" with various school staff to ensure that they fulfilled all graduation requirements and to obtain tickets for the graduation ceremony.

83. During her senior year, Student understood she was on track to graduate at the end of her senior year and began preparing for graduation well before the end of the school year. Student understood she had to pass an exit exam to graduate. Parent knew that Student had not taken a class entitled Algebra I or passed the math portion of the California Exit Exam. District informed her that Student had met her math requirement and had sufficient credits to graduate with a high school diploma. She

assumed that the Algebra Essentials satisfied Student's math requirements. Parent did not believe that Student would ever go to four-year college because of her math skills.

84. Between June 4 and June 6, 2014, Ms. Cooper did not provide Student with prior written notice that she was going to graduate or that she would no longer have special education services from District. It was not her practice to prepare a separate prior written notice for graduating seniors and she did not consider graduation a change of placement.

85. On June 5, 2014, Student participated in the Great Oak graduation ceremony for seniors graduating with a regular diploma. The last day of instruction for Great Oak students for the 2013-2014 school year was June 6, 2014. For graduating seniors, the last week of school was devoted mainly to graduation activities.

86. District awarded Student a regular high school diploma on June 6, 2014 and Student received a copy of her diploma. At the time of her graduation, Student required 220 credits to graduate with a regular high school diploma and obtained 240 credits. She passed the English language arts portion of the California Exit Exam, and but did not pass the math portion of the exam. Student satisfied all requirements necessary for District to award her a high school diploma. Student was not required to take Geometry I in order to graduate with a regular high school diploma at the end of the 2013-2014 school year.

87. Student's classmate at Great Oak testified at hearing. She graduated from Great Oak in June 2014 with a regular high school diploma. Since fall 2014, she has attended Point Loma Nazarene University where she studied nursing. Point Loma is a four-year university. She was always on the A-G diploma track, which she agreed was the track to graduate and attend a four-year university. She did not know if Student was on that same track. She always planned to attend a four-year university and knew that she had to take Algebra I and Geometry I, in order to take pre-calculus and advanced

placement calculus. Her ninth grade counselor, whom she could not name, told her that Geometry was required for a diploma, but agreed that advice was particular to her situation.

88. District had a procedure for exiting students from special education who were graduating with a regular high school high school diploma. Once the case carrier verified that the student met all requirements to graduate, the case carrier filled out an exit form stating the reason the student was being exited from special education. The exit form and the student's file were sent to the District office. Concurrently, the case carrier made an online request to the District office to exit the student from special education and a data clerk electronically exited the student from special education. District did not require either a signed IEP or parental consent to graduate a special education student with a high school diploma. Students were no longer eligible for special education once District awarded them a high school diploma.

89. A student's case carrier prepared a summary of performance for graduating special education seniors after determining they satisfied all diploma requirements. District did not require an IEP team meeting to discuss the summary of performance. While best practice was to meet with the student to go over the summary of performance, it was not always possible and never required. Student input for the summary of performance was also obtainable from a student's IEP or during meetings with that student during the school year.

90. On June 6, 2014, Ms. Cooper completed Student's Summary of Performance. Ms. Cooper's custom and practice was to send the summary of performance to students' homes within a week after the end of school year, along with the student's most current IEP and the most recent psycho educational assessment. At hearing, Parent denied having ever received the Summary of Performance, but then later, testified she received it in August 2016. Parent's testimony that Student never

received a copy of the Summary of Performance and that she did not receive it until August 2016 was not convincing because of the numerous other inconsistencies in Parent's testimony and her demonstrated memory difficulties.

91. On June 6, 2014, District also completed an Exit Report from special education for Student. The Exit Report reflected Student's exit date from special education was June 6, 2014, and that Student graduated with a regular diploma. District's data clerk also took the steps necessary to reflect electronically in District's data system that Student had been exited from special education because she had graduated with a high school diploma. It also stated that Student's IEP had been affirmed, which meant finalized.

92. At hearing, Parent claimed she never knew that Student had been exited from special education and that she never heard the words "exited from special ed" until August 2016, after Student filed her June 2016 due process complaint with OAH. Parent's testimony was not believable, and was otherwise inconsistent with her conduct after Student graduated. Parent had extensive involvement in Student's educational program throughout high school and thereafter. The certificate of completion track and diploma tracks had been explained to her at the January 25, 2011 IEP team meeting, and Parent knew Student was on the diploma track throughout high school. Student stopped receiving special education services from District well before June 6, 2014 and both Student and Parent knew that the services had stopped. Neither Parent nor Student ever asked Ms. Cooper or District why Student's special education services ceased. Parent also read and helped draft Student's June 2016 due process complaint, which contained allegations that Student was wrongfully exited from special education, establishing that Parent knew Student had been exited from special education when Student received her diploma on June 6, 2014.

STUDENT'S TRANSCRIPT, THE EVENTS AFTER GRADUATION AND MT. SAN JACINTO
COMMUNITY COLLEGE

93. Before Student's graduation, Parent requested copies of Student's final grades and a transcript from Ms. Cooper because Student wanted to attend college. Parent claimed that Ms. Cooper responded by email on June 4, 2014, informing her that Student's grades would not be input into District's system until the second week of June 14, 2014. Parent's testimony was not convincing. Student did not produce a copy of the email or persuasively explain how she could recollect the exact date of Ms. Cooper's response given her admitted memory difficulties. Throughout the hearing, Parent often appeared confused, was impeached numerous times, and refused to directly answer many of the questions she was asked. She also repeatedly admitted her inability to recall the dates and details of many events, which negatively impacted the overall credibility of her testimony on all issues.

94. After graduation, Parent returned to the Great Oak campus and picked up Student's transcript. The transcript reflected all of Student's courses, credits and grades during high school. Student obtained 240 of the 220 credits to graduate with a regular high school diploma, passed the English language arts portion of the California Exit Exam, but did not pass the math portion of the exit exam. Ms. Cooper credibly testified that the grades reflected on Student's transcript were accurate and none of them were modified, which was corroborated by District witnesses and Student, who admitted at hearing that her high school report cards were an accurate reflection of her work.

95. In June 2014, Student took summer classes in Louisiana. At hearing, Parent claimed that Student failed her classes because she had severe panic attacks. In August 2014, Student applied and enrolled at Mt. San Jacinto Community College at the Temecula campus, which she attended through October 2014. The Temecula campus did not provide special disability services. She struggled with taking her own notes, paying attention and focusing, and regulating her emotions. She became depressed and

anxious and felt suicidal. On September 5, 2014, Student was diagnosed with major depression by her medical provider. In October 2014, Student was hospitalized and never returned to that campus. For a short time in spring 2015, Student attended Mt. San Jacinto Community College in Hemet. Student did not receive the accommodations she needed and could not keep up with the coursework. Since then, Student has been sitting in her room and has almost no social life. Despite medical treatment, Student is depressed and anxious.

THE INDEPENDENT EDUCATIONAL EVALUATION

96. Parent obtained an independent educational transition evaluation from Professional Tutors of America. Her testimony as to when the assessment took place conflicted between phase one and phase two of the hearing. During phase two, the evidence supported a finding that Parent obtained the independent educational transition evaluation report from Professional Tutors of America in May 2015, after Student graduated and was diagnosed with major depression. The independent assessor did not testify at hearing, and Student offered no credible evidence that the evaluation report had any relevance to her claim that she did not meet graduation requirements. Parent's assertion that she was unaware of the facts forming the basis of Student's claims only after she obtained the independent transition evaluation was not credible.

97. Parent had no other communications with District in the two years between Student's June 2014 graduation and the filing of Student's June 2016 due process complaint. Parent's testimony that she called District in October 2015 to request an IEP team meeting because she obtained the May 2015 independent evaluation report was not believable. Her testimony conflicted with her earlier testimony in phase one, that she never requested an IEP team meeting after February 2014. She also could not

recall the specific details of the phone call and did not otherwise appear candid in her testimony regarding the call.

DISTRICT BOARD POLICIES AND REGULATIONS REGARDING GRADUATION AND GRADES

98. District had written high school graduation requirements which were periodically revised. District Board Policy 6146.1(a), last revised in 2013, mandated that students enrolled in comprehensive high schools like Great Oak, receive a diploma only after completing the prescribed course of study and meeting the standards of proficiency established by District. The policy required six semesters in mathematics, including Algebra I and Geometry I, for graduating classes "beginning with the first ninth grade class after inclusion of Geometry in the California State High School Exit Exam." District Board Policy 6146.4(a) stated that students with exceptional needs should meet the regular district graduation standards to the fullest extent of their abilities. It also provided that the IEP team determine the appropriate standards and assessments as well as accommodations that may be required for students with disabilities, and identify differential proficiency standards when necessary.

99. District Administrative Regulation 6146.4(a) was entitled Differential Graduation and Competency Standards for Individuals with Disabilities. The academic requirements for completion of a regular high school diploma included "[s]uccessful completion of required course of study with no accommodations or using accommodations, which do not substantially alter the District-approved course content in either General Education or Special Education." Under test measures, as part of the requirements for graduation with a high school diploma, students were required to demonstrate competency in District-required exams using standard administration procedures for tests (defined as no modifications, large print test, flexible setting, revised test format, except for omission of items and revised test directions), or using

non-standard administration procedures (such as extended time, use of aids or aides to include, use of readers and scribes, repeating oral comprehension items, and providing cues to maintain on-task behavior).

100. Under Administrative Regulation 5121(a) students in grades 9 through 12 demonstrated at least a level of proficiency when the student “shows some gaps in understanding concepts; can perform/apply skills with some errors.” Only letter grades of A+ through and including C- qualified for credit for high school graduation. Criteria for determining grades for achievement included, but were not limited to: preparation of assignments; contribution to classroom discussion, demonstrated understanding of concepts in tests, application of skills and principles to new situations, organization and presentation of written and oral reports and originality and reasoning ability when working through problems.

101. Joseph Balleweg has been District’s Directors of Curriculum, Instruction and Assessment since 2013. He has a bachelor’s degree in English, teaching and administrative credentials. As a Director, he supported schools in ensuring students were provided with a District-approved curriculum and quality instruction, and that District was administering state-required assessments. Between 2012 and 2013, he was a principal on special assignment, in which his primary duty was to help District transition to common core standards. From 2007 to 2012, he was the principal at Great Oak, assistant principal between 2006 and 2007 and, prior to that was an English teacher.

102. Classroom teachers of record decided whether a student successfully completed a course of study with or without an accommodation that did not substantially alter the District-approved course content. To pass a class, a student had to demonstrate a limited level of proficiency in the skills and concepts in the state standards in that course through instruction, assignments and assessments. The teacher of record determined whether a student met proficiency standards based on a variety of

considerations, including classroom assignments, written work, spoken word, student-to-student interaction, or any other student action, which allowed the teacher to make an evaluation on the student's proficiency level in the state standards. District-required exams were just one piece of the course. Students could demonstrate proficiency on an exam by scoring within the range of 70 to 79 percent, but the classroom teacher had the authority to determine the final grade awarded in a class. District policy permitted students to retake benchmarks assessments they failed, and a single benchmark assessment or final exam did not determine a student's grade. Performance on state-required assessments was not a factor in students' classroom grades. Geometry I was never required for the issuance of a regular high school diploma by District.

103. Mr. Balleweg credibly opined that using notes on a final exam is not always a modification of the curriculum. District's general education teachers had the authority to allow students to use notes on all tests except state-level tests. Local assessments were those non-state tests, developed by a group of teachers for District and those developed by individual teachers. The "support den" was a room on campus staffed by special education staff for students on IEP's to obtain extra support. Mr. Balleweg was only concerned about a student's use of notes on a final exam in a graduation-required course taken in the support den if the testing procedures in the general education classroom were different or if the use of notes was not in that student's IEP. Although he heard about concerns raised by some of the general education teachers that some students were receiving too much support in the support den, he recalled no issues related to students using notes on exams.

THE CALIFORNIA EXIT EXAM

104. Diana Damon White was District's director of special programs. She had a master's degree in education, an administrative credential, and a single subject teaching credential. She was also a District teacher for 13 years, and taught at both the middle

school and high school levels. As the director of special programs, she was responsible for accountability and assessment for state and federal mandated testing and data collection. One of her responsibilities was oversight of the California Exit Exam administration.

105. Ms. White credibility explained that the math standards tested on the California Exit Exam were seventh grade level standards and Algebra I. Geometry strands embedded within those seventh grade math standards were always part of the seventh grade standards. Geometry I content standards were never incorporated into the California Exit Exam.

STUDENT'S EXPERT – ANN WEINBURGER

106. In 2016, Parent retained Ann Weinburger to perform a transition assessment because Parent was concerned about Student's independent living abilities. Ms. Weinburger has been a self-employed special education consultant since October 2015. She has a bachelor's degree in education and a master's degree in the art of teaching and a certified occupational therapy assistant. She has teaching credentials from Colorado for special education for kindergarten through 12th grades and in general education for kindergarten through eighth grade, and she previously held teaching credentials in Michigan and Ohio. She has taught private preschool and elementary school in Colorado and Michigan for 10 years, and was a special education elementary school teacher one year at a public school and fourth grade teacher for three years at a charter school. She was an occupational therapy assistant for one year in a medical clinic setting. She completed 10 hours of transition training in March 2016 and received a certificate of completion in January 2016 for completing e-training in the Brigance Transition Skills Inventory assessment. She never worked in California as a teacher or a site administrator, did not hold an administrative credential, and never worked on a comprehensive campus at the high school level.

107. Ms. Weinburger testified at hearing. Her testimony regarding her work experience was exaggerated in contrast to her written resume, which negatively affected her credibility. For example, she claimed to be a special education teacher at various points in her career, but her detailed resume omitted any reference to her working as a special education teacher during all of those periods. Her reference to patients as students in describing her duties at an outpatient clinic suggested she was attempting to exaggerate her experience working with students. She otherwise appeared to attempt to embellish her qualifications by repeatedly providing nonresponsive, confusing and convoluted answers.

108. Ms. Weinburger conducted Student's transition assessment over three meetings in January and February 2016. She used the Brigance inventory to assess Student and prepared a written report in March 2016. She found that Student would need to ask questions or have accommodations made in the workplace and could not identify job expectations. Student completed the writing assessment with 100 percent accuracy. She could read employment vocabulary at a 12.9 grade level, but could only comprehend between 8 to 70 percent of that vocabulary. She demonstrated good computer skills. She was unable to identify the value of money. She had demonstrated a need and desire to learn how to use money.

109. Ms. Weinburger's testimony was inconsistent as to the documents she reviewed before she prepared her report, which negatively affected her credibility. She initially claimed she only reviewed the January 2013 IEP, the January 2014 IEP, the May 2015 Professional Tutors of America transition assessment and District's 2014 assistive technology report. She later contradicted that testimony and claimed to have reviewed other documents, but denied she reviewed any records for the period after Student graduated. She claimed all the documents she reviewed in rendering her opinions were in her file, but later admitted she reviewed Student's transcript, which was not in her file.

110. Her report concluded that Student had not been able to access post-secondary programs due to her need for a supportive and structured environment. Student required assistance in the areas of functional performance and academic progress. Ms. Weinburger recommended, among other things, that Student explore alternative independent living services. At hearing, she recommended Student attend a transition program at either the College of Living Experience for at least two years, or Riverside County Office of Education Community Transition Program. At the College of Living Experience she would live full-time in an apartment and have strong support in the areas of social skills, functional skills, and money management.

111. During the hearing, Ms. Weinburger opined that Student's independence level was not where it should have been to graduate from high school because she was not college-ready. Ms. Weinburger responded to leading questions from Student's counsel by listing the reasons Student was not eligible to graduate with a high school diploma: Student had an aide; there was no data to support her need for an aide; her 2014 Wechsler scores evidenced regression in the areas of listening and reading comprehension and sentence completion; her functional skills deficits; she needed modifications in economics; and she had no post-secondary goals on her January 2014 IEP. However, Ms. Weinburger's was successfully impeached on her conclusions when she admitted that none of these reasons were diploma requirements and agreed that if Student legitimately passed her classes, District properly awarded her a diploma.

112. Ms. Weinburgerun convincingly opined that Student was not capable of meeting diploma requirements because Student required a modified curriculum in economics, scored 66.67 percent on one local assessment during her junior year, took too long to meet her Algebra I requirements, and did not have practical math skills. She gave Student's grades no weight in forming her opinions which undermined the credibility of all of her opinions. Although she had never interviewed Student's teachers,

Ms. Weinburger pronounced that Student's grades were irrelevant because she did not believe Student earned her grades. She relied only on the notes from the February 11, 2014 IEP team meeting for her opinion that Student's economics curriculum was modified, but admitted she did not know if Student's work was modified or whether the modification referred to in the notes applied only to non-District required exams or assignments. She also admitted that Student never told her that she could use her notes while taking exams. Ms. Weinburger claimed that the one local assessment score of 66.67 percent told her more about Student's progress than Student's grades, but also admitted this one test was insufficient to determine progress. She also demonstrated no basis for her opinions as to what that one local assessment score reflected, and did not know how this one local measure affected course grades for determining issuance of a diploma.

113. At one point in her testimony, Ms. Weinburger opined that the only diploma requirement Student did not fulfill was completion of Geometry I. Her opinions were not credible. She admitted she did not know if Geometry I ever became a diploma requirement or whether geometry was ever added to the California Exit Exam. Later, based on some non-specific internet research, she opined that geometry had been on the California Exit Exam since 2008, although she acknowledged that the geometry on the California Exit Exam was part of the seventh grade math standards, and there were no high school geometry standards on the California Exit Exam.

114. She offered opinions on preparing a summary of performance and prior written notices, but admitted she had no experience preparing a summary of performance or prior written notice for graduating seniors. She agreed that the IDEA did not require a summary of performance to be provided prior to graduation, but opined that to provide a summary of performance prior to graduation and include the student in the process, was best practice. Her testimony regarding the prior written notices she

prepared was illogical and confusing, and she refused to or was unable to comprehensively explain the process for the prior written notices she drafted. For example, she testified that she drafted prior written notices on behalf of public school districts when she worked for Mount St. Vincent, a residential and day treatment facility, but stated that they were sent on letterhead of the "Colorado Department of Education IEP," and that she signed the notices as a representative of Mount St. Vincent. She also claimed she worked in collaboration with school districts during this process, but got no instructions from those districts on whose behalf she had sent the prior written notices.

115. Much of Ms. Weinburger's testimony was confusing and inconsistent. She repeatedly went far afield in answering the questions posed to her, volunteered tangential non-responsive information, which made her answers unclear and explanations convoluted. She was unable to comprehensively answer many questions or explain her answers. She repeatedly appeared to be advocating for Student rather than candidly answering the questions posed to her. Ms. Weinburger was also evasive during her testimony and she often contradicted her own testimony. For example, she was evasive in responding to questions as to whether Student was currently eligible for special education. She was elusive when asked whether parental consent was required to graduate a special education student from high school who had otherwise met all diploma requirements, although she ultimately agreed consent was not a requirement. Overall, her testimony was not credible and her opinions were given little weight.

DISTRICT STUDENT DATABASES

116. At the time of the hearing, District maintained three different student data systems, including EADMS, Aeries and Infinite Campus. Student's data was not in Infinite Campus. In Aeries, information about Student was limited to final grades and state testing for the 2013-2014 school year.

117. EADMS was a data warehouse used for District accountability to California Department of Education. Teachers were not required to upload information into EADMS. Local tests and local assessments referred to classroom work. Once information was uploaded into EADMS it could not be deleted. The only high school local assessment in EADMS for Student was for the 2012-2013 school year, consisting of Student's score of 66.67 percent on one assessment in Algebra Essentials. It could not be determined whether Student met proficiency standards for Algebra I by looking at this score because it was only one measure in the entirety of the full course and was not necessarily indicative of Student's final grade. Student assessments were snapshots and not necessarily an evaluation of overall proficiency.

LEGAL AUTHORITY AND ANALYSIS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.⁶; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All references to the Code of Federal Regulations are to the 2006 version.

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp.

200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.) In a recent unanimous decision, the United States Supreme Court also declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court’s analysis, and clarified FAPE as “markedly more demanding than the ‘merely more than the de minimus test’...” (*Endrew F. v. Douglas School Dist. RE-1* (2017) 137 S.Ct. 988, 1000 (*Endrew*)). The Supreme Court in *Endrew* stated that school districts must “offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” (*Id.* at p. 1002.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing

the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student, as the complaining party, bears the burden of proof.

ISSUE 3: FAILING TO HOLD AN IEP TEAM MEETING TO DISCUSS STUDENT'S SUMMARY OF PERFORMANCE

5. Student contends District was required to conduct an IEP team meeting to develop Student's Summary of Performance. Student argues that best practices for post-secondary transition required District to convene an IEP meeting. Student also claims that during the January 15, 2014 IEP team meeting, District agreed to convene an IEP team meeting in the spring for the purpose of developing Student' Summary of Performance. Student argues that the failure to convene an IEP team meeting before Student graduated denied her a FAPE because Student was not allowed to participate in the development of her Summary of Performance, and that Student never received a copy of her Summary of Performance.

6. District contends no legal requirement exists to conduct an IEP team meeting to develop a summary of performance. District denies that it ever agreed to conduct an IEP team meeting for this purpose. District argues that the summary of performance is not required until a student graduates and District should only be held to legal requirements, not to what Student believes may be better practice. District contends the summary of performance was timely provided to Student and was legally compliant.

7. For a child whose eligibility terminates due to graduation from secondary school with a regular diploma, a public agency must provide the child with a summary of the child's academic achievement and functional performance, including

recommendations on how to assist the child in meeting the child's postsecondary goals. (20 U.S.C. § 1414(c); 34 C.F.R. § 300.305 (e)(3); Ed. Code, § 56381subd. (i)(2).) The IDEA does not otherwise specify the information that must be included in the summary; rather, State and local officials have the flexibility to determine the appropriate content to be included in a child's summary of performance, based on the child's individual needs and postsecondary goals. (*Questions and Answers on Secondary Transition*, 57 IDELR 231 (OSERS 2011); *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46,645 (2006).) "The purpose of the [summary of performance] is to provide the child with a summary of the child's academic achievement and functional performance in order to assist the child to transition beyond high school." (*Questions and Answers*, *supra*, 57 IDELR 231.)

8. The IDEA does not identify a specific individual responsible for preparing the summary of performance. (See 34 C.F.R. § 300.305 (e)(3).) Some states have adopted policies and guidelines for the summary of performance; however, those policies may vary in terms of who fills out the form, when the process occurs, and how the states assist local schools in the process. Administrative decisions illustrate how the process may vary from state to state. For example, in *Twin River School Dist.*, 109 LRP 73701 (SEA NE August 4, 2009), a hearing officer noted that a summary of performance is generally written by the student's resource teachers or primary service provider when the student exits high school. Similarly, in *Walled Lake Consolidated Schools*, 114 LRP 27033 (SEA MI March 29, 2013), the students' special education teachers usually prepared the summaries which the transition coordinator monitored. The district placed the summary in the file of each graduating student and gave the student a copy. In *Waukesha School Dist.*, 114 LRP 53687 (SEA WI October 24, 2014) the ALJ held that a district's obligation to prepare a summary of performance was triggered when a

student's" eligibility for special education terminates either due to graduation with a regular high school diploma or due to exceeding the age of special education eligibility under state law." The district in *Department of Education, State of Hawaii*, 65 IDELR 249 (SEA HI January 8, 2015), permitted the district's educational specialist to prepare a student's summary of performance. In contrast, in *River Dell Regional High School Dist. Board of Education*, 109 LRP 66447 (SEA NJ May 29, 2008), an ALJ observed that the district held a summary of performance meeting that included a school social worker/case manager, a self-advocacy and study skills teacher, a transition counselor, a speech-language specialist, and an aide/scribe.

9. An IEP team meeting requested by a parent shall be held within 30 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written request. (Ed. Code, §§ 56343.5, 56043, subd. (l).)

10. Student's claim that District denied Student a FAPE by failing to hold an IEP meeting before June 4, 2014, to discuss Student's Summary of Performance was barred by the two-year statute of limitations, based upon the November 28, 2016 Order. Therefore, Student's claim is limited to the time period between June 4, 2014 and Student's graduation on June 6, 2014. Student did not establish by a preponderance of evidence that District denied her a FAPE by failing to hold an IEP meeting to discuss Student's Summary of Performance during that time frame.

11. The IDEA requires districts to complete a summary of performance for students with disabilities who graduate from high school with a regular diploma. District complied. The IDEA does not require District to convene an IEP team meeting to develop or discuss the summary of performance. Student concedes that the IDEA, its implementing regulations, and the Education Code, are silent on the specific procedure by which a district is required to develop a summary of performance. Here, District did

not require its case managers to meet with its students to discuss the summary of performance, much less convene an IEP team meeting. The evidence established that Student's input was achieved in numerous other ways, including but not limited to, Student's IEP's and other records, and from meeting with Student during the school year. Ms. Cooper was Student's case manager and prepared her Summary of Performance. She attended Student's IEP team meetings and regularly met with Student and her aide. She worked with Student at least three or four times per week, assisted her with her transition goals, and spoke to her about graduation and life after high school.

12. Ms. Weinburger's testimony on this issue was not persuasive. While she attempted to opine about "best practices," districts are not required to comply with best practices which are not legal requirements. She conceded that the IDEA did not require a summary of performance be provided at any time prior to graduation and she had no experience in preparing summaries of performance for graduating seniors.

13. Student failed to prove that District agreed to conduct an IEP team meeting to discuss the Summary of Performance. In response to an inquiry from Ms. Sester about the Summary of Performance, Ms. Cooper informed Parent that the Summary of Performance would be prepared later in the year. Parent never requested and Ms. Cooper never agreed to conduct an IEP team meeting to develop or discuss the Summary of Performance. Ms. Cooper credibly explained that only after all grades were submitted and she verified that all diploma requirements had been satisfied, did she prepare summaries of performance, which she then mailed to students' homes. Student failed to establish this was not Ms. Cooper's custom and practice or that Student did not receive the Summary of Performance shortly after Student's graduation, and Parent's testimony on this point was not credible.

14. Student's claims are also inconsistent with Parent's conduct. As of the time Student graduated, Parent knew District never held an IEP team meeting to discuss the

Summary of Performance; yet, Student offered no persuasive evidence Parent ever requested an IEP team meeting either before Student graduated or to inquire about the Summary of Performance in the two years after Student's graduation. Given the importance that Parent and Ms. Sester claimed to have attributed to the development of the Summary of Performance prior to Student's graduation, it is inconceivable that Parent would not have requested an IEP team meeting if District had in fact made such a promise. Parent admitted she never requested an IEP team meeting after February 11, 2014 and offered no reasonable explanation for her failure to do so. It is also implausible that there would be no documentation, or that Parent would not have followed up with Ms. Cooper if, after the February 11, 2014 IEP team meeting, Ms. Cooper told Parent she wanted to have an IEP team meeting to discuss the Summary of Performance; yet there was no evidence that this ever happened. Similarly, it is inconceivable that if Student never received a copy of the Summary of Performance that Parent would have neglected to contact District to at least inquire about it. Student offered no persuasive evidence that Parent ever contacted District to request a copy of the Summary of Performance she claimed she never received. Considering the totality of the evidence, Student did not prove that Ms. Cooper ever agreed to hold an IEP team meeting to discuss the Summary of Performance.

15. In summary, District did not deny Student a FAPE by failing to convene an IEP team meeting between June 4 and June 6, 2014, to discuss Student's Summary of Performance.

ISSUE 4: FAILING TO PROVIDE PRIOR WRITTEN NOTICE BETWEEN JUNE 4 AND 6, 2014

16. Student contends that District never gave Student prior written notice that it intended to graduate Student with a regular high school diploma and exit Student from special education upon her graduation in June 2014. Student contends that

graduation is a change of placement for which prior written notice was required, and the failure to provide this notice denied Student a FAPE because she did not receive the benefit of four years of the post-secondary transition services she needed. Student argues she was unaware of the ramifications of graduating, and that had District sent prior written notice within a reasonable time prior to Student's graduation and exit from special education, Parent could have filed for due process and stopped her graduation and exit from special education.

17. District contends that it was not required to provide prior written notice between June 4 and June 6, 2014. District argues that it provided Parent with many written notices of Student's impending graduation from high school, including but not limited to, Student's January/February 2014 IEP, which satisfied its legal obligations. District argues that graduation is unlike other changes in placement, that it is obligated to issue a diploma when a student satisfies diploma requirements, and that it was only required to provide adequate notice of graduation and rights available upon termination of education consistent with general notice requirements.

18. The IDEA requires an educational agency to provide "prior written notice" whenever the agency proposes or refuses to initiate or change "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." (20 U.S.C. § 1415(b)(3); see also 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).)

19. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice in accordance with 34 C.F.R. § 300.503. (34 C.F.R. § 300.102(a)(3)(iii).) Once a student graduates with a regular diploma, the student no longer has a right to a FAPE. (Ed. Code, § 56026.1; 34 C.F.R. § 300.102(a)(3)(i).) A student's eligibility for FAPE ends when the student satisfies state requirements for a regular diploma, regardless of whether he receives an actual

document. (See *T.M. ex rel. T.D.M. v. Kingston City Sch. Dist.* (N.D.N.Y. 2012) 891 F.Supp.2d 289, 294.) The termination of special education services to a child with disabilities because the child completes his graduation requirements in effect fulfills the school district's obligation to provide FAPE. (*Letter to Richards*, 17 IDELR 288 (OSEP November 23, 1990).)

20. The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H. v. Cape Henlopen School Dist.* (3d Cir. 2010) 606 F.3d 59, 70.) Prior written notice must be sent "a reasonable time" before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement or provision of FAPE to the child. (34 C.F.R. § 300.503(a)(1); Ed. Code, § 56500.4, subd. (a).) This is to ensure that parents have a reasonable time to fully consider the change of placement and respond to the action before it is implemented. (See *Letter to Chandler*, 59 IDELR 110 (OSEP April 26, 2012).)

21. A prior written notice must include (1) a description of the action proposed or refused by the agency; (2) an explanation for the action; (3) a description of each evaluation procedure, assessment, record, or report which is the basis of the action; (4) a statement that the parents of an individual with exceptional needs have protection under the procedural safeguards, and the means by which a copy of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance; (6) a description of the other options the IEP considered and the reasons why those options were rejected; and (7) a description of other factors relevant to the proposal or refusal of the agency. (20 U.S.C. § 1415(b)(3) and (c)(1); 34 C.F.R. § 300.503(a) and (b); Ed. Code, § 56500.4, subd. (a) and (b); see also Ed. Code, § 56500.5 [requiring "reasonable written prior notice" that a student "will be graduating from high school with a regular high school diploma ..."].)

22. An IEP document can serve as prior written notice as long as the IEP contains the required content of appropriate notice. (71 Fed.Reg. 46691 (2006).)

23. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2) and (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484, *superseded in part by statute on other grounds* ["...procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

24. When a violation of such notification procedures does not actually impair parental knowledge of or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*C.H., supra*, 606 F.3d at p. 70.)

25. A request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (1).) The two-year limitations period does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*; 20 U.S.C. § 1415(f)(3)(C)(D).) Invoking the exceptions to the statute of limitations requires a showing that the school district's misrepresentation or withholding of information caused the failure to file the due process complaint on time. Thus, where the evidence shows that the parents were fully aware of their procedural

options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those options. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 246-247.)

26. Student's claim that District denied Student a FAPE by failing to provide prior written notice prior to June 4, 2014 was barred by the two-year statute of limitations, based upon the November 28, 2016 Order. Student's claim that District denied Student a FAPE by failing to provide prior written notice is therefore limited to the period between June 4, 2014 and Student's graduation on June 6, 2014. On further analysis after considering all the evidence at hearing, it is now concluded that Student's claim for the remaining period at issue, from June 4 through June 6, 2014, is also barred by the two-year statute of limitations.

27. District was required to provide Parent with prior written notice of Student's graduation "a reasonable time" before it graduated Student and exited her from special education. A reasonable period of time prior to Student's June 6, 2014 graduation and exit from special education would have to have been prior to June 4, 2014 and thus, Student's claim is time-barred. There was no evidence that if Student been provided with prior written notice between June 4 and June 6, 2014, she could have filed a request for due process hearing in time to benefit from the automatic stay put relief such a filing may have provided. (See, e.g., *P.N. v. Greco* (D.N.J. 2003) 282 F.Supp.2d 221, 235.) In fact, the evidence supports the opposite conclusion.

28. Since District's obligation was to provide prior written notice "a reasonable time" prior to Student's June 6, 2014 graduation, the statute of limitations had already expired by the time Student filed her complaint. No statute of limitations exception applies to Student's claim for the June 4 through June 6, 2014 period. As of at least the January and February 2014 IEP team meetings, Parent and Student knew Student was

graduating in June 2014 and being exited from special education and all claims to the contrary were not credible.

29. In summary, Student's claim that District denied her a FAPE by failing to provide prior written notice between June 4 and June 6, 2014 before exiting Student from special education, is time-barred.

ISSUE 5: AWARDING A HIGH SCHOOL DIPLOMA AND EXITING STUDENT FROM SPECIAL EDUCATION AT THE END OF THE 2013-2014 SCHOOL YEAR

30. Student contends that she failed to meet District's requirements for a regular high school diploma and that the District denied her a FAPE by improperly graduating her and exiting her from special education in June 2014. Student argues that District awarded her a high school diploma in violation of its board policies and administrative regulations. Student claims she failed to take and pass Algebra I and Geometry I, did not meet differential graduation and competency standards for disabled students, awarded a diploma based upon modified standards, and allowed to use her notes while taking District-required exams.

31. District contends Student met the high school graduation requirements, earned her regular high school diploma and was properly exited from special education upon graduation with a regular high school diploma. District argues that academic proficiency at the 12th grade level is not required for graduation. Student's grades were not based upon modified standards and Student was not inappropriately allowed to use her notes. District claims the Geometry I issue was never raised as an issue until phase two and is not in Student's pleadings, and that Geometry I was not a diploma requirement. District further contends that Student's Issue 5 is barred by the statute of limitations because Student met her graduation requirements prior to June 4, 2014 and Student knew well in advance of June 6, 2014 that she would be graduating.

32. Legal conclusion 19 is incorporated by reference.

33. The federal regulations implementing the IDEA require that school districts provide FAPE to children with qualifying disabilities until the age of twenty-one.(34 C.F.R. §§300.101, 300.102.) This obligation, however, does not apply where the disabled student has “graduated from high school with a regular high school diploma.” (34 C.F.R. § 300.102 (a)(3)(i).) A pupil with exceptional needs who has met all state and school district requirements and graduates from high school with a regular diploma is no longer eligible for special education and related services. (34 C.F.R. § 300.102 (a)(3)(i); Ed. Code, § 56026.1.) When a student satisfies state requirements for a regular diploma, the student’s eligibility for FAPE ends. (See *T.M. ex rel. T.D.M., supra*, 891 F.Supp.2d 289, 294.)

34. The establishment of proficiency standards for a high school diploma is a State function which is not addressed by the IDEA or federal regulations. State law and school district policy exclusively determine diploma and graduation requirements. (*Letter to Anonymous*, 22 IDELR 456 (OSEP November 1, 1994).) A regular high school diploma must be fully aligned with the State's academic standards. (34 C.F.R. § 300.102(a)(3)(iv).) In California, when an individual with exceptional needs meets public education agency requirements for completion of a prescribed course of study designated in the student’s IEP, the public education agency which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.) Further, the IDEA does not make achievement of a disabled student's IEP goals a prerequisite for awarding a regular high school diploma, as the statute, as a general matter, does not establish standards for graduation. (See, *Letter to Anonymous, supra*, 22 IDELR 456.) A student who meets the standards established by the State for a high school diploma cannot be denied a diploma based on his or her disability. (*Ibid.*)

35. Notwithstanding any other provision of law, beginning with the 2009-2010 school year, an eligible pupil with a disability is not required to pass the California Exit Exam as a condition of graduation from high school. (Ed. Code, § 60852.3.)

36. Student failed to prove that District denied her a FAPE by awarding her a diploma and exiting her from special education on June 6, 2014. The weight of the evidence established that by June 6, 2014, Student met all of District's requirements for completion of the prescribed course of study designated in Student's IEP. At all times, Student's IEP's placed Student on a diploma track and identified her date for graduation as June 2014. Student met all District requirements for a regular high school diploma. Student earned the requisite 220 credits, completed the necessary courses, and was exempt from passing the California Exit Exam. District had a procedure in place for verifying students' eligibility for graduating and exiting students from special education. Student offered no persuasive evidence that this procedure was not followed for Student. Once all of Student's general education graduation requirements were met at the end of the 2013-2014 school year, District was required to award Student a regular high school diploma, which it did, and Student's graduation with a regular high school diploma was therefore appropriate.

37. Student failed to meet her burden of demonstrating that she had not met one or more of the requirements for a regular high school diploma. Student took Algebra Essentials, and that satisfied the Algebra I requirements for graduating with a high school diploma.

38. Notwithstanding Student's failure to specifically raise the Geometry I issue in her pleadings, Student failed to prove she was improperly awarded a diploma because she did not take Geometry I. Student was not required to take and pass Geometry I because it was not a diploma requirement when Student graduated in June 2014. Student's interpretation of District's Policy 6146.1(a) is incorrect. Students were

only required to take Geometry I as a condition of graduating when and if Geometry I standards were added to the California Exit Exam. Ms. White credibly testified that Geometry I standards were never added to the California Exit Exam, and the only geometry standards on the exit exam were imbedded in the seventh grade math standards, which were always part of the exam. Ms. Weinburger, Student's expert, corroborated Ms. White's testimony on this issue. Mr. Balleweg credibly testified Geometry I has never been a diploma requirement for District's graduating seniors. This interpretation is also consistent with the flow chart provided to Parent at the March 9, 2011, IEP team meeting, which did not include Geometry I as a diploma requirement. Both Ms. Weinburger's and Student's classmate's testimony that Geometry I was required for a diploma lacked credibility. Ms. Weinburger had no experience working with or interpreting District's board policies. She also admitted she did not know if Geometry I ever became a diploma requirement, and only later changed her testimony based upon some non-specific internet research. Student's classmate's testimony based her testimony on what an unidentified counselor told her which was specific to her plans to attend a four-year university.

39. Student did not prove Student was incapable of meeting the required high school proficiency for a regular high school diploma. Student's claims of modified standards were not convincing. The weight of evidence established that the work reflected on Student's report cards during high school was accurate and truthfully reflected her work product. Student admitted she did the same amount work and was held to the same standards as her classmates. Student's scores on exams was just one measure teachers used for evaluating proficiency level in the state standards, and District-required exams were just one piece of the grade in a course. There was no evidence at hearing that Student was not doing her own work. Parent's speculation that

Student was not doing her own work was insufficient to prove that Student could not perform the course work for which she earned credit.

40. Student's assertion that she was incapable of absorbing the material demonstrating the proficiency to graduate was contrary to the weight of the evidence. Student not only passed her required classes, but the contemporaneous written evidence demonstrated that Student was absorbing curriculum. For example, she passed the English language arts portion of the California Exit Exam, and despite her difficulties in math, she satisfied her Algebra I requirement by taking and passing Algebra Essentials and came close to passing the math portion of the California Exit Exam. The December 2013 teacher observation reports document Student's ability to understand the course material. At the time of Student's January 2014 IEP, she was earning B's in both her government and English 12 courses, and an A in computer animation and demonstrated growth in several areas. Student admitted that Mr. Beach was adept at explaining the English 12 material and that she had made progress in his class. During the second semester of Student's senior year, Student was doing well in school, her social skills improved, she was less reliant on her aide and she was working on her money issues. Except for Ms. Ellis' concerns regarding Student's struggles in math, neither Ms. Ellis nor Ms. Cooper had concerns regarding Student graduating. Parent's claims at hearing that Student was unqualified to graduate because of her functional skills deficits was inconsistent with Parent's earlier statements and her testimony about the Bridge program. For example, Parent thought a diploma track was appropriate for Student and rejected District's attempts to place Student in the Bridge program to work on Student's functional skills because the students in that class were too low functioning as compared to Student.

41. Student did not prove she failed to meet District's mandated test taking requirements, or that District modified her curriculum or otherwise substantially altered

the District-approved course content based upon her use of notes during exams. Two of Student's teachers testified at hearing, Mr. Navarro and Mr. Beach. Mr. Navarro had no recollection of Student using her notes for exams. His testimony was corroborated by Ms. Cooper who denied she ever allowed Student to use her notes for exams. Mr. Navarro credibly testified Student was not only held to the same standards as other students, but she performed at a higher than average standard, which was supported by the contemporaneous written evidence. Although Mr. Beach could not specifically recall Student because of the large numbers of students who pass through his classes each year, he credibly confirmed that he had no reason to believe he modified standards for Student. Except where he may have allowed all his students to use their notes, he had no specific recollection of Student using her notes on exams. His testimony was corroborated by Ms. Cooper. Student's and Ms. Ellis' testimony about Student's use of notes on her exams was equivocal, inconsistent or conflicted with other more persuasive evidence, and was therefore given little weight.

42. Student did not establish by a preponderance of evidence that her economics curriculum was modified or that she otherwise failed to demonstrate the proficiency in course standards for economics. The February 11, 2014 IEP team meeting notes did not establish she failed to satisfy the economics diploma requirement. Although the IEP team discussed having the economics class "modified," the weight of the evidence established that the class was not modified. Rather, the notes state that Student's use of notes would be added as an "accommodation." Ms. Cooper credibly testified that District staff often used the words, "accommodation" and "modification" interchangeably which was evident in the testimony and other evidence presented throughout the hearing. The evidence was unconvincing that any notes modification or accommodation was ever implemented in Student's economics course. It was never added to the FAPE page of Student's January/February 2014 IEP, and although Ms. Ellis

testified that there may have been one or two “modifications” to her course, she appeared to be referring to the “accommodations” in Student’s IEP and had no recollection of Student using her notes on exams. Student’s testimony that she used her notes on her economics exams was given little weight because it was inconsistent. Student did not prove she used her notes to take her economics exams.

43. The stray pieces of evidence relied on by Student at hearing did not prove that Student’s curriculum was modified or that Student was unable to demonstrate the proficiency necessary to complete the required course of study for a regular high school diploma. Parent claimed that the information in the November 2010 classroom observation report demonstrated evidence of grade inflation or that Student was not held to the core curriculum standards. Her assertions were not supported by any credible evidence. The comments in the report were nothing more than the teacher’s attempt to explain the classroom accommodations she provided Student. Similarly, the single notation of “modified grade” next to one of Student’s listed ninth grade English assignments in January 2011 did not establish that Student’s was unable to meet proficiency standards for the course or prove a substantial alteration of District-approved course content. There was no evidence as to how or why this grade was “modified,” whether the assignment or test was District-required, the weight given this assignment, or the effect, if any, on Student’s overall course grade. The same is true of the failing grades Student received on four of the 20 English assignments due between January 7 and March 1, 2011. Likewise, the handwritten notations on Student’s January 2014 English assignments did not establish her grades were modified.

44. District’s failure to maintain Student’s coursework and results of District-required exams did not prove that Student failed to meet District’s graduation proficiency and competence requirements. There was no persuasive evidence at hearing that District concealed from Student the coursework which was the basis of the grades

on Student's transcript or that there was anything unusual or suspicious about the data which District maintained on its databases regarding Student.

45. Ms. Weinburger's testimony that Student was not eligible to graduate with a high school diploma was not persuasive. Her opinions were not credible and she appeared biased. Her testimony was convoluted and confusing. Ms. Weinburger's opinion that Student was not capable of meeting diploma requirements was not convincing. With the exception of her unconvincing opinions regarding Geometry I as a diploma requirement and the alleged modification of Student's economics curriculum, she admitted that none of the reasons she gave for Student's graduation ineligibility were diploma requirements. She admitted that if Student passed all of her classes that District properly awarded her diploma, but she failed to give any weight to the grades Student earned in her classes. She claimed Student's grades were irrelevant because she did not believe she earned them, but admitted she never spoke to Student's teachers and placed undue importance on one local assessment score which she stated was insufficient to render an opinion. She pointed to the IEP notes as evidence that Student economic grade was not bona fide, but admitted that she did not know if Student's economics curriculum had been modified.

46. As a special education student, Student was not required by law to pass the California Exit Exam as a condition to receive a regular high school diploma. Student's inability to pass the math portion of the California Exit Exam had no impact on her qualification to graduate with a diploma.

47. Student failed to meet her burden of establishing by a preponderance of the evidence that Student had not met the requirements for graduation with a regular high school diploma. In conclusion, District did not deny Student a FAPE by improperly awarding Student a high school diploma and exiting her from special education at the end of the 2013-2014 school year.

ORDER

1. As stated in the Order dated November 28, 2016, Student's claims in Issues 1 and 2 are barred in their entirety by the two-year statute of statute of limitations. As stated in the Order dated November 28, 2016, Student's claims in Issues 3 and 4 for the period of time prior to June 4, 2016 are barred by two-year statute of limitations.

2. All of Student's remaining claims in Issues 3, 4 and 5 are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: April 13, 2017

_____/s/_____

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings