BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016060613 ORDER FOLLOWING PHASE ONE OF BIFURCATED HEARING

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. Student's amended complaint contends that District denied her a free appropriate public education in her January 2013 and January 2014 individualized education programs by failing to offer appropriate goals, transition services and transition planning (Issues 1 and 2). Student also asserts District denied Student a FAPE by failing to hold an IEP team meeting to discuss Student's summary of performance (Issue 3), and provide prior written notice before exiting Student from special education (Issue 4). Student also claims that District improperly exited her from special education at the end of the 2013-2014 school year (Issue 5).[1] In addition, Student alleges that the statute of limitations was tolled due to several District misrepresentations, as well as District's failure to provide Parent and Student with prior written notice before exiting Student from special education.

OAH bifurcated the hearing during the September 9, 2016 prehearing conference.

Administrative Law Judge Laurie Gorsline heard Phase One of the bifurcated matter in Temecula Valley, California, on September 28 and 29, and October 4 and 5, 2016. Special education advocate Theresa Sester represented Student, and was assisted by special education advocate Imari Nicoloff, Ed.D. Student attended portions of the first three days of hearing and Mother attended all days of Phase One. 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 Assistant Director of Special Education, Ami

[1] On October 11, 2016, the ALJ issued a written 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.)

Paradise attended the third and fourth days of Phase One. On October 25, 2016, the parties filed their closing briefs regarding Phase One.[2]

Phase One, and this Order only addresses whether all of Student's claims are barred by the statute of limitations, and specifically, whether an exception to the two-year statute of limitations applies because Parent and Student were prevented from timely requesting the due process hearing. Specifically, did District: (a) make specific misrepresentations to Parent or Student that it had solved the problem forming the basis of the due process hearing request; or (b) withhold information from Parent or Student that was required to be provided to the educational rights holder, which prevented Parent or Student from timely filing for due process?

District argues that all of Student's claims are barred by the statute of limitations, that the claims in Student's amended complaint do not relate back to the filing date of the original complaint and that neither of the exceptions to the statute of limitations applies to this case. Although Student did not file her complaint until June 6, 2016 and did not file her amended complaint until July 14, 2016, Student contends none of her claims are barred by the two-year statute of limitations. In Issues 1 and 2, Student argues District not only made specific misrepresentations to Parent, but withheld information from Parent and Student, which prevented Student from timely filing her claims before June 6, 2016. Student argues her claims in Issues 3, 4 and 5 are timely because Student was exited from special education and awarded her diploma on June 6, 2014, and she filed her complaint on June 6, 2016.

FACTUAL FINDINGS

Student was twenty-years old at the time of the hearing on Phase One. Student lived with Parent in District at all times relevant to this Order. Student was eligible for special education and related services as a child with autism. 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.

Student had mild cerebral palsy, seizures and autism. 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, and was on a core curriculum. Student had outbursts and did not raise her hand appropriately. Student attended general education classes with the assistance of her one-to-one aide. Student worked hard, but struggled in math. Student's aide helped her stay focused and organized, helped her regulate her emotions and took notes

[2] On November 1, 2016, District filed a Motion to Strike Portions of Petitioner's Closing Brief on the grounds that Student has raised issues in her brief not within the original or amended complaints, and not within Student's offer of proof as to the evidence supporting the issues in Phase One. On November 1, 2016, Student objected to the motion claiming that reply briefs were not permitted by the ALJ. District's motion is denied.

for her in the classroom. Throughout high school, both Parent and Student understood Student was on track to graduate in June 2014 with a high school diploma. Student believed she was held to the same standards, and did the same type and amount of work as her classmates.

Terri Cooper was Student's high school case carrier at Great Oak from 2010 to 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. Part of her duties at Great Oak included attending IEP team meetings, working with Student on her assignments, answering her questions and helping Student when she had problems at school.

The 2010-2011 School Year: Ninth Grade

District assessed Student in preparation for her January 2011 IEP following her triennial assessment. The diagnostic procedures for the assessment included observation, record review, formal academic testing, student interview, teacher reports, and work samples.

In November 2010, Student's ninth grade English teacher filled out a classroom teacher observation report about Student. The teacher reported Student took a lot of time 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.

On January 11, 2011, 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, and that was in 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, unreliable; this negatively impacted the credibility of her testimony on the issues decided in Phase One.

On January 24, 2011, District staff prepared a triennial assessment team report. Student was on 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 claims that the observation reports were not attached to the assessment were not credible. The report noted that the graduation plan was "standard diploma."

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 that Student felt overwhelmed by the length of assignment so she "modified" the assignment by breaking it down into smaller pieces. The IEP team discussed Student's one-to-one aide. The IEP team adjourned and continued the meeting.

At hearing, Parent's claim 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. Parent's impeachment on this issue negatively impacted the credibility of her testimony on the issues decided in Phase One.

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

At hearing, Parent claimed Student's math teacher told her at this meeting if Student remained on diploma track she could not have functional skills goals. Parent's testimony was not credible. 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.

On February 24, 2011, the IEP team met to develop Student's triennial IEP. Both Parent and Parent's special education advocate attended the meeting and participated. The IEP team shared teacher reports and discussed Student's one-to-one aide. The IEP team also discussed Student's math tests. Parent and advocate requested an independent educational evaluation in the area of speech.

At hearing, Parent denied that her special education advocate attended Student's IEP team meetings prior to Student's senior year. However, the notes to Student's IEP team meetings unambiguously document that Ms. Sester was attending Student's IEP team meetings as early as Student's freshman year. During Phase One, 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 credibility of her testimony regarding the issues decided in Phase One.

At the February 24, 2011 IEP team meeting, 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.

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." Ms. Cooper credibly testified that general education teachers often used the term "modified" and "accommodated" incorrectly and interchangeably. Student received an "F" grade on 4 of 20 English assignments due between January 7 and March 1, 2011.

On March 9, 2011, another IEP team meeting convened with Parent and Parent's advocate in attendance, to develop Student's triennial IEP. The team discussed community service and Student's classes. The IEP team provided to Parent a High School Graduation Status Report, with a flow chart as to the math classes District expected Student to take in high school. 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. Parent understood Student needed 220 credits to graduate and was concerned as to Student's ability to complete her math graduation requirements.

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 also contradicted other portions of Parent's testimony. Parent also claimed she could not recall the Algebra Essentials graduation option being explained to her. Her testimony was unconvincing. Parent admitted receiving this report at an IEP in 2011, and that 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.

On April 17, 2011, Parent signed a release authorizing the disclosure of Student's educational records to her special education advocate, Ms. Sester. Parent's testimony about this document was evasive and her ability to recount the purpose and circumstances of signing this document negatively affected her credibility.

The 2012-2013 School Year: Eleventh Grade[3]

On January 30, 2013, District held the first of several annual planning and transitional planning IEP team meetings. Parent attended and District offered procedural safeguards. Parent wanted Student to stay on track to graduate. At the meeting, Student's Algebra

[3] Student did not specifically rely upon the events during the 2011-2012 school year for the issues decided in Phase One; accordingly, this Order does not separately address the 2011-2012 school year.

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. Student's difficulties in making change and counting money were discussed, and Parent shared her fears about Student's future because Student did not have these skills. The team discussed Student's senior year classes, including having Student take consumer math in the twelfth grade. The recommended courses discussed in the January 2013 IEP did not include Algebra I. 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.

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. At the time, Parent believed District should have addressed Student's transition planning by 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. 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.

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.

Parent admitted at hearing 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. Student's special education advocate attended at least two IEP team meetings with Parent during the 2012-2013 school year, which was Student's junior year.

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 based on comments by Student's younger sister that the Bridge students were too low functioning as compared to Student and that Student was unwilling to participate in the program.

On April 23, 2013, Ms. Cooper informed Parent via email 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.

On May 7, 2013, Parent emailed Ms. Cooper, declining to place Student in the Bridge class. On May 7, 2013, Ms. Cooper offered 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.

Student took and completed Algebra Essentials in her junior year, satisfying her Algebra I graduation requirement in June 2013. Parent admitted at hearing that by the end of Student's junior year, 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: Twelfth Grade

In Fall 2013, Student began working in the student store as part of her regional occupational program class. 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.

At hearing, Student both claimed that she stopped working with money in the student store after her drawer came up short and denied she ever worked with money. Her inconsistency adversely affected her credibility.

On August 24, 2013, Parent wrote a letter to District explaining that Student would be turning 18 years old shortly, 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, enclosing an assessment plan, Notice of procedural safeguards, and a prior written notice.

On September 15, 2013, Parent sent the April 12 and 23, 2013 and May 7, 2013 emails between Parent and Ms. Cooper to her special education advocate, Ms. Sester. As of December 5, 2013, Parent was frustrated with the District's failure to provide appropriate post-secondary transition planning and provided her special education advocate with a written chronology of her efforts to obtain assessments from District. Parent notified her advocate 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 of transition assessment.

On December 18, 2013, Parent consented to an IEP, and agreed that she had received a copy of Student's assessment reports and IEP's. The evidence was inconclusive as to which IEP Parent had consented. 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. Parent's memory difficulties negatively affected her credibility.

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

In December 2013, Student's teachers filled out classroom teacher observation reports about Student 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.

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

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. A passing score on the California Exit Exam is 350 or higher. The January 2014 assessment also fairly summarized the teacher's comments about Student from the December 2013 teacher classroom observation reports. The teacher observation reports were listed as one of the attachments to the assessment report.

At hearing, Parent claimed she did not see the classroom observation reports until August 2016. Her testimony was not credible. She was inconsistent as to when she first saw the classroom observation reports, could not recall if she recognized some of the reports and

claimed in response to leading questions, that she had never seen the reports prior to August 2016.

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 and she may have attended part of the meeting, but Student did not sign the attendance page. Parent, Parent's advocate, Ms. Cooper, the school psychologist and a general education teacher also attended the meeting. District offered Parent her Notice of procedural rights and safeguards. The IEP team reviewed the January 14, 2014 Assessment Team Report and Student's graduation plan. The IEP team informed Parent that Student was on track to graduate with a projected graduation date in June 2014, that Student was to participate in a high school curriculum leading to a diploma as opposed to a certificate of completion, and that Student had already earned 210 credits of the 220 credits needed to graduate. The IEP indicated that Student passed her Algebra I requirement on June 6, 2013, although the box next to Algebra I was checked "no."

The January 2014 IEP included a transition plan which the IEP team reviewed and discussed. 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 the area of assistive technology and post-secondary transition planning.

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. The advocate asked about the Summary of Performance and Ms. Cooper told her it was routinely prepared later in the school year. The advocate explained to Parent that there are some things that Parent may need to "jump ship" with and use what time is left in high school for focusing on other areas. The IEP team continued the meeting to January 22, 2014.

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.

On January 22, 2014, District reconvened Student's IEP team meeting. District reported on graduation requirements and that Student was on track to graduate at the end of the school year with a high school diploma. The IEP team continued the meeting to February 11, 2014.

At the time of the January 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.

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 believed another IEP team meeting was required to review the teacher rating scales in order 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.

At hearing, Parent testified inconsistently as to whether she requested an IEP team meeting after February 11, 2014, at first claiming 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 pleadings 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.

During her senior year, Student continued to have the same one-to-one aide she had throughout high school. Ms. Cooper met with Student frequently, working with her at least three or four times per week and assisted Student on her transition goals.

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.

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. Mother 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 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

[4] Student withdrew this claim during Phase One.

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 and Parent testified inconsistently as to the method in which Ms. Cooper made this statement to her. Ms. Cooper also credibly denied that she ever told Parent that District would convene an IEP team meeting after graduation or that any special education services would be available to Student after she was awarded her diploma.

On March 20, 2014, District sent to Parent, a letter disapproving of Student's proposed assessor because District found his fee was excessive. District attached to the letter a Notice of Procedural Safeguards and Parent's Rights, and the District's SELPA guidelines for independent educational evaluations, including a list of proposed assessors.

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. It was not established that Student understood about which document she was being questioned, and Student was not asked if she received a Notice of procedural safeguards at any other time.

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 also believed she had to pass an exit exam in order to graduate. Parent knew that Student had not taken a class entitled Algebra I or passed the math portion of the California Exit Exam, but was told that Student had met her math requirement and had sufficient credits to graduate with a high school diploma. This did not make sense to Parent at the time, but she assumed that the Algebra Essentials satisfied Student's math requirements. Parent's statement at hearing that she did not recall whether she ever told District that Student should not have received a high school diploma appeared evasive.

Student stopped receiving special education services from District well before June 6, 2014. Student had a close relationship with Parent and Parent was very involved in decisions regarding Student's educational program. Student learned of IEP team meetings from Parent. Parent's and Student's claims that they did not discuss school with each other were not believable. Parent's statement at hearing that she did not believe that Student had ever been exited from special education was not believable. Parent had extensive involvement in Student's education throughout high school and thereafter.

Student's Graduation and Exit from Special Education

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. District awarded her a regular high school diploma on June 6, 2014. 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.

On June 6, 2014, District completed Student's Summary of Performance. Ms. Cooper's practice was to send to students' homes, within a week of the end of school year, the Summary of Performance, along with the most current IEP and the most recent psychoeducational assessment. 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.

The Events After Graduation: Mt. San Jacinto Community College

After Student graduated, Parent returned to the Great Oak campus and picked up Student's transcript so Student could provide it to Mt. San Jacinto Community College. The transcript reflected all of Student's courses, credits and grades during high school. It also stated that Student obtained 240 of the 220 credits to graduate with a regular high school diploma, had passed the English language arts portion of the California Exit Exam, did not pass the math portion of the exit exam, and was awarded a diploma on June 6, 2014. Ms. Cooper credibly testified that to her knowledge the grades reflected on Student's transcript were accurate and none of them were modified. Student admitted at hearing that her high school report cards were an accurate reflection of her work.

Student enrolled at Mt. San Jacinto Community College in August 2014 and attended through October 2014. She struggled with taking her own notes, paying attention and focusing, and regulating her emotions. Although she requested accommodations from San Jacinto she did not receive the accommodations she needed. She became depressed and anxious and felt suicidal. In October 2014, Student was hospitalized and never returned to school.

The Independent Educational Evaluation

Parent obtained an independent educational transition evaluation; Parent could not recall if the independent educational evaluation took place in the fall of 2014 or the fall of 2015. She also claimed not to know whether the doctor who conducted the independent evaluation was a District employee. Her testimony on this issue appeared evasive.

The independent assessor sent Parent a draft of the report and Parent had major concerns with the contents of the report. Parent claimed the assessor told her that he could not attribute Student's mental breakdown to District's failure to provide transition services because District was paying for the assessment. This testimony was given no weight. Student did not call the assessor to testify so he could not be examined about the statement Parent attributed to him.

APPLICABLE LAW AND DISCUSSION

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.* (3rd Cir. 2012) 696 F.3d 233, 246-247.) 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 persuasion on establishing that an exception to the statute of limitations applies.

If an amendment is sought after the statute of limitations has run, the amended complaint will be deemed filed as of the date of the original complaint provided recovery is sought in both pleadings on the same general set of facts. (*Austin v. Massachusetts Bonding & Insurance Co.* (1961) 56 Cal.2d 596, 600, 15 Cal.Rptr. 817, 364 P.2d 681; *Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575, 583, 86 Cal.Rptr. 465, 468 P.2d 825.) Cases applying this relation back rule have made it clear that "it is the sameness of the facts rather than the rights or obligations arising from those facts that is determinative. [Citation.]" (*Lamont v. Wolfe* (1983) 142 Cal.App.3d 375, 378, 190 Cal.Rptr. 874.) Thus, amendments alleging a new theory of liability against the defendant have been found to relate back to the original complaint, so long as the new cause of action is based on the same set facts previously alleged. (*Id*.)

Under California Code of Civil Procedure section 12a, if the last day for the performance of any act provided or required by law to be performed within a specified period of time falls on a holiday, then that period is extended to and including the next day which is not a holiday. This section applies to all provisions of law, however stated or wherever expressed, providing or requiring an act be performed on a particular day or within a specified period of time.

The IDEA requires that school districts establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A written explanation of all the procedural safeguards under the IDEA shall be included in the notice of a parent's or guardian's rights. (Ed. Code § 56321, subd. (a).) A copy of the procedural

safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year, except that a copy shall be given to the parents: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; 3) in accordance with certain discipline procedures; or 4) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301 subd. (d)(2). In addition, Education Code section 56500.1, subdivision (b) requires that parents be informed about procedural safeguards at an IEP team meeting. The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child.

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. and J.M. Kingston City Sch. Dist.* (N.D.N.Y. 2012) 891 F.Supp.2d 289, 294.)

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.)

When a student who has been receiving special education services reaches the age of 18, all educational rights are transferred to the student, and the district shall notify the student and the parent of the transfer of rights. (Ed. Code, § 56041.5.) If no guardian or conservator has been appointed for the student, the student becomes a "parent" for purposes of special education law. (Ed. Code, § 56028, subd. (a)(2).) The local educational agency shall provide any required notice of procedural safeguards to both the student and the student's parents. (34 C.F.R. § 300.517(a); Ed. Code, § 56041.5.)

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).) 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 the assessment procedure or report which is the basis of the action, and (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, a description of the options the IEP considered and the reasons why those options were rejected and a description of other factors relevant to the proposal or refusal of the agency. (34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (b).) 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 (Aug. 14, 2006).) 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.* (3rd Cir. 2010) 606 F.3d 59, 70.) When a

violation of such procedures does not actually impair parental knowledge or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*Ibid*.)

Is the Statue of Limitations Applicable to Issues 1 and 2 (January 2013 and January 2014 IEP's offer of goals, transition services and transition planning)?

The two-year statute of limitations bars Issues 1and 2 from further ligation. 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.

Parent was keenly aware of the issues relating to Student's January 2013 IEP at the IEP team meetings held to develop the January 2013 IEP. Throughout high school she was concerned about Student's functional skills and her post-secondary transition abilities. Parent attended the January and April 2013 IEP's and participated in the development of Student's January 2013 IEP, and knew at the time the IEP was developed if and what goals, transition planning and services were being offered by District. At the time of the January 30 and April 22, 2013 IEP team meetings, Parent voiced her concerns about Student's lack of functional skills and the effect on Student's future. Parent was also concerned at that time that Student would not be able to transition to college and that District was not addressing Student's transitional needs.

Not only were Student's goals and transition services discussed at the April 22, 2013 IEP team meeting, but Parent continued discussing the goals and transition services with Ms. Cooper the day after the April 22, 2013 IEP team meeting and on May 7, 2013, including her disagreement with the Bridge program. At hearing, Parent admitted that by the end of Student's junior year, she believed that District had not provided appropriate transition planning to Student. She also admitted that because District had not addressed her concerns about Student's transition planning, on August 24, 2013, she requested a transition assessment from District. Not only did Student's advocate attend at least two of the IEP team meeting held in Student's junior year where Parent raised her concerns, but in December 2013, Parent continued to communicate with Student's special education advocate regarding District's failure to properly respond to Student's transition issues.

Parent was also aware of the issues concerning Student's January 2014 IEP at the time of IEP team meetings held to develop the January 2014 IEP. Not only did Parent attend the January 15, 2014 IEP, but she attended with an advocate where the transition plan was reviewed. Accordingly, Parent knew at the time the IEP team meetings if and what goals, transition planning and services were being offered by District. Parent was aware of Student's lack of functional skills, did not believe District was addressing Student's needs and challenged the transition plan. Parent's contention 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.

Student did not prove that an exception to the two-year statute of limitations tolled the statute of limitations with regard to Issues 1 or 2. District did not make any specific

misrepresentations to Parent or Student that it had resolved the problem forming the basis of Student's complaint, which prevented Student from requesting a due process hearing. Student was not prevented from requesting a due process hearing because District withheld information that District was required to be provided to Parent or Student.

Although Parent established that on February 12, 2014, District agreed to fund independent educational transition evaluation, she failed to establish that letter contained any specific misrepresentations that District had solved the problems concerning Parent's concerns regarding Student's goals, transition services or transition planning. The letter offered a transition assessment, not that any particular goals, services or planning would be offered to Student after the transition assessment was completed.

Ms. Cooper made no specific misrepresentation as to reviewing the independent transition assessment. Parent's testimony, that Ms. Cooper agreed District would review the results of the independent assessment at an IEP meeting even after Student graduated, was unpersuasive. Ms. Cooper denied ever making this statement and Parent testified evasively and inconsistently as to when and how Ms. Cooper made this representation. Furthermore, even had it been made, such a statement agreeing to review an independent assessment at an IEP team meeting is not a representation that Student's transition issues have been solved.

Ms. Cooper never told Student or Parent that District would hold an IEP meeting after Student graduated to discuss Student's goals and transition services. Ms. Cooper credibly denied she ever told Parent that special education services would be available to Student after she was awarded a diploma. Parent knew or should have known that District was only required to provide special education services to Student until she graduated.

Parent's claims that Ms. Cooper told her that Student had to have a transition assessment before District could offer transition planning were equally unpersuasive. Parent was consulting with an advocate throughout high school so both Parent and Student knew or had reason to know of Student's rights. It was emphasized to Parent that time was of the essence for obtaining services because Student would be graduating in June 2014. Even Parent understood that transition planning was required by the time Student turned 16 years old and she knew in January 2014 the importance of having services in place before Student was awarded a diploma.

District made no specific misrepresentation to Parent, or Student, regarding Student's graduation status or her grades which tolled the statute of limitations. Student claimed that District's representations that Student was on track to graduate with a regular diploma in June 2014 were false because Student's grades were modified; however, Student's claims of grade inflation or modification were not persuasive. The work reflected on her report cards during high school accurately reflected her work product. The single notation of "modified grade" next to one of Student's listed ninth grade English assignments in January 2011 was not persuasive contrary evidence, and Parent's claim she only became aware of this issue in August 2016 was not convincing. Similarly, the handwritten notations on Student's January 2014 English assignments did not establish her grades were modified or that District

misrepresented her status to graduate. Student failed to establish how, even if District had modified Student's grades and misrepresented Student's grades to Parent, District prevented Parent or Student from timely filing for due process to challenge Student's January 2013 and January 2014 IEP FAPE offers regarding goals, services and transition planning.

District made no specific misrepresentation which tolled the statute of limitations based on the statements made at the January 15, 2014 IEP team meeting 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. Parent also knew that Student had a one-to-one aide and that Student required the assistance of an aide throughout high school. Student also knew what skills she possessed, whether or not she was taking her own notes, and whether she was doing her own work. Student admitted that the grades she received on her report cards accurately reflected her school work. There can be no tolling of the statute of limitations based on misrepresentations which Parent did not believe, or which Student knew were untrue.

District made no specific misrepresentation which tolled the statute of limitations, based upon the information contained in the classroom observation reports. 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. Parent claimed she only became aware of this report in August 2016. Her assertions were not supported by any credible evidence. Student admitted that the grades reflected on her report cards accurately reflected her work. Furthermore, Student failed to present any persuasive evidence that the teacher's comments were anything more than the teacher's attempt to explain the classroom accommodations she provided Student. In addition, Parent saw or was aware of the November 2010 observation report more than two years prior to the filing of the due process claim. Similarly, District made no specific misrepresentation which tolled the statute of limitations, based upon the information contained in the December 2013 classroom observation report. Parent and Student's advocate saw or were aware of the December 2013 observation reports more than two years prior to the filing of the due process claim.

District made no specific misrepresentation affecting Student's status to graduate which supported tolling the statute of limitations. Student did not prove that she was not meeting graduation requirements. In order to graduate with a high school diploma, Student was required to take and pass Algebra I or Algebra Essentials and Parent knew this as early as 2011. Student took Algebra Essentials, and that satisfied the Algebra I requirements for graduating with a high school diploma. There was no misrepresentation by District about Student's status to graduate based upon her failure to take Algebra I. Even if District had misrepresented Student's status to graduate with respect to the Algebra I requirement, Parent was aware of any misrepresentation no later than the January 2014 IEP.

District did not mispresent Student's status to graduate which tolled the statute of limitations, based upon the fact that Student did not take and pass the math portion of the

California Exit Exam. As a special education pupil, Student was not required by law to pass the California High School Exit Exam. Even if passing the California Exit Exam was required to graduate, Student's claims are barred. Parent knew at the time of both the January 2013 and January 2014 IEP's that Student had not passed the math portion of the California Exit Exam.

Student was not prevented from timely filing her claims because District failed to provide prior written notice notifying Student that it was exiting her from special education. More than two years prior to filing her complaint, Parent and Student knew or had reason to know that Student was being exited from special education upon graduation. Not only was Student represented by an advocate, but Student admitted District stopped providing special education services to her well before June 6, 2014 and there was no persuasive evidence Student ever returned to Great Oak after she was awarded her diploma.

Student was not prevented from timely filing her due process complaint because District did not provide Student with information about her procedural rights in a prior written notice. Even assuming District did not provide Student with information about her procedural rights in a prior written notice, Student failed to prove that this prevented her from timely filing her claims to challenge the January 2013 and January 2014 IEP's. Throughout high school and thereafter, Parent advocated on Student's behalf and had extensive involvement in Student's education. It was undisputed that Parent was provided with a Notice of procedural safeguards on numerous occasions and Student attended at least one IEP team meeting where District provided a Notice of procedural safeguards to Parent. In addition, throughout high school and thereafter, Student was represented by a special education advocate who attended IEP team meetings with Parent where Student's transition issues were discussed, and to whom Parent had communicated her transition concerns. Student's pleadings allege that she filed her due process claims with the assistance of Parent and her advocate, Ms. Sester. Having had the assistance of Parent and a special education advocate since 2011, Student did not prove that her delay in filing her due process complaint resulted from any alleged failure by District to provide her with information about her procedural rights in a prior written notice. [5]

[5] At the hearing, Student claimed that the statute of limitations should be tolled because District failed to advise Student of her age of majority rights prior to Student turning 18 years of age. However, this issue was not contained in Student's amended complaint. Accordingly, because this issue is outside the pleadings, neither this Order nor Phase Two will address that issue. In addition, neither this Order nor Phase Two will address the issue Student raised at hearing as to whether District's independent educational evaluation policy mispresented the law. Student withdrew that issue during Phase One after Student's advocate stated that it was not alleged in the amended complaint.

Is the Statute of Limitations Applicable to Issue 3 (IEP meeting to discuss Summary of Performance)?

The statute of limitations does not bar Student's claim that District failed to hold an IEP team meeting prior to Student's graduation to discuss Student's Summary of Performance during the period between June 4 and June 6, 2014. District's assertion that this claim is barred by the statute of limitations because it does not relate back to the date of the original complaint is without merit.

Student's original complaint was filed on Monday, June 6, 2016. The complaint alleged that District failed to convene and IEP team meeting before Student's graduation to develop a summary of performance. On July 14, 2016, Student filed an amended complaint, making a similar claim. Because Student's claim is based on the same general facts, it relates back to the date the original complaint was filed and is deemed to have been filed as of June 6, 2016, the date of the original complaint.

Student claims District failed to convene an IEP team meeting before she graduated. Student was awarded a diploma on June 6, 2014. Student filed her complaint on June 6, 2016 prior to the expiration of the two-year statute of limitations. Because June 4 and 5, 2016 fell on the weekend, the statute of limitations does not bar Student's claim that District failed to convene an IEP team meeting on June 4 or 5, 2014 because the last day to file such claim was Monday, June 6, 2016. Student's June 6, 2016 filing date was timely as to her claims arising on June 4, 5 or 6, 2014.

However, to the extent that Student's claim is based on District's failure to convene an IEP team meeting prior to June 4, 2014, it is barred by the two-year statute of limitations. The summary of performance issue was raised by Student's special education advocate at the January 2014 IEP team meeting. Student and Parent knew District did not convene an IEP team meeting to discuss the Summary of Performance prior to June 4, 2014, but Student waited until June 6, 2016 to file her due process complaint. For the same reasons set forth above with regard to Issues 1 and 2, District did not engage in any conduct which prevented Student from timely requesting a due process hearing prior to June 4, 2016.

In conclusion, Issue 3 shall be decided in Phase Two but shall be limited to whether District denied Student a FAPE by failing to hold an IEP team meeting between June 4 and June 6, 2014 to discuss Student's summary of performance before awarding her a diploma on June 6, 2014. Any FAPE claims in Issue 3 arising prior to June 4, 2014 are dismissed.

Is the Statute of Limitations Applicable to Issue 4 (Prior Written Notice before Exiting from Special Education)?

The statute of limitations does not bar Student's claim that District failed to provide prior written notice before exiting Student from special education during the period between June 4 and June 6, 2014.

Student argues that District should have provided Student with prior written notice before exiting Student from special education. District's assertion that this claim is barred by the statute of limitations because it does not relate back to filing date of the initial complaint is incorrect. Both the original complaint and the amended complaint allege that District failed to provide prior written notice before exiting Student from special education. Because Student's claim is based on the same general facts as the initial complaint, it relates back to the date the complaint was filed and is deemed to have been filed on June 6, 2016.

Student was exited from special education on June 6, 2014. Accordingly, the last day Student could file her claim was June 6, 2016. Because Student filed her claim on June 6, 2016, her claim is timely as to any claims arising on June 4, 5 or 6, 2014. As with Issue 3, because June 4 and June 5, 2016 fell on the weekend, Student had until the next business day, June 6, 2016, to file a claim based District's alleged failure to provide prior written notice on June 4 or 5, 2014.

However, any claim that District should have provided prior written notice before June 4, 2014 is barred by the statute of limitations. Student and Parent knew or had reason to know that Student was being exited from special education upon graduation and whether District provided prior written notice prior to her graduation, yet Student waited until June 6, 2016 to file her due process complaint. For the same reasons set forth above with regard to Issues 1 and 2, District did not engage in any conduct which prevented Parent or Student from timely requesting a due process hearing prior to June 4, 2016.

Issue 4 shall be decided in Phase Two but shall be limited to whether District denied Student a FAPE by failing to provide prior written notice between June 4 and June 6, 2014 before exiting Student from special education. Any FAPE claims in Issue 4 arising prior to June 4, 2014 are dismissed.

Is the Statute of Limitations Applicable to Issue 5 (Diploma and Exit from Special Education)?

The statute of limitations does not bar Student's Issue 5 that District denied Student a FAPE by awarding her a diploma and exiting her from special education on June 6, 2014.

District's assertion that this claim is barred by the statute of limitations because it does not relate back to June 6, 2016 is incorrect. Student's original complaint alleges that District improperly exited Student from special education, and the evidence established that Student was exited from special education on June 6, 2014. Because a student's eligibility for special education ends when a student graduates with a regular diploma, whether or not Student should have received a regular diploma is necessarily part of Student's claim that District improperly exited her from special education. Because both the initial and amended

complaints contained allegations alleging that Student was improperly exited from special education, and the complaint was filed within two years of June 6, 2014, Issue 5 is timely and deemed to have been filed as of the date of the original complaint.

Issue 5 shall proceed to hearing and shall be decided in Phase Two.

ORDER

1. Phase Two, Issues 1 and 2 as identified in the October 11, 2016 Order Restating Issues for Hearing are barred in their entirety by the two-year statute of limitations, and are dismissed.

2. Issues 3 and 4 as identified in the Order Restating Issues for Hearing are barred by the statute of limitations and therefore dismissed as to any FAPE claim arising prior to June 4, 2014. The matter shall proceed as to Issues 3 and 4 limited as to claims arising on or between June 4, 2014 and June 6, 2014 only.

3. The statute of limitations does not bar Student's Issue 5 as identified in the Order Restating Issues for Hearing and the matter shall proceed as to Issue 5.

4. District's Motion to Strike Portions of Petitioner's Closing Brief is denied.

5. As ordered on November 14, 2016, pursuant to the parties' joint request for a continuance, Phase Two will proceed on December 20, 2016.

IT IS SO ORDERED.

DATE: November 28, 2016

DocuSigned by:

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings