

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017061033

DECISION

Student filed a request for due process hearing on June 22, 2017, naming Antioch Unified School District. Student filed an amended due process complaint on November 6, 2017.

Administrative Law Judge Rita Defilippis heard the matter in Antioch, California, on May 15, 16, 17, and 22, 2018.

Jean Adams, Attorney at Law, represented Student. Parent attended the hearing on Student's behalf. Student did not attend the hearing.

Amy Levine, Attorney at Law, represented Antioch Unified School District. Ruth Rubalcava, Antioch's Senior Director of Special Education, attended the hearing on Antioch's behalf.

OAH granted a continuance at the parties' request to submit written closing arguments and the record remained open until June 18, 2018. The parties timely submitted the written closing arguments, thereafter the record was closed and the matter was submitted for decision.

PRELIMINARY MATTERS

On May 15, 2018, the parties filed a joint stipulation with OAH regarding witnesses, stipulated facts, and admission of evidence regarding the preliminary statute of limitations issue. On May 21, 2018, the parties filed a joint stipulation regarding issues, witness testimony, stipulated facts, and admission of evidence. This decision incorporates these joint stipulations and any findings of fact based on stipulation are so noted.

ISSUES¹

1. Did Antioch deny Student a free appropriate public education by failing to make him eligible for special education and related services from January 2015 through August 2015 under the eligibility category of Other Health Impairment?
2. Did Antioch deny Student a FAPE by failing to provide comprehensive assessments for the suspected disability of Other Health Impairment from January 2015 through August 2015?
3. Did Antioch deny Student a FAPE by failing to tailor an appropriate educational program to meet his unique needs from at least January 2015 through August 2015?
4. Did Antioch deny Student a FAPE by failing to timely inform Parent of her

¹ The stated issues reflect the parties joint stipulation filed on May 21, 2018, narrowing Issues One and Two due to Student's withdrawal of his challenges to Antioch's 1) failure to confer special education eligibility under specific learning disability and/or emotional disturbance, and 2) denial of free appropriate public education due to failure to assess him or refer him for assessment for suspected specific learning disability and/or emotional disturbance.

procedural safeguards, failing to include Parent in the decision-making process² regarding providing a FAPE to Student, and failing to provide prior written notices, thus violating Student's and Parent's procedural rights from January 2015 through August 2015?

SUMMARY OF DECISION

Student seeks relief for violations more than two years before he filed for due process in this matter alleging that he did not know or have reason to know the facts underlying his due process claims until after June 22, 2015, two years before the filing of his due process complaint. Student also asserts that the facts of this case establish an exception to the two year statute of limitations.

This decision holds that Student did not prove by a preponderance of the evidence either a lack of knowledge about facts underlying his alleged violations of law or an exception to the two year statute of limitations. Student's claims related to facts and circumstances occurring before June 22, 2015, are therefore barred.

Student failed to prove Antioch denied him a FAPE from June 22, 2015, through August 2015 by not assessing him for suspected disability as a student with a health impairment; not finding him eligible for special education under the eligibility category of Other Health Impairment; and not developing a program of special education and related services. Lastly, Student failed to sustain his burden of proof to establish that Antioch violated Student's and Parent's procedural safeguards from June 22, 2015, through August 2015. Accordingly, Student's claims for relief are denied.

² The prehearing conference order states that Student clarified that "decision-making process" is "the assessment process" due to the narrow timelines of this case.

FACTUAL FINDINGS

PROCEDURAL HISTORY AND JURISDICTION

1. During the 2014-2015 school year, Student was a general education first grade student living within Antioch Unified School District's boundaries. Student lived with Parent at all times from his enrollment on November 5, 2014, through August 2015.

2. Student filed a due process complaint against Antioch and Pittsburg Unified School District on June 22, 2017, alleging that both districts denied Student a FAPE by failing to identify him as a student with a disability entitled to special education services and the denial of his procedural safeguards under IDEA. Pittsburg subsequently found Student eligible for special education pursuant to a mediated settlement agreement in 2017 and was dismissed as a party.

3. On November 6, 2017, Student filed an amended complaint naming only Antioch and narrowing the timeframe for all claims to the time period of January 2015 to February 2016.

4. On December 19, 2017, Antioch filed a motion to bifurcate the issue of Student's residency claiming that Student was not a resident for a time period at issue. Student opposed the motion to bifurcate. On December 26, 2017, the undersigned administrative law judge denied the motion to bifurcate, allowed Antioch to amend its response to Student's complaint to include non-residency as an affirmative defense, and continued the hearing thereby permitting Student time to prepare for the residency challenge.

5. On January 18, 2018, Antioch filed its amended response. On January 30, 2018, Student filed notice narrowing the timeframe in this case to January 2015 through August 2015.

EDUCATIONAL HISTORY BEFORE MOVING TO ANTIOCH

6. Student attended kindergarten and the first few months of first grade in San Francisco Unified School District during the 2013-2014 and 2014-2015 school years as a general education student. During this time, Student received small group pull-out academic support and some academic push-in support in the classroom as part of the general education program. These services were referred to as "resource services." Student was not assessed for special education services in San Francisco.

7. Student's kindergarten report card documented that Student struggled in the areas of attention, reading, math, writing, and appropriate expression of emotions, and his teacher recommended that he be retained. Parent chose not to retain Student in kindergarten despite the teacher's recommendation.

FIRST GRADE, MS. GATES' CLASSROOM: NOVEMBER 13, 2014, TO MARCH 5, 2015

8. On November 13, 2014, Student was assigned to Patti Gates' first grade class at John Muir Elementary School in Antioch, as a general education first grade student. Ms. Gates had been teaching for over 30 years. For the last 22 years, she taught at John Muir Elementary school; 19 years of which she was a first grade teacher. Ms. Gates clearly remembered Student and testified in detail as to Student's demonstrated skill level while in her first grade class. Based on her detailed recollection of Student, her direct experience teaching Student, and her 30 years of experience as a first grade teacher, her testimony was given great weight.

9. Ms. Gates established that first grade students are developing the necessary skills to be successful learners. These students frequently need directions repeated and many first graders are active and have difficulty maintaining attention and focus. First graders are generally at different levels while learning to read. Typically students develop a reading ability from kindergarten to as late as third grade,

depending on various factors. In light of her experience, Ms. Gates took a wait-and-see approach with students as long as their skills continued developing. She referred Students to a resource specialist or to the student study team process if a student was not making progress in skill development or if the student showed indications that the problem was not just developmental.

10. Shortly after Student began in Ms. Gates' class, Parent asked Ms. Gates if she could volunteer in the classroom for one hour, two to three days a week, to give Student individual help to stay on task and to assist the teacher with the other students. Ms. Gates agreed. Ms. Gates did not notice any change in Student's ability to pay attention on days Parent assisted him. Parent frequently arrived with Student, anywhere from 15 to 30 minutes late. Parent was interested in Student's academics. Parent and Ms. Gates had discussions about ways Parent could assist Student with academics.

11. In January 2015, just two months after Student came to Antioch, Parent discussed her concerns with Ms. Gates that Student was struggling in school with reading, math word problems, and spelling. Parent explained to Ms. Gates that Student was given push-in and pull-out "resource support" at his prior school in San Francisco in both kindergarten and first grade. Ms. Gates informed Parent that resource services were not available in Antioch unless a student had a learning disability. Parent asked Ms. Gates how to get Student similar services to San Francisco and Ms. Gates referred her to Principal Gibson³.

12. Parent met with Principal Gibson and explained her concerns regarding

³ Joyce Gibson's name changed since the time she was principal at John Muir Elementary School. At the time of hearing, she was known as Joyce Trotter. She will be referred to as Principal Gibson in this decision to be consistent with the time at issue in this case and the evidence admitted at hearing.

Student. Parent told Principal Gibson that Ms. Gates told her Student would have to have a learning disability to get push-in or pull-out reading support. Parent asked Principal Gibson if Student could get “extra help,” through any programs. Parent then described the supports that Student received in San Francisco. Principal Gibson recommended Student to the school’s student study team to develop general education interventions to assist Student at school. Parent requested a student study team meeting.

13. Parent did not request a special education assessment for Student in her conversation with Ms. Gates or Principal Gibson. Parent asked Ms. Gates and Ms. Gibson for general education interventions similar to those Student received in San Francisco.

14. Parent was aware in January 2015 that if Student was found to have a learning disability, he may qualify for special education services as Ms. Gates shared that information with Parent. Parent therefore knew that if she was not satisfied with Student’s educational services, she could request special education testing to determine whether he qualified for special education services.

First Student Study Team Meeting

15. On February 5, 2015, a student study team meeting was held at Parent’s request to discuss her concerns about Student, which included Student’s ability to maintain focus, to remain seated, difficulty with addition and subtraction concepts, reading, and writing. Parent, Ms. Gates, and Principal Gibson attended the meeting. Recommended actions included home journaling without requiring correct spelling; daily reading at home with Student; limiting homework to one hour a night; modifying spelling words from ten weekly to five weekly; small, differentiated reading group instruction; and push-in reading support. Lastly, Parent was given community and online tutoring resources.

16. Ms. Gates did not suspect or believe that Student had a disability requiring

special education at the time of the February 5, 2015 student study team meeting. At this meeting, there was no discussion of special education testing. Ms. Gates confirmed that if Parent had requested testing, the request would have been included in the meeting notes.

17. Student was provided reading support for a half an hour, four days a week. A part-time Antioch employee provided the reading support. No evidence was presented as to the training, if any, of the reading support provider. Ms. Gates also provided in-class small group reading support for Student and three other students who all read at a similar level. Parent received the requested extra support for Student and continued to participate in the student study team process to see if the interventions resulted in Student's improvement.

18. In addition to the extra reading support, Ms. Gates also provided general education accommodations to Student including reduced weekly spelling words. She differentiated instruction to address Student's skill level and she scaffolded her instruction to assist Student with prerequisite skills and supports while he worked toward skill mastery.

19. Ms. Gates taught Student from November 13, 2014, until March 5, 2015, at which time Student transferred into another first grade class due to conflicts with a peer in Ms. Gates' classroom. While in Ms. Gates' class, Student was capable of first grade work and functioned within the range of his first grade peers, but at the lower end of this range for skill development in reading, writing, and attention. Student's second trimester report card corroborated this. The report card used a five point scale to measure skills in academics: One (needing support); two (emerging skill); three (approaching mastery); four (mastering and on grade level); and five (exceeding grade level). Student received two's in language arts reading and writing, and four's in math. Student needed improvement in areas of lifelong learning skills, including working

independently, following routines, putting forth best effort, using time effectively, accepting responsibility for choices, following school rules, and displaying self-discipline.

20. Student could sit and complete work in Ms. Gates' class, follow group instruction, and complete his homework. Student fit within the expected range for first graders both behaviorally and academically. Student struggled with attention, but was commensurate with his peers. Ms. Gates did not observe characteristics typically associated with Attention Deficit Hyperactivity Disorder. Student was generally happy, had friends at school, a good relationship with Ms. Gates, and was never defiant. Student did have problems with one of his classmates, each equally at fault, and this conflict contributed to Student's struggle with attention and focus and his ability to remain seated. During the time Student was in Ms. Gates' class, he was disciplined for five playground incidents, usually involving the same classmate, and most involving aggression.

21. Ms. Gates established Student was functioning within the range of typical first graders. Parent never requested or discussed special education testing with Ms. Gates while Student was in her class. Ms. Gates never suggested that Parent take Student to the doctor to investigate an attention issue. Ms. Gates testified that general education teachers were generally discouraged from referring Students for special education assessments or assisting Parents with requests for special education. Despite this, her practice was to provide parental assistance or make direct referrals when she believed a student needed special education services. Based on her teaching experience, she did not believe Student needed such services.

STUDENT STUDY TEAM PROCESS

22. Principal Gibson testified at hearing. She had been a Principal for over five years, and was principal at John Muir for two and a half years until August 2015. Before becoming a principal, she taught elementary school for approximately 16 years in

Antioch, primarily as a first grade teacher. Based on her lengthy experience as both a teacher and a principal, Principal Gibson credibly testified regarding the student study team process and referrals for special education in the 2014-2015 school year and the typical reading skill development of first graders. Her testimony regarding these areas was given great weight.

23. Principal Gibson had personal knowledge about the student study team process in place during the 2014-2015 school year. The process was available to any general education student and the purpose was to bring parents, teachers, and administrators together to discuss academic, physical, or behavioral concerns impacting a student's learning so that possible general education interventions could be discussed and a plan developed to assist the student. There was usually a follow-up meeting or meetings to determine if interventions were working or to determine if further needed interventions. There was no set amount of student study team meetings required before a student might be referred for special education and Ms. Gibson did not tell Parent that there was any such policy or practice. Sometimes the student study team process led to a special education referral, but the student study team process was not a prerequisite to special education testing.

SPECIAL EDUCATION REFERRAL PROCESS

24. In Antioch, a written request from a parent for special education testing circumvents the student study team process and the parent is either given an assessment plan or prior written notice denying testing. If the parent made a verbal request for special education testing, Principal Gibson discussed the student with parent and heard the parent concerns. If the parent wanted to pursue testing, Principal Gibson asked the parent to put the request in writing. If a request for testing or a district offer to assess for special education were initiated in the course of a student study team meeting, it would be noted in the meeting notes.

25. Principal Gibson did not remember any meeting with Parent and she did not independently remember Student. If approached by a parent asking for academic help, Principal Gibson did not assume the student had a disability but obtained teacher feedback and usually considered general education interventions first. Principal Gibson believed that many first grade students struggled with reading and, once spotted, these students were provided with general education reading intervention supports. In the 2014-2015 school year, these interventions included small group reading instruction in class and assistance from a part-time reading intervention teacher.

FIRST GRADE, MS. CRITESER'S CLASSROOM: MARCH 5, 2015, TO JUNE 5, 2015

26. On March 5, 2015, Student transferred into Julie Criteser's first grade class, also at John Muir, to separate Student from the classmate he was having frequent conflict with in Ms. Gates' classroom. Ms. Criteser had been a teacher for 30 years. The first ten years, Ms. Criteser taught a combined kindergarten-first grade class. For the last 20 years, she taught first grade at John Muir Elementary in Antioch.

27. Ms. Criteser remembered Student, who was in her first grade class from March 5, 2015, through the end of the 2014-2015 school year. Her testimony regarding Student was detailed, thoughtful, and credible. Based on her specific recollection, her direct experience with Student, and her 30 years of teaching experience, her testimony was given great weight.

28. There were 30 students in Ms. Criteser's class in the 2014-2015 school year. For small group academic instruction, students were broken into six groups. Occasionally Ms. Criteser had parent helpers in her class to assist students in small groups, but usually she was the only adult in the classroom and worked with one group while also monitoring the other five independent groups. Students rotated through the various group activities of which the students were expected to work as a group independently. Student had difficulty remaining focused while he was in small groups

for independent academic activities, and was on task about 50 percent of this time. Student also struggled with attention during whole class instruction. Based on Ms. Criteser's teaching experience, this was due to a combination of factors including his maturity level, motivation, and distractibility.

29. Ms. Criteser had a morning routine where students worked independently at their desks for 40 minutes. This allowed her to work one-to-one with students as needed. Student frequently missed this individual assistance due to tardiness and absences. During the three months Student was in Ms. Criteser's class, he had 12 unexcused tardies and eight absences. This had a significant effect on Student's academics because he not only missed the individual assistance first thing in the morning, but also missed lessons which involved scaffolding skills for the next lessons.

30. While in Ms. Criteser's class, Student continued to struggle in reading. His math skills were better but not at grade level. Student liked math and was more engaged due to the use of manipulatives for math instruction. Student was articulate and did not demonstrate any weakness in his language or communication skills. Student appeared happy and had a good relationship with Ms. Criteser. Student's school performance was inconsistent. At times he demonstrated the capability of working at grade level, such as when his recess was delayed for him to complete his classwork. In order to go out to recess, he worked hard and demonstrated knowledge and motivation not demonstrated earlier.

31. Ms. Criteser recognized Student's struggles and need for classroom accommodations the first day he was in her class. Ms. Criteser provided Student with many of the accommodations that were within her discretion to offer general education students when needed. She seated Student in the front of the classroom and provided him a privacy screen on his desk to reduce distractions during seat work. She frequently checked with Student for understanding. She instructed Student in a small group setting

for academics. She provided him extra time to complete assignments, modified his work by reducing required math problems and weekly spelling words by 50 percent, and repeated instructions. The 50 percent work reduction was not a frequently used general education accommodation in Ms. Criteser's first grade class.

32. Based on Ms. Criteser's 30 years of teaching experience, there were several factors related to Student's academic struggles including attendance, having had three classrooms and three teachers during his first grade year, his being a "late bloomer" in terms of his development, and his variable motivation. Ms. Criteser never considered a referral for special education services for Student because these factors had to be addressed before considering special education. Unlike Ms. Gates, Ms. Criteser testified that she was not discouraged from referring students for special education or assisting Parents with making requests for special education when she felt that one of her student's needed special education services. She referred multiple students in the past but did not believe Student needed special education services.

Second Student Study Team Meeting

33. On April 24, 2015, a follow up student study team meeting was held. Ms. Criteser, Parent, and Substitute Assistant Principal Armenta were present. Concerns noted were Student's incomplete work from reading group coming home; not being at grade level in reading; and possible processing delay. Mr. Armenta brought up a possible processing delay but he did not know Student. Ms. Criteser did not suspect that Student had any processing delay. Action items developed at the meeting included giving Student a daily visual schedule of lessons, and giving Parent information about processing delays. No request for special education testing was made or discussed at the meeting. Ms. Criteser confirmed that had a request been made, it would have been documented in the meeting notes.

34. Following the meeting, Mr. Armenta emailed Parent confirming that if she

still had concerns regarding Student's processing ability and incomplete assignments, Parent had the option of requesting testing for Student for a possible processing or learning disability. He noted the next student study team meeting would be either May 22 or 29, 2015.

35. Student's first grade progress report dated April 24, 2015, documented that he was not proficient in math and language arts. His January 2015 Standardized Testing and Reporting score was zero because he was unable to answer the first three practice questions. In May 2015 his STAR score indicated that his functioning was at the first month of first grade. He received ones (needs support) in spelling and math tests. The progress report noted that Student completed his homework, was distracted, and bothered others. This progress report was shared with Parent at the April student study team meeting and Student was recommended for retention.

36. On April 26, 2015, at ten o'clock on a Sunday evening, Ms. Criteser sent Parent an email stating it would be helpful to have the doctor appointment regarding evaluating Student for possible attention issues before the next student study team meeting in May. She copied Mr. Armenta and Principal Gibson on the email. Ms. Criteser sent the email to Parent because she believed that ADHD was a 'huge possibility' for Student and that if diagnosed, interventions such as medicine; diet; and further changes in the classroom, which she referred to as setting up an office for student, could be used to help Student make progress.

37. On April 27, 2015, Parent responded in an email to Mr. Armenta confirming the date of May 29, 2015, for the student study team meeting. She informed him that she would make an appointment with the doctor.

38. Ms. Criteser had other students diagnosed with ADHD who did not qualify for special education and related services. Ms. Criteser, therefore, incorrectly believed that even with ADHD, a student who is not performing at least two years below grade

level could not qualify for special education and related services. Parent never gave Ms. Criteser the impression that she had previously requested special education testing and Parent never requested special education testing, to Ms. Criteser's knowledge, during the 2014-2015 school year.

Third Student Study Team Meeting

39. On May 29, 2015, the scheduled student study team meeting took place. Parent's noted concern was that she saw a delay in Student's reading and writing. Actions developed were that Parent would seek summer academic tutoring and would provide summer workbooks for Student. Teacher would provide the resources of helpful website links for summer. Lastly, Parent would request an ADHD survey from Student's pediatrician. Parent had not scheduled an appointment with the pediatrician, nor did she discuss or make a request for special education testing for Student before or at this meeting.

40. Ms. Criteser agreed that Student needed tutoring in the summer. She would have recommended tutoring had it been a district service available to general education students.

41. Parent acknowledged that everyone on the student study teams gave input at the meetings and came up with ideas to help Student. Parent participated in all of the student study team meetings. The student study team members thought that the interventions proposed would help Student and might remedy the concerns Parent expressed. There was no evidence to suggest that any team members communicated to Parent that the student study team process in and of itself would definitely resolve the problems about which Parent complained.

42. Parent was not given procedural safeguards or prior written notice when she talked to Ms. Gibson about additional assistance for Student in January 2015. Nor did she receive any procedural safeguards at any of the student study team meetings in

February, April, or May 2015.

Student's End of First Grade Functioning

43. Student's reading and math grades declined in his third trimester final report card. In reading, he went from twos (emerging skills) to ones (needing support). In math he went from fours (grade level) to threes (approaching grade level). Ms. Criteser recommended that Student repeat first grade, but Parent declined to retain him. Ultimately, Student's report card indicated he was promoted to second grade.

44. Students were not required to meet the minimum standards for one grade before advancing to the next. Ms. Criteser's written comments in Student's third trimester report card stated that Student had an extreme attention span issue, he had beginning first grade skills, and he often had trouble with other students in and out of the classroom.

45. When Student came to Antioch in November of 2014 in the middle of first grade, he was reading at a kindergarten level. At the end of first grade, he advanced to the beginning first grade level. Both Ms. Gates and Ms. Criteser testified that this was appropriate reading progress in light of his reading level when he arrived from San Francisco.

SECOND GRADE: MS. STORN'S CLASSROOM, AUGUST 12 TO 31, 2015

46. On August 12, 2015, Student began the 2015-2016 school year at John Muir Elementary in Allison Storn's second grade general education class. Parent explained the history of Student's struggles to Ms. Storn and asked her to provide supports for Student. Shortly after Student began in Ms. Storn's class, Ms. Storn began calling Parent regarding Student's off task behavior, and incomplete classwork. Student began being pulled out for reading intervention as part of the general education reading intervention with a new full time reading intervention teacher, Karen Klise.

DISCIPLINE INCIDENTS

47. Between November 2014 and August 2015, Student was disciplined for seven playground incidents, mostly for aggression.

RELEVANT SCHOOL CALENDAR DATES

48. Antioch was out of session the week of November 24 through 28, 2014, and from December 22, 2014, through January 5, 2015. The 2014-2015 school year ended on June 4, 2015. The 2015-2016 school year began on August 12, 2015.

SUBSEQUENT RESIDENCY EVIDENCE RELATED TO PARENT'S CREDIBILITY

49. On August 29, 2015, Parent signed a one year residential rental agreement listing herself and Student as the occupants for an apartment located in Pittsburg, California. In Student's amended due process complaint filed on November 6, 2017, Parent sought relief for Antioch's failure to provide a FAPE through February 2016, despite Parent living within Pittsburg Unified School District's boundaries from the end of August 2015 through February 2016. Parent did not disclose her change of residency to Antioch at any time prior to filing for due process in June 2017. This evidence was offered by Antioch to impeach Parent's credibility.

50. Parent admitted at hearing that she moved to Pittsburg and lived in the apartment rented pursuant to the rental agreement. She claimed that Student remained living with Parent's stepfather while Student attended school in Antioch from August 2015 until February 2016, before joining Parent and moving to Pittsburg. Parent claimed she thought that if Student was living in Antioch, it did not matter that she moved to Pittsburg in terms of her due process claims against Antioch for times of the school year after she moved. Parent claimed that she never intentionally withheld residency information from Antioch.

51. Parent's testimony that she moved to Pittsburg without Student was not

credible given her close relationship with Student, who was her only child, and the consistent history of her significant involvement in Student's daily life. Further, Parent's assertion that she did not intentionally withhold the change of residence from Antioch was disproven by the procedural history of this case, which reflects that Parent continued to seek relief for alleged violations of law through February 2016 and did not narrow the timeframe of her claims to reflect her August 2015 move to Pittsburg, until January 30, 2018, following Antioch's amended response to Student's complaint when residency was raised as an affirmative defense. Parent's dishonesty on these two points tainted Parent's testimony and her uncorroborated testimony was accordingly given little weight.

RELEVANT EVIDENCE SUBSEQUENT TO THE TIMEFRAME AT ISSUE IN THIS CASE

Fourth Student Study Team meeting

52. A student study team meeting was convened on October 2, 2015. Parent, Student's second grade teacher Ms. Storn, Ms. Gates, Ms. Criteser, the new principal Ms. Wahidi, and the reading intervention teacher Karen Klise attended. Student's strengths were noted as being respectful, wanting to learn, putting forth best effort, and wanting to volunteer. Student was noted to be frustrated and distracted. Team concerns included Student's academic areas of math, writing, and reading. Parent brought up her intent to get Student tutoring. The team discussed that Student was recommended for retention in kindergarten and first grade. The team then discussed having Student tested for special education. The meeting notes document that Parent also wanted to request testing. The actions agreed upon included continuing reading intervention with Ms. Klise, tutoring to be provided by Parent, and Parent request for special education testing.

53. At the October 2, 2015 meeting, Ms. Wahidi told Parent to put her request

for testing in writing. After the meeting, Parent went online to find a sample letter requesting testing. Parent also found an affordable tutor.

Parent's Request for Special Education Assessment

54. On October 15, 2015, Parent requested academic testing of Student in a letter addressed to Principal Wahidi, in all areas of suspected disability to determine whether he was eligible for special education and/or related services either under the Individuals with Disabilities Education Act (including Other Health Impairment category) or Section 504 of the Rehabilitation Act of 1973. Parent stated she requested assessment because Student had been having difficulty focusing for long periods of time and was struggling to keep up in the classroom. Antioch received the letter on the same day.

55. The parties stipulated that Antioch sent Parent a Notice of Receipt of Referral for Special Education Assessment, an Assessment Plan, and a Notice of Procedural Safeguards on October 20, 2015.

56. Parent consented to the assessment plan on November 9, 2015.

57. An individualized education program team meeting was held on January 26, 2016, the assessment was reviewed, and Student was found not eligible for special education under either the specific learning disability or other health impairment eligibility categories.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act,

⁴ Unless otherwise indicated, the legal citations in this section are incorporated by reference into the analysis of each issue decided below.

its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq.; 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for higher education, 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).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 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, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].)

3. In *Board of Education of the Hendrick Hudson Central School District 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.)

4. In *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. __ [137 S.Ct. 988, 996], the Supreme Court clarified that “for children receiving instruction in the regular classroom, [the IDEA’s guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” Put another way, “[f]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” (*Id.* at 999 (citing *Rowley*, *supra*, 458 U.S. at pp. 203-204).) The Court went on to say that the *Rowley* opinion did not “need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level.” (*Id.* at 1000.) For a case in which the student cannot be reasonably expected to “progress[] smoothly through the regular curriculum,” the child’s educational program must be “appropriately ambitious in light of [the child’s] circumstances” (*Ibid.*) The IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at 1001.) Importantly, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Ibid.*)

5. 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, 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).) As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

PROCEDURAL SAFEGUARDS REQUIRED BY IDEA

Notice of Procedural Safeguards

6. A copy of procedural safeguards must be provided to parents upon initial referral or parental request for evaluation. (20 USC § 1415(d)(1)(A)(i); Ed. Code, § 56501, subd. (a)(1).)

Prior Written Notice

7. Prior written notice must be provided to parents whenever the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to a child. (20 USC § 1415 (b)(3)(A) & (B)); Ed. Code, § 56500.4, subd. (a).)

Parental Participation

8. Federal and State law require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1415(b)(1); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

PROCEDURAL VIOLATIONS RESULTING IN A DENIAL OF FAPE

9. A procedural error does not automatically require a finding that a FAPE

was denied. 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 regarding the provision of a FAPE to the parents' child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

PRELIMINARY ISSUE REGARDING THE APPLICABLE STATUTE OF LIMITATIONS

Statute of Limitations for Special Education Claims

10. The statute of limitations for the filing of due process requests in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) An action must be filed within two years from the date a party knew or had reason to know of the facts underlying the action. (Ed. Code, § 56505, subd. (l), see also 20 U.S.C. § 1415(f)(3)(C) ("knew or should have known about the alleged action that forms the basis of the complaint").) The law contains exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D)(i) & (ii); Ed. Code, § 56505, subd. (l)(1) and (2).) The Ninth Circuit recently reaffirmed this rule. (*Avila v. Spokane School Dist. 81* (2017) 852 F.3d 936.) Otherwise, the statute of limitations for due process complaints in California precludes claims that occurred more than two years prior to the date of filing the request for due process. Ed. Code, § 56505, subd. (l); 20 U.S.C. § 1415(f)(3)(c). (*M.M. v. Lafayette School District* (9th Cir. 2014) 767 F.3d 842, 309.)

11. Student filed for due process on June 22, 2017. Student first contends that

he is entitled to relief for violations prior to June 22, 2015, because he was not aware of facts underlying the basis of his due process claims before June 22, 2015. Student also asserts an exception to the two year statute of limitations claiming that Parent was prevented from filing for due process earlier than June 22, 2017, due to alleged misrepresentations to Parent that the problem regarding Student's need for special education assessment and services had been resolved. Lastly, Student asserts an exception to the statute of limitations, claiming that Antioch withheld prior written notice and information about procedural safeguards from Parent, which Antioch was required to provide to Parent following her alleged January 2015 request for special education testing in her conversation with Principal Gibson. Student alleges that if this information had been provided, he would have been aware of his rights and would have filed for due process prior to June 22, 2017.

12. Antioch contends that Parent was aware of facts underlying the basis of his alleged violations of law and that no exceptions to the statute of limitations exist under the facts of this case.

Parent had Knowledge of Facts underlying Student's due process claims

13. The violations of law alleged in Student's complaint are that Antioch failed to assess Student for the suspected disability of Other Health Impairment; failed to find him eligible for special education and develop an appropriate special education program to meet his educational needs as a student with a health impairment; denied Parent's participation in the determination of whether he qualified for special education; and failed to provide Parent a copy of the statutorily required notice of procedural rights and safeguards and a prior written notice following Parent's alleged request for special education assessment.

14. Parent failed to establish by a preponderance of the evidence that she was unaware, at the time events occurred, of facts regarding alleged violations of law

occurring before June 22, 2015. Parent's own contention that she requested special education assessment in January 2015 during her conversation with Principal Gibson establishes that Parent had knowledge, at that time, of facts underlying the basis of her claims, specifically that she requested Student be assessed for eligibility for special education but Antioch failed to assess him.

15. Parent was aware, from the time Student attended kindergarten, of Student's documented attention problems and need for general education interventions of push-in and pull-out support. Student's kindergarten teacher recommended retention. In January 2015, Parent was concerned that Student was not making enough progress in academics based on her conversations with Student's teacher and her own observation of Student during her volunteer work in Student's classroom. Therefore she had knowledge of the underlying facts for the violations alleged in Student's complaint when the violations allegedly occurred. Given that parent was aware of the availability of special education services if Student was found to have an eligible disability, Parent had sufficient knowledge in January 2015 of facts supporting a complaint for failure to assess Student for special education eligibility and services. Further, on April 26, 2015, Parent knew Student's teacher suspected Student had ADHD and recommended Parent take Student to his pediatrician to be tested. Parent therefore knew District suspected Student had a disability no later than April 26, 2015, but did not file claims that District failed to assess Student for suspected disabilities until more than two years later. Therefore unless Student can establish an exception to the two year statute of limitations, relief for violations prior to June 22, 2015, is barred.

No exception due to alleged misrepresentation that the problem about which Parent complained was resolved

16. Parent asserts that she requested special education testing in her conversation with Principal Gibson in January 2015 and was told that Student could not

be referred for assessment until three student study team meetings occurred first. Relying on this, Parent asserts that Antioch led her to believe that the student study team process would resolve the problem forming the basis of Student's complaint and that Student would automatically be assessed for special education following the third student study team meeting, without any action on her part.

17. Parent failed to establish by a preponderance of the evidence that she requested special education testing in her conversation with Principal Gibson or at any other time before June 22, 2015. Parent's testimony was the only evidence presented at hearing regarding her conversation with Principal Gibson because only Parent and Principal Gibson were present during the conversation, and Principal Gibson did not recall the meeting with Parent. Parent's own testimony established that she did not request special education testing in her conversation with Principal Gibson; rather, she requested a general education program that Student could be a part of to receive interventions similar to those which Student received in his general education program in San Francisco. The preponderance of the evidence established that Parent participated in the student study team meeting process, which resulted in Student receiving the requested general education interventions, including push-in and pull-out reading intervention.⁵

18. Parent failed to establish by a preponderance of the evidence that

⁵ In his closing brief, Student asserts that Antioch also misrepresented that the reading intervention was provided by a reading specialist but in fact it may have been provided by a person without any training on reading intervention. Student's assertion is rejected as this was not raised in his complaint, during the prehearing conference, or during the hearing. Additionally, there was no evidence presented at hearing regarding the training of the reading intervention provider in Student's first grade year.

Principal Gibson informed her of a policy requiring three student study team meetings before a child could be assessed for special education eligibility. Principal Gibson credibly testified that there is no such set amount of student study team meetings and she would never have so informed Parent of any such requirement before Student could be referred for special education assessment. Principal Gibson credibly testified that if Parent had requested special education testing in a conversation with her, she would have asked Parent to put the request in writing and the student study team process would thereby be circumvented and the provision of prior written notice and procedural safeguards would be triggered. The testimony of Principal Gibson, Ms. Gates, and Ms. Criteser established that if Parent requested special education testing in the course of a student study team meeting, the request would have been included in the meeting notes.

19. Parent's own behavior was not consistent with her claim that she delayed filing for due process based on her reliance on some representation that special education testing would automatically occur after three student study team meetings without her having any responsibility or need to request special education testing. Such a claim suggests that the student study team meeting process is simply an exercise in futility; an assumed waste of time. Additionally, any misplaced reliance that there was no need for a request for special education testing was especially unreasonable after Parent read Mr. Armenta's April 24, 2015 email informing her that if her concerns continued, she could request special education assessment in writing. Had Parent been patiently waiting for the third student study team meeting to trigger the automatic special education assessment, it is not reasonable that Parent would not have brought up testing at all during the third student study team meeting or as an action item. Lastly, once it was obvious to Parent that Antioch did not begin the assessment process following the third student study team meeting, there was no evidence presented at

hearing that Parent mentioned the failure to assess or brought it to Antioch's attention. The preponderance of the evidence presented at hearing portrayed Parent as a highly involved advocate for her child. In light of this, it is not consistent with the evidence that Parent would sit back and remain silent once special education testing did not ensue and wait another five months, after a fourth study team meeting in October 2015, to finally request assessment.

20. Parent's claim that Antioch misrepresented that the student study team process would resolve the problem forming the basis of Student's complaint – Student's need for special education assessment and services – is without merit. The main basis of Parent's allegations is that Antioch claimed that there had to be three student study team meetings before Student could be referred for special education, thus indicating the possibility that the student study team meetings may not resolve the problem. There was no evidence presented at hearing to establish that Antioch asserted that the student study team process and general education interventions would in fact solve Student's academic struggles so that need for special education assessment and services would be eliminated.

21. The preponderance of evidence presented at hearing established that from January to October 2015, Parent did not give any indication that she ever sought special education services for Student because Student received the general education interventions that she requested from Principal Gibson and Ms. Gates. Student failed to present any persuasive evidence that Parent requested special education assessment in her conversation with Ms. Gates or Principal Gibson in January of 2015, or that she was told by Principal Gibson that Student could not be tested for special education until three student study team meetings were held. Therefore Student's assertion that Antioch misrepresented that the student study team process would resolve the problem forming the basis of Student's complaint preventing Parent from filing a due process

complaint earlier is rejected.

No exception due to alleged failure to provide parent with procedural safeguards and prior written notice

22. Student also failed to establish an exception to the two year statute of limitations on the basis that Antioch withheld information that it was required to provide to Parent. Student claims that Parent requested special education testing in January 2015 and asserts that Antioch was required to provide her with procedural safeguards and prior written notice in response to that request. The preponderance of the evidence presented established that Parent did not request special education testing until October 2015, when an assessment plan and procedural safeguards were promptly provided to Parent. There was no requirement to provide Student with procedural safeguards based on a request for an assessment or prior written notice because there was no parental request for special education assessment from January 2015 through June 22, 2015, and Antioch did not propose or refuse to identify Student as a student in need of special education.

23. Student did not prove either a lack of knowledge about facts underlying the alleged violations of law or an exception to the two year statute of limitations. Therefore Student's claims related to facts and circumstances occurring before June 22, 2015, are barred. The remaining issues have been revised to reflect the two year statute of limitations based on the date of June 22, 2017, when Student filed his due process complaint.

ISSUES 1 AND 2: DID ANTIOCH DENY STUDENT A FAPE FROM JUNE 22, 2015, THROUGH AUGUST 2015, BY FAILING TO ASSESS HIM AND MAKE HIM ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER THE ELIGIBILITY CATEGORY OF OTHER HEALTH IMPAIRMENT?

24. Student contends that Parent requested special education testing in

January 2015 when she talked to Principal Gibson. Student also contends that Ms. Gates, Ms. Criteser, and Principal Gibson were aware that Parent requested special education testing. Lastly, Student asserts that there was sufficient information that Student had evidence of ADHD to suspect he may need special education under the eligibility category of other health impairment to trigger the need for an initial special education assessment.

25. Antioch asserts that Student did not request special education services until October 2015. Moreover, Antioch contends that Student did not display sufficient indications of need for an assessment to trigger child find, and that Antioch was obligated to, and did in fact, engage in the student study team process, with Parent agreement and participation, to exhaust general education interventions before considering a special education assessment. Antioch contends that many factors, other than a disability, contributed to Student's academic performance and behavior that needed to be addressed before consideration of a need for special education services.

26. As noted above, Parent did not request a special education assessment until her written request in October 2015. The preponderance of the evidence established that during the 2014-2015 school year, Parent only requested general education interventions for Student similar to those received as part of his general education services in San Francisco. Student's contention that Antioch should have suspected Student had a disability and assessed him is addressed below.

Identification and Evaluation of Children with Disabilities/Child find

27. Failure of a parent to request special education testing does not relieve a school district from its responsibility to determine if a student should be assessed for special education. A school district is required to actively and systematically seek out, identify, locate, and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special

education and related services, regardless of the severity of the disability, including those individuals advancing from grade to grade. (20 U.S.C. §1412(a)(3)(A); Ed. Code, §§ 56171, 56301, subds. (a) & (b).) This duty to seek and serve children with disabilities is known as “child find.” “The purpose of the child-find evaluation is to provide access to special education.” (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) A district’s child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194 (*Cari Rae S.*)) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

28. A disability is “suspected,” and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21.) That notice may come in the form of concerns expressed by parents about a child’s symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child’s behavior. (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1209 (*Hellgate*)).

29. Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Cari Rae S.*, *supra*, 158 F.Supp.2d at p. 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

30. Under both California law and the IDEA, a child is eligible for special education if the child needs special education and related services by reason of the following disabilities: intellectual disability; hearing impairments; speech or language

impairments; visual impairments; severe emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; or specific learning disabilities. (20 U.S.C. § 1401 (3)(A)(i) & (ii); Cal.Code Regs., tit. 5, §3030.) Attention deficit hyperactivity disorder is not, by itself, a specified disability that qualifies a child for special education. However, a child with attention deficit hyperactivity disorder can be eligible for special education if it so affects the child that the child meets the criteria for severe emotional disturbance, other health impairment, or specific learning disabilities. (Ed. Code § 56339, subd. (a).)

31. A student is eligible as a student with an “other health impairment” if he has limited strength, vitality, or alertness, due to chronic or acute health problems. (Cal. Code Regs., tit. 5, § 3030, subd. (f).) A student can qualify for eligibility under the category of other health impairment if he has attention deficit hyperactivity disorder, because his disability-related distractibility can cause him to have limited alertness with respect to his educational environment, which can then demonstrate a need for special education and related services. (34 C.F.R. §300.8(c)(9); Ed. Code, § 56026, subd. (e).)

32. The preponderance of the evidence presented at hearing established that on June 22, 2015, the beginning of the timeline at issue in this case, Antioch suspected that Student had ADHD and also suspected that the ADHD may be impacting his ability to be successful in school.

33. On April 26, 2015, Ms. Criteser sent Parent an email advising her to get Student medically assessed for an attention issue before the May 29, 2015 student study team meeting. On May 29, 2015, the student study team again recommended that Parent get Student tested by his pediatrician for ADHD. Parent agreed to have Student assessed for ADHD but never followed up during the 2014-2015 school year.

34. Ms. Criteser emailed Parent because she believed that ADHD was a “huge possibility” for Student and that interventions for ADHD, including medications, diet,

further classroom accommodations, would assist Student to make progress.

35. Student struggled academically and socially throughout kindergarten and first grade. The evidence established that despite these struggles, his skills remained commensurate with those of a typical first grader. General education interventions were appropriate and were implemented through the student study team process. Despite these interventions, his grades began to decline during the second and third trimesters of first grade. Ms. Criteser's concerns heightened by April 26, 2015, when she recommended Parent have student medically assessed for attention issues. Arguably, by this point, but assuredly by May 29, 2015, during the third SST meeting when Student had not improved but actually regressed in his academic and behavior skills, Antioch was on notice that Student was a student with a suspected disability requiring a referral for a special education assessment.

36. Antioch could not abdicate its IDEA child find responsibility to assess Student for ADHD by requesting Parent obtain an ADHD assessment from a medical doctor, even if Parent agreed and then failed to secure it. (*Hellgate, supra*, 541 F.3d at p. 1209; *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1523; *Department of Educ., State of Hawaii v. Cari Rae, Dept. of Educ., Haw. v. Cari Rae S.*, (D. Haw. 2001) 158 F.Supp.2d 1190, 1200)(*"Cari Rae"*.)

37. The statutory time period at issue in this case commences June 22, 2015. The evidence established that by that time, Antioch had sufficient information to suspect that Student had a disability that triggered the child find requirements of the IDEA requiring it to proceed with an assessment of Student. However, the unique and limited timeline at issue in this case – June 22, 2015, through August 2015 – as well as the situation that the relevant timeline of the case began when Antioch was not in session, affect the determination of whether Antioch's failure to assess Student between June 22, 2015, and August 31, 2015, violated the IDEA. As discussed below, Antioch's

obligation to assess Student and hold an IEP team meeting did not arise until after the time period at issue in this case.

38. A written proposed assessment plan and a copy of procedural safeguards must be provided to a parent within 15 days of the referral for assessment. (Ed. Code, § 56321(a).) The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision and the assessment may begin immediately upon receipt of the consent. (Ed. Code, § 56321(b)(4).)

39. An IEP required as a result of an assessment of a student must be developed within a total time not to exceed 60 days from the date of the receipt of parent's written consent, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five schooldays. (Ed. Code, § 56344.) However, an IEP required as a result of an assessment of a student must be developed within 30 days after the commencement of the subsequent regular school year as determined by each local education agency school calendar for each student for whom a referral has been made 30 days or less prior to the end of the school year. (Ed. Code, § 56344.)

40. As found above, Antioch was on notice by May 29, 2015, that Student had a suspected disability requiring a referral for an assessment. However, analyzing the facts in light most favorable to Student, and assuming *arguendo* the obligation arose with Ms. Criteser's Sunday night email to Parent on April 26, 2015, Student did not establish that Antioch violated the IDEA during the time at issue in this case. Even if Antioch's obligation arose on April 26, 2018, and assuming that Antioch had provided Parent an assessment plan on April 27, 2015, and Parent signed her consent the same day, only 38 school days would have run on the 60 day timeline to assess Student and hold an IEP meeting by June 4, 2015, the last day of school. Summer vacation, a school break in excess of five school days, continued until school reconvened on August 12,

2015. Continuing the 60 day timeline on that date, Antioch would have been required to assess Student and hold an IEP meeting by September 2, 2015, which is after the time period at issue in this case.

41. There was no violation of IDEA's child find requirements between June 22, 2015, through August 2015, because Antioch was not obligated to assess Student for special education under the eligibility category of other health impairment and hold an IEP meeting until after August 2015, beyond the timeline at issue in this case. Student failed to prove Antioch denied him a FAPE for failure to assess him for eligibility. Therefore, no determination is reached as to whether Student was, in fact eligible for special education and related services during the time period at issue.

ISSUE 3: DID ANTIOCH DENY STUDENT A FAPE BY FAILING TO TAILOR AN APPROPRIATE PROGRAM TO MEET HIS UNIQUE NEEDS FROM AT LEAST JUNE 22, 2015, THROUGH AUGUST 2015?

42. Based on the legal conclusions reached regarding Issues 1 and 2, that Antioch was not obligated to assess Student for initial eligibility and hold an IEP team meeting from June 22, 2015, through August 2015, Antioch was not obligated to provide Student with a special education program to meet his unique needs during that time and Student was not entitled to a FAPE pursuant to IDEA. Student failed to prove Antioch denied him a FAPE for failing to offer him a program of special education and related services during the time period at issue.

ISSUE 4: DID ANTIOCH DENY STUDENT A FAPE FROM AT LEAST JUNE 22, 2015 THROUGH AUGUST 2015 BY FAILING TO TIMELY INFORM PARENT OF HER PROCEDURAL SAFEGUARDS, FAILING TO INCLUDE PARENT IN THE DECISION-MAKING PROCESS REGARDING PROVIDING A FAPE TO STUDENT, AND FAILING TO PROVIDE PRIOR WRITTEN NOTICE, THUS VIOLATING STUDENT'S AND PARENT'S PROCEDURAL RIGHTS?

43. As stated in the legal conclusions above regarding analysis of the statute of limitations, Antioch was not required to provide Parent with notice of procedural safeguards because Parent did not request special education assessment at any time through August 2015. Antioch was not required to provide Parent with prior written notice because Antioch did not propose or refuse to initiate or change the identification or educational placement of Student. Any claim or allegation regarding Antioch's failure to provide Parent with an assessment plan, procedural safeguards, or prior written notice, once Antioch suspected Student had a disability, arose before the statutory period at issue in this case. Antioch was not required to provide Parent participation in decisions regarding FAPE or the assessment process from June 22, 2015, through the end of August 2015 because Antioch was not yet obligated to initially assess Student under Antioch's child find obligation or hold an IEP meeting to facilitate Parent participation until after August 2015, beyond the timeline at issue in this case.

ORDER

Student's request for relief is 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, Antioch prevailed on all issues heard and decided.

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: July 11, 2018

/s/

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings