BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019081052

PARENT ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL DISTRICT AND MODESTO CITY SCHOOLS.

DECISION

FEBRUARY 24, 2020

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, known as OAH, State of California, on August 27, 2019, naming Modesto City Schools and Turlock Unified School District. Student requested leave to amend her complaint, which OAH granted effective September 16, 2019. OAH continued the matter for good cause on October 30, 2019.

Administrative Law Judge Chris Butchko heard this matter in Turlock, California, on December 17 and 18, 2019.

Attorney Daniel R. Shaw represented Student. Student's Mother attended the hearing each day on behalf of Student. Student did not attend the hearing.

Attorneys Matt Tamel and Jennifer Choi represented Modesto City, with Assistant Superintendent Mark Hearbst attending on its behalf. Christi Allan, the Assistant Director, appeared on behalf of the Modesto's special education local plan area.

Attorneys Amanda Ruiz and Marcy Gutierrez represented Turlock. Laura Fong, Director of Special Education, attended the hearing on behalf of Turlock.

As directed in the prehearing conference order, the first days of hearing focused solely on whether Student's claims against Modesto City were barred by the statute of limitations, a legal rule generally requiring that all educational claims heard before OAH must be brought not more than two years after the events underlying the action take place. After Student and Modesto City completed their presentations, the Administrative Law Judge, referred to as an ALJ, orally ruled that the claims against Modesto City had not been filed within the required time and would be dismissed. The hearing was then continued at the request of the parties. While the hearing was recessed, Student and Turlock settled the claims between them, and Student notified OAH on January 6, 2020.

The ALJ issued an order that day continuing the matter and setting a briefing schedule for written closing briefs to be filed by January 24, 2020, by Student and Modesto City. The parties filed timely written closing briefs. On January 24, 2020, the record was closed and the matter submitted for decision.

ISSUES

The issues set forth below have been redefined in accordance with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. A typographical error has been corrected from the issues set forth in the prehearing conference order, but no substantive changes have been made.

1. Are Student's claims against Modesto City barred by the statute of limitations because the underlying complaint, filed on August 27, 2019, was not filed within two years from the date Parent knew or had reason to know of the facts underlying the basis for the request against Modesto City?
2. Does the two-year statute of limitations [not] apply because Parent was prevented from timely requesting the due process hearing because Modesto City:
    a. made specific misrepresentations to Parent it had solved the problem forming the basis of the due process hearing request; or
    b. withheld information from Parent that was required to be provided to the Parent under special education law?

SUMMARY OF DECISION

Due to disability-related anxiety, Student could not leave her home to attend school. Although Student had been receiving in-home social and emotional support services from her elementary school, those services were not continued when she began middle school at Modesto City in the 2014 to 2015 school year. Modesto City refused to provide in-home services other than academic instruction, and told Parent disability support services would only be offered when Student began attending school.

Student did not meet her burden to prove that her filing was timely. Parent was sufficiently aware of the underlying facts giving rise to her cause of action more than two years before her filing. Modesto City did not represent that it had solved the problem or withhold information that it was required to provide to Parent that prevented her from filing for due process.

FACTUAL FINDINGS

Student moved to California in 2013 from Oregon. She suffered extreme trauma prior to the move, both from severe domestic violence and from being physically restrained in the school setting for long periods of time in a piece of equipment used to support paraplegics. These events, combined with her autism, gave her great anxiety about people and new places.

EMPIRE UNION SCHOOL DISTRICT

Initially, Student was enrolled in the Empire Union School District for eighth grade. In November of 2013, Empire placed Student at a non-public school, and Student was at first successful and happy at the school. However, some trauma or trigger took place, and Student began refusing school. What had been a manageable level of anxiety and fear greatly escalated. Student retreated into her room and isolated herself from even her own family members. She became very sensitive to stimulation and would be physically aggressive when overstimulated.

Empire Union held a meeting on March 6, 2014, to develop an Individualized Education Program, referred to as an IEP, for Student to help her cope with her disability's impact upon her education. Because Student was too traumatized to attend

school, Empire Union offered her in-home educational services, called Home/Hospital Instruction. In addition, Empire Union contracted with the Central Valley Autism Project to provide Student with in-home behavioral support services.

Student responded very well to the behavior services she received. Parent noted that Student was regaining trust in people, and a significant milestone was reached when Student left her bedroom to attend her birthday party in her kitchen.

The 2013 to 2014 school year was Student's last year with Empire Union. Student was graduating to ninth grade, and would be attending a middle school run by Modesto City. In mid-July of 2014, the Central Valley Autism Project ceased providing in-home behavior support services to Student.

MODESTO CITY SCHOOLS

Once Student graduated from eighth grade and completed her extended school year, she became a high school student and the responsibility of Modesto City. Representatives of Modesto City had attended Student's last IEP team meeting in March 2013 and were aware that Student was getting in-home behavioral support services from Empire Union. Modesto City did not continue to provide Student with the same level of services. Student did not receive in-home behavioral services in the 2014 to 2015 school year or at any time from Modesto City.

Modesto City placed a very high importance on returning Student to a school environment. Although the IEP team members recognized the impact her disability and traumatic experiences had on her ability to tolerate the presence of others, Modesto City wanted Parent to have Student return to on-campus school attendance. Modesto

City held an IEP team meeting on October 6, 2014, to discuss Student's transition into high school.

THE 2014 TO 2015 SCHOOL YEAR

At the transition IEP team meeting, Modesto City informed Parent that it would not provide Student with Home/Hospital Instruction unless Parent obtained a doctor's note stating that Student could not attend school due to a medical condition. Modesto City staff told Parent that other related services, such as behavioral support for Student's autism and emotional issues and occupational therapy services, were designed to be delivered at a school site. Parent was told by Modesto City's IEP team members that Student would not receive those services until she began attending school, although the team did consider having a behaviorist work with Student to help her overcome her school refusal. The IEP team put off a decision on Student's school placement until Parent could obtain a doctor's note for Home/Hospital Instruction service.

The team reconvened on October 14, 2014, after Parent obtained the note. Student was placed on Home/Hospital Instruction service, and Modesto City again told Parent that it would not provide any other services until Student began attending a school campus. When questioned by Parent, staff again told her that those services were designed to be implemented at the school sites. The meeting notes for both sessions report that Parent requested both behavioral and occupational therapy services in the home but Modesto City denied her requests.

Parent was very upset by the position taken by Modesto City. She believed that the support provided by Empire Union through the Central Valley Autism Project had

greatly helped Student. She believed that no other service had been as meaningful and helpful to Student, and, once it stopped, all of Student's progress toward rejoining the world simply went away. Student was again a recluse in her room and she would only briefly tolerate the presence of her Home/Hospital instructor. Parent believed that Student would not make any progress at all without in-home behavioral services, but she could not get Modesto City to restore the service.

Parent argued with the Modesto City staff at the IEP team meetings and tried to get them to understand how important behavioral services were to Student, but Modesto City flatly refused to resume providing them. Modesto City staff told Parent that Student had been a special case at Empire Union, and while Empire Union was willing to provide in-home behavior services while Student was on Home/Hospital Instruction, Modesto City was not.

TRANSITION TO TURLOCK UNIFIED SCHOOL DISTRICT

Modesto City convened further IEP team meetings on August 28, 2015, September 23, 2015, August 16, 2016, September 22, 2016, November 6, 2016, and December 9, 2016. Each IEP team meeting document introduced at hearing reported that Parent received notice of her educational rights and procedural safeguards. Prior to the December 9, 2016, IEP team meeting, Modesto City sent a behaviorist into Parent's home to observe Student and gather data.

At each meeting Parent pleaded for Modesto City to provide in-home behavioral services and Modesto City refused. Student did not attend school at a school site between August 2014 and June 2017. During that time, Student spent her time in her

bedroom, had very limited social interaction, and received very little benefit from the Home/Hospital Instruction because she could only tolerate the presence of the instructor for brief periods of time. Student received de minimis education from Modesto City Schools.

In April of 2017, Parent moved to Turlock. Parent withdraw Student from Modesto City Schools and enrolled her with Turlock Unified School District.

Parent believes that she first became aware that Student could receive in-home services when a private service provider attending an IEP team meeting held by Turlock on February 6, 2019, told Parent that Student should have been getting those services.

This action was filed on behalf of Student on August 27, 2019.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The legal citations in the introduction are incorporated by reference into the analysis of each issue decided below. All references in this discussion to the Code of Federal Regulations are to the 2006 version.

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs.,

tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is often referred to as the IDEA. The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further 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).)

A FAPE, which is an acronym for "fair appropriate public education," means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

In general, an individualized education program, or "IEP," is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel. This statement describes the child's needs, academic and functional goals related to those needs. It also provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals,

make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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], the Supreme Court held that"the 'basic floor of opportune ity' 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.

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, assessment, or educational placement of a child, or the provision of a FAPE to a child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

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].) Here, Student requested the hearing in this matter, and therefore Student has the burden of proof on the issues.

ISSUE 1: STATUTE OF LIMITATIONS

Student contends that prior decisions by OAH incorrectly apply a strict rule that all actions must be filed within two years of the events at issue unless certain exceptions apply. She argues that since the statute of limitations is tolled until the date when a parent knew or should have known about the actions forming the basis of the complaint, her action is timely filed as it was filed within two years of the February 6, 2019 IEP team meeting when she was told by a private service provider that Student should have been receiving in home services while on Home/Hospital instruction. Modesto City argues that Parent had two years to file from the date she knew or should have known that Student's education was inadequate.

THE IDEA STATUTE OF LIMITATIONS

Under Federal law, a due process hearing must be requested within two years of the date the parent or agency "knew or should have known about the alleged action that forms the basis of the complaint," or, "if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows." (20 U.S.C. § 1415(f)(3)(C).) The California statute of limitations for due process requests is also two years. (Ed. Code, § 56505, subd. (l).) 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." *(Id.)* The IDEA seeks speedy resolution of special education claims and the avoidance of stale claims. (See Ed. Code § 56505 subd. (f)(3).) Statutes of limitations "serve the policies of repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." (*Young v. United States* (2002) 535 U.S. 43, 49.)

With two limited exceptions, the statute of limitations in both federal and California law precludes claims where parents had knowledge or reason to know about the facts or alleged action forming the basis of the complaint more than two years before the date of filing the request for due process. (Ed. Code § 56505(l); 20 U.S.C. § 1415(f)(3)(C); *M.M. v. Lafayette Sch. Dist., et al.* (9th Cir. 2014) 767 F.3d 842, 859 (referred to as *M.M.*).)

The IDEA mandates that the hearing officer issue its decision in a Student-filed case within 75 days from the filing of the due process complaint, unless the hearing officer grants a continuance based on good cause. (34 C.F.R. § 300.515 subd. (a) and (c).) The clear intent of the IDEA, and its directive to hearing officers, is to ensure that disputes involving children with special needs are adjudicated promptly and expeditiously so that necessary intervention and supports for growing children are put in place as early as possible.

G.L. v. Ligonier Valley Sch. Dist. Authority (3rd Cir. 2015) 802 F.3d 601 (referred to as *Ligonier*) concluded that sections 1415(f)(3)(D) and 1415(b)(6)(B) of the IDEA function together "as a filing deadline that runs from the date of reasonable discovery, not as a cap on a child's remedy for timely-filed claims that happen to date back more than two years before the complaint is filed." (*Ligioner*, *supra*, 802 F.3d at p. 616.)

The Ninth Circuit Court of Appeals recently endorsed the "knew or should have known" approach from *Ligonier* in *Avila v. Spokane Sch. Dist. 81* (9th Cir. 2017) 852 F.3d 936.) The *Avila* decision rejected a strict occurrence rule, because that is not compatible with the "knew or should have known" language in 20 U.S.C. § 1415(f)(3)(C). Further, "[c]utting off children's or parents' remedies if violations are not discovered within two

years, as the occurrence rule and the 2+2 rule would do, is not consistent with the IDEA's remedial purpose." (*Avila*, 852 F.3d at 943.) Accordingly, the Ninth Circuit ruled that the discovery rule should apply to save claims that were not filed within two years of the acts giving rise to the claim, as long as such actions were filed within two years of the time when a party knew or should have known about them. The Ninth Circuit did not find that the claims at issue in *Avila* did survive application of the statute of limitations, but remanded the matter for the District Court to determine whether the discovery rule should save the claims. On remand, the District Court found that Student's claims were barred the statute of limitations. (*Avila v. Spokane Sch. Dist.* (E.D. Wash., Jan. 29, 2018, No. CV-10-00408-EFS) 2018 WL 616140, affd. (2018) 744 Fed.Appx. 506.)

Knowledge that a student's education is inadequate is sufficient to start the running of the statute of limitations. (*M.M.*, *supra*, 767 F.3d at 859; *see also*, *M.D. v. Southington Bd. of Educ*. (2d Cir. 2003) 334 F.3d 217, 221.) In the District Court case reviewed by *M.M.*, the standard was defined as when "parents had sufficient knowledge of the educational goings-on inside and outside of the classroom to be put on notice of their underlying claims." (*M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19.) In other words, the statute of limitations begins to run when a party is aware of the underlying facts of a denial of needed services, not when a party learns that the action was wrong or constituted a viable legal claim. (see also *Bell v. Bd. Of Educ. of the Albuquerque Pub. Schs*. (D.N.M. 2008) 2008 WL 4104070, at *17.)

It does not matter if the parent understood that the inadequacy constituted a legal claim, just that parent had knowledge of the problem. Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Alexopulous v. San Francisco Unified Sch. Dist*. (9th Cir. 1987) 817 F.2d 551, 555 (referred to as *Alexopulous*).) "[A] cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury which is the basis of his action…. The District's delay in rectifying Alexis' home placement was known to Mrs. Alexopulous at this time. Because she waited six years to assert a claim, the claim is barred." (*Alexopulous*, 817 F.2d at p. 554-555).)

KNOWLEDGE OF MODESTO CITY'S ACTIONS

Student contends that application of the discovery rule to the underlying facts or to the date of Parent's knowledge that Student's education was inadequate to her needs would punish Student because Parent was not an expert in education law or theory. In support of that argument, Student cites *Draper v. Atlanta Independent School System,* (11th Cir. 2008) 518 F.3d 1275. In that case, the parent accepted the school district's assertion that the student was intellectually disabled for almost five years, before parents learned that student was of average intelligence but impacted by dyslexia.

There, the school district argued that parents "should have known that Draper had been misdiagnosed and misplaced even before the School System informed Draper's family of that fact" because, among other reasons, the misdiagnosis was terribly bad. The Circuit Court rejected the school district's argument, finding that it was

not reasonable to expect that his parents could "know enough to realize that Draper had been injured by his misdiagnosis and misplacement by the school system." *Draper*, 518 F.2d at p. 1288. In that case, the circuit court found that parents should not be expected to recognize that their child's problems were caused by dyslexia and not intellectual disability. Student argues here that her parent could not be expected to know that Student could have received services while on Home/Hospital Instruction. That argument does not address the correct standard. The law, as set out in *Avila*, *M.M.,* and *Alexopulous*, looks at when a parent knew or should have known the underlying facts and has awareness that a student's needs are not being addressed. Parent was aware from July 2014 through April 7, 2017, when Student moved to Turlock, that Student was no longer getting in-home services from the Central Valley Autism Project, and Parent strongly believed that the lack of those services to help Student with her disability was negatively affecting Student's education. Parent was aware of the injury to her child. Even accepting Parent's testimony that she was not aware that Student could get services in the home until told by a private provider on February 6, 2019, that knowledge related to a legal claim, not of the impact Modesto City's policies were having on her child. Parent did not need to know the educational disability causing Student's withdrawal and anxiety, only that it was not being addressed by Modesto City.

The decision here applies the "knew or should have known" standard, and not, and Student contends, a strict and inflexible occurrence rule. Parent knew in 2014 that her child needed to continue with the behavioral services that had been provided by Empire Union. Once Modesto City terminated those services and Student regressed, Parent knew or should have known that Student's educational program was inadequate.

Parent had two years from that the October 14, 2014, refusal of Modesto City to provide those services to file, and did not do so until August of 2019, more than two years after Student left Modesto City on April 7, 2017. The claims against Modesto City were not timely filed and are barred by the statute of limitations.

ISSUE 2: MISREPRESENTATIONS

Student contends that Modesto City made misrepresentations to Parent and withheld information from her that prevented a timely filing of this matter.

EXCEPTIONS DUE TO MISREPRESENTATION

Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases where the parent was prevented from filing a request for due process due to:

1) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or
2) the local educational agency withheld information from the parent that was statutorily required to be provided to the parent.

(*M.M., supra*, 767 F.3d at p. 859.) Title 34 Code of Federal Regulations section 300.507(a)(2) specifically provides in relevant part that, if a state has an explicit time limitation for filing a due process complaint, the two exceptions to the filing timeline described in title 34 Code of Federal Regulations section 300.511(f) must apply.

Prior written notice must be given by a school district to the parents of a child with exceptional needs "upon initial referral for assessment, and a reasonable time

before the public agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, educational placement of the child, or the provision of a free appropriate public education to the child." (Ed. Code., § 56500.4, subd. (a); see also, 20 U.S.C. 1415(b)(3) and (4) and (c)(l); 34 C.F.R. § 300.503.)

STATEMENTS ABOUT IN HOME SERVICES

Parents were told by Modesto City that it would not provide in-home behavior services to Student. When pressed on the point, staff told Parent that such services were intended by Modesto City to be implemented only in the school setting. Student argues that these statements were misrepresentations which prevented her from filing a request for due process.

Neither statement meets the standard set in the IDEA and California law for an exception to the two-year statute of limitations. Even assuming that they were false and that Parent reasonably believed them despite her immediately previous experience of receiving such services in the home when attending Empire Union, they do not create an exception to the statute of limitations. Neither statement can be understood as claiming that Modesto City had resolved the problem forming the basis of the complaint. There is no allegation that Parent understood Modesto City to say that Student did not need in-home services because her needs had been met.

On the contrary, Modesto City understood that Student needed behavior support services and offered to provide them, but only once Student began attending school at a campus location. Student has alleged only that Modesto City made misrepresentations regarding its obligation to provide related services to Student. Modesto City's obligations are a different issue than whether it has resolved Student's

problems. Student has not proven or even alleged that Modesto City made any such specific misrepresentation that it had resolved the problem forming the basis of the complaint, and therefore the first exception does not apply.

Student's last contention is that Modesto City withheld statutorily required information that prevented her from requesting a timely hearing because it failed to provide Parent with prior written notice of its need for a doctor's note to continue Student on Home/Hospital Instruction or of its position that students on Home/Hospital Instruction could not receive any related services unless the students attended a school campus.

Those positions were set out in the IEP team meeting reports, and 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).) When a failure to give proper prior written notice does not actually impair parental knowledge or participation, the violation is not a substantive harm under the IDEA. (*C.H. v. Cape Henlopen Sch. Dist.* (3rd Cir. 2010) 606 F.3d 59, 70.) However, the issue here is not whether Student suffered a denial of her educational rights, but whether Parent was prevented from filing for due process.

Student argues that Parent was prevented from filing because "she was not fully informed of the reasons why" Modesto City required a doctor's note or refused to provide support services to Students on Home/Hospital instruction. Student further contends that Parent was prevented from filing for due process because she believed Modesto City's representations that it needed a doctor's note to continue Home/Hospital instruction and that its support services were designed to be implemented at a school site.

Student's explanation of how the lack of written notice affected Parent is unpersuasive. Student has not demonstrated how lack of knowledge of the basis for Modesto City's positions impaired Parent's ability to initiate a lawsuit against it. The fact that Parent accepted Modesto City's explanation of the reasons why it chose to refuse to meet her daughter's needs caused by her disability did not in any way mitigate her knowledge that the education Student was receiving was inadequate to her needs. No authority supports the position that lack of knowledge of one's legal rights excuses a failure to file within the statutorily required time period. Further, Student did not establish that Modesto City did not provide her with the required statement of procedural safeguards, which sets forth a parent's right to request a hearing.

Parent was entitled to prior written notice of Modesto City's refusal to provide in-home services to Student. However, even if the IEP team meeting reports failed to satisfy the requirement for prior written notice and constituted the withholding of information that was statutorily required to be provided to Parent, Student still needed to show that this prevented Parent from filing for due process.

Student presents only the conclusory statement that Parent would have been better informed about Modesto City's reasons for its policies. That showing is not adequate. To hold otherwise would elevate a failure by a school district to provide any statutorily required information into a per se justification for failure to meet the statute of limitations. The Ninth Circuit has rejected the argument that timeliness may be excused if there is withholding of statutorily required information without demonstration of how it prevented timely filing. (*M.M.*, *supra*, 767 F.3d at 860 ("The parents fail to demonstrate how receipt of the RTI data, and for that matter the notice of procedural safeguards, in February rather than April would have caused them to file the due process complaint earlier.").)

Parent was not prevented from making a timely filing for due process by any misrepresentations by Modesto City or by its withholding of information it was statutorily required to provide. The exceptions to IDEA's statute of limitations period do not apply to Student's action.

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, Student did not prove that her claims against Modesto City were not barred by the two-year statute of limitations and she did not prove that either of the two statutory exceptions applied. Modesto City prevailed on all issues.

RIGHT TO APPEAL

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

/s/
CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings