

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020080333

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

DECISION

January 4, 2021

On August 12, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Oakland Unified School District. Student filed an amended complaint on September 15, 2020. On November 13, 2020, OAH granted a continuance of the due process hearing for good cause. Administrative Law Judge Marlo Nisperos heard this matter via videoconference on December 1 and 2, 2020.

Attorney Nicole Hodge Amey represented Student. Parent and Shanelle Snipes, paralegal and Parent's advocate, attended all hearing days on Student's behalf. Student did not attend the hearing.

Attorney David Mishook represented Oakland Unified School District. Cary Kaufman, Coordinator for Special Education Services, attended all hearing days on Oakland's behalf.

At the parties' request the administrative law judge, referred to as ALJ, continued the matter to December 14, 2020 for written closing briefs. The record was closed, and the matter was submitted on December 14, 2020.

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. Typographical errors have been corrected for the issues set forth in the prehearing conference order, but no substantive changes have been made.

1. Did Oakland Unified School District withhold information related to procedural rights and safeguards it was required to provide to Parent, during the initial request in September 2016, preventing Parent from filing a due process request as a result?
2. Did Oakland Unified School District deny Student a free appropriate public education, called FAPE, during the 2015-2016 school year by:
 - a. failing to assess Student in all areas of suspected disability, specifically: behavior, academics, and language and speech;
 - b. failing to perform a functional behavior assessment;
 - c. removing Student from placement in excess of 10 days without a manifestation determination meeting;
 - d. failing to design and implement a behavioral intervention plan to address Student's unique and individual needs;

- e. failing to identify Student as a child with a need in anxiety requiring special education services;
- f. failing to offer an appropriate program relating to Student as a child with an anxiety disorder;
- g. failing to offer appropriate services relating to Student as a child with an anxiety disorder;
- h. failing to offer appropriate interventions relating to Student as a child with an anxiety disorder;
- i. failing to identify Student as a child with a need in attention requiring special education services;
- j. failing to offer an appropriate program relating to Student as a child with attention deficit hyperactivity disorder;
- k. failing to offer appropriate services relating to Student as a child with an attention deficit hyperactivity disorder;
- l. failing to offer appropriate interventions relating to Student as a child with attention deficit hyperactivity disorder;
- m. failing to offer Student an IEP reasonably calculated to enable him to make progress appropriate in light of his circumstances;
- n. failing to offer appropriate services in the areas of behavior, academics, and language and speech;
- o. predetermining placement;
- p. failing to consider a continuum of placements; and
- q. failing to provide Parent with prior written notice in October 2015, November 2015, February 2016, and May 5, 2016 when Parent requested assessments and additional supports?

3. Did Oakland Unified School District deny Student a FAPE during the 2016-2017 school year by:
- a. failing to provide Parent with procedural rights and safeguards during the initial request for assessments;
 - b. failing to timely present assessments to Parent within 60 days;
 - c. failing to conduct and present a language or speech assessment;
 - d. failing to assess Student in all areas of suspected disability, specifically: behavior, academics, and language and speech;
 - e. failing to perform a functional behavior assessment;
 - f. removing Student from placement in excess of 10 days without a manifestation determination meeting;
 - g. failing to design and implement a behavioral intervention plan to address Student's unique and individual needs;
 - h. failing to conduct an educationally related mental health services, referred to as ERMHS, assessment, and failing to offer ERMHS services;
 - i. failing to identify Student as a child with an anxiety disorder;
 - j. failing to offer an appropriate program relating to Student as a child with an anxiety disorder;
 - k. failing to offer appropriate services relating to Student as a child with an anxiety disorder;
 - l. failing to offer appropriate interventions to Student as a child with an anxiety disorder;
 - m. failing to identify Student as a child with attention deficit hyperactivity disorder;
 - n. failing to offer an appropriate program, relating to Student as a child with attention deficit hyperactivity disorder;

- o. failing to offer appropriate services relating to Student as a child with attention deficit hyperactivity disorder;
 - p. failing to offer appropriate interventions relating to Student as a child with attention deficit hyperactivity disorder;
 - q. failing to offer Student an individualized education program, called IEP, reasonably calculated to enable him to make progress appropriate in light of his circumstances;
 - r. failing to offer appropriate services in the areas of behavior, academics, and language and speech;
 - s. predetermining placement;
 - t. failing to consider a continuum of services placements; and
 - u. failing to provide Parent with prior written notice on December 6, 2016 and March 15, 2017, when Parent requested assessments and additional supports?
4. Did Oakland Unified School District deny Student a FAPE during the 2019-2020 school year, through August 12, 2020 by:
- a. failing to include Parent in the decision-making process beginning March 13, 2020, by failing to provide Parent with Student's complete education file; and
 - b. failing to provide Student records within five days of March 13, 2020, which caused Student to delay filing a complaint during the school year?

PROCEDURAL MATTERS

As directed in the prehearing conference order, the first day of hearing focused solely on whether some or all of Student's claims against Oakland were barred by the statute of limitations. Student and Oakland presented argument and evidence,

thereafter, the ALJ took the matter under submission, recessed for the evening, and carefully considered the parties' presentations. The following morning, the ALJ ruled that Student had not met his burden of proof to extend the statute of limitations to a time before August 12, 2018. Student's Issues 1, 2, and 3, as pled, predate the two-year statute of limitations and were barred pursuant to the holding. Issue 4 remained as it sought to adjudicate a claim from August 12, 2018, through August 12, 2020.

The ALJ specified on the record that the factual findings and analysis supporting the legal conclusion would be contained in the final written decision in this matter. The written factual findings and legal conclusion supporting the statute of limitations holding are contained within the analysis of Issues 1, 2, and 3.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (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 main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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 the child, or the provision of a free appropriate public education to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student requested the hearing in this matter, and therefore Student has the burden of proof on the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was twelve years old and in seventh grade at the time of hearing. Student resided at the time of hearing within Oakland's geographic boundaries. Student was found eligible for special education under the primary disability category of emotional disturbance in October 2018 by North Oakland Community Charter. North Oakland Community Charter is not a school within Oakland Unified School District. Student attended North Oakland Community Charter from September 2017 until the end of the 2019-2020 school year. Student reenrolled in Oakland Unified School District after August 17, 2020.

ISSUE 1: DID OAKLAND UNIFIED SCHOOL DISTRICT WITHHOLD INFORMATION RELATED TO PROCEDURAL RIGHTS AND SAFEGUARDS IT WAS REQUIRED TO PROVIDE PARENT DURING THE INITIAL REQUEST IN SEPTEMBER 2016, PREVENTING PARENT FROM FILING A DUE PROCESS REQUEST AS A RESULT?

Student argued that he was denied a FAPE based on Oakland's failure to provide Parent with procedural rights and safeguards during the initial request for assessments.

Oakland argued that Parent was provided procedural safeguards. Accordingly, Parent was aware of Student's legal rights, including the right to file a due process hearing request. Thus, Student's claim is barred by the two-year statute of limitations.

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

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

Parent testified that she was not provided procedural safeguards at the March 27, 2017 IEP team meeting. Parent pointed out that the box stating Parent received a copy of procedural safeguards was not checked on the IEP.

Parent's testimony that she did not receive a copy of the procedural safeguards was not persuasive. The IEP notes, drafted during the meeting, expressly state she was provided procedural safeguards. Parent did not explain why the notes reflected she received them when she had not or why Parent did not correct this misstatement. Parent did not challenge any other information in the IEP meeting notes besides the fact they erroneously reflected she received procedural safeguards. More importantly, however, is that the evidence established that a copy of the procedural safeguards accompanied the assessment plan given to Parent that she signed on October 5, 2016. Therefore, Parent had the procedural safeguards five months before Student's IEP team meeting.

Even had Parent not received a copy of the procedural safeguards with the assessment plan in October 2016 or during the March 2017 IEP team meeting, she acknowledged receiving a copy in relation to Student's sibling. Parent testified that she received procedural safeguards for Student's sibling before Student's March 27, 2017 IEP team meeting. Parent claimed that she did not know they applied to Student because Oakland did not provide them to Parent at Student's IEP team meeting. Parent asserted she was not aware that Student was protected by the procedural safeguards because he was found ineligible for special education services.

Parent's claim is unpersuasive. The procedural safeguards are unambiguous in setting out the rights attendant to the special education evaluation and IEP process. There is nothing suggesting they only apply to children found eligible for special education. To the contrary, the procedural safeguards specify the right to file for due process if a parent disagrees with an eligibility determination.

The evidence admitted at hearing conclusively showed that Parent received notice of procedural safeguards and was advised that the procedural safeguards applied

to Student before the March 27, 2017 IEP team meeting. Parent recognized the document entitled notice of procedural safeguards. The assessment plan informed Parent that the protections under state and federal law applied to Student and also indicated the notice of procedural safeguards were enclosed with the plan. Parent admitted she kept copies of the assessment plan and Student's IEP's in storage.

Oakland proved that it provided Parent a copy of procedural safeguards with the assessment plan provided on October 5, 2016. The procedural safeguards clearly applied to Student. Oakland also proved that it provided Parent procedural safeguards for Student's sibling on May 5, 2016. As a result, even if the safeguards were not provided during Student's IEP team meeting, Oakland proved that Parent was aware of the legal protections contained in the notice of procedural safeguards and that those protections applied to Student. Parent's testimony that she was not provided procedural safeguards at the March 17, 2017 IEP meeting was not reliable. Even if the document had not been provided, it is inconsequential in this case as the record established Parent received a copy on at least two prior occasions, including specifically, with Student's assessment plan. Accordingly, Student failed to meet his burden of proving that Oakland failed to provide procedural safeguards it was required to provide to Parent at the initial request for assessment or at the initial IEP team meeting.

STATUTE OF LIMITATIONS

The statute of limitations for 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").)

It does not matter if the parent understood that the inadequacy of student's education constituted a legal claim, just that parent had knowledge of the problem forming the basis of a claim. 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. (*Alexopoulos v. San Francisco Unified Sch. Dist.* (9th Cir. 1987) 817 F.2d 551, 555.) "[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." (*Id.*)

EXCEPTIONS TO THE STATUTE OF LIMITATIONS

The law contains two express exceptions to the two-year statute of limitations. Those exceptions apply in cases where the parent was prevented from filing a request for due process because of specific misrepresentations made by the local educational agency that it had resolved the problem forming the basis of the complaint, or because the local educational agency withheld 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, 859.)

Student argued that Parent did not know she could file for due process based on Oakland's failure to find Student eligible for special education services until October 25, 2018 when North Oakland Community Charter found Student eligible for special education. Student alleged he was not aware of his rights before then because Oakland did not provide Parent with procedural safeguards at the initial IEP team meeting.

Student also contended that Oakland intentionally misrepresented the law and facts to Parent at the initial IEP team meeting by telling Parent that Student qualified for special education services pursuant to the eligibility category other health impairment; but that Oakland did not find Student eligible for services because he did not require specialized academic instruction. Student contended that Oakland's misrepresentations and failure to provide Parent procedural safeguards prevented Student from filing the request for due process. It was previously found that Oakland did provide Parent a copy of the procedural safeguards. To proceed on this issue, therefore, Student would have to prove Parent was not aware of the underlying facts giving rise to Student's claims or an exception to the two-year statute of limitations.

Oakland argued that Student was required to file a request for due process within two years of the date Parent contemporaneously believed Student's education was inadequate. Oakland asserted that Parent was aware of Student's academic and behavior struggles in the classroom from 2015 to 2017 and therefore the claims prior to August 12, 2018 should be barred by the statute of limitations.

Student contended the statute of limitations should be extended because at the March 27, 2017 initial IEP team meeting, Oakland misrepresented to Parent that Student was not eligible for special education services because he did not require specialized academic instruction. Parent relied on Oakland's misrepresentation that Student was not eligible for special education services and therefore did not file a due process complaint.

Oakland argued that the exceptions to the statute of limitations do not apply in this matter because Oakland did not inform Parent that it solved the problem that formed the basis for the due process complaint.

Student's misrepresentation argument does not address either of the two exceptions to the statute of limitations. The fact that Parent relied on Oakland's determination that Student was not eligible for special education is not an exception to the statute of limitations. The first exception to the statute of limitations applies if specific misrepresentations were made by the local educational agency, commonly referred to as LEA, that it had solved the problem forming the basis of the due process request. Here, there is no allegation that Oakland claimed it solved the problem forming the basis of the due process complaint. The misrepresentation alleged by Parent, even if proved by a preponderance of the evidence, would not be a legal basis to extend the statute of limitations. Student failed to prove that the statute of limitations should be extended based on Oakland misrepresenting the criteria for finding Student eligible for special education services.

Student did not meet his burden of proving the second exception to the statute of limitations applied in this matter. The statute of limitations does not apply if the local educational agency withheld information from parent that it was required to provide the parent. (Ed. Code, § 56505 subd. (l)(2).) Here, Student alleged that Oakland withheld the procedural safeguards at the March 27, 2017 IEP team meeting. As discussed above, the evidence established they were provided. Furthermore, for the purpose of the statute of limitations analysis, whether Parent understood at that time she had rights under the law is not relevant. The evidence conclusively proves that Parent had knowledge of procedural safeguards before March 27, 2017 because Parent received notice for Student's sibling and notice that they applied to Student based on the assessment plan. Student failed to establish by a preponderance of the evidence that Oakland withheld information from Parent that it was required to provide. For the forgoing reasons, Student failed to meet his burden of proving that either exception to

the two-year statute of limitations applied in Issue 1. Accordingly, Issue 1 was dismissed as barred by the statute of limitations.

ISSUE 2(a)-(q): DID OAKLAND UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2015-2016 SCHOOL YEAR?

Student filed for due process on August 12, 2020, alleging claims during the 2015-2016, 2016-2017, and 2019-2020 school years. The time period at issue for the statute of limitations analysis are the 2015-2016 and 2016-2017 school years when Student attended Parker school and Piedmont Avenue school, respectively. Both schools are within the Oakland Unified School District. Student contended he was denied a FAPE during the 2015-2016 school year based on Oakland's failure to meet child find obligations; failure to assess in all areas of suspected disability; failing to timely present assessments to Parent; removing Student from placement in excess of 10 days without a manifestation determination meeting; failing to design and implement an appropriate IEP; and failing to provide Parent with prior written notice.

Oakland contended this claim is outside of the statute of limitations and should be dismissed.

THE 2015-2016 SCHOOL YEAR AT PARKER SCHOOL

Parent failed to establish by a preponderance of the evidence that she was unaware of the underlying facts that formed the basis of the complaint, at the time the events occurred. During the 2015-2016 school year, Parent believed that Student's behavior caused him to receive an inadequate education. Student was removed from the classroom because he had frequent confrontations with the teacher and fought with classmates. Student was out of class regularly because he was off task, out of his seat, and playing when he was supposed to be attending to classwork. Parent contended

that Student was ultimately excluded from Parker school by administrators and placed on independent study because of his disruptive behavior. Parent claimed that if an adult did not accompany Student to school, the teacher would not allow him into the classroom.

Parent contended the principal at Parker school recommended Student participate in independent study so he could take tests at home and have time to catch up on his work because he was falling behind. According to Parent, Student's placement on independent study resulted in Parent being subjected to the jurisdiction of juvenile truancy court because Student was marked absent when he participated in independent study. In truancy court, organizations called the Lincoln Center and Ann Martin provided services to Student. These organizations provided Student transportation to and from school, behavior support, and counseling services in the home and at school. While Student attended Parker school, Parent had a reason to suspect Student was not receiving an adequate education based on Student's removal from the classroom as a result of his behavior. Accordingly, based upon Parent's knowledge of the facts constituting a possible claim, Student failed to meet his burden to prove the statute of limitations should be extended to include claims that occurred during the 2015-2016 school year.

During the 2015-2016 school year, Parent had sufficient knowledge of the underlying facts related to the denial of FAPE as alleged in Issue 2 at the time they occurred. Accordingly, the statute of limitations began to run at that time, absent proving an exception. Student did not offer evidence that either exception to the statute of limitations applied to the 2015-2016 school year. As Student did not file this case until August 2020, Issue 2 is barred by the statute of limitations.

ISSUE 3(a)-(u): DID OAKLAND UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2016-2017 SCHOOL YEAR?

Student contended he was denied a FAPE during the 2016-2017 school year based on Oakland's failure to meet child find obligations; failure to assess in all areas of suspected disability; failing to timely present assessments to Parent; removing Student from placement in excess of 10 days without a manifestation determination meeting; failing to design and implement an appropriate IEP; and failing to provide Parent with prior written notice.

Oakland contended this claim is outside of the statute of limitations and should be dismissed.

Student attended Piedmont Avenue school during the 2016-2017 school year. While attending Piedmont Avenue school, staff from the Lincoln Center provided Student one-to-one support throughout the school day, two to three days per week, to assist Student with behavior related issues. Parent frequently communicated with Lincoln Center staff and the resource teacher, Bethany Meyer, regarding Student's needs and behavior. Parent knew Student participated in the general education classroom for one hour per day and the remainder of the day he was with Meyer in the resource room beginning November 2016. While Student was in the resource room, he was completing only 65 to 75 percent of his work. Parent texted with Meyer daily regarding Student's behavior so Parent could attempt to get Student the help that he needed. Parent attended school daily with Student for a portion of the school year and observed him display disruptive and inappropriate behavior in class.

Student was found ineligible for special education at the March 27, 2017 IEP team meeting and instead received a behavior contract. A school therapist named Carly

Brown, an employee of Ann Martin, attended the IEP team meeting. Brown created behavior goals and provided services to assist Student in accomplishing those goals. Parent collaborated with Meyers and service providers regarding Student's academic progress and struggles with behavior. Based on the constant communication and personally viewing Student in the school environment, Parent knew of the facts underlying the claims during the 2016-2017 school year. Accordingly, Student failed to meet his burden of proof to extend the statute of limitations, absent an exception, to include claims arising during the 2016-2017 school year because Parent was aware of the facts that formed the basis of the claim.

EXCEPTIONS TO THE STATUTE OF LIMITATIONS

As discussed in Issue 1, Student failed to prove by a preponderance of the evidence that either of the two bases for extending the statute of limitations to the 2016-2017 school year applied in this matter. Student's argument relating to misrepresentation does not apply to the exception to the two-year statute of limitations. Additionally, Student failed to prove that Oakland did not provide Parent notice of procedural safeguards. As a result, Student failed to meet his burden that the exceptions to the statute of limitations applied to Student and failed to prove the statute of limitations should be extended to claims that arose in the 2016-2017 school year. Accordingly, Issue 3 is barred by the statute of limitations.

ISSUE 4(a)-(b): DID OAKLAND UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH AUGUST 12, 2020, BY FAILING TO PROVIDE PARENT WITH STUDENT'S COMPLETE EDUCATION FILE WITHIN FIVE DAYS OF THE MARCH 13, 2020 REQUEST, THEREBY DENYING PARENT MEANINGFUL PARTICIPATION IN THE DECISION-MAKING PROCESS FOR STUDENT AND CAUSING STUDENT TO DELAY FILING A DUE PROCESS COMPLAINT?

Student contended that Oakland denied him a FAPE because Oakland failed to timely respond to Student's March 13, 2020 written request for a copy of his education file for 2015-2016 and 2016-2017 school years, when he was a student at Oakland. The evidence established that Student disenrolled from Oakland in September 2017 and thereafter enrolled at North Oakland Community Charter. Student did not re-enroll at Oakland before August 12, 2020, the time period at issue in this case. Accordingly, as discussed more fully below, at no time during the 2019-2020 school year, or up to August 12, 2020, was Oakland responsible or legally able to provide Student a FAPE.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

On March 13, 2020, Student's attorney requested Oakland provide a complete copy of his student records. Parent asserted that she made additional records requests during the 2019-2020 school year. Student contended that Oakland failed to timely comply with Parent's or Student's attorney's request. At the time of the request, Student attended North Oakland Community Charter. Student argued that Oakland's failure to produce records prevented Parent from participating in the special education decision-making process for Student. Student asserted that Oakland's failure to provide the records within five days of his request caused Student to delay filing a complaint with OAH during the school year. Parent indicated she needed Student's educational records to provide to her attorney and to monitor Student's progress in school. Student maintained that he never received a complete education file from Oakland.

Oakland asserted that Student's attorney, not his Parent, requested the records on March 13, 2020, and if it failed to provide records, that did not prevent Parent from participating in the decision-making process or cause delay in Student filing a due process complaint. Oakland also contended that Student was a pupil at North Oakland Community Charter from March 13, 2020 to August 12, 2020, and there was no evidence the absent records affected Parent's participation. Oakland argued that Student did not demonstrate he was denied a FAPE by any alleged failure to provide his educational records within five days. Lastly, Oakland claimed that the requirement it provide school records within five business days did not apply at the time the records request was processed because Oakland was closed due to the COVID-19 pandemic and emergency legislation waived the five-day timeline requirement.

EDUCATIONAL RECORDS

The parent or guardian shall have the right and opportunity to examine all school records of the child and to receive complete copies within five business days after a

request is made by the parent or guardian, either orally or in writing, and before any meeting regarding an individualized education program of his or her child or any hearing or resolution session. (Ed. Code, § 56403 subd. (n).) The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies within five business days after the request is made by parent, either orally or in writing. The public agency shall comply with a request for school records without unnecessary delay before any meeting regarding an individualized education program or any hearing. (Ed. Code, § 56504.)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act. (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Education records include “records, files, documents, and other materials” containing information directly related to a student, other than directory information, which “are maintained by an educational agency or institution or by a person acting for such agency or institution.” (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b).)

Parent asserted that she requested records from Oakland in March and April 2020. No reliable evidence was admitted regarding whether Parent made a request, the date those requests were made, or what records Parent requested. Parent testified inconsistently regarding the manner in which she requested the records from Oakland. Accordingly, the evidence did not establish Parent made a records request during the 2019-2020 school year from Oakland.

The only substantiated request for records was made by Student’s attorney. Student provided no legal authority establishing Student’s attorney’s request for records on March 13, 2020, without a request from Parent, triggered an obligation for Oakland to produce records within five days. However, in this case, that legal question need not be answered. Student did not claim it was a failure for Oakland to provide records.

Here, Student claimed a denial of a FAPE because of a failure to provide records. As discussed next, Student could not as a matter of law, establish Oakland denied him a FAPE at that time.

ANALYZING A PROCEDURAL VIOLATION

If Oakland failed to provide records responsive to Student's March 13, 2020 request, that would have constituted a procedural violation of the IDEA. Not all procedural violations are of legal consequence. A due process decision shall be based on substantive grounds based on whether a child received a FAPE. (20 U.S.C. § 1415 (f)(3)(E)(i); Ed. Code, § 56505, subd. (j) [decision cannot be based solely on a non-substantive error unless the error resulted in the loss of an educational opportunity or interfered with parental participation in the IEP process].)

A procedural violation results in a denial of a FAPE only if the violation impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded in part on other grounds by 20 U.S.C. § 1414(d)(1)(B); *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 910.) The Ninth Circuit has held that a procedural error that causes a loss of an educational opportunity denies a student a FAPE. (*Doug. C. v. Hawaii Depart. of Education* (9th Cir. 2013) 720 F.3d 1038, 1047.) "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for the student 'would have been better considered.'" (*Id.* at p. 1047, quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 657.)

Student did not meet his burden of proving that even if Oakland committed a procedural violation, it substantively denied Student a FAPE.

LOCAL EDUCATIONAL AGENCY RESPONSIBLE FOR PROVIDING FAPE

Under Education Code section 48200, elementary and secondary school students must attend school in the district in which their parent or legal guardian reside and that district is the appropriate local educational agency, called LEA. The LEA is responsible for the provision of FAPE and preparation of an IEP, subject to several specified exceptions. (Ed. Code, §§ 48200, 56028; *B.H. v. Manhattan Beach Unified School Dist.* (2019) 35 Cal.App.5th 563, 571; citing *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54.)

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. (10 U.S.C. § 1415(b)(1); Ed Code, §§ 56304, 56342.5.)

Here, the LEA that owed him a FAPE was North Oakland Community Charter, not respondent. The LEA responsible for developing Student's IEP during the entire time period at issue in this case was North Oakland Community Charter and not Respondent. If Oakland did not owe Student a FAPE, even if it committed a procedural violation, it could not substantively deny Student a FAPE.

This matter is similar to *R.B., ex rel. F.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932. In *R.B.* the school district conducted an initial assessment and determined student was not eligible for special education benefits under the IDEA. (*Id.* at 936.) Student requested a due process hearing based on an alleged procedural violation at the initial IEP team meeting. The hearing officer found that because student

was not eligible for special education services, a procedural violation did not result in a lost educational opportunity. (*Id.* at 937.) The Ninth Circuit found that a child is denied a FAPE only when a procedural violation results in the loss of educational opportunity or seriously infringes the parent's opportunity to participate in the IEP formation process. (*Id.* at 938 citing *W.G. v. Bd. Of Trustees of Target Range Sch. Dist. No 23*, (9th Cir. 1992) 906 F.2d 1479, 1484, superseded in part on other grounds by 20 U.S.C. § 1414(d)(1)(B).) The Court in *R.B.* held that a procedural violation was harmless if student is ineligible for IDEA benefits.

Here, Student disenrolled from Oakland in September 2017. He was ultimately deemed eligible for special education by North Oakland Community Charter on October 25, 2018, where he remained through the time period at issue herein. Oakland was not responsible for providing Student a FAPE while he attended North Oakland Community Charter. As a result, Oakland did not owe Student a FAPE during the 2019-2020 school year through August 12, 2020. Similar to the facts in *R.B.*, if Oakland committed a procedural violation, Oakland could not deprive Student of an educational benefit since it was not responsible for providing a FAPE.

Even if there is a legal theory under which Student could establish Oakland owed him a FAPE, Student did not prove by any credible evidence how or if this procedural violation resulted in the loss of an educational opportunity or seriously infringed Parent's opportunity to participate in the IEP formation process during the 2019-2020 school year, through August 12, 2020. Student failed to prove how a failure to provide the records within five days of the request being made, impeded Parent's opportunity to participate in the decision-making process. Student did not prove that an IEP team meeting was held during the time period in question and whether the absent records hindered Parent from participating in the decision-making process. There was no

evidence of Student being deprived of an educational benefit based on Oakland's failure to provide records.

For the reasons stated above, Student has failed to meet his burden to show Oakland's failure to provide records, if any, in response to Student's attorney's March 13, 2020 request denied him a FAPE during the 2019-2020 school year, through August 12, 2020.

Oakland argued that it was also relieved of responsibility for providing Student records based on emergency legislation passed in response to the COVID-19 pandemic. Based on the holding above, it is unnecessary in this decision to reach a conclusion on whether Oakland was granted an extension between March 18, 2020 to July 1, 2020 based on the waiver granted by the senate bills.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issue 1: Dismissed. This allegation occurred in September 2016 and Student did not prove that his claim was not barred by the two-year statute of limitations. Student did not prove that the exceptions to the two-year statute of limitations applied. Oakland prevailed on Issue 1.

Issue 2(a)-(q): Dismissed. These allegations occurred during the 2015-2016 school year. Student did not prove that his claims were not barred by the two-year statute of limitations. Student did not prove that the exceptions to the two-year statute of limitations applied. Oakland prevailed on Issue 2.

Issue 3(a)-(u): Dismissed. These allegations occurred during the 2016-2017 school year. Student did not prove that his claims were not barred by the two-year statute of limitations. Student did not prove that the exceptions to the two-year statute of limitations applied. Oakland prevailed on Issue 3.

Issue 4(a)-(b): Oakland did not deny Student a FAPE during the 2019-2020 school year, through August 12, 2020 by failing to provide Student's educational records pursuant to the March 13, 2020 request for records. Oakland prevailed on Issue 4.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings