BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022040550

STUDENT

v.

SANTA BARBARA UNIFIED SCHOOL DISTRICT.

JANUARY 27, 2023

CORRECTED DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, known as OAH, State of California, on April 18, 2022, naming Santa Barbara Unified School District and Olive Grove Charter School. OAH continued the matter on May 23, 2022, so that mediation could take place. After rescheduling, mediation was held on August 22, 2022. Student reached a settlement with Olive Grove, and it was dismissed from the case on August 30, 2022. After granting the parties' joint request for a continuance on September 7, 2022, the matter proceeded to hearing.

Administrative Law Judge Chris Butchko heard this matter on November 29, 2022, December 15, 2022, and January 3, 2023. The Administrative Law Judge is called an ALJ.

Attorney Andrea Marcus represented Student. Student attended the hearing days on all days except December 15, 2022.

Attorneys Karen Gilyard and Carlos Gonzalez represented Santa Barbara, with Director of Special Education John Schlettler attending all hearing days on its behalf.

OAH bifurcated the hearing into two phases at the prehearing conference. According to the complaint, Student last attended school in Santa Barbara in October of 2019, more than two years before Student filed the complaint. The first phase of the hearing concerned whether an exception applied to the two-year 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 date the party initiating the request knew or had reason to know of the facts underlying the basis of the request.

On the first day of hearing, Student proposed to present expert testimony on whether Santa Barbara had failed in its duties to identify, locate, and evaluate Student as a child suspected of having a disability, generally called child find responsibilities. Santa Barbara objected, and the ALJ ruled the proposed testimony would not be relevant to the first phase of the hearing, which only concerned whether Student could prove one of the two statutory exceptions to the statute of limitations applied. Student argued that proof depended upon receiving evidence regarding Santa Barbara's failure to meet its child find responsibilities. After discussion, the parties agreed to proceed by briefing the issue of whether expert testimony should be received.

OAH continued the hearing to December 13, 2022, and set a briefing schedule on the issue of expert testimony. After receiving both parties' briefing on December 7, 2022, OAH continued the hearing to December 15, 2022. On December 14, 2022, OAH issued an Order Excluding Expert Testimony, holding that expert testimony would not be helpful in resolving factual issues concerning the application of the statute of limitations. The December 14, 2022 Order Excluding Expert Testimony ordered the first phase of the bifurcated hearing to resume on December 15, 2022, and the parties to "be prepared to present any witnesses they believe[d] [were] necessary to decide the question of Issue One whether Student's claims are barred by the statute of limitations, and, specifically, whether an exception to the statute of limitations exists." When the hearing resumed on December 15, 2022, Student requested a continuance to allow Student to attend the hearing and adjust Student's presentation to the terms of the Order Excluding Expert Testimony. OAH granted the continuance.

The hearing resumed on January 3, 2023. Although the parties had prepared a schedule proposing testimony by 11 witnesses, Student announced at the start of hearing that Student would be the only witness. Student rested after testifying, and Santa Barbara rested after cross-examining Student.

OAH continued the hearing to January 31, 2023, to all the parties to file written arguments on the first phase of the due process hearing. The parties timely filed simultaneous briefs on January 18, 2023. OAH closed record for the first phase of the due process hearing and the matter was 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. The ALJ did not make any substantive changes to the issues.

1. Does an exception to the two-year statute of limitations apply because Parent was prevented from timely requesting the due process hearing because Santa Barbara:
   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 Parent under special education law?
2. From January 2018 through October 31, 2019, did Santa Barbara:
   a. fail in its child find obligations to identify Student as a student with a disability, and/or
   b. fail to offer Student a free appropriate public education by providing a program of services and supports to address her needs resulting from disability?

The bifurcated hearing solely concerned Issue 1. On the second day of hearing, following the ruling excluding expert testimony, Student asserted that Student did not agree that Student's claims would be barred by the statute of limitations if an exception did not apply. OAH held two prehearing conferences in this matter. Following the first

prehearing conference, an order was issued on September 6, 2022, setting forth the issues as described above. That order noted that "[t]he parties agreed and stipulated at the PHC that Student's claims against Santa Barbara would be barred by the statute of limitations if the ALJ finds no exception pursuant to California Education Code section 56505, subdivision (l)."

The parties submitted a joint request for continuance on September 6, 2022, which OAH granted on the following day. OAH held a second prehearing conference on November 18, 2023. The issues for hearing were again discussed with counsel, and the same note regarding the stipulation about the statute of limitations appeared in the second order. Student did not file a request to correct or clarify the issues for hearing, but contends in briefing that Student should be allowed to argue that Student and Parent did not know of the facts underlying the claim against Santa Barbara until consulting with Student's attorney in 2022. Student contends the claims were timely filed without any application of a statutory exception to the statute of limitations.

JURISDICTION

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

This hearing was held under the Individuals with Disabilities Education Act, often referred to as IDEA, its regulations, and California statutes and regulations intended

to implement it. (20 U.S.C. § 1400 et. Seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education 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 free 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 individualized education program. (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).)

The IDEA affords parents, adult students, 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 student, or the provision of a free appropriate public education to a student. (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. The factual statements below constitute the written findings of fact required by the IDEA and California law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was a minor while attending school at Santa Barbara. Student's educational rights were held by Parents during that time. One parent appears to have exclusively interacted with Santa Barbara during the events at issue. Parents have not appeared in this action and did not attend or testify at hearing. Student is now over 18 years of age and holds educational rights.

ISSUE 1: EXCEPTIONS TO THE STATUTE OF LIMITATIONS

Student attended school within Santa Barbara from July of 2007 through October of 2019. Student had high grades in elementary school and put forth excellent effort until middle school, when Student began experiencing anxiety and having trouble focusing on work. Once Student reached high school, it was clearly evident that Student was suffering emotionally in ways that impacted Student's academic performance, as Student showed symptoms of emotional disturbance and need for intervention. In the 2018-2019 school year, Student's sophomore year, Student attempted to commit

suicide by trying to induce suffocation under a pile of pillows. Lisa Howard, Student's academic and mental health counselor at Santa Barbara, suggested Student seek mental health support from Santa Barbara County Alcohol, Drug, and Mental Health Services. Student did so, and Santa Barbara County offered her mental health support.

Santa Barbara County provided Student counseling and medication through a psychiatrist. Through counseling, Santa Barbara County advised Student to seek school-based support from Santa Barbara Unified School District. Student brought a letter written on March 13, 2019, by Student's psychiatrist suggesting that Student receive "accommodations such as a Section 504 plan" to the administration at school. Thereafter, Santa Barbara held a meeting on March 20, 2019, and offered Student academic accommodations pursuant to Section 504 of the Rehabilitation Act of 1973.

Student believed Santa Barbara had done all that it could by providing accommodations such as extra time for assignments and testing. Student knew special education services were provided at Student's school, but Student did not believe that Student would qualify to receive special education. In Student's view, special education was for people with serious disabilities, who "could not walk or talk" and could not function with other students. Student knew there were students who participated in general education who had hearing or vision loss, but believed anxiety and inability to focus would not be sufficient to get special education services. Student offered no evidence regarding what Parent knew or believed on these same topics.

Student disenrolled from Santa Barbara in October of 2019. The two-year statute of limitations period before Student filed the complaint with OAH began on April 18, 2020.

Student consulted with an attorney in 2022, and was told that Student had a viable legal claim against Santa Barbara for failing to identify Student as a child with a disability. Student filed the due process complaint on April 18, 2022.

In previous briefing on the issue of expert testimony, Student contended Santa Barbara withheld information from Parents that it was statutorily required to provide when it failed to provide a statement of parental rights and safeguards to Parents. Student explicitly abandoned that line of argument at hearing and did not raise it in her written closing argument. Instead, Student argues that Student had no idea that Student might be eligible for special education until consulting an attorney in 2022, and therefore Student and Parent could not have known the facts underlying any claim against Santa Barbara until then.

Santa Barbara argues the exceptions to the two-year statute of limitations do not apply, and that Student and Parent should have known about Student's need for special education services from the time Student began receiving mental health services from Santa Barbara County. Santa Barbara argues Student, at the very latest, had all the information needed to file against Santa Barbara by the time Student disenrolled from Santa Barbara in October 2019.

Issue 1 exclusively concerns whether an exception to the two-year statute of limitations applies to Student's claims. Issue 1 was agreed to by Student during two separate PHCs and without subsequent challenge or request for clarification after the PHCs and before hearing. However, in written closing argument, Student does not argue that any exception to the statute of limitations should apply. On that basis, Student concedes Issue 1.

This Decision does not address Issue 2. To create a full record, this Decision considers whether Student and Parents knew or should have known of the facts underlying Student's issues prior to the April 18, 2020 statute of limitations date, without finding that issue properly raised.

STATUTE OF LIMITATIONS UNDER THE IDEA AND CALIFORNIA LAW

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." (*Ibid.*) The IDEA seeks speedy resolution of special education claims and to avoid 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, subd. (*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 a 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(a) & (c).) The clear intent of the IDEA, and its directive to hearing officers, is to ensure that disputes involving children with special needs are resolved promptly and expeditiously so that necessary interventions and supports for children are put in place as early as possible. (*Alexopulos ex rel. Alexopulos v. S.F. Unified Sch. Dist.*, (9th Cir.1987) 817 F.2d 551, 556 ("Congress recognized that it is critical to assure appropriate education for handicapped children at the earliest time possible. Failure to act promptly could irretrievably impair a child's educational progress.").)

G.L. v. Ligonier Valley School Dist. Authority (3d Cir. 2015) 802 F.3d 601 (*Ligonier*) concluded that title 20 United States Code 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." (802 F.3d at p. 616.) Reasonable discovery is understood to be when a person knew or should have known of the facts underlying the claim. The Ninth Circuit Court of Appeals 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 title 20 United States Code section 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*, *supra*, 852 F.3d at p. 943.)

Accordingly, the Ninth Circuit ruled 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 the claims at issue in *Avila* survived 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 the student's claims were barred by 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. Board 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. (*Alexopulos*, *supra*, 817 F.2d at p. 554-555.

["[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 ….. The District's delay in rectifying Alexis' home placement was known to Mrs. Alexopulos at this time. Because she waited six years to assert a claim, the claim is barred."].)

KNEW OR SHOULD HAVE KNOWN

Student argues that Student has not conceded that Student or Parent knew or should have known of the facts underlying Student's due process hearing request more than two years before filing suit. Student argues Parent did not know because Santa Barbara never assessed Student for special education services, never held a meeting to discuss special education eligibility, and never provided a statement of procedural safeguards or rights.

Student reports Parent only became aware that Student might be eligible for special education services after meeting with an attorney in 2022, and only became aware of Student's eligibility for special education after being assessed months later. Student contends the cases finding that parents knew or had reason to know of the facts underlying their claim because their child was struggling academically exclusively involved cases where the child was already receiving special education.

Santa Barbara contends Parent knew Student's emotional difficulties were impacting Student's ability to benefit from education by Student's entry into high school, and from January of 2018 through October of 2019 Student demonstrated that emotional dysregulation severely impacted Student's ability to learn. Santa Barbara

argues the latest possible date that Student could have timely filed an action against Santa Barbara would have been two years after Student stopped attending Santa Barbara's schools in October of 2019.

The law, as set out in *Avila*, *M.M.,* and *Alexopulos*, looks at when a parent knew or should have known the underlying facts and had awareness that a student's needs were not being addressed. Parent knew Student had difficulty in school due to emotional dysregulation when Student was in middle school. Student continued having difficulties through high school and was severely affected by online threats and harassment in January of 2018. The situation reached such severity that Santa Barbara County offered Student mental health services. Parent knew Santa Barbara County was involved because Parent transported Student to the County's mental health services sessions and met with Student's counselors. Parent knew of Student's disabling condition and need for intervention to access education more than two years before Student filed for due process.

Santa Barbara contends that "at the very least" Student knew or should have known everything relating to the claims at issue by the time Student disenrolled. This, however, is exactly the sort of "strict occurrence" rule disavowed by *Avila*. (*Avila, supra,* 852 F.3d at 943.) Just because all the events may have occurred more than two years before Student filed for due process and no further contact or interaction took place afterwards does not mean a parent would have had all information necessary to pursue a claim. Additional information may afterwards come to light that explains, contextualizes, or completes the facts necessary to pursue a claim.

However, Student's characterization of the triggering event for the statute of limitations in this matter is incorrect. Student contends neither Student nor Parent even

suspected Student might be eligible for special education services until meeting with an attorney in 2022. However, they did not produce evidence of what they knew in 2022 when they arranged a meeting with an attorney that they did not know or reasonably have access to in 2019 or by April 18, 2020. Student simply learned that an attorney was willing to pursue a claim against Santa Barbara for the events that took place prior to 2020. Hearing that one has a potentially viable legal claim does not add to the knowledge of facts underlying the request for relief. Parents knew of Student's educational issues and possible need for services due to disability as early as middle school, when Student began receiving mental health services from Santa Barbara County in March of 2019 and certainly by October of 2019, when Student changed schools due to difficulty accessing her education within Santa Barbara.

STUDENT'S AFFIRMATIVE DEFENSE ARGUMENT

Student's written closing argument asserts that Santa Barbara's raising the issue of the statute of limitations constitutes an affirmative defense, placing the burden of proof upon it to show that Student or Parent knew of the facts underlying the claims at issue prior to 2020. Because only Student testified at hearing, and neither parent was called to testify, no evidence was presented about what Parents knew, and there is no evidence contrary to Student's assertion of ignorance about the underlying facts prior to 2022. This, Student argues, means that Santa Barbara has failed to carry its burden on its affirmative defense, and the matter should proceed to the second phase of the hearing on Student's child find claims in Issue 2.

Student's complaint states Student was suffering academically due to anxiety and emotional issues. To establish that Parents knew from middle school that emotional issues and inability to focus were impairing Student's academic achievement, factual

development beyond the pleadings is typically required. "[C]omplaints need not anticipate, and attempt to plead around, potential affirmative defenses." (*Davis v. Indiana State Police*, 541 F.3d 760, 763 (7th Cir. 2008) (*citing Gomez v. Toledo* (1980) 446 U.S. 635, 640). However, the allegations in Student's complaint are judicial admissions, which Student may not disavow. "[A] pleaded fact is conclusively deemed true as against the pleader." (*Dang v. Smith* (2010) 190 Cal.App.4th 646, 657.)

In addition to the statements in Student's complaint, hearing has taken place on Student's claims. Student testified about emotional and academic issues that occurred in middle school and that Santa Barbara reacted only by providing accommodations under Section 504 of the Rehabilitation Act of 1973. Student's issues continued and worsened, to the point where Student disenrolled from Santa Barbara and enrolled in a charter school. All of those events occurred more than two years before Student filed for due process. Those facts were established through Student's testimony and corroborate the allegations in Student's complaint.

Student further testified that Student had no knowledge of what Parent knew. Santa Barbara did not show what Parent knew, but it did not need to do so. A person with "actual notice of circumstances sufficient to put a prudent man upon inquiry" is deemed to have constructive notice of all facts that a reasonable inquiry would disclose. (Civ. Code, § 19; *see Hobart v. Hobart Estate Co*. (1945) 26 Cal.2d 412, 439; 1 Schwing, Cal. Affirmative Defenses (2022 Ed.), § 25:4, pp. 1340–1341 at fn. 28.) What Parent knew is at issue, but so is what Parent should have known. Santa Barbara established through Student's testimony that Parent should have known of Student's condition, academic struggles, and need for additional support and services to access education.

Further, "when a plaintiff relies on the discovery rule or allegations of fraudulent concealment, as excuses for an apparently belated filing of a complaint, 'the burden of pleading and proving belated discovery of a cause of action falls on the plaintiff.'" (*Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1533; *see April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 833 ["It is plaintiff's burden to establish 'facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry.'"].) (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal. App. 4th 166, 174.)

The statute of limitations begins to run when a party is or should have been aware of the facts that would support a legal claim, not earlier, when the act occurred, and not later, when a party learns that it has a legal claim. (*El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039) (discovery rules are designed to "protect those who are ignorant of their cause of action through no fault of their own."). The statute of limitations is triggered when "a plaintiff discovers, or reasonably could have discovered, his claim." (*O'Connor v. Boeing N. Am., Inc.* (9th Cir. 2002) 311 F.3d 1139, 1147.) In the field of special education disputes, California has interpreted that trigger to occur when parents know the education is inadequate, not when parents knew that inadequacy was a legal claim. (*Miller ex rel Miller v. San Mateo-Foster City Unified School Dist.*, 318 F.Supp.2d 851, 861.)

Even if it were proper in this action to consider when Student or Parent knew or should have known the facts forming the basis for Student's claim, Student would not prevail. Claims under the IDEA are known at the time the underlying facts are discovered, not when a party is advised by legal counsel that they have a potentially viable lawsuit. (*Moyer ex rel. Moyer v. Long Beach Unified Sch. Dist.,* (C.D. Cal. Jan. 24,

2013) No. CV 09-04430 MMM AJWX, 2013 WL 271686, at *7-8 ("To accept the argument would expand the exception under § 56505(l) to such an extent that the limitations provision would be meaningless in most instances.")

Pursuant to *Avila*, *MM*, the IDEA, and California law, the statute of limitations starts to run at the time when a parent knows or should have known the underlying facts of a claim and not when advised by an attorney that they have a potentially viable lawsuit. Here, the preponderance of the evidence showed Parent knew or should have known of the underlying facts regarding Student's claims for requiring special education by 2019. Therefore, since Student did not file within two years of that date, Student's claims against Santa Barbara were not timely filed and are barred by the statute of limitations. Because Student did not allege any issues within the two-year statute of limitations, the case is dismissed.

CONCLUSIONS AND 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 the claims against Santa Barbara were exempt from the two-year statute of limitations because either of the two statutory exceptions applied. Therefore, Student's claims were time barred. The parties prevailed on the issues as follows:

ON ISSUE 1:

ISSUE 1(a):

An exception to the two-year statute of limitations does not apply because Parent was not prevented from timely requesting the due process

hearing because Santa Barbara made specific misrepresentations to Parent it had solved the problem forming the basis of the due process hearing request.

Santa Barbara prevailed on Issue 1(a).

ISSUE 1(b):

An exception to the two-year statute of limitations does not apply because Parent was not prevented from timely requesting the due process hearing because Santa Barbara withheld information from Parent that was required to be provided to Parent under special education law.

Santa Barbara prevailed on Issue 1(b).

ON ISSUE 2:

Because Santa Barbara prevailed on Issue 1, OAH did not decide Issue 2. Neither party prevailed on Issue 2.

ORDER

1. The dates currently set for the second phase of the due process hearing regarding Issue 2 are vacated.
2. Student's case is dismissed.
3. All Student's requests for relief are denied.

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).)

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings