BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025050862

DECISION

AUGUST 13, 2025

On May 19, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Mt. Diablo Unified School District, called Mt. Diablo, as respondent. Administrative Law Judge Daniel Senter heard this matter by videoconference on July 8, 2025.

Parent appeared on behalf of Student. Attorney David Mishook represented Mt. Diablo. Ivanna Huthman, Assistant Director of Special Education, attended the hearing on Mt. Diablo's behalf.

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Following conclusion of testimony, the matter was continued to July 21, 2025, to allow the parties to submit written closing briefs. Mt. Diablo timely filed a written closing brief. Student did not file a written closing brief. The record was closed, and the matter was submitted on July 21, 2025.

ISSUES

1. Did Mt. Diablo deny Student a FAPE during the 2024-2025 school year, from April 4, 2025, up to May 19, 2025, by:
    a. Failing to fund independent audiology and psychoeducational assessments or file for due process to defend its assessments, following Parent's April 4, 2025 request; and
    b. Failing to provide timely prior written notice in response to Parent's April 4, 2025 request for independent educational evaluations?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California special education 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, referred to as FAPE, 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. The filing party 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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

In this case, Student had the burden of proof. 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 five years old and entering kindergarten at the time of hearing. Student was eligible for special education under the categories of autism and hearing impairment.

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ISSUE 1a: DID MT. DIABLO DENY STUDENT A FAPE BY FAILING TO FUND INDEPENDENT ASSESSMENTS OR FILE TO DEFEND ITS ASSESSMENTS BASED ON PARENT'S APRIL 4, 2025 INDIVIDUAL EDUCATONAL EVALUATION REQUEST?

Student contends that Mt. Diablo failed to fund independent audiology and psychoeducational assessments, or file for due process to defend its October 2022 assessments, following Parent's April 4, 2025 independent educational evaluation, also known as IEE, request. Student asserts that the statute of limitations does not bar her claim.

Mt. Diablo asserts that Student's independent educational evaluation request was not a disagreement with the 2022 assessments. Rather Student sought updated present levels of performance to provide to a private school to which Student was applying. Mt. Diablo contends that Parent's independent educational evaluation request was therefore not for a purpose permitted under the IDEA. Mt. Diablo also contends Student's independent educational evaluation request was barred by the two-year statute of limitations. Accordingly, it was not required to fund the requested assessments or file for due process to prove they were appropriate.

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 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 (2007), 300.321 (2007), and 300.501 (2006).)

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 Cnty. School. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

STUDENT DISAGREED WITH MT. DIABLO'S ASSESSMENTS

The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1) (2006); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) To obtain an independent educational evaluation, the parent must disagree with an evaluation obtained by the public agency and request an independent educational evaluation at public expense. (34 C.F.R. § 300.502(b)(1).)

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. § 300.502(a)(3)(i).) A parent is entitled to only one independent educational assessment at public expense each time the public education agency conducts an assessment with which the parent disagrees. (34 C.F.R. § 300.502(b)(5); Ed. Code, § 56329, subd. (b).)

Here, Parent established he disagreed with Mt. Diablo's October 2022 audiology and psychoeducational assessments. On April 4, 2025, Parent requested independent psychoeducational and audiology educational evaluations by email to Mt. Diablo. On April 15, 2025, Mt. Diablo inquired by email with which assessments Parent disagreed.

The same day, Parent responded by email, specifically noting, "I disagree with the district's psychoeducational assessment" and also explaining he wanted the independent psychoeducational evaluation because Parent, "believe[d] a more comprehensive and independent evaluation is needed to accurately determine [Student's] learning profile and appropriate level of support."

Within Parent's same April 15, 2025 email, Parent also disagreed with Mt. Diablo's most recent audiology assessment, stating, "I do not agree with the recommendation for use of a HAT device." Parent explained he wanted an independent audiology evaluation "to determine whether such a device is educationally necessary and whether [Student's] current hearing support needs are being appropriately interpreted."

In its closing brief, Mt. Diablo asserted that Parent's disagreement was not with the 2022 assessments but with the lack of updated levels of performance for purposes of enrollment in a private school. Mt. Diablo contended that Parent's independent educational evaluation request was therefore not for a purpose permitted under the IDEA. Mt. Diablo's argument is unpersuasive, as it ignores that Parent expressed disagreement with the assessments.

Here, Parent disagreed with Mt. Diablo's October 2022 audiology and psychoeducational assessments. That Parent provided additional context for disagreement, should not disqualify Parent from requesting an independent educational evaluation. The IDEA does not require a Parent to explain their purposes for requesting an independent educational evaluation to the school

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district. (34 C.F.R. § 300.502(b)(4) [A school district is permitted to ask for the parent's reason why they object to the public evaluation, but the public agency "may not require the parent to provide an explanation."].) Accordingly, Parent's willingness to provide an explanation should not be used to invalidate his request.

Following the student's request for an independent educational evaluation, the public agency must, "without unnecessary delay," either:

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

This obligation is commonly referred to as a school district's duty to "fund or file."

Student disagreed with Mt. Diablo's assessments and requested independent educational evaluations. Student established she provided Mt. Diablo a legally sufficient independent educational evaluation request.

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THE STATUTE OF LIMITATIONS WAS NOT A DEFENSE TO FUND OR FILE

Mt. Diablo contends that it was not required to fund the independent evaluations or file for due process to defend its own assessments because the two-year statute of limitations had run on Student's right to dispute the October 2022 assessments. Mt. Diablo argues that the two-year statute of limitations began to run in October 2022 when Parent had knowledge of the assessments, and thus, Parent needed to express his disagreement with the October 2022 assessments within two years. Because Parent waited until April 2025 to request independent educational evaluations, Mt. Diablo asserts that Student's request was untimely, and Mt. Diablo did not need to fund or file.

Student contends that her independent educational evaluation request was timely. Student asserts that the right to disagree with an evaluation exists so long as the assessment is used to make decisions affecting the child. Student's argument is predicated on the legal theory that she is entitled to an independent educational evaluation based on a disagreement with the most current assessment. Student did not dispute that she is entitled to seek only one independent educational evaluation at public expense each time the district conducts an assessment.

Mt. Diablo did not meet its burden that the statute of limitations was a defense to not fund or file. However, as discussed more fully below, Student did not meet her burden that Mt. Diablo's procedural violation resulted in a substantive FAPE violation. Accordingly, Student's request for independent educational evaluations is denied.

Mt. Diablo had the burden of proof to establish its affirmative defenses. (Evid. Code § 500. ["[A] party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."]) The IDEA allows states to establish their own statute of limitations for special education cases. (20 U.S.C. § 1415(b)(6)(B) and (f)(3)(C).) In California, a request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l).) Federal law also includes a two-year statute of limitations to file a request for a due process hearing. (See 20 U.S.C. § 1415(f)(3)(C).)

The IDEA provides for reevaluations to be conducted no more frequently than once a year, but at least once every three years, unless the parents and the agency agree that it is unnecessary. (20 U.S.C. §§ 1414(a)(2)(B)(ii), 1414(c)(4); 34 C.F.R. § 300.303(b)(2) (2006); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) A school district must also conduct a reassessment if it determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R § 300.303(a)(1) (2006); Ed. Code, § 56381, subd. (a)(1),(2).)

Here, Mt. Diablo failed to identify any precedential or persuasive legal authority that a school district need not fund or file in response to a parent's IEE request, where that request expresses disagreement with the most recent assessment and parent has not previously received an independent educational evaluation for that assessment. In its closing brief, Mt. Diablo cited a 1990 opinion of the Office of Special Education Programs ("OSEP"), the federal agency charged with developing the regulations for implementation of the IDEA, called *Letter to Thorne*. ((OSEP February 5, 1990) 16 IDELR

606, 16 LRP 838 (*Letter to Thorne*).) Mt. Diablo asserts *Letter to Thorne* stands for the proposition that a school district is not obligated to fund independent educational evaluations or file to defend assessments when the request for assessment is made more than two years after the completion of the assessments. *Letter to Thorne* is unpersuasive as it does not unambiguously stand for that proposition, apply to the facts of this case, or serve as binding authority.

OSEP's *Letter to Thorne* is not binding authority.

> "The IDEA expressly provides that informal guidance letters are 'not legally binding' … and that the Secretary 'may not issue policy letters … that … establish a rule that is required for compliance with … this chapter without following the' rule-making requirements of the Administrative Procedure Act. …"

(*J.M. by and through Mandeville v. Matayoshi* (9th Cir. 2018) 729 Fed.Appx. 585, 586.) In concluding that U.S. Department of Education informal guidance letters are not legally binding, the Ninth Circuit Court of Appeals has stated that, "holding otherwise would create an unfair surprise for regulated parties because the guidance would create new duties beyond those currently imposed." (*Csutoras v. Paradise High School* (9th Cir. 2021) 12 F.4th 960, 968.)

Letter to Thorne is also distinguishable from this case. The answer to question five in *Letter to Thorne*, as well as the answer to question eight, which directs the reader back to five, relates to the original question posed in five. The question specifically asked,

> "[a]fter a parent has received reimbursement for an independent evaluation in year three of a three year evaluation cycle, is the public

> agency required to pay for parent initiated independent evaluations… which were performed during years one and two of the evaluation cycle?"

(*Letter to Thorne, supra,* 16 IDELR 606, at p. 3.) Mt. Diablo seems to rely heavily on the limited portion of the guidance specifying,

> "[i]n the situation presented by your inquiry, however, it would not seem unreasonable for the public agency to deny a parent reimbursement for an IEE that was conducted more than two years after the public agency's evaluation. Therefore, it would not be necessary for the public agency to initiate a hearing in this situation."

(*Ibid.)* Mt. Diablo's narrow interpretation of the guidance is not persuasive.

The facts here are distinguishable from *Letter to Thorne*. Here, Parent requested independent educational evaluations at public expense disagreeing with the most recent assessments. Parent did not unilaterally obtain multiple independent educational evaluations, then request reimbursement for the older ones after already being reimbursed for the most recent independent evaluation. *Letter to Thorne* was also not written under the current IDEA, but under the regulations that applied to the predecessor to the current IDEA. Mt. Diablo fails to explain how, despite these differences, *Letter to Thorne* applies to the instant case.

Even if *Letter to Thorne* is considered, OSEP's answers to question five and eight are ambiguous. Because OSEP restates the original question number five in different ways within its answer, it is unclear whether OSEP is answering a question about the timing of a request for an independent educational evaluation, or the reasonableness of a school district's denial of a request for reimbursement after it has already reimbursed a parent for an evaluation, or both. The clearest statement about the timing for a

request for reimbursement in *Letter to Thorne* is: "The EHA-B regulations do not establish timelines regarding how long after receiving the results of a child's public agency evaluation a parent can wait to request reimbursement for an IEE." (*Letter to Thorne, surpra*,16 IDELR 606, at p. 3.)

However, this statement does not support Mt. Diablo's argument that there is such a timeline, and is instead consistent with the current IDEA regulation, 34 Code of Federal Regulations, part 300.502, that does not establish a time limit for requesting an independent educational evaluation.

Letter to Thorne is not binding authority. Moreover, neither the question posed nor the answer given expressly addressed the statute of limitations. Accordingly, it does not establish that the statute of limitations barred Student's independent educational evaluation request and permitted Mt. Diablo not to fund or file. (See *William S. Hart Union High School. Dist. v. Romero,* (C.D. Cal. Apr. 9, 2014, CV-13-3382-MWF (PLAx), 2014 WL 12493766, at *4 (*Romero*) [declining to adopt OSEP's interpretation in *Letter to Thorne*].)

Mt. Diablo also offers two OAH Decisions, *Placentia-Yorba Linda Unified School District v. Parents* (2012) OAH Case No. 2012051153, (*Placentia-Yorba Linda*); and *Student v. Sulfur Springs School District* (2014) OAH Case No. 2013100027 (*Sulfur Springs*), as support for its contention that it need not fund or file in response to an independent educational evaluation request made more than two years after an assessment. Neither case was precedential, as prior OAH rulings may be considered as persuasive, but are not binding authority. (Govt. Code § 11425.60; tit. 5, Cal. Code

Regs., § 3085.) Also, neither case explicitly considered the text of 34 Code of Federal Regulations, part 300.502, which does not specify a time limit on Parent's right to request an independent evaluation request.

This finding is supported by *Romero*, a United States Central District Court decision issued shortly after *Sulfur Springs*. (*Romero*, *supra*, 2014 WL 12493766, at *4.) In *Romero*, the Court found *Letter to Thorne*, "difficult to reconcile with the text of § 300.502(b)," as it "provides no guidance on why a district would be entitled to deny a parent's request for IEE reimbursement when the IEE occurred more than two years after the original evaluation." (*Ibid.*) With regard to *Placentia-Yorba Linda,* the Central District offered that "the ALJ simply determined that the two-year statute of limitations applicable to requests for due process hearings also applies to requests for an IEE." (*Ibid.*) In *Romero*, the Court found that 34 Code of Federal Regulations, part 300.502 "states no limitation on when a parent can request an IEE, and appears to require an objecting district to present its defenses via a due process complaint and hearing." (*Ibid.*)

Finally, Mt. Diablo argues that if Parent's position were accepted, there would be no limit on when a parent could request an independent educational evaluation. In its closing brief, Mt. Diablo asserts Parent's position is effectively a theory of "continuing violation," which is not recognized under the IDEA. Mt. Diablo's argument is that the statute of limitations should be applied to prevent endless litigation and litigation on stale claims.

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The ALJs in *Placentia-Yorba Linda* and *Sulfur Springs* raised similar concerns.The ALJ in *Placentia-Yorba Linda* reasoned that since the purpose of an independent educational evaluation is to "permit a parent to challenge test results and recommendations on *present* district assessment findings," it would "serve no purpose to challenge an assessment so old it no longer applied to a child because it no longer addressed the child's present abilities and unique needs." (*Placentia-Yorba Linda*, *supra*, at p. 9 (emphasis original).) The ALJ further cautioned, "[d]istricts conceivably would have to litigate the appropriateness of assessments long since superseded by more recent assessments …." (*Id.* at pp. 9-10.) *Sulfur Springs* cites the same concerns from *Placentia-Yorba Linda*. (*Sulfur Springs*, *supra*, at p.11.)

Here, the policy concerns raised by Mt. Diablo and discussed in *Placentia-Yorba Linda* and *Sulfur Springs* are not persuasive in finding that the statute of limitations applies in this case. In this case, Parent disagreed with Mt. Diablo's most recent assessment prior to Student's next triennial reevaluation deadline of October 21, 2025. In addition, Parent had not previously been granted an independent educational evaluation in connection with Student's most recent evaluation. Neither *Placentia-Yorba Linda* nor *Sulfur Springs* reconciles why at two years an assessment should be considered "so old it no longer applies to a child," for the purposes of requesting an independent evaluation, while a district may still rely on it until the Student is reevaluated. Indeed, that reasoning runs counter to the statutory timeline for reevaluations which must be conducted at least once every three years, unless the parents and the agency agree that it is unnecessary, and a school district's obligation to reevaluate a child if it believes a reevaluation is warranted. (See 20 U.S.C. §§ 1414(a)(2)(B)(ii),20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1),(2).)

The reasoning is also at odds with the IDEA's intent to involve parents in the IEP process and the purpose of independent evaluations. The United States Supreme Court in *Schaffer* found that the core of the IDEA

> "is the cooperative process that it establishes between parents and schools …. IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion."

(See *Schaffer, supra,* 546 U.S. at pp. 53, 60-61.) Here, because the independent educational evaluations were requested prior to Student's next triennial reevaluation, and because Parent had not already obtained an independent evaluation, the timing of Parent's request was consistent with the purpose of an independent educational evaluation, to allow a parent access to an expert and ensure that both assessments may be considered in crafting an IEP.

The Central District in *Romero* addressed similar concerns raised by the school district that absent the application of the statute of limitations, parents could be entitled to independent educational evaluations for assessments conducted many years earlier that had been superseded by reevaluations. (*Romero*, *supra*, 2014 WL 12493766, at *6.) The Court's response in *Romero* was twofold. First, it offered that although there is no binding authority that the two-year statute of limitations applies to a parent's independent educational evaluation request, a "court faced with a parent's delay of over two years could avoid the purportedly absurd result by applying a two-year limitations period." (*Ibid.*) Here, as determined above, Parent requested independent educational evaluations within the three-year assessment cycle and had not previously obtained an independent evaluation at public expense, so no absurd result exists to justify limiting the right to two years.

Second, the Central District in *Romero* offered that a parent's right to an IEE may be limited by tethering it to the frequency with which the Student is reevaluated: "when a public agency determines that an original evaluation is stale and conducts a reevaluation, the parent's disagreement with the original evaluation does not provide him or her with the right to an IEE at public expense." (*Romero*, *supra*, 2014 WL 12493766, at *7.) For example, if a student were evaluated every three years according to the default timeline, a parent would need to request an independent educational evaluation before the next triennial evaluation. However, if a student were evaluated more frequently, the parent would need to disagree before the next scheduled evaluation. In both cases, a parent would only be entitled to one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. (34 C.F.R. § (b)(5).)

Here, challenging an assessment after it has been superseded by a reevaluation was not at issue, because Student was not due for reevaluation until October 21, 2025. Nonetheless, this response in *Romero* may reconcile the ambiguity in *Letter to Thorne* and the concerns identified by Mt. Diablo and in the OAH cases, by limiting a parent's right to request an independent educational evaluation according to the frequency with which the Student is evaluated, rather than by applying a statute of limitations that, by its terms, applies to due process hearings, not to independent evaluation requests. (*Romero*, *supra*, 2014 WL 12493766, at *7.)

Although Parent filed a request for due process in this case, Parent does not challenge the legal compliance of Mt. Diablo's 2022 assessments. Rather, Parent challenges Mt. Diablo's refusal to fund an independent evaluation or file for due process to defend its assessments based on Parent's April 4, 2025 request.

Mt. Diablo failed to persuasively establish that:

(i) the statute of limitations governing a challenge of the legal compliance of its October 2022 assessments also applies here where Parent's legal claim is Mt. Diablo's failure to fund or file; and

(ii) that the statute of limitations on Parent's due process claim began to run in October 2022 rather than April 4, 2025 when Parent requested the independent evaluations.

(See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039 [the statute of limitations begins to run when a party is aware of the facts that would support a legal claim]; *see also D.S. v. Trumbull Board of Education.*, (2d Cir. 2020) 975 F.3d 152, 169 [where a parent files a due process request to seek an independent educational evaluation based on an alleged failure to fund or file, "the two-year statute of limitations for filing that due process complaint would run from the date of the statutory violation, not the date on which the contested evaluation was conducted"].)

Moreover, Mt. Diablo failed to offer any binding or persuasive legal authority that 34 Code of Federal Regulations, part 300.502, permitted it to pursue a third option of issuing a prior written notice in lieu of fulfilling its obligation to fund or file in this case. As determined in *Romero*, if Mt. Diablo believed it had defenses to raise, 34 Code of Federal Regulations, part 300.502, "appears to require an objecting district to present its defenses via a due process complaint and hearing." (*Romero*, *supra*, 2014 WL 12493766, at *4.)

A review of the United States Department of Education's comments to the IDEA federal regulations, further indicates that the burden was intentionally placed on the

district, rather than the parent, to file for due process to defend its assessment. (U.S. Dept. of Education, Off. of Special Education and Rehabilitative Services, Final Regs., Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, Analysis of Comments and Changes, comments to 34 C.F.R. § 300.502, 64 Fed. Reg. 12406, 12607 (March 12, 1999)

> ["The purpose of requiring the public agency to either initiate a due process hearing if it wishes to challenge a parent's request for an IEE, or otherwise provide an IEE at public expense, is to require public agencies to respond to IEE requests …. There is no corresponding need to specify that a parent also has the right to initiate a due process hearing since if a public agency does not do so it must provide the IEE at public expense.").]

For all these reasons, Mt. Diablo failed to meet its burden by a preponderance of the evidence that the statute of limitations is a defense for Mt. Diablo not fulfilling its obligation to fund or file in response to Student's independent educational evaluation request.

MT. DIABLO'S PROCEDURAL VIOLATION DID NOT CONSTITUTE A DENIAL OF FAPE

Mt. Diablo's failure to fund independent educational evaluations or file for due process to defend its own assessments constituted a procedural violation. A denial of FAPE resulting from a procedural violation only exists if it is established that the procedural violation impeded the child's right to a free appropriate public education, significantly impeded parents' opportunity to participate in the development of Student's IEP, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R.

§ 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j); See *Doug C. v. Hawaii Dept. of Educ.,* (9th Cir. 2013) 720 F. 3d. 1038, 1046.) Here, the question is whether Mt. Diablo's failure to fund Student's requested independent assessments or file to defend the assessments with which Parents disagreed resulted in a denial of FAPE.

Parent requested the independent evaluations on April 4, 2025. Parent filed this case on May 19, 2025. For purposes of determining whether the procedural violation rose to a denial of FAPE, the issue of whether Student was denied access to her education or whether Parents were denied a meaningful opportunity to participate in Student's IEP development process between April 4, 2025, and May 19, 2025, must be reviewed.

Student did not meet her burden that Mt. Diablo's procedural violation resulted in a denial of access to a FAPE. At hearing, Parent stated that Student was attending private school. Parent offered no evidence or expert opinion that Mt. Diablo's failure to fund the requested independent educational evaluations or file to defend the assessments resulted in Student's denial of access to a FAPE.

Student also did not meet her burden that Mt. Diablo's procedural violation significantly impeded Parent's opportunity to participate in the development of Student's IEP. The evidence established Parent sought updated assessment information to enroll Student in private school. Student had been accepted into private school, and Parents were still determining whether Student would attend private school or a Mt. Diablo school for the 2025-2026 school year. Neither parent nor any expert established that Mt. Diablo's failure to fund or file adversely impacted Parent's ability to participate in the development of Student's IEP.

Parent requested an independent audiology evaluation and an independent psychoeducational evaluation. Because Parent failed to prove there was a substantive FAPE violation, Parent is not entitled to the requested independent educational evaluations.

Despite this, Mt. Diablo offered to reevaluate Student, when it provided an assessment plan to Parent in its May 14, 2025 prior written notice. Nothing in this decision restricts Parent's ability to consent to that assessment plan.

ISSUE 1b: DID MT. DIABLO DENY STUDENT A FAPE BY FAILING TO TIMELY PROVIDE PRIOR WRITTEN NOTICE IN RESPONSE TO PARENT'S APRIL 4, 2025 IEE REQUEST?

Prior written notice is required to be given by the public agency to parents of a child with exceptional needs upon initial referral for assessment, and a "reasonable time before" the public agency initiates or changes, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or provision of FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503; Ed. Code, § 56500.4, subd. (a).)

The procedures for written notice, "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H. v. Cape Henlopen School Dist*. (3d. Cir. 2010) 606 F.3d 59, 70).) The determination of what constitutes a "reasonable time" may depend on the circumstances of the situation and what will enable parents an opportunity to object or otherwise respond. (See, e.g., *Student v. Roseville Joint Union High School District* (2017) OAH Case No. 2017070292.)

Here, Parent initially requested independent educational evaluations on April 4, 2025. On May 14, 2025, Mt. Diablo sent Parent a prior written notice denying the independent educational evaluation request.

In response to a request for an independent educational evaluation, Mt. Diablo was required to fund the evaluation or to file to defend its earlier assessments. While it is true that Mt. Diablo chose to send a prior written notice in response, Student did not establish that such notice was legally required or appropriate.

Student also did not establish that a refusal to fund an independent educational evaluation or to file to defend a district's own assessments is a refusal to assess. In fact, Mt. Diablo provided Parent with an assessment plan to conduct Student's reevaluation within its May 14, 2025 prior written notice.

As discussed at length above, an independent educational evaluation contains its own binary requirement on the school district to fund or file, and sending a prior written notice in lieu of one of those options was not an available response in this case. Here, where a prior written notice was not shown to be legally required, it cannot be deemed late.

In the five-and-one-half weeks between Parent's request and the prior written notice, the parties engaged in an email exchange seeking clarification of the request. Thus, even if a prior written notice had been needed, Student failed to offer any facts or legal authority that Mt. Diablo's prior written notice was untimely.

For these reasons, Student failed to prove a denial of FAPE on this issue.

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:

ISSUE 1.

Did Mt. Diablo deny Student a FAPE during the 2024-2025 school year, from April 4, 2025, up to May 19, 2025, by:

ISSUE 1a:

Failing to fund independent audiology and psychoeducational assessments or file for due process to defend its assessments following Parent's April 4, 2025, request; and

Mt. Diablo prevailed on issue 1a.

ISSUE 1b:

Failing to provide timely prior written notice in response to Parent's April 4, 2025, request for independent educational evaluations?

Mt. Diablo prevailed on issue 1b.

ORDER

1. Mt. Diablo is not required to fund independent audiology and psychoeducational assessments at public expense.

2. All other requests for relief are denied.

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.

Daniel Senter
Administrative Law Judge
Office of Administrative Hearings