State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 00298-21

AGENCY DKT. NO. 2017-25520

L.W.,

Petitioner,

v.

JERSEY CITY BOARD OF EDUCATION,

Respondent.

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Anastasia P. Winslow, Esq., for petitioner

Cherie L. Adams, Esq., for respondent (Adams, Gutierrez, Lattiboudere, LLC, attorneys)

Record Closed: July 15, 2022 Decided: August 9, 2022

BEFORE **BARRY E. MOSCOWITZ**, Acting Director and Chief ALJ:

STATEMENT OF THE CASE

On December 19, 2016, L.W. filed a complaint that Jersey City violated the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482, when L.W. knew or should have known that the alleged violation was May 12, 2012. Did L.W. file her complaint within the statute of limitations? No. Under 20 U.S.C. § 1415(f)(3)(C), a parent

shall file a complaint within two years of the date the parent knew or should have known of the alleged violation.

PROCEDURAL HISTORY

On December 19, 2016, L.W. filed a complaint, a request for a due-process hearing, with the Department of Education, Office of Special Education Programs (OSEP).[1] In her complaint, L.W. alleges, among other things, that from 1997 to 2008, Jersey City failed to identify and evaluate her for special education and related services, and as a result, failed to provide her with special education and related services during this time, all in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482. L.W. also alleges that Jersey City withheld information from her and her parents and misrepresented information to her and her parents about special education and related services in violation of the IDEA.

To remedy these alleged violations, L.W. seeks a complete copy of her educational records, a comprehensive evaluation of her educational needs, an individualized education program (IEP), transition services, an award of compensatory education, and attorney fees.

On January 20, 2017, OSEP transmitted the case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

The case was assigned to the Honorable Ellen S. Bass, ALJ, for hearing. On February 21, 2017, Jersey City moved for summary decision, asserting that the complaint was filed outside the statute of limitations. On March 10, 2017, L.W. cross-moved for summary decision, asserting that exceptions applied.

[1] OSEP is now known as the Office of Special Education but will be referred to as OSEP in this decision as it was known at the times in question.

On May 30, 2017, Judge Bass granted Jersey City's motion for summary decision and dismissed the case. On August 27, 2017, petitioner appealed the decision to federal court. On July 23, 2018, the Honorable Susan D. Wigenton, USDJ, remanded the case. In her remand, Judge Wigenton wrote that the record is unclear who had decision-making authority for L.W. at the times in question. As a corollary, Judge Wigenton wrote that she could not determine whether L.W. has standing to file this petition. To clarify or complete this record, Judge Wigenton remanded the case for a determination about what L.W. knew or should have known regarding her eligibility for special education and related services at the times in question.

On January 12, 2021, OSEP again transmitted the case to the OAL as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

On January 27, 2021, L.W. moved for Judge Bass to recuse herself from the case, which she did by order dated February 18, 2021, and the case was reassigned to me for hearing.

After a protracted period of additional discovery, including a desire to obtain additional records from the Department of Children and Families, as well as extensive conferencing concerning the issues for trial, the hearing was finally held on the requested dates: November 15, 2021, November 23, 2021, December 10, 2021, and January 12, 2022.

After the hearing, the parties requested the opportunity to submit proposed findings and fact and conclusions of law in post-hearing briefs, which I granted, and the parties agreed to their own briefing schedule. On April 4, 2022, Jersey City submitted its post-hearing brief, and on April 22, 2022, L.W. submitted her post-hearing brief in opposition to it. On May 16, 2022, respondent submitted its reply, and on May 31, 2022, L.W. submitted her sur-reply. On July 15, 2022, I closed the record.

FINDINGS OF FACT

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

PART ONE

I.

L.W. is twenty-eight years old. She was enrolled in the Jersey City public schools from kindergarten through ninth grade, from the 1999–2000 through the 2009–2010 school years, after which she dropped out of school. L.W. was sixteen years old at the time and beyond the age for compulsory education. The circumstances surrounding her dropping out of school are the subject of this case.

A.

The year before L.W. dropped out of school, on October 9, 2008, the Superior Court, Chancery Division, Family Part (family court), ordered Jersey City to evaluate L.W. for special education and related services. On October 27, 2008, H.W., L.W.'s mother, acknowledged receipt of the New Jersey Department of Education's handout, the "Parental Rights in Special Education" (PRISE), which apprised H.W. of her procedural rights under the IDEA, and H.W. provided consent for the evaluations, which took place immediately. In fact, on that date, L.W. participated in the first of the evaluations, a Social Assessment by Dona Caamano, a school social worker.

Significantly, H.W. had legal custody of L.W. and legal authority over her education. Reference is made to two family-court orders, one dated May 3, 2008, R-2, and the other dated April 23, 2009, R-28. While L.W. was under the care and supervision

of the Department of Youth and Family Services (DYFS),[2] the legal authority over her education remained with H.W. Nothing in the record indicates otherwise.

On December 16, 2008, L.W. participated in a Psychological Evaluation by Kristen Burke, Ph.D., a school psychologist, and an Education Assessment by Jean Carne, LDT-C, a learning disabilities teacher-consultant, who was also the case manager for L.W.

Finally, on January 6, 2009, L.W. participated in an Audiologic Evaluation by Kirk Knutsen, M.S., CCC-A, a certified audiologist.

On January 13, 2009, Jersey City provided notice to both H.W. and L.W. for an initial-eligibility and IEP-team meeting, which was to take place the following week, on January 20, 2009, at Public School No. 4 (PS#4).

On January 20, 2009, L.W. attended the meeting with Michael LoCicero, L.W.'s caseworker, who would later testify at the hearing, and Maxine Bradshaw, Ph.D., L.W.'s mental-health counselor. Also in attendance were Debbie Ganesh, L.W.'s guidance counselor and home instructor, as well as Carne, L.W.'s case manager and LDT-C. H.W., however, was sick and could not attend. As a result, the meeting was rescheduled for January 27, 2009, with H.W. to participate by phone.

On January 20, 2009, Jersey City provided the official notice to both H.W. and L.W., together with another PRISE, and on January 27, 2009, the meeting took place with all in attendance, except for H.W., who hung up on Carne when she called H.W. for her to participate. Also in attendance was Alma Baker, a case manager from the Youth Consultation Services, who worked with LoCicero and Bradshaw. Based upon the evaluations Jersey City had performed, Jersey City had concluded that L.W. was eligible for special education and related services under the eligibility classification "specific learning disability" and presented an IEP for L.W., covering the annual period February 4, 2009, to January 26, 2010.

[2] DYFS is now known as the Division of Child Protection and Permanency but will be referred to as DYFS in this decision as it was known then.

Neither H.W. nor her husband, however, consented to the implementation of the IEP. In an internal case note dated January 27, 2009, Jersey City wrote, "Since parent retains legal custody and consent was not given, the case should be closed." Thus, Jersey City closed the case.

A note from LoCicero memorialized the same. In a contact sheet dated January 27, 2009, LoCicero wrote, "When she was contacted by the child study team, she hung up the phone and refused to give her consent to [L.W.'s] IEP or talk to the team." He also wrote that L.W. did not want to return to school.

On February 5, 2009, Jersey City wrote to LoCicero to have DYFS pursue this lack of consent or failure to implement in family court with the judge assigned to the case. Enclosed with the letter was the proposed IEP. Meanwhile, L.W. received home instruction through the end of the school year.

B.

Since her parents did not consent to the implementation of the IEP, and in the absence of any court intervention, L.W. began ninth grade, the 2009–2010 school year, in the general-education setting, still receiving home instruction. L.W. continued on home instruction until May 12, 2010, when L.W., who had turned sixteen years old and was beyond the age for compulsory education, dropped out of school. On May 13, 2010, in accordance with that choice, Jersey City unenrolled L.W. from its schools. In 2011, L.W. moved out of Jersey City.

II.

For twenty years, from 2000 to 2020, Michael LoCicero was a family service specialist in the Permanency Unit of DYFS, and for the bulk of the relevant time period in this case, from 2008 to 2010, LoCicero was the caseworker assigned to L.W. and her family.

LoCicero was a terrific witness. He remembered L.W. and her family well. He also remembered their situation with genuine caring and concern. In short, LoCicero was a highly credible, trustworthy, and reliable witness. Indeed, the State of New Jersey was lucky to have such a dedicated worker in its employ for so many years.

For me, his testimony provided the backbone of this case.

A.

By way of background, LoCicero went to college for social work and received training at DYFS in special education. For the particulars of this case, LoCicero testified that he completed contact sheets for every interaction, and he used the contact sheets during the hearing to refresh his recollection. Once his recollection was refreshed, LoCicero had good recall of the information contained in those contact sheets, and his testimony provided assurances of their reliability.

To begin, LoCicero testified that he was assigned to L.W. and her family because the family was having difficulties. The father had issues with drug abuse, and the mother had issues with mental health and alcohol abuse. LoCicero explained that the priority of DYFS was to ensure the safety of the child, and that the goal of DYFS was to keep the family intact. This was his charge. Toward this end, DYFS offered L.W.'s father substance-abuse treatment, but L.W.'s father did not avail himself of it, which left L.W.'s father essentially absentee. L.W.'s mother, however, remained involved. Unfortunately, L.W. and her mother did not get along.

L.W. was not an only child. She was one of ten, but at this time, only she and her two younger brothers lived at home. All the other siblings were older and lived outside the home.

LoCicero testified that L.W. did not want to go to school. He explained that hygiene was a problem for L.W., who was in eighth grade at the time, and that L.W. did not want to go to school because she said that the teachers and students made fun of her appearance. LoCicero further explained that he developed a good relationship with L.W.,

and that through his aegis, DYFS decided to offer additional support. As a result, DYFS provided Bradshaw, who could help the family with family relationships and L.W. with personal issues. DYFS also provided an adult mentor, who could take L.W. away from the family on weekends as a respite. Moreover, DYFS informed the child study team of the situation and requested home instruction—which Jersey City granted and provided through Ganesh.

LoCicero testified that L.W. responded positively to both Ganesh and Bradshaw. LoCicero explained that Bradshaw helped L.W. with her self-image and coping skills, and that both Bradshaw and Ganesh helped L.W. address her school refusal. LoCicero further explained that it was understood by all that this home instruction was not to be a permanent feature—that it could not and would not continue indefinitely. LoCicero emphasized that the goal was always for L.W. to return to school. Nevertheless, LoCicero recounted that L.W. was "adamant" about not returning to school—asserting that she would "never" return.

For his part, LoCicero testified that he would not and did not discuss a return to school until the additional evaluations were completed. LoCicero added that the parents remained challenging. He also noted that the family court—other than ordering the evaluations—did not intervene.[3]

B.

While this backdrop provided the context, the contact sheets provided the timing. From a contact sheet dated March 28, 2008, LoCicero testified that the W family was a "high-risk family," so he would make both announced and unannounced visits. This visit was his minimum, monthly visit, which was announced. The contact sheet notes that at this time, all the children were going to school, and that L.W. benefited by talking to her mentor about school and her mother. The contact sheet also notes that everyone was groomed and dressed appropriately.

[3] The family court would later order an increase in the home instruction and the conduct of the evaluations.

By April 17, 2008, L.W. no longer wanted to go to school. According to the contact sheet from that date, H.W. reported that L.W. refused to go to school regularly, but H.W. did not know why. L.W. did not want to live with H.W. anymore either. She wanted to move to Bayonne, New Jersey, to live with her sister. In fact, H.W. reported that her eldest daughter wanted to adopt L.W., and that H.W. thought it was a good idea.

On May 22, 2008, LoCicero made an unannounced visit. According to the contact sheet from that date, LoCicero asked L.W. why she did not want to go to school, but L.W. did not respond, so LoCicero asked if she wanted home instruction. L.W. said that she did and that she would comply with it.

From a contact sheet dated May 29, 2008, LoCicero testified that Jersey City enrolled L.W. in a Better Choices program and provided her with home instruction, but he did not recall anything about the reference to the court order in the contact sheet or whether L.W. attended the Better Choices program.

On May 30, 2008, LoCicero wrote a letter to Jersey City. In that letter, LoCicero asked Jersey City on behalf of L.W. for Jersey City to provide a 504 plan for L.W. and to develop an alternative educational plan for her. Although LoCicero had no specific recall of this letter, his letter specifies that he asked Jersey City to enroll L.W. in a Better Choices program and to provide L.W. with home instruction.

On June 6, 2008, LoCicero made another unannounced visit. According to the contact sheet from that date, LoCicero advised L.W. that she was accepted into the Better Choices program, but that she needed to meet with the principal of the program for an intake, and that LoCicero was trying to arrange for home instruction during the summer, so that L.W. would be better prepared for the start of school in the fall. L.W. said that she would comply.

From a contact sheet dated June 10, 2008, LoCicero testified that he accompanied L.W. and H.W. to meet the principal of the Better Choices program for the intake. LoCicero explained that during the ride, he reviewed the program and urged their cooperation, which they agreed to provide. LoCicero emphasized that during the

meeting, the principal reminded L.W. and H.W. that L.W. would only be attending the Better Choices program and receiving the home instruction until an appropriate program was selected in the fall. LoCicero recounted that once again, L.W. and H.W. agreed to cooperate and comply with the plan.

LoCicero testified that he did not recall whether any discussion or follow up occurred, whether any evaluations were performed, or whether any parental consent was given in furtherance of a more appropriate program. Significantly, LoCicero explained that even if H.W. withheld consent to a more appropriate program, this would not have affected his course of action. LoCicero repeated that the priority of DYFS was child safety and specified that the withholding of consent does not risk child safety or require court intervention.

On August 26, 2008, LoCicero made another unannounced visit. According to the contact sheet from that date, the visit was not for L.W. but for one of her brothers. Nevertheless, LoCicero spoke with H.W., who advised LoCicero that she received notice that L.W. was to start high school in person, but reminded him that L.W. was about to begin the Better Choices program because L.W. had been truant for most of the school year and was not prepared. LoCicero advised that he would be sure to contact Jersey City on her behalf.

From a contact sheet dated August 29, 2008, LoCicero testified that he confirmed that Jersey City was going to provide home instruction for the start of the school year. This visit was his minimum, monthly visit, which was announced. The contact sheet notes that L.W. would only be receiving the home instruction until the child study team completed its evaluations and an appropriate program was selected in the fall. LoCicero testified that he still did not recall whether any parental consent was given for the evaluations.

On September 3, 2008, LoCicero made another unannounced visit. According to the contact sheet from that date, LoCicero spoke with L.W. and reminded her of the plan for the start of the school year. The contact sheet concludes that L.W. agreed with the plan—as long as she did not have to return to PS#4.

On October 8, 2008, LoCicero made another unannounced visit. According to the contact sheet from that date, the purpose of the visit was to review an agreement LoCicero and H.W. had reached and to discuss any obstacles with compliance.

On October 10, 2008, the family court ordered Jersey City to increase home instruction to five days a week and ordered the child study team to conduct evaluations.

On October 27, 2008, H.W. gave consent for the evaluations.

On December 9, 2008, Carne emailed LoCicero to advise him that she had been having difficulty contacting H.W. to arrange for the evaluations. Carne noted that she also reached out to Ganesh, who advised her that she would arrange to have someone bring L.W. to school for the evaluations. Carne implored that she wanted to complete these evaluations timely. On that same day, LoCicero immediately replied to Carne that Bradshaw would be the one to bring L.W. to school for her evaluations.

On December 16, 2008, LoCicero received a phone call from Bradshaw, who confirmed that she brought L.W. to PS#4 for the evaluations.

By December 18, 2008, the psychological and educational evaluations were complete. Both are dated December 16, 2008, but in an email to LoCicero, Carne memorialized that L.W. was still in need of an audiological evaluation, and that attempts to schedule one with L.W. had been unsuccessful, as H.W. was unwilling to accept her telephone calls, so Carne contacted Bradshaw directly. Case notes from the child study team reveal that the evaluation took place on January 6, 2009, and that the report was received on January 9, 2009, which triggered the scheduling of the IEP-team meeting for January 20, 2009.

On January 13, 2009, Jersey City invited L.W. and H.W. to attend the IEP meeting. The notice was delivered by Ganesh, who handed it to H.W. The notice expressly states that the purpose of the meeting was to review the evaluations, determine eligibility for special education and related services, and if eligible, develop the initial IEP.

On January 20, 2009, LoCicero and L.W. attended the meeting but H.W. did not. According to the contact sheet from that date, Carne, Bradshaw, and Ganesh were also in attendance. Moreover, the contact sheet notes that LoCicero advised the other IEP-team members that H.W. could not attend because she was sick.

LoCicero testified that he was not surprised that H.W. did not attend the meeting, and that he understood that the meeting could not proceed without her, so the meeting was rescheduled for January 27, 2009. LoCicero further testified that it was well understood at the meeting that the child study team recommended a return to school, so much so that the child study team showed L.W. the proposed IEP with the return to school so she could see it for herself, and that L.W. agreed with the proposed IEP, although she preferred a transfer to another school. Significantly, the contact sheet from January 20, 2009, which is reproduced below in full, notes that L.W. was given the opportunity to return to the school of her choice, namely Public School No. 17 (PS#17):

> Before concluding the meeting, the team discussed with [L.W.] the case plan for her. [L.W.] was advised that she was going to be provided with extra support and recommended to return to either PS#4 or a school of her choice. [L.W.] was reminded of the difficulties she had last year attending school and was asked if she felt able to resume attending school. [L.W.] advised the team that she felt ready to attend school again and would make an effort to go to school. She added however that she would prefer not attending PS#4 again and asked to be transferred to PS#17.
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> [J-17 (emphasis added).]

LoCicero underscored that his priority was L.W.'s safety, not her education, and that the school's priority was her education.

Parenthetically, the proposed IEP, which was to start on February 4, 2009, and end on January 26, 2010, is comprehensive. It contains summaries of the evaluations, identifies "specific learning disability" as its category for eligibility, and includes pull-out replacement for all academic subjects in the resource room for the fall. It also included counseling.

On January 27, 2009, LoCicero and L.W. again attended the IEP-team meeting, but once again, H.W. did not. According to the contact sheet from that date, Carne, Bradshaw, and Ganesh were in attendance, and once again, H.W. was to participate by phone, but H.W. hung up on the child study team when H.W. was called to participate, and the meeting could not be concluded. Moreover, L.W. changed her mind about returning to school:

> The meeting was not able to be concluded as the mother refused to give her consent or participate in the meeting by phone. When she was contacted by the child study team, she hung up the phone and refused to give her consent to [L.W.'s] IEP or talk to the team.
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> During the meeting, [L.W.] also objected to the child study team's recommendation that she return to regular classes with resource room and supportive services. [L.W.] asked that her in-home tutoring with Ms. Ganesh [continue] until the end of the year which was rejected by the child study team. [L.W.] explained that she did not feel like she was prepared to return to school.
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> [J-19.]

LoCicero again testified that he was not surprised that H.W. did not attend the meeting. LoCicero, however, noted that L.W. was not ready to return to school. Still, he said that she was doing well with the home instruction.

On February 5, 2009, Jersey City forwarded a copy of the proposed IEP to LoCicero and advised him that since the IEP was not signed, it could not be implemented, but that L.W. could remain on home instruction until the end of the school year. Jersey City also advised that if the IEP was signed, the program would be implemented at PS#4.[4] Finally, Jersey City advised LoCicero to have DYFS pursue the matter in family court.

LoCicero testified that he only remembered this letter after seeing it at the hearing. In particular, he only remembered seeing the proposed IEP, not being asked to pursue

[4] No evidence exists that H.W. asked the child study team to return L.W. to her school of choice.

this matter in family court, and that he pushed L.W. and H.W. to cooperate with the child study team, presuming that he had shared the IEP with them. When pressed about whether DYFS pursued the implementation of the IEP through the family court, LoCicero still did not remember whether DYFS had done so, but was thrilled to be reminded that the case had still been open in family court at the time. This exchange is where LoCicero shined as a witness, displaying his kind, gentle, and caring manner.

LoCicero concluded his direct examination by recalling that H.W. rejected the proposed IEP. He also restated that the relationship between L.W. and H.W. was fragile, and that the safety of the child remained the priority of DYFS. LoCicero also recalled discussing with Bradshaw the difficult circumstances surrounding L.W. and her family.

C.

On cross-examination, LoCicero recapitulated that L.W. was unhappy and angry, disturbed by the chaos in the family, and that this circumstance contributed to her school refusal, as did the ridicule she had faced in school. Referencing his letter to Jersey City dated May 30, 2008, LoCicero restated that he had asked Jersey City to provide for a 504 plan for L.W., including home instruction. To underscore this, LoCicero acknowledged a letter from Bradshaw to him dated May 29, 2008, which memorializes that L.W. was struggling with depression, due to the challenges at home and the ridicule at school, and recommends the home instruction.

Likewise, LoCicero acknowledged another letter from Bradshaw to him dated August 27, 2008, which repeats the identification of the psychosocial problems and the recommendation for home instruction, but adds that L.W. was showing “tremendous progress” toward achieving her therapeutic goals. The progress was myriad: L.W. was sufficiently engaged in her counseling sessions and appropriately groomed for them; L.W. was cleaning up around the house and encouraging others to do so; and L.W. had successfully refrained from physical and verbal confrontations and had successfully kept her emotions in control. L.W. had even kept diligent track of her emotions and employed cognitive restructuring, which had boosted her self-esteem and opened discussions about her career aspirations. Still, the recommendation for home instruction continued—though

not at the expense of a return to school. As Bradshaw concluded, "This temporary academic program should not replace the determination to secure [L.W.'s] return to long-term admission to school and possible testing to better determine her educational needs."

LoCicero confirmed that home instruction could not be provided over that summer, but that it could be provided in the fall, and that H.W. was cooperative. This was significant because H.W. had not been cooperative during the summer in providing consent for the evaluations. Nevertheless, the evaluations did take place in December 2008 and January 2009, and an eligibility meeting was scheduled for January 2009, as previously testified.

Regarding the eligibility meeting, LoCicero emphasized that L.W. did not want to attend PS#4, and that DYFS did not want her to return to PS#4 either, but that the child study team had given her a choice to attend PS#4 or PS#17, and that L.W. knew this at both the first and the second scheduled IEP meetings. LoCicero, however, does not remember whether he saw the proposed IEP at the meeting. Nevertheless, LoCicero did recall receiving it and reviewing it on February 5, 2009, which further suggests that he shared the IEP with L.W. and H.W. after the meeting.

In fact, on that same date, LoCicero made an unannounced visit. From a contact sheet dated February 5, 2009, LoCicero testified that he spoke with L.W. and reminded her that the home instruction would only continue until the end of the school year, and that L.W. would have to return to school in the fall, with the expectation that she would be attending the high school. The contact sheet notes that L.W. responded that she was prepared to return to high school and that she would not object to returning to high school. The contact sheet further notes that L.W. reported that she was meeting with Bradshaw regularly and that her sessions with Bradshaw, as well as her mentor, had helped her greatly with her family relationships.

Finally, LoCicero testified that he would have shared any notice or document that he received from Jersey City with L.W. and her family, but as LoCicero further testified on redirect examination, L.W. really did not want to return to school at any time, and H.W. did not participate in the educational process. Regardless, Ganesh did not think that L.W.

was prepared to return to school. As a result, the home instruction continued until the end of the 2008–2009 school year.

Given this testimony and these documents, a preponderance of the evidence exists that the IEP was provided to both L.W. and H.W., that LoCicero went over it with both L.W. and H.W., and that LoCicero tried to get H.W. to consent to it. As a corollary, a preponderance of the evidence exists that H.W. knew that L.W. had a specific learning disability, and that L.W. should have known that she had a specific learning disability. Moreover, a preponderance of the evidence exists that once the IEP was rejected, what remained was a return to school in the general-education setting.

D.

By April 22, 2009, LoCicero was no longer the caseworker for the W family. According to a contact sheet of that date, a Lisa Hopkins contacted Carne to request information about the eligibility determination and IEP-team meetings from January 20, 2009, and January 27, 2009. The contact sheet notes that Carne stated that all the testing had been completed and that all that was left was for H.W. to give her consent to implement the IEP. The contact sheet summarizes what had happened at the meetings and why the case was closed. Nevertheless, the contact sheet states that Carne would forward a letter with the timeline for DYFS to submit the information to the family court:

> Twice meetings were scheduled to get consent or signature and [H.W.] did not comply. The first meeting was scheduled on January 20, 2009, and [H.W.] did not answer the phone. A letter was sent home via the home instructor [and guidance counselor, Ganesh,] informing [H.W.] of a second meeting, which was one week later on January 27, 2009.
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> On January 27, 2009, [H.W.] did not respond to the call and had son on the phone pretending to be [H.W.].
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> Matter was closed because [H.W.] failed to give consent.
>
> [J-22.]

E.

On October 8, 2009, the family court terminated the litigation against H.W. by DYFS because the family was complying with all services, and DYFS had no further concerns. The court order is Exhibit P-20. By August 25, 2010, DYFS closed its case with the W family. The DYFS case summary is Exhibit P-10. The case summary notes that L.W. had been provided with tutoring since September 2008, and counseling since January 2009. Moreover, the case summary notes that progress had been achieved, and that neither tutoring nor counseling was needed anymore, as personal adjustment and school performance were adequate. Indeed, the case summary notes that DYFS closed the case because issues of neglect or abuse no longer existed, and the family was functioning adequately, with community services to continue. Yet, L.W. stopped attending school in September 2009, and on May 13, 2010, she was unenrolled from her school due to excessive absences.

PART TWO

III.

Between the end of the 2008–2009 school year and the beginning of the 2009–2010 school year, Luqman Ahmad took over the DYFS case for LoCicero. He testified that he knew LoCicero very well and that he remembered attending the transfer conference. He just did not remember when.

Ahmad first started working at DYFS in 2007. He began as a permanency worker and then as a DYFS investigator. Ahmad testified that he also worked in educational neglect and had received training in special education.

Significantly, Ahmad testified that neither he nor DYFS could make a parent attend an eligibility meeting or sign an IEP. He explained that DYFS tries to be a bridge between a parent and a school, but that DYFS would not infringe on either. For example, Ahmad said that DYFS could provide transportation or an advocate for a parent but would not stand in for a parent. Indeed, DYFS policy, P-25, delineates the role of the worker and

states, definitively, that a DYFS worker cannot give verbal or written consent for educational decisions.

Like LoCicero, Ahmad used his contact sheets to refresh his recollection, and once his recollection was refreshed, Ahmad had good recall of the information contained in those contact sheets, which provided assurances of their reliability.

A.

From a contact sheet dated September 8, 2009, Ahmad testified that L.W. was doing well. This was his minimum, monthly visit, which was announced. The contact sheet notes that L.W. enjoys school, that she was adjusting well, and that she had no altercations with anyone at school.

This good start, however, was short-lived. Ahmad testified that he knew that Jersey City had proposed an IEP for L.W. because he had seen it in the record, but Ahmad repeated for emphasis that the provision of special education and related services was the province of the parent, not the caseworker. Ahmad explained that his priority was to get L.W. to go to school, but L.W. refused to go. Indeed, Ahmad further testified that L.W. wanted to continue home instruction instead, but when he contacted Jersey City to inquire whether it could continue, Jersey City informed him that it could not because L.W. did not meet the criteria.

From a contact sheet dated January 21, 2010, Ahmad testified that L.W. was easily triggered. She did not like to be around other kids and fought a lot. The contact sheet notes that L.W. did not want to go to school, that she claimed she could not focus when she was around other students, and that she wanted home instruction. She could not, however, explain why. She also could not remember the last time she was in school. The contact sheet continues that Ahmad informed L.W. that she did not meet the criteria for home instruction, and no reason existed why she should not go to school. The contact sheet concludes with L.W. stating that she was not going to school and leaving the room.

Regarding H.W., the contact sheet states that Ahmad explained to H.W. that L.W. should not be home babysitting but at school learning. H.W. stated that she understood, but that she too wanted home instruction for L.W., and that she wanted DYFS to do it for her. Ahmad further explained that DYFS could not do it for her, and that H.W. had to contact the school herself, which H.W. said she would. "[Worker] explained that [DYFS] does not have any legal authority, and it is her responsibility to follow up with any educational concerns." More significantly, Ahmad testified that L.W. wanted to disenroll from school.

From a contact sheet dated March 29, 2010, Ahmad testified that L.W. complained that school was "too far," that L.W. was turning sixteen years old, and that she wanted to drop out. This was the minimum, monthly visit. According to the contact sheet, L.W. reported that she had stayed with her brother in Newark for approximately three weeks, and that she did not want to go to school because she "did not like kids." She stated that she wanted to be a "hair designer." She said she wanted to go to night school but could not explain why. When Ahmad explained that such programs were at Ferris and Dickinson high schools, L.W. said that she no longer wanted to go because they were "too far," and that she wanted home instruction instead. When Ahmad told L.W. that home instruction was not an option, L.W. ended the conversation. Still, Ahmad offered to help get L.W. back in school—but he asserted that it was up to her to attend.

On June 23, 2010, Ahmad made an unannounced visit. By this time, L.W. had been unenrolled from school. This was his minimum, monthly visit. According to the contact sheet, L.W. "had an attitude," admitted that she was not attending school, and stated that she would be staying with her brother in Newark "because it is fun over there." "[L.W.] stated that she does not have any activities planned nor does she know what she wants to do. [L.W.] stated that she eats whenever she wants and does not have any other concerns." When L.W. said that she would return to school in the fall, Ahmad explained to her that one of her parents needed to reenroll her.

On cross-examination, Ahmad underscored that by the time L.W. wanted to return to school in the fall, she was past the age of compulsory education, but that she still needed a parent to reenroll her in school.

Meanwhile, the litigation DYFS had brought against H.W. in family court had already been closed.

Regardless, Ahmad testified that he did not believe that L.W. wanted to reenroll in school, no matter what L.W. reported. He simply did not believe her, and he blamed her parents for this. He also blamed L.W., repeating that she did not want to go to school.

B.

On April 14, 2009, DYFS provided its Court Report to the family-court judge who was presiding over the case. In that report, DYFS memorialized that L.W. and H.W. were compliant. Although Hopkins, not Ahmad, was the caseworker then, the report comports with prior testimony and documentation: L.W. was still under the care and supervision of DYFS; L.W. had been evaluated by the child study team, with those evaluations included in the report; L.W. continued to receive mentoring services; and L.W. continued to receive home instruction, which Jersey City provided five days a week.

By way of update, the report noted that L.W. attended an open house on April 8, 2009, at the high school in preparation for high school in the fall, and at the time of the report DYFS continued to recommend that L.W. remain under its care and supervision. DYFS also recommended that it continue to provide the mentoring services, and that Jersey City continue to provide the home instruction. Counseling, however, was to be discontinued. In a letter dated April 6, 2009, which was included in the report, Bradshaw wrote that she had been encountering resistance to her services: "Sad to say, this family appears more interested in the glamour of the attention provided by multiple agencies, rather than the practical implications that the services are geared toward empowering their family towards productively contributing to society and gaining independence from the statewide network of social service." Bradshaw's additional remark regarding this resistance proved to be a harbinger:

> Positive results can only be achieved with the cooperation and full participation of the family clients. This family on a whole

> has been demonstrating a sense of "entitlement" in which they would cooperate with the therapeutic goals if they [were] promised a treat and remain resistant when Clinician refuses to acquiesce. The family's insistence in asking for cash or food has also become uncomfortable and they have lost sight of the relevance of the services that are authorized.
>
> [P-23.]

It is through this insight that L.W.'s school refusal, her insistence that she remain on home instruction, and her ultimate decision to drop out of high school make sense.

The next hearing date before the family court was scheduled for April 23, 2009, and L.W. was required to meet with her law guardian at the courthouse, ostensibly to discuss her future.

IV.

L.W. testified that she was one of ten children, and that she and her nine siblings all attended the Jersey City public schools. H.W. was her mother, who had mental-health issues, which L.W. said was "challenging." L.W. specified that her mother was not always "aware and present." L.W. further testified that she had a good relationship with her dad, which was not supported by the documentation from DYFS, but this was her characterization. Meanwhile, L.W. testified that she remembered LoCicero and thought he was a "pretty decent guy."

Throughout her testimony, L.W. was gracious and forthright. I believe that she believed what she said, and that she did not intend to bend the truth; however, I was not confident that she was accurate about her past. She had little recall of specific events from the 2008–2009 and 2009–2010 school years and her testimony remained at a surface level. What was clear was that L.W. was disengaged from and disinterested in school at the times in question. Indeed, it was only after she became a mother and took responsibility for her child's education that she reflected upon her past and assumed a different position about her own. As such, I took her testimony about the relevant time period at face value. This testimony is discussed below.

A.

L.W. recounted that she attended PS#17 for first grade and Public School No. 22 (PS#22) for second, third, fourth, and fifth grades. L.W. stated that she was held back in first grade because her sister would bring her to school late, and that she was held back in fourth grade because she was bullied. She generalized that PS#22 was "pretty okay," and that she had "a lot of work to catch up on." Nevertheless, L.W. asserted that she was an honor-roll student, earning A's and B's.

Her report card, however, does not support such achievement.

L.W. specified that in fourth grade she did not "go hard with schoolwork" because she had "a lot going on," and that in fifth grade it went "okay, alright." She added that she had a good teacher in fifth grade, so she amended that "it went pretty good," which brought her to sixth grade.

L.W. continued that she attended PS#4 for sixth grade but did not stay. She stated that she only attended half the time and that it was different—that it was at a faster pace and that she had to adapt. L.W. admitted that she could not keep up with the work, but that she did not speak up and that she missed some time in the spring. Still, L.W. asserted that she completed sixth grade.

Refencing her report card, L.W. testified that she scored high enough on a test that she took at the end of sixth grade that she could skip seventh grade and go straight to eighth grade. The record, however, indicates that this occurred mid-year. No matter.

Referencing the contact sheet from September 3, 2008, L.W. testified that she received home instruction for seventh grade because she did not want to go to school, and that she did not want to return for eighth grade either. L.W. stated that the home instruction went "pretty okay," and that she was still in "regular classes" for eighth grade. L.W. added that she still had tutoring.

Referencing her absence from the first month and a half of ninth grade, L.W. admitted that school was "a bit of a struggle" for her. She stated that she completed her assignments "sometimes," and that she did not seek help. With complete candor and frank detachment, she further stated that she "didn't really understand the work," that she "wasn't interested," and that she "dropped out"—that she "just left" soon thereafter—around October or November of 2009.

L.W. testified that she had talked to LoCicero about school, that she told him that she had been struggling, and that she had never wanted to return. She stated that she was willing to receive home instruction, and that she had this conversation with him "a few times." L.W. noted that LoCicero responded, "We will see what we can do."

B.

Referencing the notice to the IEP meeting on January 20, 2009, to determine her eligibility for special education and related services, L.W. testified that she did not remember seeing the notice or reviewing it.

Referencing the contact sheet for the IEP meeting on January 20, 2009, L.W. testified that she remembered attending the meeting. She stated that she remembered that she needed extra help and that she could attend PS#17. That L.W. remembered that she could attend PS#17 was significant because the implication was that L.W. did not want to return to school and that the IEP was inappropriate because L.W. could only attend PS#4. This admission disproves that contention.

Referencing the contact sheet for the rescheduled IEP meeting on January 27, 2009, L.W. testified that she remembered that she was looking for "proper services," but that she did not understand what the IEP proposed. She only remembered "what [she] wanted." In fact, L.W. said that she did not know what special education and related services even meant.

On cross-examination, L.W. underscored that she told Bradshaw about her problems with bullying and with her difficulties in class, and that Bradshaw encouraged

her to stay positive and finish school. L.W. continued that she discussed this with no one else except LoCicero. She said that she told LoCicero that she was "more comfortable" with "home school," but that she did not know who requested it or obtained it for her. Moreover, L.W. claimed that she did not remember discussing potential eligibility for special education and related services with anyone or being evaluated for special education and related services. She only understood that she underwent testing to see if she needed help and merely repeated that she only learned that she had been eligible for special education and related services when she met her attorney for this case.

Returning to the contact sheet for the IEP meeting on January 20, 2009, L.W. testified that she did not remember attending that meeting, only that she remembered that she stated her preference to attend PS#17. She stated that she told LoCicero and the mental-health counselor that PS#17 was a "good school—not like PS#4," and she repeated that she did not remember discussing her eligibility for special education and related services with her parents. She also stated that she did not remember attending the IEP meeting rescheduled to January 27, 2009.

In addition, L.W. testified that she did not know that her mother had to consent to the receipt of special education and related services. This is true. L.W. had no idea what her mother did or did not have to do about her receiving special education and related services—just as L.W. did not know what the receipt of special education and related services even meant.[5] All L.W. knew is that she told LoCicero that she did not want to go back to school and that she wanted to remain on home instruction because she did not think that she would be ready to return to school in the fall. Finally, L.W. stated that she never had this discussion with her mother because her mother had her own difficulties. "She wasn't fully aware," she said.

[5] But this does not mean that L.W. should not have known that she was eligible for special education and related services, that L.W. should not have known that her mother had to consent to the receipt of special education and related services, or that L.W. should not have known what the receipt of special education and related services even meant.

C.

According to a contact sheet dated January 20, 2010, L.W. did not want to go to school. Ahmad was her caseworker, and when he told her that home instruction was no longer an option, L.W. walked out of the room. L.W. testified that she wanted home instruction to continue, and that she had this conversation with him three or four times.

Referencing a contact sheet dated March 29, 2010, L.W. testified that she did not remember Ahmad but recalled that she wanted to be a hair designer. The contact sheet states that she wanted to go to night school, but that she could not explain why. L.W. wanted to continue to receive home instruction, but Ahmad restated that home instruction was not an option, so L.W. ended the conversation.

L.W. testified that during this time, as with the others, she did not know what special education was, and that she did not know that she qualified for it.

Meanwhile, L.W. remained truant.

Ultimately, on cross-examination, L.W. testified that she did not remember any truancy proceeding concerning her absence from school, only that she tried to reenroll in school. L.W. stated that a security guard told her that she needed to bring her parents with her to reenroll. L.W. further stated that she told her mother that she wanted to reenroll in school, but L.W. admitted that her mother could not reenroll her because L.W. had already left home to live with her brother in Newark. "I was going through a lot," she said.

On redirect examination, L.W. clarified that she left home for good in 2011 or in 2012, just after her son was born. Regardless, L.W. had admitted that she had changed her mind about reenrolling in school. In other words, she did not want to go.

D.

Returning to direct examination, and referencing an intake form from a shelter in Morris County in 2013, L.W. testified that she remembered going to the shelter. L.W. stated that she was nineteen years old and that she filled out the form for the shelter. According to the intake form, L.W. had a "physical altercation" with her "baby's father," and she had been homeless before. L.W. also stated that Huntington Learning Center had been recommended for her, but that DYFS had to fund it, yet did not do so. L.W. concluded that her caseworker never tried to enroll her in public school and that no one from DYFS ever even suggested it. L.W. said that she only learned that she had been eligible for special education and related services when she met her attorney in 2016 and filed this case.

PART THREE

V.

On rebuttal, L.W. restated that she could not reenroll in school without a parent, and that she had tried to reenroll. This much is true, but I do not believe, as L.W. implies, that her attempts to reenroll were frustrated, because as L.W. had testified before, she had left town before her mother could reenroll her. Nevertheless, L.W. asserted that she was never told that she could reenroll without a parent when she turned eighteen, and that she would still be eligible, presumably, for special education and related services.

This assertion and this presumption, however, are irrelevant to this case. The decisional point in this case is when the child study team proposed the IEP, and H.W. did not consent to its implementation. Indeed, when L.W. turned eighteen, she was responsible for her own actions—for which she did take personal responsibility.

As L.W. further stated, she had become a mother herself at age eighteen, at which time she had her own DYFS case opened, and caseworker assigned. Referencing a contact sheet dated July 11, 2012, L.W. continued that she had wanted to complete her GED. She added that she was never told by either her caseworker or Jersey City

(notwithstanding the fact that she was no longer living in Jersey City) that she could reenroll in school.

On cross-examination, L.W. tempered her testimony. She stated that she did not remember her caseworker when she moved out of Jersey City and had her child because she had three or four caseworkers, and that she did not remember what any caseworker did or did not tell her about school. What L.W. did remember was that the priority was for her to get a job and secure an apartment—so she could reunite with her child.

To underscore, L.W. restated that she left Jersey City in 2011 or 2012 and moved to Newark. L.W. added that she later moved to Parsippany, where her priority was for her to get a job. Documentation reveals that L.W. entered into a homeless shelter in 2013. Still, L.W. did not remember telling a caseworker that she did not want to return to school and that she wanted to remain on home instruction. In other words, her recall was unreliable.

On redirect examination, L.W. concluded that if she had known that she could have reenrolled in school, she would have reenrolled in school because she always wanted to finish school.

Again, I believe that L.W. always wanted to finish school. I just do not believe that L.W. was ever willing to do so. What is consistent throughout this case—throughout the testimony provided and the documents submitted—is that L.W. wanted to remain on home instruction—period.

Home instruction, or “homeschool” as L.W. called it, was only available temporarily. When an IEP was proposed to provide L.W. with the “extra help” that she needed, L.W. did not want it in school. She wanted it at home. Whether L.W. understood that the extra help Jersey City was offering was special education and related services does not matter because L.W. did not want it in school. Even if her mother consented to the implementation of the IEP, it is unlikely that L.W. would have complied, especially since L.W. understood that she did not have to return to PS#4 and that she could have

gone to PS#17, which she preferred. Although L.W. remained desirous of finishing school in theory, she was unwilling to do so in practice.

To recapitulate, L.W. was sixteen when she dropped out of school and eighteen when she reaffirmed her desire to finish school. She just turned twenty-eight in May. Nevertheless, L.W. has never attempted to finish school.

CONCLUSIONS OF LAW

The legal issues before us are three: (1) Whether L.W. has legal standing to make her claims under the IDEA; (2) if so, whether the statute of limitations bars L.W. from making those claims; (3) and even so, whether exceptions to the statute of limitations apply.

I.

Jersey City argues that L.W. does not have legal standing to make her claims under the IDEA. In support of its argument, Jersey City asserts that the IDEA requires a parent or guardian to plan for a student's education until the age of majority, citing 34 C.F.R. § 300.300 (2022), N.J.A.C. 6A:14-1.3, and N.J.A.C. 6A:14-3.7. In addition, Jersey City asserts that the IDEA requires this in the present, not in the future when the child reaches the age of majority, quoting the original decision in this case, "the IDEA is intended to assure educational programming for students in real time, and was not enacted as a vehicle for former students to redress the inaction of their parents when they reach adulthood." Resp't's Br. at 19. Moreover, Jersey City reasons that H.W., who had legal custody of L.W. and legal authority over her education, planned for L.W.'s education, by giving consent to L.W.'s evaluations, but ultimately rejected L.W.'s eligibility, which both Jersey City and L.W. had to accept, whether they agreed with it or not. Thus, Jersey City concludes that H.W. had the legal right to make that decision on L.W.'s behalf, and that Jersey City did not have the legal right to challenge it.

In further support of its argument, Jersey City notes the following: (1) Neither the law guardian nor DYFS challenged H.W.'s decision to reject the special education and

related services; (2) L.W. (who knew that she was eligible for special education and related services) did not accept the special education and related services either—insisting that she remain on home instruction instead; (3) L.W. refused to go to school—dropping out of school when she turned sixteen and school was no longer compulsory; and (4) L.W. never sought to reclaim any special education and related service when she turned eighteen and could file claims on her own behalf.

L.W. argues in opposition that she has legal standing to bring her claims because the parental rights transferred to her when she turned eighteen. In support of her argument, L.W. relies on the definitions of "parent" and "adult student" in N.J.A.C. 6A:14-1.3. But no one disputes this. What Jersey City disputes is that L.W. did not have legal standing to file these claims before she turned eighteen, and that L.W. is barred by the statute of limitations from making those claims now.

More specifically, what Jersey City argues in its response is that L.W. is seeking to assert rights by third parties, namely, her parents, by challenging their rejection of special education and related services on her behalf, and asserting that Jersey City did not make reasonable efforts to engage her parents and accommodate her mother's disability. In support of its argument, Jersey City repeats that L.W. did not have any rights independent of her parents at that time, as her mother had legal custody of L.W. and legal authority over her education. Moreover, Jersey City notes that L.W. has cited no authority and no evidence to support her argument that she had rights independent of her parents before she turned eighteen and that Jersey City did not make reasonable efforts to engage her parents and accommodate her mother's disability. Thus, Jersey City concludes once more that L.W. did not have legal standing to file these claims before she turned eighteen, and that L.W. is barred by the statute of limitations from making these claims now.

In her sur-reply, L.W. argues that she still has legal standing to file her claims now because the remedial period for compensatory education can be longer than the two-year time period under the statute of limitations. In support of her argument, L.W. cites G.L. v. Ligonier Valley School District Authority, 802 F.3d 601 (3d Cir. 2015), and Ferren C. v. School District of Philadelphia, 612 F.3d 712 (3d Cir. 2010), but L.W. conflates the issue.

The issue is not whether the remedial period can exceed the statutory period; the issue is whether a claim is filed within the statutory period.

In addition, L.W. repeats that Jersey City failed to make reasonable efforts to engage her parents and accommodate her mother's disability. In support of her argument, L.W. cites 34 C.F.R. § 300.300(b)(1)–(2) (2022), and reasons that Jersey City should have done more, asserting that Jersey City "aborted" the process when H.W. did not participate in the eligibility determination and IEP-team meeting. Such an argument, however, turns the law on its head. First, such a claim is not L.W.'s claim to make; it was H.W.'s claim to make. Second, it is counterfactual. As I found above, Jersey City provided notice to both H.W. and L.W. for the initial-eligibility and IEP-team meeting, together with the PRISE, which apprised H.W. of her procedural rights under the IDEA, and then provided the IEP to L.W. at the meeting and to her mother after the meeting.

To be clear, in 2008 and 2009, H.W. had legal custody of L.W. and legal authority over her education, which meant that H.W. had the legal authority to accept or reject the special education and related services that Jersey City had offered to H.W. on behalf of L.W. It also meant that H.W. had legal standing to file legal claims concerning that offer. Stated differently, L.W. did not have any legal authority over her own education or any legal standing over her own claims at that time. They remained with her mother. More significantly, L.W. did not challenge her mother's decision once she turned eighteen and had both the legal authority and the legal standing to do so in her own right and on her own behalf. Above all, L.W. and H.W. had both the help and support of Jersey City and DYFS, and both the insight and oversight of the law guardian and the family court. Such facts cannot be overstated. And they cannot be undermined by what L.W. perceives as a lack of documentation either. The record is sufficient. As such, Jersey City is exactly right in citing the authority it cites and advancing the arguments it advances, and the suggestion that Jersey City provided insufficient notice or insufficient information or that Jersey City failed to make reasonable efforts to engage L.W.'s parents and accommodate her mother's disability is specifically rejected.

L.W. also argues in her sur-reply that a parent must affirmatively sign a form rejecting an IEP or affirmatively revoke special education and related services after they

are offered by a district. Yet no such legal requirement exists. Moreover, Jersey City had developed the IEP as required. They simply could not implement it without consent.

Finally, L.W. confuses the issue of child find with the issue of standing when she argues that Jersey City should have found her eligible for special education and related services in first grade. That Jersey City should have found her eligible for special education and related services in first grade is a claim that must still be made within the statute of limitations. It does not equate with standing; it relates to timeliness. Accordingly, I **CONCLUDE** that L.W. did not have standing to make her claims under the IDEA until she turned eighteen and the parental rights transferred to her.

II.

Regarding the more salient issue concerning the statute of limitations, Jersey City argues, relying on the governing statute, 20 U.S.C. § 1415(f)(3)(C), that L.W. filed her request for a due-process hearing at least two years too late because the statute of limitations is two years from the date the parent knew or should have known of the alleged action that forms the basis of the complaint, and L.W. filed her complaint in 2016, when the latest she knew or should have known of the alleged action that forms the basis of her complaint was in 2012, the year she turned eighteen and the parental rights transferred to her. L.W. argues in opposition and in her sur-reply that exceptions apply. In response, Jersey City reasserts the statute of limitations. I will address the statute of limitations in this section and its exceptions in the next.

The statute of limitations is clear: A parent has two years to file a complaint from the date the parent knew or should have known about the alleged violation that forms the basis of the complaint. 20 U.S.C. 1415(f)(3)(C). As Jersey City notes, L.W. filed her complaint in 2016, when all the alleged violations occurred before 2011. And as Jersey City further notes, L.W. did not even file her complaint within two years after she turned eighteen, or any time before she turned twenty-one, when she could have remained eligible for special education and related services.

More pointedly, Jersey City argues that H.W. could have filed her claims in 2001, when L.W. was determined ineligible for special education and related services; in 2009, when H.W. did not accept the special education and related services; and in 2010, when L.W. was unenrolled from the school. More importantly, Jersey City argues that these are all timeframes when H.W. knew or should have known that she could have filed her claims but never did so. Likewise, Jersey City argues that these are all timeframes when L.W. knew or should have known that H.W. could have filed her claims—at least in 2009, when H.W. did not accept the special education and related services; in 2010, when L.W. was unenrolled from school; but most certainly in 2012, when L.W. turned eighteen and the parental rights transferred to her. Parenthetically, Jersey City argues that this reasoning does not even take into account the fact that L.W. was no longer living in Jersey City in 2012 and had no legal right to special education and related services from the district.

To be sure, Jersey City is exactly right. The testimony on remand showed that H.W. knew about the initial-eligibility and IEP-team meetings, that H.W. had received the PRISE advising her of her rights, and that H.W. knew about the eligibility for special education and related services. The testimony also showed that H.W. chose not to accept the special education and related services, and that L.W. chose not to return to school. Indeed, the testimony showed that L.W. dropped out of school as soon as she could. Moreover, the testimony on remand showed time and again that neither L.W. nor H.W. was alone in any of this decision making. To repeat, the W family had both the help and support of Jersey City and DYFS, and both the insight and oversight of the law guardian and the family court, so in applying the law to the facts, L.W. simply filed her claims too late. Accordingly, I **CONCLUDE** that the statute of limitations bars L.W. from making those claims now.

III.

L.W. argues that exceptions to the statute of limitations apply. In support of her argument, L.W. asserts that the timeline described in 20 U.S.C. § 1415(f)(3)(C) does not apply if a parent was prevented from requesting the hearing because the district misrepresented that it had resolved the dispute that is the subject of the complaint or

withheld information that the district was required to provide, citing 20 U.S.C. § 1415(f)(3)(D), and decries that Jersey City failed to provide (1) a notice of eligibility for special education and related services, (2) at least four notices after H.W. refused the special education and related services, and (3) a notice of transfer of rights upon turning eighteen. Thus, L.W. concludes that this withholding of information prevented her and her family from requesting any due-process hearing within the statute of limitations. L.W. also concludes that this withholding constitutes a misrepresentation that this dispute had been resolved.

Jersey City argues in opposition that a preponderance of the evidence does not exist that Jersey City mispresented any circumstance or withheld any information. In support of its argument, Jersey City recites the facts of the case. For the sake of brevity, I will address each of Jersey City's counterarguments at the same time I address each of L.W.'s arguments.

First, L.W. argues that Jersey City failed to provide a notice of eligibility for special education and related services. This is not true. On January 13, 2009, Jersey City provided notice to both L.W. and H.W. for an initial-eligibility and IEP-team meeting that was to take place on January 20, 2009. Jersey City also provided the PRISE. On January 20, 2009, L.W. attended the meeting, but H.W. did not attend, so the meeting was rescheduled for January 27, 2009, and on January 20, 2009, Jersey City provided the official notice to both L.W. and H.W., as well as the PRISE. On January 27, 2009, L.W. attended the meeting, but H.W. again did not attend. More importantly, Jersey City provided L.W. and H.W. with the IEP, which advised them that L.W. was eligible for special education and related services, but H.W. refused the special education and related services, and L.W. refused to go to school at all. As a result, Jersey City closed the case.

To underscore once more, L.W. and H.W. were assisted throughout this process by Jersey City personnel and DYFS personnel. The family was also under the supervision of DYFS while L.W. was under the supervision of a guardian. Meanwhile, the entire case was under the watchful eye of the family court. L.W. may disagree with the collective decision making of all these entities, and she may wish that her schooling had turned out

differently, but she cannot say that her circumstances were misrepresented or that information was somehow withheld.

Second, L.W. asserts that Jersey City failed to provide the following written notices after H.W. refused the special education and related services: (1) notice in January or February 2009 that it would not initiate any special-education services for her; (2) notice in September 2009 that it would discontinue home instruction in fall 2009; (3) notice in spring 2010 that it refused to reinstate home instruction; and (4) notice in May 2010 that it proposed to unenroll L.W. from school. L.W., however, is mistaken. As Jersey City notes in its post-hearing brief, once H.W. refused special education and related services for L.W., Jersey City was under no obligation to provide H.W. with any additional notices concerning that special education and related services. The law is clear: If a parent refuses special education and related services on behalf of a student, the district board of education may not seek to compel its implementation, and it shall not be determined to have denied the student a FAPE:

> When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized, and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services, nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP. . . .
>
> [N.J.A.C. 6A:14-2.3(c).]

And as Jersey City further notes, home instruction was ordered by the family court, not as part of an IEP. In other words, once H.W. rejected the special education and related services, home instruction was only possible through medical documentation, which H.W. never provided. Thus, the issues concerning these notices are red herrings.

For example, L.W. argues that the word "solely," which appears in N.J.A.C. 6A:14-2.3(c), means that Jersey City can be in violation of its child-find obligation for other reasons. This is true. But this case does not concern child find. It concerns legal standing, the statute of limitations, and statutory exceptions. Child find is an issue that L.W. can make only if she has legal standing to raise that issue and does so within the statute of limitations. To repeat, L.W. had legal standing to raise that issue, among all the other issues L.W. has raised, when L.W. turned eighteen and the parental rights transferred to her, but L.W. failed to do so within the statute of limitations.

Third, L.W. asserts that Jersey City failed to provide written notice to her that her rights regarding her education would transfer to her upon turning eighteen. But once again, L.W. is mistaken. Once H.W. rejected the special education and related services, Jersey City was under no obligation to provide such notice. Moreover, L.W. never re-registered for school, let alone sought special education and related services when she turned eighteen.

For the sake of completeness, I will address L.W.'s argument in her opposition brief that the statute of limitations is tolled until a child becomes aware of any alleged violation that could form the basis of a complaint. In support of her argument, L.W. relies on N.J.A.C. 6A:14-2.7, which states that a request for a due-process hearing shall be filed within two years from the date "the parent" knew or should have known about the alleged violation that forms the basis of the complaint. According to L.W., such a parent can be "an adult student," and as an adult student, L.W. did not discover an alleged violation that could form the basis of a complaint until her attorney told her.

Once again, L.W. confuses the issues. These claims were not L.W.'s claims to make. They were H.W.'s claims to make. L.W. also confuses the terms. As explained above, H.W. (as a parent) knew or should have known that she could have filed her claims (1) in 2001, when L.W. was determined ineligible for special education and related services; (2) in 2009, when H.W. did not accept the special education and related services and could have challenged the IEP; and (3) in 2010, when L.W. was unenrolled from the school. Similarly, L.W. knew or should have known that H.W. could have filed her claims (1) in 2009, when H.W. did not accept the special education and related services and

could have challenged the IEP; (2) in 2010, when L.W. was unenrolled from school; and (3) in 2012, when L.W. (as an adult student) turned eighteen and the parental rights transferred to her.

L.W. also confuses the application of the knew-or-should-have-known date by arguing what L.W. knew based on her testimony as opposed to what L.W. should have known based on all of the evidence.

Moreover, the case exemplars upon which L.W. relies all include fact patterns in which the triggering date (as L.W. refers to it) is when the parent discovered that the child was eligible for special education and related services. In this case, that date would be January 27, 2009—when H.W. should have participated in the eligibility and IEP-team meeting. Thus, H.W. had until January 27, 2011, to have filed her complaint.

Finally, I will address L.W.'s argument in her sur-reply that Jersey City had an ongoing obligation to propose an IEP until L.W. dropped out of school. Here too, L.W. is mistaken. According to L.W., if a parent rejects the special education and related services that a district offers in an IEP, that district must continue to offer special education and related services year after year.

Yet no such requirement exists in any statute or code, let alone the federal and State regulations upon which L.W. relies, 34 C.F.R. § 300.300(b)(3)(ii) (2022) and N.J.A.C. 6A:14-2.3(c).

If a parent rejects the special education and related services that are offered in an IEP, then the parent can accept the consequence of that choice, or the parent can challenge the appropriateness of the special education and related services contained in the IEP by filing a complaint. The statute of limitations, however, is the caveat emptor. Under the statute of limitations, the parent has two years to file that complaint, that is, two years from the date the parent knew or should have known that the special education and related services offered contained in the IEP were inappropriate. Meanwhile, a district is under no continuing obligation to offer special education and related services because the child-find obligation has already been satisfied.

In this case, L.W. may argue that Jersey City violated its child-find obligation by not finding L.W. eligible for special education and related services in first grade, but that argument, even if true, does not relieve L.W. from having filed that claim timely, nor does it impose a continuing obligation for Jersey City to offer special education and related services once it satisfied its child-find obligation in eighth grade. Nor did it impose a legal obligation for Jersey City to have filed a legal action in family court. Moreover, Jersey City continued to offer home instruction.[6]

No matter how many different ways L.W. makes the same argument, L.W. cannot avoid the simple fact that she filed her claims too late. In the end, that is what this case is all about. Accordingly, I **CONCLUDE** that the exceptions to the statute of limitations do not apply.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case be **DISMISSED**.

[6] Incidentally, no evidence exists that Jersey City would not have offered additional support in school in the general-education setting had only L.W. returned to school.

This decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2022). If the parent or adult student believes that this decision is not being fully implemented with respect to any program or service, then this concern should be communicated in writing to the Director of the Office of Special Education.

August 9, 2022
DATE

BARRY E. MOSCOWITZ
Acting Director and Chief ALJ

Date Received at Agency: August 9, 2022

Date Mailed to Parties: August 9, 2022
dr

APPENDIX

Witnesses

For Petitioner:

L.W.

For Respondent:

Michael LoCicero

Luqman Ahmad

Documents

Joint:

J-1 Contact Sheet by LoCicero dated April 17, 2008

J-2 Letter from LoCicero to Jersey City dated May 30, 2008

J-3 Contact Sheet by LoCicero dated August 29, 2008

J-4 Contact Sheet by LoCicero dated October 1, 2008

J-5 Order from Family Court dated October 9, 2008

J-6 Invitation to Meeting dated October 14, 2008

J-7 Letter from Jersey City to LoCicero dated October 21, 2008

J-8 Social Assessment by Caamano dated October 27, 2008

J-9 Contact Sheet by LoCicero dated December 11, 2008

J-10 Psychological Assessment by Burke dated December 16, 2008

J-11 Educational Assessment by Carne date December 16, 2008

J-12 CST Case Notes from October 9, 2008, to January 27, 2009

J-13 Eligibility Status dated January 27, 2009

J-14 IEP Status dated January 27, 2009

J-15 Invitation to Meeting dated January 13, 2009

J-16 Invitation to Meeting dated January 20, 2009

J-17 Contact Sheet by LoCicero dated January 20, 2009

J-18 IEP dated January 27, 2009

J-19 Contact Sheet by LoCicero dated January 27, 2009

J-20 Case Review by Carne dated January 27, 2009
J-21 Contact Sheet by LoCicero dated February 5, 2009
J-22 Contact Sheet by Hopkins dated April 22, 2009
J-23 Contact Sheet by Ahmad dated January 20, 2010
J-24 Off Roll Due to Excessive Absence Form dated May 13, 2010
J-25 Contact Sheet by Ahmad dated May 18, 2010
J-26 Contact Sheet by Ahmad dated March 29, 2010
J-27 Due Process Petition by L.W. dated December 19, 2016
J-28 Answer and Affirmative Defenses to Petition by Jersey City dated January 10, 2017
J-29 L.W.'s Interrogatories to DYFS dated January 7, 2022, together with their Answers dated April 6, 2022
J-30 Family Summary/Case Plan/Court Report dated February 4, 2009
J-31 Letter from DYFS to Family Court dated July 17, 2009
J-32 Order from Family Court dated July 23, 2009

For Petitioner:

P-1 Report Card for L.W. from kindergarten to eighth grade
P-2 Psychoeducational Assessment by Trudy Jean-Francois, MS, Ph.D., dated May 25, 2001
P-3 Parental Notice of Eligibility dated June 14, 2001
P-4 Letter from Bradshaw to Ganesh dated May 29, 2008
P-5 Letter from Bradshaw to LoCicero dated August 17, 2008
P-6 Case Review by Carne dated October 8, 2008
P-7 Parental Notice of Eligibility dated January 27, 2009
P-8 Absences by L.W. from September 10, 2009, to October 13, 2009
P-9 Contact Sheet by Janice Bennett-Johnson dated July 28, 2010
P-10 Case Summary for Closing/Transfer by Ahmad dated August 25, 2010
P-11 Redacted Contact Sheet dated July 11, 2012
P-12 Intake Form for Family Promise of Morris County dated May 13, 2013
P-13 Contact Sheet by A. Perez dated January 10, 2002
P-14 Certification of Karen Gullace dated March 28, 2017
P-15 Contact Sheet by LoCicero dated March 28, 2008

Contact Sheet by LoCicero dated May 22, 2008
Contact Sheet by LoCicero dated May 29, 2008
Contact Sheet by LoCicero dated June 6, 2008
Contact Sheet by LoCicero dated June 10, 2008
Contact Sheet by LoCicero dated August 26, 2008
Contact Sheet by LoCicero dated September 3, 2008
Contact Sheet by LoCicero dated October 8, 2008
Contact Sheet by LoCicero dated December 12, 2008

P-16 Parent Participation as a Member of the IEP Team Form dated January 27, 2009
P-17 Authorization to Share Information Form dated January 27, 2009
P-18 Order by Family Court dated December 9, 1999
P-19 Contact Sheet Ahmad dated September 23, 2009
P-20 Order by Family Court dated October 8, 2009
P-21 DCP&P Response to Request for Production of Documents undated
P-22 Certification to the Request for Production of Documents dated November 10, 2021
P-23 Court Report by DYFS dated April 14, 2009
P-24 Court Report by DYFS dated September 25, 2009
P-25 DYFS Policy Manual effective October 27, 2014
P-26 DYFS Policy Manual revised April 1, 2019

For Respondent:

R-1 Order from Family Court dated December 10, 2007
R-2 Order from Family Court dated May 8, 2008
R-3 Referral for L.W. dated June 24–25, 2008
R-4 Attempt to Obtain Consent to Evaluate dated June 25, 2008, to October 8, 2008
R-5 Intervention and Referral Services Request for Assistance for L.W. dated June 25, 2008, to March 28, 2008
R-6 Case Notes by Carne dated June 24, 2008
R-7 Parental Notice of Proposed Initial Evaluation dated June 25, 2008
R-8 Invitation to a Meeting for L.W. dated June 25, 2008

R-9 Invitation to a Meeting for L.W. dated June 25, 2008

R-10 Letter from Jersey City to LoCicero dated July 23, 2008

R-11 Contact Sheet from LoCicero dated October 1, 2008

R-12 Invitation to a Meeting dated October 14, 2008

R-13 Emails between Carne and LoCicero dated October 21, 2008

R-14 Email from Carne to LoCicero dated October 27, 2008

R-15 Attempt to Obtain Consent to Evaluate dated October 9–28, 2008

R-16 Meeting Confirmation Form dated October 24, 2008

R-17 Parental Notice of Proposed Initial Evaluation dated October 27, 2008

R-18 Receipt of Reports/ Documents dated October 27, 2008

R-19 Emails between Carne and LoCicero dated December 9, 2008

R-20 Email from Carne to LoCicero dated December 11, 2008

R-21 Email from Carne to LoCicero dated December 18, 2008

R-22 Audiologic Evaluation by Knutsen dated January 6, 2009

R-23 Invitation to a Meeting for L.W. dated January 13, 2009

R-24 Prior Report Notice dated January 16, 2009

R-25 Invitation to a Meeting for L.W. dated January 20, 2009

R-26 Meeting Confirmation Form dated January 21, 2009

R-27 Letter from Jersey City dated February 5, 2009

R-28 Order from Family Court dated April 23, 2009