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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

RILEY DUNCAN Plaintiff, v. EUGENE SCHOOL DISTRICT 4J Defendant.	**6:19-cv-00065** FIRST AMENDED COMPLAINT In SUPPORT OF PLAINTIFF'S APPEAL OF ADMINISTRATIVE HEARING ORDER Individuals with Disabilities Education Act 20 U.S.C. § 1400 et seq. Americans with Disabilities Act 42 U.S.C. § 12101 et seq. Section 504 of the Rehabilitation Act of 1973 29 U.S.C. § 794 et seq. JURY TRIAL REQUESTED

I. INTRODUCTION

1. This action is brought by Plaintiff Riley Duncan ("Plaintiff"), by his counsel Kimberly Sherman, against Defendant Eugene School District 4J ("Defendant") in appeal of the underlying due process hearing *In the Matter of the Education of Student and Eugene School District 4J,* OAH Case no 2018-ABC-01842 ("Final Order") (attached as Exhibit 1).

2. Plaintiff was eligible for special education services while a student in Defendant's education programs pursuant to the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. § 1400 et seq. ("IDEA"), 34 C.F.R. 300 et seq. Plaintiff's IDEA and Section 504 claims were exhausted through an administrative hearing order and have been dismissed with prejudice.

3. Defendant School District failed to provide a free and appropriate public education under the IDEA and Section 504 by failing to require that all of Plaintiff's teachers appropriately implemented Plaintiff's specially designed instruction, supports, services, and accommodations as defined in his individualized education program; Defendant knowingly, improperly, and with deliberate indifference discriminated against a person by reason of his disability, by failing to take simple, no-cost, reasonable measures to accommodate Plaintiff's disabilities within Defendant's public school program, including those measures the District had previously approved as reasonable accommodations to Plaintiff's disabilities; Defendant failed to provide for the education of a person with a disability that was equal to the educational program provided to his non-disabled peers; and Defendant's actions or non-actions created a hostile learning environment for Plaintiff.

4. Defendant acted with deliberate indifference, knowing that Plaintiff's requests for accommodations were protected under state and federal law and failing to respond appropriately even when repeatedly notified by Plaintiff and his parents that Plaintiff's accommodations were not made available. Defendant school district acted with clear animus when a district teacher openly acted with discriminatory intent, informing Plaintiff that he would not implement the accommodations approved for the Plaintiff and instead graded Plaintiff's work in a discriminatory manner.

5. Defendant further knowingly, improperly, and with deliberate indifference failed to

protect the Plaintiff from retaliation and bullying by his classmates after the removal from the school of a teacher who was found to engage in discrimination against the Plaintiff and other person(s) with disabilities, which said failures served to create a hostile learning environment.

6. Defendant maintained policies, and/or customs, and/or practices that directly discriminated against Plaintiff and his disabilities known to Defendants, and maintained policies, and/or customs, and/or practices that deliberately deprived Plaintiff of rights granted under the Constitution of the United States and other federal and state laws.

7. Plaintiff continues to suffer the results of the discriminatory and bullying behavior perpetrated and/or permitted by the district in ongoing mental health, emotional, and economic impacts and distress.

8. Plaintiff hereby demands a trial by jury for the causes of action described in this complaint.

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II. JURISDICTION AND VENUE

9. The statute of limitations for federal claims are tolled while an action is being decided at the administrative level. *See* 28 U.S.C. § 1367 ("(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."). The underlying action, filed in the Oregon Office of Administrative Services through the Oregon Department of Education and with Defendant School District, was dismissed pursuant to District's Motion to Dismiss on October 17, 2018. Parties were granted leave to request a review of the Final Order within 90 days after the mailing date of the Order. Final Order at 9. *See also* 20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. §300.516(a) (allowing allows a civil lawsuit to be filed with respect to an appeal of an underlying due process complaint.). Plaintiff timely filed a Complaint in this court on January 15, 2019. On March 19, 2019, this court granted leave to Plaintiff to submit this first amended complaint, due April 9, 2019; it is timely filed. This action was filed within the permitted time period after the dismissal of the administrative due process case.

10. This appeal of an administrative due process final order is an action for declaratory and injunctive relief for discriminatory actions by Defendant, brought pursuant to the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. § 1400 *et seq*. ("IDEA") and 34 C.F.R. 300 *et seq*.; Section 504 of The Rehabilitation Act of 1973 ("§ 504"), (29 U.S.C. §§ 701 *et seq.* and 34 C.F.R. Part 104 *et seq*.); discrimination under Title II of the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 to 12213 and 28 C.F.R. Part 35 (2010)); the ADA Amendments Act (ADAAA), Public Law 110-325, ADAAA, 42 U.S.C. § 12101 et seq. (2008); the

Constitution and laws of the United State; and relevant Oregon state laws, including Or. Rev. Stat. 12.110; Or. Rev. Stat. 12.160; Or. Rev. Stat. 659A.142; Or. Rev. Stat. 659A.875; and Or. Rev. Stat. 659A.870 to Or. Rev. Stat. 659A.890.[1]

11. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343(a) because this civil action arises under the IDEA; ADA; Section 504 of the Rehabilitation Act of 1973; and the Constitution and laws of the United States.

12. This court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202. This court has jurisdiction over the state law claims related to the same issues and controversies that gave rise to federal law claims. *See* 28 U.S.C. § 1367 ("(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.").

13. Plaintiff has exhausted his administrative remedies to the extent required under the IDEA, § 504, and the ADA. Plaintiff filed a request for due process hearing with the Oregon Department of Education and Eugene School District 4J on July 12, 2018. Plaintiff raised claims under the IDEA, ADA, and § 504 of the Rehabilitation Act and Oregon law. Without convening

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[1] *See generally Lowry ex rel. T.L. v. Sherwood Charter Sch.*, No. 03:13-cv-01562-HZ (D. Or. Mar. 4, 2014) (finding, *inter alia,* that ORS 12.110 applies to discrimination actions; ORS 659A.142 is the most analogous law related to disability discrimination actions; and that "a plaintiff bringing an action for disability discrimination under any of the provisions in O.R.S. 659A.103 to O.R.S. 659A.145, is entitled to equitable relief, compensatory damages, punitive damages, and a jury trial. O.R.S. 659A.885(1), (2), (3).").

a hearing, the administrative law judge dismissed all claims with prejudice by written order on October 17, 2018. Defendant timely appealed the hearing officer's dismissal on January 15, 2019.

14. The Plaintiff has standing to be before this court. At all times during the events detailed below, Plaintiff and his parents were residents of Eugene, Lane County, Oregon. The injuries described below are concrete and particularized actual injuries-in-fact. The injuries-in-fact were caused by the defendant's actions or refusals to act in a manner required by federal law. The relief requested is within the court's power to provide. Plaintiff is a person with a disability as defined in the IDEA, ADA, and § 504. At all times of the events at District's high school program described below, Plaintiff was a minor child as defined by Or. Rev. Stat. 109.510. Plaintiff's educational rights transferred to him on his 18th birthday on [REDACTED], 2017, pursuant to Or. Rev. Stat. 343.181.[2]

15. Defendant is a public agency, located within this Court's jurisdiction and transacts business in this jurisdiction, and a substantial portion of the acts giving rise to this action occurred in this jurisdiction.

16. As a substantial portion of the acts or omissions giving rise to this complaint took place in the City of Eugene, Lane County, Oregon and the Defendant's principal place of business is Lane County, venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(b).

17. Unlike the IDEA, the purpose of the ADA and § 504 of the Rehabilitation Act is not to

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[2] Or. Rev. Stat. § 343.181 When a child with a disability reaches the age of majority as described in ORS 109.510 or 109.520 or is emancipated pursuant to ORS 419B.550 to 419B.558:
(1) The rights accorded to the child's parents under this chapter transfer to the child; (2) The school district shall provide any written notice required to both the child and the parents; and (3) The school district shall notify the child and the parents of the transfer of rights. [1999 c.989 §9].

provide immediate relief. The purpose of these statutes is to provide people with disabilities equal access to public accommodations and services and to provide monetary compensation when that access is denied. Section 504 requires that "no otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . ." 29 U.S.C. 794(a) . The Americans with Disabilities Act similarly requires that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Section 504 adopts the remedies available under title VI of the Civil Rights Act of 1964. 29 U.S.C. § 794a(a)(2). Title II of the ADA adopts the remedies available under Section 504. 43 U.S.C. § 12133 (2006). *See generally US Dept. of Ed., Office of Civil Rights,* "Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities" retrieved February 1, 2019 from https://www2.ed.gov/about/offices/list/ocr/504faq.html.

18. Both the Americans with Disability Act and § 504 of the Rehabilitation Act authorize remedies, including injunctive relief and monetary damages. 29 U.S.C. § 794a (a)(2); 42 U.S.C. § 12133 (2016); *see also Fry ex rel. E.F. v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 750 (2017).

19. The Supreme Court held that Section 504 of the Rehabilitation Act and the ADA are spending clause statutes, and that plaintiffs have a private right of action for redress. *See Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (" the remedies for violations of § 202 of the ADA and § 504 of the Rehabilitation Act are coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*., which

prohibits racial discrimination in federally funded programs and activities. Although Title VI does not mention a private right of action, our prior decisions have found an *implied* right of action").

20. Parents of children with disabilities have successfully petitioned courts for compensatory damages. Although the Supreme Court disallowed punitive damages as a remedy under ADA Title II in *Barnes v. Gorman*, 536 U.S. 181, 189 (2002), the Court did not challenge the proposition that compensatory damages are available and allowed to stand a $1 million compensatory award. See also *Mark H. v. Lemahieu*, 513 F.3d 922, 939 (9th Cir. 2008) (Noting that, in adding § 1415(l) to the IDEA, "Congress has clearly expressed its intent that remedies be available under Title V of the Rehabilitation Act for acts that also violate the IDEA, overriding the holding of the Supreme Court in *Smith v. Robinson*.").

21. The Ninth Circuit found that remedies are available for violations of § 504. *See Mark H. v. Lemahieu*, 513 F.3d 922, 934 (9th Cir. 2008) ("In sum, availability of relief under the IDEA does not limit the availability of a damages remedy under § 504 for failure to provide the FAPE independently required by § 504 and its implementing regulations."). In *Mark H. v. Hamamoto*, 620 F.3d 1090 (9th Cir. 2010), the Ninth Circuit Court of Appeals held that compensatory damages for discriminatory actions and violations of Section 504 are available when defendant acted "intentionally or with deliberate indifference."

22.

III. PARTIES

Plaintiff Riley Duncan

23. At the time the events described below transpired, Plaintiff Riley Duncan ("Plaintiff") was a minor student enrolled in District's high school program. Plaintiff graduated Defendant's

K-12 public education program in June 2017. Plaintiff reached the age of majority on [REDACTED], 2017. On the date this case was commenced at the administrative level, Plaintiff was an 18-year-old adult male. During his enrollment in Defendant's public school program, Plaintiff qualified as a student with disabilities under the Individuals with Disabilities Education Act ("IDEA") and Section 504 of the Rehabilitation Act ("§ 504"). Beginning in 2008, Plaintiff was eligible for an Individualized Education Program ("IEP") under the disability category of Specific Learning Disability (SLD). In February 2017, Plaintiff was found to be eligible for special education services under the disability category of Other Health Impaired (OHI) but no longer met the criteria for eligibility under SLD. In individualized education program (IEP) documents beginning in 2008, District described appropriate specially designed instruction, related services, and accommodations to classroom and testing environments.

24. Plaintiff was enrolled in the District's French Immersion Program from the first grade through his graduation from high school in June 2017. Student was additionally enrolled in District's French Immersion, International Baccalaureate (IB), and International High School (IHS) programs. Plaintiff earned a regular high school diploma and an IHS diploma and French Immersion completion but did not earn an IB diploma. Enrollment in the French Immersion, IHS, and IB programs in the District is by lottery.

25. While Plaintiff was a minor child enrolled in Defendant's K-12 public education program, Plaintiff's parents advocated on his behalf with school and district administration, Mr. Michael Stasack (the teacher at the center of these events), filed official complaints with the District (discrimination), obtained an in-district review of Mr. Stasack's grading of Plaintiff's work, and filed a complaint against Mr. Stasack with Oregon's Teacher Standards and Practices Commission ("TSPC") related to Mr. Stasack's refusal to implement Plaintiff's IEP and

accommodations and the resulting hostile learning environment.

Defendant Eugene School District 4J

26. Eugene School District 4J ("District") is a local government body whose responsibility is to oversee the public school education of students grades K through 12, or to age 21 in the case of some students with disabilities. The District is located Eugene, Oregon. The District is a public entity under Title II of the ADA as defined in 28 U.S.C. § 12131(I) and 28 CFR § 35.104. The District is a recipient of federal financial assistance under 29 U.S.C. § 794. The District uses said federal financial assistance in its program activities.

27. The District's principal place of business, the district office, is located at 200 N. Monroe Street, Eugene OR 97402.

IV. BACKGROUND

28. Plaintiff, a 2017 South Eugene High School (SEHS) graduate, was enrolled in the International High School (IHS), International Baccalaureate (IB), and French Immersion programs offered by Eugene School District 4J. Plaintiff was eligible for special education as a student with a specific learning disability as of June 2008 and continued to be eligible until graduating in June 2017. In February 2017, Plaintiff was found eligible for special education as a student with Other Health Impairment in addition to Specific Learning Disability. During this time period, District staff who were involved in the events detailed below include (1) Principal of SEHS, Mr. Andy Dey (Principal); (2) Director of Special Education, Dr. Cheryl Linder (Special Education Director); (3) Superintendent, Dr. Gustavos Balderos (Superintendent); (4) Assistant Superintendent, Charis McGuaghey (Assistant Superintendent); (5) Director of Secondary Education, Ms. BJ Blake (Secondary Education Director); (6) IHS Head Teacher, Ms. Jessica Schaubtach (IHS Head Teacher); and (7) Plaintiff's special education case manager, Mr. Joel

Kuiper (Case Manager).

29. During the two school years in question (September 2015 through June 2016 and September 2016 through June 2017), Plaintiff's IEPs included the following accommodations:

March 4, 2015 IEP

- Preferential seating as determined between [Plaintiff], Teachers, and Parents
- When requested by student, parent, or case manager, provide alternate due dates on assignments
- When requested by student, parent, or case manager, allow [Plaintiff] to test in another location
- When requested by student, parent, or case manager, allow [Plaintiff] multiple opportunities to show proficiency on learning targets
- When requested by student, parent, or case manager, provide private one on one check in with [Plaintiff], to check for understanding of task/assignment to complete
- When requested by student, parent, or case manager, option to use digital materials when appropriate and possible

February 17, 2015 IEP

- Preferential seating as determined between [Plaintiff], Teachers, and Parents
- provide alternate due dates on assignments
- allow [Plaintiff] to test in another location. This is best done with [Plaintiff] beginning the test in classroom and then finishing test in learning center
- allow [Plaintiff] multiple opportunities to show proficiency on learning targets
- provide private one on one check in with to check for understanding of task/assignment to complete
- option to use digital materials when appropriate and possible

February 16, 2016 IEP

- Preferential seating as determined between Riley, Teachers, and Parents
- Late work should be accepted up to one week after notifying parents or learning center teacher, which allows for additional time to learn material
- [Plaintiff] will receive a preview of the weekly lessons at the beginning of each week
- allow [Plaintiff] to test in another location. This is best done with [Plaintiff] beginning the test in classroom and then finishing test in learning center
- Provide alternate ways to show understanding of academic content without modifying course content standards
- Gather the weekly/daily homework assignments and make sure that [Plaintiff] is aware of what is being asked for the upcoming week.
- Copies of all tests and quizzes will be reviewed with [Plaintiff] in the learning center along with criteria for grading on the day they are reviewed in class

February 6, 2017 IEP

- Copies of all tests and quizzes will be reviewed with [Plaintiff] in the learning center along with criteria for grading on the day they are reviewed in class
- Gather the weekly/daily homework assignments and make sure that [Plaintiff] is aware of what is being asked for the upcoming week.
- [Plaintiff] will receive a preview of the weekly lessons at the beginning of each week
- [p]referential seating as determined between [Plaintiff], Teachers, and Parents
- allow [Plaintiff] to test in another location. This is best done with [Plaintiff] beginning the test in classroom and then finishing test in learning center
- Late work should be accepted up to one week after notifying parents or learning center teacher, which allows for additional time to learn material
- Provide alternate ways to show understanding of academic content without modifying course content standards

30. In addition, all IEPs throughout Plaintiff's high school years included 30 minutes per month of general education consultation as a support for school personnel.

V. STATEMENT OF FACTS

31. Following is a detailed, though partial, chronology of events from Parents' records, District records, and emails that underlie the discrimination claims for Plaintiff.

School Year 2013-2014 (9th grade)

32. Plaintiff acknowledges that school year 2013-2014 falls outside the statute of limitations; however, narrative related to that school year provides background and explanation to the events that occurred later in 2015-2016 and 2016-2017.

33. Plaintiff was enrolled in Mr. Mike Stasack's French Language class as a 9th grade student.

34. Prior to April 2014, Parents emailed Plaintiff's Case Manager multiple times requesting that Mr. Stasack implement the accommodations as detailed in Plaintiff's IEP.

35. On April 17, 2014, Parents received an email from Mr. Stasack responding "no" when asked by Case Manager to implement Plaintiff's IEP accommodations.

School year 2014-2015 (10th grade)

36. None of Plaintiff's 10th grade classes were taught by Mr. Stasack; all teachers during this school year implemented the accommodations described in Student's IEP.

School Year 2015-2016 (11th grade)

37. First Semester: Plaintiff regularly experienced difficulty in Mr. Stasack's French Language class because Mr. Stasack failed to make available Plaintiff's accommodations, as described in Plaintiff's IEP.

38. November 2015: Plaintiff, Case Manager, and Mr. Stasack met to discuss Plaintiff's difficulties in Mr. Stasack's class that term. Mr. Stasack suggested that Plaintiff could improve his grade by raising his hand three times in each class, and further suggests that Plaintiff should leave the French Immersion program because he does not belong in the program.

39. December 2, 2015: Parents emailed Assistant Principal regarding Mr. Stasack's continued non-compliance in implementing Plaintiff's IEP accommodations.

40. December 9, 2015: Parents emailed Assistant Principal with further details of Mr. Stasack's violations of Plaintiff's IEP requirements, including: testing Plaintiff on materials not yet taught; failure to allow multiple opportunities to complete work or provide alternates to show mastery; refusal to accept homework submitted after the due date; failure to permit extra time on tests and quizzes; failure to retain tests and quizzes to review and master missed items; ambiguous grading criteria; and a lack of understanding about the impact of ADHD on a student's learning.

41. January 7, 2016: An email from Mr. Stasack stated "no" to parent's request that Mr. Stasack implement Plaintiff's IEP accommodations (as detailed in 12/9/2015 email from Parents to Assistant Principal).

42. January 29, 2016: Plaintiff participated in a meeting at SEHS with Assistant Principal, Case Manager, Mr. Stasack, and Plaintiff's Parents. Parents reported that Mr. Stasack belittled Plaintiff when Mr. Stasack made statements such as a claim that the French Immersion Program was a rigorous program meant only for students whom he described as "high achievers that are 'in love with the language' and must be 'highly motivated.'" Mr. Stasack made these statements with fervor, with frequent repetition in defense of his stance, and while criticizing parents for expecting Plaintiff to be in a program that was "not fit" for Plaintiff. Mr. Stasack stated that he

graded Plaintiff differently due to his IEP (stating he was generous because "Plaintiff was not a distraction") and stating "I do not agree" when mother said "Plaintiff has a right to be in the program." Further, Mr. Stasack made it clear that he would not deviate from his syllabus, asked no questions about Plaintiff's disability or IEP accommodations, and was hostile and defensive in his tone.

43. January 31, 2016: Parents emailed SEHS administrators expressing concerns about retribution that had already happened to Plaintiff, continued retribution, and discriminatory behavior. Parents stated a belief that Mr. Stasack's treatment of Plaintiff worsened in response to Parents' request that Plaintiff's IEP be implemented. Plaintiff stated a belief that Mr. Stasack was unwilling to help him.

44. February 2016: Plaintiff's self-esteem and emotional stability was fragile. After participating in a sample SAT/ACT test, Plaintiff lost confidence. Parents contracted privately with a tutor to prepare Plaintiff for SAT/ACT preparation.

45. February 1, 2016: Principal called Plaintiff's mother to express that Mr. Stasack was sorry and recognized his responsibilities. Plaintiff's mother persisted in the discrimination claim. Principal asked Parents to "think about it."

46. February 3, 2016: Principal called Plaintiff's mother to say that a discrimination investigation was going to be opened and the family was not to speak with Mr. Stasack without an administrator present until the investigation was complete.

47. February 8, 2016: Mr. Stasack stood in line at Costco behind Plaintiff's mother. Plaintiff's mother felt intimidated by Mr. Stasack's demeanor and close proximity. Plaintiff's mother felt further intimidated when Mr. Stasack followed her to her car in the Costco parking lot. Plaintiff's mother later learned that Mr. Stasack had behaved in a similar manner to at least

two other mothers of SEHS students, who also had felt intimidated by his behavior.

48. February 11, 2016: Parents of two additional SEHS French Immersion students (identified as Parent #2 and Parent #3) contacted the SEHS Principal and shared their stories about Mr. Stasack that were very similar to Plaintiff's experiences, including that Mr. Stasack had not followed 504 plans; had engaged in public intimidation of the two of the mothers; and was inflexible in assertion that he would not make IEP or § 504 accommodations available from the syllabus. One of the parents also forwarded a letter she had written to the previous SEHS principal that demonstrated the same behavior by Mr. Stasack years prior to Plaintiff's experience.

49. February 12, 2016: Meeting with SEHS Principal and Special Education Director. The focus of the meeting was not about how the District would respond to harassment and discrimination of the Plaintiff, but instead the discussion focused on ways the District could adjust Plaintiff's IEP in order to manage the impacts from Mr. Stasack's behaviors, putting expectations on other teachers to implement accommodations for Plaintiff. As a result, Plaintiff's father asked for a formal grade review; to have an adult in the classroom Plaintiff in Mr. Stasack's class; for another person to grade Plaintiff's work from Mr. Stasack's class; and for the District to develop a better plan for the following year.

50. February 24, 2016: Parents filed complaint with Teachers Standards and Practices Commission (TSPC) against Mr. Stasack.

51. February 24, 2016: Parents filed formal District Bullying/Harassment complaint against Mr. Stasack.

52. March 4, 2016: Meeting between Principal and Parents. Principal expressed that the District was going to find Mr. Stasack guilty of discrimination and provide Plaintiff with another

teacher for the remainder of the year, with other yet-to-be-announced plans for the following year. Principal also said they were changing Plaintiff's grade from from Mr. Stasack for the first semester term of the 2015-2016 school year. SEHS convened a grading committee to evaluate Mr. Stasack's grading which found consistent grading irregularities with Plaintiff's work. The Principal implied that the committee could identify certain students being targeted with Mr. Stasack's grading.

53. As a result of these failures on the part of Defendant school district, and the failure of District administration to require staff adherence to Plaintiff's IEP and accommodations, Parents filed a Bullying/Harassment complaint with the District and with TSPC against Mr. Stasack. The District

54. completed its investigation into Mr. Stasack's actions on March 28, 2016, amended April 13, 2016. The district found that Mr. Stasack had failed to implement Plaintiff's IEP accommodations.

55. March 28, 2016: Parents received a letter from the District, signed by the Principal stating the District's findings of the investigation.

56. April 3, 2016: Plaintiff's mother emailed the Principal that the March 28 letter: (1) did not specify discrimination; (2) did not describe the manner in which Mr. Stasack's actions had made Plaintiff feel inadequate; and (3) that there was no reference to the "I do not agree" [that Plaintiff has a right to be in the program] comment or any reference to Mr. Stasack's actions prior to the January 29, 2016 meeting.

57. April 13, 2016: SEHS Principal delivered the amended results of the District's review of Parents and Plaintiff's letter of complaint. The District findings are quoted below:

- Alternative due dates were not routinely allowed with regard to homework. As a result, [Plaintiff] was denied an accommodation explicitly stated in his IEP.

- Additionally, [Plaintiff] was not allowed multiple opportunities to demonstrated proficiency or allowed extended time for tests as was a common practice in the implementation of Riley's IEP. Although [Plaintiff] was invited to attend Instructional Access times, he was not provided with one-on-one check ins with the teacher in a way that was accessible to him;

- Mr. Stasack acknowledged having made the comment in his meeting with you.

- Although he offered an explanation for the comment, he quickly acknowledged making the comment was an error in judgment and has since expressed his apologies for saying anything that offended the family;

- Mr. Stasack acknowledged that he disputed your statement that your son had a right to be in the French Immersion program. He quickly acknowledged his error;

- It is likely that failure to properly implement Riley's IEP had an impact on the degree to which [Plaintiff] was able to learn required material and as such negatively impacted Riley's grade for the term. After a review by an appeals panel, Riley's grade was changed from a D to a C for the term;

- Michael acknowledged having been at Costco the night you indicated he was behind Jennifer in line, he denied having any knowledge of who was in front of him or having any intent to intimidate or menace. We were not able to find any evidence to rebut his claim nor support yours. We are however committed to ensuring that all interactions between district employees and families are characterized by civility, a welcoming nature and one of support. We are deeply disappointed that this was not the case for your particular interaction and are committed to ensuring that nothing like this happens in the near or distant future;

- Given the profound lack of trust between Michael Stasack and Riley's family, Michael Stasack's classroom is not an appropriate placement for [Plaintiff] for the remainder of his education here at SEHS. [Plaintiff] is fully entitled to pursue his current academic program and will be supported in doing so with unquestioned implementation of his IEP. As such, [Plaintiff] will continue to follow the curriculum from the AP/IB French class independently and will be supported by weekly checkins with a native French licensed educator currently employed by the district for the third term of this academic year. While final plans are not yet in place

> for the following academic year, it is our commitment to you that [Plaintiff] be provided with an educational environment that is welcoming, safe and supportive. As soon as an alternative to Michael's class can be proposed, it will be presented to the family for your reflection and feedback. Under no circumstances will your son be disadvantaged by not being able to be enrolled in the classes that Mr. Stasack teaches.

58. April 13, 2016: The letter from the Principal was amended to state that it was a discrimination investigation but did not specify that the District found Mr. Stasack guilty of discrimination. However, the District did state that as a result of the findings, the District would make some confidential staffing adjustments "designed to prevent a recurrence of the behaviors that led to your complaint." Also included with the letter was an invitation to submit a formal complaint to the Superintendent, which included Parents' February 24, 2016 complaint that had already been filed and a copy of the district's bullying and harassment policy.

59. May 6, 2016: Administrators confirmed that Mr. Stasack would be reassigned to an elementary school in the District, effective the next school year. Mr. Stasack was scheduled to complete the 2015-2016 school year at SEHS.

60. May 13, 2016: Parents, Parent #4 (a fourth parent of a fourth student with similar circumstances who was also in Mr. Stasack's class), Parent #2, and Parent #3 met with the District Superintendent to discuss their concerns and share their common stories about Mr. Stasack that had occurred in 2012, 2013, 2014 and 2016. Three of the four parents reported they had experienced public intimidation by Mr. Stasack. All four families submitted written statements of their experiences with Mr. Stasack's refusal to implement their children's IEP accommodations. All four families requested that their written statements be included in Mr. Stasack's personnel file.

61. May 24, 2016: Led by a French Immersion 11th grade student (identified herein as "AS"), students in the French Immersion program organized by text with classmates a walkout to

happen 1st period on May 25, 2016. The texts and planning excluded Plaintiff and Parent #4's child. The walkout was in protest of Mr. Stasack's reassignment to take effect in school year 2016-2017.

62. May 24, 2016: In the evening, Ms. McLaughlin (French History teacher and teacher of the independent study French Language class) and Principal learned of the student walkout planned for first period on May 25.

63. May 25, 2016: For the walkout, all but four (of about 40) students got up and left Ms. McLaughlin's French History classroom to walk as a group to the Principal's office in support of Mr. Stasack and in protest of his being reassigned to an elementary school the following year. Principal reported that the students said, "It wasn't fair that Mr. Stasack had to leave over the 504 kids."

64. Student #4 (who also had been removed from Mr. Stasack's class in 2012 to avoid Mr. Stasack's refusals to implement her 504 accommodations) arrived late to school that day and passed her classmates in the hall as they were walking to the Principal's office; she was told to "shut up and go back to class." She did not know why her classmates were marching to the office.

65. Four students remained in the class: Plaintiff, two of Plaintiff's friends including student #4, and another female student.

66. May 26: 2016: Mother spoke with the Assistant Superintendent about the walkout and the impact it had on Plaintiff and asked for help. The Assistant Superintendent also had a daughter in the French Immersion program who was one year behind Plaintiff; she said that when the lower grade French Immersion students got the invitation to participate, one of the students stood up and said, "This isn't right."

67. May 27, 2016: Principal sent an email to the French Immersion families stating that he wanted to dismiss the rumors about Mr. Stasack's departure from SEHS. He stated, "I hope you will all understand that I, nor anyone else within the district, can publicly discuss personnel matters given their confidential nature. What I can say is that we are committed to ensuring your student continues to receive the highest quality instruction in pursuit of their French studies and we are currently in the search process for South's next French Immersion faculty member. Mr. Stasack has made many positive contributions to the French Immersion program in his four years here and will now go on to do the same at another school in the district. I hope you will join us in wishing him the best in his future endeavors."

68. May 28, 2016: Plaintiff's mother sent an email to the Principal, Director of Special Education, Superintendent, the Assistant Superintendent, and the IHS Head Teacher documenting the walkout, in which she asked that the Parent's email & TSPC complaint be put in Mr. Stasack's file as evidence of his behavior; described the bullying behavior that was modeled by Mr. Stasack and emulated by students; and described the ways in which Mr. Stasack's behaviors were in conflict with the IHS mission statement. Plaintiff's mother stated:

> Though all classes (9-12th grades) were invited and encouraged to participate [in the "walk out"], more than 90% of those that did were 11th graders.
>
> The invitation was sent out via text and social media, though my son and another female student who have both been removed from Mr. Stasack's classroom due to his discriminatory and harassing behavior, were excluded in all of the correspondence and were, in fact, blindsided by the walkout. The female student arrived late that period and when seeing her class walk down the hall, she naturally started to join them, only to be told by her peers to shut her mouth and get back to class.
>
> One of the students that sent the organizational texts was in our home for over an hour the night before the walkout, with our son, along with her parent that knew of the plans, and did not say anything to our family. The parent is also the chairperson of the French Immersion parent group.

> Prior to this incident, I have been warned by that same parent that kids were jealous of my son and the other female, though most of the anger was directed at the female, not my son. The text reads that the kids are getting "preferential treatment" and quotes her daughter as saying "OMG...[other female] is taking AP French from Mme Suzie because she doesn't get along with Mr. Mike...so the rest of us are busting our butts in MM [Mr. Mike Stasack] and she's getting an auto A from MS [Madam Suzie McLaughlin]."
>
> The Frenchie kids have two classes where they are all together: 1st period with Mme Suzie and 3rd (?) period with Mr. Stasack. The fact that they chose to do this during 1st period - in Mme Suzie's class - when they knew [Plaintiff] & the other female would be in the classroom instead of the period with Mr. Stasack when they know they are not there is significant.
>
> There have been 2 days since this incident and neither my son nor I have been provided with an apology from any of the classmates or their parents, even though I have been in social situations with a few families since that time and [Plaintiff] has attended all of his classes.

69. May 31, 2016: The Principal replied, stating that he could not guarantee the Parent's letter would be placed in Mr. Stasack's personnel file or added to the TSPC complaint. Further, Principal said SEHS staff were thinking of a way to address the French Immersion students' behaviors: "The focus of the conversation will be on ways in which students can most effectively utilize their voice and what information they are able to receive in answer to their questions based on the law. In no way is the intention to discuss the particulars of this specific situation but to give the students the chance to hear from those whom they believe to have answers they are looking for."

70. May 31, 2016: The Associate Director of Human Resources said they would not put Plaintiff's mother's 5/28 email in Mr. Stasack's personnel file but would send it to the TSPC and stated that Mr. Stasack's attorney "has asked for, and is entitled to receive a copy of, documents being sent to TSPC."

71. May 31, 2016: Parents and Plaintiff understood that administration intended to develop a lesson about student voice (Principal/student conversation) and to deliver that lesson to Ms.

McLaughlin's first period French History class, the class that had led the walkout. Plaintiff asked that the planned "conversation" between the Principal and students in Ms. McLaughlin's class not take place as he felt it would lead to further targeting.

72. May 31, 2016: Plaintiff's father sent an email to Principal, asking for a stop to the planned principal/student conversation, stating: "Mike Stasack has created an us versus them mentality and this is now being inadvertently perpetuated by the students. This talk will only serve to identify and alienate Plaintiff and the other targeted student more. One thing that is clear to me, and history supports this idea, is that there are parents behind the information that the students are using. If you allow students to give voice to their concerns and relay the answers back to the parents, this mass miscommunication will backfire and only Plaintiff and the other targeted student will be hurt by the process."

73. Despite these requests by Plaintiff and Plaintiff's father, the Principal/student conversation took place. Ms. Jericho Dunn, SEHS Assistant Principal, taught the lesson. Administration did not forewarn Plaintiff, nor did administration remove student from the classroom during this lesson. Plaintiff felt additionally targeted and bullied as a result of the Principal/student "conversation."

74. June 26, 2016: Plaintiff's mother sent an email to the Associate Director of Human Resources, the Assistant Superintendent, and SEHS Principal further describing the bullying behavior:

> The fact that Mr. Stasack set the tone for these special education kids to be treated as not deserving of participation in the French Immersion/IB program set the stage for nearly the entire class to think that it is OK to leave behind the kids with special needs and even to brazenly act in ways that was certain to leave them feeling powerless and ostracized. According to 4j's policy on Discrimination, Harassment & Bullying (https://www.4j.lane.edu/wp-content/uploads/2013/02/4j_ess_pbs_law.pdf), my son was left in a position to be unreasonably differentiated, with unwanted (planful) behavior, in a way that substantially interferes with his educational benefit

> by creating a hostile environment. ... The fact that an entire class acted as they did says to me that no individuals can be held responsible for this. Rather, there is some other force guiding and setting the culture for them that has caused such a hostile environment. They are simply repeating what they experienced from an educator that should be trustworthy.

School Year 2016-2017 (12th grade)

75. September 2, 2016: Parents learned from Plaintiff's course enrollment schedule that Greg Hopper-Moore had been hired as the new French teacher. His son was one of the students that walked out of class on May 27. Parents emailed Principal asking for meeting with Mr. Hopper-Moore, Special Ed teacher, Plaintiff, and Principal. Principal said he "wouldn't characterize the students' activities last year as walking out on Plaintiff and don't feel it would be fair or helpful to link the new teacher to that incident in any way. I think that was a very unfortunate and totally avoidable situation." Principal would not assist in arranging the meeting and denied any bullying by students had occurred.

76. Early September 2016: Case Manager, Parents, Plaintiff, and Mr. Hopper-Moore met to discuss what had happened and what supports Plaintiff needed.

77. March 21, 2017: Plaintiff's Mother reported to Assistant Superintendent that the French Immersion parents had discussed inviting Mr. Stasack to the French Immersion ceremony in June that is hosted by French Immersion parents but takes place at the SEHS cafeteria; Plaintiff's mother requested that Mr. Stasack not be allowed to attend any graduation ceremonies. The Assistant Superintendent said she would "get back to" Parents. After no response, Plaintiff's mother wrote again on April 14 and again on May 11. The Assistant Superintendent responded that, because the ceremonies were public events, the District could not stop Mr. Stasack from attending unless Parent had a restraining order.

78. June 8, 2017: Plaintiff's mother learned from Parent of student #4 that special event

sweatshirts were being ordered by graduating French Immersion students with the intention of wearing them to the French Immersion graduation ceremony on June 10, 2017. Plaintiff's mother emailed to the Superintendent, Assistant Superintendent, and SEHS Principal a photograph of a female French Immersion student, (AS), standing in SEHS wearing a sweatshirt that started with "Meeesieur Mike" and displayed more than 30 "sayings" associated only with Mr. Stasack. Plaintiff's mother called this behavior "harassment" and asked that the administrators stop the sweatshirts from being part of any graduation ceremony. SEHS Principal responded that he (the Principal) would attend the ceremony.

79. June 8, 2017: Plaintiff, Plaintiff's mother, and Parent #4 met with Assistant Superintendent, Director of Special Education, and Director of Secondary Education at District Office. The parents and Plaintiff explained that: (1) the sweatshirts were ordered by student AS and provided the order form with her name on it and a message from her; (2) not all of the French Immersion students had been invited to order the sweatshirts (in particular Plaintiff and student #4 were excluded); and (3) that the IHS office had distributed the sweatshirts to students. Plaintiff confirmed that all of the statements on the sweatshirt were from Mr. Stasack's class. Plaintiff spoke of his experiences, telling of having to defend his right to take tests in a quiet place to other French Immersion students who confronted him at a social event about it. He talked about how the other students don't understand, that they're not bad kids, but they just don't understand. The more he talked, the more everyone realized how difficult this situation had been for Plaintiff. By the time Plaintiff was done talking, the Assistant Superintendent had tears and the others were silent. Plaintiff said he would talk to anyone about this so that it didn't happen to another kid, but District staff assured him that it was their job to take care of him and that he didn't need to do anything and that "they would put their heads together and come up with a

plan."

80. Within two hours, as Plaintiff and his parents were getting dressed for Plaintiff's IHS graduation ceremony, they received an email from Special Education Director stating, "In wanting the best for both students the district has consulted with our attorney to determine what we can and cannot do. We have been advised that we have the authority to recommend that the sweatshirt should not be worn to the graduation ceremony. Andy Dey has done this. We have further been advised that the district does not have the authority to prohibit the free speech of students, thus we cannot prohibit the wearing of the sweatshirts."

81. Plaintiff's father replied, "As a matter of free speech, this really does not fit. The kids can wear what they want, but if the school is distributing them, it changes. That means the school is supporting bullying two students with documented disabilities. I think that it gets lost that both these students have disabilities and are not typical students." There was no reply.

82. June 9, 2017: Plaintiff's mother had 1.5-hour conversation with Principal and learned that Principal had called only a select group of families about the sweatshirts and offered no transparency about how that group was selected or who was included in it, further contributing to feelings of exclusion and harassment. Principal declined to take any measures against students involved in harassing and bullying behavior against Plaintiff, and suggested the family should pursue the matter with an attorney.

83. June 10, 2017: One student wore the sweatshirt to the French Immersion graduation practice, but none wore them to the ceremony.

84. June 11, 2017: Plaintiff's mother emailed Principal, Special Education Director, Assistant Superintendent, and Secondary Education Director stating that another student in the class was willing to speak with Principal about social media posts he had read and his discomfort with the

treatment of Plaintiff and the female student, including posts from student AS. Plaintiff's mother also forwarded an email from AS's mother stating that AS knew not everyone had been invited to order sweatshirts. There was no response from the District.

85. June 12, 2017: SEHS graduation. There were no consequences for any students who had engaged in bullying behavior. AS was one of three student speakers at the ceremony and spoke about how proud she was of her class' civil rights actions and about the power of what they had learned about civil rights and how to address bullying at SEHS. AS had engaged in discrimination, bullying behavior, and exclusion against Plaintiff and student #4. Administration was aware of Plaintiff's distress over these events. Despite this, Administration approved AS's speech and her public participation at the ceremony. Plaintiff's speech caused additional emotional distress to Plaintiff.

86. Fall 2017 through present: Plaintiff continues to experience mental health challenges as a result of the bullying and discrimination experienced as a student in Defendant school district's programs.

87. December 31, 2017: Plaintiff retained an attorney related to these claims, after continuing to suffer emotional and physical harms from District's discriminatory actions while he was a freshman student enrolled in Wittenberg College.

88. In summary, the purpose of the accommodations detailed in Plaintiff's IEPs related to provision of a quiet testing environment and extended time on tests and homework in order to accommodate the effects of ADHD on Plaintiff's learning and work production.

89. Despite these enumerated accommodations in official District IEP documents, Defendant's employee Mr. Stasack repeatedly denied specific accommodations to Plaintiff. Further, by words and actions, Mr. Stasack telegraphed his belief that Plaintiff did not belong in

the French Immersion Program or IHS program because his accommodations meant that those programs were not a "fit" for Plaintiff's potential. Mr. Stasack demonstrated this attitude in official meetings with administrators, Parents, and Plaintiff present, as well as in his interactions with the Plaintiff in class and on campus.

90. Furthermore, as found by Defendant school district's internal investigation, Mr. Stasack discriminated against Plaintiff when he graded Plaintiff's work differently than he graded the work of non-disabled students.

91. Defendant school district discriminated against Plaintiff when it failed to adequately supervise and train Mr. Stasack, or to discipline him or others to remedy his failures to implement Plaintiff's accommodations.

92. Defendant school district discriminated against Plaintiff by failing to implement a Plan of Assistance for Improvement with clear accountability requirements, and by instead transferring Mr. Stasack to another school in the District, thereby potentially perpetuating the policy and practice of permitting individual teachers to discriminate against students with disabilities.

93. Defendant school district discriminated against Plaintiff by removing Plaintiff from AP/IB French Language class and providing an inferior program to him. During spring term, 2016, Plaintiff engaged in French Language instruction in an independent study arrangement. Plaintiff's non-disabled classmates engaged in French Language instruction in a group setting, allowing for greater opportunity to hear and speak the French language in an interactive and fast paced environment and to more readily prepare for the AP French exams. Mr. Stasack was certified to provide French Language instruction and award IB credit in the International Baccalaureate program, and qualified to prepare students for the IB language exams. Further,

Mr. Stasack was certified as an LCC College Now! Instructor.[3] By contrast, the instructor for Plaintiff's independent study arrangement was not certified to provide instruction in the International Baccalaureate program and was not a certified LCC College Now! instructor. The independent study program did not meet as often as the class taught by Mr. Stasack. The arrangement, as implemented by the District, denied Plaintiff access to a French Immersion experience that was equal to the educational program provided to his non-disabled peers; denied Plaintiff the opportunity to fully prepare for the IB Language exam; and denied Plaintiff the opportunity to earn college credit for enrollment in Defendant's 11th grade French Language class taught by Mr. Stasack.

94. Students in Mr. Stasack's French Language class witnessed and emulated Mr. Stasack's discriminatory and harassing behaviors toward Plaintiff and student #4.

95. Defendant school district further discriminated against Plaintiff when it failed to address the bullying behaviors of Plaintiff's French Immersion classmates and failed to honor Plaintiff's request to not hold the special lesson on equality delivered to the French Immersion students following the May 27th walkout.

96. Defendant's failures resulted in creation of a hostile learning environment, thereby causing additional bullying and targeting behavior by his classmates, resulting in additional mental and emotional stress and anxiety to Plaintiff.

97. The stress of the hostile learning environment in Plaintiff's 11th and 12th grade years had

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[3] LCC College Now! is a partnership program between Eugene School District 4J and Lane Community College (LCC) whereby students enrolled in certain Eugene School District high school courses earn college credit through LCC. Therefore, students enrolled in Mr. Stasack's 11th grade French Language course were eligible for college credit upon earning a passing grade from Mr. Stasack, while Plaintiff, enrolled in an independent study course with an alternate instructor, was not eligible for college credit for 11th grade French language course.

a negative impact on Plaintiff's performance on the International Baccalaureate exams (two in Grade 11 and five in Grade 12). Despite earning high scores on the ACT and SAT exams taken in the fall of his 11th Grade year, Plaintiff did not earn scores sufficient to be awarded an International Baccalaureate diploma, which caused economic damages in college credit awarded and college scholarships available to Plaintiff.

VI. APPEAL OF ISSUES BELOW

A. Statutes of Limitations under IDEA and § 504

(1) The Ninth Circuit Applies the "Discovery" Rule to Statute of Limitations

98. Notwithstanding Plaintiff's assertion of minority tolling, *supra*, the correct calculation of the triggering date for statute of limitations in the Ninth Circuit relies on the "discovery" rule. In the decision below, District argued that the statute of limitations for Plaintiff's cause of action included only events occurring two years prior to July 12, 2018 (the date Plaintiff filed his request for due process hearing). This is an incorrect calculation of statute of limitations in the Ninth Circuit. The Administrative Law Judge found in favor of District's incorrect statute of limitations legal standard.:

> Based on the statute of limitations applicable to due process hearings under the IDEA and § 504, Student's due process complaint must be limited to allegations arising no more than two years before the filing date, to wit June 12, 2016. Further, according to the due process complaint, Student graduated in June 2017. Moreover, the complaint raises no allegations related to extended school year services that would extend the applicable period beyond the end of the traditional school years. Accordingly, the relevant period for consideration in this proceeding is September 2, 2016 through June 2017. Student's due process complaint raises no allegations of procedural or substantive violations of the IDEA during that period.") (internal citations omitted.)

Final Order at 6-7.

99. Plaintiff appeals the administrative hearing officer's calculation of the statute of

limitations under IDEA and Section 504. The correct statute of limitations rule in the Ninth Circuit would look to the date on which the Plaintiff "knew or should have known" ("KOSHK") of the basis of his legal claims related to the alleged action that forms the basis of the complaint and applies a two year statute of limitations going forward from that date. Plaintiff may then look back two years from this KOSHK date, or "discovery date," for evidence and events to support his claims. *Avilla v. Spokane Sch. Dist. 81*, 852 F.3d 936, 944-45 (9th Cir. 2017); 20 U.S.C. § 1415(f)(3)(C).

100. In *Avila*, the Ninth Circuit Court of Appeals described the legal standard for statute of limitations in terms of the date the parent discovered the basis of his or her legal claims related to denial of FAPE. As long as the parent's due process complaint was filed within two years of the "knew or should have known" date, then the student is entitled to full relief for that injury. The "knew or should have known" date "stems from when parents know or have reason to know of an alleged denial of [FAPE] under the IDEA, not necessarily when the parents became aware that the district acted or failed to act." *Avilla v. Spokane Sch. Dist. 81*, 852 F.3d 936, 944-45 (9th Cir. 2017) (explaining that parents' awareness of a school district's evaluation, which determined that the student was not eligible for services under the IDEA, did not necessarily mean they knew or had reason to know of the basis of their legal claims) (emphasis added). This standard is known as "the discovery rule." *See Avilla v. Spokane Sch. Dist. 81*, 852 F.3d 936, 944 (9th Cir. 2017) ("We hold the IDEA's statute of limitations requires courts to apply the discovery rule without limiting redressability to the two year period that precedes the date when 'the parent or agency "knew or should have known" about the alleged action that forms the basis of the complaint.").

101. But, because Plaintiff did not have standing as a minor child to bring the action on his

own behalf (*supra* at section VI(B)), he did not learn of the basis for his legal claims until he met with an attorney in December 2017 to pursue his rights to seek redress the District's failure to provide a FAPE and District's resulting discrimination against him because of his disabilities.

102. Alternately, applying the *Avila* discovery rule, Plaintiff was not aware that he may have a private right of action on his own standing, independent of the actions his parents took or could have taken, until he conferred with an attorney on December 20, 2017. Plaintiff's claims thus include events and facts from at least December 20, 2015. Plaintiff's statute of limitations under *Avila* therefore required him to file his claims on or before December 20, 2019. Plaintiff filed his request for a due process hearing with Oregon Department of Education on July 17, 2018, well within the statute of limitations.

(2) The Statute of Limitations for Section 504 Claims is Two Years.

103. The statute of limitations for Section 504 claims is also two years. Under OAR 581-015-2395(3), "The prehearing and hearing procedures in OAR 581-015-2340 through 581-015-2383 apply to hearings conducted under Section 504 of the Rehabilitation Act." OAR 581-015-2345(3)(a) falls within that range and establishes a two-year statute of limitations. That timeframe is consistent with previous rulings from controlling courts. *See, e.g., T.L. v. Sherwood Charter Sch.*, 2014 WL 897123 (D. Or. 2014) (*affm'd*, 691 Fed.Appx 310 (9th Cir. 2017)) (holding O.R.S. 12.110(1) established two-year statute of limitations for claims filed by a parent on behalf of a middle school-aged student's Section 504 claims against school).

B. Plaintiff's Rights to Bring Claims on His Own Behalf Were Unavailable to him While he was a Minor.

104. Complaints filed under OAR 581-015-2345 (Hearing Request and Response) and OAR 581-015-2390 (Hearings under Section 504) must be filed within two years after the date of the

act or omission (or the date that the party knew or should have known that an omission occurred) that gave rise to the hearing. OAR 581-015-2345(3). However, because Plaintiff was a minor child until two months *after* he graduated from District's education program, Plaintiff was unable to file a request for due process hearing under either the IDEA or § 504 or under related state statutes and administrative rules.

(1) Student was unable to bring a due process claim while he was a minor student.

105. The Administrative Law Judge found that Plaintiff, while he was a minor student enrolled in District's public education program, did not have rights as a minor to raise denial of FAPE allegations under the IDEA, nor did he have a right to request an administrative hearing under Oregon Administrative Rules related to Hearings under Section 504. *See* Final Order at 8 (holding "[p]ursuant to OAR 581-015-2395(1), the right to request a hearing under § 504 of the Rehabilitation Act lies solely with a student's parent or guardian."). The Administrative Law Judge further held that

> [a]ll claims raised in the due process complaint related to alleged violations of the District's obligation to provide FAPE under § 504 occurred while Student was still a minor and attending high school within the District. Under the applicable rules, Student's parents were entitled to work with the District to resolve the perceived issues and, if unable to do so, request a hearing on Student's behalf to seek any available remedies. According to the due process complaint, Student's parents engaged with the District on multiple occasions to remedy issues related to Student's special education needs. While arguably parents of Student might still be able to request a due process hearing for a denial of FAPE under 504, those rights did not transfer to Student upon reaching the age of majority. As such, the due process complaint fails to comply with OAR 581-015-2395(1) and is hereby dismissed."

Id. at 9. *See also* ORS 343.165 which relates to special education, the rights of parents to pursue claims, and the statute of limitations by which parents or a school district must bring a due process complaint under Oregon's special education statutes related to claims of denial of FAPE; ORS 343.165 is silent to limitations placed on minor children to bring a claim; is likewise silent

on the rights of 18 year-old former students to bring a complaint for themselves; and silent on whether minority tolling applies to such minor plaintiffs.[4]

106. Similarly, the IDEA contemplates complaints filed by parents of students with disabilities enrolled in public education programs: The IDEA permits the parents of disabled children to "present a complaint ... with respect to any matter relating to identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to such child[,]" (20 U.S.C. § 1415(b)(6)(A)).

107. The IDEA defines the timeline to be incorporated when a parent files a request for a due process hearing. 20 U.S.C. § 1415(f)(3)(C) ("Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part [20 USCS §§ 1411 et seq.], in such time as the State law allows.") (emphasis added)

108. The IDEA requires the state educational agency to assist parents in filing requests for due process hearings "develop[ing] a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively." 20 U.S.C. § 1415(b)(8) (emphasis added).

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[4] ORS 343.165 "(1) A hearing shall be conducted pursuant to rules of the State Board of Education if: (a) The *parent* requests a hearing to contest the determination of the school district concerning the identification, evaluation, individualized education program, educational placement or the provision of a free appropriate public education to the child; or (b) The school district requests a hearing to obtain a decision regarding whether its identification, evaluation, individualized education program or educational placement of the child is appropriate or whether the district's proposed action is necessary to provide the child with a free appropriate public education." (emphasis added).

109. By contrast, Plaintiff's parents' claims were "discovered" on March 28, 2016 when the District concluded its investigations of discriminatory treatment (refusal to implement accommodations) and discriminatory grading. While Plaintiff was a minor student enrolled in District's education program, Plaintiff's parents pursued a complaint for bullying/harassment against Mr. Stasack with the school district and filed a complaint against Mr. Stasack to TSPC. Plaintiff's parents did not pursue a due process complaint against the district for discrimination. The District did not inform Plaintiff's parents that they had a due process right to file a discrimination complaint against Mr. Stasack with the Office of Civil Rights or file a request for due process hearing with the Oregon Department of Education.

110. Thus, at the time the events detailed in the due process complaint occurred, Plaintiff was a minor student without standing to bring claims or request a due process hearing on his own behalf under Oregon Administrative Rules regarding due process hearings for alleged violations of IDEA or § 504. The administrative law judge dismissed Plaintiff's IDEA claims as untimely and pointed to the transfer of educational rights described in the IDEA at age of majority. However, at the time that Plaintiff suffered the denials of FAPE and discrimination detailed in his Administrative Hearing complaint, Plaintiff had not reached the age of 18 and therefore educational rights had not transferred to him and thus he did not have standing to bring a complaint on his own behalf while he was a student with District. Although Plaintiff's parents were informed of their procedural safeguards and rights; engaged in multiple conversations, complaints, and actions related to the events described herein; and sought to advocate for their son under the IDEA and § 504 of the Rehabilitation Act while Plaintiff was a student in Defendant's school, Plaintiff did not know, or should not have known, that Defendant's acts were discriminatory in violation of state and federal law against him individually and that he had

individual standing to bring a claim against Defendant until December 31, 2017. Defendant school district established an alternate educational placement for Plaintiff that Plaintiff and his parents were told was equivalent to the education received by his non-disabled peers. The true impact of Defendant's actions on Plaintiff's educational, emotional, and mental health were not known to Plaintiff until Spring 2017 through Spring 2018.

(2) Transfer of educational rights occurred after Plaintiff graduated District's educational program.

111. Upon reaching the age of majority on [REDACTED], 2017, Plaintiff became eligible to bring a claim on his own behalf under IDEA, § 504, and ADA. *See* 34 C.F.R. § 300.520; s*ee also* the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g(d)) (" For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.").

112. On July 12, 2018, Plaintiff filed a request for due process hearing. The administrative law judge dismissed Plaintiff's complaint with prejudice. Plaintiff has thus exhausted the administrative remedies that might have been available to him through the Office of Administrative Hearing.

113. Plaintiff continued to suffer emotional and mental health harms as a result of the events in his junior and senior year of high school, and those harms impacted him in his college environment. At home from college for winter break in 2017, Plaintiff sought legal counsel to determine if he had available legal claims.

C. Plaintiff's Statute of Limitations was Tolled While he was a Minor.

114. Plaintiff appeals the administrative law judge finding that minority tolling is unavailable to Plaintiff.

115. As described *supra*, Plaintiff's minority status while he was a student in Defendant's school district prevented him from filing a request for a due process hearing on his own behalf. Plaintiff brings a claim of discrimination on the basis of his disability for District's failure to implement his IEP accommodations and discriminatory grading and instructional placement in independent study arrangement.

116. The statute of limitations in Oregon for an action alleging discrimination is tolled for one year after a minor person attains 18 years of age. *See* Response to District's Motion to Dismiss ("Resp. to Mot. Dism." at 9-21) (attached as Exhibit 2, and also incorporated into arguments below for the convenience of the court, providing legal explanation related to the availability of minority tolling of the statute of limitations to Plaintiff's claims).

(1) ORS 12.160 is the controlling legal authority for minority tolling of discrimination claims.

Or. Rev. Stat. § 12.160 reads:

> (1) Subject to subsection (2) of this section, if a person is entitled to bring an action mentioned in ORS 12.010 to 12.050, 12.070 to 12.250 or 12.276, and at the time the cause of action accrues the person is a child who is younger than 18 years of age, the statute of limitation for commencing the action is tolled for so long as the person is younger than 18 years of age.
>
> (2) The time for commencing an action may not be extended under subsection (1) of this section for more than five years, or for more than one year after the person attains 18 years of age, whichever occurs first.
>
> (3) Subject to subsection (4) of this section, if a person is entitled to bring an action mentioned in ORS 12.010 to 12.050, 12.070 to 12.250 or 12.276, and at the time the cause of action accrues the person has a disabling mental condition that bars the person from comprehending rights that the person is otherwise bound to know, the statute of limitation for commencing the action is tolled for so long as the person has

> a disabling mental condition that bars the person from comprehending rights that the person is otherwise bound to know.
>
> (4) The time for commencing an action may not be extended under subsection (3) of this section for more than five years, or for more than one year after the person no longer has a disabling mental condition that bars the person from comprehending rights that the person is otherwise bound to know, whichever occurs first.
>
> (5) If a child's cause of action is tolled under subsection (1) of this section, a cause of action for recovery of damages for medical expenses incurred by a parent, guardian or conservator of the child is tolled for the same period of time as the child's cause of action if the medical expenses resulted from the same wrongful conduct that is the basis of the child's cause of action.
> [Amended by 1973 c.827 §4; 1979 c.246 §1; 1983 c.762 §9; 1997 c.339 §1; 2007 c.285 §1; 2015 c.510 §1]

117. Or. Rev. Stat. § 12.110 falls within 12.070 to 12.250 as included in 12.160(1), *supra,* and reads in part:

> (1) An action for assault, battery, false imprisonment, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

Or. Rev. Stat. § 12.110(1).

118. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act are anti-discrimination statutes. An educational agency required to apply the protections of Section 504 for its students may meet the FAPE requirements by meeting the procedural and substantive requirements of the IDEA. 34 C.F.R. § 104.33(2). Plaintiff's claims are thus claims related to discrimination for failure to meet the substantive requirements of the IDEA and resulting discriminatory denial of FAPE by Defendant District. Additionally, Plaintiff brings a claim related to bullying and a hostile learning environment.

(a) *Minority tolling is not disallowed in Oregon.*

119. Minority tolling is available for several legal causes of action in Oregon. In *Bradford v.*

Davis, the Oregon Supreme Court described the mechanism by which the tolling provisions of ORS Chapter 12 apply to tort claims brought under other statutes of limitations:

> If tort actions against public bodies and their officers and employees are not a specially created type of action but ordinary tort actions to which the legislature has consented to subject the government and its personnel, then it is immaterial that ORS 12.160 does not refer to ORS 30.275 in providing for an extension of time for minors and other incapacitated persons. ORS 12.160, *supra*, does not say that the particular time limit which is extended must be one which is mentioned in the listed sections. What ORS 12.160 does refer to is "any person entitled to bring *an action mentioned in* ORS 12.010," etc. (emphasis added). An action for damages for an alleged tort, or more compendiously "for any injury to the person or rights of another, not arising on contract," ORS 12.110, is one of those "mentioned in ORS . . . 12.070 to 12.160"; and a person entitled to bring such an action therefore comes within ORS 12.160, notwithstanding that his particular action is against a public body or public employee.

Bradford v. Davis, 290 Or. 855, 861 (Or. 1981)

120. In *Bradford*, Oregon's Supreme Court addressed the issue of the Oregon Tort Claims Act ("OTCA") and legislative intent related to minority tolling of the OTCA statutes of limitations. The OTCA is a statute that prescribes its own statute of limitations. 290 Or. 855, 861 (Or. 1981). The *Bradford* court held that minority tolling of the statute of limitations applied because "ORS 30.275 (3) itself makes special provision for minority in the notice requirement, but it is silent as to the two-year limitation with respect to minors or other incapacitated claimants. It is consistent with the remedial policy of the Tort Claims Act to assume that the legislature meant to assure local governments of an early opportunity to investigate claims even by minors, but that thereafter the extension of time to commence an action generally provided to minors and incapacitated persons by ORS 12.160 would apply to the same kinds of actions when brought against a public defendant." *Bradford v. Davis*, 290 Or. 855, 861 (Or. 1981).

121. The legislative history of the OTCA related to minority tolling is described in *Baker v. Lakeside*. In *Baker*, the Oregon Supreme Court called into question two prior cases where plaintiffs sought to toll the statute of limitations for claims were subject to the Oregon Torts

Claim Act ("OTCA") pursuant to the minority tolling provisions of O.R.S. 12.160, holding that, following a 1981 legislative revision of the OTCA, claims brought under OTCA may be tolled for minority for negligence claims.[5] 343 Or. 70 (2007).

122. Within ORS 12.110, the legislature clearly defined whether minority tolling would apply to certain medical claims:

> (4) An action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation shall be commenced within two years from the date when the injury is first discovered or in the exercise of reasonable care should have been discovered. However, notwithstanding the provisions of ORS 12.160, every such action shall be commenced within five years from the date of the treatment, omission or operation upon which the action is based or, if there has been no action commenced within five years because of fraud, deceit or misleading representation, then within two years from the date such fraud, deceit or misleading representation is discovered or in the exercise of reasonable care should have been discovered.

Or. Rev. Stat. § 12.110(4)

123. The Oregon Court of Appeals examined the history of minority tolling related to OTCA claims in 2015 and found "Based on the text of ORS 12.160 (2005), and following the [Oregon] Supreme Court's reasoning in *Bradford* and *Baker,* we conclude that ORS 30.275(9) does not bar application of ORS 12.160 (2005) to OTCA claims, because ORS 12.160 (2005) does not provide a limitation on the commencement of an action but instead provides for tolling the time allowed for the commencement of an action. Thus, plaintiff's claim "comes within ORS 12.160, notwithstanding that [her] particular action is against a public body." *Smith v. Or. Health Sci.*

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[5] In two earlier cases, *Cooksey* and *Lawson*, the Oregon Court of Appeals held that 12.160 did not apply to Oregon Tort Claims Act because the OTCA included its own statute of limitations of two years, and had an express provision stating that minority did not toll the statute of limitations. *See Cooksey v. Portland Public School Dist. No. 1*, 143 Or. App. 527, 923 P.2d 1328, rev den, 324 Or. 394 (1996). *See also Lawson v. Coos Co. Sch. Dist. # 13*, 94 Or.App. 387, 390,765 P.2d 829 (1988).

Univ. Hosp. & Clinic, 356 P.3d 142, 150 (Or. Ct. App. 2015) (internal citations omitted).

124. Oregon court decisions have supported minority tolling in other causes of action. Thus, Oregon courts applied minority tolling in the context of negligence alleged against a school district; civil rights violations; medical negligence; and sexual abuse against a public body – even where the statute addressing the claim defines a specific statute of limitation.

125. In *Pelster v. Walker*, 185 F. Supp. 2d 1174, 1183 (D. Or. 2001), minority status tolled the statute of limitations in a case of civil rights violations pursuant to 42 U.S.C. § 1983, based on claims of sexual assault from a medical examination/physical search of minor plaintiffs' bodies and a search of their home. In *Funez ex rel Funez v Guzman*, 687 F. Supp. 2d 1214 (D. Or. 2009), the court found that the minority tolling provision applied to the plaintiff's claims of negligence against a school district after other students assaulted him. In *Robbins v. State*, 366 P.3d 752 (Or. Ct. App. 2016), the statute of limitations was tolled for a minor's claim under the Oregon Tort Claim Act in a case of sexual abuse. In *Smith v. Oregon Health Sci. Univ. Hosp. & Clinic*, 272 Or. App. 473, 474, 356 P.3d 142, 144 (2015), minority status also tolled the statute of limitations. *See also Baker, supra.* In *Luchini v. Harsany*, 98 Or. App. 217 (1989), the Oregon Court of Appeals held that appointment of a conservator does not eliminate minority tolling, because it does not remove the "litigation difficulties suffered by minors, including lack of knowledge of legal rights, problems with investigating, preparing and filing and an action, and problems testifying." *Luchini* at 222.

126. In *Robbins v. State*, the court noted that the legislature revised language of 12.160 to correct a phrase that the judiciary was interpreting in a way contrary to legislative intent.

> In 2015, while this appeal was pending, the legislature once again amended ORS 12.160(1). House Bill (HB) 2333 (2015) amended that subsection of the statute by substituting the phrase "that is subject to the statutes of limitation prescribed by" with the pre–2007 language that the statutes of limitation would be tolled for actions

> "mentioned in" chapter 12. Or. Laws 2015, ch. 510, § 1 (enacting HB 2333). The legislature explained that the rewording of the statute in 2007 had resulted in the unintended consequence of eliminating application of the minority.

366 P.3d 752, 753 (Or. Ct. App. 2016)

127. The *Robbins* court, referencing *Smith*, ruled that, absent a prohibition against application of a tolling statute within "the claim's limitation statute was governed by ORS 30.275(9), that Statute "'does not bar application of ORS 12.160 (2005) to OTCA claims, because ORS 12.160 (2005) does not provide a limitation on the commencement of an action but instead provides for tolling the time allowed for the commencement of an action. Thus plaintiff's claim comes within ORS 12.160, notwithstanding that her particular action is against a public body.'" *Robbins v. State*, 366 P.3d 752, 754 (Or. Ct. App. 2016) (internal citations omitted).

128. Within Chapter 12, the legislature has clearly limited the application of tolling to specific causes of action. For example, ORS 12.115 explicitly bars the tolling of statutes of limitations in negligent injury:

> ORS 12.115: Action for negligent injury to person or property. (1) In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained of.
>
> (2) Nothing in this section shall be construed to extend any period of limitation otherwise established by law, including but not limited to the limitations established by ORS 12.110. [1967 c.406 §2]

129. Therefore, because ORS 343.165 does not prohibit application of 12.160, minority tolling is available to cases brought under ORS 343.165. Additionally, because the Oregon legislature has revised provisions O.R.S. 12.160 six times it could have defined a prohibition for applying minority tolling to discrimination by school districts or school employees.[6] It did not.

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[6] *See* O.R.S. 12.160 (listing dates of revisions as "[Amended by 1973 c.§4; 1979 c.246 §1; 1983 c.762 §9; 1997 c.339 §1; 2007 c.285 §1; 2015 c.510 §1]").

(b) ***Minority tolling is available in claims of discrimination in education settings***

130. In *Lowry Ex Rel. T.L. v. Sherwood Charter School*, the District Court of Oregon recognized that ". . .Oregon's disability discrimination statutes found at O.R.S. 659A.103 to O.R.S. 659A.145 contain the most analogous state law [to the ADA or Rehabilitation Act]." No. 03:13-cv-01562-HZ, at *14 (D. Or. Mar. 4, 2014). Discrimination is one of the actions "mentioned in ORS 12.010 to 12.050, 12.070 to 12.260, 109.100 or 109.25."[7] The *Lowry* court also defined that O.R.S. 12.110(1) applies to disability discrimination actions. *Lowry Ex Rel. T.L. v. Sherwood Charter Sch.*, No. 03:13-cv-01562-HZ, at *17 (D. Or. Mar. 4, 2014). In the context of § 504 of the Rehabilitation Act and IDEA claims, minority status may toll the statute of limitations in cases where minors claim discrimination.

131. In *PGE v. Bureau of Labor and Industries*, the Oregon Supreme Court described rules of statutory construction that should be employed in interpreting a statute:

> In interpreting a statute, the court's task is to discern the intent of the legislature. To do that, the court examines both the text and context of the statute. That is the first level of our analysis.
>
> In this first level of analysis, the text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent. In trying to ascertain the meaning of a statutory provision, and thereby to inform the court's inquiry into legislative intent, the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning.

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[7] O.R.S. 12.070(1) "An action for assault, battery, false imprisonment, or for *any injury to the person or rights of another*, not arising on contract and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit."

> Also at the first level of analysis, the court considers the context of the statutory provision at issue, which includes other provisions of the same statute and other related statutes. Just as with the court's consideration of the text of a statute, the court utilizes rules of construction that bear directly on the interpretation of the statutory provision in context. Some of those rules are mandated by statute, including, for example, the principles that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all" and that "a particular intent shall control a general one that is inconsistent with it." . . .
>
> If the legislature's intent is clear from the above-described inquiry into text and context, further inquiry is unnecessary.

132. *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or. 606, 610-11, 859 P.2d 1143, 1146 (Or. 1993) (superseded by statute on other grounds as explained in *State v. Gaines*, 206 P.3d 1042, 1050 (Or. 2009)) (internal citations omitted).

133. Applying the Oregon Supreme Court's statutory construction canons from *PGE*, this tribunal should interpret that minority tolling should apply to causes of action permitted under O.R.S. 12.110, which includes claims of discrimination.

134. Within ORS Chapter 12, the legislature included ORS 12.160, which provides for minority tolling. Because ORS 12.160 and ORS 12.110 both reside within Chapter 12, minority tolling applies to causes of action described in the surrounding chapter. *See Duncan v. State*, Civil Case No. 05-1747-KI (Lead Case), consolidated cases, at *8-9 (D. Or. Mar. 14, 2007) ("The two statutes that we all agree are statutes of limitations, ORS 12.110(1) and ORS 12.117, state that the action "shall be commenced" within a certain time frame. The tolling provision for minority and insanity, ORS 12.160, does not contain this phrase but instead removes the time of disability from the limitations period and states a maximum extension period. The phrasing of the tolling statute is completely different from the limitations statutes. ORS 12.117 also contains the "shall be commenced" language and thus is a limitations statute and not a tolling statute. Consequently, [the court] will apply ORS 12.160 as the minority tolling provision.")

135. Here, Plaintiff's claims discrimination, denial of FAPE, and violation of access under IDEA, Section 504 of the Rehabilitation Act, the ADA, and related state statutes and rules and therefore may apply the minority tolling provisions of ORS. Chapter 12. Oregon limits the time for commencing an action to either five years or one year after attaining the age of majority. Or. Rev. Stat. 12.160(2). Plaintiff filed the instant case on July 12, 2018; Plaintiff's nineteenth birthday was [REDACTED], 2018. Oregon case law applying minority tolling in discrimination claims is applicable here. Plaintiff requests that this tribunal apply Oregon's minority tolling statute, allowing Plaintiff to seek remedies for events and harms that occurred during his 11th and 12th grade years (between July 1, 2015 and June 30, 2017).

(2) Minority tolling of discrimination claims is not inconsistent with public policy underlying the IDEA or § 504.

136. Plaintiff asserts that it is an error of law to deny application of minority tolling to Plaintiff's § 504, ADA, IDEA, and ORS 659 claims.

137. Plaintiff agrees that important public policies are met through quickly resolving due process claims related to a child's education. These include (1) allowing a school district, with its particular expertise, to design and implement educational programs for children; (2) quickly repairing an inappropriate educational program is in the best interest of the child.

138. *Robb v. Bethel School Dist. # 403* identified several purposes to requiring plaintiffs to exhaust administrative remedies of IDEA disputes: "Our allowing the School District a chance to remedy Ms. Robb's injuries in the first instance serves other goals the exhaustion requirement is meant to serve. We have noted that the exhaustion requirement embodies the notion that educational agencies, not the courts, ought to have primary responsibility for the educational programs that Congress has charged them to administer. The requirement ensures that federal courts, "generalists with no experience in the educational needs of [disabled] students," are given

the benefit of expert fact-finding by a state agency devoted to this very purpose. And it promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled students." 308 F.3d 1047, 1051 (9th Cir. 2002) (internal citations omitted). *See also A.T. v. Dry Creek Joint Elementary Sch. Dist.*, No. 2:16-cv-02925-MCE-DB (E.D. Cal. Jun. 16, 2017) (holding); *Robb v. Bethel Sch. Dist. # 403,* 308 F.3d 1047, 1050 (9th Cir.2002). ("If so, exhaustion of those remedies is required. . . If not, the claim necessarily falls outside the IDEA's scope, and exhaustion is unnecessary. … Where the IDEA's ability to remedy a particular injury is unclear, exhaustion should be required to give educational agencies an initial opportunity to ascertain and alleviate the alleged problem.")(overruled on other grounds)(internal citations omitted).

139. However, these important goals are unavailable in this case. Plaintiff was unable to bring a request for due process hearing on his own behalf; Plaintiff's parents attempted to resolve the educational issues on Plaintiff's behalf through District procedures while Plaintiff was a minor child; and Plaintiff has graduated from the District.

140. It is an equally important purpose of the IDEA, § 504, the ADA, and ORS 659 to safeguard the rights of persons with disability to be free from discrimination. However, when a minor child is a student in a public education program and does not have standing to bring a claim on his own behalf, the Plaintiff's rights are then dependent on the vigilance and action of his parents, unless minority tolling or other equitable tolling applies.

141. Instead, the Plaintiff in the instant case asserts that the district discriminated against him because of his disability when it permitted one specific teacher to refuse to implement the accommodations written in his IEP, arranged a parallel but unequal French language class, and negligently permitted bullying, harassment, and a hostile learning environment to flourish as a

result of Plaintiff's attempts to access his accommodations, and the district's transfer of the French instructor to an elementary school.

142. In the case at hand, Plaintiff seeks a finding that the District failed to provide a FAPE under the IDEA and discriminated against him on the basis of his disabilities in violation of § 504. Plaintiff seeks remedies and damages for disability discrimination. Thus, the IDEA's underlying policy of prompt parental involvement in litigating special education claims does not apply here. Here, IDEA's remedies are not available to Plaintiff, because Plaintiff has graduated the District's K-12 education program and thus no educational remedy remains available to him.

143. Other jurisdictions have examined the availability of minority tolling to claims brought against K-12 education programs. *See Bishop v. Children's Center for Developmental*, 618 F.3d 533, 538 (6th Cir. 2010) ("Ohio's tolling provisions apply to CB's claims because the minority tolling statute is not inconsistent with § 1983, and the Rehabilitation Act's goal of protecting individuals with handicaps from discrimination."); *Hickey v. Irving Indep. Sch. Dist.*, 976 F.2d 980, 983-84 (5th Cir. 1992) (reversing and remanding a district court's decision that a plaintiff's claims were time-barred under the Rehabilitation Act because the court had failed to consider whether Texas's minority tolling statute was applicable).

144. By contrast, California courts have barred the application of minority tolling as offensive to the purpose of the IDEA, relying on a calculation that minority tolling of a claim of educational harm or failure to provide FAPE that "a school district in California . . . 'could be held hostage' for up to fifteen years for § 504 and ADA claims." *A.T. v. Dry Creek Joint Elementary Sch. Dist.*, No. 2:16-cv-02925-MCE-DB, at *9 (E.D. Cal. Jun. 16, 2017) (internal citations omitted). *But see Ashlee R. v. Oakland Unified School District Financing*, No. C 03-5802 MEJ. (N.D. Cal. Aug. 23, 2004) (applying California's minority tolling provisions to a

plaintiff's §1983 and § 504 of the Rehabilitation Act and Americans with Disabilities Act claims but deciding timeliness of IDEA claims on other grounds.)

145. The Oregon District Court likewise found that minority tolling was unavailable to a similarly plaintiff similarly situated to the events for this Plaintiff. *McIntyre v. Eugene Sch. Dist. 4J*, Case No. 6:18-cv-00768-MK (D. Or. Jan. 23, 2019) (appeal pending).

146. Oregon courts have found minority tolling to be appropriate in a variety of causes of action including negligence claims *Funez Ex. Rel. Funez v. Guzman*, 687 F. Supp. 2d 1214, 1221 (D. Or. 2009) (holding that "[p]laintiff's negligence claim is governed by the 2006 version of § 12.160, and this Court is bound by the Oregon Supreme Court's interpretation of the provision at that time. Thus, the Court concludes the tolling provision of § 12.160 as it existed in 2006 applies to Plaintiff's negligence claim.") (internal citations omitted);

147. In an opinion clarifying the question "Who must discover a minor's cognizable claim?" the Oregon court of appeals found that the minor child's discovery of the harms and claims sufficient to provide notice of a tort against a public body, and provide notice, tolling both the statute of limitations and the notice provision timelines from that date. The Court also found that the involvement of the minor plaintiff's mother in a potential tort claim (by, among other things, consulting an attorney related to potential claims) more than two years prior to the plaintiff's notice did not block the minor child's application of minority tolling. *Buchwalter-Drumm v. State*, 404 P.3d 959, 968 (Or. Ct. App. 2017) ("A claim for injury to a child is "the child's claim." It is, thus, the child who must discover the cognizable injury, either directly or through knowledge imputed to the child [through a guardian ad item].").

148. If minority tolling is unavailable to any minor plaintiff in a similar situation, no minor plaintiff will have access to the protections of Oregon and federal statutes related to provision of

a free and appropriate public education except through the actions of his or her parents. However, applying minority tolling to Plaintiff's statute of limitations serves the purpose of justice and fairness.

149. Oregon's minority tolling statute places a cap on minority tolling of five years or age 19, whichever is earlier.[8] This cap supports the public policy preference of resolving discrimination cases quickly. Applying minority tolling here includes the events at issue detailed in this due process complaint between [REDACTED] (the date on which Plaintiff attained 18 years of age). These events are within five years of the filing of the underlying action. The underlying action was timely filed on July 12, 2018, within one year of Plaintiff's 18th birthday.

(c) *Equitable tolling should apply to Plaintiff's claims*

150. Plaintiff requests this court to apply the doctrine of equitable tolling to his claims in order to prevent an unjust dismissal of his claims, claims for which he did not himself have standing to bring while he was a minor student in District's K-12 education program.

151. "The equitable tolling of statutes of limitations is a judicially created, nonstatutory doctrine. It is 'designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff's claims—has been satisfied.' Where applicable, the doctrine will 'suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.'" *Hopkins v. Kedzierski*, 225 Cal. App. 4th 736, 746 (Cal. Ct. App. 2014) quoting *McDonald v. Antelope Valley Comm*, 45 Cal. 4th 88, 99 (Cal. 2008) (internal citations omitted.).

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[8] Or. Rev. Stat. Ann. § 12.160(2). "The time for commencing an action may not be extended under subsection (1) of this section for more than five years, or for more than one year after the person attains 18 years of age, whichever occurs first."

D. Hostile Learning Environment and Continuing Harms

152. Plaintiff further argued at the administrative level that, even if one were to apply the "traditional" calculation of statute of limitations in IDEA and Section 504 cases (the "occurrence date"), wherein one looks back two years from the date the complaint is filed, the hostile learning environment that was created during school year 2015-2016 continued throughout his senior year (2016-2017).

153. The Administrative Law Judge ruled that Plaintiff failed "to raise any claims, under the IDEA or its state counterparts, redressable before this tribunal, the alleged violations of the IDEA must be dismissed as untimely because each occurred prior to July 2, 2016." Final Order at 7.

154. Sufficient discrimination and harm occurred between July 13, 2016 and July 12, 2018 to sustain this complaint. The background history of Plaintiff's interactions with Mr. Stasack throughout his four years of high school at South Eugene High School built in intensity to his senior year, and contributed to increased anxiety; heightened stress; the establishment of the hostile learning environment; and bullying that happened at the end of his junior year and throughout his senior year with continuing harmful effects throughout his freshman year of college. As explained below**,** the statute of limitation for his discrimination claims tolled while Plaintiff was a minor. However, even if this court rules that the statute of limitations includes only events between July 13, 2016 and the date the complaint was filed on July 12, 2018, viable claims arose within that time frame.

155. Schools can be held financially liable if they are deliberately indifferent to known acts of student-on-student harassment and the harasser is under the school's authority so long as the harassment is so severe, pervasive, and objectionably offensive that it can be said to deprive the

victims of access to the educational opportunities or benefits provided by the school. *See Davis v. Monroe County Board of Education*, 526 U.S. 629, 645 (1999) (holding that "[t]hese factors combine to limit a recipient's damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs. Only then can the recipient be said to "expose" its students to harassment or "cause" them to undergo it "under" the recipient's programs.").

156. Equitable tolling is available to courts where fairness or policy considerations so advocate. For example, equitable tolling is available when a plaintiff is prevented from bringing suit.

> [The "pure" continuing violations doctrine] permits a plaintiff to recover for wrongdoing transpiring outside of the limitations period, which is saved from the limitations bar because of its connection to more recent misconduct. If this form of the continuing violations doctrine applies, the limitations period on a claim does not necessarily begin to run as soon as its essential elements first fall into place, or when the plaintiff becomes aware that he or she has the makings of a valid cause of action. Instead, a claim subject to this approach will continue to build and absorb new wrongful acts for so long as the defendant perpetuates its misconduct. The statute of limitations will start to run upon the entirety of this accumulated malfeasance only when the defendant's misbehavior draws to a close.
>
> Hostile work environment claims brought under Title VII of the Civil Rights Act of 1964 offer the paradigmatic example of this type of continuing violation. A plaintiff alleging a single hostile work environment can recover for all injurious manifestations of that environment, regardless of when they occurred, whether they would be actionable if sued upon individually, and when the plaintiff discovered the essential facts supporting his or her claim, provided that the same hostile environment persisted up into the limitations period prior to the filing of the administrative charge.

Kyle Graham, *The Continuing Violations Doctrine* , 43 Gonz. L. Rev. 271, 280-281 (2008) (internal citations omitted.). *See generally* Kyle Graham, *The Continuing Violations Doctrine* , 43 Gonz. L. Rev. 271 (2008); *see also Hilao v. Estate of Marcos*, 103 F.3d 767, 773 (9th Cir. 1996) (applying equitable tolling in an action filed under the Torture Victim Protection Act); *Miller v. Beneficial Mgmt. Corp.,* 977 F.2d 834, 843-44 (3rd Cir. 1992) (finding that "if the

alleged discriminatory conduct is a 'continuing violation' the statute of limitations begins to run on the date of the last occurrence of discrimination rather than the first.").

157. In public schools, a hostile learning environment is similar in nature to a hostile work environment. The Supreme Court, applying the "deliberate indifference" standard on school officials when they failed to intervene in student-on-student sexual harassment and held that a school district could be held liable for its failure to intervene in the creation of a hostile learning environment. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 646 (1999) ("Where, as here, the misconduct occurs during school hours and on school grounds — the bulk of G. F.'s misconduct, in fact, took place in the classroom — the misconduct is taking place "under" an "operation" of the funding recipient. (finding liability where school fails to respond properly to "student-on-student sexual harassment that takes place while the students are involved in school activities or otherwise under the supervision of school employees"). In these circumstances, the recipient retains substantial control over the context in which the harassment occurs.") (internal citations omitted.).

158. The Office of Civil Rights published guidance to school districts related to a district's responsibilities to students with disabilities who experience bullying, in which it recommended that "[i]f a school's investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects." Department of Education, Office of Civil Rights, Dear Colleague Letter,

October 21, 2014 at 4 ("2014 Dear Colleague Letter").[9] The Office of Civil Rights defined the elements necessary to find a violation of Section 504 for bullying and hostile learning environments: "(1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately." 2014 Dear Colleague Letter at 4.

159. The effects of his experiences in South Eugene School District that occurred in Plaintiff's freshman and sophomore years of high school are included to describe the escalating nature of stress, hostility, and bullying by Plaintiff's teacher and classmates that culminated in the events of his junior and senior years.

160. Defendant failed to address Plaintiff's claims of a hostile learning environment while Plaintiff was a minor student enrolled in District's high school educational program.

161. As described in Plaintiff's request for a due process hearing (and reiterated in this appeal), Plaintiff experienced continuing harms and ongoing bullying and harassment by classmates throughout Plaintiff's junior and senior years (school years 2015-2016 and 2016-2017) that represented a continuing and ongoing hostile learning environment that was established by Defendant's actions beginning in Plaintiff's freshman year. Plaintiff continues to suffer economic and non-economic harm and injury as a result of those actions and events.

162. Mr. Stasack had engaged in the same discriminatory behavior to another student 2 years prior to these events. Several other families reported that Mr. Stasack exhibited similar and ongoing refusals to implement their child's IEP or 504 accommodations. District administrators knew or had reason to know of a pattern of discrimination engaged in by Mr. Stasack against

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[9] Department of Education, Office of Civil Rights, 2014 Dear Colleague Letter, retrieved April 9, 2019 from https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf.

students with disabilities in the French Immersion and International Baccalaureate programs. By permitting Mr. Stasack's on-going behaviors, Administration established a hostile learning environment for Student.

163. As a result of these failures on the part of District staff, and the failure of District administration to require staff adherence to Student's IEP and accommodations, Parents filed a Bullying/Harassment complaint with the District and with TSPC against Mr. Stasack. The District completed its investigation into Mr. Stasack's actions on March 28, 2016, amended April 13, 2016. The district found that Mr. Stasack had engaged in discriminatory practices and had failed to implement Student's IEP.

164. Students in Mr. Stasack's French Language class witnessed and emulated Mr. Stasack's discriminatory and harassing behaviors toward Student and Parent #4's child.

165. School and District administrators failed to adequately supervise, train, and discipline Mr. Stasack's failures to implement Student's accommodations when it removed Student from AP/IB French class and provided an inferior program to him; failed to implement an effective Plan of Assistance for Improvement with clear accountability requirements for Mr. Stasack and instead transferred Mr. Stasack to another school in the District. Administrators further failed to address the bullying behaviors of Student's French Immersion classmates and failed to honor Student's request to not hold the special lesson on equality delivered to the French Immersion students following the May 27th walkout. Administration further failed to address peer-to-peer bullying behaviors when it facilitated the distribution of a sweatshirt prior to graduation, celebrating Mr. Stasack, and when it approved Student AS's application to speak at graduation on the topic of civil rights and micro-aggressions.

166. Bullying has been shown to adversely impact academic performance. Students victimized

by bullying tend to have lower standardized test scores and difficulty concentrating. Gwen M. Glew et. al., supra, at 1030. Other studies have found that the overall academic performance of bullying victims decreases significantly. See Carter & Spencer, supra, at 12. See also Jaana Juvonen & Yueyan Wang et al., Bullying Experiences and Compromised Academic Performance Across Middle School Grades, 31 J. Early Adolescence 152, 167 (2011) (finding "robust direct associations between peer victimization and compromised academic performance over time."). As the DOE noted, ". . . [A]ny bullying of a student with a disability that results in the student not receiving meaningful educational benefit from the special education and related services provided by the school is a denial of FAPE. A student must feel safe in school in order to fulfill his or her full academic potential." Department of Education, Office of Special Education and Rehabilitative Services, August 20, 2013 at 3.[10]

167. District failed to mitigate the ongoing harms suffered by Plaintiff related to the hostile learning environment that was created by Mr. Stasack's treatment of Plaintiff and at least one other student with disabilities and the resulting bullying by Plaintiff's classmates. Student suffered stress and anxiety as a result of the events described *supra* and was unable to perform to his true ability when participating in the International Baccalaureate exams, said failure to perform resulted in a loss of scholarship offers and college credit allocation in his college enrollment. Student continues to suffer emotional harms as a result of the events described herein.

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[10] Department of Education, Office of Special Education and Rehabilitative Services, August 20, 2013, retrieved April 9, 2019 from https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf

E. Oregon Tort Claims Act

168. To the extent that the Oregon Tort Claims Act applies to Plaintiff's state law claims of discrimination under ORS 659, Plaintiff provided actual notice to District of his claims on April 18, 2018 when Plaintiff submitted, in writing, an offer to settle his claims against District. April 18, 2018 is 240 days following Plaintiff's 18th birthday ([REDACTED], 2017). *See Buchwalter-Drumm v. State*, 404 P.3d 959, (Or. Ct. App. 2017) ("We conclude that the time for filing a minor's tort claim notice commences when *the minor* discovers the cause of action and that genuine issues of material fact preclude a determination on summary judgment that plaintiff discovered the cause of action outside of the 270-day filing period applicable to claims by a minor.")

169. Plaintiff's letter offering to settle this action clearly defined the events, harms, and legal claims on which his request for due process hearing was based. *See G.R. v. Dallas School District No. 2*, 823 F. Supp. 2d 1120, 1148 (D. Or. 2011) ("Under the Act, actual notice may be any communication "such that a reasonable person would conclude that a particular person intends to assert a claim" against the employee. ORS 30.275(6)."); *see also* Or. Rev. Stat. § 30.275(1) and (2)(b) (defining the time period by which an OTCA notice must be given as 180 days from the date of the event or 270 days in the event of a minor.).

VII. FIRST CLAIM FOR RELIEF

(The Individuals with Disabilities Education Act)

170. Plaintiff incorporates by reference the allegations of all preceding paragraphs.

171. The purposes of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq*. and 34 C.F.R. 300 *et seq*., include, *inter alia,* ensuring a free appropriate public education that emphasizes special education and related services to meet the needs of children with disabilities,

and to ensure that the rights of children with disabilities and their parents are protected. 20 U.S.C. §1400(d).

A. District Failed to Provide Plaintiff with a Free Appropriate Public Education

172. District failed to provide access to accommodations in class assessments. The purpose of the accommodations detailed in Student's IEPs related, *inter alia,* to provision of a quiet testing environment and extended time on tests and homework in order to accommodate the effects of ADHD on Student's learning and work production.

173. Despite these enumerated accommodations in official District IEP documents, Mr. Stasack repeatedly denied specific accommodations to student.

B. District Failed to Provide Education in the Least Restrictive Environment

174. During spring term, 2016, Student engaged in French Language instruction in an independent study arrangement consisting of Student and an independent study instructor. Student's non-disabled classmates engaged in French Language instruction in a group setting, allowing for greater opportunity to hear and speak the French language in an interactive and fast paced environment and to more readily prepare for the AP French exams. This placement represented a separate class, without access to non-disabled peers. During this time period, Student's IEP Statement of Nonparticipation Justification stated that "Riley is removed [from the regular classroom] for 70 minutes per school day. Riley is removed to receive specially designed instruction in the area of study/ organizational skills." Student's IEP did not accurately reflect the amount of removal from regular classroom instruction.

175. Furthermore, Student's independent study placement was an inferior educational opportunity. Mr. Stasack was certified to provide French Language instruction in the IHS program, and qualified to prepare students for the International Baccalaureate (IB) and Advanced

Placement (AP) exams. The instructor for Student's independent study arrangement was not certified to provide French language instruction in IB or AP courses. The independent study program did not meet as often as the class taught by Mr. Stasack. The instructor for the independent study French language class was not certified to grant LCC College Now! College credit for completion of the course, though Mr. Stasack was certified to do so. The arrangement, as implemented by the District, denied Student access to a French Immersion experience that was equal to the educational program provided to his non-disabled peers in the least restrictive environment .

C. District Failed To Provide a Prior Written Notice of its Proposal to Remove Student From General Education Class Into Independent Study Class

176. The District failed to properly memorialize the Independent Study arrangement in Student's IEP or Placement Determination paperwork. Further, the District failed to provide prior written notice of its intent to remove student from French language class to a more restrictive learning environment that was populated by just Student and an independent study instructor and failed to fully describe the educational and economic impacts such a removal would create.

177. At all times relevant to this complaint, Defendant was aware that Plaintiff was a student served by the IDEA as a student with a disability; required specially designed instruction, related services, and accommodations; and failed to make available a free and appropriate public education reasonably calculated to enable Student to make progress in light of his circumstances which included advanced level coursework, and then failed to deliver the accommodations that were recorded in his IEPs. See *Endrew F. v. Douglas Cnty. Sch. Dist*. RE-1, 137 S. Ct. 988, 999 (2017).

178. As a proximate result of Defendant's violations of the Individuals with Disabilities

Education Act, Plaintiff has been injured as set forth herein.

VIII. SECOND CLAIM FOR RELIEF

(The Americans with Disabilities Act)

179. Plaintiff incorporates by reference the allegations of all preceding paragraphs.

180. The Americans with Disabilities Act requires that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

181. At all times relevant to this action, the District was and is a public entity within the meaning of Title II of the ADA, receives federal funding, and provides educational instruction and services to all students of appropriate age who reside within the school district boundaries.

182. At all times relevant to this action, Plaintiff was a qualified individual with a disability within the meaning of Title II of the ADA and met the essential eligibility requirements for the receipt of the services, programs or activities provided by the District.

183. From September 2015 to June 2017, Defendant failed to provide reasonable accommodations to the Plaintiff that would ensure that the Plaintiff, an individual with disabilities, was educated with non-disabled students in an environment free from hostility, allowed to interact with non-disabled peers, and enjoyed the same benefits of the French Immersion and International High School programs that his non-disabled peers enjoyed.

184. At all times relevant to this action, Defendant school district knew or had reason to know that Mr. Stasack engaged in discriminatory and harmful actions against Plaintiff, solely on the basis of his disability, and Defendant failed to remedy the events at the time of their occurrence.

185. At times relevant to this complaint, Defendant had notice that accommodations were

required, Defendant put in place a specific written plan describing said accommodations, and Defendant deliberately and repeatedly failed to act upon that knowledge.

186. As a direct and proximate result of Defendant's violations of Title II of the ADA, Plaintiff was injured as set forth herein.

IX. THIRD CLAIM FOR RELIEF

(Discrimination in Violation of Section 504 of The Rehabilitation Act of 1973)

187. Plaintiff incorporates by reference the allegations of all preceding paragraphs.

188. Section 504 of the Rehabilitation Act of 1973, 29 U.S .C. § 701 et seq. and the regulations promulgated in 34 C.F.R. §§ 104.31 through 104.37 .prohibits discrimination against people with disabilities in preschool, elementary, and secondary education programs by recipients of federal funding. Section 504 provides, in pertinent part, that: "No otherwise qualified individual with a disability…shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance […]." 29 U.S. Code § 794 (a).

189. Defendant School District has received substantial federal financial assistance at all relevant times.

190. Plaintiff is an otherwise qualified individual with a disability within the meaning of Section 504 of the Rehabilitation Act.

191. At all times relevant to this action, Defendant school district knew or had reason to know that Mr. Stasack engaged in discriminatory and harmful actions against Plaintiff, solely on the basis of his disability, and Defendant failed to remedy the events at the time of their occurrence.

192. Claims alleging violation of § 504 are independent of claims alleging violations of IDEA. Meeting the requirements of the IDEA is *one manner* by which school districts may meet the

requirements of § 504. *See Pasatiempo v. Aizawa*, 103 F.3d 796, 798 (9th Cir. 1996) (holding that "[t]he regulations further provide that compliance with the IDEA's procedures satisfies the requirements of § 504."); *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1099 (9th Cir. 2013) ("Because a school district's provision of a FAPE under the IDEA meets Section 504 FAPE requirements, a claim predicated on finding a violation of the Section 504 FAPE standard will fail if the IDEA FAPE requirement has been met. Section 504 claims predicated on other theories of liability under that statute and its implementing regulations, however, are not precluded by a determination that the student has been provided an IDEA FAPE."); 34 C.F.R. § 104.36. However, District committed substantive IDEA errors when it failed to ensure that Plaintiff's accommodations were fairly and reliably made available to him and thus did not satisfy the requirements of § 504.

193. Section 104.33) (b)(1) explains that an "appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36." This requirement may be met by providing a child with an Individualized Education Program in compliance with IDEA. 34 C.F.R. § 104.33(b)(2).

194. Section 104.34 requires funding recipients to attempt to educate handicapped and nonhandicapped students in the same setting to the "maximum extent appropriate to the needs of the handicapped person," by using "supplementary aids and services. 34 C.F.R. § 104.34(a).

195. Section 104.35 requires that recipients establish procedures for periodic reevaluations that comply with the above requirements for evaluations. 34 C.F.R. § 104.35(d). One way to comply with reevaluation requirements is to comply with IDEA's reevaluation requirements.

196. Defendant discriminated against Plaintiff in programs and activities receiving federal financial assistance solely because of his disability by failing to deliver reasonable accommodations; failing to provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person; failing to ensure that the educational placement decision was made in conformity with 34 C.F.R. § 104.34; failing to provide education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; creating and supporting a hostile learning environment thereby failing to provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities; and permitting teachers and students to engage with impunity in bullying and harassment; in violation of 29 U.S.C. § 794 and 34 C.F.R. §§ 104.31 through 104.37..

197. Student suffered stress and anxiety as a result of the events described *supra* and was unable to perform to his true ability when participating in the International Baccalaureate exams, said failure to perform resulted in a loss of scholarship offers and college credit allocation in his college enrollment.

198. At times relevant to this complaint, Defendant had notice that reasonable accommodations were available to the Plaintiff and deliberately failed to act upon that knowledge.

199. As a proximate result of Defendant's violations of Section 504 of the Rehabilitation Act of 1973, the Plaintiff has been injured as set forth herein.

X. FOURTH CLAIM FOR RELIEF

(Discrimination in Violation or Oregon State Laws)

200. Furthermore, a school district must comply not only with federal statutory and regulatory procedures, but with state regulations as well: "State standards that are not inconsistent with federal standards [under the IDEA] are also enforceable in federal court." *W.G. v. Bd. of Trs. of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1483 (9th Cir. 1992)." *See also N.B. v. Hellgate Elementary*, 541 F.3d 1202, 1208 (9th Cir. 2008).

201. Plaintiff incorporates by reference the allegations of all preceding paragraphs.

202. At all times relevant to this action, Defendant was a public body as defined in ORS 174.108, serving as a public accommodation as defined in Or. Rev. Stat. 659A.400.

203. At all times relevant to this action, Plaintiff was a person with a disability as defined in Or. Rev. Stat. 659A.104.

204. At all times relevant to this action, Plaintiff requested reasonable accommodations as defined by Or. Rev. Stat.659A.118.

205. Oregon Revised Statutes and Administrative Rules prohibit discrimination against persons with disabilities. *See* Or. Rev. Stat. 659A.103 (Unlawful discrimination against persons with disabilities); Or. Rev. Stat. 659A.142 (Discrimination against individual with disability by employment agency, labor organization, place of public accommodation, or state government prohibited); and Or. Rev. Stat. 659A.403 (Discrimination in place of public accommodation prohibited).

206. Defendant discriminated against Plaintiff because of his disability by allowing Mr. Stasack to refuse to make reasonable accommodations for Plaintiff's disabilities, by enrolling Plaintiff in an alternate educational placement that was inferior to the placement and program

offered to his non-disabled peers, and by allowing the establishment and maintenance of a hostile learning environment by Defendant's staff and students at Defendant's school.

207. Defendant discriminated against Plaintiff in programs and activities of public accommodation solely because of Plaintiff's disability by failing to deliver reasonable accommodations; failing to provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person; failing to provide education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; creating and supporting a hostile learning environment thereby failing to provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities; and permitting teachers and students to engage with impunity in bullying and harassment; in violation of Oregon's laws prohibiting discrimination against persons with disabilities and pursuant to ORS 659A.885 (Civil Action).

208. As a proximate result of Defendant's violations of state anti-discrimination laws, Plaintiff has been injured as set forth herein.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

209. A declaration that Defendant's policy, pattern and/or practice of failing to implement the accommodations described in a student's individualized education program (IEP) violates the requirements of the Individuals with Disabilities Education Act, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Oregon disability laws;

210. A declaration that Defendant's policy, pattern and/or practice of failing to mitigate hostile

learning environments, harassment, and bullying discriminated against Plaintiff and other similarly situated students with disabilities and fails to comply with the requirements of Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, and Oregon disability laws;

211. An order and judgment enjoining Defendant from violating the Individuals with Disabilities Education Act, Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, and Oregon disability laws, including anti-retaliation provisions that prohibit retaliation, harassment, or discrimination against anyone, disabled or not, on the basis of that person's efforts to oppose unlawful discriminatory practices;

212. An order and judgment in favor of Plaintiff in an amount of economic money damages, incurred either by Plaintiff or Plaintiff's parents related to the events herein described, to be proven at trial, and $50,000 for future economic money damages related to Plaintiff's ongoing and future mental health care;

213. Compensatory, consequential, and future damages in an amount of $100,000 including damages for pain, humiliation, anxiety, shame, embarrassment, mental anguish, emotional distress, and damage to Plaintiff's personal relations, and any and all other claims as allowed by law in an amount to be determined at trial;

214. An award of Plaintiff's reasonable attorneys' fees and litigation expenses and costs, in the full amounts allowed by law, including expert witness fees pursuant to 29 U.S.C. § 794(b); 42 U.S.C. § 12133; and 42 U.S.C. § 12205;

215. Pre- and post-judgment interest at the highest rate allowed by law; and

216. All such other and further relief as the Court deems just and equitable.

217. Plaintiff requests a jury trial.

Respectfully submitted this 9th day of April 2019.

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