

DOCKET NO. 166-SE-0120

**STUDENT, B/N/F PARENT,
Petitioner**

v.

**FLORESVILLE INDEPENDENT
SCHOOL DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Student, by next friend Parent (Student or, collectively, Petitioner), brought this case against the Floresville Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations. Petitioner requested a due process hearing on January 29, 2020, with notice issued by the Texas Education Agency the same day. Respondent filed a Plea to the Jurisdiction and Response on February 7, 2020.

The legal issue presented in this case is whether the District denied Student a free, appropriate public education (FAPE) by failing to continue special education and related services after Student's *** in June 2017.

The hearing officer concludes Petitioner's claim is barred by the one year statute of limitations. Petitioner's requested relief is therefore denied.

A. Legal Representatives

Petitioner was represented by Michael O'Dell throughout the litigation. Respondent was represented by John Muniz and Eric Rodriguez.

B. Preliminary Motions and Orders

The hearing officer issued orders on several preliminary motions. Order No. 3 denied the District's Motion to Dismiss for lack of standing and Plea to the Jurisdiction on the statute of limitations. The hearing officer also denied the District's Motion for Summary Judgment in Order No. 5, finding a genuine issue of material fact existed as to whether Student's Individualized Education Plan (IEP) called for modified content or curriculum that would impact whether Student's *** was appropriate.

II. DUE PROCESS HEARING

The due process hearing convened on September 2-3, 2020, via the Zoom platform, and was recorded and transcribed by a certified court reporter.

Petitioner continued to be represented by Michael O'Dell. Student's father, ***, attended the hearing. Respondent was represented by John Muniz, assisted by co-counsel Eric Rodriguez. ***, Executive Director of ***, participated as the party representative for the District.

III. ISSUES**A. Petitioner's Claims**

The due process hearing request raised both exceptions to the one year statute of limitations, and presented the following legal issue for decision:

FAPE: Whether the District denied Student a free, appropriate public education (FAPE) by failing to continue special education and related services after Student *** in June 2017.

B. Petitioner's Requested Relief

Petitioner seeks the following relief:

1. An order finding the District denied Student a FAPE from at least September 2017 to the date of decision, and awarding compensatory educational services;
2. An order finding Student's *** did not *** for special education and related services, and directing the District to provide services ***; and
3. Reimbursement of parental expenses, including attorney's fees (dismissed in Order No. 2).

C. The School District's Legal Position

The District generally denies the allegations, and maintains it provided Student a FAPE at all relevant times. The District also raises the following legal issues for decision:

STATUTE OF LIMITATIONS: Whether claims accruing outside the one year statute of limitations should be dismissed.

PLEA TO THE JURISDICTION: Whether a hearing officer has jurisdiction to award parental expenses, to include attorney's fees (granted in Order No. 2).

IV. FINDINGS OF FACT

1. Student is *** years old. Student ***.¹
2. ***.²
3. Based on a February 2012 Full and Individual Evaluation, Student was eligible for special education and related services under the Autism and Speech Impairment classifications.³
4. Student attended school in another school district until April 2013, followed by a period of homeschooling. Student enrolled in the District at the beginning of the 2013-14 school year, Student's *** grade year. On September ***, 2013, Student's Admission, Review, and Dismissal (ARD) Committee, including Student's parents, convened for a thirty day placement ARD.⁴

¹ Joint Exhibit (JE) 28 at 1; Petitioner's Exhibit (PE) 14 at 1.

² PE 25.

³ JE 16 at 1.

⁴ JE 16 at 1, 2, 30.

5. The September 2013 ARD Committee reviewed present levels of academic achievement and functional performance in Reading, occupational therapy (OT), speech therapy, written expression, Math, and Behavior. Student's Individualized Education Program (IEP) included a ***, and the ARD Committee developed one annual goal for the 2013-14 school year in each of three areas - Adaptive Behavior, ***, and Speech Therapy. A Behavior Intervention Plan (BIP) targeting off task behavior, refusal to begin assignments, speaking in class without permission, and verbal aggression with peers was adopted.⁵
6. The September 2013 ARD Committee reviewed and accepted Student's ***. An IEP *** for Student showed an ***.⁶
7. Student's parents were provided a Notice of Procedural Safeguards by mail with the ARD Committee invitation on August ***, 2013. The District again provided the parents Notice of Procedural Safeguards on September ***, 2013.⁷
8. An accommodation is a support provided to assist a student with accessing the curriculum. A curriculum modification changes what Texas Essential Knowledge and Skills (TEKS) the student is required to master. To receive credit in a general education course, a student must be exposed to the entire curriculum and demonstrate a mastery level of seventy percent. The September 2013 ARD Committee established Student's Schedule of Services for the 2013-14 school year, and did not prescribe modified content for any class.⁸
9. In spring 2014, Student achieved satisfactory performance on the *** State of Texas Assessment of Academic Readiness (STAAR) *** tests, but did not meet standards on the *** test. The District develops an intensive program of instruction (IPI) for all students not meeting assessment standards. The ARD Committee develops the IPI for special education students, and creates an IEP goal in the area targeted. An IPI does not require curriculum modification. An IEP Amendment dated June ***, 2014 added an annual goal for *** STAAR testing specifying that, during the time leading up to the next administration, Student would attend STAAR *** to include intense instruction on *** objectives and online instruction. The District provided a Notice of Procedural Safeguards in connection with the IEP Amendment.⁹
10. Student's ARD Committee, including Student's parent, convened on September ***, 2014 for Student's annual meeting. Student continued to meet eligibility criteria as a student with Autism. The ARD Committee reviewed present levels of academic achievement and functional performance in Reading, speech therapy, OT, written expression, Math, and Behavior. Dismissal from speech services was recommended. The ARD Committee

⁵ JE 16 at 2-3, 4-6, 10-11, 28-29.

⁶ JE 16 at 6-8, 21, 22.

⁷ JE 16 at 21, 24, 33-34.

⁸ JE 16 at 18-19; Tr. at 114-15, 207, 209.

⁹ JE 11 at 1-3; JE 17 at 1-2, 4; Tr. at 116-18, 121.

- developed one annual goal for the 2014-15 school year in these three areas - Adaptive Behavior, ***, and IPI *** - and continued Student's previous BIP.¹⁰
11. The September 2014 ARD Committee reviewed and accepted Student's ***. An IEP *** again showed an ***. Student had accumulated *** at that time.¹¹
 12. The September 2014 ARD Committee established Student's Schedule of Services for the 2014-15 school year, and did not prescribe modified content for any class.¹²
 13. Student's parents were provided a Notice of Procedural Safeguards by mail with the ARD Committee invitation on September ***, 2014. The District again provided a Notice of Procedural Safeguards on September ***, 2014.¹³
 14. Student did not meet standards on the *** STAAR *** tests in spring 2015. The District proposed accelerated instruction to prepare for second administrations consisting of *** and remediation through pull-outs during the 2015-16 school year. An IEP Amendment dated May ***, 2015 incorporated this change. The District provided a Notice of Procedural Safeguards in connection with the IEP Amendment.¹⁴
 15. Student's ARD Committee, including Student's parent or parents, convened on September *** and ***, 2015 for Student's annual meeting. Student continued to meet eligibility criteria as a student with Autism. The Committee reviewed present levels of academic achievement and functional performance in Reading, OT, written expression, Math, and Behavior, and developed one annual goal for the 2015-16 school year in the areas of Adaptive Behavior, ***, and ***. A Language Arts goal focusing on *** was added. This goal was not derived from a particular TEKS, and did not modify the curriculum. The Committee requested further evaluations, including an OT evaluation and Functional Behavioral Assessment (FBA).¹⁵
 16. The September 2015 ARD Committee reviewed and accepted Student's ***. At that time, Student was ***. An IEP *** showed an ***.¹⁶
 17. The September 2015 ARD Committee established Student's Schedule of Services for the 2015-16 school year, and did not prescribe modified content for any class.¹⁷

¹⁰ JE 18 at 1-3, 10-11, 22, 27-28, 31.

¹¹ JE 18 at 6-8, 22-23.

¹² JE 18 at 19-20; Tr. at 118-19.

¹³ JE 18 at 22, 25, 34-35.

¹⁴ JE 12 at 1-2; JE 20 at 1-3.

¹⁵ JE 21; JE 21 at 33; JE 22 at 1, 2-5, 12-13, 23; Tr. at 248, 250-51.

¹⁶ JE 22 at 9, 23, 24.

¹⁷ JE 22 at 20-21.

18. Student's parents were provided Notice of Procedural Safeguards by mail with the ARD Committee invitation sent on August ***, 2015.¹⁸
19. The District proposed an IEP Amendment on December ***, 2015 due to Student's performance on state assessments. The special education teacher reviewed assessment information with Student's parent. Because Student did not meet standards on the *** tests, the teacher recommended accepting the scores and participation, which would mean Student would not***, but could still ***. Student still needed to ***. The parent agreed with the proposal, and to changes to Student's IEP for state assessment expectations going forward. As a result, Student did not have to retake the *** assessments in December. Student would take the *** STAAR *** test during the 2016 spring semester.¹⁹
20. The ARD Committee, including Student's parent, convened on February ***, 2016 to consider the FBA and OT evaluation and Student's ***. The Committee discussed changing the *** to the *** based on the December 2015 decision to accept previous scores and participation on the *** assessments. The change was necessary because Student did not meet standards on *** state assessments. The Committee reviewed ***, identified the ***, and accepted the change to Student's ***.²⁰
21. The District provided Prior Written Notice on February ***, 2016 that confirmed agreement to change Student's *** based on the December 2015 decision to accept previous scores and participation on the *** assessments.²¹
22. Student's ARD Committee, including Student's parent, convened on September ***, 2016 for Student's annual meeting. Student continued to meet eligibility criteria as a student with Autism. The Committee reviewed present levels of academic achievement and functional performance in Reading, OT, written expression, Math, and Behavior, as well as performance in classes. The ARD Committee developed an annual goal for the 2016-17 school year in *** and two *** goals. A Language Arts goal again focused on ***. The Committee agreed to discontinue Student's BIP.²²
23. The September 2016 ARD Committee reviewed and accepted Student's ***. An IEP *** showed an ***. The Committee discussed *** to date, and Student's ***.²³
24. The September 2016 ARD Committee established Student's Schedule of Services for the 2016-17 school year, and did not prescribe modified content for any class.²⁴

¹⁸ JE 21 at 22, 34-35; JE 22 at 36.

¹⁹ JE 24 at 1-3.

²⁰ JE 26 at 1, 3, 5; Tr. at 132-33.

²¹ JE 26 at 5.

²² JE 28 at 1, 2-5, 10-11, 21, 31.

²³ JE 28 at 8, 21.

²⁴ JE 28 at 18; Tr. at 133-34.

25. The District provided Prior Written Notice related to the September 2016 meeting. Among other items, the notice confirmed the ARD Committee's mutual agreement "**** goals based on Student's ***, present levels of performance, cognitive abilities, and interests," and mutual agreement on IEP goals "based on course schedule, performance, academic and cognitive deficits, as well as ***." Student had also completed requirements for state assessments. The notice cited *** and state assessments, among others, as bases for the decisions.²⁵
26. Student's parents were provided Notice of Procedural Safeguards by mail with the ARD Committee invitation on August ***, 2016.²⁶
27. The District's Academic Achievement Record dated September ***, 2016 shows Student ***. Student received an additional *** for coursework completed during the 2016-17 school year.²⁷
28. The District is required to *** and reported Student *** special education services.²⁸
29. The District produces a *** special education student, and provides it to the parent. The ***. The District provided a *** with parent or student input on June ***, 2017. The ***. The ARD Committee is not required to***.²⁹
30. The District became aware of Student's father's concern his *** should have continued receiving educational services after June 2017 when he***. In seeking further services, the parent expressed Student *** and raised a specific concern about Student's difficulties writing.³⁰
31. In an August ***, 2019 letter to Student's father in response to his request to *** Student, the District's Director of Special Education advised the parent Student's *** in June 2017***. The District cited the September 2016 ARD Committee's decisions concerning *** in support of its position.³¹
32. In response to a parent grievance regarding the District's failure to***, the District held a Level II grievance conference on September ***, 2019. A written response dated September *** found the grievance, which challenged Student's *** in June 2017, was

²⁵ JE 28 at 24-25.

²⁶ JE 28 at 21, 38-39.

²⁷ JE 8 at 2; JE 10 at 1.

²⁸ PE 14 at 1; Tr. at 82, 83-84, 87, 135, 157.

²⁹ JE 33 at 1-2; Tr. at 137-39, 155, 199-201.

³⁰ Tr. at 98-99, 139, 202-03.

³¹ JE 42 at 1-2; Tr. at 196-97.

untimely based on the District's policy and timelines for presenting complaints.³²

33. In a September ***, 2019 response to a September *** parent grievance about privacy concerns with District software, the District confirmed its position Student is ***.³³

V. DISCUSSION

Petitioner alleges the District denied Student a FAPE by failing to continue special education and related services after June 2017, and seeks an order directing the District to continue those services and provide compensatory educational services.

A. Burden of Proof in an IDEA Case

There is no distinction between the burden of proof in an administrative hearing and judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009). The burden of proof in a due process hearing is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1991). The burden of proof is on Petitioner to show the District failed to provide Student a FAPE.

In this case, the District raised the affirmative defense of the statute of limitations, and bears the initial burden to present sufficient facts of the accrual date. *Matter of Hinsley v. Boudloche*, 201 F.3d 638, 645 (5th Cir. 2000) ("Under Texas law, a party defending on the ground of statute of limitations bears the burden of proof on this issue"). The District argues Petitioner's claim is barred by the one year statute of limitations. If the District meets its initial burden, the burden of proof then shifts to the Petitioner to prove by a preponderance of the evidence one of the enumerated exceptions to the one year statute of limitations. *G.I. v. Lewisville Indep. Sch. Dist.*, No. 4:12CV385, 2013 WL 4523581, at *8 (E.D. Tex. Aug. 23, 2013) ("If a parent brings a complaint based on allegations that fall outside the limitations period, the parent bears the burden

³² PE 26 at 1-2.

³³ PE 23 at 1-2.

to first establish an exception to the limitations period”). *See also*, Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46540, 46706 (2006).

B. The Statute of Limitations in Texas

Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE within two years of the date the parent knew or should have known about the alleged action forming the basis of the complaint. 20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(1)-(2).

The two year limitations period may be more or less if a state has an alternate time limitation for requesting a hearing, in which case state timelines apply. 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2). Texas adopted an alternative time limitations, and state regulations require a parent to request a hearing within one year of the date he or she knew or should have known (i.e. discovered) of the alleged action(s) forming the basis of the petition. 19 Tex. Admin. Code § 89.1151(c). The limitations period begins to run when a party knows, or has reason to know, of an injury. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995). *See also*, *Doe v. Westerville City Sch. Dist.*, 50 IDELR 132, p. 5-6 (D.C. Ohio 2008). The complaining party need not realize a legal cause of action exists, or is potentially actionable, in order for a claim to accrue. Rather, the complaining party need only know, or have reason to know, of the facts that would support a claim. *Piotrowski* at 516.

In this case, the evidence showed Student *** in the District in June 2017. The injury forming the basis of the due process hearing request and the facts supporting the claim were known at that time, and the hearing officer concludes June ***, 2017 is the accrual date for Petitioner’s claims. Under the one year statute of limitations rule applicable to IDEA causes of action in Texas, Petitioner needed to file by June ***, 2018. Petitioner filed Petitioner’s complaint in January 2020 challenging the District’s failure to continue services under the IDEA *** in 017. This filing date is well over one year after the claim asserted accrued. Because Petitioner did not file Petitioner’s hearing request within one year of the accrual date for Petitioner’s claim, the

burden is on Petitioner to show that one or more exceptions to the one year statute of limitations rule as applied in Texas applies.

C. Exceptions to the Statute of Limitations

There are two, and only two, exceptions to the statute of limitations under the IDEA – the misrepresentation and withholding exceptions. The timeline does not apply if the parent was prevented from filing a due process complaint due to:

- (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or
- (2) the public education agency's withholding of information from the parent that was required by 34 C.F.R. § 300.1, *et seq.* to be provided to the parent. 19 Tex. Admin. Code § 89.1151(d).

The Texas regulation cited above is derived from 20 U.S.C. § 1415(f)(3)(D) and 34 C.F.R. § 300.511(f). As discussed, because Texas has adopted a state specific timeline of one year, this alternative limitations period applies.

1. Continuing Violation

In Petitioner's closing brief, Petitioner argues the limitations period must "begin to run before a litigant can be said to have filed too late." Specifically, "because the school district never completed the ARD process for [Student] there was a continuing violation of the IDEA law and procedures and thus whenever Student filed was timely." Petitioner specifically argues the District failed to convene an ARD Committee meeting prior to the *** special education and "complete the special education process."

First, the IDEA and its implementing state and federal regulations recognize only two exceptions that, if met, will toll the statute of limitations. Petitioner cites no legal authority in support of the argument a continuing violation tolls the limitation period, and United States Department of Education comments on the regulations implementing the IDEA state explicitly

that the two exceptions to the limitation period provided in the statute “do not include when a violation is continuing.” Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46540, 46697 (2006).

Petitioner also cites no legal authority for the argument a school district must convene an ARD Committee before a special education student *** special education. The ARD Committee is required to review, at least annually, a student’s IEP, and make any needed revisions to address lack of expected progress on the basis of any re-evaluations, information provided by parents, or the student’s anticipated needs. 34 C.F.R. § 300.324(b). While there is nothing that would prevent an ARD Committee from convening ***, the evidence showed Student’s ARD Committee convened in September 2016 for Student’s annual review, as required.

2. Misrepresentation Exception

Petitioner next argues the misrepresentation exception to the statute of limitations applies, and should excuse the untimely filing. In Petitioner’s closing brief, Petitioner argues “[t]he school district not only misled the parent they lied and deceived them. They were either extremely negligent as to the *** and [Student’s] compliance with them or knew the *** would not *** but lied and deceived the parent as to this thereby stopping the parent the opportunity to pursue a hearing to obtain the required relief and services [Student] so urgently needed.” This is a serious allegation, and one not supported by the evidence.

Neither the IDEA nor its implementing regulations clarify the scope of what constitutes a “misrepresentation” under the first exception to the statute of limitations. The United States Department of Education elected to leave it to hearing officers to decide on a case by case basis the factors that establish whether a parent knew or should have known about the action that is the basis of the hearing request. Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46540, 46706 (2006).

The alleged misrepresentation must be intentional or flagrant. Petitioner must establish not that the school district’s educational program was objectively inappropriate, but instead that the

school district subjectively determined Student was not receiving a FAPE and intentionally and knowingly misrepresented that fact to Student's parents. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 246 (3d Cir. 2012) (student could not show misrepresentations caused failure to request a hearing on time as teachers did not intentionally or knowingly mislead parents about extent of academic and behavioral issues or efficacy of solutions and programs attempted). *See also, Evan H., ex rel. Kosta H. v. Unionville-Chadds Ford Sch. Dist.*, No. CIV.A. 07-4990, 2008 WL 4791634, at *6 (E.D. Pa. Nov. 4, 2008).

Here, the evidence did not support a subjective determination by the District, or District members of the ARD Committee, to deny Student a continuing right to FAPE. While it is clear the parties have considerably different views and legal theories on whether Student's *** was appropriate, and whether Student's *** special education and related services ended in June 2017, the evidence did not support a knowing or intentional misrepresentation by the District that prevented a timely filing.

3. Withholding Exception

The withholding exception tolls the statute of limitations when a District withholds information from the parent that it was required to disclose. 19 Tex. Admin. Code § 89.1151(d)(2). Petitioner alleges the District failed to provide the parents a Notice of Procedural Safeguards and Prior Written Notice.

Here, the evidence showed the parents were provided Notice of Procedural Safeguards during the 2013-14, 2014-15, 2015-16, and 2016-17 school years either in connection with an ARD Committee meeting invitation, the meeting itself, or in connection with an IEP Amendment. Petitioner argues the District failed to offer any evidence the parents actually *received* a Notice of Procedural Safeguards. First, given the numerous instances the District provided the notice to the parents during Student's *** tenure, it is difficult to conclude none were received. More importantly, receipt is not the appropriate standard to trigger this exception. *El Paso Independent School Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008) ("When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations for

IDEA violations commence without disturbance. Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA”). *Id.*

The hearing officer concludes the evidence supports the reasonable inference of actual or constructive knowledge of parent and student procedural rights, including the right to file a due process hearing request, based on the numerous instances the District provided a Notice of Procedural Safeguards reflected in the record.

Petitioner also argues the District failed to provide the parents Prior Written Notice. A school district must provide the parent of a child with a disability Prior Written Notice when it proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE, or refuses to change the educational placement of the student or the provision of FAPE. 34 C.F.R. § 300.503(a). *** is a change of placement, and as such, requires Prior Written Notice. 34 C.F.R. § 300.102(a)(3)(iii).

Here, the evidence showed the District did not provide Prior Written Notice at the end of the 2016-17 school year when Student ***. Failure to provide Prior Written Notice alone, however, does not automatically toll the limitations period. Petitioner must also show the failure *prevented the parent from filing in a timely manner*. 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f) (emphasis added); *D.K., supra*, 696 F.3d at 246 (“This language imposes an additional requirement for invoking either of the two exceptions to the statute of limitations”).

First, Student’s *** was considered at annual ARD Committee meetings in September 2013, September 2014, September 2015, and September 2016. Student’s parent or parents participated in each of these meetings. The ARD Committee also met in February 2016 and considered and accepted the recommendation to change Student’s *** based on the December 2015 decision to accept previous scores and participation on the *** assessments. The Committee reviewed current ***, identified the ***, and accepted the change to Student’s ***. The District provided Prior Written Notice on February ***, 2016 that confirmed agreement to change Student’s ***.

Student's ARD Committee also reviewed and accepted Student's *** at the September 2016 annual meeting. An IEP *** developed at that meeting showed an ***. The Committee discussed ***. The District also provided Prior Written Notice related to the September 2016 annual meeting that confirmed the ARD Committee's consensus as to courses and IEP content for the 2016-17 school year consistent with the *** discussed at this annual meeting.

School districts are also required to ***. Apart from these requirements, state and local officials can *** goals. ***. Here, the District provided the *** on June ***, 2017, ***, indicating Student's ***.

Though the District did not provide Prior Written Notice more contemporaneously with Student's *** in June 2017, the regulations require more than this alone to toll the statute of limitations. Student's IEP consistently contemplated and confirmed Student's *** based on ARD Committee discussions and agreement over Student's ***. The ARD Committee convened in February 2016 for the specific purpose of considering and updating Student's ***, and provided Prior Written Notice of Student's change. The ARD Committee again considered *** at the September 2016 meeting, made no changes to the *** developed in February 2016, and the District provided Prior Written Notice reflecting agreement on an IEP and course schedule consistent with the ***. The *** Student's ***. Finally, the evidence showed Student's parent or parent participated in each ARD Committee meeting where a *** was considered and approved.

Given the information available at or around the time of Student's ***, the weight of the credible evidence did not establish Petitioner was prevented from filing a due process hearing request in a timely manner due to lack of Prior Written Notice. The hearing officer therefore finds the withholding exception was not met, and Petitioner's failure to file within one year of June ***, 2017 is not excused on this basis.

4. Conclusion

Respondent met its burden of proof to establish the accrual date outside of the one year statute of limitations. *Matter of Hinsley*, 201 F.3d at 645. The hearing officer concludes the

appropriate accrual date for the claim raised is June***, 2017, and Petitioner filed a due process hearing request in January 2020. Petitioner failed to establish that an exception to the statute of limitations applies in this case. *G.I.*, 2013 WL 4523581, at *8. The hearing officer therefore concludes Petitioner's claim is barred by the one year statute of limitations regulation applicable to IDEA cases in Texas. 19 Tex. Admin. Code § 89.1151(d).

VI. CONCLUSIONS OF LAW

1. Petitioner did not meet the burden of proof as the party challenging a student's IEP and educational placement. *Schaffer v. Weast*, 546 U.S. 49 (2005).
2. Petitioner's claim accrued in June 2017 when Petitioner knew or should have known about the alleged action forming the basis of the due process hearing request. 19 Tex. Admin. Code § 89.1151(c); 34 C.F.R. § 300.511(e); 20 U.S.C. § 1415(f)(3)(C).
3. Petitioner did not meet the burden of proving Petitioner was prevented from filing a due process hearing request in a timely manner due to specific misrepresentations by the District it had resolved the problem forming the basis of the due process complaint. 19 Tex. Admin. Code § 89.1151(d)(1); 34 C.F.R. § 300.511(f)(1); 20 U.S.C. § 1415(f)(3)(D)(i).
4. Petitioner did not meet the burden of proving Petitioner was prevented from filing a due process hearing request in a timely manner because the District withheld information from the parent it was required to provide. 19 Tex. Admin. Code § 89.1151(d)(2); 34 C.F.R. § 300.511(f)(2); 20 U.S.C. § 1415(f)(3)(D)(ii).

VII. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

SIGNED October 26, 2020.



Kathryn Lewis
Special Education Hearing Officer
For the State of Texas

VIII. NOTICE TO PARTIES

The Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20. U.S.C. § 1415(i)(2); 19 Tex. Admin. Code § 89.1185(n).