§

Petitioner alleged that the district failed to comply with its Child Find obligations pursuant to 20 U.S.C. §1412(3) and 1412(10), 34 C.F.R §300.140(b) and 300.131. Petitioner further alleged that the district, at the hearing, did not prove up a statute of limitations defense and that its claims are not barred by the provisions of U.S.C. §1415(B)(6)(b) and the one -year limitation in Texas set forth in 19 T.A.C. §89.1151(c).

As relief, Petitioner seeks a finding that the district did not meet its obligation under Child Find to locate, identify, and serve the student with a free appropriate public education ("FAPE"). Petitioner seeks reimbursement for costs associated with private evaluations, reimbursement for tuition and related expenses at a private school, compensatory educational services, and,sese withge v

3.

10. In October 2015, the student was evaluated at ***

13. The parents did not receive a response from Ms. ***. No evidence was presented at the hearing showing that the email was ever received by Ms. *** or read by anyone. [Transcript Pages 341 & 360]

14. The student's parents sought evaluation of the student during the student's enrollment in private schools, and they inquired about services for the student based upon information from the evaluators. The *** in May 2016 directed the parents to HISD as the district responsible for providing services for the student while enrolled in private school. The student's private school is geographically located within the bounds of HISD. [Petitioner's Exhibit 26; Transcript Pages 377-379]

15. Pearland ISD seeks to satisfy its responsibilities under Child Find through its presence on the district's webpage, preparing brochures identifying its Executive Director as the district's contact person to answer questions about Child Find, placing notifications in local newspapers, providing parent training sessions which are advertised on the district's webpage, posting on Facebook, holding disability fairs, meetings with private schools, and notifying employees of the district about evaluations. Child Find information and specific contact information has been on the district's webpage since at least 2015. [Respondent's Exhibit 1; Transcript Pages 34-36]

16. *** provided a consultation in September 2016 for the student and the student's parents and made recommendations for the student's *** services, *** and educational programming. *** made recommendations for assistive technology ("AT") and the use and maintenance of *** such as *** used by the student. [Petitioner's Exhibit 37; Transcript Page 410]

17. The student attended *** in the *** grade for the 2016-2017 school year. The *** serves only students with educational disabilities, has small classes, many social clubs on campus,

and divides students based on their skill levels. *** speech pathologists work with the students. [Petitioner's Exhibit 30 & 31; Transcript Pages 87-98]

18. *** does not provide *** services, ***, or occupational therapy services. School personnel are not familiar with other students with ***. The school does no training for its personnel for working with students with ***. The student is currently having difficulty in *** but no one at the school is trained to support ***. The school does not provide adaptive physical education. School personnel are unfamiliar with AT which the student uses for ***. [Transcript Pages 87, 110-129 & 141-144]

19. When the student's parents did not receive a response from PISD to their 2016 email, the parents followed up with a contact person at HISD and HISD provided an evaluation of the student. The testimony from the parent indicated "this is the path we took". The parents made no other effort to contact Pearland ISD until emailing Pearlandh 3ces maiIb1u( )Tr

about the student. Credible evidence shows the meeting was not

for the parents. No one at the meeting, including Ms. Freeze, informed the parents that they could seek services from PISD. [Transcript Pages 151-152, 293-300 & 329]

26. After the request for hearing was filed, the parties held a resolution meeting on June 20, 2017. The district agreed that the student was eligible and an agreement was executed calling for the district to conduct additional assessment and obtain records from ***, ***, ***, and Dr. ***, the neuropsychologist who evaluated the student. Consent forms were returned to the district for some of the information on July ***, 2017. Consent forms for information from *** and *** were not returned until July ***, 2017. [Respondent's Exhibits 9 & 11; Transcript Pages 48-49]

27. An ARD committee for the student was held on August ***, 2017. The committee reviewed assessment and evaluation. An expert retained by the parents, ***, stated that the district's *** evaluation was fair and spoke of no concerns about the evaluation or its recommendations. Assessments for AT, occupational therapy, speech, and *** were presented. The parents did not express any disagreement with the evaluations. The district offered to perform an adaptive PE evaluation for the student whether or not the student enrolled. Records sent from ***

to assist the student in *** to the campus and provide appropriate aid during transition. The student can begin with immediate access to ***, and occupational therapy services. [Respondent's Exhibits 28, 31 & 32; Transcript Pages 201-205, 467-486, 552 & 620-621]

30. ***, an expert witness retained by Petitioners, is employed at *** University in the teacher preparation program for teachers of students ***. Mr. *** is a credible witness. Mr. *** testified that the services provided in the IEP for the student at Pearland are appropriate. [Transcript Pages 242 & 274]

Discussion

IDEA provides for an opportunity for FAPE for all students who are eligible for special education services. The United States Supreme Court has defined what such an education is to be in *Board of Education of Hendrick Hudson School District v. Rowley,* 458 U.S. 176 (1982). The Court recently addressed the standard again in *Endrew F. v. Douglas County School District*, 137 S.Ct. 988 (2017).

The Fifth Circuit has addressed the rulings in the *Rowley*, *supra*, and *Endrew* F., *supra*, cases. While *Rowley* sets the floor of opportunity for a student, the Fifth Circuit says that the *Endrew F.* decision does not displace or differ from the standard set forth for analysis of special education placement decisions in *Cypress-*

IDEA requires that a due process complaint must be made within two years of the date the Petitioner knew or should have known about the alleged action giving rise to the claims. 34 C.F.R §300.511(e). In Texas, the party filing for a due process hearing must request the hearing within one year of the day the party knew or should have known about the actions giving rise to a claim. 19 T.A.C. §89.1151(c).

Petitioner raises many claims arising before June 7, 2016. Petitioner also asserts that the

only “part” of the procedural safeguards, one parent ***. The parents knew or should have known of the actions they could take to bring a claim against the district. In applying the controlling statute of limitations, Petitioner’s claims for relief time are barred until one year prior to filing.

Petitioner insists that this matter is based squarely on the violation of the Child Find requirements of IDEA. Petitioner argues that the district clearly did not meet its duty to locate, identify, and serve the student after the student moved into the district. Petitioner argues that it should prevail because the student was not found, identified, and offered an IEP under the requirements of *Forest Grove v. T.A.*, 557 U.S. 230 (2009). The evidence shows, though, that the district’s ignorance of the presence of a potential student in need of services cannot be justly blamed on the district. The parents knew or should have known of their rights to seek services several years before moving into the district. The parents knew that their child could possibly be afforded services because of the dealings with HISD in the years prior to the move. The parents did not enroll, seek enrollment, or seek evaluation until May 2017. The district’s information on Child Find and special education was readily available. The information they had received from HISD was relevant to their position in the matter and their experience. Their use of a lay advocate and their own personal experience *** belie their claims. The law was not written to be used to seek years of reimbursement for private placement for a student who never sought services while living in the district when the unique family circumstances and experiences undermine their own claims.

Further, the evidence shows that the district did what was required of it when the student and the student’s parents eventually sought appropriate interaction with the district. The district endeavored to evaluate, program for, and serve the student with an IEP that meets the requirements of *Michael*, *Rowley*, and *Endrew*

restrictive environment ("LRE"); and 3) provides services to be coordinated in a collaborative manner by key stakeholders; and which 4) confers positive academic and non-academic benefits.

Petitioner's assertion that reimbursement should be ordered for previous private placements and prospective private placement are not meritorious. Prior to the student's placement at ***, the parents did not give the district clear notice that they were seeking an IEP from Pearland Independent School District. Because the district had no opportunity to timely develop an IEP for the student, the district is not responsible for the private placement costs of their unilateral placement. *Dallas Indep.Sch.Dist. v. Woody*, 865 F.3d 303 (5th Cir. 2017).

Conclusions of Law

1. The student resides with the student's parents in the Pearland ISD.

2. The Pearland Independent School District is responsible for compliance in

7. Petitioner is not entitled to reimbursement for costs of private placement for the 2016-2017 school year for the student because Petitioner did not prove the student was denied a FAPE prior to enrollment in private school or prove that the unilateral private placement is appropriate. *Stevens v. New York City Dept. of Educ.*, 54 IDELR 84 (2010).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims are DISMISSED with prejudice.

SIGNED this 8th day of December, 2017.

/s/ Lucius D. Bunton
Lucius D. Bunton
Special Education Hearing Officer

DOCKET NO. 249-SE-0617

STUDENT, B/N/F PARENT & PARENT	§ § §	BEFORE A SPECIAL EDUCATION
VS.	§ §	HEARING OFFICER
PEARLAND INDEPENDENT SCHOOL DISTRICT	§ §	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE #1: Whether Petitioner's claims are barred by the status of limitations.

TEXAS CITATION: 19 T.A.C §89.1151 (c)

HELD: For Respondent

ISSUE #2: Whether the district vio(e)6(-)Tj 01Cher thheil6(r)5Fi]TJ 6(r)5Fi]TJ 6(r)5FXAwEXAwE04 T

ISSUE #2 FOR THE STATE O VS.

ISSUE #2