

DOCKET NO. 017-SE-0920

STUDENT,	PARENT,	§	BEFORE A SPECIAL EDUCATION
		§	
	Petitioner,	§	
		§	
V.		§	HEARING OFFICER
		§	
CHILDRESS INDEPENDENT		§	
SCHOOL DISTRICT,		§	
		§	
	Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

On September 28, 2020, Student,

4. Whether the District failed to develop a program for Petitioner that provided academic and non-academic benefits;
5. Whether the District denied Petitioner a meaningful educational benefit by failing to appropriately address *** issues related to Petitioner; and
6. Whether the District was required, but failed, to provide a Notice of Procedural Safeguards to Petitioner.

B. PETITIONER'S REQUESTS FOR RELIEF:

1. Prospective and compensatory reimbursement for the family for counseling and therapy services;
2. An independent consultant, retained by the District, to provide training, supervision, and monitoring of Child Find activities for the District for one year;
3. Requiring the District to provide notice of procedural safeguards required under the IDEA to parents and to display them on the District's website;
4. Reimbursement for out-of-pocket expenses incurred; and
5. Any relief that the SEHO officer deems appropriate or which is recommended by independent experts and evaluators.

C. RESPONDENT'S AFFIRMATIVE DEFENSES:

Respondent requested that SEHO May's previous Order regarding Respondent's affirmative defense of Statute of Limitations and Plea to the Jurisdiction of claims, other than those arising under IDEA, are maintained. ²

**II.
PROCEDURAL HISTORY**

On September 30, 2020, Respondent's Counsel filed a Notice of Representation. On October 1, 2020, SEHO May issued Order No. 1g(i)6 (ous)4 (g(i)S)11 (epO)TJ0.002 Tc 10.7vicdu th

the Due Process Hearing would convene on March 31-April 1, 2021; and the Decision would issue on May 20, 2021.

On March 8, 2021, TEA re-assigned this case to the undersigned SEHO, Deborah McElvaney. Upon receipt of the case, the undersigned contacted the Parties to verify the hearing and attendant deadlines and to schedule a Pn



Mr. Slater Elza and Ms. Janet Sobey Bubert, Respondent's counsel.

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16. Petitioner had no discipline referrals [T1.175.24-25; 176.1-11]. Petitioner benefited from tutoring when Student attended [T.1.44].
 17. Petitioner achieved satisfactory performance on the STAAR assessment. Although Student's score was close, Petitioner did not achieve satisfactory performance on the STAAR assessment [R.6.4 & T1.220.14-19].
 18. Petitioner attended and successfully completed summer school after grade for [T1.277.3-21].
 19. Petitioner passed all of
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§1415(f)(3)(D)(i); 34 C.F.R. §300.511(f)(1); and/or (2) the statute of limitations shall not apply where a parent failed to exercise his/her right to a due process hearing because the local district withheld information that it is required to provide to the parent. 20 U.S.C. §1415(f)(3)(D)(ii); 34 C.F.R. §300.511(f)(2). There are no other exceptions. The United States Department of Education left 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. 71 Fed. Reg. 46540, 46706 (Aug. 14, 2006).

Petitioner filed this request for a due process hearing on September 29, 2020, alleging that Student's claims go back to school year 2017-08. Petitioner argued that the one-year statute of limitations is not applicable to the facts of this case because the District (1) made misrepresentations that prevented the Parents from filing a timely request for due process hearing, and (2) withheld required information. Petitioner had the burden of proving that one of these exceptions tolled the one-year statute of limitations.

, 567 F.Supp.2d 918, 945 (W.D. Tex. 2008),

, 591 F.3d 1222 (5th Cir. 2019) (citing 20 U.S.C. §1415(f)(3)(D)(ii); 34 C.F.R. §300.511(f)(2)).



2. Petitioner Failed to Prove the District Withheld Information It Was Required to Provide

The second exception to the statute of limitations applies when a school district withholds information it is required to provide under the IDEA. 20 U.S.C. §1415(f)(3)(D)(ii). This exception incorporates the obligation to provide the parents of a child with a disability with notice of the IDEA procedural safeguards. 34 C.F.R. §300.504(a). For the parent of a child with a disability, the notice must be provided once a year, except that a copy also shall be given to the parent: (i) upon initial referral or parental request for an evaluation; (ii) upon the first occurrence of the filing of a due process complaint; and (iii) upon request of the parent. 20 U.S.C. §1415(d)(1)(A).

There is no dispute that Petitioner was never identified as a “child with a disability” under the IDEA. At the time ^{***}, there was no request for special education services; no FIE evaluation contemplated; and no indication that Petitioner had disabilities requiring special education services. Simply put, there was no



The District offered accommodations in the general education setting that were effective and sufficient to overcome any alleged child find violation. ., 680 F.3d 260, 272 (3rd Cir. 2012) (no child find violation occurred where a school district appeared to be invested in addressing the Petitioner's needs and in providing appropriate instruction and interventions "before rushing to special education identification").

Petitioner offered no evidence, expert or otherwise, that Student required special education services to receive an educational benefit despite. Petitioner offered no evidence that Student required specialized instruction to make appropriate progress. Petitioner had no evaluation completed in accordance with the IDEA procedures that demonstrated Petitioner required special education and related services. To prevail on the claim that Petitioner was denied FAPE, Petitioner must (1) prove Student was an eligible Petitioner under the IDEA because Student



SIGNED this the 23rd day of June 2021.

Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

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