



Individual Evaluation, and gave written consent for a full and individual evaluation the same date.

R-4, 5, 6, 7

2. Student, whose disabilities are intellectual disability and speech impairment, received all services in a special education setting called the \*\*\* (“\*\*\*\*”) classroom. R-9, pgs. 11-14

3. In Mw [(“9 Td( )T,nu622-1.717)0/TT1 1 Tf-2( )Tj[,ce.5886 (37481d( )T,nu622-.1 (n)-9 ( Mw [7c 077/(ex)-9 ( Mw



18. Student \*\*\*. R-35
19. On September \*\*\*, the Acting Deputy General Counsel explained to Mr. Amon that if the parties participated in a successful mediation, “the ARD Committee will still need to convene to adopt the agreed issues. There is simply no other way around it. Even a Hearing Officer’s ruling from a due process hearing, requires the ruling be adopted by the ARD Committee.” R-34
20. On September \*\*\*, Mr. Amon informed the Acting Deputy General Counsel of Student’s \*\*\*. He further explained the family’s belief that \*\*\* while at school. R-35
21. Four days later, Parent’s new attorney, -4.4 (e .6 (b11d)17.2 ( t)6.9 (ul)-4.6 (iw)4.6 (e)0 Td[()4.6 (ev6 (b11d)17.9

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limitations, District bears the burden to present sufficient facts of the accrual date. *Matter of Hinsley v. Boudloche*, 201 F.3d 638, 645 (5th Cir. 2000). 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.*, 2013 WL 4523581 (E.D. Tex. 2013).

The running of limitations begins at the time a litigant is entitled to seek a remedy, and contemplates the exercise of reasonable diligence on the part of the litigant to discover the facts giving rise to the claim. *See, e.g., Trinity River Authority v. URS Consultants*, 889 S.W. 2d 259 (Tex. 1994).

### **Statute of Limitations**

#### **Date Petitioner Knew or Should Have Known**

The applicable federal law provides the following with regard to the statute of limitations: “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, in such time as the State law allows.” 20 U.S.C. §1415(f)(3)(C).

Under 19 Texas Administrative Code § 89.1151(c), “[a] parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.”

In a due process hearing request under the IDEA, there are two explicit exceptions to the timeline for making the request. The timeline does not apply to a parent if the parent was prevented from requesting a due process hearing due to specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint, or the local education agency’s withholding of information from the parent that was required under this part to be provided to the parent. 20 U.S.C. §1415(f)(D).

Petitioner filed the request for due process hearing and complaint with the Texas Education Agency July 26, 2021. Petitioner alleged that District failed to provide adequate supervision to Student and allowed Student to \*\*\*; thus, denied Petitioner a free appropriate public education (“FAPE”).

On September \*\*\*, 2019, Parent emailed the Principal that she had \*\*\*, and had called CPS. She further stated that PEma52(ed )JTJ( 2on )JTJ.2 (s)-2.3 31-4.6 (i)-4..9-4.6 (e)9.2 ( publ)7r be\*\*s-18.2 (r)ud9 (ci)-13.001 26



footage of Student \*\*\*, specifically stating that she observed from \*\*\*. Petitioner argued that the statement misrepresented what was on the video and thus, prevented Parent from filing the instant action. Even if Parent was prevented from filing the due process hearing request following the Principal's impression from the video footage, she learned from the CPS investigator of the finding of negligent supervision in October. Further, Parent had the opportunity to view all of the footage in early January 2020, failed to do so, and did not file the instant action until July 2021.

Petitioner's argument loses sight of the IDEA's misrepresentation exception language in its entirety. A specific misrepresentation alone is insufficient. Petitioner also must show that the specific misrepresentation was *that District had resolved the problem forming the basis of the complaint*. While it may have been in disagreement with the CPS investigator's Notice, the Principal's report of what she viewed on the video did not indicate that the problem of lack of supervision of Student in the classroom had been resolved.

Petitioner complained that the District misrepresented that it was implementing an appropriate IEP for Student to prevent Student from \*\*\*. Parent argued that despite her concerns, Student's safety needs were not noted appropriately in the ARD documents and safety precautions were not being implemented with Student.

If a party proves that a school district failed to implement an IEP, there is a violation of FAPE. However, the allegation alone cannot be the basis for a misrepresentation exception to the statute of limitations rule. Action that constitutes the basis for an IDEA claim itself, absent more, does not satisfy the exception to the statute of limitations rule.

testified that the accumulation of misrepresentations, lies, or omissions caused her to believe that pursuing a due process hearing would be futile.

Shortly after Parent discovered \*\*\*, she retained legal representation. She promptly contacted CPS of her discovery, and an investigation began. The CPS investigator provided Parent a copy of its Notice of Findings on October \*\*\*, 2019. The Notice validated neglectful supervision by Student's teachers. District provided Parent copies of Procedural Safeguards in May and September 2019. District's Assistant General Counsel informed Petitioner's second attorney of the IDEA requirement to exhaust administrative remedies in October 2019. The videos of Student's classroom on September \*\*\* were available to Parent by January 2020. However, Parent waited until July 2021 to file the due process( SCue)9.2 ( pr)6.9(oc)

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SIGNED on December 11, 2021.

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Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas

Notice

The Decision of the Hearing Officer in this cause 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. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a-b).