1. An order directing the District to provide Student services consistent with Student's

"questionable" Student was demonstrating educational needs that could not be met through general education programming options and that Student's performance could be adequately accommodated by continuing to provide the accommodations in Student's Section 504 plan.[12]

13. District evaluators thoroughly considered Dr. ***'s independent evaluation, including her diagnostic impressions, testing and assessments, and recommendations, before concluding Student was not eligible under the IDEA.[13]

14. The District did not convene an ARD Committee meeting to review the June 2019 FIIE with Parents. Parents did not file a due process hearing request challenging the District's June 2019 FIIE or failure to convene an ARD Committee to consider the evaluation.[14]

15. On June 14, 2019, the District moved for summary judgment on Petitioner's Child Find claim. On August 12, 2019, Hearing Officer Lowe granted the District's motion for summary judgment and entered a final judgment in favor of the District, finding that it did not violate its Child Find responsibilities during the relevant time period (October ***, 2017 through November ***, 2018) because the evidence did not demonstrate that Student was eligible for special education and related services during that time period.[15]

16. This decision was affirmed by the U.S. District Court for the Western District of Texas in June 2021, which found the District complied with the IDEA and adequately addressed Student's educational needs during the relevant time period. Parents did not appeal this ruling.[16]

***** (December 2018-February 2020)**

17. Student enrolled in ***, a charter school, in December 2018. *** initially provided Student a Section 504 services plan.[17]

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[12] R. Ex. 3 at 3, 62-68.

[13] R. Ex. 3 at 2, 5, 7-17, 19-20, 34, 37, 39-40, 44-54, 57-59, 62-67; Tr. at 142.

[14] Tr. at 99-100, 114-16, 190-91, 204.

[15] Tr. at 102-03; *Zamora v. Hays Consol. Indep. Sch. Dist.*, No. 1:19-CV-1087-SH, 2021 WL 2531011, at *4, *7 (W.D. Tex. June 20, 2021).

[16] Tr. at 103; *Zamora v. Hays Consol. Indep. Sch. Dist.*, No. 1:19-CV-1087-SH, 2021 WL 2531011, at *12 (W.D. Tex. June 20, 2021).

[17] R. Ex. 3 at 21; Tr. at 66-67.

2021 school year." She explained these records were needed "to understand why [Student] may be entitled to an ARD committee meeting at this time (since we have no record of Student's special education eligibility)" and to "prepare for any meeting to collaborate concerning comparable services, if Student has been determined eligible for special education."[31]

32. Parents, through their advocate, provided the District Student's IEPs from *** and the *** on August ***, 2021. Parents did not provide any additional records supporting Student's current eligibility for services.[32]

33. On August ***, 2021, the District's counsel acknowledged receipt of Student's prior IEPs and requested "a copy of the [Full and Individual Evaluation] that was completed in 2019" to help the District understand Student's needs. Parents' advocate responded by asking for a time for the ARD Committee to meet the next day. Counsel advised the advocate that the District could not convene an ARD Committee meeting without the necessary information to develop an IEP and confirmed the District would not convene a meeting the next day.[33]

34. On August ***, 2021, the District's counsel again requested "the evaluation report(s) and any other records from the prior schools, as well as any records concerning [Student's] instruction during the 2020-21 school year.

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42. Parents were unwilling to allow Student to return to school in the District without an IEP. While Parents were not concerned about Student's safety, they feared Student would not be successful without supports in place. Parents did not re-enroll Student in the District for the 2021-22 school year.[42]

43. Parents refused to consent to the District's proposed FIIE.[43]

44. Apart from the District's June 2019 FIIE, no other school district has completed an evaluation of Student to determine Student's eligibility under the IDEA.[44]

45. The District furthers its Child Find obligation by putting notices in the paper and pediatricians' offices, visiting area private schools two times a semester, and posting notices on its Facebook page.[45]

46. Petitioner did not unreasonably protract the final resolution of the issues in controversy.

VI. DISCUSSION

Petitioner alleges the District violated its Child Find duty and further alleges the District

attempt to cast the District's eligibility determination as occurring in August 2021 is not supported by the record.

In Texas, state regulations require a parent to request a due process hearing within one year of the date he or she knew or should have known of the alleged action forming the basis of the complaint. 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). The District raised the affirmative defense of the statute of limitations.

The evidence showed that Parents were provided the District's FIIE in June 2019 and thus knew or should have known of the District's conclusion regarding eligibility at that time, not in August 2021. Therefore, to the extent Petitioner seeks to challenge the District's June 2019 eligibility determination and failure to convene an ARD Committee meeting to consider it in the instant action, any such claims accrued more than one year prior to filing this case in August 2021 and fall outside the limitations period. Any such claims are therefore not properly before the hearing officer.

A. Burden of Proof

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 challenging the student's IEP and placement. *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 in this case is on Petitioner.

B. Free, Appropriate Public Education

A two-part inquiry is required to resolve a Child Find claim. The first inquiry is whether the school district had reason to suspect the student has a disability. The second inquiry is whether the school district had reason to suspect the student may need special education and related services as a result of the disability. *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 467 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F.3d 303, 320 (5th Cir. 2017). The inquiry is not whether the student actually *qualifies*

efforts, albeit unsuccessful ones, to obtain consent for an evaluation. As such, the evidence supports the conclusion the District did not unreasonably delay an evaluation after it was on notice of facts or behavior likely to indicate a disability in July 2021. *O.W.*, 961 F.3d at 790-91, 793. Moreover, any delay in completing an evaluation to determine Student's eligibility for services is attributable to Parents, not the District. In addition, Petitioner's position that an evaluation was unnecessary was not reasonable given the District's prior eligibility finding and the lack of information available to the District in August 2021 to support not only Student's eligibility for services, but to determine Student's current educational needs.

The hearing officer concludes Petitioner did not meet Petitioner's burden on Petitioner's Child Find claim.

D. Obligation to Convene an ARD Committee Meeting to Develop an IEP

1. Whether the District Complied with 19 Tex. Admin. Code § 89.1050(e)

Petitioner argues the District failed to comply with state regulations in responding to Parents' July 2021 request for an ARD Committee meeting. Upon receipt of a written request for an ARD Committee meeting from a aneting.f 222m215C())nthPsRrivS (s)0.1002 Tf2-0.004.01 Tw 5.84 0 yTd8[(p

additional information, including a new evaluation, to determine Student's current academic, developmental, and functional needs.

3. Whether Petitioner Unreasonably Protracted the Final Resolution of the Issues

At the request of either party, the hearing officer must make a finding of fact regarding whether or not a party has unreasonably protracted the final resolution of the issues in controversy. 19 Tex. Admin. Code § 89.1185(m)(1). Respondent requested a finding as to whether Petitioner unreasonably protracted the litigation and asserts that Petitioner's due process hearing request was

VII. CONCLUSIONS OF LAW

1. As the challenging party, Petitioner has the burden of proof to establish a violation of the IDEA. *Schaffer*, 546 U.S. at 62.

2. Petitioner did not meet the burden of proving the District violated its Child Find obligation during the relevant time period. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111.

3. The District provided timely and procedurally compliant Prior Written Notice of its refusal to convene an ARD Committee meeting. 19 Tex. Admin. Code § 89.1050(e); 34 C.F.R. § 300.503.

4. Petitioner did not meet the burden of proving the District denied Student a FAPE by failing to convene an ARD Committee meeting to develop an IEP for the 2021-22 school year. 19 Tex. Admin. Code § 89.1096(b).

VIII. ORDERS

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Pursuant to