

6. BISD failed to provide Student an autism program;
7. BISD failed to consider and implement the requirements of the

DECISION OF THE HEARING OFFICER

Process Complaint. On February 11, 2010, Student filed student's objection to BISD's motion; BISD responded on the same day. On February 22, 2010, Student requested a pre-hearing telephone conference to re-schedule the Due Process Hearing, set for March 10-12, 2010, for mutually agreeable dates. ²

On February 24, 2010, the parties convened the second pre-hearing telephone conference. In attendance were the following: 1) Ms. Philpot and Ms. Heiligenthal, counsel for Student; 2) Ms. Hart, counsel for BISD; 3) the undersigned Hearing Officer; and 4) the court reporter, who made a record of the telephone conference. The parties verified the issues in the case, briefly discussed BISD's Motion for Leave to File Amended Response, and re-scheduled the Due Process Hearing for April 28-30, 2010, which extended the Decision Deadline to May 28, 2010.

On March 11, 2010, the Hearing Officer granted BISD's Motion for Leave and deemed filed, as of February 10, 2010, BISD's First Amended Response to Due Process Complaint.

On March 17, 2010, BISD filed Respondent's Motion for Hearing Officer to Consider and Rule on Respondent's Motion to Apply One Year Statute Of Limitations and Motion to Dismiss. BISD requested that the undersigned

**III.
FINDINGS OF FACT**

1. Student is ***-year-old *** who resides with student's Parents and sibling within the jurisdictional limits of BISD. BISD is a political subdivision of the State of Texas and a duly incorporated independent school district. Student currently attends ***, which is a TEA-approved, non-public school located within the jurisdictional limits of BISD (Tr. Vol. 1, p. 264; Vol. 2, p. 7).
2. Student is eligible for special education and related services under the classification of Autism Spectrum Disorder ("autism") and Speech Impairment ("SI") (P. Ex. 20, p. 77). Student has been eligible for special education under these classifications since April 2002 (Tr. Vol. 2, p. 90).

Student's Education in BISD: 2002-2004:

3. Student attended classes in BISD from ***, 2002, to ***, 2003. The Parents were not satisfied with Student's educational progress during student's ten (10) months at BISD (Tr. Vol. 2, p. 95).
4. In *** 2003 Student began in-home Applied Behavioral Analysis ("ABA") therapy, which consisted of daily private services for approximately forty (40) hours per week. Student was also receiving private OT and speech (P. Ex. 48). At that time, Student's Parents stopped taking student to BISD (Tr. Vol. 2, p. 52, 90; P. Ex. 31, 41, & 48). Although Student never returned to BISD, Student's Parents never officially withdrew student from the District (Tr. Vol. 2, p. 98).
5. Student was manifesting little progress under student's goals and objectives in speech or communication techniques when the Parents stopped sending student to BISD in *** 2003. BISD was concerned with Student's frequent absences and attendant loss of services, which it believed resulted in minimal progress (P. Ex. 29, pp. 154-155; Tr. Vol. 2, p. 56-57).
6. In *** 2003, shortly after the inception of the private ABA program, Student's ARD Committee met and dk

evaluation of Student after June 2006 was an Independent Educational Evaluation (“IEE”) obtained by the Parents in 2010 (P. Ex. 65).

20. Student’s Parents did not provide BISD with any prior notice of their intention to 0 (P. (P.

A. LEA's D

either Student's Parents or ***, which should have rendered information relevant to
BISD's child 35442 (a) 3 (a) 1 3475.66 § 507 (e) 5.4.92 File (e) BISD (a) 3 (a) 1 (a) 1
obligation to provide Student FAPE until the Parents re-enrolled student in the District,
BISD did have a duty to locate Student and to re-evaluate student because it is the LEA
in which *** is located.

The obligation to re-evaluate Student does not arise 802 626147m [T433(8.02 side)-5(o)-JE

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).

1. Limitations Bars Student's Claims of Acts/Omissions Prior to June 2006.

It is undisputed that Student has not attended BISD since *** 2003 and that BISD has not provided Student with any educational services since spring 2004.⁵ It is likewise undisputed that there has been no communication between BISD and the Parents since spring 2004. Notwithstanding these facts, I find that Student's claims related to acts and omissions occurring prior to June 2006 are barred.

a. BISD Did Not Misrepresent the Resolution of Problems.

To justify the tolling of limitations under this statutory exception, it is incumbent that the LEA specifically misrepresent that it has resolved the problem forming the basis of the complaint. 20 U.S.C. §1415(f)(3)(D)(i); 34 C.F.R. §300.511(f)(1). In this case, the evidence established that there was a great deal of interaction between Student's Parents and BISD between April 2002 and spring 2004. Student's Parents participated in student's education and ARD Committee meetings through January 2004. These Parents are highly educated and knowledgeable about their child's disabilities, various methodologies, and LEA responsibilities. While the Parents did not agree with BISD's proposed program and placement starting in February 2003, there was no evidence that BISD misrepresented its ability to educate Student or craft an appropriate educational program or that it had resolved the issues between the parties. Accordingly, this first statutory exception does not apply.

b. BISD Did Not Withhold Information.

This second exception requires a finding that the Student's Parents were prevented from requesting a Due Process Hearing because BISD withheld information from them that it was obligated to provide. 20 U.S.C. §1415(f)(3)(D)(ii); 34 C.F.R. §300.511(f)(2). The information that a ()-211 TJ.73001004(g)r5()-81[]5f1 TJ.7351 Tm[g)r5-3((t)-2

complied with the notice and information requirements of 34 C.F.R. §300.504. Student's Parents read and understood these rights, including their right to bring a Request for Due Process Hearing within one (1) year of when a claim accrued.

Additionally, the Parents had received copies of ARD documents, including the January 23, 2004, ARD document, which referenced the deadline for Student's triennial evaluation in March 2005. By their own admission, the Parents knew of their right to file a Request for Due Process Hearing as stated in their February 2003 correspondence to BISD.

Under the facts of this case, and the logical conclusions that can be drawn from the evidence presented, Student's claims of acts and omissions on the part of BISD, committed prior to Student's unilateral enrollment at *** in June 2006, are barred.

2. Limitations Does Not Bar Student's Viable Claims After June 2006.

BISD assumed new responsibilities toward Student when the Parents unilaterally enrolled student in *** in June 2006. As set forth above, although BISD did not have an

under 34 C.F.R. §300.130-144. If not, the appropriate relief is an order for an evaluation, or under appropriate circumstances, reimbursement for an IEE when required due to the District's failure to conduct an evaluation. *Student v. McKinney ISD*.

As presented above, the undersigned Hearing Officer finds that BISD failed in its child-find obligations pursuant to 34 C.F.R. §300.130-144. The relief available relief is not barred by the one-year statute of limitations. That relief, under the circumstances of this case, is reimbursement to the Parents for the IEE they obtained in 2010.

**V.
CONCLUSIONS OF LAW**

1. Student is eligible for special education services, based upon student's classifications of Autism Spectrum Disorder and Speech Impairment. 20 U.S.C. §1400 *et seq.*
2. The one-year statute of limitations bars Student's claims against BISD for acts or omissions arising prior to Student's placement at *** in June 2006. 20 U.S.C. §1415(f)(3)(C); 20 U.S.C. §1415(f)(3)(D)(i); 20 U.S.C. §1415(f)(3)(D)(ii); 34 C.F.R. 20

**VI.
ORDER**

