

STUDENT, <i>b/n/f</i>	§	BEFORE A SPECIAL EDUCATION
PARENTS,	§	
	§	
Petitioners,	§	
	§	
V.	§	HEARING OFFICER
	§	
BEAUMONT INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

Petitioners, Student *b/n/f* Parents (“Petitioners” or “Student” or “Parents”), filed a Request for Due Process Hearing (“complaint”) with the Texas Education Agency (“TEA”), requesting a Due Process Hearing pursuant to the Individuals With Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400 *et. seq.*, contending that Respondent, Beaumont Independent School District (“Respondent” or “BISD” or “District”) denied Student a free, appropriate public education (“FAPE”) beginning in April 2002 and continuing to the present. Respondent countered with the affirmative defenses of 1) statute of limitations and 2) laches.

A. STUDENT’S DUE PROCESS HEARING ISSUES:

Student asserts that BISD committed numerous procedural and substantive violations of IDEIA, which denied Student FAPE, in the following particulars:

1. BISD failed to convene Student’s admission, review, dismissal (“ARD”) Committee meetings after January 2004;
2. BISD failed to develop any individual education plans (“IEP”) for Student after January 2004;
3. BISD failed to offer Student any services after January 2004;
4. BISD failed to evaluate Student in all suspected areas of disability;
5. BISD failed to conduct Student’s full individual evaluation (“FIE”) at least every three years;

6. BISD failed to provide Student an autism program;
7. BISD failed to consider and implement the requirements of the Autism Supplement;
8. BISD failed to offer Student appropriate related services;
9. BISD failed to provide Student's Parents with Procedural Safeguards;
10. BISD failed to offer scientifically based, peer-reviewed methods of instruction to Student; and
11. BISD failed to provide Student's Parents with required prior written notice.

Student requests that the undersigned Hearing Officer order BISD to provide Student with the following relief for BISD's acts and omissions occurring from April 2002 to the present:

1. BISD shall develop an appropriate Individual Education Plan ("IEP") and place Student at ***, a private school;
2. BISD shall reimburse Student's Parents for past private services and attendant fees, as well as future private placement, related services, and mileage;
3. BISD shall reimburse Student's Parents for the 2010 private evaluations;
4. BISD shall provide Student compensatory speech and Occupational Therapy ("OT") and in-home training for the Parents; and
5. BISD shall perform staff training related to the duties BISD owes to students and their parents who are enrolled in private schools within the District's jurisdictional boundaries.

B. BISD'S AFFIRMATIVE DEFENSES

In response to Student's issues, BISD urges the affirmative defenses of 1) the Texas one-year statute of limitations and 2) laches. BISD asserts that all of Student's claims should be dismissed for want of jurisdiction. Student counters that the statute of limitations is tolled as to every claim because 1) BISD prevented Student from requesting a hearing due to a) BISD's misrepresentations, and/or b) BISD's withholding information

that it was required to provide to Student's Parents; and 2) BISD engaged in a pattern of continuing violations of IDEIA.

II. PROCEDURAL HISTORY

On December 7, 2009, TEA received the complaint filed by Student and assigned the case Docket No. 076-SE-1209. This case was assigned to the undersigned Hearing Officer and on December 9, 2009, the undersigned sent the Initial Scheduling Order to the parties stating that the pre-hearing telephone conference would convene on December 29, 2009, that the Due Process Hearing would take place on January 20, 2010, and that the Decision would issue by February 20, 2010.

On December 29, 2009, the parties convened the pre-hearing telephone conference. In attendance were the following: 1) Ms. Dorene Philpot, counsel for Student; 2) Ms. Nancy Hart, counsel for BISD; 3) the undersigned Hearing Officer; and 4) the court reporter, who made a record of the telephone conference. The parties discussed the issues and scheduled the Due Process Hearing for February 17-19, 2010, which extended the Decision Deadline to March 22, 2010. Likewise, the parties discussed deadlines for responding to discovery and addressing the one-year statute of limitations issue.

On December 30, 2009, Student filed and served documents in support of student's position that the one-year statute of limitations is not applicable in this case. On January 8, 2010, BISD filed a Motion to Apply One-Year Statute of Limitations and Motion to Dismiss, asserting its argument and authorities for imposing the one-year statute of limitations and requesting that the undersigned dismiss this case, in its entirety, for want of jurisdiction. On January 15, 2010, Student filed student's Brief Addressing Statute of Limitations and a Motion to Strike an exhibit attached to BISD's Motion.

On January 21, 2010, the undersigned issued rulings on the limitations issue as well as the pre-hearing motions: BISD's Motion to Apply One-Year Statute of Limitations would be taken with the case and evidence allowed at the hearing regarding this issue; Student's Motion to Strike was denied; BISD's Motion to Dismiss was denied.

On January 22, 2010, the parties participated in mediation.¹ The mediation was continued and for that reason, the parties requested a continuance of the Due Process Hearing. Finding good cause for the continuance, the undersigned granted the continuance and re-scheduled the Due Process Hearing from February 17-19, 2010, to March 10-12, 2010, which were arbitrary dates provided to the parties to allow for settlement discussions.

On February 10, 2010, BISD filed its Motion for Leave to File First Amended Response to Student's Due Process Complaint and its First Amended Response to Due

¹ The parties also participated in a Resolution Session.

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 rescind the order taking the limitations defense with the case and rule on BISD's limitations defense prior to the Due Process Hearing. The undersigned denied BISD's Motion to Reconsider and ordered that BISD's limitations and laches defenses would be tried with Student's case in chief.

The Due Process Hearing convened on April 29 and 30, 2010. Both parties introduced documentary evidence; Student called six (6) witnesses; BISD called two (2) witnesses. Both parties conducted extensive cross-examination of the witnesses.

During the hearing, Student was represented by counsel, Ms. Philpot and Ms. Heiligenthal. Student's mother attended the hearing both days and student's father attended most of the two (2) days. BISD was represented by counsel, Mr. Henslee and Ms. Rutland.³ Also in attendance throughout the hearing was the District representative, Dr. Gabrielle Polk, BISD's Compliance Monitor, and Dr. Amanda Boutot, BISD's expert witness. Additionally, because Student opened the hearing to the public, a few observers were present throughout the hearing.

At the conclusion of the hearing on April 30, 2010, the parties and Hearing Officer agreed to a post-hearing schedule: closing arguments would be due by June 1, 2010, and the Decision would be rendered June 9, 2010. This Decision Deadline was modified subsequently to June 10, 2010.⁴

² On that date, Ms. Susan Heiligenthal made her appearance as co-counsel for Student.

³ Mr. Henslee's firm made an appearance as co-counsel for BISD prior to the hearing.

⁴ References to the Due Process Hearing Record are identified as follows: "Tr. Vol. 1" or "Tr. Vol. 2" refers to the Certified Court Reporter's Transcription of testimony made on April 29 and 30, 2010; "P. Ex." refers to Petitioner's Exhibits; "R. Ex." refers to Respondent's Exhibits.

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 discussed the Parents' request for a one-on-one ABA program, based generally upon the Student's progress in the ABA program over only two (2) months. BISD declined this request but offered an ("IEP") that BISD believed was appropriate for Student (P. Ex. 41). At, or about this time, Student's Parents determined that BISD could not educate their child and they made the decision to provide Student with the private, one-on-one ABA therapy in their home (Tr. Vol. 2, p. 95).
7. Student's ARD Committee convened again on December 5, 2003. Student had not attended BISD since the prior *** 2003. The Parents informed the ARD Committee that Student was making progress in the private ABA program (P. Ex. 48 & 50). Student's Parents signed the ARD document indicating agreement;

however, the Parents requested that BISD fund the in-home ABA program as well as the private OT and speech services Student was receiving from Memorial Hermann Hospital (P. Ex. 48). Included in this December 2003 IEP was notification that Student's next three-year re-evaluation was due by March 26, 2005 (P. Ex. 48). BISD did not perform this evaluation by the March 26, 2005, deadline. March 26, 2005, was the accrual date for Student's claims related to this evaluation.

8. Student's ARD Committee re-convened on January 23, 2004. This meeting was cut short when Student's Parents left the meeting (P. Ex. 50). On January 28, 2004, the Parents sent follow-up correspondence to BISD, again requesting payment for the in-home program and other private services, stating that BISD's failure to comply with this demand would result in the Parents' filing a Request for Due Process Hearing with TEA (P. Ex. 51). The Parents gave BISD ten (10) business days in which to respond. When BISD did not respond to the Parents' demand for payment of the ABA therapy by the February 10, 2004, Student's Parents knew, or should have known, that BISD was not going to fund the ABA therapy. February 10, 2004, was the accrual date for Student's claims related to reimbursement for the private therapies.
9. On February 6, 2004, BISD informed the Parents that BISD could provide Student with FAPE at its facilities (P. Ex. 53). On that date the Parents knew, or should have known, that BISD was refusing to provide the in-home ABA therapy and that BISD was going to implement Student's 2003-2004 IEPs when, and if, Student's Parents returned student to school. These IEPs would be in effect until Student's next annual ARD Committee meeting. At most, Student's claims related to student's 2003-2004 IEPs accrued in January 2005 prior to the deadline for BISD's development of Student's 2004-2005 IEPs.
10. Student's next annual ARD Committee meeting was due no later than January 23, 2005, to develop Student's 2004-2005 IEPs. However, because Student never returned for services with BISD, and Student's Parents had no further contact with BISD, no January 2005 ARD Committee was convened for Student. Any issue related to the District's failure to convene this ARD Committee or to develop IEPs for school year 2004-2005 accrued on January 23, 2005.
11. During the time Student attended BISD, between *** 2002 and *** 2003, and at the January 23, 2004, ARD Committee meeting, BISD provided Student's Parents with copies of the Procedural Safeguards, which contained all requisite statutory notification. Student's Parents read and understood these Procedural Safeguards (Tr. Vol. 2, p. 81, 101-102).
12. Student presented no evidence that between *** 2002, when BISD began providing services to Student, and June 2006, when the Parents unilaterally enrolled Student at ***, BISD made specific misrepresentations that prevented the Parents from filing a Request for Due Process Hearing.

13. Until the January 23, 2004, ARD Committee meeting, Student's Parents participated in all ARD Committee meetings and actively engaged in Student's program planning. Student's Parents are highly educated and motivated; they understand Student's disabilities, related physical issues, and methodologies for addressing these disabilities. Further, in 2003 and 2004 Student's Parents had the advice of an attorney (Tr. Vol. 2, pp. 106-107).
14. By *** 2003, Student's Parents had made the decision that BISD could not provide Student with an appropriate education and that Student could best be served in the private sector (Tr. Vol. 2, p. 95). No evidence was presented that Student's Parents ever contemplated returning student to BISD after February 2004. The evidence established that the Parents never contacted BISD regarding development of an educational program after spring 2004.
15. Student did not establish any exception to the one-year statute of limitations related to student's education prior to June 2006. Student and student's Parents had one (1) year from the above-stated accrual dates to file a Request for Due Process Hearing to contest any matters related to Student's education at BISD or the request for private ABA services or the request for evaluations or to contest BISD's failure to provide the three-year re-evaluation in March 2005. All claims related to Student's program prior to student's enrollment in *** in June 2006 are barred under the one-year statute of limitations.

B. Student's Education at *: June 2006-Present**

16. Student's Parents unilaterally placed Student in *** in June 2006. *** is a private school that provides services to children with many types of disabilities, such as mental retardation, speech impairment, behavioral problems, physical disabilities, and autism. *** provides year-round services, including OT, Physical Therapy ("PT"), speech, and ABA therapy, for children with autism (Tr. Vol. 1, p. 255, 259, 234).
17. *** is a private school that is located within the jurisdictional boundaries of BISD. As such, BISD owes limited duties to its children who are parentally placed at this facility.
18. BISD is responsible for conducting a thorough and complete "child-find" process, after consultation with *** representatives, to identify and determine the number of parentally placed children with disabilities attending ***. BISD failed to consult with representatives of ***, or the Parents, regarding Student's education between June 2006 and the December 2009 complaint (Tr. Vol. 1, p. 154, 170, 171, 230; Vol. 2, p. 52, 115).
19. BISD is responsible for conducting re-evaluations of its students attending ***. BISD failed to re-evaluate Student after June 2006 (Tr. Vol. 1, p. 155). The only

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 enroll Student in ***. The Parents did not provide BISD with any subsequent notice that Student was attending *** (Tr. Vol. 2, pp. 98-99).
21. BISD did not provide the Parents with any copy of the Procedural Safeguards from January 2004 until several weeks after the December 2009 complaint (Tr. Vol. 2, pp. 36-37, 67).
22. Student’s Parents have not returned Student to BISD. Between spring 2004 and the December 2009 complaint, Student’s Parents had not requested that BISD prepare and implement an IEP for delivery of services at BISD, that BISD perform an evaluation, or that BISD provide Student any related services.

IV. DISCUSSION

This case presents a pivotal issue that appears, at first, to be quite simple and routine: What are BISD’s obligations under IDEIA to Student, who is a parentally-place disabled child attending a private school within BISD’s jurisdiction? The parties’ responses to this question are in diametric contradiction.

Student has not physically attended school in BISD since *** 2003, although BISD developed IEPs for Student as late as December 2003 for school year 2003-2004. In June 2006 Student was parentally-placed at ***, a private school located within BISD’s jurisdiction. Since spring 2004, there has been no communication between Parents and BISD. Notwithstanding that fact, Student alleges that BISD owed Student FAPE during this time frame, that BISD failed to provide Student FAPE, and the Texas one-year statute of limitations is tolled related to Student’s claims for, *inter alia*, compensatory services; reimbursement for all private services, therapies, schooling, evaluations, and attendant expenses; and development of an appropriate IEP that places Student at *** during school year 2010-2011.

BISD responds that all of Student’s claims are barred by the statute of limitations because they accrued more than six (6) years ago and Student is seeking the same services that were denied in spring 2004. Further, BISD asserts that Student’s Parents have never intended, nor do they intend now, to withdraw Student from *** and enroll student in BISD. As such, BISD seeks dismissal of all of Student’s claims because 1) the claims are barred by the statute of limitations, and/or 2) the claims lodged in this case, and the relief requested, are not available in this due process proceeding.

A. LEA's DUTIES TO CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

A parentally-placed private school child with disabilities is a child who is enrolled by his/her parents in private schools or facilities that meet the definitions of elementary school or secondary school. 34 C.F.R. §300.130; 20 U.S.C. §1412(a)(10)(A).

The local education agency ("LEA") where a private school is located is responsible for conducting a "child-find" process, including evaluations, after consultation with private school representatives, to identify and determine the number of parentally-placed children with disabilities attending private schools located within the district's boundaries. 34 C.F.R. §300.130-144; 19 Tex. Admin. Code §89.1096(b). The LEA in which the private school is located is obligated to spend a proportionate amount of IDEIA funds to provide "equitable services" to these children. 34 C.F.R. §300.132; §300.137-138; 20 U.S.C. §1412(a)(10)(A)(i). Such equitable services must be provided in accordance with a services plan, which is developed much like an IEP. 34 C.F.R. §300.138(b)(2)(ii); §300.321-324. However, these "equitable services" do not equate to the special education and related services that the disabled child would receive if enrolled in the public school with an IEP. 34 C.F.R. §300.137(a).

IDEIA provides no individual right to special education and related services for parentally-placed private school students. 34 C.F.R. §300.137; 20 U.S.C. §1412(a)(10)(A). The LEA, in which the private school student is located, is not responsible for providing the student FAPE beyond the proportionate share of IDEIA funds that may be available to that student. 34 C.F.R. §300.137(a); *Cefalu v. East Baton Rouge Parish School Board*, 117 F.3d 1371 (5th Cir. 1997). Likewise, the LEA, in which the private school student is located *and* resides is not responsible for providing FAPE unless, and until, the parents re-enroll the child in the public school.

A parent of a child enrolled in a private school has the right to file a due process complaint regarding the district's child-find requirements of 34 C.F.R. §300.131. However, the due process provisions of IDEIA and its implementing federal regulations, 34 C.F.R. §300.504-519, do not apply to issues regarding the provision of services to a parentally-placed private school child with disabilities. Rather, disputes that arise concerning "equitable services" are subject to the State complaint program. 34 C.F.R. §300.151-153.

BISD had, and continues to have, an obligation, after consultation with private school representatives, to locate, identify, and evaluate children that attend private elementary and secondary schools within its boundaries. Notwithstanding the fact that BISD had previously identified, evaluated, and supported Student when student was enrolled in BISD, BISD had an additional child-find duty imposed upon it when Student's Parents unilaterally placed student at ***. This duty obtained even though Student's Parents failed to notify BISD of this private school enrollment in June 2006.

After spring 2004, when Student failed to return to school and all communication from Student's Parents ceased, BISD did nothing further to communicate or consult with

either Student's Parents or ***, which should have rendered information relevant to BISD's child-find mandates under 34 C.F.R. §300.130-144. While BISD did not have an 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 out of an ongoing duty to provide FAPE; it derives from BISD's ongoing child-find and evaluation obligations to parentally-placed private school children under the proportionate share provisions of IDEIA. BISD's obligation to Student was to locate student and to re-evaluate student on at least a triennial basis. 34 C.F.R. §300.131; §300.140(b); §300.303. See *Student v. McKinney ISD*, TEA Docket No. 107-SE-0110 (Hearing Officer Decision, April 28, 2010). BISD failed in its child-find obligation under these statutory mandates.

B. IMPACT OF THE STATUTE OF LIMITATIONS

In this case, Student's Parents allege multiple substantive and procedural violations of IDEIA dating back to Student's initial IEPs developed by BISD in April 2002: BISD failed to convene Student's ARD Committee annually or to develop appropriate IEPs or to provide services or to provide an autism program or to implement the autism supplement or to offer related services or to offer scientifically based, peer-reviewed methods of instruction to Student; BISD failed to evaluate Student in all suspected areas of disability and to conduct Student's FIE at least every three (3) years; and BISD failed to provide Student's Parents with procedural safeguards or required prior written notice.

BISD answers these charges by pleading the affirmative defense of statute of limitations, asserting that all of Student's claims are barred by the Texas one-year statute of limitations and that no exceptions to this bar have been proven by Student. Student counters that the exceptions to the limitations statute obtain here.

Under IDEIA, two limitations options are provided: 1) the parent or agency has two (2) years from the date the parent or agency knew, or should have known, about the alleged actions that form the basis of the complaint; or 2) if the state has a different, explicit time limitation for requesting a hearing, such time limitation is applicable to complaints filed within that state. 20 U.S.C. §1415(f)(3)(C). In Texas, IDEIA complaints must be brought within one (1) year of obtaining "knowledge of facts" forming the basis of the complaint. 19 Tex. Admin. Code §89.1151(c).

IDEIA allows very narrow exceptions to its time limitations: 1) the statute of limitations shall not apply if a parent was prevented from requesting a due process hearing due to specific misrepresentations by the local district that it had 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); 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).

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 district is required to provide is specific and includes, *inter alia*, 1) prior written notice when the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child (20 U.S.C. §1415(c); 34 C.F.R. §300.503(a)); and 2) copies of procedural safeguards (20 U.S.C. §1415(d); 34 C.F.R. §300.504(a)). In this case, Student alleges that BISD failed to timely provide 1) written notice to the Parents when it rejected the Parents' request for private ABA services, and 2) copies of Procedural Safeguards.

The evidence established that BISD provided Student's Parents with copies of Procedural Safeguards until January 23, 2004. The content of these safeguards

⁵ Although Student did not attend school after *** 2003, BISD did develop IEPs for school year 2003-2004 and convened at least three (3) ARD Committee meetings between February 2003 and January 2004.

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 obligation to provide Student FAPE until and/or unless the Parents re-enrolled student in the public school, it did have a duty to locate Student and to re-evaluate student at least on a triennial basis. 34 C.F.R. §300.131; §300.140(b); §300.303. See *Student v. McKinney ISD*, TEA Docket No. 107-SE-0110 (Hearing Officer Decision, April 28, 2010).

The evidence established that BISD did not consult with *** at any time after June 2006; BISD did not ascertain that Student was enrolled in *** and therefore, entitled to re-evaluations, a proportionate share of IDEIA funds, and/or, if re-enrolled in the District, the provisions of FAPE. BISD never sent the Parents copies of Procedural Safeguards, which would have included information relevant to the private school placement, among other pertinent things. Failing to provide Student's Parents with Procedural Safeguards tolled the statute of limitations related to Student's viable claims dating from June 2006. As set forth above, most of the claims alleged in this proceeding are not viable pursuant to the operative statutes and regulations.

Among other things, the Parents seek an order for Student's continued placement at *** and BISD's assumption of payment for these services. They request that BISD immediately convene an ARD Committee meeting to develop IEPs and related services that will be implemented at ***. This relief is not available under the facts of this case.

Even though Student also resides in the district in which student's private school is located, there is no obligation for BISD to convene an ARD Committee meeting where, as here, the Student remains at ***. There is no obligation for BISD to provide FAPE where, as here, the Student remains at ***. Because Student is a parentally-placed student at a private school within the jurisdiction of BISD, the sole viable substantive issue before the undersigned is whether BISD met its child-find obligations

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. §300.511(f)(1); 34 C.F.R. §300.511(f)(2); 19 Tex. Admin. Code §89.1151(c).
3. BISD had the responsibility of conducting a "child-find" process, including evaluations, after consultation with *** representatives, to identify and determine that Student was a parentally-placed child with disabilities attending a private school within BISD's boundaries. 34 C.F.R. §300.130-144; 19 Tex. Admin. Code §89.1096(b). BISD failed to comply with this obligation, which is a child-find violation under 34 C.F.R. §300.131.
4. The one-year statute of limitations was tolled related to Student's viable claims against BISD for acts or omissions arising after Student's placement at *** in June 2006 because BISD withheld information from Student's Parents that it was required to provide. 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. §300.511(f)(1); 34 C.F.R. §300.511(f)(2); 19 Tex. Admin. Code §89.1151(c).
5. The appropriate relief for a child-find violation under 34 C.F.R. §300.131 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. BISD shall reimburse the Parents for the IEE they obtained in 2010.

**VI.
ORDER**

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Petitioner is GRANTED, IN PART AND DENIED, IN PART:

BISD shall reimburse the Parents the sum of \$3,393.00 for the cost of the IEE obtained in 2010. This payment shall be made within ten (10) school days from the date of this Decision. All other requests for relief not specifically stated in this Order are **DENIED**.

**VII.
NOTICE TO PARENTS**

The Decision of the Hearing Officer is final and appealable to state or federal district court.

The District shall timely implement this Decision within ten (10) school days in accordance with 19 Tex. Admin. Code §89.1185(p). The following must be provided to the Division of IDEIA Coordination at the Texas Education Agency and copied to the Petitioner within fifteen (15) school days from the date of this Decision: 1) documentation demonstrating that the Decision has been implemented; or 2) if the timeline set by the Hearing Officer for implementing certain aspects of the Decision is longer than ten (10) school days, documentation demonstrating the District's plan for implementing the Decision within the prescribed timeline and a signed assurance from the Superintendent that the Decision will be implemented.

SIGNED this 10th day of June 2010.

Deborah Heaton McElvaney
Special Education Hearing Officer

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