

STUDENT,	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT & PARENT	§	
	§	
VS.	§	HEARING OFFICER
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

ORDER GRANTING
RESPONDENT’S MOTION FOR SUMMARY JUDGMENT

Statement of the Case

STUDENT, by next friends and parents *** and *** (hereinafter “Petitioner” or “the student”) filed a request for hearing on June 7, 2017, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of the Houston Independent School District (hereinafter “Respondent”, “HISD”, or “the district”).

Petitioner alleged that the district failed to comply with the statute’s Child Find obligations pursuant to 20 U.S.C. §1412(3) and §1412 (10), 34 CFR §300.140 (b) and §300.131.

As relief, Petitioner sought an order finding that Petitioner is entitled to an exception to the one-year statute of limitations, 19 T.A.C. §89.1151(c), that Respondent failed to identify and evaluate the student consistent with its Child Find obligations since the student’s placement into private schools located in the respondent district beginning in the 2010-2011 school year and following years, and that Petitioner is entitled to reimbursement for costs of the private school placements.

The matter was assigned to Cathy Egan, a hearing officer with the State Office of Administrative Hearings and originally set for hearing on July 18-19, 2017. The hearing date has been reset on a number of occasions by order of the hearing officer for good cause shown and agreements of the parties.

Respondent filed a motion for summary judgment on July 7, 2017. Petitioner filed a response to the motion for summary judgment on July 21, 2017.

The case was reassigned to an independent hearing officer with the Texas Education Agency, Sherry Wetsch, on July 27, 2017. After the resignation of Hearing Officer Wetsch, the case was reassigned to the undersigned independent hearing officer on August 29, 2017.

Hearing Officer Wetsch ordered an evidentiary hearing on Respondent's motion for summary judgment. The evidentiary hearing began on August 21, 2017, but was not completed. The hearing continued and was completed by the undersigned hearing officer on October 5, 2017. The parties filed written closing arguments on the motion. Based upon the evidence and argument, the hearing officer finds that Respondent's motion is meritorious.

Findings

The parties agree that the student was ***, ***, suffered from serious medical problems and complications, and was considered legally blind. In ***, the student qualified for an Individual Family Service Plan under the Early Childhood Intervention ("ECI") program and was qualified for vision services.

In January ***, the district developed an individual education program ("IEP") for the student, after a functional vision evaluation determined the student met eligibility criteria for a visually impaired student. The student began a program in *** ("****") at a school within the district. During the spring of ***, the student's parents removed the student from the school and placed the student in a private school within the boundaries of HISD.

The student attended the private school for the *** and *** school years. The student attended another private school within the geographical boundaries of HISD for the school years of ***, ***, and ***. In June ***, the student and the parents moved into the *** Independent School District, and the student has attended private schools located within the Houston school

district boundaries since that time.

In February 2016, the student's parents notified the district that the student was attending private school within HISD and requested an evaluation for special education. An admission, review and dismissal ("ARD") committee considered an evaluation of the student in May 2016 and determined that the student did not meet criteria under IDEA as a student with a visual impairment because the committee concluded the student adequately functioned in school despite the student's vision loss. The student's parents disagreed with the district's determination of eligibility and the district recommended an orientation and mobility evaluation of the student for the fall 2016 when the student began attending a new private school within HISD.

The district completed a full individual evaluation ("FIE") of the student at the new private school in October 2016. At this point, the district recommended eligibility as a student with a visual impairment. Another ARD committee met to consider the student in January 2017. The student's parents disagreed with the evaluation of the student and requested an independent educational evaluation ("IEE") for the student at the district's expense.

The district granted the parent's request, and provided an independent evaluation of the student and gave written notice to the parents that their legal obligations were completed because the student was attending private school.

Analysis

The district has moved for summary judgment alleging that the claims of the parents for reimbursement of the costs of private school are barred by the statute of limitations and that any further requests for relief while the student is in private school located within HISD are mooted by its granting the parents the IEE.

Petitioner alleges that the statute of limitations should be tolled to allow their case to proceed to hearing because of the exceptions to the application of the statute under 34 CFR

§300.511(f). Texas law imposes a one-year statute of limitations under 19 T.A.C. §89.1151(c). Petitioner argues that the law requires tolling in this case when the district has made misrepresentations about the circumstances forming the basis of the complaint or the district has withheld information from the parent about their rights to due process under IDEA.

The district avers that the Petitioner knew or should have known that their claims could have been pursued within the time frame permitted under the law. Petitioner claims they did not.

Petitioner's claims for reimbursement are barred by the statute of limitations unless the evidence shows that they could not have been filed timely because Petitioner did not know and could not have known at the time that such claims were viable under the law. Respondent proved Petitioner had notice of the right to file the claims timely.

The district further avers that it met its Child Find obligations to Petitioner in accordance with 34 CFR §300.131(a) for students enrolled in the district and has no further obligation for the student who is not enrolled under the provisions of Tex. Educ. Code §25.001. HISD has an obligation to provide proportionate share services to students attending private schools within the district in accordance with 34 CFR §300.132.

Proportionate share services for parentally-placed eligible students in private school who reside in the district are not required to be a free appropriate public education ("FAPE") as established under IDEA. The district is required to identify eligible disabled students and to develop a service plan. To the extent appropriate, the plan must meet the requirement of 34 CFR §300.320 (***) and must be developed, reviewed, and revised consistent with §§300.321-300.324.

Further, 34 CFR §300.140 states that due process hearings are not appropriate (except for Child Find cases) in cases alleging the failure of district to meet its obligations under §300.132. Instead, those allegations are addressed in state complaint proceedings as set for in 34 CFR §§300.151-300.153 and 19 T.A.C. §89.1095(f). Because the student is parentally-placed in a

private school, disputes about the implementation of the student's educational program fall under the state complaint procedures. 34 CFR §§300.151-153.

Respondent cites as authority a similar case whose fact situation and ruling are on point with this case. McKinney Independent School District, 110 LRP 35315 (SEA Tex. April 28, 2010). The hearing officer found that Petitioner's claims against a district were outside the hearing officer's jurisdiction when they asserted disputes about proportionate share funding.

The pleadings, evidence, and argument of the parties demonstrate that the district met its obligations under Child Find and provided an IEE at public expense.

Conclusion

The evidence shows that Petitioner had notice of the right to file claims for violation of the law under IDEA at least two years before Petitioner brought its claims. The evidence also shows that Respondent met its obligations under the law to provide an IEE at public expense and is entitled to no other relief. Petitioner's claims for any remedies are mooted.

Findings of Fact

1. The student's parents were provided notice of procedural safeguards sufficiently explaining applicable law under IDEA after an evaluation of the student by the district in January ***. [Transcript Pages 36-37 & 46-50].

2. The student's parents were provided the procedural safeguards again at an ARD meeting in January ***. [Transcript Pages 68-79]

3. One of the student's parents testified by affidavit that the parent "probably received the notice of procedural safeguards". [Respondent's Exhibit 25]

4. One of the student's parents *** and at the time of the hearing on October 5, 2017, ***. [Transcript Page 337]

Conclusions of Law

1. No material fact is at issue. Respondent has proven that Petitioner's claims for relief for reimbursement are barred by the statute of limitations.

2. All other claims brought by Petitioner are moot.

ORDER

Respondent's motion for summary judgment is GRANTED. All claims brought by Petitioner are DISMISSED with prejudice.

SIGNED this 24th day of October, 2017.

/s/ Lucius D. Bunton
Lucius D. Bunton
Special Education Hearing Officer