DOCKET NO. 284-SE-0618

[redacted]	§	**BEFORE A SPECIAL EDUCATION**
Petitioner	§	
	§	
v.	§	**HEARING OFFICER FOR**
	§	
HARLANDALE INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	**THE STATE OF TEXAS**

ORDER NO. 15
ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT

I. PROCEDURAL HISTORY

Student, [redacted] (Student or Petitioner), filed a request for an impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA) on June 25, 2018, with Notice of the Complaint issued by the Texas Education Agency (Agency) on June 26, 2018. The Respondent to the Complaint is the Harlandale Independent School District (School District or Respondent). The due process hearing in this matter is set for August 15, 2019 with the decision of the hearing officer due on September 16, 2019.

II. PETITIONER'S COMPLAINT

In [redacted] amended complaint filed on August 2, 2018, Student describes in detail an injury [redacted] sustained at school during a [redacted]. [redacted] alleges that as the result of this injury, which occurred on January [redacted], 2017, [redacted] suffered [redacted], [redacted]. [redacted] further alleges that do to [redacted] injuries and the impact on [redacted] ability to think and learn, [redacted] missed weeks of school and met criteria for a student with a disability under the IDEA. Student contends the District violated the IDEA when it failed to evaluate [redacted] for special education services following [redacted] injury. [redacted] also contends the District withheld information from [redacted] interfering with [redacted] ability to exercise [redacted] rights under the IDEA. Student admits [redacted] in June of 2017, four months after the injury, and

that [redacted] in the fall of 2017 and the spring of 2018. However, Student asserts [redacted] did not discover the rights and remedies available to [redacted] under the IDEA until after [redacted] left the District.

In [redacted] amended complaint, Student discusses the standards set by the [redacted] for [redacted] and details the role Student's [redacted] teacher played in [redacted] injury. [redacted] also describes the medical treatment and expenses that resulted from [redacted] injuries. Student alleges [redacted] injuries were the proximate cause of the actions of both the [redacted] teacher and other District personnel. As the result of these injuries, [redacted] requests as relief damages related to physical pain, medical expenses, mental anguish, physical impairment, and loss of earning capacity.

While Student does raise a claim under the IDEA, the thrust of [redacted] complaint is a personal injury complaint against the District. In fact, [redacted] admitted during [redacted] deposition that [redacted] is not seeking any education relief, and is instead, seeking damages and discipline for the [redacted] teacher. Petitioner's counsel even admitted during a prehearing conference that the only reason this matter was filed with the Texas Education Agency and is before this hearing officer is for the purpose of exhausting administrative remedies before pursuing the personal injury claims in court.

III. RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT

On June 6, 2019, Respondent filed a motion for summary judgement requesting dismissal of Petitioner's claims in their entirety. Respondent argued all of Petitioner's claims are barred by the one-year statute of limitations for IDEA claims in Texas, and, thus, should be dismissed. Respondent asserts the accrual date, the date Petitioner knew or should have known, [redacted] had a claim under the IDEA, was more than one year prior to June 25, 2018, when [redacted] filed [redacted] complaint. Since Petitioner failed to file [redacted] complaint within one year of the date the claims accrued, Respondent argues [redacted] complaint should be dismissed.

IV. SUMMARY JUDGEMENT STANDARD

Summary Judgment is proper if the pleadings, admissions, and public records on file demonstrate that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. T.R.C.P. Rule 166a; *Shell Oil Co. v. Khan*, 138 S.W. 3d 288 (Tex 2004). In considering a request for summary judgment, the Hearing Officer must view the evidence in the light most favorable to the non-movant. *Valence Operating Co. v. Dorsett*, 164 S.W. 3d 656 (Tex. 2005). The moving party (in this case the District) must show the absence of evidence to support the nonmoving party's (Student) case. If the moving party fails to meet its initial burden, the motion must be denied, regardless of the non-movant's response. However, if the movant meets its initial burden, the non-movant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Tubacex, Inc.v. M.V. Risan*, 45 F. 3d 951 (5th Cir. 1995); *Brown v. Houston ISD*, 763 F. Supp. 905 (S.D.TX 1991).

A. Burden of Proof In An IDEA Case

The party seeking relief under the IDEA bears the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, 61 (2005). The District raised the affirmative defense of the statute of limitations (SOL) 19 Tex. Admin. Code § 89.1150(c) and the District bears the initial burden to present sufficient facts of the accrual date. Matter of *Hinsley v. Boudloche*, 201 F.3d 638, 645 (5th Cir. 2000) ("Under Texas law, a party defending on ground of statute of limitations bears the burden of proof on this issue."). In its motion, the District is the party seeking relief in the form of a dismissal. 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 Texas one-year statute of limitations. GI v Lewisville Independent School District, 2013 WL 4523581, *8-9, Case No. 4:12cv385 (E.D. Tex. Aug. 13, 2013) ("If a parent brings a complaint based on allegations that fall outside the limitations period, the parent bears the burden to first establish an exception to the limitations period."). See also Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46540, 46706 (Aug. 14, 2006).

B. District's SOL Argument

The District contends that Petitioner's amended complaint raises only a Child Find issue for this due process hearing. According to Respondent, Petitioner claims [redacted] has an IDEA eligible disability and the District failed to find [redacted] eligible for services under IDEA. Respondent argues Petitioner was aware of [redacted] IDEA eligibility claim by at least April [redacted] 2017, when [redacted] was informed that the District found [redacted] ineligible for IDEA services. On this same date, the District asserts Petitioner was provided written notice of [redacted] rights under the IDEA, as well as under Section 504 of the Rehabilitation Act.

The District argues that April [redacted], 2017, is the "known or should have known" date triggering the SOL. Thus, the District argues that the complaint is time barred because the accrual date was April [redacted], 2017 and the original complaint was filed on June 25, 2018, which was over one year and two months beyond the accrual date. Finally, the District argues that neither statutory SOL exceptions nor the common law SOL exceptions raised by Petitioner are applicable to this case; consequently, the case must be dismissed.

C. Petitioner's SOL Argument

Petitioner's complaint and amended complaint pled the IDEA withholding exception and equitable tolling to extend the SOL beyond one year. Petitioner further argues [redacted] complaint was timely because it was filed within one year of [redacted] and within one year of the time Student became aware of [redacted] rights under IDEA. Specifically, Petitioner argues the District failed to provide [redacted] with the IDEA procedural safeguards after determining an evaluation for IDEA services was not warranted. 20 U.S.C. § 1415(f)(3)(D)(ii); 34 C.F.R § 300.511(f)(2); 19 Tex. Admin. Code § 89.1151(d)(2). Petitioner also argues the SOL did not start to run until [redacted], because [redacted] did not have the legal capacity to know of the alleged wrong.

V. THE IDEA SOL IN TEXAS

In Texas, a party must request a special education 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 request. 19 Tex. Admin. Code § 89.1150(c). A 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). A complaining party need not realize a legal cause of action exists or is potentially actionable in order for a claim to accrue. Rather, a complaining party need only know, or have reason to know, of the facts that would support a claim. Id.

On January [redacted], 2017, Student was injured at school during [redacted]. Both Petitioner and Respondent were aware of Student's injury on this day. On April [redacted], 2017, the District convened a meeting to address the educational consequences of Student's injury and determined Student eligible for services and accommodations under Section 504 of the Rehabilitation Act. On this same day, the District informed Petitioner that Student was not eligible for IDEA services and Petitioner received a notice of [redacted] rights under the IDEA.

Thus, the relevant events occurring between January [redacted], 2017 and April [redacted], 2017 are the basis for this due process hearing. These events form the allegations that are the basis of the amended complaint, which all occurred while Student was a student in the District. Petitioner's cause of action accrued on April [redacted], 2017, when the District determined Student ineligible for IDEA services and provided a notice of procedural rights under IDEA. Petitioner had reason to know of the facts supporting [redacted] eligibility claim under IDEA on this day. 19 Tex. Admin. Code § 89.1150(c); Piotrowski, 51 F.3d at 516. Petitioner's argument that [redacted] was unaware of [redacted] legal rights under the IDEA at the time [redacted] was a student in the District is irrelevant to the determination of the accrual date. Piotrowski, 51 F.3d at 516.

VI. SOL EXCEPTIONS UNDER IDEA

There are two, and only two, exceptions to the SOL under IDEA: the misrepresentation and withholding exceptions:

> (d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:
> (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or
> (2) the public education agency's withholding of information from the parent that was required by 34 C.F.R. § 300.1, et seq. to be provided to the parent. 19 Tex. Admin. Code § 89.1151(d).

The Texas rule quoted above is derived from 20 U.S.C. § 1415(f)(3)(D) and 34 C.F.R § 300.511(f). Because Texas has adopted state specific timelines, the Texas one-year SOL applies and is the law for resolving this SOL issue. The IDEA limitations period, with its explicit exceptions, "is not subject to equitable tolling." *Wood v Katy Independent School District*, 163 F.Supp.3d 396, 409 (S.D. Tex. Sep. 30, 2015). Petitioner argues the District withheld information from [redacted] preventing [redacted] from exercising [redacted] rights under IDEA.

A. Withholding Exception:

The withholding exception tolls the SOL when a District "withholds information from the parent that it was required to disclose." 19 Tex. Admin. Code § 89.1151(d)(2). Petitioner alleges the District failed to provide an IDEA notice of procedural safeguards (NPS) following the April [redacted] 2017 meeting and eligibility determination. The record establishes that Petitioner received NPS at, or immediately following, the April [redacted] 2017 eligibility meeting.

The record does not establish that the District withheld information it was required to disclose. Consequently, the Hearing Officer finds that the withholding exception is not applicable to this case. *El Paso Independent School Dist. v Richard R.*, 567 F. Supp. 2d 918 (W.D. Tex. Jul. 14, 2008) ("When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations for IDEA violations commence without disturbance. Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA.").

B. Equitable Tolling:

Simply stated, IDEA complaints are not subject to equitable tolling. *Wood v. Katy Independent Sch. Dist*, 163 F.Supp.3d 396, 409 (S.D. Tex. Sep. 30, 2015) ("The IDEA limitations period, with its express exceptions, is not subject to equitable tolling.") citing *D.C. and A.C. v. Klein ISD*, 711 F. Supp. 2d 739, 409 (S.D. Tex. 2010) (cases cited therein).

As a form of equitable tolling, Petitioner argues the SOL did not start to run until [redacted], because [redacted] did not have the legal capacity to know of the alleged wrong. In effect, Petitioner is asserting that the SOL is tolled while Student remains a minor pursuant to Texas Civil Practice & Remedies Code § 16.001(a). The tolling provision of the Civil Practice & Remedies Code is inapplicable to an IDEA case. *Reyes v Manor Independent School District*, 2016 WL 439148, *3 (W.D. Tex. Feb. 2, 2016):

> "The Texas legislature enumerated two exceptions to the one-year statute of limitations it created for filing due process hearings, neither of which are related to the exceptions set forth under § 16.001 of the Texas Civil Practice and Remedies Code for bringing a lawsuit. As a result, the Court finds § 16.001 does not apply to toll the one-year statute of limitations for requesting a due process hearing."

CONCLUSION

Respondent has met its burden of proof to establish the accrual date for Petitioner's complaint as April [redacted], 2017. Schaffer, 546 U.S. at 61); Matter of *Hinsley,* 201 F.3d at 645). Petitioner has failed to establish that an exception to the SOL exists in this case. GI, 2013 WL 4523581, *8-9. The hearing officer concludes there is no genuine issue of material fact on the SOL for Petitioner's complaint and that Petitioner's claims are barred by the one year SOL under IDEA in Texas. T.R.C.P. Rule 166a; *Shell Oil Co.*, 138 S.W. 3d 288. Therefore, Respondent's motion for summary judgement is granted.

ORDER

The accrual date, the known or should have known date, for Petitioner's complaint is April [redacted], 2017. The original complaint was filed two and one half months beyond the one-year SOL. Neither enumerated exception to the SOL applies; therefore, the District's motion is **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

SIGNED August 2, 2019.

Steve Elliot
Special Education Hearing Officer
For the State of Texas