

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
18 EDC 00359

<p>█ by and through her parent █ Petitioner,</p> <p>v.</p> <p>Charlotte-Mecklenburg Schools Board of Education Respondent.</p>	<p>FINAL DECISION— ORDER OF DISMISSAL</p>
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THIS CAUSE comes before the undersigned Administrative Law Judge on Petitioner's Partial Motion for Summary Judgment and Respondent's Revised Motion for Summary Judgment. The Undersigned has taken full consideration of all written and oral arguments presented by counsel for both parties, all documents in support of or in opposition to the motions, and all filings by both parties, including but not limited to, Petitioner's Motion for Partial Summary Judgment, Respondent's Memorandum in Opposition to Petitioner's Motion for Partial Summary Judgment, Respondent's Revised Motion for Summary Judgment and Memorandum of Law in Support and Petitioner's Response in Opposition to Respondent's Motion for Summary Judgment, as well as all exhibits and affidavits.

BASED UPON the entire record herein, the Undersigned concludes as follows:

1. In accordance with the Individuals with Disabilities Education Act (IDEA) regulations, "[t]he due process complaint must allege a violation occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section." 34 C.F.R. § 300.507(a)(2).

2. In accordance with N.C. GEN. STAT. § 115C-109.6(b), "[n]otwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition."

3. N.C. GEN. STAT. § 115C-109.6(c) states however that, "[t]he one-year restriction in subsection (b) of this section shall not apply to a parent if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's

withholding of information from the parent that was required under State or federal law to be provided to the parent.”

4. No argument was made that the local educational agency made misrepresentations to Petitioner that prevented the filing of a due process petition.

5. Turning to the second exception, Petitioners assert that the Respondent withheld information that was required under State or Federal law to be provided to the parent. The Undersigned is persuaded by the reasoning found in *El Paso Independent School Dist. v. Richard R.*, 567 F.Supp.2d 918 (W.D. Tex. 2008). In that case the court found that the second exception refers to the procedural safeguards and prior written notice requirements found in IDEA and its regulations, and not to any substantive information regarding services or the student’s educational progress. *Id.* at 942–44. The preponderance of the evidence in this case, supports a determination that the Respondent did not withhold information from the parents that is required under State or Federal law.

6. Petitioner filed the within Petition on January 18, 2018. All claims prior to January 18, 2017 are barred by the statute of limitations because the greater weight of the evidence presented shows that the parents knew or should have known about the actions prior to January 18, 2017 that formed the basis of their complaint. Most pertinently, Petitioner unilaterally withdrew [REDACTED] from Respondent in December 2015, and placed [REDACTED] in a medical treatment facility in [REDACTED]. In May 2016, Petitioner informed Respondent that Petitioner had received a diagnosis for Autism and was receiving treatment in [REDACTED]. Currently, [REDACTED] is a parentally-placed private school student who is enrolled in the online program at [REDACTED] University’s Independent Study Program and [REDACTED] Community College’s dual enrollment program.

7. The preponderance of the evidence supports the conclusion that neither of the two exceptions that would override the one-year restriction in this case are applicable.

8. Under the facts presented, the Undersigned lacks jurisdiction of the subject matter of this case and dismissal is appropriate in accordance with N.C. GEN. STAT. § 1A, Rule 12(h)(3).

FINAL DECISION

NOW THEREFORE based on the foregoing, disposition of those claims occurring prior to, on or about January 18, 2017 by dismissal in accord with Chapter 3 of Title 26 of the North Carolina Administrative Code, and N.C. GEN. STAT. § 150B-33 and § 150B-36 and N.C. GEN. STAT. § 1A-1, Rule 12(b) of the North Carolina Rules of Civil Procedure, as well as the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., and implementing regulations, 34 C.F.R. Part 300, is proper and lawful. It is hereby ORDERED that those claims are hereby Dismissed with Prejudice.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 18th day of April, 2018.



Selina Malherbe
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 18th day of April, 2018.



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