STATE DEPARTMENT OF EDUCATION
DUE PROCESS APPEAL REVIEW
STATE OF OKLAHOMA

[Parent],
on behalf of M.L., Student,

Petitioner/Appellant,

DPH Case Number 2013
(Appeal)

[NAME] PUBLIC SCHOOLS,

Respondent/Appellee.

APPEARANCES:

For Appellant:
Parent Attorney

For Appellee:
School District Attorney

FINAL ORDER ON APPEAL

PROTECTIVE ORDER

In order to provide confidentiality and insure privacy, throughout this Order, the minor student shall simply be referred to as Student.

As part and partial of this Final Order, a protective order is hereby decreed. No party to these proceedings shall publish to any third party the name or identity of student. All documents pertaining to these proceedings shall be sealed and any copy of any document made pursuant to the legal request of a third party shall be redacted as to the names, birthdates and other private, sensitive information.

BACKGROUND

Parent filed an original due process complaint through her attorney on February 28, 2011. The Second Amended Due Process Complaint of Petitioner, which consisted of sixteen numbered complaints, some with sub-parts, was the basis for the complaints heard by the hearing officer at trial. After some legal maneuvering and orders of the hearing officer, the hearing was basically concentrated on the issues of whether the district failed to provide a free and appropriate public education (FAPE) (encompassing claims numbered Paragraphs numbered 8, 9, 10, 11, and 12); and (2) Did the District fully and properly evaluate Student (encompassing claims numbered 2, 3, 7, and 13).

A four day hearing was held on the following dates: Wednesday, June 15, 2011; Thursday, June 16, 2011; Friday, June 17, 2011; and Thursday, July 21, 2011. Thereafter, a decision was rendered on August 19, 2011, in favor of the school district. The student's representative appealed that decision and it is now before the below signed hearing officer.

By prior agreement of the parties dated September 29, 2011, the briefing deadlines and the due date for this decision were extended. The parties waived oral arguments and both parties agreed that the record is complete and the matter was to be considered by the appeal officer after submission of briefs. The final brief was received on October 31, 2011.

The student who is the subject of this due process appeal was born on [date] and was in the [number] grade during the 2010-2011 school year. The student was identified as a child with a disability under the Individuals with Disabilities Act (IDEA) and qualified for special education and related services under the IDEA disability category of Other Health Impaired as a result of a diagnosis of attention deficit disorder.

Student filed his *Request For Due Process Appeal Review* on September 19, 2001. In it, he asserted 36 grounds for error. They are stated as follows:

a. The Hearing Officer erred by denying Petitioner's May 4, 2011 Application for Independent Evaluations as reflected in the Order dated May 10, 2011;

b. The Hearing Officer erred by barring all claims prior to February 28, 2011;

c. The Hearing officer erred in determining that the Petitioner failed to prove, by a preponderance of the evidence, that the Student did not receive a free appropriate education.

d. The Hearing Officer erred in determining that the Petitioner failed to prove, by a preponderance of the evidence, that the District's acts, omissions and/or procedural violations impeded the parents' opportunity to participate in the IEP process.

e. The Hearing officer erred in determining that the Petitioner failed to prove, by a preponderance of the evidence, that the District's acts, omissions and/or procedural violations caused a deprivation of educational benefit.

f. The Hearing Officer erred in determining that Petitioner failed to prove, by a preponderance of the evidence, that the District's acts, omissions and/or procedural violations impeded the Student's right to a free appropriate public education.

g. The Hearing Officer erred by determining that Petitioner failed to prove, by a preponderance of the evidence, that the IEP team did not properly consider ESY services.

h. The Hearing officer erred by determining that the Petitioner failed to prove, by a preponderance of the evidence, that the Student did not have the ability to interact with nondisabled peers over the summer, resulting in a failure to properly consider ESY services.

i. The Hearing officer erred by refusing to receive the testimony of Dr. [name] and Dr. [name]after accepting reports from each as evidence.

j. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the IEP goals were not calculated to confer meaningful educational benefit.

k. The Hearing Officer erred by determining that Petitioner failed to prove, by a preponderance of credible evidence, that the Student regressed.

l. The Hearing Officer erred by determining that a grade appropriate PASS standard constitutes an IEP goal that is unique to the Students needs.

m. The Hearing Officer erred by determining that end of year achievement tests are a measure of the Student's progress toward IEP goals.

n. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the IEPs, or material provisions of the IEPs, were not fully and properly implemented.

o. The Hearing Officer erred by determining that any lack of implementation of any part of the IEPs was trivial and did not result in denial of a free appropriate public education.

p. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the IEP goals were defective, deficient or not proper to address the unique needs of the Student.

q. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the Student failed to make meaningful educational progress during the operative time period.

r. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the District's failure to create, preserve and/or maintain records constituted an IDEA violation.

s. The Hearing Officer erred by failing to find an adverse inference in favor of the Petitioner due to the Districts destruction of records during the pendency of the due process hearing, and/or due to the failure to produce, preserve and/or maintain records.

t. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the District failed to reevaluate the Student as required by the IDEA.

u. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that [JF]s Brief Synopsis and suggestions related to speech therapy, including modifications, educational and/or related services, were not properly and fully considered by the IEP team.

v. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the Student has a language impairment, learning disability or central auditory processing disorder, or that the District failed to properly evaluate for these disabilities, and/or that the District had sufficient reason to evaluate the student for these disabilities.

w. The Hearing Officer erred by failing to find that [BB] did not administer assessments in accordance with the instructions or protocols provided by the producer of the assessment, in violation of 34 CFR 300.304(c)(1)(v).

x. The Hearing Officer erred by finding that [JF]'s assessment results are not an accurate indication of the Student's language abilities.

y. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that [MP] was not qualified, trained and/or knowledgeable to provide speech/language therapy services, including but not limited to, diagnosing, administering and interpreting assessments and making appropriate recommendations for the Student.

z. The Hearing Officer erred by determining that Petitioner failed to establish, by a preponderance of the evidence, that the District failed to provide the Student special education and related services necessary to address the Student's ADD/ADHD diagnosis through his IEPS.

aa. The Hearing Officer erred by determining that a written behavior plan is not necessary and/or by determining that a District need only "consider" strategies to address the Student's behavior.

bb. The Hearing Officer erred by determining that the Petitioner failed to establish, by a preponderance of the evidence, that the absence of a functional behavior assessment constituted a violation of IDEA, caused a deprivation of educational benefits, or denied the Student a free appropriate public education.

cc. The Hearing Officer erred by determining that the interventions and behavior strategies considered and/or implemented by the District to address the Student's in-class sleeping served the same purpose as a behavior intervention plan.

dd. The Hearing Officer erred by determining that Petitioner is not entitled to any relief, including but not limited to, an award of compensatory education and/or related services, or independent evaluations.

ee. The Hearing Officer erred by refusing to allow Petitioner to make a record of a prehearing conference as reflected in the Order dated May 16, 2011;

ff. The Hearing Officer erred by prohibiting Petitioners counsel from making a record(s) or offer(s) of proof during the hearing;

gg. The Hearing Officer erred by refusing to allow the Student to be advised by his legal counsel and/or by refusing to allow the Student to have any communications with his legal counsel prior to his testimony in violation of 20 U.S.C.A. §1415(h)(1);

hh. The Hearing Officer erred by objecting to, impeding and/or prohibiting Petitioner and/or Petitioner's counsel, during the due process hearing, from being advised by an advocate with special knowledge and training with respect to the problems of children with disabilities in violation of 20 U.S_C.A §1415(h)(1);

ii. The Hearing Officer erred by failing to remain impartial and by failing to inform the Oklahoma State Department of Education that she was not and/or could not remain impartial in violation of 210 OAC 15-13-5(b);

jj. The Hearing Officer erred by failing to conduct all phases of the due process hearing in a professional manner in violation of 210 OAG 15-13-5(c), as reflected in Orders dated April 1, 2011, May 2, 2011, and throughout the hearing transcript.

It is not necessary to address each and every separate allegation of error and they will not be specifically addressed in this opinion unless noted. This opinion will set forth the findings of fact and conclusions of law applicable to the appeal issues within the scope of the appeal officer's duties for review, his authority and the application of law that applies.

FEDERAL LAW APPLICABLE TO CASE

In 2004, Congress reauthorized the Individuals with Disabilities Education Act (IDEA). The act is replete with acronyms used commonly by those familiar with special education due process issues but foreign to those outside this arena. Several of the common acronyms are referenced by the parties to this action and this hearing officer. The several words initialized by each particular

acronym generally have a particular legal meaning and definition. Judicial notice is taken of the stated definition of the acronyms used in this case.

The Individuals with Disabilities Education Act (IDEA)[i] is the major federal statute for the education of children with disabilities. Oklahoma receives federal funding under this act which sets out principles under which special education and related services are to be provided. As referenced above, the requirements are detailed, legally defined and replete with acronyms.[ii]

IDEA concerns the provision of special education services to students with disabilities, from birth up to their 22nd birthday. Congress enacted IDEA to provide students with disabilities the right to a free and appropriate public education (FAPE) in the least restrictive environment (LRE) through the development and implementation of an Individualized Education Program (IEP) setting forth goals for each eligible student

Every individual independent school district in Oklahoma must make available a free appropriate public education (FAPE)[iii] to all children with disabilities. States and school districts identify, locate, and evaluate all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services.[iv]

Each child receiving services has an individual education program (IEP)[v] spelling out the specific special education and related services to be provided to meet his or her needs.[vi] The parent must be a partner in planning and overseeing the child's special education and related services as a member of the IEP team. "To the maximum extent appropriate," children with disabilities must be educated with children who are not disabled. Oklahoma school districts must provide procedural safeguards to children with disabilities and their parents, including a right to a due process hearing and the right of appeal.

Various remedies are available to students when a school district is not in compliance with the federal guidelines. Such relief must be "appropriate" as defined by the IDEA. That means the *Rowley* standard of "reasonably calculated to provide some educational benefit" or "meaningful educational benefit" applies. *Reid v. Dist. of Columbia,* 401 F.3d 516 (D.C. Cir. 2005).

STANDARD OF REVIEW

The scope of review applied on appeal is that enunciated in *Carlisle Area School District v. Scott P.* 62 F.2d 520 (3d Cir. 1995), where the Third Circuit said:

> "We thus hold that appeals panels reviewing the fact findings of hearing officers ... should defer to the hearing officer's findings based upon credibility judgments unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion."

The review officer is obligated to conduct an impartial and independent review based on the entire record on appeal. 34 CFR 300.514. However, due deference also must be given to the decision of the fact-finder below, for the review is clearly not a hearing de novo. *Carlisle Area Sch. Dist. v. Scott P.*, 22 IDELR 1017 (3d Cir. 1995), *amended*, 23 IDELR 293 (3d Cir. 1995).

FINDINGS OF FACT

Any findings of fact, which are properly conclusions of law, are incorporated in this decision as conclusions of law. Any conclusions of law, which are properly findings of fact, are incorporated in this decision as findings of fact. In so far as federal law cited above applies, it shall be considered a conclusion of law as well.

In making the Findings of Fact, the Hearing Officer was under a duty to weigh all the evidence and assess the credibility of the witnesses by taking into account the

appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. In this regard, the Appeal Officer will not overrule the Hearing Officer unless evidence clearly establishing biases or error is demonstrated.

Unless otherwise noted, the findings of fact set forth by the Hearing Officer shall be adopted as the findings of fact in this appeal decision along with any new findings of fact determined by the appeal officer. Since the Hearing Officer in this case considered the entire record and enumerated the undisputed facts there is no reason to set aside any of her findings of fact based upon the record as a whole or credibility judgments. Thus, this review is limited to the application of legal concepts and requirements.[vii]

There is nothing in the record to indicate that the hearing officer does not possess the qualifications set forth in 34 CFR § 300.511(c)

Oklahoma has adopted a two tier system in the due process procedure. To guarantee due process protection to children and their parents in regard to the identification, evaluation, placement, and appropriate education of the child, either party, who is not in agreement with the due process hearing decision or expedited due process hearing decision, may appeal the due process hearing decision to an Appeal Officer. 34 CFR § 300.514.

Pursuant to 34 CFR § 300.514, this Appeal Officer conducted a preliminary review of the entire record from the due process hearing.

The parties to this proceeding agreed and stipulated that no additional evidence was needed and no formal hearing was necessary in order for the Appeal Officer to make an independent decision on completion of the review. Therefore, the parties submitted briefs establishing their positions and authorities and no oral argument was heard.

A hearing officer is under no mandatory requirement to order any test unless it serves as an aid to the court in making its determination and other, timely information is not available or, where such order is incorporated as a requirement in a final decision enforceable against the district. There is no mandatory language under 34 C.F. R. § 300.502(d).

The IDEA demands that the due process hearing request be made within two years of the date the aggrieved party knew or should have known of the alleged action forming the basis of the complaint. See 20 U.S.C. §1415(f)(3)(C). Exceptions to the two-year period are contained in 20 U.S.C. §1415(f)(3)(D), in which a parent may make a claim outside of the two-year period based on misrepresentations or withholding of information. Both the two-year time frame and its noted statutory exceptions contained in 20 U.S.C. § 1415 are affirmative defenses, rather than grants of jurisdictional authority.

There is nothing to indicate that Congress indicated that the adjudicatory officer could not exercise jurisdiction except in the two-year time frame; in fact, the contrary is expressed, since the provision immediately following the two-year limitation provision provides for "exceptions" to the two-year rule, which allows the adjudicatory officer to make a determination of matters outside of the two-year window. See 20 U.S.C. §1415(f)(3)(D)(exceptions for agency misrepresentation or for agency withholding of information).

It is up to a hearing officer or ALJ to make the decision as to whether the parent should have known about the alleged action that forms the basis of the complaint. *See* Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46706

(2006).[viii]

As stated by the Appellant, The "knew or should have known" standard requires a fact intensive inquiry. The parent must be in possession of "critical facts" which indicate that the child has been hurt and the defendants are responsible for the injury. *Draper v. Atlanta Indep. School Systems,* 480 F.Supp.2d 1331, 1340 (N.D. Ga. 2007) affd, 518 F.3d 1275 (11th Cir. 2008).

The Appellee correctly states in its brief that the operative word or "trigger" in the regulation is the word "action." Based on a thorough review of the facts and authorities presented, it is the court's conclusion that the hearing officer ruled correctly on the issue of barring claims.

The appropriate inquiry is not whether the student made progress, but whether his IEP was reasonably calculated to provide FAPE. Progress and regression are equally irrelevant. To sustain its burden to prove the IEP was reasonably calculated to provide educational benefit, the district must show: (1) that the IEP contained the required elements and (2) that the annual goals, benchmarks and short-term objectives were reasonable; and (3) that the methodology it employed was tailored to meet the goals, objectives and benchmarks. If the goals for the student with disabilities depart from state standards for students of similar age and grade, the district must state the reasons for the discrepancy. **(***Board of Education of the County of Kanawha***,** 95 F. Supp. 2d 600 (S.D.W.Va. 2000).

School districts determine the appropriate methodology to be used to implement a child's IEP. Parents, "no matter how well motivated, do not have a right under IDEA to compel the school district to provide a specific program or employ a specific methodology for the education of their disabled child." *Logue By and Through Logue* v. *Shawnee Mission Pub. Sch. Unified*

Sch. Dist. No. 512,959 F. Supp. 1338, 1351 (D. Kan. 1997), *aff'd,* 153 F.3d 727 (l998); *see also Tucker by Tucker* v. *Calloway County Bd. of Educ.,* 136 F.3d 495, 506 (6th Cir. 1998)

Parents are afforded the right to be accompanied and advised by an individual with special knowledge or training with respect to the problems of children with disabilities. 20 U.S.C. § 1415(h)(1).

The parents were accompanied to the hearing by an advocate, Ms. [C], who, according to the transcript was whispering in counsel's ear and passing notes to counsel. The hearing officer did not approve of this procedure. It appears that the repeated actions of Ms. [C] throughout the hearing were disruptive, in the view of the hearing officer, and caused delay in the proceedings. If any error occurred with regard to curtailing the actions of Ms. [C] in the courtroom, it was harmless error.

The law is quite clear in regarding courtroom administration that the judge is "the governor of the trial for the purposes of assuring its proper conduct," *Quercia v. U.S.*, 289 U.S. 466, (1933). HO Welsh had authority over the conduct of the parties and counsel during the hearing and is charged with ensuring the hearing proceeds in an orderly manner.

The actions of HO Welsh could not be considered a departure from impartiality but an attempt to use courtroom administration to move the trial along without unnecessary delay.

As stated in the Tenth Circuit case of Riggins *v. Goodman,* 572 F.3d 1101, 1112 (10th Cir.2009), "Impartiality of the tribunal is an essential element of due process." Impartiality may be affected by a "personal or financial stake" in the outcome or "personal animosity." *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n,* 426

U.S. 482, 491–92, 96 S.Ct. 2308, 49 L.Ed.2d 1 (1976).

A person claiming bias on the part of an administrative tribunal must overcome a presumption of honesty and integrity in those serving as adjudicators. A substantial showing of personal bias is required to disqualify a hearing officer or tribunal. *Riggins,* 572 F.3d at 1112 and *Hicks v. City of Watonga,* 942 F.2d 737, 746–47 (10th Cir.1991)

The burden rests on the party challenging the hearing officer's impartiality, and in relying on United States Supreme Court precedent, the Tenth Circuit has held that this party "must overcome a presumption of honesty and integrity in those serving as adjudicators." *Riggins v. Goodman*, 572 F.3d 1101, 1112 (10th Cir. 2009) (citing *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

The burden is quite high indeed. "Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not . . . disqualify a decisionmaker" and demonstrate actual bias. *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976); *Mangels v. Pena*, 789 F.2d 836, 838 (10th Cir.1986). Even "rul[ing] strongly against a party' in an earlier matter or participating in the initial proceedings is not enough to show that the decision maker is biased or partial to one side. *Hicks*, 942 F.2d at 750-51.

A perusal of the record shows that the hearing officer demonstrated no bias in favor of the District or prejudice against Petitioner nor did she fail to conduct the hearing in a professional manner.

The record does not indicate that any objection was made at hearing regarding

The hearing officer's bias or prejudice before or during the due process hearing. *See York County School District Three*, 48 IDELR 178 at p. 8-9 (Jan. 24, 2008) holding that since the parents did not object to the hearing officer's impartiality before or during hearing "they should not now be heard to complain simply because [the hearing officer] did not agree with them. The same is applicable in the present case; Petitioner may not complain on appeal when no objection was previously made.

CONCLUSIONS OF LAW

In this case, the testimony of witnesses and the non-testimonial, extrinsic evidence in the record does not justify a reversal of the hearing officer's decision.

The Individuals with Disabilities Education Act (IDEA),2 0 U.S.C. 1400-1487(2 000), obligates school districts to provide children with disabilities a "free appropriate public education." (§1412(a)(1).

The burden of proof in this administrative hearing challenging an IEP is properly placed upon the parent who is the party seeking relief. *Schaffer v. Weast,* 546 U.S. 49 (2005).

Congress enacted *IDEA* in part, "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.1(a). To achieve this goal, the Act requires schools to provide children with a free, appropriate public education (FAPE).

Under 20 USC §1415(f)(3)(E), a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
(III) caused a deprivation of educational benefits.

The Appellant did not meet the burden of proof in establishing by a preponderance of the evidence that the test elements of the law were met. (See *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692 (10th Cir. 1998)

DECISION

The August 19, 2011 decision of the Hearing Officer is upheld. Parent did not prove by a preponderance of the evidence that they should have prevailed.

NOTICE OF APPEAL RIGHTS

Pursuant to 20 U.S.C. § 1415(g) and (i) and 34 C.F.R. §300.516, the decision of the Appeal Review Officer is final except that any party involved in such hearing who feels themselves aggrieved by the findings and decision made shall have the right to bring a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy **within 90 days of receipt of this Order**.

Date: November 18, 2011.

//signature
Gary E. Payne,
Appeal Review Officer

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2011, I e-mailed and mailed a true, correct and exact copy of the above and foregoing document, via regular U.S. mail, with postage prepaid, to:

(1) Parent Attorney
(2) Special Education Resolution Center

(3) School District Attorney

//signature
Gary E. Payne

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[i] 20 U.S.C. §1400 et seq.

[ii] Phrases such as "free appropriate public education" and "least restrictive environment" are phrases of legal art.

[iii] FAPE is defined in the statute as meaning "special education and related services that -- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(d)." 20 U.S.C. §1401 (9).

[iv] All children with a disability, as defined by 34 CFR 300.8 , must be educated in the least restrictive environment. 34 CFR 300.114.

[v] The IEP must include a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how these goals are to be met; a statement of the special education and related services to be provided; and an explanation of the extent to which the child is to be educated with children without disabilities.

[vi] Placement determinations of a special education student, including changes in placement, is a decision that is usually required to be made by a group of knowledgeable individuals, including the student's parents, after considering the continuum of placement options available.

Pursuant to 34 C.F.R. 300.116, in determining the educational placement of a child with a disability, a school district must ensure that:

a. The placement decision
   (i) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
   (ii) Is made in conformity with the Least Restrictive Environment ("LRE") provisions set forth in federal law.

b. The child's placement
   (i) Is determined at least annually;
   (ii) Is based on the child's individualized education program ("IEP"); and
   (iii) Is as close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services he or she needs; and

e. A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.

[vii] "Due weight" must be given to the hearing officer's findings of fact, which are considered prima facie correct. (*Murray v. Montrose County Sch. Dist*., 51 F.3d 921, 927 (10th Cir. 1995)

[viii] Section 1415(f)(3)(c) of IDEA provides:

> [a] parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint.

The only exception to the above is where the delay in the parent requesting due process was caused by (1) a specific misrepresentation made to the parent by the local educational agency ("LEA") that the LEA had resolved the complained of problem or (2) a withholding of information by the LEA from the parent which the LEA was required to provide