

STUDENT b/n/f Parents	§	BEFORE A SPECIAL EDUCATION
V.	§	HEARING OFFICER FOR THE
CLEAR CREEK INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner brings this appeal by Student's next friends pursuant to the Individuals with Disabilities Education Improvement Act 20 U.S.C. § 1400 *et seq.*, (hereinafter referred to as "IDEIA"), against Respondent Clear Creek Independent School District (hereinafter referred to as "Respondent" or "Clear Creek ISD"). Petitioner (hereinafter referred to as "Petitioner" or "Student") filed a written request for a special education due process hearing which was received by the Texas Education Agency on Wednesday, June 18, 2008. Petitioner was represented by Attorney Dorene Philpot of Galveston, Texas. Respondent was represented by Attorney Jeffrey Rogers the law firm Feldman, Rogers, Morris & Grover, L. L. P. of Houston, Texas.

All procedural matters have been conducted by agreement of the parties and in accordance with their schedules. A telephone prehearing conference was held on Tuesday, July 8, 2008, and a Prehearing Order was issued on Thursday, July 10, 2008. Disclosure occurred on Tuesday, July 22, 2008, and the due process hearing was held as scheduled on Wednesday and Thursday, July 30 and 31, 2008 at the Clear Creek ISD Administration Building. Respondent requested the opportunity to file written closing arguments, the Hearing Officer granted the request, and it was agreed that the parties would file their briefs on Monday, August 18, 2008. A Post Hearing Scheduling Order was issued on Friday, August 1, 2008 setting forth the agreed upon briefing scheduled and confirming the decision due date of August 29, 2008.

Petitioner complains that Respondent deprived Student of a free appropriate public education ("FAPE") as follows:

1. Respondent failed to devise an appropriate Individualized Education Program ("IEP") for Student in a collaborative manner, resulting in a denial of a free appropriate public education ("FAPE") and harm to Student, including significantly impeding Student's parents' opportunity to participate in the decision-making process and/or causing a deprivation of educational benefits.
2. Student's IEP failed to contain appropriate and measurable goals and objectives in all areas of need, including academics, speech, social skills, behavior, communication, Extended School Year services ("ESY"), Occupational Therapy ("OT"), and all other needs addressed in Student's independent educational evaluation ("IEE") and failed to

devise appropriate accommodations and modifications, as already requested by Student's parents.

3. Respondent failed to provide appropriate training to staff members in Student's specific areas of need.
4. Respondent failed to timely convene an Admission Review Dismissal Committee meeting ("ARD") after Student's parents requested it, and repeatedly limited time at ARDs to discuss all issues regarding Student.
5. Respondent failed to implement Student's IEP in regard to Student's Voice Output Device ("VOD").
6. Student's school day was inappropriately limited to a half-day, rather than a full day.
7. Respondent failed to perform a timely and appropriate Functional Behavior Assessment ("FBA") and develop a Behavioral Intervention Plan ("BIP") or appropriate behavioral supports.
8. Respondent failed to provide appropriate speech and OT therapies and appropriate ESY to Student, and that Respondent failed to provide data to support the school's decisions as to ESY for Student.
9. Respondent failed to use scientifically based, peer-reviewed methods of instruction with Student.
10. Respondent failed to provide prior written notice to Student's parents when denying the parents' request for changes in services and programming.

As relief in this due process hearing, Petitioner asks the Hearing Officer to order Respondent to do the following:

1. Provide to Student an appropriate IEP in the least-restrictive environment that complies with all procedural safeguards.
2. Conduct a half-day training session for teachers and staff members who work with Student for the Fall and Spring semesters of this school year, once each semester, regarding the issues raised in the case. A copy of the attendance sheets and any fliers or written materials produced for these trainings should be provided to the parents within ten days of the training.
3. Provide ESY that consist of Speech Communication and Occupational Therapy until Student is at grade level in all subject areas.
4. Devise and implement a formal social skills training program for Student.

5. Provide an appropriate FBA and devise an appropriate BIP.
6. Provide appropriate Speech Therapy and OT to Student, as well as accommodations and modifications to Student, as already shared with the school via parental request.
7. Add Autism as an area of eligibility for Student due to the additional requirements that are inherent in that area of eligibility, including the Autism Supplement that became a requirement in November, 2007;
8. Provide compensatory educational services due to the denial of FAPE;
9. Reimburse Petitioner's attorney fees.

Additionally, Petitioner requested that all records not already provided to Student's parents, or generated after Student's parents received the records provided previously, be made available to Student's parents within 45 days.

Respondent generally denied Petitioner's allegations and demanded strict proof thereof. Respondent stated that the only issue for which the School District had proposed or refused to take action was related to Student's parents' request for eligibility under the Autism category, Extended School Year services and the Functional Behavior Assessment. Respondent previously provided Petitioner with a notice pursuant to 34 C.F.R. §300.503 regarding those issues on April 21, 2008. Respondent stated that on any other issues, Respondent has not had an opportunity to propose or refuse to take any action because those issues have not been addressed with the ARD committee.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

II. Findings of Fact

1. Student is now ** years old and is a student who resides within Clear Creek Independent School District.
2. Clear Creek ISD is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing Student a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, *et seq.*, and the rules and regulations promulgated pursuant to IDEIA.
3. Student is eligible for special education Student receives special education as a child with a disability: Speech Impairment.
4. Student received Speech Therapy since age ** as part of an Early Childhood Intervention LAUNCH program. Student was ** years old and attending a half day session in Respondent's ** Program for Children with Disabilities (PPCD") during the 2007-2008 School Year.

5. Respondent prepared a Full and Individual Initial Evaluation (“FIE”) of Student as of June 13, 2006. Student was referred to special education by his parent due to concerns with speech, especially expressive language, and developmental delays. No diagnosis of Aspergers Spectrum Disorder or Pervasive Developmental Disorder was made. Student tested in the Average range of intelligence and was reported to have some separation issues, but continues to thrive in small settings, with no behaviors which would influence his school placement, programming or discipline. Student was in good health with no health or physical factors directly affecting his ability to benefit from the educational process. The FIE concluded that Student met specific special education eligibility criteria for Speech Impairment.

6. As part of the June 2006 FIE, Respondent prepared a Determination of Disability Report: Speech Impairment. The evaluation noted that Student’s parents concluded that Student had delays in receptive language, but that in the Preschool Language Scale-4 test, Student’s overall receptive language skills in auditory comprehension tested at age appropriate at the time. Student’s expressive communication skills, however, were below age level and significantly lower than his receptive language. There were concerns regarding Student’s pragmatic language, as well, with the Speech-Language Pathologist noting Student’s functional use of objects and symbolic play with toys with some loss of focus, while Student’s parent noted Student was a loner and would stare off and “get lost” at times. Assistive Technology was recommended, including visual cues, such as an object/picture symbol exchange, Voice Output Device and participation in interactive instruction and play. Continued Speech-Language therapy was recommended, with an emphasis on expressive language development, language structure and expansion, vocabulary development, auditory processing and answering questions, and articulation therapy focusing on phonological deviations.

7. Respondent also provided an OT Evaluation and Determination of Need Report as part of the June, 2006 FIE. Student was found to have age appropriate fine motor skills, gross motor skills were “functional for school performance, but delayed in specific skills.” OT was recommended, in order to allow Student to benefit from his education in pre-writing skills, dressing skills, and gross motor skills. OT was recommended for all school environments, with a wide array of intervention methodologies, including direct and consultative services and/or equipment modifications. No assistive technology was recommended.

8. Following the June 2006 FIE, an Admission, Review or Dismissal Committee meeting (“ARD”) was convened on July 6, 2006 to review the FIE and to develop an IEP for Student for School Year 2006-2007. The IEP developed for Student focused on expressive language goals, including: 13 objectives for increasing expressive language from the present level of performance (23 months) to the 30-36 month range; 8 objectives for increase expressive language by answering “wh questions;” and 15 objectives for using age appropriate phonological and articulation skills. Additionally, the 2006-2007 IEP provided 8 OT objectives to promote pre-writing, gross motor and self care skills. Student would attend a full time Early Childhood Intervention Special Education program for 15 hours each week. An integrated curriculum of 840 minutes per week of special education, with 180 minutes per month of Speech- Language services was agreed upon by all members of the ARD committee, including Parent. OT and transportation were provided by Respondent. ESY services with transportation were

recommended, so that Student did not experience a “significant loss in self-sufficiency in self-help skill areas.”

9. Texas Children’s Hospital, Clear Lake Center provided a Speech and Language Evaluation Report by **, M.S., CCC-SLP dated July 12, 2006 after referral by Student’s physician. Based on parental reporting, clinician observations and formal assessment, the Speech-Language Pathologist concluded that Student’s expressive language skills were below average, and that Student needed speech and language therapy to improve expressive language skills, including Speech Therapy 1-2 times per week for 45 minutes with a focus on expressive language skills, a home program for speech, and periodic re-evaluation. The Speech therapy goals suggested were included among the IEP objectives developed at the July 6, 2006 ARD. The Speech-Language Pathologist concluded that Student’s prognosis was good for improved expressive language skills, provided he receives speech therapy on a regular basis.

10. An ARD convened on February 13, 2007 to consider Student’s ESY program. ARD committee members present were Parents, School Administrator, Special Education Teacher, Educational Diagnostician and Student’s Speech Pathologist. The Committee agreed that Student needed ESY in order to prevent significant regression in the critical area of communication. Student was scheduled to receive 2 Speech Therapy sessions of 30 minutes for each of the 6 weeks of the ESY program. All ARD Committee members agreed to the ESY program.

11. An ARD convened again on March 27, 2007 to consider further evaluation. Present at the meeting were Students’ Parents, School Administrator, Special Education Teacher, Educational Diagnostician, Speech-Language Pathologist, Lead Psychologist, LSSP Trainee, and Occupational Therapist. At this ARD, Parent expressed concern that Student had autism in addition to Speech Impairment, based on Student’s behaviors. Parent asked about an In Home Training assessment, and was told that an In Home Training assessment was not usually done until a diagnosis of autism, but that “a member of ADST could possibly make a phone consultation.” Parent signed the Consent for Full and Individual Evaluation Form on March 27, 2007. Parents’ request for an IEE was deferred pending completion of the School District’s evaluation; the psychological evaluation was scheduled for completion by May 15, 2007.

12. **, Ph. D., licensed clinical psychologist and Licensed Specialist in School Psychology in private practice conducted an evaluation of Student upon request by School District and issued a report dated May 9, 2007. Dr. ** noted that Student scored in the **th percentile in the Gilliam Autism Rating Scale which equates to Student having a “very likely” probability of Autism. On the Behavior Assessment for Children-2 Clinical Scales, Student was in the “Clinically Significant” range for atypicality and Withdrawal, and in the At-Risk range for Anxiety, Depression, Somatization, Internalizing Problems and Behavioral Symptoms. Student was rated “in normal limits” for hyperactivity, Aggression, Externalizing Problems and Attention Problems. On the Adaptive Scales, Ratings in the “Clinically Significant” range included Adaptability, Functional Communication and Adaptive Skills; while Activities of Daily Living were in the “At-Risk” range. Student’s social skills were rated within normal limits.

13. Dr. ** could not base a diagnosis of autism spectrum disorder or pervasive developmental delay, however, solely on the rating scale scores reported by Student's parents as informants, but also had to include direct observation of the student in the educational environment. Student was observed on April 27, 2007 and May 4, 2007 in the classroom as part of the Dr. **'s psychological evaluation. Student demonstrated an ability to interact appropriately with teachers and students in the classroom setting, participated in learning and play activities including fine motor skills and circle (group discussion) time, was properly oriented to his surroundings, took turns, and followed the teacher's directions. Student exhibited significant expressive language deficits, was fidgety at times, and was not as fast in hand movements accompanying a song as other students in the class. Student also expressed wariness regarding Dr. ** and backed out of the room upon seeing him the first visit, behavior more typical of a two-year-old child. Nonetheless, Student was able to overcome his shyness, wariness or resistance to make eye contact, and play with Dr. **, and on a subsequent visit to engage in multiple "high fives," by way of greeting.

14. Although Dr. **'s May 2007 assessment differs from Student's parents' ratings, for special education, the most important consideration is the child's performance in the educational setting. Based on observations in the classroom setting as well as the Autism rating scales, diagnosis of autism is premature at this time. In accordance with Dr. **'s recommendations, Student's special education program should continue to emphasize the development of language skills and social skills, and, further, Student should be exposed to a variety of situations and people in a supportive context.

15. Student made progress in meeting annual goals for Speech-Language and Self Care Objectives in 2006-2007 as follows:

Student's Speech Objectives 2007	% Indicating Content Mastery	Did Student Progress
Label objects from vocabulary units	**	yes
Use plurals in sentences	**	yes
Using present progressive verbs (ing) in sentences	**	no
Using subject pronouns in sentences	**	no (03/09/07) yes (05/15/07)
Using 2-3 word phrases to describe actions taking place , to request, during structured language tasks	**	yes
Using 2-3 word phrases in spontaneous speech	**	yes
Answering what, where, what doing, questions using pictures	**	yes
Answering what, where, what doing questions during classroom activities	**	yes

Answering what is your name by giving first name	**	yes
Answering what is your name by giving first and last name	**	yes
Increase intelligibility by facilitating the emergence of phonological processes by imitating consonant-vowel syllables, vowel-consonant syllables, reduplicated syllables; final and medial consonants 2-4 word phrases.	**	yes
Increase intelligibility by facilitating the emergence of phonological processes imitating consonant vowel-consonant words	**	yes
Increase intelligibility by facilitating the emergence of phonological processes imitating vowels and consonants (age-appropriate); Final and medial consonants in imitated words ad spontaneous words	**	yes
Increase intelligibility by facilitating the emergence of phonological processes Non-speech sounds; Final and medial consonants imitated syllables	**	yes
Put on an opened shirt/backpack	**	yes
Put on a pull over shirt	**	yes

16. Student's Annual ARD Committee convened on May 21, 2007. Student's IEP for the next year was developed. The IEP developed for Student for 2007-2008 focused on expressive language annual goals, including 7 objectives for increasing expressive language by working on naming objects in specific categories; 3 Language/Pragmatics objectives related to eye contact, turn taking and speaking at an appropriate volume and rate; 8 phonological objectives; 8 objectives relating to answering wh- questions with higher requirements for mastery and more specific requirements for responses; 2 objectives for giving personal information; 4 objectives for increasing expressive language by working on counting, verbalizing toileting needs and properly referring to self; 1 objective for communicating effectively using a VOD/ picture cards/ sign language as needed to make needs known; and expand expressive language skills through the process of labeling objects/ pictures from vocabulary units. The proposed 2007-2008 IEP also provided 6 OT objectives to improve fine motor skills and pre-writing skills, including holding a marker with a mature grasp and tracing the letters of Student's name on the line. Student would continue to be provided with special education transportation and 30 minutes per month of direct OT in a half-day Early Childhood special education program of 845 minutes per week of integrated curriculum and 180 minutes per month of Speech Therapy.

17. The May 21, 2007 ARD Committee also discussed Student's ESY program. Parents were concerned that Student had limited accessibility to his VOD. In addition, Student would be working with a different Speech Therapist for ESY Parents were concerned that Student would have some difficulty because of his aversion to change. It was recommended that Student would

receive one or two more sessions per week to promote transition to the new Speech Therapist and prevent regression. All ARD members agreed that Student's IEP from the February 13, 2007 ARD were appropriate and would continue for Student's ESY.

18. Respondent also provided an Assistive Technology Consultation, based on the May 21, 2007 ARD Committee's request. Based on Parent's report that Student had some difficulty with a vocabulary picture book, and some success with the Voice Output Device and signing, School District's Speech-Language Pathologist, Registered Occupational Therapist (both Assistive Technology Practitioners), and the Director, G. B. C. H. I. agreed that Student should continue with multiple communication modes, including vocalization, verbalization, gestures, sign language, picture cards/ boards/books in addition to a VOD, with an de-emphasis on signing. The VOD should be programmed for quick conversational communication and effectively integrated into Student's daily routine.

19. Student's teachers received instruction and training in programming the VOD so that Student was able to incorporate it into his daily schedule, demonstrating its use in support of his verbal communications later at an In Home Training Assessment session.

20. A speech/language evaluation was conducted by **, M.S., CCC-SLP, a Speech Language Pathologist at Texas Children's Hospital on July 24, 2007, with a report dated August 22, 2007¹. The Speech-Language Pathologist observed Student using 1-3 word utterances to communicate. Student was assessed using the Pre-school Language Scale-4 (PLS-4) which was not completed due to Student's inability to continue the testing; and, also, the Hawaiian Early Learning Profile on the expressive portion of this test. Student was determined to have delayed receptive/expressive language abilities and articulation delay. The Student demonstrated expressive language skills up to 35 months (below age level). Recommendations of the Speech Therapist included continued speech therapy twice a week and inter disciplinary collaboration between Student's Speech Therapist and Occupational Therapist to ensure an appropriate plan to address Student's language deficiencies.

21. An Occupational Therapy Evaluation was conducted by **, a Licensed Occupational Therapist at Texas Children's Hospital, with a report dated July 27, 2007. Student was determined to have delays in self-help skills and fine motor skills. Student also demonstrated some difficulty with sensory processing, most notably in areas of auditory processing, touch processing and multi sensory processing. Finally, the Texas Children's Hospital OT concluded that inefficient sensory processing was impacting Student's ability to engage in age appropriate tasks necessary for skill development. Recommendations included continued OT once weekly in collaboration with speech therapy, referring physician and parents. The OT assessment also included recommendations for the parents, including reading materials on Sensory Integration and activities to improve self-help skills and fine motor skills.

22. Student received an evaluation from **, M.D. a Developmental Pediatrician at Texas Children's Hospital, Meyer Center for Developmental Pediatrics on September 28, 2007, with a

¹Respondent's Exhibit 11 included the date, August 22, 2007; Petitioner's Page 117 appeared to be the same report and referenced the same July 24, 2007 evaluation date, but included the date, August 31, 2007.

report dated October 2, 2007. The pediatrician noted Student's continued developmental problems in the areas of language, visual motor problem solving, and gross motor skills, also noting Student's poor social interaction and intermittent poor eye contact. Dr. ** stated that the primary diagnosis is "encephalopathy unspecified," meaning an unspecified abnormality in brain development that is the basis of the secondary diagnosis of global developmental delay, receptive expressive language disorder and articulation disorder. Dr. ** recommended additional testing to rule out ADHD combined type and pervasive developmental disorder, not otherwise specified. The additional testing to rule out the specified conditions was being undertaken at Texas Children's Hospital in the next two days.

23. Student was observed on October 25, 2007 and November 7, 2007 for Psychological evaluation by **, Ph.D., a Licensed Psychologist with the Meyer Center for Developmental Pediatrics. Student's parents stated that their main concern in seeking the evaluation was Student's possible autism, with concerns that Student will not be able to function in a regular ** class. Parents also stated that Student has several additional issues that cause them concern including:

- Major difficulties with articulation.
- Difficulty with social interactions.
- Highly dependent upon structure.
- Trouble with transition.
- Hates to have changes in routine.

Parents also stated that Student was previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and was currently taking Daytrana to control it.

24. During the October 25, 2007 and November 7, 2007 evaluation sessions, Dr. ** observed Student to have an unusual voice tone, using a loud voice, and using language in an idiosyncratic way. Using the Vineland Adaptive Behavior Scales, Student's scores were within the mild deficits range of the low adaptive level. Students' parents indicated that Students communication skills fall within the ** year-** month range for expressive language, ** year-** month range for his written communication skills, ** years- ** month range for personal skills and ** year-** month range for domestic skills, ** year- ** month range for his fine motor skills ** years-** months for his gross motor skills. According to Student's parents, only 40% of Student's conversation is comprehensible to anyone outside of the family.

25. In her report based on 8 hours of observation on October 25, 2007 and November 7, 2007, Dr. ** made the following recommendations:

- Student is best classified as a child with "high-functioning" autism.
- Student should receive adequate individualized attention and support in a general education classroom environment to discourage Student's giving up too easily.
- New skill should be visually modeled and taught in a way which capitalizes on Student's visual strengths.

- Student should have a structured routine, adequate time to transition between activities, consistency with routines and expectations, and peer pairing and modeling of appropriate behavior.
- Student should continue with speech therapy, including social communication and pragmatics.
- Student should have services that are specific to children with autism, including structured intervention which targets Student's areas of need, including social skills training.

26. Dr. **, Student's primary physician at the Pediatric Clinic, submitted his physician's report, based on the Texas Children's Hospital assessments, to be included in Student's Full and Individual Evaluation. While the report is not dated, it is presumed to have been issued after the completion of the Texas Children's Hospital Psychological, Speech/Language, and Occupational Therapy reports were completed. The Physician's Information Report stated that Student should be considered for special education as a student with moderate Autism Spectrum Disorder and recommended that with this diagnosis Student should receive the services for that disability in conjunction with Speech Therapy guided structured social interaction exercises.

27. Student's Parent informed School District of Student's autism diagnosis, and was informed that the testing would not be accepted in that it did not contain input from school personnel. Although it is not clear what was meant by the phrase "would not be accepted," Parent moved forward to increase the level of supervision of Student's special education program and requested a 3 hour ARD as of January 28, 2008. A mutually convenient ARD Committee meeting time did not occur until April 9, 2008.

28. On March 12, 2008, in preparation for the ARD, School District convened a staff meeting to consider Student's special education and additional information which might be needed. Parents fault School District for having the staffing and not including them in any discussion of Student's educational programming. Following the staffing, School District requested additional health and medical information from Parents.

29. Student's ARD committee convened on April 9, 2008 for an annual review of Student's progress and to develop an IEP for Student's ** year. Student's teacher and Speech Therapist both stated that Student was making progress. Parents were concerned that Student's current eligibility is incorrect and that an autism eligibility would be more accurate, however, School District disagreed with the Texas Children's Hospital autism diagnosis because it did not include any input from school personnel. Parent's disagreed with Student's eligibility not including autism, and Parents requested ESY as both support for maintaining skills, and also assistance with transitioning to **; School District refused ESY in light of no evidence of Student regression after breaks. Parents also requested a functional behavior assessment, which School District refused, citing no need for this based on Student's school behavior. Parents' advocate was concerned as to why Student's behavior is not generalized, or capable of repetition, across the school and home environments. Accommodations were discussed, including allowing Student to stand while eating and frequent breaks. School District's lead Psychologist stated that the Texas Children's Hospital autism diagnosis was incomplete due to a lack of input from Meyer Clinic. Parents also disagreed with the proposed speech IEPs which they felt were not

appropriate, and the proposed IEP in general, because they felt that the program would not be individualized enough to benefit Student. The ARD Committee ended in disagreement, and the parents elected not to return to a reconvened ARD, and pursued a due process hearing.

30. Parents gave consent for a Full and Individual Evaluation on April 9, 2008.

31. Parents disagreed with the IEP goals and objectives proposed by School District at the April 29, 2008 ARD, as well as the redrafted IEPs provided for review dated April 17, 2008. Parents stated the School District proposed IEPs were not specific, although Parents declined to provide alternative IEPs or further comment on the School District's proposed Speech-Language IEPs. Speech-Language goals proposed by School District include: 7 objectives for producing /s/ blends; 4 objectives for producing final consonants; 2 objectives for increasing vocabulary through picture cues and Student's VOD; and 3 objectives for using language skills appropriately during the school day. School District also proposed 2 objectives for self-help/cafeeteria skills and 7 objectives for improving fine motor skills and increased independence in written expression and cutting with scissors.

32. The District issued a Notice of Refusal to Provide Services on April 21, 2008, stating that School District refused Parents' requests: a) to add autism as an eligibility for special education in addition to speech impairment; b) to provide ESY; and c) to undertake an FBA. School District refused the requested actions because Student does not meet eligibility criteria for autism, Student continues to make progress in under the current IEP and Student interacts appropriately with peers, participates in classroom activities, speaks 3-5 word phrases making eye contact, and exhibits empathy for classmates, and generally does not display autism characteristics such as atypical peer relationships, stereotypical or repetitive behaviors, unusual hand or finger posturing, and use of others' hands as tools.

33. An In-home and Parent Training Assessment was completed at Student's Home, Day Care and PPCD Classroom conducted by Student's Speech Language Pathologist, Assistive Technology Practitioner; and School District's Autism Spectrum Disorder Support Team Specialist and In-home Parent Trainer; Lead Occupational Therapist, Lead Psychologist. Student's parents concerns were: Helping Student in the home, especially in the area of social skills and behavior, and preparation for ** at a new school. Parents were also concerned about student's sleeping difficulties, needed preparation for any events outside of his routine, (haircuts, plane rides), and Student's unintelligible speech for unfamiliar listeners, and self care. Parents also felt that Student was having issues with dressing himself and making his need for the restroom known due to communication problems. School District observers noted a marked difference in behaviors observed at school and day care, where the main concern was speech language difficulties, versus the parent's statements about behaviors at home. In one incident, Student and Parent got into a heated dispute regarding hand washing and Student was sent to Time Out. Student's teacher's reported no such difficulties with Student at school and suggested removing hand washing as an issue except when absolutely necessary, such as before meals. The recommendation to increase continuity in Student's behavior regarding speech and self-help skills were additional parent training in the following areas:

- 20 minutes of uninterrupted floor time each day;

- Consider adjusting Daytrana medication patch and Clonidine dose to improve sleeping;
- Social stories, visual and concrete cues, and establishment of routines to improve Parents' behavior concerns;
- Use of simple language when making requests of Student and allow additional processing time;
- Discuss school in a more casual way;
- Additional instruction regarding age appropriate expectations;
- Summer programs with age appropriate peers; and
- Obtain additional training from Regional Education Service Center.

Parents did not agree with the suggestions made by the In Home Training Assessment Team, and did not agree that In Home Training would necessarily involve some instruction to Student's parents from autism, speech and home training experts.

35. In general, School Personnel observed markedly different behaviors in the school setting than Parents observed at home. Specifically, School District teachers and Speech Therapists observed Student acting appropriately, including making progress in speech-language skills, social interactions, fine motor skills and self help. Student was toilet trained at school without incident and was capable of using the toilet appropriately with age appropriate assistance at times with fasteners. Student had a friend and functioned well within the classroom routines and was not a behavior problem, being easily redirected and helped to stay on task. Student functioned well in the small group setting for instruction and speech therapy.

36. Parents, however, experienced markedly different behaviors at home, including resistance, shyness, anxiety and withdrawal. Parents were not, however, able to demonstrate that Student failed to make progress, or that Student regressed after breaks, or that Student had sustained periods where he exhibited typical characteristics of autism, including atypical social interactions, stereotypical movements and gestures, and lack of eye contact and communication.

III. Discussion

A denial of a free appropriate public education cannot be found where a Student makes educational progress and is successful in a special education program pursuant to an agreed upon IEP. In this case, while there were markedly different views of Student's educational performance, the school district personnel were convincing in their close agreement on Student's performance in the school setting. Student's parents, however, seemed most concerned about Student's potential future difficulties in **, fearful that Student might become lost and might not realize his full educational potential. In order to maximize Student's educational benefits, Parents wanted additional eligibility and services for Student. On the other hand, even though Student was not eligible for special education as a child with autism, School District provided the In Home Training and the Speech Therapy supports recommended in the disputed assessment by

The Meyer Center for Developmental Pediatrics. School District was not obligated to accept without question the judgment of other professionals whose assessments did not include reports from School District personnel about Student's performance in the educational setting.

Moreover, IDEIA does not provide relief in anticipation of a School District's denial of FAPE. If Parents' worst fears come to pass and student does not continue to perform appropriately in the ** setting at the new School, then Parents can request an ARD and obtain additional appropriate special education programming. Even as student's lack of expected performance is not necessarily a basis for a determination that there was a denial of FAPE—as long as the student's IEP is designed to confer meaningful educational benefit. See, Cypress-Fairbanks ISD v. Michael F., 118 F. 3d 245, 248 (5th Cir. 1997). But, Parents' concerns regarding Student's future ** performance cannot form the basis of a finding against a School District, which implemented an agreed upon IEP in an appropriate PPCD educational setting. In this case, School District does not propose eliminating services which Speech-Language Pathologists, Occupational Therapists, Psychologists and Assistive Technology Practitioners have all stated is necessary for Student's special education. On the contrary, School District has refused to provide only services for which Student has shown no educational need. The Fifth Circuit has held that ESY services are appropriate only when the benefits accrued to a disabled child during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. See, Alamo Heights ISD v. State Bd of Education, 790 F. 2d 1153, 1158. (5th Cir. 1986). Petitioner simply failed to show that Student's educational gains were at risk. Although Petitioner faulted School District for not displaying regression data; Petitioner could provide no evidence of regression in past instances, only fears that Student might have a difficult time in ** if Student did not receive ESY. Petitioner failed to show that School District denied Student a free appropriate public education suited to his unique needs as a child with a disability when it failed to provide autism eligibility, Extended School Year services, a functional behavior assessment, and different but unspecified IEP goals and objectives requested by Parents.

The parents' interest in seeking the best education possible for their child is understandable. Both Parents are teachers and actively involved in working with Student at home. Parents, however, have misunderstood the concept of collaboration as it applies to Admission Review and Dismissal Committee meetings to develop Student's IEP. Parents fault School District personnel for not accepting without question the diagnosis of autism spectrum disorder by The Meyer Center for Developmental Pediatrics, but fail to address the fact that the Meyer Center diagnosis was not part of any collaborative effort and is at least partly at odds with the School District FIE. Student was provided 11 separate assessments and evaluations in the last two years in support of his special education program, and Student has yet to start **! Only one of the evaluations includes direct support for a diagnosis of autism. Reasonable professional minds can differ regarding a diagnosis of a young child, especially when they are looking at different data. Parents are remiss in not returning to the ARD committee to develop an IEP for Student's ** year. Parents have an important role to play in the ARD deliberations, and IDEIA does require that the parents cooperate, even in the face of disagreement, for the benefit of the Student's individualized special education program. Hopefully, Parents will return to ARD as quickly as possible to provide their input on Student's IEP for School Year 2008-

2009, in light of this determination that Student has been provided FAPE and successfully completed School Year 2007-2008.

IV. Conclusions of Law

1. Petitioner is a student in Clear Creek ISD who is eligible for special education services based on their classification as a student who has Speech or language impairments. 20 U.S.C.A. § 1401(3); 34 C. F. R. § 300.8 (c) (11); 19 T. A. C. § 89.1040(c)(10).
2. Respondent Clear Creek ISD has a responsibility to provide Student with a free appropriate public education. 20 U.S.C.A. § 1414; 34 C. F. R. §300.300; 19 T. A. C.§ 89.1001.
3. Petitioner failed to show that Respondent denied Student a free appropriate public education, that Student's IEPs were not based on current assessment data and reasonably calculated to provide Student an educational benefit. 20 U. S. C., §§ 1400; 1401 and 1414; 34 C.F.R., §§300.304-300.311; and 34 C.F.R., §§300.320-300.320. 19 Tex. Admin. Code, §§ 89.1001, 89.1040, 89.1050 and 89.1055.
4. Petitioner failed to show that Student did not receive appropriate evaluations and IEPs based on those evaluations in all areas of educational need, and that Student needed, but was denied autism eligibility, Extended School Year Services, and a Functional Behavior Assessment. *Alamo Heights ISD v. State Bd of Education*, 790 F. 2d 1153, 1158. (5th Cir. 1986); *Cypress-Fairbanks ISD v. Michael F.*, 118 F. 3d 245, 248 (5th Cir. 1997).

V. Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

SIGNED in Austin, Texas this 29th day of August, 2008.

Gwendolyn Hill Webb
Special Education Hearing Officer

DOCKET NO. 259-SE-0608

STUDENT	§	BEFORE A SPECIAL EDUCATION
V.	§	HEARING OFFICER FOR THE
CLEAR CREEK INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

Issue: Was PPCD Student denied FAPE when School District failed to provide an autism diagnosis, Extended School Year Services, and a functional behavior assessment, when school district implemented IEPs based on FIEs and IEEs?

Federal Citation: 20 U. S. C., §§ 1400; 1401 and 1414; 34 C.F.R., §§300.304-300.311; and 34 C.F.R., §§300.320-300.320.

Texas Citation: 19 Tex. Admin. Code, §§ 89.1001, 89.1040, 89.1050 and 89.1055.
Alamo Heights ISD v. State Bd of Education, 790 F. 2d 1153, 1158. (5th Cir. 1986); *Cypress-Fairbanks ISD v. Michael F.*, 118 F. 3d 245, 248 (5th Cir. 1997).

Held: Where Student received educational benefit from agreed upon IEPs based on current assessments including Speech Therapy, Occupational Therapy and special education in an integrated curriculum, Student was not denied a free appropriate public education.