

STUDENT <i>b/n/f</i>	§	BEFORE A SPECIAL EDUCATION
PARENT,	§	
Petitioner,	§	
	§	
	§	
vs.	§	HEARING OFFICER
	§	
CLARENDON INDEPENDENT	§	
SCHOOL DISTRICT, and	§	
EASTERN PANHANDLE SHARED	§	
SERVICES AGREEMENT,	§	
Respondents.	§	FOR THE STATE OF TEXAS

**DECISION OF THE HEARING OFFICER**

**I.  
STATEMENT OF THE CASE**

On August 6, 2008, Student *b/n/f* Parent (“Petitioner”), requested a Due Process Hearing from Texas Education Agency (“TEA”) pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400 *et seq.*, contending that Clarendon Independent School District (“CISD”) and Eastern Panhandle Shared Services Agreement, (collectively referred to as the single entity “Respondent”), denied Petitioner a free, appropriate, public education (“FAPE”). TEA initially assigned the case to Hearing Officer Lucius Bunton, but on August 8, 2008, the matter was administratively reassigned to the undersigned to serve as Special Education Hearing Officer.

On August 8, 2008, the Initial Scheduling Order of the Hearing Officer was sent to the parties informing them that the prehearing telephone conference would be held on August 28, 2008, that the Due Process Hearing was scheduled for September 19, 2008, and that the Decision due date was October 19, 2008. Due to conflicting schedules, the prehearing telephone conference was rescheduled by agreement to August 29, 2008.

The Hearing Officer convened the prehearing telephone conference on August 29, 2008. In attendance were the following persons: (1) Mr. Matthew Finch, counsel for the Petitioner; (2) Ms. Debra Liva, parent advocate for Petitioner; (3) Ms. Gigi Norman, counsel for the Respondent; (4) the court reporter, who made a record of the telephone conference; and (5) the Hearing Officer. During the conference the parties discussed rescheduling the hearing and agreed to the following dates: the Due Process Hearing would be rescheduled to October 1-2, 2008, with Disclosures due September 24, 2008; the Decision deadline would be November 2, 2008.

The Due Process Hearing convened at the Clarendon Junior High Library on October 1, 2008. Mr. Matthew Finch appeared as counsel for Petitioner, along with Ms. Debra Liva, who served as parent advocate for Petitioner. Both Mr. and Mrs. XXX were present for Student during the hearing. Ms. Gigi Norman and Ms. Nona Matthews appeared as counsel for Respondent. The Director of Special Education served as the official representative for Respondent during the hearing.

Petitioner called seven witnesses; Respondent called four witnesses. The Hearing Officer admitted 82 exhibits into evidence from the parties that filled three very large binders. The transcript of the hearing prepared by the court reporter was 623 pages, reflecting the two very full days of the hearing that ended on October 2, 2008.

Respondent filed several prehearing motions requesting partial or total dismissal for lack of jurisdiction or exclusion of issues based on factual allegations that were prior to the execution of a release by Petitioner and outside the statute of limitations. Because many of the arguments involved the existence of factual allegations, the Hearing Officer declined ruling on the motions until the hearing. The parties and the Hearing Officer agreed that the parties would submit post-hearing briefs after the Hearing Officer ruled on Respondent's outstanding motions concerning jurisdiction. The Hearing Officer partially granted Respondent's motion to exclude issues on October 21, 2008.

The date agreed upon for submission of post-hearing briefs was October 30, 2008, and the parties timely submitted their briefs. The Decision deadline necessarily was extended from its previous deadline of November 2, 2008, until December 1, 2008, to accommodate the submission of briefs and preparation of the Decision.

## **II. ISSUES AND RELIEF REQUESTED**

After the Order Partially Granting Respondent's Motion to Exclude Issues, the following issues remain to be decided, based upon the evidence presented in the Due Process Hearing that convened on October 1 and 2, 2008:

1. Whether Petitioner is a student with autism;
2. Whether Petitioner was denied FAPE after December 19, 2007;
3. Whether Respondent should be required to provide speech therapy services from the independent speech and language evaluator at District expense, with reimbursement to the student's parents;
4. Whether the student's parents were denied participation in the educational planning for the student after December 19, 2007; and
5. Whether Respondent received consent from student's parents to conduct a Full Individual Evaluation ("FIE"), and whether the FIE was conducted appropriately.

Petitioner has identified the following items in the Request for Due Process Hearing as the areas of relief being sought in this case: compensatory education and related services;

placement with trained personnel and an independent para-professional specifically assigned to Petitioner; Speech Therapy in all areas recommended in the IEE, plus reimbursement for attendant costs; Music Therapy on a consult and direct basis; Assistive Technology; Occupational Therapy; convene an ARD in a timely manner with the evaluator who conducted the IEE; a liaison for the family to facilitate communication; documentation of appropriate restraints; qualification as a child with autism; data collection of behaviors and interventions and results thereof; reimbursement of all costs and attorneys' fees; damages; and all other relief to which Petitioner may be entitled.

### **III. FINDINGS OF FACT**

Based upon the matters of record and matters of official notice, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following findings of fact based on a preponderance of the credible evidence:

1. Student's parents reside within the jurisdictional limits of Clarendon Independent School District. CISD is a political subdivision of the State of Texas and a duly incorporated independent school district. Student, who is now in her late teens, resides with those parents. They have established legal guardianship of Student.
2. Student currently receives special education services from CISD under the classification of mentally retarded (MR) and speech impaired (SI). When Student transferred to CISD in 2005 from Amarillo Independent School District she was already receiving special education services under those two classifications.
3. \*\* is the Director of Intake and Admissions for Texas Panhandle Mental Health and Mental Retardation in Amarillo. In October 2006 she prepared a Determination of Mental Retardation Report and Psychological Assessment for Student. In the section labeled Background Information/Behavioral Observations, Ms. \*\* noted that Student "is also diagnosed with autism through the school." The parents provided this information to Ms. \*\*. Her records also reflected a recent hospitalization at Northwest Texas Hospital and a diagnosis of psychosis.
4. In May 2008 Ms. \*\* prepared a second Determination of Mental Retardation Report and Psychological Assessment for Student. In this report Ms. \*\* reviewed the Childhood Autism Rating Scale (CARS) she administered to Student that yielded a score suggesting characteristics of mild autism. The information for the CARS was based on her observation of Student in her office and her interview with the parent in October 2006.
5. In February 2008 \*\* performed a psychological evaluation of Student. Mr. \*\* used the following procedures in his assessment:

Wechsler Adult Intelligence Scale – 3<sup>rd</sup> Edition  
Woodcock Johnson Achievement Tests

Multiscore Depression Inventory  
Parent Behavior Rating Inventory of Executive Function  
Teacher Behavior Rating Inventory of Executive Function  
Conner's Teacher Rating Scale  
Conner's Parent Rating Scale  
Vineland II  
Social Skills Checklist  
Childhood Autism Rating Scale (CARS)  
CSSB  
Reinforcement Survey  
Clinical Interview  
Teacher Information  
Parent Information  
Records

6. The Wechsler Adult Intelligence Scale – 3<sup>rd</sup> Edition measures an adult's intellectual ability. In the three composite scores, Student scored \*\* on the Verbal IQ, \*\* on the Performance IQ, and \*\* on the Full Scale IQ. These scores are consistent with those obtained over the years for Student.
7. Student was also given the Woodcock-Johnson Tests of Achievement – Form A. Even though Student's skills did not appear to be high enough to be able to begin some of the subtests, attempts were made to see what could be accomplished. About the only meaningful scores that were obtained were a Standard Score of \*\* on Oral Language and \*\* on Understanding Directions.
8. The Connors' Teacher and Parent Rating Scales measure numerous issues that a student may have at school as well as home. Based on the scores reported by the teacher and parent Student scored markedly high on all subtests. Both the parent and the school indicated that Student was having problems with opposition, anxiety, overactivity, and inattention.
9. Student's teacher was given a social skills rating assessment, consisting of forty-one specific skills to be measured. The skills were broken into seven different areas: Teacher/Parent Pleasing skills, Conversation skills, Boundary skills, Self-Monitoring skills, Relationship Management skills, and Conflict Management skills. Weaknesses existed for Student in each of the seven different areas.
10. According to Mr. \*\*' report, "The CSSB profiles twelve different core areas of concern for a standard based on teacher feedback as well as input from other data. Within each core area are multiple composites (specific skill, sensory or behavioral issues). Up to fifty-two different composite areas are identified by the CSSB. The twelve different core areas are as follows: communication, feelings & emotions, socialization, coping skills, self-esteem, and physical issues. It also profiles issues related to transition/structure/workload, fine/gross motor skills, imagination/cognition, restrictive patterns of behavior interests and activities, sensory issues and numerous

comorbid conditions.” According to the report Student had issues in each of those areas.

11. “The Childhood Autism Rating Scale (CARS) is a behavioral rating scale developed to identify children with autism, and to distinguish them from developmentally handicapped children without the autism syndrome,” stated Mr. \*\* in his report. Student’s score on the CARS placed her only \*\* points above the non-autistic range.
12. One of the most significant findings in Mr. \*\*’ report concerned the Behavior Rating Inventory of Executive Function (BRIEF) for Student, rated by both parent and teacher. Mr. \*\* stated, “Based on this instrument this would suggest that she is having some difficulty with executive functions. Mental retardation can cause significant problems in this area.” The only subtest score not rated clinically significant was the Organization of Materials. These subtests and what they measure are foundational to the Hearing Officer’s understanding of Mr. \*\*’ report and the significance of his expert opinion.

**Inhibit** This subtest measures the degree to which a student has significant problems with inhibitory control, *i.e.*, the ability to inhibit, resist, or not act on an impulse, and the ability to stop one’s own behavior at the appropriate time.

**Shift** Difficulties with shifting often compromise the efficiency of problem solving abilities. Caregivers often describe children who have this level of difficulty with shifting as somewhat rigid and/or inflexible. This suggests Student has some difficulties with behavioral shifting, attentional shifting, and/or cognitive shifting.

**Emotional Control** Adolescents with difficulties in this domain may have overblown emotional reactions to seemingly minor events. Student likely overreacts to events and likely demonstrates sudden outbursts, sudden and/or frequent mood changes.

**Initiate** Student has difficulty beginning a task or activity, as well as independently generating ideas, responses, or problem-solving strategies.

**Monitor** Parent and teacher rated Student as being clinically significant in this subtest. This suggests she has significant problems with the ability to self-monitor. This is seen in the ability to keep track of the effect that her behavior has on others. Problems with self-monitoring are described in terms of failing to appreciate or have an awareness of one’s own social behavior.

**Working Memory** Working memory is the capacity to actively hold information in one’s mind for the purpose of completing a task or generating a response. Children who have weak working memory have trouble remembering things, *e.g.*, directions, even for a few minutes, lose track of what they are doing as they work, or may forget what they are supposed to retrieve when instructed.

**Plan/Organize** The ability to manage current and future-oriented task demands within the situational complex is measured by this subtest. The plan component of

this scale relates to the ability to anticipate future events, implement instructions or goals and develop appropriate steps ahead of time to carry out a task or activity. The organizational component of this scale relates to the ability to bring order to information, actions, or materials to achieve an objective. Students with weaknesses often approach tasks in a haphazard fashion or become easily overwhelmed.

**Behavioral Regulation Index (BRI)** The ability to maintain appropriate regulatory control of her behavioral and emotional responses is measured by this subtest.

**Metacognition Index (MI)** The Metacognition Index reflects the child's ability to initiate, plan, organize, self-monitor, and sustain working memory. It relates directly to a child's ability to actively problem solve in a variety of contexts. It is composed of the Initiate, Working Memory, Plan/Organize, Organization of Materials, and Monitor scales.

**Global Executive Composite (GEC)** "Overall, this composite is an accurate reflection of [Student's] level of executive dysfunction. *With this in mind, [Student's] score on the GEC is significantly elevated as compared to the scores of her peers, suggesting significant difficulty in one or more areas of executive function.*" [emphasis added]

13. The Vineland Adaptive Behavior Scales – Second Edition was administered to Student to determine her overall functioning as well as her level of functioning in each of the adaptive behavior domains. Student scored \*\* for Communication, \*\* for Daily Living Skills, \*\* for Socialization, and \*\* for Adaptive Behavior Composite.
14. Mr. \*\* found that Student's IQ places her in the mentally retarded range. He also concluded that multiple executive function weaknesses in Student's brain make it difficult for Student to internalize and utilize information that is given to her in a social or academic setting. The executive function weaknesses also suggest that Student will have significant problems learning. Her overall behavior is consistent with her mental capacity.
15. Mr. \*\* found that although Student exhibits some autistic traits, he believes many of her issues can be attributed to her lowered mental functioning. Additionally, the psychosis that Student has been diagnosed with also complicates the difficulty in concluding that Student should be diagnosed with autism.
16. Ms. \*\* disagrees with Mr. \*\*' opinion. She believes that Student does indeed exhibit the characteristics of autism. However, she did not review any information from the school's records, nor has she seen Student in any setting other than her office. Her information about Student is limited to her interview with the parents and her relatively brief interview Student.

17. The diagnostic criteria<sup>1</sup> for Autistic Disorder specified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition – Text Revised, published in May 2000 are as follow:

**Diagnostic Criteria for 299.00 Autistic Disorder**

- A. A total of six (or more) items from (1), (2), and (3), with at least two from (1), and one each from (2) and (3):
1. qualitative impairment in social interaction, as manifested by at least two of the following:
    - a. marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
    - b. failure to develop peer relationships appropriate to developmental level
    - c. a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)
    - d. lack of social or emotional reciprocity
  2. qualitative impairments in communication as manifested by at least one of the following:
    - a. delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)
    - b. in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
    - c. stereotyped and repetitive use of language or idiosyncratic language
    - d. lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level
  3. restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:
    - a. encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus
    - b. apparently inflexible adherence to specific, nonfunctional routines or rituals
    - c. stereotyped and repetitive motor manners (e.g., hand or finger flapping or twisting, or complex whole-body movements)
    - d. persistent preoccupation with parts of objects
- B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.
- C. The disturbance is not better accounted for by Rett's Disorder or Childhood Disintegrative Disorder.

18. Both Mr. \*\* and Ms. \*\* are familiar with the DSM-IV-TR criteria for Autistic Disorder.

19. On August 8, 2008, Dr. \*\*<sup>2</sup>, a child psychiatrist sent a letter to CISD containing the following diagnoses for Student: mental retardation, psychosis, pervasive

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<sup>1</sup> These criteria are quoted and printed exactly as contained in the Manual.

<sup>2</sup> Dr. \*\*did not testify at the hearing.

- developmental disorder.<sup>3</sup> He also noted that Student would benefit from a single aide in school to provide more structure.
20. CISD has provided an aide to work with Student. For the most part the same person has worked with Student on a regular basis.
  21. Student has classes in the Functional Life Skills classroom. There are two teachers and three aides for the eight students in the class.
  22. CISD appointed the educational diagnostician to serve as liaison with the parents of Student in an effort to improve communications. The person that served in this role worked hard to perform the duties asked, and she helped to prevent problems from becoming worse.
  23. CISD hired a behavior specialist to consult with the classroom personnel about Student's behavioral issues. She suggested a number of ideas including a picture schedule that benefited Student a lot. She also developed a log to assist with data collection to analyze Student's behaviors in order to target the triggers and identify strategies to change the behavior with a behavior plan.
  24. On January 13, 2008, Student's parent signed a consent form to evaluate Student. At the top of the form was the title, "Consent for Full Individual Evaluation." The form contains several boxes that may be checked yes or no. One item states, "I give my permission for the testing that has been recommended for my child/me. If no, please explain: ." Parent checked the "yes" box, but also included the notation, "speech & occupational therapy only."
  25. On March 12, 2008, a report was prepared that was labeled at the top,  

"Full Individual Evaluation  
Determination of Disability Condition and Educational Need"

In substance the report dealt only with Student's language and communication abilities. It did not address any psychoeducational needs, occupational therapy needs, or other areas of disability or needs that might pertain to Student. The Hearing Officer concludes that the March 12, 2008, report was not a Full Individual Evaluation as that term is ordinarily used by special education departments in schools.
  26. CISD has provided speech therapy services to Student on a consult basis since her transfer from Amarillo ISD. After an independent evaluation by a private speech therapist, CISD has offered to compromise and offer speech therapy services under a different arrangement, providing direct speech therapy to Student. However, the relationship between the parents and the speech therapist for CISD has become

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<sup>3</sup> Pervasive Developmental Disorders is the category under which Autistic Disorder, Asperger's Disorder, Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, and Childhood Disintegrative Disorder are classified in the Diagnostic and Statistical Manual, Fourth Edition – TR.

strained, primarily because of the perception of the parents concerning the report mentioned in Finding of Fact Number 25. There is a serious lack of trust by the parents toward the school that services would actually be provided by someone affiliated with CISD. Additionally, the CISD speech/language pathologist is employed on a part-time basis.<sup>4</sup>

27. The March 12, 2008, report of the evaluation of Student's language and communication abilities was performed by qualified persons, using appropriate instruments for the intended purposes. The Hearing Officer finds the evaluation conducted by the speech/language pathologist for CISD was conducted appropriately.
28. Student's parents have been concerned about various aspects of Student's education since December 17, 2007. Some of these include the alleged lack of a certified teacher in the classroom when the regular teacher is absent, difficulties with keeping Student physically in the classroom and on campus, and the failure to provide a designated person to be Student's full-time one-on-one aide as the parents have requested.
29. CISD declined to designate a specific person to be Student's full-time one-on-one aide. The reason given was it preferred the flexibility to assign the best person for the child at the time and make adjustments if needed.
30. The Hearing Officer finds that CISD's explanation of its reason for refusing to designate a specific person to be Student's full-time one-on-one aide is reasonable for practical, business reasons. Even though Student needs to have a consistent routine and environment, including the persons in the routine and environment, CISD has made every effort to keep the same persons in place for Student. They have committed to continuing that effort in the future.
31. Many of the behavior problems exhibited by Student have improved since the recommendations provided by the behavior specialist were implemented by CISD. This includes the problem of Student leaving the classroom or the campus. Although the targeted behaviors may not have completely ceased, they have improved.
32. In addition to the training provided by the behavior specialist, Mr. \*\* provided training to the CISD staff to address the specific behavior and academic needs of Student.
33. CISD has responded to the parents' concerns for Student's safety. The school has installed safety film to windows to prevent the glass from shattering and regression locks on the doors.
34. An Admission, Review and Dismissal (ARD) Committee meeting was held on January 25, 2008. Appropriate notice was provided to the parents. The parent advocate participated in the meeting by telephone.

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<sup>4</sup> The part-time status is mandatory, because the employee is a retiree who returned to work.

35. A series of dates were suggested by CISD for the next ARD Committee meeting, and efforts made to schedule the meeting on a mutually convenient date. After communication from the parents or their representatives ceased, CISD set the meeting for April 14, 2008, with proper notice sent to the parents. The parents requested the meeting be rescheduled to April 25, 2008, and CISD agreed. The meeting had to be rescheduled once again because of the unavailability of the independent evaluator on April 25, 2008, whose report was to be discussed at the meeting. The meeting was reset to May 9, 2008. On May 2, 2008, the parent advocate asked for the meeting to be rescheduled yet again because she was unable to travel. CISD's attorney offered to have the advocate participate by telephone, and have another ARD meeting after May 9 to allow the advocate to participate in person to address any concerns the parents may have. However, the ARD Committee meeting went forward on May 9, 2008.
36. At the May 9, 2008, ARD Committee meeting the parents entered the room, stayed for a brief period, signed the form indicating their disagreement, requested a ten-day recess, and left. The rest of the Committee members heard from Mr. \*\*, who had flown in from Dallas, to discuss his report and recommendations.
37. The ARD Committee resumed from the ten-day recess on May 23, 2008. The 7½-hour meeting was contentious. Petitioner's parent advocate appeared in person and both parents also were present. The meeting ended with no consensus.
38. Over the summer Respondent completed the assistive technology and music therapy evaluations. Independent speech and language and occupational therapy evaluations were also completed. The recommendations from all four evaluations were provided to the parents on July 16, 2008.
39. On September 11, 2008, the ARD Committee met to review the evaluations. The parents were present and participated fully in the deliberations. They brought documents from Ms. \*\* that included her autism diagnosis, and a letter from Student's medical doctor stating that she had Pervasive Developmental Disorder. The parents requested CISD add autism to Student's areas of eligibility. Again the meeting ended without consensus. The parents did not request a ten-day recess. The ARD Committee meeting documents for that date reflect that the parents provided a written statement of disagreement that CISD attached as requested.

#### **IV. DISCUSSION**

##### **A. Student's Classification**

The primary focus of this case has been whether Student should be classified as a child with Autistic Disorder. Petitioner offers a competing psychological opinion, along with a letter

from a physician, and asks that their experts' opinions be recognized as the only versions worthy of credence.

Because it is Petitioner who is seeking to change the classification, and therefore is the party seeking relief under the IDEIA, Petitioner bears the burden of proof on this matter. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 535-537 (2005). In *Schaffer* the Court stated, "a party attacking the appropriateness of an IEP established by a local educational agency bears the burden of showing why the IEP and the resulting placement were inappropriate under the IDEA."

The Hearing Officer finds Mr. \*\*' opinion to be persuasive. Student's social skills deficits are consistent with mental retardation as well as autism. Moreover, Student has the co-existing conditions of psychosis and anxiety, which includes obsessive-compulsive issues in her case. All of this makes it very difficult to separate exactly what symptom belongs to autism or to mental retardation. Given the thoroughness of his testing, his training and credentials, and his many years of experience, particularly in this field, the Hearing Officer finds his testimony to be credible.

There was no testimony available from Dr. \*\*. His letter with a diagnosis of Pervasive Developmental Disorder apparently noted for the very first time, that appeared after having treated Student for so many years, needed to be explained before it could be relied upon by the Hearing Officer. Ms. \*\* opinion was sincerely held, but ultimately, she did not have the benefit of all the data as did Mr. \*\*.

## **B. The Appropriateness of Student's Education**

The next issue in this case is to determine whether the CISD provided an appropriate education to Student. In this regard the standard is described as one that enables a student to obtain "some benefit" from her education. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982). Whether the education is designed to maximize a student's potential is not the test. Rather, the IDEA guarantees a "basic floor or opportunity," requiring a school to provide "access to specialized instruction and related services which are individually designed to provide educational benefit." *Rowley*, 458 U.S. at 201.

The four-factor test approved by the Fifth Circuit in *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253, (5th Cir. 1997) is used to determine whether an IEP is appropriate. The Court said that an IEP must be geared to provide some benefit, and that is demonstrated where:

- (1) The program is individualized on the basis of the student's assessment and performance;
- (2) The program is administered in the least restrictive environment;
- (3) The services are provided in a coordinated and collaborative manner by the key "stakeholders"; and

- (4) Positive academic and non-academic benefits are demonstrated.

The Hearing Officer finds from the evidence presented that CISD has met all four of these factors.

### **C. Speech Therapy**

Turning to Student's request that Respondent should be required to provide speech therapy services from the independent speech and language evaluator at District expense, with reimbursement to the parents, Petitioner bears the burden of proof on this issue as well because it would be a change to the IEP. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 535-537 (2005). Petitioner's stated reasons for requesting an independent provider are the parent's problem with the speech/language pathologist employed by CISD, and whether she would be available because she is a part-time employee. These reasons do not justify mandating CISD to now hire the independent speech/language pathologist to provide speech therapy for Student.

### **D. Parental Participation**

The issue of whether the parents were denied participation in the educational planning for the student is a question of procedural rights. The U.S. Court of Appeals for the Fifth Circuit has held that a claim based on a violation of IDEIA's procedural requirements is viable only if those procedural violations affected the student's substantive rights. *Adam J. v. Keller ISD*, 328 F.3d 804, 811-812 (5<sup>th</sup> Cir. 2003). This holding was codified in 20 U.S.C. §1415 and 34 C.F.R. §300.513. The procedural deficiencies complained of here did not result in any lost educational opportunity and therefore, did not equate to a denial of FAPE. 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. §300.513(a)(2)(ii). The parents attended every ARD Committee meeting and CISD worked with them to accommodate their counsel and advocate. There are no violations in this area.

## **V. CONCLUSIONS OF LAW**

After due consideration of matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Student is eligible for special education services as a child who is mentally retarded and speech impaired. 20 U.S.C. §1401 (3) (A); 34 C.F.R. §300.8 (c) (6), (11); 19 TEX. ADMIN. CODE § 89.1040 (c) (5), (10).
2. CISD is required to provide Student FAPE. *See Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F.3d 245, 248 (5<sup>th</sup> Cir. 1997).
3. Petitioner bears the burden of proof with respect to the issues presented in this case. *Schaffer v. Weast*, 546 U.S. 49 (2005).

4. Petitioner did not meet its burden of proof with respect to the issue of adding autism as a classification for Student. *See Teague Indep. School Dist. v. Todd L.*, 999 F. 2d 127 (5<sup>th</sup> Cir. 1993).
5. Petitioner did not meet its burden of proof with respect to the issue of whether Petitioner was denied FAPE after December 19, 2007. *See Teague Indep. School Dist. v. Todd L.*, 999 F. 2d 127 (5<sup>th</sup> Cir. 1993).
6. Petitioner did not meet its burden of proof with respect to the issue of whether Respondent should be required to provide speech therapy services from the independent speech and language evaluator at District expense, with reimbursement to the student's parents. *See Teague Indep. School Dist. v. Todd L.*, 999 F. 2d 127 (5<sup>th</sup> Cir. 1993).
7. Petitioner did not meet its burden of proof with respect to the issue of whether any alleged procedural violations affected the student's substantive rights. 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. §300.513(a)(2)(ii). *See Teague Indep. School Dist. v. Todd L.*, 999 F. 2d 127 (5<sup>th</sup> Cir. 1993); *Adam J. v. Keller ISD*, 328 F.3d 804, 811-812 (5<sup>th</sup> Cir. 2003).
8. The Hearing Officer concludes that the March 12, 2008, report was not a Full Individual Evaluation as that term is ordinarily used in the law. 34. C.F.R. § 300.301
9. The Hearing Officer concludes that Petitioner is not entitled to any relief sought in this case.

### **ORDER**

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief sought in this matter by Petitioner is DENIED. Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED this 1<sup>st</sup> day of December 2008.

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*Lucretia Dillard*  
Special Education Hearing Officer