

STUDENT, <i>b/n/f</i> PARENT,	§	BEFORE A SPECIAL EDUCATION
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
CORPUS CHRISTI INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I
STATEMENT OF THE CASE**

Petitioner, Student *b/n/f* Parent (“Petitioner” or “Student”), filed a Request for Due Process Hearing (“Complaint”) with the Texas Education Agency (“TEA”), requesting a Due Process Hearing pursuant to the Individuals With Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400 *et seq.*, contending that Respondent, Corpus Christi Independent School District (“Respondent” or “CCISD” or “District”) denied Student a free, appropriate public education (“FAPE”) in the following particulars: 1) Respondent failed to identify and classify Petitioner as a student with autism; and 2) Respondent failed to provide Petitioner appropriate educational programming, interventions, related services, and behavior interventions. Petitioner seeks the following relief: 1) an appropriate educational program that meets Petitioner’s educational needs in the least restrictive environment (“LRE”); 2) appropriate evaluations; and 3) appropriate compensatory services.

**II.
PROCEDURAL HISTORY**

Petitioner filed his Complaint with TEA on October 13, 2010. On that same date, TEA assigned the case Docket No. 035-SE-1010 and assigned the matter to the undersigned Hearing Officer. On October 14, 2010, the undersigned Hearing Officer sent the Initial Scheduling Order to the parties, stating that the pre-hearing telephone conference would convene on October 29, 2010, that the Due Process Hearing would take place on November 30, 2010, and that the Decision would issue by December 27, 2010. Due to the illness of Petitioner’s counsel, Mr. Christopher Jonas, the pre-hearing telephone conference was re-scheduled to January 26, 2011.

On January 26, 2011, the parties convened the pre-hearing telephone conference. In attendance were the following: 1) Mr. Jonas, counsel for Petitioner; 2) Mr. John Janssen and Mr. Andrew Thompson, counsel for Respondent; 3) the undersigned Hearing Officer; and 4) the court reporter, who made a record of the telephone conference. The parties discussed the issues and re-scheduled the Due Process Hearing for March 7, 2011. ¹

¹ During the pre-hearing telephone conference, the parties reported that they had participated in the Resolution Session on October 26, 2010, but were unable to reach an agreement.

The Due Process Hearing convened on March 7, 2011, as scheduled. Both parties introduced documentary evidence; Student called two (2) witnesses; CCISD called five (5) witnesses. Both parties conducted cross-examination of the witnesses.

During the hearing, Student was represented by counsel, Mr. Jonas. Also in attendance throughout the hearing were 1) Mr. Roland Ramirez, Assistant to Mr. Jonas, and 2) Student's *** ("Parent"). CCISD was represented by counsel, Mr. Janssen and Mr. Thompson. Also in attendance throughout the hearing were 1) Ms. ***, Respondent's Special Education Director, and 2) Ms Monica Salinas, Respondent's Paralegal.

At the conclusion of the hearing on March 7, 2011, the parties and Hearing Officer agreed to a post-hearing schedule: closing arguments would be due by April 5, 2011, and the Decision would be rendered by April 14, 2011. Due to scheduling difficulties, the parties agreed to extend the Decision Deadline to April 18, 2011.²

III. FINDINGS OF FACT

1. CCISD is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEIA and its implementing rules and regulations.
2. Student is a ***-year old child who qualifies for special education and related services under the classifications of a) other health impairment ("OHI") for attention deficit, hyperactivity disorder ("ADHD") and ***, and b) speech impairment ("SI")(T24; R1-3.2).³
3. Student lives within the jurisdictional boundaries of CCISD with Parent and his ***. CCISD is responsible for providing Student with special education and related services.
4. Student currently attends *** School and is in the *** grade.
5. Prior to enrolling in CCISD, Student attended *** at *** School, ***. Although Student was only *** years old, he was demonstrating severe behavioral problems at school. Student had anger management issues; he was aggressive, ***, and noncompliant. Despite his ***, he used *** when he became angry; he *** and tantrums, all of which resulted in his suspension on *** occasions (R22).
6. Student started *** in CCISD at *** School (T.88). In spring 2009, CCISD conducted Student's Full and Individual Evaluation ("FIE"). On March 11, 2009, Student's Admission, Review, and Dismissal Committee ("ARDC") met to review Student's FIE. At that time, Student's home campus was *** School, which is where his educational services would be delivered; however, Student was unable to attend *** School because he was ***. This was Student's *** (R22).

² The Court Reporter's Record is one (1) volume. References to the Due Process Hearing Record are identified as follows: "T#" refers to the page number of the Court Reporter's Transcription of testimony made on March 7, 2011; "P#.#" refers to Petitioner's exhibit number and specific page numbers contained therein; "R#.#" refers to Respondent's exhibit number and specific page numbers contained therein.

³ *** (T28, 68; R24.2, 4, 5, 10; R23.27-32).

7. The ARDC determined that Student qualified for special education under the categories of emotional disturbance (“ED”) and OHI, based upon the ADHD condition (R6.2, 13; R26).⁴ Student’s ARDC developed an individual educational plan (“IEP”) for school year 2009-10, which placed Student in the general education setting with modifications to assignments for negative behavior, as well as resource room support. The Committee developed a Behavior Intervention Plan (“BIP”) (R6).
8. On April 9, 2009, Student’s ARDC met for an update on Student’s progress at ***. Student’s psychiatrist, Dr. ***, informed the ADRC that Student was still *** receiving services for ADHD and ***. Dr. *** requested that upon Student’s release, the ARDC place him in a Behavior Intervention (“BI”) unit “for his studies” (R21). The BI program is a special education program for students with significant behavioral concerns. The ARDC requested a speech screening with possible future speech testing. The ARDC determined that Student could transition to *** School with additional modifications to his academic and behavioral plans.
9. Also on April 9, 2009, Dr. ***, performed a psychological evaluation of Student to obtain more information related to his emotional and intellectual functioning. Dr. *** confirmed that Student has *** but suggested that additional assessments would be needed to rule out pervasive developmental disorder (“PDD”) and *** intellectual functioning (T148-49; R22.3).⁵
10. On May 8, 2009, Student’s ADRC met for a special review of Student’s status. The Committee placed Student in the *** class at *** School for the remainder of school year 2008-09, with extra assistance provided to Student via an aide until the end of the school year. Parent provided consent for speech testing (R10).
11. On June 4, 2009, Student’s ADRC met for a placement/review ARD (R9). The Committee changed Student’s placement for school year 2009-10 to the BI classroom, ***, at *** School.⁶ The ARDC recommended ESY for the remainder of the summer and agreed to continue the BIP developed at the prior ARDC meetings in spring 2009.
12. On March 9, 2010, Student’s ARDC met for his annual ARD (R8). At this time, Student was still identified under the ED and OHI categories. The ARDC considered Student’s on-going behavioral problems, which were severely impacting his education. Student was difficult to motivate to begin or complete tasks; his tantrums had ***. Teachers and paraprofessionals had to *** during one of his episodes. He ***. When transitioning to another area, Student would ***. The BI instructors attempted a plethora of strategies to control his negative behavior: positive reinforcement, instant privileges, and use of tangible items, all of which held Student’s attention for a short period (R8.6). The BI staff introduced the “Football Behavior Chart,” which appeared to garner some interest, allowing Student to remain on task for longer periods of time.

⁴ The ED finding was based on a) Student’s inability to learn, which could not be explained by intellectual, sensory, or other health factors; b) Student’s inability to build or maintain satisfactory interpersonal relationships with peers and teachers; and c) Student’s general, pervasive mood of unhappiness and depression (R17.13).

⁵ Dr. *** believed that the scores obtained on Student’s intellectual functioning were actually lower than they should have been because of Student’s behavior difficulties.

⁶ Originally, the ADRC assigned Student to the BI class at *** School but Student’s brother *** and it was determined that *** would not benefit from such placement ***.

13. At the March 9, 2010, ARDC, Parent and Student's advocate raised concerns that Respondent had failed to properly identify Student's disabilities, asserting that Student was not ED but rather, suffered from autism ("AU"). Parent consented for Respondent's Licensed Specialist in School Psychology ("LSSP") to provide additional psychological evaluation services to address Parent's concerns (R8.29). The ARDC updated Student's FBA and BIP, adding an additional goal to Student's BIP. The ARDC noted that Student was performing at a *** level in all subjects. The ARDC maintained Student's placement in the self-contained BI classroom with three hundred sixty (360) minutes per six (6) weeks inclusion time (R8.24). This March 9, 2010, ARDC reached consensus (R8.22).
14. CCISD's LSSP began Student's FIE on March 11, 2010, and issued the report on May 18, 2010 (R17). The LSSP had medical information from one of Student's doctors who determined that Student has neurological problems, probably stemming from ***, and a borderline ***. *** (R17.29; T130-31). To ascertain whether Student's behavioral issues emanate from his neurological problems, or because he is autistic, the LSSP administered multiple psychological assessments used for identifying children with autism:

Childhood Autism Rating Scale (CARS): This is an observation assessment. The assessor observes the student and rates behavior on a scale while looking at behavior characteristics consistent with autism, such as communication, social interaction, and self-stimulating behaviors. This assessment identifies children with autism and distinguishes the severity for any child over two (2) years of age (R17.10; T116).

The LSSP found that Student displayed mildly abnormal behaviors in the areas of relationships; abnormal body use, visual response, verbal communication, intellectual response, and activity level (R17.10). Student's scores on the CARS indicated he is "non-autistic" (R17.10; T116).

Gilliam Autism Rating Scale 2nd Edition, Parent Information (GARS Parent): This is a screener used to assess individuals with severe behavioral problems, which may be indicative of autism. It is normed on individuals between the ages of three (3) and twenty-two (22) who have autism, and it provides an Autism Index, which has a mean of 100, and is a reliable estimate of an individual's autistic behavior. In this assessment, the evaluator reviews the parent's responses and then scores the individual on a rating scale in three (3) areas: a) stereotyped behaviors; b) communication; and c) social interaction. If the individual's Autism Index is between seventy (70) and eighty-four (84), the individual is "probably" autistic; if the score is eighty-five (85) or higher, then the individual is "very likely" autistic.

Parent's score places Student in the "very likely" range for autism (R17.22; T123-24).

Gilliam Autism Rating Scale 2nd Edition, Teacher 1 (GARS Teacher): Like the parent version of this assessment, the evaluator reviews the teacher's responses and then scores the individual on a rating scale in three (3) areas: a) stereotyped behaviors; b) communication; and c) social interaction.

The teacher's scores place Student in the "possible" range for autism (R17.23-24; T123-24).

Autism Diagnostic Observation Schedule (ADOS): This is a semi-structured, standardized evaluation.⁷ The ADOS assesses communication, social interaction, and play or imaginative use of materials for individuals suspected of having autism spectrum disorders (R17.18). The School Psychologist administered this assessment.

Student scored below the cutoffs for autism and autism spectrum disorder for all assessment components: a) communication; b) reciprocal social interaction; c) communication + social interaction; d) imagination/ creativity; and e) stereotyped behaviors/restricted interests (R17.18-19). Both the LSSP and the School Psychologist observed that Student a) never used stereotyped or idiosyncratic words or phrases; b) made frequent attempts to get or maintain the examiner's attention; c) demonstrated spontaneous elaboration of his own responses; d) pointed with his index finger to show visually directed referencing and used communicative gestures; e) demonstrated frequent and appropriate eye contact; f) demonstrated a range of appropriate facial expressions; g) demonstrated pleasure in interactive participation; h) spontaneously showed toys to the examiner; i) showed a range of appropriate responses to social situations; j) appeared comfortable in the interaction with the examiner; and k) demonstrated spontaneous play. Student did not demonstrate unusual sensory interest in people/materials or hand, finger, or other complex mannerisms.

The result of the ADOS indicated that Student is not autistic (R17.18-19).

15. In addition to the above-referenced assessments geared to diagnosing autism, the LSSP administered multiple other assessments that are not specific to identifying children with autism, as well as some geared to assessed Student's speech/language: a) House-Tree-Person; b) Sentence Completion Inventory; c) Behavior Assessment System for Children - 2nd Edition – Parent Rating Scales (BASC-2-PRS); d) Behavior Assessment System for Children - 2nd Edition – Teacher Rating Scales (BASC-2-TRS);⁸ e) Behavior Evaluation Scale-3: LHV; f) Behavior Evaluation Scale-3: School Version, Teacher 1;⁹ g) clinical observation; h) student interview; i) parent interview; j) Additional Assessment 1; k) Comprehensive Assessment of Spoken Language (CASL); l) Teacher Language Survey; and m) Goldman Fristoe 2 Test of Articulation (R17; T113-130).
16. Based upon the various speech/language assessments, Student qualifies under the SI category based upon his “below average” proficiency in both receptive and expressive language (R17.8).
17. Based upon the multiple behavioral assessments, the LSSP concluded that Student does not fall on the autism spectrum (R17.28: T130-31). The LSSP concluded that it is more likely that Student's behaviors stem from his neurological issues, *i. e.*, the ADHD and ***, which were more easily traced to *** (R17.28-29; T130-31).

⁷ The assessor administered this test because there was such variation in the responses to the CARS, GARS Parent, and GARS Teachers assessments (T115, 125-26).

⁸ Student's teacher rated his behavior in the “clinically significant” range on the Conduct Problems, Depression, and Social Skills sub-scales and as “at risk” on the following sub-scales: a) Hyperactivity; b) Aggression; c) Depression; d) Somatization; e) Attention Problems; f) Learning Problems; g) Atypicality; h) Withdrawal; i) Attention Problems; j) Behavioral Symptoms Index; k) Adaptability; l) Leadership; m) Activities of Daily Living; and n) Functional Communication and Adaptive Skills.

⁹ Student's teacher rated him in the statistically “normal” range with the exception of learning problems. Parent rated him in the statistically “atypical” range (R24.2).

18. The LSSP determined that Student qualified for services under the categories of OHI and SI (R17.29). However, the LSSP noted that the FIE was inconclusive because the ARDC needed an OHI form from Student's physician to rule out ED as the primary disability (R17.29).
19. The LSSP made multiple recommendations for Student's IEP: a) continue Student's BIP but revise his FBA; b) provide Student opportunities to release tension and frustration; c) continue to teach and set well-defined limits, rules, and expectations; d) reinforce Student's attempts to self-control; e) teach Student how to recognize internal signs of tension and how to request a time-out or cooling-off period; f) teach Student problem-solving skills; g) continue Student's BI plan but increase his time in the general education setting as that should be of high interest to Student; h) include a BI staffer in Student's general education classes for additional support; i) allow Student to remain in the general education setting unless his negative behavior sends him back to the BI classroom; j) continue to praise and encourage Student in his improvements; k) help Student keep a daily log of his accomplishments; and l) allow Student additional time to process information (R17.30; T136).
20. On April 12, 2010, Parent obtained a report prepared by psychologists at *** to determine Student's eligibility for services under the criteria of mental retardation ("MR") or PDD (P10B.2). *** administered the following evaluations: a) Wechsler Abbreviated Scale of Intelligence (WASI), which indicated a *** full scale IQ of ***; b) the Inventory for Client and Agency Planning (ICAP), which indicated Student has moderate deficits in adaptive behavior; c) the GARS-2 , which placed Student on the "possible" range for autism; and d) the CARS, which placed Student on the "moderate-to-severe" range for autism (P10B.3). *** determined that Student's overall functioning and behavior are consistent with a diagnosis of PDD, which makes him eligible for services through *** (P10B5).
21. On June 18, 2010, Dr. *** completed an OHI Disability Report (R24.9). Dr. *** confirmed Student's ***, indicating that the impairment is severe, and specifying the educational implications of this impairment on Student: a) difficulty transferring on and off the bus independently; b) difficulty with mobility and seating within a general classroom; c) difficulty performing activities found in a general classroom, such as cutting and writing, which may require special adaptations to the general program; and d) difficulty maintaining alertness in the general classroom. Dr. *** recommended that Student receive physical therapy ("PT") and occupational therapy ("OT"), as well as speech and services for PDD, NOS (R24.9). Dr. *** found that Student did not have self-help skill deficiencies, such as feeding, dressing, and toileting (R24.9).
22. Because Parent did not agree with CCISD's conclusion that Student does not meet the eligibility criteria for autism, Parent requested an independent educational evaluation ("IEE") in June 2010 and obtained this evaluation from ***, Ph.D., LSSP (P9A; T33, 34; R23). Dr. *** administered some of the same psychological assessments as CCISD's LSSP: a) CARS, b) GARS Parent, c) ADOS, and d) BASC 2. Additionally, Dr. *** administered the Vineland Survey Edition II, and the Social Skills Improvement System (SSIS). Dr. *** reviewed Student's cumulative records and interviewed Parent; however, Dr. *** did not observe Student in the classroom or interview any of Student's teachers.

CARS: Parent scored Student in the "severe problem" range for behaviors such as a) an inability to direct his facial expressions to others to show emotions he is feeling; and b) engaging in behaviors that might result in self-injury, such as scratching, head banging, or picking at his skin. Parent scored Student in the "mild-to-moderate problem" range for

behaviors such as a) inappropriate facial expressions, gestures, and different tone of voice; b) using made-up words or repeating specific words or phrases; c) difficulty carrying on a conversations that flow back and forth; d) making eye contact when speaking or listening; e) difficulty with responsiveness to social initiations; e) using toys or other materials to represent something they are not; and f) inappropriately reacting to new experiences (R.23.2).

GARS Parent: Parent scored *** on the GARS Parent, which places Student in the “very likely” category of the Autism Index. Dr. *** did not administer the GARS Teacher.

BASC-2: Parent scored Student in the “extreme caution” range in such areas as attitude to school and teachers; atypicality; social stress; anxiety; and depression. The diagnostic impressions from the BASC-2 include characteristics associated with an autism spectrum disorder. Student's scores were high when compared to the general population. Dr. *** noted the following behaviors in determining that Student has an autism spectrum disorder: Student a) never makes friends easily; b) never adjusts well to changes in routine; c) sometimes appears shy with other children; c) is never chosen as a leader; e) sometimes acts as if other children are not there; f) sometimes avoids other children; g) often has trouble making new friends; h) almost always prefers to be alone; and k) often shows feelings that do not fit the situation. Dr. *** also noted that Student a) sometimes responds appropriately when asked a question; b) sometimes communicates clearly; and c) sometimes shows interest in others' ideas (R23.3).

Vineland Survey Edition II: Student obtained a score of *** on the Vineland, which indicates that Student's adaptive behavior function is low (R23.7).

Social Skills Improvement System (SSIS): “Social skills” are defined as socially acceptable, learned behaviors used to promote positive interactions, such as sharing, helping, initiating relationships, and controlling one's temper, while simultaneously discouraging negative interactions (R23.6). The SSIS is designed to facilitate the identification and classification of a) pro-social behaviors and b) problem behaviors and to aid in the design of intervention plans.

The SSIS organizes pro-social behaviors into seven (7) categories: a) communication; b) cooperation; c) assertion; d) responsibility; e) empathy; f) engagement; and g) self-control. Scores on these categories are reported as standard scores and percentiles. The raw scores obtained on each of these social skills are categorized as a) below average, b) average, and c) above average. A below-average behavior level indicates that the individual may need direct instruction to improve that skill (R23.6).

Student scored *** with a percentile rank of ***. This score places Student in the “well-below average” behavior range, thus indicating that Student may need direct instruction to improve these skills (R23.6)

The SSIS organizes problem behaviors into five (5) categories: a) externalizing; b) bullying; c) hyperactivity/inattention; d) internalizing; and f) autism spectrum.¹⁰ Scores are described using three behavior levels: a) below average, b) average, and c) above average. Problem-behavior scores that fall in the above-average behavior range indicate that the individual exhibits more

¹⁰ The autism spectrum sub-scale includes behaviors such as a) preoccupation with objects; b) repetition; c) failure to make eye contact when talking. Student's raw score on this category falls in the “above-average” behavior level (R23.7).

problem behaviors than his peers and that intervention designed to reduce such behaviors may be warranted (R23.7).

Student scored ***, with a percentile rank of ***, which places Student in the “well-above-average” behavior range, thus indicating that Student exhibits more problem behaviors than his peers (R23.7).

ADOS Module 3: Dr. *** chose this assessment because Student is verbally fluent. This module has three specific goals: a) to observe spontaneous social-communicative behavior; b) to assess the participant's ability to behave appropriately given the demands of particular situations; and c) to provide a standard context for the collection of a language sample (R23.10). Dr. *** reviewed the speech language reports and Teacher Language Survey from the May 18, 2010, FIE. Dr. *** found that Student exceeds the cut-off scores for autism spectrum disorder, although she did not provide any specific detail as to how she reached this conclusion (R23.10; T66).

23. Dr. *** determined that Student appears to meet criteria as a student with PDD, not otherwise specified (“NOS”) (R23.11), based upon a) her interview with Parent; b) Parent's BASC-2 scores; c) Parent's GARS scores; d) scores obtained on ADOS Module 3; e) the *** diagnosis of PDD-NOS; and f) the speech/ language report by CCISD. Additionally, Dr. *** noted that, per the Center for Disease Control (“CDC”), ***, that is typically found in ***, “usually” co-occurs with autism spectrum disorders and conduct (R23.11).¹¹ Accordingly, Dr. *** determined that Student “presents with a secondary presentation of autism as opposed to an idiopathic presentation of autism” (R23.12), and recommended that Student's ARDC consider Student a “likely candidate for special education participation based on an Autism eligibility” (R23.12).
24. Dr. *** finding does not markedly differ from the District's FIE. Both assessments acknowledge that early childhood developmental problems related to *** (R3.31).
25. On August 20, 2010, Student's ARDC met to review the District's May 18, 2010, FIE as well as the IEE. The Committee agreed to reconsider a secondary eligibility of autism at the next ARD. The ARD agreed to add OHI as Student's primary eligibility, to drop the ED label, and to add SI. Student was placed in the *** program in the general education classroom at *** School, *** grade.¹² Consideration of educating Student in the resource room was held until a future ARDC meeting. Dr. *** report was reviewed and per his recommendation, the ARDC agreed to initiate referral for OT/PT consult. At this time, Student had been receiving services from *** (R3.31). The August 20, 2010, ARDC reached consensus.
26. On September 7, 2010, Student's ARDC met to discuss informal assessments and placement (R7.12, 12; T180-81, 199, 201-02). The ARDC discussed placing Student in the resource room for reading, language arts, and math (R7.12; T172). The ARDC also discussed retaining Student in the *** grade (R7.12; T181). Parent insisted that placement would not be discussed unless the ARDC considered the autism eligibility (R7.12; T182-83, 201-02). Accordingly, the

¹¹ Respondent testified that Dr. *** exaggerated the co-occurring instances; the CDC states that other disorders, such as autism, “can” co-occur with *** but it does not identify autism as one of many recognized, commonly co-occurring mental health issues (T144-45; R34.9).

¹² The *** program is a behavior intervention program that emphasizes inclusion in the general education setting (R1.8; T137, 172-73). *** (T219).

ARDC dismissed without further placement discussion and Parent noted her disagreement with this result (R7.11; T182-83).

27. On September 20, 2010, the LSSP amended her FIE after receiving Dr. *** OHI Disability Report (R24.1, 4, 10; T132-33). This amended FIE determined that Student met the criteria for OHI, based upon *** and ADHD, and SI (R24.5).
28. On October 12, 2010, Student's ARDC met to discuss his progress and consider the autism eligibility (R2.39; T184). Although Parent was provided notice, she declined to attend (R2.39-40). Student's teachers reported that he is generally well-behaved and cooperative. At times Student will shut down and become lethargic, although he will come around eventually. The *** teacher reported that he often shuts down when he is tired or hungry, but a small snack usually improves his behavior (R2.39).
29. The October 20, 2010, ARDC noted that Student was struggling academically in reading, language arts, and math. He was reading at a ***-grade level; he was working in math at ***-grade level. The ARDC determined that Student's difficulties in the classroom were attributable more to his medical conditions: ADHD and ***.
30. The Committee developed IEPs in reading and math for delivery in the resource room (R2.30, 39; R11.19-24; T185). Student would receive in-class support for language arts and appropriate modifications in the general education setting. The ARDC reached consensus (R2.38).
31. Student's ARDC met again on January 26, 2011, to make programming recommendations. At this time, Student was attending *** School. Student's eligibility continued to be OHI and SI. The Committee determined that all of Student's assessments were current (R1.24).
32. Teachers reported that Student is a fast learner; that he is willing to learn; that he thrives on praise, works well in small groups, and benefits from frequent breaks. Student was working at the ***-grade level in math and the ***-grade level in reading (R1.24; T210). Academic goals and objectives were agreed upon and Parent noted they were appropriate. Reading, language arts, and math would be provided in the resource room with science and social studies in the *** grade general education classroom, with specified accommodations. Because Student was no longer having behavioral outbursts or transitioning problems, his prior BIP was discontinued and a new behavioral goal and objective were written. The Committee determined that Student did not need AT. The ADRC reached consensus (R1.24).
33. Parent was extremely pleased with Student's progress at the January 26, 2011, ARDC (T98-99). At that time, she had no issues with the services' being provided at *** School (T98-99).
34. Student is currently receiving instruction in the general education setting with accommodations and modifications (T18; R1.8). Reading, language arts, and math are taught in the resource room (R1.8). Student receives speech therapy and social skills training once a week (R1.8). Student receives behavioral intervention support from the *** program (R1.8; T137, 172-73).
35. Student has a current BIP with goals and objectives to target behavioral concerns and to aid him in developing appropriate coping strategies (R1.48-49; T214-15). Targeted behaviors include shutting down, refusing to do assignments, and refusing to follow directives when

frustrated (R1.48). Student's progress is measured using teacher observations and a daily behavior chart (R1.48).

36. The evidence is insufficient to establish that CCISD has failed to properly identify and classify Student's disabilities. Student is appropriately classified under OHI, for his ADHD and ***, and SI.
37. The evidence is insufficient to establish that CCISD failed to appropriately evaluate Student in all areas of suspected disabilities. CCISD's May 18, 2010, FIE was more comprehensive and reliable than the IEE. The determination that Student does not qualify for services under the autism spectrum is supported by CCISD's evaluations.
38. Student's IEPs and placement are based on comprehensive, current assessment data.
39. Student's IEPs were developed in a coordinated and collaborative manner by Student's key stakeholders. Parent's decision not to attend and participate in the October 12, 2010, ARDC meeting does not change this fact.
40. Student's IEPs are appropriate and are likely to provide Student with an appropriate education, both academically and non-academically.
41. Student's placement in general education, with accommodations and modifications, and the resource room for some academics is appropriate.
42. Student's BIP is appropriate. Student's BIP contains a measurable goal with measurable objectives that address targeted behaviors.

IV. DISCUSSION

IDEIA mandates that all state school districts receiving federal funding must provide all handicapped children a free, appropriate, public education. The United States Supreme Court, in *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982), established a two-part test for determining whether a school district has provided a student FAPE: 1) the school district must comply with the procedural requirements of IDEIA, and 2) the school district must design and implement a program "... reasonably calculated to enable the child to receive educational benefits." An educational benefit must be meaningful and provide the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-01. In determining whether a child is receiving FAPE, the *Rowley* Court insisted that the reviewing court must not substitute its concept of sound educational policy for that of the school authorities. *Id.*, 458 U.S. at 206. Although the school district need only provide "some educational benefit," the educational program must be meaningful. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). The educational benefit cannot be a mere modicum or *de minimis*. It must be likely to produce progress, not regression or trivial educational advancement. *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000).

In *Cypress-Fairbanks Independent School District v. Michael F.*, the Court set forth four factors that aid in evaluating whether a student is receiving the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational

benefit” to that student: 1) whether there is an individualized program based on the student's assessment and performance; 2) whether the individualized program is administered in the least restrictive environment (“LRE”); 3) whether the services are provided in a coordinated and collaborative manner by the key stakeholders; and 4) whether positive benefits are demonstrated both academically and non-academically.

In this case, Student asserts that he has been denied FAPE because CCISD's evaluations were inadequate to identify his real disability, autism, which in turn resulted in the development of inappropriate IEPs, related services, and behavior interventions. Analyzing this basic premise requires application of the four (4) *Michael F.* factors.

A. Student's IEPs Are Individualized and Based on Student's Assessments and Performance.

Evaluation procedures are carefully spelled out in the federal and state rules and regulations implementing IDEIA. 34 C.F.R. §300.304 specifies that in conducting the evaluation, the public agency, *i.e.*, the school district, must 1) use a variety of assessment tools and strategies to gather functional, developmental, and academic information; 2) not use a single measure or assessment as the sole criterion for determining a disability; and 3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The school district must ensure that the assessments are selected and administered in a non-discriminatory manner, provided in the child's native language and in a form likely to provide accurate information, used for the purposes for which the assessments are valid and reliable, administered by trained and knowledgeable personnel, and administered in accordance with any instructions provided by the producer of the assessments.

The district is charged with administering assessments and other evaluation materials that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. Assessments must be selected and administered in a manner that best ensures that the assessment results accurately reflect the child's aptitude or achievement level or other factors that the test is measuring. The child being assessed must be evaluated in all areas related to the suspected disability. The assessment must be sufficiently comprehensive to identify all of the child's special needs. As part of the overall evaluation, the assessors should review all existing evaluation data, including information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, observations by the child's teachers and related-services providers. 34 C.F.R. §300.305. Once the assessments and other evaluation measures are completed, the student's ARDC must consider all of the information gathered and make a recommendation based upon that information.

In this case, Student's ARDC met multiple times between January 2010 and January 2011. The ARDC reviewed new assessments as they became available, including CCISD's May 2010 FIE, Dr. *** IEE, and medical evaluations related to Student's ADHD and ***. Additionally, the ARDC reviewed information from Parent, outside assessments, educational records, and classroom teachers. Student was administered a plethora of formal and informal assessments, as set forth specifically in the Findings of Fact. What they all agreed on was that Student suffers severe problems with behavior, speech/language, cognitive issues, and adaptive behavior.

In reviewing this record, the more reliable information comes from those who work with Student everyday, who perform psychological assessments routinely, and who understand the role of the school district in educating students with disabilities. Based upon the more persuasive

assessments, I find that CCISD's OHI and SI determinations are appropriate and are based upon valid and reliable assessments.

B. Student's Special Education Services Were Developed by the Key Stakeholders and Are Provided in the Least Restrictive Environment.

Student's current placement allows for educational services in both the general education setting and the resource room. The Fifth Circuit developed a two-part test to use in determining whether the placement is too restrictive: 1) whether, with the use of supplementary aids and services, the child's education can be achieved satisfactorily in the regular classroom, and 2) if not, whether the child has been mainstreamed to the maximum extent appropriate. *Daniel R. R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989). In making an LRE determination, the regular education teacher is not required to act as a special education teacher in the regular education setting or to so radically modify the curriculum that it is unrecognizable. What is required is an understanding of the nature and severity of the child's disabilities and whether the child is able to grasp the essential elements of the regular education curriculum. *Id.*, 874 at 1049. Mainstreaming must provide an education that is attuned to the unique needs of the child, which necessarily requires that the child's education be individualized, based on his/her assessment. *Id.*, 874 F.2d 1047.

In applying these standards to the case at bar, it is clear that Student's IEPs were developed in a coordinated, collaborative manner. Since spring 2010, Student's ARDC has meet approximately five (5) times. Parent attended all but one (1) of these meetings and participated in developing Student's program and placement. Each ARDC meeting resulted in some "tweaking" of Student's program, depending upon the latest assessments or teacher input. In developing his IEPs, the ARDC attempted to accommodate Student in the general education setting as much as possible, but he did not perform well, even with accommodations and modifications. Thus, the ARDC determined that Student should have some services delivered in the resource room. When his program was split to allow for general education, with appropriate accommodations and modifications of some subjects, and resource support for other academics, Student really began to show academic and behavioral progress. The current program, which continues to allow for general education, resource room, speech therapy, social skills training, and behavioral support through the SAIL program, is certainly the LRE for Student.

C. Student Is Making Academic And Non-Academic Progress.

Student has made remarkable progress under his IEPs. His reading and math levels have increased to the point that he is coming closer to grade-level performance. His behavioral outbursts have all but vanished. His teachers report that he is generally well-behaved and cooperative, although he still has times when he shuts down. Through the implementation of his BIP and support from the SAIL program, Student's behaviors are being properly managed. Even Parent acknowledged Student's progress at the January 2011 ARDC meeting and her sheer joy at his placement at *** School.

**V.
CONCLUSIONS OF LAW**

1. Student's eligibility classifications of a) OHI, based upon ADHD and ***, and b) SI are appropriate. These eligibility determinations were based upon appropriate, comprehensive assessments and tailored to Student's unique needs in compliance with the operative rules and regulations. 34 C.F.R. §300.305.

2. Student's IEPs have been, and continue to be, appropriate and reasonably calculated to provide Student FAPE in the LRE. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); *Daniel R. R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989).

**IV.
ORDER**

Based upon the record of this proceeding and the foregoing Findings Of Fact and Conclusions Of Law, it is

ORDERED that the relief requested by Student is DENIED.

Finding that the public welfare requires the immediate effect of this Decision, the Special Education Hearing Officer makes it effective immediately.

SIGNED this 18th day of April 2011.

Deborah Heaton McElvaney
Special Education Hearing Officer

COPIES SENT TO:

Mr. Christopher Jonas
Attorney at Law
3349 Jamaica Drive
Corpus Christi, Texas 78418
Attorney for Petitioner

Mr. John J. Janssen
Mr. Andrew Thompson
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110
Attorneys for Respondent

07870/Decision.