

DOCKET NO. 027-SE-0906

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

And

DOCKET NO 058-SE-1106

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Alamo Heights Independent School District (AHISD), requested a Due Process Hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 *et seq.* Student *b/n/f* Parent (“Student”) had requested an Independent Education Evaluation at AHISD’s expense. AHISD denied Student’s request, because AHISD believed the evaluation it obtained was appropriate. AHISD seeks an order from the Hearing Officer finding that its evaluation is appropriate.

Parents also requested a Due Process Hearing, contending that AHISD denied Student a free, appropriate public education (FAPE) in the following particulars: that AHISD did not comply with procedural requirements, and a regression or lack of meaningful progress by Student.

Procedural History

On September 28, 2006, the Texas Education Agency (TEA) received AHISD's Request for Due Process Hearing (the complaint), assigned the case Docket No. 027-SE-0906, and appointed the undersigned Hearing Officer to the matter. On September 29, 2006, the Hearing Officer sent the Initial Scheduling Order to the parties setting forth all applicable dates related to the Resolution Period and the Hearing.

On November 1, 2006, the TEA received from Student *b/n/f* Parent (Student) a Request for Due Process Hearing (the complaint), assigned the case Docket No. 058-SE-1106, and appointed the undersigned Hearing Officer to the matter. Rather than sending out another Initial Scheduling Order, the Hearing Officer contacted the parties to ascertain their position about consolidating the two matters into one proceeding. A prehearing conference was scheduled with the parties for November 21, 2006, and the conference operator attempted to connect all of the parties, but was not successful. The prehearing conference did not formally occur that day, but the Hearing Officer obtained formal agreement on the record and prepared an order dated December 5, 2006, consolidating Docket No. 027-SE-0906 and Docket No. 058-SE-1106 into one case for proceeding to hearing. The Hearing Officer conducted two additional prehearing conferences, the first on December 22, 2006, and the second on January 9, 2007.

The hearing date was scheduled several times and reset for a variety of reasons for good cause shown. Finally, the parties were able to proceed to the Due Process Hearing on May 1 and 2, 2007. Both sides were represented by able counsel. AHISD's Director of Special Programs and Pupil Services attended the hearing as its representative. Both parents attended as representatives for Student.

AHISD called seven witnesses to testify; Student called four witnesses. AHISD offered approximately 300 pages of documentary evidence, and Student offered 29 exhibits totaling a similar number of pages into evidence. A certified court reporter recorded the proceedings and prepared a transcript of the conference. After the close of the hearing the attorneys requested they be allowed to submit closing arguments and briefs in writing after the transcript had been prepared by the court reporter. They agreed to a deadline of June 1, 2007. They also agreed to allow the Hearing Officer until June 15, 2007, to prepare the Decision.

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 resides with his parent within the jurisdictional limits of Alamo Heights Independent School District. AHISD is a political subdivision of the State of Texas and a duly incorporated independent school district.

2. Student currently receives special education services from AHISD under the classifications of other health impaired (OHI) and speech impaired (SI). Student was placed in the ** grade during the 2006-2007 school year.
3. On May 18, 2006, an Admission, Review, and Dismissal (ARD) committee met for an annual review of Student's educational program. The committee reviewed the existing data, and completed a supplement to the ARD committee's record, referred to as a Review of Existing Evaluation Data (REED). A number of significant discussions occurred during this ARD meeting.
4. The REED provided important analytical information to the ARD committee, because it laid out the previous assessment data side-by-side with a review of the current existing data for comparison in an easy to read format, listed by category. Several anecdotal reports from teachers and the parent led to a decision by the committee to request additional assessment.
5. Under the Emotional/Behavioral category, the REED included the following anecdotal information: Teachers reported Student was very inflexible in his work, obstinate and used up time in the "how" he would approach it such that the work usually was not completed. The occupational therapist reported a decline in Student's writing since the beginning of the year; he was often uncooperative in that he was very rigid about how things should be done, which impeded his progress. The parent reported that Student must have the shower head positioned a certain way before he will shower; he resists having his hair shampooed; he has rituals in the evening that must be followed.
6. The REED determination found no disability in emotional or behavioral functioning identified by current existing data. On the next line of the form, the ARD committee wrote: "Additional Assessment requested: Emotional-Behavioral Assessment (rule out Autism Spectrum Disorder) by July 14, 2006."
7. Under the Intellectual category, the REED referenced the results from standardized testing on file for Student from 2003. On the section for current information, the ARD committee wrote (emphasis in original document):

Change in intellectual status:

Student has not had an updated intellectual and adaptive functioning recently. Due to his extreme academic difficulties in school, updated testing in this area is needed.

ARD DETERMINATION:

There is no disability in intellectual functioning identified by current existing data. Diagnosis: Borderline Intellectual Functioning.

Additional Assessment requested: Intellectual and adaptive functioning by July 14, 2006.

8. Under the Educational Performance category, the RED referenced the results from the 2003 achievement tests and also outlined the change in Student's educational performance status. The ARD determination was to request additional assessment of his academic achievement by July 14, 2006.
9. In the section identified as Conclusions, item 2 recaps the ARD committee's request for additional assessment, and specifies the type as "FIE, Psychological by 7-14-06."
10. AHISD's school psychologist selected ** to perform the full individual evaluation and psychological evaluation of Student in the summer of 2006. ** holds a bachelor's degree in speech pathology and audiology, and two master's degrees, one a master of education, the other a master of arts in psychology having an emphasis on school psychology. She is a certified educational diagnostician, a certified speech therapist, and a licensed specialist in school psychology (LSSP). She has served in the field of education for thirty years, 27 of which have been as either an educational diagnostician or an LSSP. Over the years she has performed numerous assessments to evaluate children for Autism Spectrum Disorder. Now self-employed, she consults for three school districts besides AHISD in addition to her other work. She is fully qualified in all respects to assess children for Autism for purposes of special education evaluations.
11. ** assessed Student on the following dates: July 21, 24, 25, 26, and 28, 2006; August 4, 14, and 15, 2006. The testing occurred while Student was attending extended school year sessions at his regular elementary school. His classes ran from 8:00 a.m. to 12:00 p.m. ** also spent time observing Student in his classroom on July 21, 2006.
12. ** administered a wide array of assessments, designed to test Student's areas of intelligence, adaptive behavior skills, and academic skills. Standard testing procedures were used, including parent information, informal observation, school information, and standardized tests. She produced a report dated August 18, 2006, that contained her findings. She concluded that Student is a child with multiple disabilities including Attention Deficit Hyperactivity Disorder, Autistic Disorder and Speech Impairment.
13. Specific testing instruments ** used were:
 - Vineland Adaptive Behavior Scales – 2nd Edition, (Vineland-II)
 - Behavior Assessment System for Children – Second Edition – 2 (BASC-2)
 - Comprehensive Test of Nonverbal Intelligence (CTONI)
 - Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV)
 - Gilliam Autism Rating Scales – Second Edition (GARS-2)
 - Gilliam Asperger's Disorder Scale (GADS)
 - Wechsler Individual Achievement Test – Second Edition (WIAT-II)
14. The tests used by ** are widely used instruments across the United States, suitable for the assessment of Student as requested by the ARD committee in May 2006. The

tests have been validated and are updated and reliable. Clearly, they were appropriate and appropriately administered.

15. As part of her assessment ** requested that Student's parent complete a Structured Developmental History in order to obtain important information about Student's early childhood years. ** asked the parent to rate Student's behavior on a formal measurement, using the Behavior Assessment System for Children – Second Edition. In addition to the Structured Developmental History the parent also participated as the respondent on the Survey Interview Form measuring Adaptive Behavior Skills on the Vineland Adaptive Behavior Scales – Second Edition. Parent also completed the Gilliam Autism Rating Scale – Second Edition, and the Gilliam Asperger's Disorder Scale.
16. ** utilized information from Student's teachers. Student's special education teacher responded on the Teacher Rating Form for the Vineland Adaptive Behavior Scales – Second Edition. Two of Student's teachers completed rating scales for the Gilliam Autism Rating Scale – Second Edition, and the Gilliam Asperger's Disorder Scale, in addition to the Teacher Rating Scales for the BASC-2.
17. Autism Spectrum Disorder is a pervasive developmental disorder that goes across several domains, including communication, social interaction, and response to environment. There are no medical tests, brain imaging or scans that currently can diagnose Autism.
18. **'s report identified the referral question: to rule in or rule out the presence of Autism. In her experience the methods to determine the presence of Autism are observational. The assessor would be looking for delays in specific areas, especially in social interaction, but also how the child acts and reacts in the environment, along with the child's language. One would also look for repetitive kinds of behavior, such as lining objects up.
19. **'s report discussed Student's language proficiency. His standard score obtained on the Communication Subtest of the Vineland Adaptive Behaviors Scales, as reported by the mother, was **, which falls within the low range. The Communication Subtest of the Vineland-II, Teacher Rating Form presented additional information about Student's deficits in the area of language proficiency. ** ended this section of the report with this summary: **Observation and test results indicate that Student exhibits a moderate delay in communication skills, both expressively and receptively. This delay interferes with his ability to communicate effectively with others in his environment.**
20. Physical Factors also played a part in **'s report. Most of this information came from Parent, but some information also could be gleaned from school records. Parent reported that language development stopped following Student's seizure activity when he was ** old and he did not use any oral language for two years after the seizures. ARD committee minutes indicated that the parents reported no recent episodes of seizures. The parents also reported at that same ARD meeting that an

MRI had recently been done by Student's neurologist, and it was described as "normal." Parent reported also that when Student was in ** grade he was started on Adderall to control the symptoms of an Attention Deficit Hyperactivity Disorder. Some time after that he was also given Lexapro to control the symptoms of anxiety.

21. Of great importance in **'s report were the results of assessment of Student's Intellectual Functioning. ** began with assessments of Student's Cognitive Skills and Developmental Skills, and she also tested his Adaptive Behavior Skills.
22. The CTONI assesses the cognitive ability of individuals through a nonverbal format. It is frequently used with children who do not have English as their native language or who exhibit a history of significant delays in language development. A total of three composite scores can be derived with the CTONI. Student's scores on the CTONI were very revealing.¹

Pictorial Nonverbal Intelligence	Standard Score **
Geometric Nonverbal Intelligence	Standard Score **
Nonverbal Intelligence Quotient	Standard Score **

** opined about these test results, "Test results suggest that cognitive skills fall within the low average range. The scores across the three composite areas are very consistent, with no significant strengths or weaknesses."

23. The WISC-IV is an assessment of cognitive ability of children that focuses more on working memory and processing speed. On the WISC a total of 5 composite scores can be derived including the Full Scale IQ score to represent the child's overall cognitive ability.²
24. Student's Verbal Comprehension Index score of ** places him in the extremely low range when compared to his same age peers. This score measures his verbal concept formation, verbal reasoning, and knowledge acquired from his environment.
25. Student's Perceptual Reasoning Index score of ** places him in the low average range when compared to the abilities of his peers. This score measures nonverbal concept formation, visual perception and organization, simultaneous processing, visual-motor coordination, and nonverbal problem solving. This score is consistent with the score on the CTONI scores, which measure nonverbal cognitive abilities.
26. Student's Working Memory Index score of ** places him in the extremely low range, suggesting that his working memory is significantly weak for his age. This measures a person's ability to sustain attention, concentrate, and exert mental control. Mental

¹

The CTONI is only a screening device however. It does not provide a full scale intelligence quotient.

² Much of the information regarding the results from Student's WISC-IV assessment is quoted verbatim from **'s report. Moreover, much of the explanation about the test itself and the meaning of the data are also direct quotes.

- control is the ability to attend to and hold information in short-term memory while performing some operation or manipulation with it. A weakness in mental control may make the processing of complex information more time consuming, drain mental energies more quickly compared to peers, and may result in more frequent errors on a variety of learning tasks.
27. Student's Processing Speed Index score of ** falls within the extremely low range when compared to the abilities of his peers. The PSI provides a measure of Student's ability to quickly and correctly scan, sequence, or discriminate simple visual information. Processing speed is an indication of the rapidity with which a student mentally processes simple or routine information without making errors.
 28. Student's Full Scale IQ is a composite score of all the previous index scores above, in this case, **, within the extremely low range of intellectual functioning.
 29. ** also noted the **-point difference between Student's Verbal Comprehension Index and his Perceptual Reasoning Index, which is statistically significant. This suggests that his skills used to complete visual-spatial tasks are stronger than skills used to complete verbal tasks. Moreover, Student's scores on the Working Memory Index (**) indicate that his ability to timely process complex information is significantly delayed.
 30. Current data provided by formal evaluation of Student's cognitive skills indicate his cognitive skills, verbally, are significantly delayed. However, measures of nonverbal skills indicate that cognitive skills fall within the low average range.
 31. **'s report also addressed Student's Adaptive Behavior Skills. These skills were measured through formal measures using the Vineland Adaptive Behavior Scales – Second Edition, with Parent and one of Student's teachers responding on the rating forms. Interestingly, on the three domains that are assessed, both raters scored Student within two points of each other on each domain (standard scores). On Communication, Parent's report of Student scored **, and Teacher's report scored **. On Daily Living Skills, Parent's report of Student scored **, and Teacher's report scored **. On Socialization, Parent's report of Student scored **, and Teacher's report scored **. These results placed Student within the classification of severe deficit. Test results indicate that Student's Adaptive Behavior Skills are significantly delayed. ** noted that if these scores are compared to the scores obtained in the area of nonverbal cognitive ability, the adaptive behavior skills are significantly lower.
 32. The Hearing Officer finds the disparity between Student's Adaptive Behavior Skills and his nonverbal cognitive ability to be an important piece of evidence with respect to the diagnosis of Autism.
 33. **'s report discussed Behavior/Emotional Factors. She detailed her observation of Student the day he was in class on July 21, 2006. There were six children present in the classroom. Student was working at a desk with children on both sides of him. He was observed to have little interaction with other students. She probably spent about

- an hour for the observation. She also spent time with Student for the testing that was performed and was able to observe his behavior.
34. ** received scaled scores from Parent and Student's special education teacher providing information about behavioral disturbances typical of Autism Spectrum Disorders. This information was the GARS-2 and the GADS.
 35. On the GARS-2 subtests include Stereotyped Behaviors, Communication, Social Interaction, and Autism Index. These subtests are computed to produce standard scores, and a range, or Autism Quotient, meaning a probability of Autism. The ratings provided by Parent fell within the range of "Possibly," whereas those provided by the teacher fell within the range of "Very Likely" probability of Autism. Of particular note on the domain subtests, the standard score provided by both persons for Student on Social Interaction was **.
 36. Because of the higher score on Social Interaction, the Gilliam Asperger's Disorder Scale (GADS) was also given to Parent and the same special education teacher to complete. On the information reported by Parent, three of the four subtests fell within the significant range for the indication of Asperger's Disorder. The same was true for the information reported by the teacher, although it was not the same three subtests.
 37. ** also requested Parent and two teachers complete the Parent and Teacher Rating Scales of the Behavior Assessment System for Children – Second Edition (BASC-2). Only one area rated as clinically significant by all three raters: aggression. Six areas were rated as clinically significant by the two teachers: aggression, learning problems, atypicality, withdrawal, functional communication, and study skills. Two areas were rated as clinically significant by Parent and at least one of the teachers: hyperactivity and attention problems.
 38. Although the ratings on the GADS for both the teacher and Parent placed Student within the range of "Very Likely" probability for Asperger's Disorder, a diagnosis of Asperger's would clearly be ruled out in Student's case according to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). According to Section D, "There is no clinically significant general delay in language" and Section E, "There is no clinically significant delay in cognitive development or in the development of age-appropriate self-help skills, adaptive behavior, and curiosity about the environment in childhood," Student's background disqualifies him for a diagnosis of Asperger's Disorder.
 39. ** also administered the WIAT-II to Student to gain a measure of current academic skills. The scores reflect a significant delay in all academic areas. His Composite Reading Score was **, Composite Math Score was **, and Composite Written Language Score was **.
 40. The summary portion of the Educational/Academic Levels section of **'s report states (emphasis in original):

When the standard scores achieved on the WIAT-II are compared to the IQ score obtained on the CTONI, a significant 15-point discrepancy is noted in all three areas. However, a diagnosis of Learning Disabilities cannot be made because the presence of a health impairment or emotional disorder can be ruled out at this time.

At the hearing ** testified that this section contained an error, and the final sentence should have had the word “not” before the phrase “be ruled out at this time.” Although this was the first time ** had pointed out the error to anyone, the Hearing Officer finds her testimony credible in light of the rest of the evidence.

41. On August 25, 2006, AHISD’s school psychologist met with both of Student’s parents to discuss **’s report and go over her findings.
42. The ARD committee met on September 7, 2006 to review **’s report. ** herself was not present at the meeting, but AHISD’s school psychologist attended. During the discussion the parents objected to the decision of the ARD committee to accept **’s recommendations and her diagnosis of Autism.
43. Additionally, at the September 7, 2006, ARD meeting, the parents requested an Independent Education Evaluation (IEE). The reasons given by the parents were: (1) ** is not a psychiatrist, and they wanted the testing done by a medical doctor. (2) The testing was on the 21st, 24th, 25th, 26, and 28th when Parent was on vacation and out of town; therefore, Student was out of his daily routine during that time frame. (3) The testing was supposed to be done by July 14 and was over the deadline to test him.
44. AHISD’s school psychologist informed the parents the ARD meeting would have to adjourn at that point, and that they could not move on to develop the IEP. The psychologist also told them the District had the option of doing two things. Either the District could honor the request for an IEE, or ask to go to a hearing to defend **’s evaluation.
45. Student is in a regular education classroom for about 2 ½ hours per day for social studies and science. That teacher also works with him on his writing and math. Student requires a number of modifications. She reads orally to him and lets him listen to a science tape of the chapter. During an experiment Student does it with her. She takes pictures at each stage, and he orally describes to her what steps he took. That is one of the modifications she uses from his IEP in her class.
46. Student’s special education teacher taught math, reading, writing, and social skills to him in ** grade. In ** grade she taught him math. She also taught him during the extended school year session in 2006 between ** and ** grades and participated in **’s assessment. She was very familiar with Student’s daily behavior in the classroom. She noticed nothing out of the ordinary in terms of Student’s regular behaviors during the time Student was being tested in the summer of 2006.

47. Another of Student's teachers came to this school in January 2006. She has taught him continuously since that time. She has seen remarkable progress in her reading and writing class. He has learned to spell his first and last names. He is able to recognize alphabet sounds, and knows about 12 letters in isolation.
48. Although Student is still working on a ** grade level, he has moved up within the skill levels for that grade. This progress is indicated by his scores on the SDAA testing instruments, by the testimony of the teachers, and by the testimony of Parent.
49. Parent told ** that Student suffers from Obsessive-Compulsive Disorder (OCD), but there is no documentation of such a diagnosis in any school records, medical records in evidence in this case, or provided by expert testimony.

Discussion

The parents in this case complain primarily about **'s conclusion that Student has Autism. Many of her other findings are not disputed, just the bit about Autism. In looking to the DSM-IV, the bible for mental disorders, one is guided by four dominating criteria when looking for Autism, those being:

- Atypical development of social competence
- Atypical development of communication competence
- Atypical range of interests and patterns of behavior
- Unusual or inconsistent responses to sensory stimuli³

** clearly focused in the proper direction. She is licensed to administer the proper tests, she did administer the proper tests, she interpreted the results properly, and all that is left is to determine whether she reached the proper results.

** has been granted the status of an expert witness in this case. Only one other witness qualified as an expert witness, the school psychologist from AHISD. Testimony from this witness only strengthened the rationale for the findings in **'s report.

The criticisms offered of **'s report or the methods she used, must therefore be taken into consideration as being offered from the perspective of non-experts. The first criticism goes to her credentials. ** is not a medical doctor. That is true, she is not. However, there is no requirement that for purposes of a special education evaluation, a school district must employ the services of a medical doctor. The District must use qualified personnel to assess students for special education, but not necessarily medical personnel, when the function the District performs is education.

³ The definition for purposes of special education: (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in paragraph (c) (4) of this section. (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c) (1) 9i) of this section are satisfied. 34 C.F.R. § 300.8 (c)

The second criticism leveled at **’s report centered on the testing dates. Student was away from home during a portion of the testing dates and staying with a relative, because Parent had planned a vacation to coincide with dates after the testing would be completed. The vacation, though, occurred right in the middle of the testing, and Student was outside his normal routine. Parent believed this may have had an adverse effect on Student’s test results. There is no evidence that it actually affected the results, and in fact, the evidence points the other way. His teachers testified that his behavior was not out of the ordinary for him, and **, who had known Student for several years and tested him previously, also believed that his behavior during the testing dates was not unusual for him.

The “out of his routine” argument does not make sense to the Hearing Officer. The testing that was being done on those dates would have been for the intellectual functioning and the academic skills. If one accepts this theory, his scores on the CTONI, the WISC, and the WIAT-II should have been higher. But the numbers from 2006 are remarkably similar to the numbers obtained on tests in 2003, coincidentally by **. ⁴ Moreover, making such an argument only supports the underlying atypicality of Student’s need for consistency and constancy in his daily routine, a hallmark if ever there was one for Autism. ⁵

The third criticism leveled at **’s report has nothing to do with ** herself, but rather at the date she was given the task. The argument is that everything should have been completed by July 14, 2006, and failure to do so is somehow a legal violation. Nothing has been cited to the Hearing Officer how this is a violation. No regulation, no statute, no comment section or anything else has been found in the research performed by the Hearing Officer. Looking at the ARD committee’s minutes and the transcript of the deliberations from the May 18, 2006, meeting, the date “July 14, 2006,” prominently appears throughout the records. The school psychologist testified she selected the date because Student would be attending extended school year sessions and would be available during the summer. ⁶ Certainly there was an expectation by Parent that the testing would be completed by July 14, 2006. Other than vacation plans Parent has not pointed to any other harm that has resulted from AHISD’s failure to complete the assessment by July 14, 2006. No services were delayed, so even if there were a legal obligation – which there does not seem to be – any violation would have no harm attached to a failure to complete in a timely fashion in this instance.

⁴ Student’s Full Scale IQ in 2003 was ** and in 2006 it was **.

⁵ The GARS-2 and GADS forms were completed independently by Parent and the teachers. Those ratings would be unaffected by vacation dates. Any conclusion by ** regarding Autism coming from them would be unaffected by the “out of his routine” theory, because those ratings covered the entire time period during which the rater had known the child.

⁶ The school psychologist was not available to perform the assessment herself. Because of rules under the Teacher Retirement Board, the psychologist who had previously retired and returned to work was required to be a part-time employee and could not work during the summer. Thus, the assignment had to be contracted out.

Student's Complaint against AHISD

Turning to Student's complaint against AHISD, the procedural violations alleged that the parents were not equal partners in the ARD committee process. There was unhappiness about the manner in which minutes were prepared. There was also discussion about a limitation of time placed on ARD meetings. This process is an important one, no doubt, but not every procedural claim merits action by a court. The U.S. Court of Appeals for the 5th Circuit has held that a claim based on a violation of IDEA'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 (5th Cir. 2003). The procedural deficiencies complained of here did not result in any lost educational opportunity. The parents attended every ARD meeting and actively participated in the crafting of Student's IEPs. If there was a time limitation placed on meetings, it was only to allow for reasonable planning of schedules. ARD committee meetings are regularly recessed and then resumed. Parent has had the opportunity to submit additional information or corrections into the minutes, but those do not rise to the level of substantive violations in this case.

Student's second complaint against AHISD relates to his educational progress. The analytical process begins with whether AHISD provided an appropriate education to Student, generally defined as one that enables a student to obtain "some benefit" from his education. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982). According to the now familiar four-factor test espoused by the Fifth Circuit in *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 253, (5th Cir. 1997) "some benefit" 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 evidence indicates that these factors have been met. The program was individualized, administered in the least restrictive environment, with services provided in a coordinated and collaborative manner by the key stakeholders. Positive benefits have been demonstrated.

Looking at the full assessment results provided by **'s report from 2006, Student's educational record makes sense in context. Of course Student should not be graded by ** grade standards. Given his cognitive skills, his goals and objectives are appropriately measured differently from ordinary grade levels. Smaller increments, even much smaller increments, may be appropriate for this child. His progress may not be that of other children, but he should not be measured by the same standards as other children. He has shown academic and behavioral advances; that is progress.

Asperger's Disorder has been ruled out. OCD is not inconsistent with Autism. Seizure disorder and learning disabilities are not inconsistent with Autism either. However, Student does not fit the criteria for learning disabilities alone, and the seizures have stopped. What we are left with, and what fits according to all the formal measurements, and the DSM-IV criteria, is the diagnosis of Autism by someone qualified to make it. It usually shows up before age 3, but not always. It is certainly not unheard of for it to be diagnosed when a student is the age of this child.

Conclusions of Law

1. AHISD's evaluation of Student was appropriate.
2. AHISD bears the burden of proof with respect to its issue concerning the appropriateness of its evaluation. AHISD did meet its burden of proof with respect to this issue.
3. Student is eligible for special education services as a child who is other health impaired and speech impaired. 20 U.S.C. §1401 (3) (A); 34 C.F.R. §300.8 (c) (1), (9) (11); 19 TEX. ADMIN. CODE § 89.1040 (c) (8), (10).
4. AHISD is required to provide Student FAPE.
5. AHISD did not fail to provide FAPE to Student during the 2006-2007 school year. *See Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
6. Student bears the burden of proof with respect Student's claims that Student was denied a free appropriate public education. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984). Student did not meet Student's burden of proof in this case.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief sought by AHISD is GRANTED. IT IS FURTHER ORDERED that the relief requested by Student is DENIED.

SIGNED this 15th day of June 2007.

Lucetia Dillard
Special Education Hearing Officer