

NO. 142-SE-0207

STUDENT B/N/F	§	BEFORE A SPECIAL EDUCATION
PARENT	§	
PETITIONERS	§	
	§	
VS.	§	HEARING OFFICER
	§	
EL PASO INDEPENDENT	§	
SCHOOL DISTRICT	§	
RESPONDENT	§	FOR THE STATE OF TEXAS

**FINAL DECISION OF THE HEARING OFFICER**

STATEMENT OF THE CASE

Petitioner, student, by his next of friend, Parent (hereinafter Petitioner, Student, or Parent) brings this proceeding against Respondent El Paso Independent School District (hereinafter Respondent or District) under the Individuals with Disabilities Education Improvement Act (hereinafter IDEA or IDEIA), 20 U.S.C. § 1400 *et. seq.*

Petitioners allege that Respondent denied student of a free appropriate public education during the 2005-2006 and 2006-2007 school years based on the following claims:

1. El Paso ISD failed to provide speech therapy services as specified by student's Individual Education Plan (IEP).
2. El Paso ISD failed to provide student's parents written notification of the District's failure to provide speech services as required by his IEP.
3. El Paso ISD violated Petitioners' opportunity to meaningfully participate in the development of their child's education planning.
4. El Paso ISD failed to provide student an appropriate education program based on then-current Present Levels of Performance (PLOP) and his functional performance.
5. El Paso ISD failed to provide academic and functional goals and objectives which were measurable within the meaning of IDEA.

As relief, Petitioner seeks Orders requiring El Paso ISD to:

1. convene an Admissions, Review, and Dismissal (ARD) meeting to develop a new IEP based on student's present levels of academic and functional performance.
2. provide measurable annual goals and objectives for all academic and functional areas.
3. provide written notification of any proposed initiative or change or refusal to identify, evaluate, or place student in a special education placement.
4. allow Petitioner to meaningfully participate in an ARD meeting.
5. provide speech therapy services in accordance with student's IEP and to require it to provide compensatory speech services.
6. pay attorneys fees.

#### PROCEDURAL HISTORY

Petitioners, represented by Mark Berry of El Paso, Texas, filed their request for a due process proceeding on February 5, 2007. Carol Helms, with the Albuquerque, New Mexico office of Walsh, Anderson, Brown, Schulze & Aldridge represented Respondent.

The Hearing Officer scheduled a prehearing conference for March 5, 2007, and the due process hearing for March 20-21, 2007. By agreement, the March 5 prehearing conference was held on March 9; both Parties requested a continuance of the March 20-21 hearing. The hearing was rescheduled for April 17-18, 2007. Before April 17, the Parties held a Resolution Meeting but were unable to obtain an agreement.

On March 30, 2007, Respondent filed a Motion to Continue the April 20-21, 2007 hearing because school employees were involved in state-wide testing on those dates. The hearing was rescheduled for May 21-22, 2007. On May 14, 2007, Petitioner filed a motion to continue the May 21-22 hearing in order to provide an itemized Index to its exhibits, failed to individually identify each exhibit, and failed to provide Respondent copies of the exhibits. The request was granted and the hearing was rescheduled for June 27-28, 2007.

The hearing began on June 27 and continued on June 28, 2007. After hearing part of the first witness's testimony, the Hearing Officer, sua sponte, continued the hearing and ordered Respondent to provide to Petitioner additional documents that were not previously disclosed. The hearing continued on August 29 and was completed on August 30, 2007.

At the conclusion of the hearing, the Hearing Officer asked the Parties to brief certain legal issues by September 29, 2007. On September 26, Petitioners filed a Motion for an Extension of Time to file Its Brief. On October 4, 2007, Petitioners filed a second Motion for an Extension of Time seeking another extension to October 10. Both extensions were granted and Petitioners timely filed its legal brief on October 10, 2007.

Taking continuances into account, the deadline for the Final Decision is November 10, 2007. The Hearing Officer issued her decision on November 10, 2007.

## FINDINGS OF FACT

1. The Parties stipulated that the relevant time period for this cause of action is from February 5, 2006 through February 5, 2007, the date of filing for this due process hearing. (Transcript [Tr.], Volume [V] 1, page [p.] 5).
2. Prior to enrolling in \*\*, student's doctor's determined that he suffered from Pervasive Developmental Disorder (PDD), a disorder found on the autism spectrum. Upon enrollment in August 2005, student's mother provided the PDD diagnosis to El Paso ISD. Nevertheless, the campus Special Education Specialist informed Petitioner that student would be placed in a regular education classroom. The District did not conduct an evaluation or hold an ARD meeting to discuss initiating a special education referral. (Tr. V. 4, pp. 648-650; JX-1).
3. Within two weeks, student's \*\* teacher initiated the process to request a special education evaluation. By November 3, 2005, his \*\* teacher formally referred student for a special education evaluation because of his "Autistic behaviors and for further assessment," noting that student had a previous diagnosis of autism. (Joint Exhibits [JX]-1, 3).
4. The referral packet stated that student had difficulty paying attention, concentrating, following directions, working with peers, and with frustration. All his academic characteristics were on a pre-kindergarten level. Before the referral was made, his teacher provided individual tutoring, peer tutoring, and other academic interventions. In the parent interview conducted by the District's speech pathologist, student's mother noted that he had been diagnosed with autism before enrolling in El Paso ISD and that student had speech problems as early as three years old. (JX-1-2).
5. A Full Individual Evaluation (FIE) was completed in November 2005. The evaluation indicated that student had been recently diagnosed with autism, but found he qualified only for speech services for a mild-moderate articulation disorder. (JX4-5).
6. On November 28, 2005, an ARD Committee convened to review student's FIE, finding that student qualified for special education services under the Speech Impairment classification.  
The Committee recommended further evaluation for autism, including intellectual and academic assessments.
7. The instructional accommodations provided by the November 2005 IEP were generic in nature and were not tailored to a student with PDD. Further, the November 2005 ARD provided only three of the ten recommendations later suggested by the March 21, 2006 autism evaluation. No other services (such as in-home trainer, occupational therapy, social worker, and assistive technology) were provided. Only limited instructional

modifications were provided. The Committee recommended 60 minutes per week of speech services, and full-time placement in a general education classroom with modified TEKS (Texas Essential and Knowledge Skills). (Tr. V. 1 p.43; Tr. V. 4, p. 654; JX-6, 9).

8. The November 2005 ARD did formulate annual speech goals: “R will improve his articulation skills by achieving the following objectives.” This goal contained ten objectives that addressed various articulation problems. A second goal, “R will use developmentally appropriate social skills to enhance communication abilities,” provided four objectives that addressed social skills communication. (Tr. V 1, pp.48-49; JX-6).
9. Both speech goals and objectives were measurable and addressed student’s identified articulation problems. Taken together, the goals and objectives were specific, tailored to address student’s needs, and measurable.
10. A second FIE, an autism evaluation, was completed on March 21, 2006, but an ARD meeting to review the report was not held until May 8, 2006. At that meeting, the Committee determined that student met eligibility for an autism classification. (Tr. V 1, p. 47-48, 50; JX-10).
11. The May 2006 ARD Committee developed academic IEPs using the Comprehensive Learner Adapted Scope and Sequence (CLASS) Plus evaluation, which sets academic goals according to an individual’s own developmental sequence. The ARD Committee used the CLASS program to develop objectives. The results of the test and an explanation of how the program measures progress were not provided to student’s parents. (PX44-45).
12. The May 2006 IEP restated student’s then-present levels of academic achievement and functional performance. The IEP added information to only 7 of the 39 items from the November 2005 FIE which identified his strengths and weaknesses. Of the 7 items, four were in the “Academic Weakness” area and three in the “Behavioral, Emotional, and Social Weakness” area. (Tr. V. 2, pp. 362,388; JX10, 44-45).
13. The May 2006 IEP did not provide, and student did not receive, resource or special education instructional support. (JX10).
14. The May 2006 ARD Committee provided for social work services to achieve the annual goal “Counseling w/Social Worker Incl. /and or Group coping and Social Skills.” The two objectives under such goal related to student exhibiting appropriate expression of frustration and appropriate social skills for a school environment. This goal and the objectives, taken together are appropriate and measurable. (JX-10).
15. The ARD Committee developed the following academic goals and objectives:
  - a. The English/Language Arts annual goal: “Listening and Speaking Purposes”.

This goal has two objectives:

- 1) “[Student] will be expected to listen such as to get information to solve, connect, and discuss books read to him,” and
  - 2) “[Student} will be expected to retell a spoken message by summarizing or clarifying, Putting thoughts and feelings into words.”
- b. The second English/Language Arts annual goal is “Writing, Spelling, Penmanship, (sic) The student develops the foundation of writing.”

This goal has one objective:

- 1) “[Student] is expected to gain increasing control of penmanship, pencil grip, paper position, and beginning stroke with smoothness. He will be expected to write his name with correct letter formation, letters of the alphabet upper and lower case and important words, ex: love, mom, and, the , no, etc.).”
- c. Under “Reading/Cog Comm Skills Dev,” the annual goal is: “Reading/letter/sound relationships.”

This goal has one objective:

- 1) “[Student] is expected to name and identify each letter of the alphabet and the sound it makes. [Student] will understand to learn to apply letter-sound correspondences of a set of consonants and vowels to begin to read.” (JX-10).
- d. Under “Reading/Cog Comm Skills Dev,” a second annual goal is “Reading/Vocabulary Development.”

This goal has one objective:

- 1) “[Student} will discuss meaning of words and develop vocabulary by listening and discussing familiar and challenging selections read aloud.” (JX-10).
16. The reading and English goals and objectives set out in the May 2006 IEP do not specify the grade or age level to be attained, nor do they indicate expected level of achievement for the year. Although an annual goal may itself appear immeasurable, the stated objectives often render the goal capable of measure. In this case, however, not only are the annual goals vague and confusing, the objectives do little to clarify them, and ultimately fail to support the amorphous “goals”.
17. The above four academic “goals” do not provide measurable goals within the meaning of IDEA.
18. In the math area, the ARD Committee set an annual goal of “Number, Operation, and Quantative (sic) Reasoning.” The math annual goal had three objectives which addressed

addition and subtraction, sequencing of numbers, measurements, and order of events. This goal and objectives, taken together are appropriate and measurable. (JX-10).

19. School personnel attending the May 2006 ARD could not explain who wrote the goals on how the goals and objectives were developed. The parents were not told that a CLASS Plus evaluation was conducted or that it was used to develop academic goals and objectives. Student's parents did not timely participate in development of the May 2006 goals and objectives.
20. The Vice-Principal of student's elementary school testified that none of the annual goals mentioned above are measurable. (Tr. V. 1, pp. 101-105).
21. The May 2006 IEP was in effect for approximately three weeks before the summer break.
22. According to the IEPs from November 2005 and May 2006, student was to receive 60 minutes of speech services. The ARD Committee deemed this amount to be appropriate to address his disability. Student should have received 1,260 minutes during this time period, but in fact he received only 840 minutes, a shortage of 420 minutes or one-third of the time allotted. (Tr. V. 1, pp.65-69; JX-10, 11, 32).
23. No one ever told student's parents that he did not receive all the speech services under the IEPs of November 2005 and May 2006, a fact learned only through discovery in this due process proceeding. There was no attempt to offer compensatory speech services during the 2006 summer.
24. Student's education program from September 2005 through May 2006 was not appropriate because it was not designed to address his unique educational needs. Student's needs were complex and required an array of services and personnel. Given his lack of classroom education and formal schooling when he entered school, any amount of learning would appear as progress.

There simply was no evidence that speech services alone could or did provide an opportunity for a meaningful education, particularly since he did not received all the speech services to which he was entitled. The education he received, if any, during this time period was de minimus.

25. The ARD Committee met again in June 2006 to plan student's summer program. Two annual goals and speech services were carried over from the May 2006 ARD. He received the speech services that were provided under the June 2006 IEPs. (JX-11).
26. The speech goals originally developed in November 2005 were readopted at every subsequent ARD meeting, including the December 2006 annual review, despite the fact that the speech therapist never submitted any documentation showing student's progress in speech. In the four ARD meetings held over 13 months, not a single written progress report was ever provided to the Committee or the parents. The minutes of these four

meetings failed to show that student's speech goals were even discussed or reviewed. (Tr. V. 1, p. 60, Tr. V. 4, pp.655-657; JX-17).

27. Failure to provide the parents with progress reports on student's speech program interfered with their right to meaningfully participate in the development of his program.
28. Before convening the August 31, 2006 ARD, the resource teacher gave student another CLASS Plus evaluation to determine his levels of academic and social performance. The parents were neither notified nor given a copy of the CLASS Plus evaluation. The failure to notify the parents of the assessment, to provide them a copy, to show or discuss the results of this assessment with the parents, interfered with their right to meaningfully participate in the development of student's educational program. (Tr. V. 3, p.367)
29. The August 31, 2006 ARD Committee reviewed student's program and increased special education time, ordered additional evaluations, and considered a Behavior Intervention Plan (IEP). The parents were aware that the speech therapist would not attend this meeting, but they were never informed that she would be unavailable to provide services until January 2007. The District, however, knew within a week later that the campus speech therapist would be out on leave and unavailable to provide services. (Tr. V. 1, p. 107; JX-12).
30. The failure of the District to provide the parents information about the lack of speech services denied them their right to meaningfully participate in the development of their child's education plan.
31. The August 2006 ARD Committee reviewed the Texas Autism Supplement and provided services thereunder. Accordingly, student was placed in a resource class for 150 minutes per day, and the rest of his day was spent in general education with a modified TEKS (Texas Essential Knowledge and Skills). In addition, student was to receive in-home training services and social work services. (JX-12).
32. The August 2006 schedule of services states that student will spend time in his general education class with modified TEKS and time in a special education class. For Language Arts, Reading, and Math, he was to attend regular education classes and receive support for these subjects in a resource class. The IEP does not specify the time of day, only the amount of time that student would attend regular education classes with an inclusion teacher. Similarly, the IEP does not specify when student would attend his resource class for supplemental teaching. (JX-12).
33. Although student was to attend resources classes for a specified time, 150 minutes, the resource teacher never documented the time he actually spent in the resource class. student's parents did not know that he was not in his resource class for 150 minutes of academic support. The resource teacher determined on a daily basis whether or not student would attend resource class for academic support. Although the resource teacher

was present in his regular education class, there was no documentation to show how she was using the general education time or resource class time. The parents did not know if student was receiving his services as required by his IEP. The unilateral decision by the resource teacher to leave student in his regular education classroom rather than give him 150 minutes in the resource class room was a change a placement. The failure to inform the parents of a placement change interferes with their meaningful participation in placement decisions. (Tr. V 2, pp. 231-240; JX-12).

34. On December 8, 2006, the ARD Committee met for student's annual review. The Committee did not address speech services. Student had not received speech services in school since his summer program. Although student attended a Saturday speech camp and received 240 minutes of services, he lacked 820 minutes for the 2006 fall semester. Student's speech services did not begin until January 25, 2007.
35. The December 2006 Committee drafted a new Behavior Intervention Plan (BIP) to address student's off-task behaviors, his frustration, and his inappropriate expression of needs. The Committee also added occupational therapy, assistive technology, and a computer software program. Yet again, the ARD Committee adopted the academic, speech and behavior IEP from November 2005.
36. The progress report for week of December 8, 2006, noted that student had mastered only one of nine objectives in his IEP. Despite this, the December 2006 ARD did not update his performance on the annual goals and objectives.
37. Progress reports dated November 7, 2006 and January 9, 2007, showed student had not met expectations in math, phonological awareness, vocabulary, reading fluency and comprehension, and writing. (Tr. V. 1, pp. 97-98, 146-147; PX-49-50).
38. The week of February 5-9, 2007, the same week his parents filed for this hearing request, student mastered four of nine objectives. The last complete progress report for the week of March 19-23, 2007, shows student had mastered five of nine objectives. (JX-22; RX-43).
39. With the exception of the August 2006 CLASS Plus evaluation, no other criterion-referenced testing was conducted. From his initial special education admission through his last report card in May 2007, his two assessments and the CLASS Plus evaluation demonstrated that student made no progress in the core academic skill areas.
40. The progress described by his teacher for the 2006-2007 school year began after December 8, 2007 ARD. After his January 9, 2007 progress report, student received additional support services from an occupational therapist, an in-home trainer, and a social worker. By March 2007, the teacher began to see improvements in student's behavior and academic work. For purposes of this Decision, it is not necessary to determine whether the improvement in student's progress reports were due to the new

services he received or to the filing of this Complaint. (Tr. V. 1, pp. 148-156; JX22; RX-42).

41. The April 11, 2007 progress report showed that student was not meeting expectations in math, phonics, phonological awareness, vocabulary, fluency, comprehension, or writing. On his report card for the 2006-2007 school year, student received a zero in English, Reading, and Arithmetic. Student was retained in \*\* grade for the 2007-2008 year. (PX-47-49).
42. During the 2006 fall semester, student failed to receive 18 weeks of speech therapy. From January 1, 2007 through February 5, 2007, student did not receive three weeks of speech therapy. The total speech therapy time owed to student for these two time periods is 1260 minutes. (Tr. V. 1, pp. 73; JX-32).
43. From August 2006 through the filing of this Complaint on February 5, 2007, El Paso ISD failed to provide student a free appropriate public education. Specifically, the District's failure to provide any speech services deprived student of a free appropriate public education. Further, the de minimus academic progress shown on student's report cards and progress reports is further evidence that his IEPs were not designed to address his particular needs in order to provide him a meaningful opportunity to receive an appropriate education.
44. The District's failure to inform student's parents that he was not receiving speech services, its failure to provide student's parents with annual review of his goals at the annual ARD, and its failure to inform student's parents of changes in his resource time interfered with their parents' right to meaningful participation in the development of their child's educational program.

## DISCUSSION

### I. STANDARD OF REVIEW

In general, IDEA entitles every student with a disability to receive a free appropriate public education (FAPE). This means every student is entitled to an individualized education plan (IEP) that is developed according to specified procedures, designed specifically for the student's unique needs, individualized based on assessments and performance, and supported by services that will permit the student to benefit meaningfully from instruction. The United States Supreme Court established a two-prong test for determining whether a school district has provided a free appropriate public education. The first inquiry is whether the district complied with IDEA procedural requirements. The second inquiry is whether the student's education program is reasonably calculated to confer an educational benefit. *Board of Education of Hendricks Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982).

Petitioners allege that El Paso ISD violated the procedural guarantees of IDEA. Specifically, El Paso ISD violated their right to meaningfully participate in the development of their child's education. Under the second prong, Petitioner alleges that El Paso ISD did not

provide their child an appropriate education because it failed to provide an appropriate speech services, written notification of the lack of speech services, current present levels of performances, and measurable goals and objectives.

Because IDEA does not provide a substantive standard specifying the precise level of education required to provide a free appropriate public education, courts have defined the required education as “personalized instruction with sufficient services to permit the child to benefit educationally from that instruction.” An IEP must be designed to achieve a meaningful educational benefit that is likely to produce progress, rather than regression or trivial educational advancement. Although the educational benefit must be meaningful, schools are not required to maximize a child’s potential or provide the best program. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3rd 245 (5th Cir 1997); cert. denied, 522 U.S. 1047 (1998).

The Fifth Circuit delineated four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the student’s assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated. *Id.* at 253. An IEP will be strictly scrutinize for procedural defects that result in a lost educational opportunity for the student, or that infringe on the parents’ opportunity to participate in the IEP process.

## II. MEASURABLE GOALS

IDEA requires that a student’s IEP contain a “statement of measurable annual goals.” The purpose of this requirement is to meet the student’s educational needs that arise from the qualifying disability and to enable the student to participate in the general education curriculum. The IEP must provide the special education and related services necessary to advance appropriately towards attaining the annual goals.

The formulation of annual goals is a central component of the IEP process. It is generally accepted that a “measurable goal” requires some objective criterion under which it is possible to determine whether the student is working towards or has achieved the goal. *R.H v. Ysleta ISD, No. 365-SE-0803* (SEA-TX 2003, citing *Windsor C-1 School Dist.*, 29 IDELR 170 (SEA MO 1998)). The annual goal must be written in positive terms, with sufficient specificity to ensure there will be no confusion in determining if the goal has been met. (*Id.* at 3).

Annual goals requiring only that the student “improve” or “increase skill” in a subject area, without more, are not measurable. (*Id.* citing *Jasmine v. Socorro ISD, No. 235-SE-258* (SEA-TX 2001)). Although IDEA no longer requires the inclusion of short-term objectives or goals, a post-2004 IDEA case endorsed the use of objectives to meet the measurability component for annual goals. A goal stated in general terms but that incorporates by reference measurable criteria from the general curriculum or from a criterion-referenced test, may be measurable. (*Leticia H. v. Ysleta ISD, F. Supp. 2d. 2006*(W.D. Tex. 2006), 47 IDELR 13; *R.H. v. Ysleta ISD* (SEA TX-2003)).

In this case, the four academic annual goals set forth in student's IEP are: 1) Listening and Speaking Purposes, 2) Writing, Spelling, Penmanship, 3) Reading/letter/sound relationships, 4) Reading/Vocabulary Development. These are not goals; at best, they are category titles. El Paso ISD argues that even if the annual goals were not measurable, the objectives were measurable and set the basic floor of opportunity. (*See*, Respondent's Brief Regarding the Definition ... Of a Measurable Goal and Objective, p. 4). As written, the annual goals do not provide a floor of opportunity and do not state measurable goals as defined in law.

To the question of whether the objectives underlying each goal render them measurable, the answer is no. Objectives cannot entirely displace measurable annual goals. The objectives under these academic goals are too vague to provide measurement for the annual goals. IDEA expressly requires that the IEP be formulated with an eye to measurable attainments that may occur during a school year. (*R.H., Id.*, at p. 4). The District cannot circumvent this requirement by having student's parents approve meaningless goals that do not comply with the regulations. I find that the annual goals described in Finding of Fact #15 are not measurable and cannot be measured by the objectives under each goal.

### III. WRITTEN NOTIFICATION OF THE DISTRICT'S FAILURE TO PROVIDE SERVICES

Petitioner contends that during the relevant time period, Respondent changed student's IEP by reducing speech therapy without prior written notification to the parents. The IDEA requires prior written notice to a parent when it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. In short, prior written notice is required if a school district intends to propose a change to an IEP or refuses services.

In this case, El Paso ISD failed to provide a service due to a shortage of qualified personnel. El Paso never proposed or refused a change; it merely failed to implement agreed-upon services. The IDEA statute contemplates a district's proposal to change an IEP or refusal of services. Here, the District did not refuse to provide speech therapy; the merely intended to delay the service until the therapist returned to work. Although El Paso ISD failed to implement the speech IEP, there is no evidence that the District refused to provide or did not otherwise intend not to deprive the services. Under these circumstances, I do not find that the District withheld prior written notification for speech services it refused to provide or change.

### IV. PARENTS' MEANINGFUL PARTICIPATION IN THE ARD

Petitioners contend that El Paso ISD impeded their ability to participate in the ARD process from May 2006 to the filing date of this Complaint because it withheld vital information. Specifically, Petitioners complain that they were never informed that speech services were unavailable, that student's schedule of Resource classes was not being implemented according to his IEP, and that student's progress on his goals were never updated. The last two complaints were discovered through testimony at the hearing.

IDEA establishes certain procedural requirements, including “meaningful parental participation in formulating and implementing a child’s IEP.” The credible evidence established that Petitioners were never informed that Student was not receiving speech services. There was a substantial reduction of speech services during the Spring 2006 semester and a complete lack of services beginning in August 2006 through the end of January 2007. The parents were first informed of the shortage of speech therapists in October 2006 after their repeated complaints. There were four ARD meetings between student’s admission date in special education in November 2005 and February 2007, all which discussed speech services. Not until the last of the four ARD meetings in December 2006 was the lack of speech services discussed. Without such vital information, the parents were deprived of important information regarding services and student’s progress. The parents’ meaningful participation was seriously impeded by this lack of information.

Similarly, the District’s failure to notify the parent of changes in student’s resource time was also a serious error. The resource teacher testified that she decided whether to use student’s resource time in his regular education classroom (inclusion) or in the Resource classroom providing one on one instruction. Student’s schedule provided placement in a regular education classroom with a modified curriculum and in the resource classroom for academic support. Since resource and a general education placement are two distinct placements, changing the amount of allotted time for each constitutes a change in placement. Clearly, on some days, certain events may have prevented teaching Student in the Resource classroom on some days, but the testimony from both the \*\* grade teacher and the resource teacher made clear that student’s resource placement time was unilaterally altered by his teachers. This change in his schedule of services was important information that should have been shared with the parents. Without such information, the parents were deprived of important information regarding the placement.

In both instances noted above, student’s parents were deprived of information that would be vital to their meaningful participation.

## V. FREE APPROPRIATE PUBLIC EDUCATION

IDEA requires that a student receive a meaningful educational benefit, that is more than merely trivial benefit, but not necessarily a maximization of a student’s potential. *Bd. Of Edu. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 175 (1982). Respondent argues that Student received a free appropriate public education despite the lack of speech services. Respondent further argues that Student made progress on his IEPs.

A review of the progress reports, service logs, report card, and the testimony of various witnesses, I find insufficient evidence to show that from November 2005 through February 5, 2006, Student was progressing in his IEP goals. Rather his teacher’s weekly goals reports show that during this period, Student made minimal progress on his academic IEPs. Furthermore, his progress reports through January 7, 2006 showed he did not meet expectations. I find that

Student progress was less than meaningful and could not be substantiated though testimony, weekly goal reports, progress reports, or criteria based assessments.

Student's right to a meaningful education benefit was adversely affected by the lack of measurable annual goals. Coupled with the procedural violation of Petitioners' right to meaningfully participate in the development of their child's education, it is clear that Student was deprived of an appropriate education.

## VI. CONCLUSION

In conclusion, I find that Student was deprived of a free appropriate public education because he was deprived of a significant service, speech therapy, and because the annual goals in his IEPs were not measurable. Additionally, since his parents were denied vital information which denied them the ability to meaningfully participate in the development of his IEP, student's program was not provided in a coordinated and collaborative manner by the key stakeholders. Lastly, the failure to provide student's schedule of services for Resource was a significant change of deprivation of a vital service.

### CONCLUSIONS OF LAW

1. El Paso Independent School District is an independent school district duly constituted in and by the State of Texas, and is subject to the requirements of IDEA, 20 U.S.C. §1401, and its implementing federal and state regulations.
2. Residing within El Paso ISD, Student is currently eligible for special education services under the Autism and Speech Impairment classifications. 20 U.S.C. §1401; 34 C.F.R. §300.7(c) (1, 9).
3. Petitioners met their burden to show that their opportunity to meaningful participate in the development of their child's education plan was significantly impeded by Respondent's failure to provide speech services, failure to inform them of a change in student's schedule of services, and failure to provide progress reports on his annual goals.
4. Petitioners met their burden to show that their child is entitled to speech therapy services as compensation for the deprivation of a free appropriate public education.
5. Student's Present Levels of Performance developed by the May 2006 ARD were appropriate.
6. El Paso ISD failed to provide academic goals and objectives that were measurable within the meaning of IDEA.

## ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, this Hearing Officer hereby **ORDERS** that the relief sought by Petitioner is hereby **GRANTED IN PART AND DENIED IN PART**.

IT IS HEREBY **ORDERED** that Respondent shall convene an ARDC as soon as practical, but no later than ten school days from the date of this decision, to develop a plan for the delivery of 1,680 minutes of speech services, as compensation for the 1,680 minutes of speech therapy services not provided to Student during the period of November 2005 through January 25, 2007. The plan shall include a review of the current speech goals and objectives, and if necessary, the addition, removal, or change of goals and objectives.

IT IS HEREBY **ORDERED** that Respondent shall convene an ARDC as soon as practical, but no later than ten school days from the date of this decision, to review his complete education plan and allow student's parents to meaningfully participate in the development of his education plan.

IT IS HEREBY **ORDERED** that Respondent shall convene an ARDC as soon as practical, but no later than ten school days from the date of this decision, to develop specific measurable annual goals. Such goals shall include objective criteria under which it is possible to determine whether the student is working towards or has achieved the stated goal.

All other and further relief not expressly granted herein is hereby **DENIED**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately, pursuant to 19 Tex. Admin. Code §157.5(n).

**SIGNED** and **ENTERED** this 10<sup>th</sup> of November 2007.

Olivia B. Ruiz  
Special Education Hearing Officer

## NOTICE TO THE PARTIES

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision made by the Hearing Officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2). A civil action brought in state or federal court under 20 USC, §1415(i)(2) must be initiated not more than 90 days after the date the Hearing Officer issues his or her written decision in the due process hearing. 19 Tex. Admin. Code §89.1185(p).

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SCHOOL DISTRICT	§	
RESPONDENT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether El Paso ISD failed to provide speech therapy services as specified in student’s Individual Education Plan (IEP).  
HELD: For the Student  
20 U.S.C.§1415(B)(3); 34 C.F.R. §300.503(a)(1)

ISSUE: Whether El Paso ISD failed to provide student’s parents written notification of the District’s failure to provide speech services as required by student’s IEP.  
HELD: For the District  
20 U.S.C. §1415(c)

ISSUE: Whether El Paso ISD violated Petitioners’ opportunity to meaningfully participate in the development of their child’s education planning.  
HELD: For the student  
20 U.S.C.§1415(f)(3)(E)(ii)(I); 34 C.F.R. §300.501(b)(1)(i)

ISSUE: Whether El Paso ISD failed to provide student an appropriate education program based on then-current Present Levels of Performance (PLOP) and his functional performance.  
HELD: For the District  
20 U.S.C. §1414(c) (B) (ii)

ISSUE: Whether El Paso ISD failed to provide measurable goals and objectives.  
HELD: For the Student  
34 C.F.R. §300.347(a) (2)