

**BEFORE A SPECIAL EDUCATION
HEARING OFFICER FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

**Student, b/n/f
Parent,
Petitioner**

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§
§

v.

DOCKET NO. 022-SE-0903

**CORPUS CHRISTI
INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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REPRESENTING PETITIONER:

Christopher Jonas
Center for Special Education Law
3349 Jamaica
Corpus Christi, Texas 78418
Telephone: 361/937-1801
Facsimile: 361/937-1802

REPRESENTING RESPONDENT:

David M. Richards
Richards Lindsay & Martin, L.L.P.
9801 Anderson Mill Road, Suite 230
Austin, Texas 78750
Telephone: 512/918-0051
Facsimile: 512/918-3013

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| Student b/n/f | § | |
| Parent | § | BEFORE A SPECIAL EDUCATION |
| Petitioner | § | |
| | § | |
| v. | § | HEARING OFFICER |
| | § | |
| CORPUS CHRISTI | § | |
| INDEPENDENT SCHOOL | § | FOR THE STATE OF TEXAS |
| DISTRICT, Respondent | § | |

DECISION OF THE HEARING OFFICER

Statement of the Case and Procedural History

Petitioner, Student (“Student” or “Petitioner”), by next friend Parent, requested an impartial due process hearing under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, *et seq.*, as amended, against Corpus Christi Independent School District (“Corpus Christi ISD” or “Respondent”). Petitioner filed his Request for Hearing with the Texas Education Agency (“TEA”) on September 17, 2003, and the Decision Due Date was set in compliance with the forty-five day rule for November 1, 2003. The undersigned Hearing Officer received the case assignment on September 18, 2003.

The first pre-hearing conference was held by telephone on September 26, 2003. The Parties jointly requested four continuances of the hearing date granted for good cause shown. The due process hearing was held on June 16-17, 2004, in the Region II Educational Service Center in Corpus Christi, Texas. At the conclusion of the hearing, the Parties requested and were granted leave to file written closing argument by July 12, 2004, and the Decision Due Date was extended accordingly to August 9, 2004. The Decision was issued on August 9, 2004.

Petitioner alleged that Student failed to make proper educational progress under the program offered by Corpus Christi ISD. Further, Petitioner alleged that Corpus Christi ISD did not properly implement speech therapy for Student. As relief, Petitioner sought placement of Student at a suitable residential facility at school district expense and compensatory speech services.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

- 1) Student is a ***-year-old student in the *** grade at *** School (“***”) in Corpus Christi, Texas.
- 2) Student lives with his mother, Parent, within the geographical boundaries of Corpus Christi ISD. He has attended Corpus Christi ISD since 2002.
- 3) Student qualifies for special education and related services as a student with Autism (“AU”), Mental Retardation (“MR”), and Speech Impairment (“SI”). [Petitioner’s Exhibit 2].
- 4) Student is incontinent and has not mastered self-care skills. He needs 24-hour supervision. [Petitioner’s Exhibits 28 and 29; Transcript at 31 and 170].
- 5) Student is nonverbal. Although he makes noises, his use of words has been sporadic. [Transcript at 258, 263, and 281].
- 6) Prior to attending Corpus Christi ISD, Student resided with his family within the jurisdiction of West Oso ISD. [Transcript at 28].
- 7) In December 1998, West Oso ISD placed Student in the Shiloh Treatment Center (“Shiloh”) in Manvel, Texas. Shiloh is a facility for students with disabilities. Shiloh Admission Assessment documents show that Student was referred to the facility for “residential educational services secondary to behavioral problems that pose a significant danger to himself and others.” [Petitioner’s Exhibit 21 at 1; Respondent’s Exhibit 23 at 1].

Previous Residential Placement

- 8) On May 27, 1999, West Oso ISD convened an Admission, Review, and Dismissal Committee (“ARDC”) meeting to discuss Student’s placement. West Oso had developed a program for Student within the District. The ARDC wanted to return Student to West Oso for placement in a life skills unit. After a recess due to the parents’ disagreement, the ARDC convened on June 10, 1999, and decided that Student would remain at Shiloh for Extended School Year (“ESY”) services for the summer session. Student’s father disagreed with this determination. [Petitioner’s Exhibit 20 at 46-49].
- 9) During his Shiloh placement, Student made progress in the areas of communication, toileting, dressing and feeding himself, and on-task behaviors. Shiloh managed Student’s multiple medications to support his behavioral progress. In his educational program at Shiloh, Student did not appear to be capable of interacting with other children, was easily distracted, and had no behavioral competencies for meeting his own safety needs. Student did not display aggressive behavior in the educational program at Shiloh. While participating at the Shiloh program, Student did not have opportunities to interact with non-disabled children. [Transcript at 28; Petitioner’s Exhibits 20 at 38-39, 41, 43-44 and 21 at 3-5].

- 10) At the end of his Shiloh placement in September 1999, Shiloh staff reviewed Student's service plan. Student had improved in the area of toileting, yet he did not signal well. The Shiloh staff discussed extending his toileting schedule to 45 minutes, noting that Student's toileting was better at school than at home where there is less structure. During an extended home visit, Student's toileting skill mastery reduced to pre-treatment levels. Parent was unable to maintain a successful toileting program for Student at home. She did not ask Shiloh staff what to do nor did she ask for an explanation. [Petitioner's Exhibit 21 at 27-28; Transcript at 49-50].

Corpus Christi ISD

- 11) Student returned to West Oso ISD for a short time before moving to Corpus Christi ISD and enrolling in *** School. [Transcript at 139-140].
- 12) Student's home campus in Corpus Christi ISD, *** School, does not have an AU unit. During the 2002-2003 and 2003-2004 school years, Student received educational services in the AU unit at ***. [Petitioner's Exhibit 2 at 11-12].
- 13) ***'s principal, Ms. ***, met with the incoming AU students in Summer 2002 to help ease their transition. She also met with the teacher and paraprofessionals to discuss the goals for the year and the incoming students. She ensured that the classroom teacher and paraprofessionals in the *** AU unit received professional development training in two methods of working with autistic children, the Treatment and Education of Autistic and Related Communication Handicapped Children ("TEACCH") model and the Picture Exchange Communication System ("PECS"). [Transcript at 134-139].

2002-2003 School Year

- 14) The certified special education teacher in the AU unit during the 2002-2003 school year was Ms. ***. With the assistance of several paraprofessionals, the AU staff served seven students during the school year. [Transcript at 138].
- 15) Ms. *** routinely visited the AU unit each day throughout the 2002-2003 school year to check on the classroom, review the students' IEPs to determine the goals and services that were needed, and discuss and coordinate speech services with the speech therapist, Ms. ***. As the year progressed, she noted increases in Student's comfort level with her and his use of gesturing and pictures to indicate what he wanted, and decreases in his need for paraprofessional attention during lunch periods. By the end of the year, she observed that Student required less hand-on-hand instruction to complete tasks. [Transcript at 138 and 144-145].
- 16) Corpus Christi ISD progress reports from the 2002-03 school year reflect Student's progress towards his IEP objectives. By the end of the school year, Student mastered his objectives of throwing a ball, stacking blocks, and placing objects in a container. Student had improved from *** to *** mastery in decreasing toileting accidents, improved his clothing removal to accommodate toileting, increased ball catching ability, and improved his ability to follow

simple commands. He showed improvement from *** to ** mastery in following individually given instructions and from *** to *** mastery in participation in games. Student remained at the *** mastery level for participation in Community Based Instruction (“CBI”), crossing the street using auditory and visual cues, attending environmental sounds, communication of toileting needs, brushing teeth, wiping his nose, kicking water while sitting on the edge of the pool, and floating on his back. [Respondent’s Exhibit 9].

- 17) Since Student’s ARDC on December 13, 2001, Student’s IEP specified his speech services as 30 minutes every six weeks of consultation between Student’s teacher and the speech therapist. [Petitioner’s Exhibit 3 at 5].
- 18) Student receives 30 minutes of occupational therapy every three weeks as part of his special education services. [Petitioner’s Exhibit 1 at 6].
- 19) During the 2002-2003 school year, Student received consultative speech services from Ms. ***, a speech therapist with Corpus Christi ISD. When Ms. *** was in the classroom, she also provided direct speech services to Student, although the extra speech services were not specified in Student’s IEP. [Transcript at 141].
- 20) Petitioner presented no evidence to show that Corpus Christi ISD failed to provide consultative speech therapy services to Student.
- 21) When Ms. *** left her employment with Corpus Christi ISD during the last six-week grading period of the 2002-2003 school year, a substitute teacher with special education experience replaced her. [Transcript at 151-153].

2003-2004 School Year

- 22) Ms. *** interviewed 17 applicants and observed final applicants functioning as substitutes in the AU unit before selecting Ms. *** as the replacement for Ms. *** in October 2003. Ms.*** received support in her new teaching role with videotapes on how to set up and run the classroom, opportunities to visit similar classrooms within the school district with follow-up assistance from the instructors, and on-going assistance from Ms. ***, a speech therapist with experience in the TEACCH model. [Transcript at 135-136 and 164-166].
- 23) Throughout the 2003-2004 school year, Student’s class was staffed with a certified special education teacher and two paraprofessionals for the four students in the class. Ms. *** had the additional assistance of a *** aide, so that the students had one-on-one assistance during morning hours. [Transcript at 170-171].
- 24) Student received consultative speech therapy services as specified by Student’s IEP from Ms. ***. Although his IEP did not call for direct speech services, Ms. *** also worked directly with Student for 30 minutes each week on various speech skills, including increasing PECS usage, picture schedules, and attentiveness. By the end of the school year, Student could sit attentively for 30 minutes without redirection from an aide. [Transcript at 277-279].

Community Based Instruction and Social Interaction

- 25) Interaction with the community through CBI is an important component of Ms. ***'s class and is part of the TEACCH model designed to immerse students in daily living activities and practice these skills in the community. During the 2003-2004 school year, Student and his classmates made trips to a seafood restaurant, a cafeteria, several fast food restaurants, a local shopping mall, visited a flight simulator, a grocery store, a park, and a swimming pool. Student enjoyed these trips, and did not display any remarkable behavior problems in the community settings. [Transcript at 146-147, 166-168, and 197].
- 26) Student's social skills improved during January to May 2004. He exhibited increased confidence, less frustration, and an increased ability to communicate with accuracy through gestures and various utterances to make his wishes known. Student played longer with his peers and he exhibited exceptional behavior during CBI. By the conclusion of the school year, Student actively played with other regular education students during his physical education class in the "Clean the Closet" ball game, a two-team game with the winning side throwing more balls over the net to the other team. During the game, students brought balls to Student for him to throw over the net. [Respondent's Exhibit 39; Transcript at 251-252].
- 27) Student interacted with regular education *** grade students at lunch during the 2003-2004 school year. After Student ate lunch with another special education classmate and two aides, Student joined a *** grade table and attended to the other students' talking. [Transcript at 148 and 260-261].

Basic Life Skills

- 28) Student's eating habits have improved at school and Student no longer grabs food off the plates of others. ***, one of the paraprofessionals in the AU classroom who accompanied Student during lunch, observed Student learn to become a cleaner eater and use his fork appropriately over the 2003-2004 school year. By the end of May 2004, Student learned to choose his meal in the cafeteria, select his condiments, put his food choices on the tray while Ms. *** held the tray, carry the tray to his table, pull out his chair, sit down, eat, and had begun to use a napkin to wipe himself. [Transcript at 249-250].
- 29) Ms. *** administered the Revised Brigance Diagnostic Inventory of Early Development Test ("Brigance") to Student in January 2004 and May 2004. Student improved in all skill areas with the following scores: Gross-Motor Skills and Behaviors – *** to *** years; Fine Motor Skills and Behavior – *** to *** years; Self Help Skills – *** to *** years; General Speech and Language Skills – *** to *** years; General Knowledge and Comprehension – *** to *** years; Social and Emotional Development – *** to *** years; and Average Age Equivalent – *** to *** years. [Respondent's Exhibit 39].
- 30) Student made progress in toileting during the 2003-2004 school year by increasing his use of a communication device to indicate his need to go to the bathroom, pulling down his shorts and underwear in the toilet, sitting on the commode, powdering his diaper, soaping and rinsing his hands at the sink, turning off the water, using the paper towel dispenser, and throwing away the paper towel appropriately. Because Student's clothes and pull-ups were frequently too tight, he

did not make further progress in dressing and undressing without assistance.¹ [Respondent's Exhibit 28; Transcript at 179-181, 248-249, and 268-270].

Parent and School Interaction

- 31) Corpus Christi ISD used a daily communication log to communicate with Parent about obtaining the correct size diapers, permission slips, signed progress reports, and other items. Student's teachers talked with Parent and attempted to share successes and strategies with her when she was at school. As part of these logs, Corpus Christi ISD personnel frequently noted Student's condition upon his arrival at school. Student often arrived at school dirty, wet, or with feces under his fingernails, delaying the start of his instructional day while staff cleaned him up. [Respondent's Exhibits 6, 28, and 41; Transcript at 43, 183-184, and 254-255].
- 32) Parent does not believe that Student is making progress in learning at Corpus Christi ISD because she has not seen similar progress in her home. As a working mother, she finds it difficult to take care of Student. She now keeps Student indoors at home and does not take him out of the house, reporting that he tries to run away and takes his clothes off in public. [Transcript at 30-32].
- 33) Parent believes that Student has lost skills that he learned during his Shiloh placement. [Transcript at 62].
- 34) Both Student's parents report problems with Student in their respective home settings with throwing food and other objects, putting his hands in his dirty diapers, and putting things into his mouth such as rocks, his own feces, and dog feces. [Transcript at 30-31 and 61-62].
- 35) Parent has remarried and has two young daughters ages *** and ***. Parent is not comfortable leaving his daughters unsupervised with Student because Student often hits his younger siblings. [Transcript at 59-60].
- 36) Student has extended family living in his community, including an aunt and a cousin. Student's cousin lives with Student and his mother and helps with Student's care. [Transcript at 44 and 142].
- 37) Student's parents have not accessed in-home training services offered by Corpus Christi ISD. Although Parent had tried in-home training services in the past, she did not wish to access these services because "it just didn't work for us." [Petitioner's Exhibit 6 at 5; Transcript at 55].
- 38) Parent has not observed Student in the *** AU classroom setting. Parent has limited her visits to the AU unit to 20-30 minutes, because she noted that once Student saw her, he wanted to go home with her. [Transcript at 42-43, 52, and 64-65].
- 39) Parent believes that Corpus Christi ISD staff made untruthful claims that Student made progress in school because she does not see the same things at home. Neither Parent nor Parent has been able to replicate the gains that Corpus Christi ISD has experienced with Student in

¹ The record in this proceeding alternately refers to "pull-ups" and diapers without differentiating between the two.

their respective homes. Likewise, neither parent has talked to the school about why they do not see the gains at home that the school staff observes at school. [Transcript at 52-53 and 64-65].

- 40) Student has had no disciplinary problems at Corpus Christi ISD. He has not assaulted other students or other members of the community, has not run away from the school campus, and has not tried to run off from his group during CBI trips. There has been only one occasion when Student left his classroom without adult supervision. While the staff was working with another classmate who had an accident, Student appropriately brought the staff the symbol for swing, the next activity indicated on the class schedule. Student was told to wait, but he went outside to the swings, located directly outside the classroom, without supervision. [Transcript at 149, 169. and 252-253].
- 41) Student appears happy at school and is well liked by the school staff. He particularly enjoys CBI outings. [Transcript at 250, 257, and 265].
- 42) In April 2003, Parent complained about the level of speech services that Student received and alleged a lack of educational progress. As a result, Ms. *** arranged a meeting for Parent and several special education staff members. The meeting was held in April 2003, at which time Parent requested residential placement for Student. [Transcript at 139-142].
- 43) On May 14, 2003, Corpus Christi ISD gave written notice for an ARDC meeting to discuss the parental request for residential placement. Respondent set the meeting for May 27, 2003, but the meeting was never held. On May 21, 2003, Petitioner filed his first due process request, Docket No. 296-SE-0503, later dismissed without prejudice on September 17, 2003. [Pre-hearing Conference Transcript (September 26, 2003) at 3; Respondent's Exhibit 10].
- 44) Student received ESY during the summers of 2002 and 2003. [Respondent's Exhibit 13].
- 45) At the time of the hearing, Student was scheduled to begin ESY services the following week on June 21, 2004. ***, a diagnostician with Corpus Christi ISD, established that Parent was not properly notified about the plans for ESY prior to the hearing, as no ARDC had been held since September 2003 after the initiation of this proceeding. [Transcript at 283-284].

46)

Evaluation by Dr. ***

- 47) Dr. *** is a licensed specialist in school psychology in private practice in Corpus Christi, Texas. He evaluated Student on December 23, 2003, and January 6, 2004. Dr. *** looked at school documents, teacher notes, the full individual evaluation conducted by Corpus Christi ISD, and Shiloh documents as part of his review. Dr. *** administered the Slosson Intelligence Test (Slosson") to Student to give an indication of Student's ability to learn, solve, and understand problems. On the Slosson, Student's chronological age of *** years, *** months was compared with his mental age of *** year, *** months to yield an intelligence quotient of less than ***, or within the profound range of mental retardation. Dr. *** reviewed Parent's responses to a Neuropsychological Symptoms Survey to indicate Student's recent difficulties. Additionally, Dr. *** conducted an assessment with Student's parents to determine Student's

present developmental skills by administering the Vineland Adaptive Behavior Scales (“Vineland”). On the Vineland, Student’s adaptive behavioral composite standard score fell below ***, with severe deficits in all areas of communication, socialization, and motor skills with a functioning age of *** year, *** months. [Petitioner’s Exhibit 28; Transcript at 73-74].

- 48) During Dr. ***’s testing, Student was non-communicative and failed to make eye contact with the evaluator. Dr. *** recommended Student’s placement in a structured residential treatment setting for his safety and to develop daily life skills. He recommended speech therapy for work on Student’s picture communication and hand symbols. [Petitioner’s Exhibit 28 at 3 and 6].
- 49) In Dr. ***’s opinion, the severity of Student’s impairments require placement in a residential setting. He does not believe that consistency across settings is possible as “a parent is a parent and a professional is a professional, and I firmly believe that parents should not be therapists.” Dr. *** agrees that parents should receive some training and have someone to help them “handle certain situations and explaining to them the best way to do this so there’s some consistency....That’s not therapy.” Dr. *** acknowledged that Student’s future retention of what he learns in a residential setting will depend on a “whole series of factors,” so that both regression and learning retention are possible. [Transcript at 92-93].
- 50) Dr. ***’s written report and testimony did not include specific recommendations for successful transition from a residential treatment center to home and still maintain any gains achieved in a residential setting. [Petitioner’s Exhibit 28].
- 51) At the time of Dr. ***’s evaluation, Student’s medications were Topamax at 25 mg. and Amiriptyline at 10 mg. At the hearing, Dr. *** stated that, generally speaking, the research on medicine and therapy “is very clear that the single best combination for success is a combination of medication and therapy.” [Petitioner’s Exhibit 28 at 3; Transcript at 94-95].
- 52) Student is not likely to have an ascending straight-line learning curve for skill acquisition. Dr. *** indicated that for Student, “a lot of ups and downs” may be expected. His growth curve may take years, with the time between growth and regression periods varying “on a hundred different factors, up to and including how his brain happens to be sparking that day.” [Transcript at 93-94].

Comprehensive Reevaluation by Ms. * and Dr. *****

- 53) On May 4, 2004, Student underwent a comprehensive reevaluation at the request of Corpus Christi ISD to establish continued special education eligibility and to assist in determining Student’s overall level of scholastic and cognitive functioning. The evaluation was performed by ***, a licensed psychological associate and licensed professional counselor, and reviewed by Dr. ***, a psychologist in private practice in Corpus Christi, Texas. Dr. *** found that Student continued to qualify for special education services as a student with AU and Attention Deficit Hyperactivity Disorder, by history, with a moderate to severe range of MR. [Petitioner’s Exhibit 29].

- 54) As part of Student's comprehensive reevaluation, Ms. *** interviewed Parent and administered a variety of testing instruments to Student. Student failed to respond to the Wechsler Intelligence Scale for Children – Third Edition. On the Slosson – Revised, Student's standard score was less than ***, or a Mean Age Equivalent of less than *** years, *** months. Student's percentile score was less than ***, pointing to a moderate to severe level of MR. Student's scores on the Peabody Picture Vocabulary Test – Revised yielded an age equivalent of below *** year, *** months with a standard score of ***. Parent's responses to the Vineland yielded standard scores below *** and severe deficits in all domains, commensurate with a moderate to severe level of MR. [Petitioner's Exhibit 29].
- 55) Ms. *** evaluated Student's autistic behavior during the May 2004 evaluation with the Gilliam Autism Rating Scale ("GARS") and the Childhood Autism Rating Scale ("CARS"). Based on Parent's responses to the GARS, Student scored a AU quotient of *** or the *** percentile compared to other children with an autistic spectrum disorder. On the CARS, Student fell into the severe range of autistic behaviors with a total score of ***. [Petitioner's Exhibit 29 at 4].
- 56) At the time of his comprehensive reevaluation, Student was generally healthy and took Topamax to control seizures. Parent reported that Student had been treated by several psychiatrists in the past, but that psychotropic medications were not effective in controlling his behavior or reducing his activity level. [Petitioner's Exhibit 29 at 2].
- 57) In Dr. ***'s opinion, Student will likely have "splinter" in skill acquisition with some periods of developmental regression in skill acquisition. As no "magic formula" exists for preventing periodic regression in students with AU and MR, "on-going intensive work across settings" will be required to generalize and maintain Student's minimal educational gains. As periods of regression for an autistic student like Student may last indefinitely, a previously-learned skill may never be reestablished. [Transcript at 222-224].
- 58) Dr. *** and Ms. *** concluded that Student will "likely always be dependent on others for meeting his daily living needs and will require full-time supervision and care." As part of their report, Dr. *** and Ms. *** made specific recommendations for Student's educational success, including the following: a) keeping a predictable routine in place; b) provision of a highly individualized academic plan that breaks down targeted skills into basic components; c) a consistent toileting schedule; d) breaking down social skills into simple components with frequent reinforcement; e) ensuring enough physical and emotional space with outdoor play and opportunities for peer cooperative group play; f) focus on increasing positive behaviors and maintain a highly structured predictable routine, with consistency across settings; g) intensive speech therapy; h) occupational therapy; i) using the picture identification method for Student to indicate his specific needs; and, j) reconsideration by Parent of a psychiatric evaluation of Student to assist him with sleep onset, maintenance problems, and to promote behavioral control and attention. [Petitioner's Exhibit 29 at 5-6].
- 59) Dr. *** does not believe a residential setting is necessary to be able to implement the scholastic recommendations for Student, as all the recommendations may be implemented in a self-contained special education classroom. [Transcript at 224-225].

Discussion

Background

It is undisputed that Student is a student with MR compounded by autistic behaviors. As such, Student faces challenges in learning the most basic life skills. However, the challenge to Student does not stop upon learning a specific behavior. It is undisputed that Student will face uncertainty in retaining his learning over his lifetime.

This is Petitioner's second due process filing against Corpus Christi ISD before this Hearing Officer. The first filing, Docket No. 296-SE-0503, was dismissed without prejudice on September 17, 2003. On the same day, Petitioner re-filed his due process request. As in the first docket, Petitioner does not believe that Student has made educational progress under his individualized educational program ("IEP") at Corpus Christi ISD and distrusts all claims of progress by the school district because Student's parents do not have the same successes with Student in their respective homes. Both parents believe that Student has regressed from the learning he acquired during his six-month placement at the Shiloh Treatment Center in Manvel, Texas, during the 1998-1999 school year. Student's parents allege that Corpus Christi ISD failed to provide the speech services for Student indicated by his IEP. Student's parents want him returned to a residential setting, although they fail to identify what treatment center, and want compensatory speech services.

Corpus Christi ISD, by contrast, is convinced that Student's placement in an AU unit at *** School is the least restrictive setting for him, allows him opportunities for interaction with peers and his community, has allowed him to make educational progress, and has appropriately served him with the services specified in his IEP, including speech services. As such, Corpus Christi ISD does not believe that Student requires a residential setting in order to continue his educational gains and denies that Student is entitled to compensatory speech services. I agree with Respondent.

Legal Standard

Student bears the burden to show that the program offered by the school is inappropriate. *Tatro v. Texas*, 703 F.2d 823 (5th Cir.1983) *aff'd on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883; *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5th Cir. 1986).

The IDEA mandates all school districts that receive federal funding to offer a free appropriate public education ("FAPE") to disabled students within their geographical boundaries. 20 U.S.C. §1412(1) and §1414(d). School districts are required to provide a "basic floor of opportunity" to students qualified for IDEA services through an educational program that is reasonably calculated to confer an educational benefit. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034, 3049 (1982). Maximization of the student's educational benefit is not required so long as the student receives "some benefit." *Id. at 3051*. The IDEA requires development of an IEP for each eligible student, containing goals and objectives for the student to achieve, a schedule of services deemed necessary to achieve those goals and objectives, and a placement in the least restrictive environment appropriate for addressing the student's educational needs. The IEP does not guarantee that the student will achieve all of the goals and objectives identified for the student. 34 C.F.R. §300.350(b) However, schools must provide the

services scheduled in the IEP and make a “good faith effort” to help the student achieve goals and objectives. 34 C.F.R. §300.350(a)

To determine whether a student is receiving a FAPE, the Fifth Circuit has identified four factors to examine in determining if a student’s IEP is reasonably calculated to provide a meaningful benefit under IDEA: 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. *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

The second *Michael F.* factor requires the public school to ensure that the student’s proposed placement is the LRE. *Michael F.*, *supra*. In determining whether a proposed placement represents the LRE for the student, the school district must first determine whether the student may be educated within a regular classroom environment with the use of supplementary aids and services. *Daniel R.R. v. SBOE*, 874 F.2d 1036 (5th Cir. 1989). If the answer is no, then the school district must ensure that the student is mainstreamed to the maximum extent possible. *Id.*

The LRE for a student means not only the freedom from restraint, but also “the freedom of the child to associate with his or her family and able-bodied peers to the maximum extend possible.” *Teague ISD v. Todd L.*, 999 F.2d 127,128 (5th Cir. 1993) (*citing Sherri A.D. v. Kirby*, 975 F.2d 193, 207 n. 23 (5th Cir. 1992)). Careful consideration should be given prior to the removal of a student from his home community. *Id.*

The IDEA requires disabled students to be educated with their nondisabled peers to the maximum extent appropriate. 20 U.S.C. §1412(a)(5). Implementing regulations of the IDEA allow removal of students with disabilities from regular to special education classes only if education in the regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. 34 C.F.R. §300.550(b)(2).

State regulations limit the placement of a student into a residential setting only for situations where the student requires the placement in order to receive a FAPE. 19 T.A.C. §89.61. If the residential placement is proposed “primarily due to medical reasons or primarily due to problems in the student’s home,” then the residential placement is not appropriate within the meaning of IDEA. 19 T.A.C. §89.61(b)(1). Additionally, a residential placement may not to be approved under IDEA’s implementing regulations until a school district has attempted implementation of a less restrictive placement prior to the residential placement. *Id.*

Student’s Progress under his IEP

The unrefuted evidence and hearing testimony in the record before me established that Student’s parents have difficulty managing him in their homes. At the time of hearing, Parent no longer takes Student out of her house. They are convinced that Student is not making progress on toileting at school and has regressed on his eating habits because they have not seen success at home. By contrast, Corpus Christi ISD gave extensive testimony and produced copious record evidence to show Student’s progress on his IEP goals and objectives. I find the District’s evidence more credible.

2002-2003 School Year

During Student's first year in the AU unit at ***, the teacher and paraprofessionals had daily in-classroom oversight of the campus principal. By the end of the year, he required less assistance from classroom aides, increased use of gesturing and pictures to indicate his wants, and less hand-on-hand instruction for task completion. Further, Student's progress reports for the school year reflect mastery of the physical skill objectives of block stacking and putting objects in a container as well as mastery of the social interaction objective of throwing a ball. At the end of the school year, Student progressed in two of his five self-help skill objectives by decreasing his toileting accidents and clothing removal for toileting, but did not make gains in communicating his toileting needs, brushing his teeth, or wiping his nose. He showed improved social skill interaction by participation in games, catching balls, following instructions and commands, but had not improved in his CBI participation, swimming activities, and attending environmental, auditory, and visual cues. He received more speech services than specified by his IEP, including direct speech therapy services.

2003-2004 School Year

In the following year, Student progressed further on his goals and objectives in the 2003-2004 school year. The credible testimony of Respondent's witnesses ***, ***, ***, and *** detailed numerous specific examples of Student's improvement under their supervision. By the end of the school year, Student had shown marked improvement in his CBI participation and interaction, had improved the detailed steps of toileting mastery, improved his feeding skills, and increased his ability to socially interact with non-disabled peers. Student failed to present any disciplinary problems, exhibited exemplary behavior in all CBI activities, and exhibited no assaultive behaviors. He never ran away on CBI trips, and only once did he leave the classroom without proper supervision to go to the swings in the adjacent school yard – the next routine activity on the class schedule.

The record evidence established Student's continued progress during the school year as reflected by voluminous detailed communication logs and progress reports. Student's teacher, Ms. ***, administered the Brigance to Student in January 2004 and again in May 2004. These testing results show that Student increased his Average Age Equivalent from *** years to *** years, *** months with corresponding gains in all areas. I find that the preponderance of the record evidence established that Student progressed in most, if not all, of his targeted IEP objectives and conveyed educational benefit under the standard of *Rowley, supra*.

Application of the *Michael F., supra*, four-part inquiry to the record evidence shows that Student received an individualized IEP, developed on assessment data and classroom performance. Petitioner did not contest the individualized nature of his IEP. Student received his education in the highly structured AU unit setting, thereby meeting his need for small group interaction under the close supervision of a certified special education teacher and two paraprofessionals. The goals and objectives of his IEP specifically address his life skill deficits and the services provided under his IEP are tailored to meet those needs. I find that Student's IEP meets the first prong of the *Michael F.* test.

The second prong of the *Michael F.* inquiry focuses on the LRE for implementation of Student's IEP. The overwhelming preponderance of the evidence shows that Student is able to receive a benefit in

the AU unit at ***. This setting has allowed him the opportunity to interact with non-disabled peers in a less restrictive setting than the residential placement sought by Petitioner. Because a residential placement is not the LRE for Student, it fails to meet the second prong under *Michael F.* and cannot provide FAPE to Student. I conclude that Student must be placed in a less restrictive setting than a residential setting.

The third prong of the *Michael F.* inquires into the delivery of Student's IEP services. The preponderance of the hearing testimony and record evidence established that these services were constantly monitored by the campus principal, overseen by his teachers, and included interaction and support to Student's teacher and staff. Student's parents were apprised of the day-to-day progress and needs of Student through the written communication log, telephone calls, conversations with his teachers and paraprofessionals, and a parent meeting to discuss concerns. I find that Student's program meets the third prong of the *Michael F.* test.

The fourth prong under the *Michael F.* considers the positive academic and non-academic benefits from Student's program at ***. Academically, Student showed improvement in most, if not all, targeted areas of learning. Corpus Christi ISD staff gave credible testimony about his peer interactions in the lunchroom and during physical education class. The preponderance of evidence established that not only does Student enjoy participating in CBI outings, he is remarkably free of behavior problems when out in the community. Student has a record of positive interactions with school staff. I find that Student's placement in the AU unit meets the fourth prong of the *Michael F.* inquiry.

Retention of Learning

The expert testimony in this proceeding clarified the severity of Student's disability as well as his difficulty in retention of learning. As a student not only with MR but also AU, it is unrealistic to expect an ascending learning curve for Student at all times. Petitioner's expert witness, Dr. ***, expects Student to have a more erratic learning curve, with periods of growth and regression that vary based on many different factors. Dr. *** believes that Student's progress will likely not be visible in terms of daily or weekly progress, but instead the learning curve may take years to develop.

Respondent's expert witness, Dr. ***, agrees with Dr. *** that no method is available to predict the frequency of Student's regression periods. In Dr. ***'s opinion, Student's learned skills, once mastered, may disappear altogether and not return. To generalize his skills, consistency across settings is necessary, such as school to home. Dr. *** and Ms. *** made specific recommendations for Student's educational program. Dr. *** does not believe that Student requires residential placement in order to make educational progress, as Student is able to receive all of the recommendations in their report in a self-contained special education classroom setting.

By contrast, Dr. *** believes that Student cannot receive the consistency he needs without placement in a residential setting with the delivery of services by trained therapists rather than the parents. Dr. *** did not offer testimony regarding how Student would retain gains from a residential setting into his home, nor did he outline specific training steps Student's parents would need to enable such a transition. I remain unconvinced by Dr. ***'s recommendation for residential placement of Student.

Student's parents remain concerned that he has not retained the skills he once exhibited during his six-month placement at Shiloh. Yet, the record evidence established that, even during Student's home visits and upon his return home from the placement, he suffered regression. At hearing, Parent agreed that she had not been able to duplicate Student's level of success upon his return home. She did not seek assistance from Student's placement at the time, Shiloh, in how to replicate their success, nor did she seek input from Shiloh staff as to why she was not getting similar results.

In a similar scenario, Student's parents have not had the same level of success with Student in their homes as Corpus Christi ISD has had during his educational day. When faced with this difficulty, the parents again chose not to seek the assistance of Student's current placement, Corpus Christi ISD. The record evidence conclusively established that neither parent talked to Corpus Christi ISD staff about why they were not able to duplicate Student's school successes in their two homes.

During the hearing, Student's parents described their difficulties in providing Student's care as well as work demands, sharing Student's care between separate households, and how Student's time is divided between the parents on weekends and holidays. Yet, despite these personal challenges, the parental task of supervision of Student after school at night and on weekends is not unreasonable, as Student's parents have family members in the area to assist them in his care. Both Parent and Parent described Student's troubling behaviors in their homes, including the need for close supervision at home to keep him from running away, Parent's choice to keep Student indoors rather than take him out into the community, and that Student hits his younger siblings if not closely supervised. Although such behaviors are of concern to both parents and his school, I find that they do not rise to the level of justifying removal of Student to a residential setting.

Based on the evidence before me, I remain unconvinced that Student's parents lack the ability to adequately care for Student if they avail themselves of in-home services offered by Corpus Christi ISD to assist them and help provide continuity between the school district and their two homes. The preponderance of evidence established that, despite the parents' choice not to access in-home training to help provide the consistency that Student needs between home and school, Respondent made repeated proactive efforts to keep Student's parents informed through the use of school logs, telephone calls, conversations, and during other interactions with the parents. Student's parents did not avail themselves of the opportunities that Corpus Christi ISD offered in regard to parent training, for observation in Student's class setting, and for explanation of the methods the school district found successful with Student. Corpus Christi ISD worked to encourage the parents by sharing Student's successes as well as problems in the communication logs and conversations. When problems arose regarding Student, such as clothing or hygiene issues, District staff routinely worked to surmount or correct the problem and tried to communicate with the parents. Yet, Student's parents simply did not accept additional training and input from the school. Despite the lack of reinforcement for Student's behaviors between school and home, he did make meaningful progress on IEP goals and objectives in the school setting and in his CBI activities.

Speech Services

Petitioner complains that Student did not receive speech services as specified by his IEP. The preponderance of the record evidence established that Corpus Christi ISD delivered individual as well as consultative services to Student in excess of the minimum specified in his IEP. I find that Petitioner

failed to prove that Student was denied speech services and is, therefore, not entitled to an award of compensatory speech services.

In conclusion, I find that Petitioner failed to sustain his burden to prove that Student requires placement in a residential setting to address his educational needs. Although Student is a severely disabled student, he is capable of receiving, and has received, an educational benefit within the *** AU setting, which additionally has afforded him opportunities to interact with peers and his community. Student has been managed well by Corpus Christi ISD trained staff and has not presented escaping behaviors or required disciplinary intervention at school or on CBI outings. Student has made progress on his IEP goals and objectives over the past two years and is functioning well within his placement. I find that he does not need a more restrictive setting in order to receive meaningful benefit from his education.

Although Student's parents experience difficulty supervising their son, they have not availed themselves of parent training and in-home training concerning the methods and strategies that Corpus Christi ISD uses successfully with Student. According to the preponderance of evidence and expert testimony, whether or not Student will achieve generalization of his school gains within the parents' homes will depend upon their willingness to become trained in the methods and strategies that have benefited Student in the school setting, and then to implement those, to whatever degree is workable within their respective homes. There is no evidence that residential placement will prevent periodic regression in Student's learning, nor does the evidence tend to establish that residential placement will assist at all with generalization of Student's behavioral gains to the home and community. On the contrary, the chances for this happening appear much better in the public school and community-based settings.

Conclusions of Law

1. Student is a student entitled to special education and related services under the provisions of IDEA, 20 U.S.C.A. §1400, *et. seq.*, and its implementing regulations.
2. Student and his parents reside in Corpus Christi Independent School District ("Corpus Christi ISD"), a legally constituted independent school district operating as a political subdivision of the State of Texas. Corpus Christi ISD is responsible for providing Student with a free appropriate public education. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034 (1982); 20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C. §89.1001.
3. The educational program proposed by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program offered by Corpus Christi ISD, bears the burden of proof. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5th Cir. 1986).
4. Corpus Christi ISD's individualized program for Student in an AU unit within the school district provides the least restrictive environment in which to educate Student and allows him opportunities to have social interaction with peers and his community. *eague ISD v. Todd L.*,

999 F.2d 127,128 (5th Cir. 1993) (citing *Sherri A.D. v. Kirby*, 975 F.2d 193,207 n.23 (5th Cir. 1992)); 34 C.F.R. §300.550.

5. Corpus Christi ISD met its obligation to provide an appropriate educational program for Student during the 2002-2003 and 2003-2004 school years that included sufficient individualized instruction and support services to allow him to benefit from his education. *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir 1997); 34 C.F.R. §§300.346-300.347; 19 T.A.C. §89.1055.
6. Corpus Christi ISD provided speech services specified in his IEP and delivered additional direct speech services not specified under his IEP during the 2002-2003 and 2003-2004 school years. As a result, Petitioner is not entitled to compensatory speech services. *Burlington School Comm. v. Department of Educ.*, 471 U.S. 359 (1985); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5th Cir. 1986).
7. Petitioner failed to prove that Student requires residential placement in order to receive an educational benefit from his education. Placement of Student in a residential setting is not the LRE for him at this time. *Houston ISD v. Bobby R.*, 200 F.3 341 (5th Cir. 2000); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); 19 T.A.C. §89.61(b)(1).

Orders

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

IT IS HEREBY ORDERED that Petitioner's Requested Relief is **DENIED** in its entirety.

IT IS FURTHER ORDERED that any findings of fact that are more properly characterized as conclusions of law, and any conclusions of law that are more properly characterized as findings of fact, shall be considered and shall have the same effect as if properly characterized.

IT IS FURTHER ORDERED that any and all additional or different relief not specifically ordered is herein is **DENIED**.

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

Signed this 9th day of August 2004.

/s/ Mary Carolyn Carmichael
Mary Carolyn Carmichael
Special Education Hearing Officer

DOCKET NO. 022-SE-0903

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|----------------------|---------|---|----------------------------|
| Student | , b/n/f | § | |
| Parent. | | § | BEFORE A SPECIAL EDUCATION |
| Petitioner | | § | |
| | | § | |
| v. | | § | HEARING OFFICER |
| | | § | |
| CORPUS CHRISTI | | § | |
| INDEPENDENT SCHOOL | | § | FOR THE STATE OF TEXAS |
| DISTRICT, Respondent | | § | |

SYNOPSIS

ISSUE: A. *Whether the school district’s individualized program was sufficient for student with Autism and Mental Retardation to make educational progress in a self-contained classroom within the school district rather than in a residential setting?*

C.F.R. CITATION: 34 C.F.R §300.550(a)-(b)

TEXAS CITATION: 19 TAC §89.61(b)(1)

HELD: **For the school district.**

ISSUE: B. *Whether the school district properly implemented speech therapy services for the student?*

C.F.R. CITATION: 34 C.F.R. §300.24

TEXAS CITATION: 19 T.A.C. §89.1060

HELD: **For the school district.**