

**DOCKET NO. 192-SE-0203**

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

**DECISION OF THE HEARING OFFICER**

**STATEMENT OF THE CASE**

Student (Student or Petitioner), through his next friend Parent (Parent), requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended.

Petitioner alleged, *inter alia*, that Conroe Independent School District (CISD):

- 1) Denied Student a free, appropriate, public education (FAPE);
- 2) Failed to provide education in the least restrictive environment (LRE) appropriate;
- 3) Failed to provide and implement an appropriate individualized education program (IEP) in the 2002-2003 and 2003-2004 school years;
- 4) Failed to properly train, monitor, and supervise staff in regard to Student’s hearing impairment and other disabilities;
- 5) Failed to follow IDEA procedures for parental participation and collaboration in meetings of the admission, review, and dismissal committee (ARDC); and
- 6) Failed to provide and use current evaluations to develop IEPs.

As relief, Petitioner requested, *inter alia*:

Compensatory services, including private educational placement, tutoring, counseling, or implementation of related services; staff training on Student’s IEP and disabilities; development of appropriate IEP goals and objectives with identifiable benchmarks to measure progress; an outside consultant to facilitate the ARDC process; assessment for and provision of related services in the form of social work and/or in-home parent “facilitation”; a communication assessment and consultation by an independent expert to determine Student’s appropriate communication mode and plan an intensive communication program; reimbursement of parent-obtained private evaluations; reimbursement of representational fees.

Held, for Respondent.

**PROCEDURAL HISTORY**

Petitioner’s request for hearing was received by the Texas Commissioner of Education on February 28, 2003, and was received by the Hearing Officer on March 4, 2003. \*\*\*, parent advocate, acted as primary advocate for Petitioner at the hearing. David Beinke, parent advocate, appeared on behalf of Petitioner during part of the prehearing stage of the process and also attended the hearing. Respondent was represented by Jeffery Rogers of Feldman and Rogers law firm.

The hearing was scheduled for April 4, 2003. Telephone prehearing conferences were held on March 17, 2003, and November 14, 2003, and were transcribed by a court reporter. The parties requested several continuances for good cause, and the hearing was reset by agreement five times, with the Decision due date

extended accordingly. The hearing was held on December 16, 17, and 18, 2003. The Decision due date was extended by agreement of the parties to January 26, 2004, and was issued on that date.

A settlement agreement in a previous filing of this matter, signed by the parties on October 8, 2002, expressly stated that it was intended to finally resolve all issues and complaints related to Student's education up to the date of signing. Respondent filed a Motion to Limit Claims Prior to October 8, 2002, which was granted.

### **FINDINGS OF FACT**

1. At the time of hearing Student was \*\*\* years old. Student has Down Syndrome. He is eligible for special education as a student with mental retardation, speech impairment, hearing impairment, and multiple disabilities. He has several health issues, including a heart condition, a thyroid condition, fluctuating conductive hearing loss due to middle-ear infections, and progressive sensorineural hearing loss. Student is a cooperative, friendly, compliant young man. He likes to please people and readily responds to redirection by staff when needed to stay on task. He presents no discipline problems in the classroom and does not need a behavior intervention plan (BIP).
2. The ARDC reviewed proposed IEPs for the 2002-2003 school year in May 2002 and revised them in August 2002. IEPs were developed for life skills and functional academic skills; domestic skills; semi-independent living skills; art; vocational skills; fine motor/occupational therapy; physical therapy; and expressive and receptive language skills. Student received PE and art instruction in regular education classes. He received speech therapy from a speech pathologist and training from a deaf education teacher, Ms. \*\*. He was provided an FM assistive listening device and special transportation. Parent disagreed with the IEPs.
3. The ARDC met on October 1, 2002, and developed a Communications Supplement which included a statement that Student needed "expressive functional signs due to poor articulation and cognitive disabilities," an assistive listening device (FM system), oral/aural expressive and receptive skills to communicate, visual cues, and staff who can understand sign language receptively.
4. A settlement agreement was signed by the parties on October 8, 2002, resulting in dismissal with prejudice of a previous filing in this matter, Docket No. 399-SE-0802. Joint Exhibit 1.
5. The settlement agreement provided for 13 independent educational evaluations (IEEs) as follows: Intelligence; Academic (norm-referenced); Academic/Present Levels of Performance (criterion-referenced); Speech Language by \*\*; Occupational Therapy (OT); Physical Therapy; Developmental Optometry; Assistive Technology; Communication (sign language); Functional Contextual Assessment; Functional Behavioral Assessment; Autism Evaluation; and ADHD Evaluation. All the IEEs were completed prior to the hearing, and most were completed prior to the ARDC meeting in August 2003 to plan the current school year. Student's illnesses and other appointments delayed completion of some IEEs. Also, Parent did not at first understand that it was her responsibility to contact the evaluators and schedule Student's appointments with them. Joint Exhibit 1; Testimony of Parent.
6. The settlement agreement provided compensatory services as follows: three hours OT; 60 hours speech; 30 hours music instruction; 45 hours adaptive physical education (APE); and 150 compensatory hours of academic tutoring with the presence of a signing adult. These services have been provided to the extent allowed by Student's availability. Joint Exhibit 1.
7. Other settlement agreement provisions included, but were not limited to, a sum in settlement of all claims for reimbursement up to that point; a one-on-one signing paraprofessional during the regular

school day; and review of the IEEs by an independent educational consultant knowledgeable about Student's known and suspected disabilities, followed by recommendations to the ARDC by the consultant. Joint Exhibit 1.

8. After the settlement agreement was signed on October 8, 2002, the ARDC met on October 11, 2002, and revised the IEPs by adding the phrase: "The student will learn sign, speech and audition for the following skills." Student's instructional modifications included an assistive listening device to be worn by the instructor; sign language delivery at an appropriate pace; and reduced auditory distractions. Parent requested additional time to review paperwork. The ARDC met again on December 18, 2002. Parent remained in disagreement on some issues and the ARDC rescheduled for January 13, 2003. Parent continued to disagree with the IEPs. She filed the current Request for Due Process on February 28, 2003.
9. During the 2002-03 school year, Student attended a life skills classroom at \*\*\*. Student made progress in the life skills classroom. His IEPs for the 2003-04 school year also provide for placement in a life skills classroom.
10. Dr. \*\*\* is an independent educational consultant who reviewed Student's post-settlement agreement IEEs and made recommendations for his programming.  
Dr. \*\*\* is a licensed specialist in school psychology (LSSP) and has extensive experience in assessing and working with children with multiple disabilities.  
Dr. \*\*\* met with a team of CISD staff members and \*\*\*, a \*\*\* specialist with a Regional Educational Service Center, for approximately two days in July and August 2003 to develop draft IEPs. Student needs iconic, concrete signs. Testimony of \*\*\*.
11. Student's educational setting for the 2003-04 school year changed from \*\*\* to \*\*\* School, his home campus, due to his age. Student's current-year IEPs address his needs in functional academic life skills; domestic life skills; self-help skills; semi-independent living skills; vocational skills; speech and communication skills; gross motor skills; and fine motor skills. His instructional modifications and support include, but are not limited to: use of a computer for written work; simple, clear directions; repetition; use of visual cues; direct supervision in general education settings; and private dressing-out for PE. In addition, his schedule includes OT services and consultation by an auditory impairment teacher with his other teachers. The IEP also calls for training for teachers on assistive listening devices and assistive technology, and an in-home training evaluation. Joint Exhibit 2.
12. The 2003-04 ARDC Supplement for the Communication Needs of Deaf or Auditorially Impaired Students lists Student's primary communication mode as oral (speech and hearing). It calls for the use of speech, audition, gestures, simple one-to-two-word signs, personal hearing aids or FM system, and pictures. The Communication Supplement is consistent with the recommendations of CISD deaf education staff; the 2002-03 life skills teacher, Ms. \*\*\*; the signing aide, Ms. \*\*\*; and numerous independent evaluators. Joint Exhibit 2.
13. An ARDC meeting was held on August 15, 2003, to review the 11 IEEs completed at that date and to consider the draft IEPs for the 2003-04 school year. Parent disagreed with the IEPs. Her objections included the lack of a one-on-one signing aide; the lack of a BIP; placement in the life skills classroom at \*\*\* School; present levels of performance; IQ findings; functional academic levels; focus on life skills instead of more academics; treating mental retardation as the primary disability rather than hearing impairment; and the failure to provide Total Communication as a communication mode. The ARDC recessed and reconvened on September 2, 2003. Parent continued to disagree with the IEPs, and Student has not attended his placement in CISD during the 2003-04 school year, other than to attend some compensatory tutoring at \*\*\* School. Joint Exhibit 2.
14. The IEEs not yet completed when the Fall 2003 ARDC met were the assistive technology and

communication IEEs. They were completed in October 2003 and were reviewed by Dr. \*\*\* prior to hearing. She did not change her IEP recommendations based on them. Testimony of \*\*\*.

15. Student has sensorineural (nerve) hearing loss that is progressive, and fluctuating conductive hearing loss related to chronic middle ear infections. The most recent evaluation provided to the ARDC from a doctor specializing in otology was August of 1999, and was used to determine his eligibility for services as a student with auditory impairment. His eligibility for hearing impairment services is not in dispute at this time. His unaided hearing loss fluctuates from moderate to severe at times, depending on the status of his ear infections and concomitant fluid in the ears, and at times perforation of the eardrum.
16. At the time of the August 2003 ARDC meeting, the most recent audiological evaluation was dated August 2001, by \*\*\*. However, the ARDC did not have this evaluation. Petitioner's Exhibit 59.
17. Parent gave a copy of Ms. \*\*\*'s audiological evaluation to \*\*\*, a deaf education teacher who provided brief compensatory tutoring to Student in Summer 2003, and to Dr. \*\*\*, an independent evaluator, but she did not provide it to the ARDC or the diagnostician. Mr. \*\*\* and Dr. \*\*\* were not responsible for providing it to the ARDC and did not do so.
18. An audiological evaluation was obtained from Lamar University by Parent in October 2003 and provided to the district shortly before the hearing in December 2003. At the time the Lamar University audiological evaluation was performed, Student had a large perforation in his left ear and the testing results may be different when his ears are clear. The Lamar University audiological report recommended the use of speech accompanied by sign and a quiet classroom with close proximity to the instructor. Although the ARDC did not have the Lamar University evaluation, Student's 2002-03 program did comply with these recommendations, and his 2003-04 IEPs also provide for them. Petitioner's Exhibit 43.
19. A communication assessment by \*\*\*, PhD, educational diagnostician, was obtained by Parent in October 2003 pursuant to the settlement agreement. Although she used Signed Exact English sign language with Student as directed by Parent, Dr. \*\*\* found that "Overall, Student's primary mode of communication is by oral/aural means supported by visual cues including pictures and signs." He did not use any inflected sign language with her. If a picture stimulus was present, Student generally did not look to the signer unless prompted. Dr. \*\*\*'s testing indicated Student's knowledge of signs presented with and without voice is at the \*\*\* level. In fingerspelling, he was able to receptively recognize 23 letters when shown the handshape. However, "Student would not be expected to use fingerspelling as it is intended for proper nouns due to his demonstrated significantly below average vocabulary and language skills." Informal assessment of his listening comprehension showed that "Student was unable to understand a passage presented without a picture component at the preprimer level using either a simultaneous oral English and sign language presentation or an oral only presentation. The addition of signed sign cues to a voiced presentation did not significantly enhance understanding." Joint Exhibit 7.
20. Dr. \*\*\*'s test results were consistent with Student's cognitive skills. "It is evident Student has a sign repertoire and uses signs as another visual cue to promote receptive and expressive understanding; however, the use of signs does not make a significant difference in his receptive communication abilities." Dr. \*\*\*'s recommendations include use of the communication method of "oral/aural in conjunction with visual cues including pictures, signs, demonstrations, models, etc." She also recommended continued development of functional language and communication skills, with new language taught within the context of life skills activities. Joint Exhibit 7.
21. \*\*\*, an independent educational consultant, observed Student in the life skills class and regular art class at \*\*\*, and issued a functional/contextual evaluation report on May 7, 2003. She noted that

Student almost always used oral communication first. He used sign language upon request, or to name a picture or object as part of his instruction. He also used simple one-word signs to request things, such as the sign for “restroom.” She noted that Student was exposed to sign language throughout the school day, and that two aides were fluent in American Sign Language in the life skills class. “The other paraeducators and teachers know several basic signs and are working to learn more. The physical environment is filled with posters and flyers depicting sign language.” Joint Exhibit 10.

22. Ms. \*\*\* also observed Student at the \*\*\* campus, which Student attended pursuant to the settlement agreement during the 2002-03 school year with his signing aide for part of one afternoon per week. The other students knew each other well, were not cognitively disabled, and used sign at an advanced level. Student did not participate socially with the signing students as had been hoped. He kept his head down, made little if any response to overtures by the other students, and did not follow their instruction. Student did not receive an academic or nonacademic benefit from this arrangement, as confirmed by his signing aide and other observers who testified at hearing. Ms. \*\*\* recommended the arrangement be discontinued, and the ARDC discontinued in the IEPs for the 2003-04 school year. Joint Exhibit 10.
23. Dr. \*\*\*, PhD and LSSP, performed an independent educational evaluation of Student prior to the Fall 2003 ARDC meetings, which included assessing his intelligence, academic achievement and a functional behavioral report. Using nonverbal testing, she found Student to have a full-scale IQ of \*\*\*. Student’s academic skills and ability to apply those skills are within the very low range compared to others his age, which is consistent with his cognitive abilities. She ruled out attention deficit hyperactivity disorder (ADHD), and found that Student was compliant and easily redirected at school, and therefore not in need of a behavior intervention plan. Joint Exhibit 11.
24. Dr. \*\*\* observed Student in his life skills classroom and with\*\*\*, his \*\*\* teacher. Student appeared to prefer to communicate using words rather than signs, and was frustrated when he tried to learn a new sign and new word at the same time. Many of his responses occurred prior to the signer beginning to sign. Dr. \*\*\*’s recommendations included: “Multiple modes of communication should be used in teaching and giving Student commands. For example, instructions should be simple and clear combined with nonverbal gestures and visual cues.” Dr. \*\*\* recommended continuing to focus instruction on daily living skills, communication, and adaptive skills as part of his daily academic instruction, and continuing to provide a small student-teacher ratio and minimal unstructured time. He needs simple signs and gestures used throughout his school day. Joint Exhibit 11; Testimony of \*\*\*.
25. Dr. \*\*\*, PhD, performed an independent psychological evaluation of Student in March 2003, including a determination that he does not demonstrate autism or an autism spectrum disorder at this time. Joint Exhibit 12.
26. \*\*\*, provided speech services to Student for three 45-minute sessions per week during the 2002-03 school year, although his absences affected the implementation of this schedule. Ms. \*\*\* reported in October 2002 that Student was “increasing his use of functional and common signs with words on a daily basis . . . .” In May 2003, she noted that Student’s pragmatic language skills had improved and that he demonstrated growth in his total communication skills. She and his signing aide sat close to him. He focused on her rather than the aide. He did not appear to have any difficulty hearing her. Student required much repetition, but he did make some progress with Ms. \*\*\*. Joint Exhibit 20; Testimony of \*\*\*.
27. \*\*\* was Student’s one-on-one aide during 2002-03 as required by the settlement agreement. She used Signing Exact English with him as requested by his mother, but she simplified it for him. He paid more attention to people speaking than to her. He sometimes used a sign to ask for something he wanted, and sometimes used a word, but rarely both at the same time. He primarily uses speech for

both receptive and expressive communication. She checked his hearing aids and FM to be sure they were working, and she and Ms. \*\*\* used the FM system with him. Parent told her once that Student's hearing was getting worse, but Ms. \*\*\* did not personally observe an increase in hearing difficulty. "He never seemed not to hear me." Testimony of \*\*\*.

28. \*\*\* was Student's life skills teacher during 2002-03. He used hearing aids and the FM device, and she did not observe him having trouble hearing her, even at times when the FM system was not charged properly. Student could hear better than he could sign. He made progress in her class. Testimony of \*\*\*.
29. \*\*\* is a deaf education teacher with the \*\*\* who has a master's degree in deaf education. He worked with Student briefly to provide compensatory tutoring in Summer 2003. He used sign-assisted speech with Student. Student appeared to hear everything Mr. \*\*\* said to him and responded to every verbal communication. Student's mode of communication is spoken English, with the use of signs when necessary. Student did not use Signing Exact English, which is "an incredibly complex, very difficult system of signing. And he didn't use a system. He signed some signs for some things." Student does use some English signs, but conceptual sign is more appropriate for him. Student's cognitive disability has a much more profound impact on his learning than his auditory impairment. Testimony of \*\*\*.
30. \*\*\* was Student's \*\*\* teacher during the 2001-02 and 2002-03 school years. She taught him Signed Exact English because Parent requested that type of sign to facilitate learning to read English, but it was very difficult for him. Student had trouble remembering what he had learned previously, and he also had some problems with manual dexterity using Signed Exact English. He prefers speech to using signs. He needs simple, functional signing due to his cognitive level. He should be allowed to use speech when he wants to, and not forced to sign when he does not want to do so, to avoid frustration. She recommended that for the 2003-2004 school year her services be changed to consulting with his teachers. He needs simple signing incorporated into all his everyday activities rather than being pulled out to work with a deaf education teacher. The ARDC adopted this recommendation in the 2003-2004 IEPs. Testimony of \*\*\*.
31. Student had numerous excused absences during the 2002-03 school year due to illness, including chronic middle ear infections and a hospitalization due to a heart condition. In addition, he had excused absences due to the illness and death of his maternal grandmother, and due to numerous medical appointments, as well as appointments in connection with his IEEs and compensatory services. Student's receipt of instruction in general was affected by his absences, but he did make some progress during the 2002-03 school year.

## **DISCUSSION**

### **Background**

Student is a \*\*\*-year-old boy with Down Syndrome who is eligible for special education services as a student with mental retardation, speech impairment, hearing impairment, and multiple disabilities. He has not attended school during the current school year due to his mother's dissatisfaction with his proposed educational program.

Petitioner alleged that CISD failed to follow a mediated settlement agreement signed by the parties October 8, 2002, but conceded that any failures to carry out the agreement were not, in and of themselves, a denial of FAPE. CISD's compliance with the settlement agreement is relevant only insofar as actions taken by the district pursuant to the agreement affect the issue of provision of a FAPE.

### **Free, Appropriate, Public Education**

The district's proposed educational program is entitled to a legal presumption of appropriateness.

Petitioner bears the burden of proving that it is not appropriate. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983).

An appropriate placement under IDEA is one that enables a student to obtain “some benefit” from his education, and does not require that a student’s educational potential be optimal or “maximized.” *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). Schools are not required to provide all services from which a child might benefit. Rather, the district must provide personalized instruction with sufficient support services to permit the student to receive an “educational benefit,” i.e., a program that is meaningful and is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Rowley, id.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000)

Since October 2002, the district has provided 13 independent evaluations pursuant to the settlement agreement. These evaluations were provided in lieu of the district’s planned full individual evaluation because Parent wanted all evaluators to be independent. The independent evaluations and staff testimony at hearing are persuasive evidence that Student’s overriding educational challenge is the cognitive limitation imposed by Down Syndrome. His speech generally is limited to one-word or two-word phrases, and his ability to learn sign is similarly hindered by his cognitive disability. He is appropriately served in a life skills classroom, which was his placement in the 2002-03 school year, and his proposed placement for the current school year.

Under 34 C.F.R. §300.346, Texas Educ. Code, §§ 29.302, 29.303, and the general requirements of FAPE under IDEA, educational programs for students with hearing impairments must be designed around each student’s unique mode of communication, and must respect, use, and develop that mode. A central issue in this case is Petitioner’s contention that CISD did not appropriately address Student’s hearing impairment, specifically the allegation that CISD has not provided an appropriate type and amount of signing. Petitioner did not carry the burden of proof on this issue.

When given instructions and directions both orally and in sign, Student looks at the speaker and responds first to the speaker. Numerous independent evaluators and deaf educators found him to be primarily an oral/aural communicator. Simple, representational, “functional” signing, as an adjunct to speech, was recommended by the overwhelming majority of those who testified. Most of Student’s instruction is one-on-one or in a very small group, and all staff and evaluators who worked with him believed that he heard them adequately with his hearing aids and/or FM system. He was reported by several observers to become frustrated when asked to sign when he wanted to speak.

Petitioner’s reliance on \*\*\* *v. Alief ISD*, TEA No. 061-SE-1001 (2002), is misplaced. That Decision states that even for a hearing-impaired child, a district is not obligated to offer a program and placement “based solely on parental choice.” Neither Texas Education Code Chapter 29 nor IDEA authorizes parents to dictate the child’s program, placement, or instructional methodology. “Rather, the analysis of *Rowley* must be applied to determine if the school, in developing the program that was not based on parental choice, committed procedural or substantive violations of law that resulted in a denial of a free appropriate public education.” \*\*\* *v. Alief ISD, id.*, footnote 1.

Parent, accompanied by various friends and advocates, has provided substantial input to the ARDC. She also provided substantial input to Student’s independent evaluators, and those evaluations were used to develop the current-year IEPs. Student’s ARDC met regularly and often for long periods during the two school years in question. Most of the meetings were recessed and reconvened several times due to parental disagreement. Some but not all of Parent’s input has been reflected in Student’s IEPs, but she is not satisfied with the type and amount of signing that she speculates would be provided under the current IEP. “The right to provide meaningful input is simply not the right to dictate an outcome.” *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5<sup>th</sup> Cir. 2003). “[P]arents, no matter how well-motivated, do not have a right . . . to compel a school district to provide a specific program or employ a specific methodology.” *Lachman v. Illinois St. Bd. of Educ.* 852 D. 2d 290 (7<sup>th</sup> Cir. 1988), *cert. denied*, 488 U.S. 925 (1988).

Pursuant to the settlement agreement, Student was provided a one-on-one signing aide, Ms. \*\*\*,

beginning in October 2002. The current IEP does not provide for a one-on-one signing aide, which is consistent with the findings of the independent evaluators and the testimony of Ms. \*\*\* herself. The current IEP does require the use of sign-assisted speech. Petitioner speculates that the staff who would instruct Student at \*\*\* are not properly qualified and will not provide appropriate signing. However, Student has not attended \*\*\*, and Petitioner provided no evidence concerning the staff or how the proposed IEPs would be effectuated there. Petitioner also failed to prove any deficiencies in the educational program or the qualifications, training, or supervision of staff at \*\*\*, where Student attended last year.

Petitioner did not prove that the district was at fault in its response to Student's absences during the 2002-03 school year. He had numerous excused absences due to illness and medical appointments, including a hospitalization. Other absences were due to the illness and death of his grandmother, and appointments in connection with the IEEs and compensatory services provided under the settlement agreement. The absences were sporadic and often without prior notice to the district. They were not of a nature that would allow the district to program for them, as when a student is at home for a long period recovering from an injury. Petitioner did not prove that Ms. \*\*\* or other school staff failed to provide instruction or related services other than at times when Student was absent.

### **Least Restrictive Environment Appropriate**

Student is entitled to be educated with his nondisabled peers to the maximum extent appropriate. *Daniel R.R. v. State Board of Educ.*, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989). Petitioner offered no proof that Student was denied an education in the least restrictive environment (LRE) appropriate in 2002-03, or that his proposed IEP for 2003-04 would not provide FAPE in the least restrictive environment appropriate if his mother allowed him to attend school.

### **Assessment Issues**

Petitioner asserts that the IEPs developed for the two relevant school years cannot be appropriate due to the age of the audiological and otological evaluation data used. However, Parent failed to provide the ARDC with current audiological evaluation data she had in her possession. It is appropriate that Student have regular audiological evaluations, with the frequency to be determined by the ARDC. Audiological services are a related service under 34 C.F.R. §300.24, to be provided at no cost to the parent. To the extent that Petitioner provides evidence of out-of-pocket expenses for the audiological evaluation obtained in October 2003, CISD should reimburse Parent. However, I do not find CISD at fault in regard to audiological evaluations, in light of 1) Petitioner's failure to demonstrate any substantive effect on Student's education in relation to audiological evaluation data (*see Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000)); 2) Petitioner's failure to timely provide the evaluation to the district after she obtained it; and 3) Respondent's provision of 13 independent evaluations which provided a thorough overall assessment of the impact of Student's several disabilities upon his education. Petitioner also did not prove that more recent otological information was necessary to provide Student a FAPE.

## CONCLUSIONS OF LAW

1. Student resides in BISD, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended.
2. The educational program proposed by the school district is presumed to be appropriate. As the party challenging the educational program proposed by the district, Petitioner bears the burden of proof. *Tatro v. State of Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983), aff'd 468 U.S. 883 (1984); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000).
3. During the 2002-2003 school year, Student received a FAPE in the least restrictive environment appropriate. His IEPs were reasonably calculated to provide an educational benefit and he made some educational progress despite numerous absences. *Hendrick Hudson District Board of Educ. v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997). *Daniel R.R v. State Bd. Of Educ.*, 874 F2d.1036 (5<sup>th</sup> Cir. 1989).
4. During the 2003-2004 school year, CISD offered and continues to offer Student a FAPE in the least restrictive environment appropriate. His current IEPs are reasonably calculated to provide an educational benefit, but have not been implemented due to parental refusal to allow him to attend school. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997). *Daniel R.R v. State Bd. Of Educ.*, 874 F2d.1036 (5<sup>th</sup> Cir. 1989).
5. Petitioner failed to prove that Student's IEPs were deficient based on outdated evaluation data or other reasons in 2002-2003 or 2003-2004. Thirteen independent evaluations in all areas of suspected disability have been obtained since October 2002, and even evaluations that weren't available at the time the IEPs were developed demonstrate the appropriateness of the IEPs provided in both school years. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997).
6. Student is hard of hearing but not deaf. His primary mode of communication is oral/aural, using speech augmented by simple, functional signs. Petitioner did not demonstrate a failure by CISD to properly address Student's hearing impairment, communication mode, or the rights of his parent concerning the communication mode during the 2002-03 or 2003-04 school years. The right of a parent to meaningful input and involvement does not constitute a right to dictate an outcome, even for a hearing-impaired child. *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5<sup>th</sup> Cir. 2003); *Lachman v. Illinois St. Bd. of Educ.* 852 D. 2d 290 (7<sup>th</sup> Cir. 1988), cert. denied, 488 U.S. 925 (1988); \*\*\* *v. Alief ISD*, TEA No. 061-SE-1001(2002); 34 C.F.R. §300.346; Texas Educ. Code, §§ 29.302, 29.303.
7. Student's mother has been actively involved in the development of his IEPs. The parent and her advocates have been active participants in Student's ARDC meetings, and the parent's input was used by the independent evaluators and the ARDC in the development of the IEPs. The ARDC collaborated with the parent although it did not grant all her requests. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997); *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5<sup>th</sup> Cir. 2003); *Lachman v. Illinois St. Bd. of Educ.* 852 D. 2d 290 (7<sup>th</sup> Cir. 1988), cert. denied, 488 U.S. 925 (1988).
8. Petitioner did not demonstrate that the district failed to provide proper training, monitoring, and supervision of staff for the 2002-2003 school year, or failed to offer such for the 2003-2004 school year. 34 C.F.R. §300.23; 19 T.A.C. §89.1131.

9. Petitioner did not demonstrate that CISD denied Student a FAPE in regard to the provision of evaluations or the use of evaluations in the development of IEPs. *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000).

**ORDER**

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the relief requested by Petitioner is **DENIED**.

**NOTICE TO THE PARTIES**

This Decision is final and is appealable to state or federal district court.

**SIGNED** this 26<sup>th</sup> day of January, 2004.

/s/Janis Herd

Janis Herd

Special Education Hearing Officer

**DOCKET NO. 192-SE-0203**

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

**SYNOPSIS**

**Issue 1:** Did CISD provide Student a FAPE in the least restrictive environment appropriate during the 2002-2003 school year?

**Held:** For Respondent. Student's placement in the life skills classroom at \*\*\* with related services was appropriate, and he made educational progress despite numerous absences.

**Citation:** 34 C.F.R. §§300.300; 300.550 - 300.552

**Issue 2:** Did CISD offer Student a FAPE in the least restrictive environment appropriate during the 2003-2004 school year?

**Held:** For Respondent. Student's proposed placement in the life skills classroom at \*\*\* is appropriate. Although Student's current IEP does not provide for a one-on-one signing aide, no evidence was produced to indicate that the staff responsible for providing his current-year services cannot or will not provide him an appropriate amount of sign language. The placement has not been implemented because his parent chose not to allow him to attend school this year.

**Citation:** 34 C.F.R. §§300.300; 300.550 - 300.552

**Issue 3:** Did CISD fail to follow IDEA procedures for parental participation and collaboration in meetings of the ARDC, and/or fail to allow appropriate parental involvement in regard to Student's communication mode?

**Held:** For Respondent. Petitioner did not demonstrate a failure by CISD to provide the parent the right to participate and give input to the ARDC, or a failure to appropriately address Student's hearing impairment and communication mode during the 2002-03 or 2003-04 school years.

**Citation:** 34 C.F.R. §§300.345; 300.346; Texas Educ. Code §§29.302, 29.303

**Issue 4:** Did CISD fail to provide and use current evaluations to develop Student's IEPs?

**Held:** For Respondent. Petitioner did not demonstrate that CISD denied Student a FAPE in regard to the provision of evaluations or the use of evaluations in the development of the IEPs.

**Citation:** 34 C.F.R. §§300.346; 300.532 - 300.536

**Issue 5:** Did CISD fail to properly train, monitor, and supervise staff in regard to Student's hearing impairment and other disabilities?

**Held:** For Respondent. Petitioner did not demonstrate lack of proper training, monitoring, or supervision of staff for either school year in question.

**Citation:** 34 C.F.R. §300.23; 19 T.A.C. §89.1131