

|                     |   |                            |
|---------------------|---|----------------------------|
| STUDENT             | § | BEFORE A SPECIAL EDUCATION |
| b/n/f PARENT        | § |                            |
|                     | § |                            |
| V.                  | § | HEARING OFFICER FOR THE    |
|                     | § |                            |
| LINDALE INDEPENDENT | § |                            |
| SCHOOL DISTRICT     | § | STATE OF TEXAS             |

**DECISION OF HEARING OFFICER**

**Procedural History**

Petitioner, Student (“the Student”), by next friend, Parent, (“the Parent”) filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C. § 1400 *et seq.* The complaint was received by the Texas Education Agency (“Agency”) on July 20, 2009. The Respondent is Lindale Independent School District (“Respondent,” “the District,” or “LISD”).

After several continuances were granted for good cause, the due process hearing took place August 24-27, 2010. At the conclusion of presentation of evidence, the parties jointly requested a continuance in order to allow sufficient time to submit written closing arguments, and agreed to an extension of the decision due date. The parties submitted proposed findings of fact, conclusions of law and written arguments on September 30, 2010. The decision due date was extended to November 1, 2010.

At all times during the proceedings, Petitioner was represented by Christopher Jonas, attorney. Respondent was represented by Janet Horton, attorney.

**Issue**

Petitioner alleged that the District denied petitioner a Free Appropriate Public Education (“FAPE”), specifically as follows:

1. The District refused to place the Student in the \*\*\*, a private facility;
2. The District failed to devise an appropriate Individual Education Program (“IEP”) in that it failed to provide the Student with an appropriate amount of Applied Behavioral Analysis (“ABA”);
3. The District failed to provide appropriate Extended School Year (“ESY”) in the summer, 2009; and
4. The District failed to have highly trained staff to work with the Student.

### **Request for Relief**

As relief, Petitioner requested the following:

1. Placement of the Student for one year at the \*\*\*; and
2. One year of compensatory services in the areas of ABA and ESY for the summer, 2010.

### **Findings of Fact**

Based upon the evidence and argument of the parties, the undersigned hearing officer makes the following findings of fact and conclusions of law. Citations to the transcript are designated as “Tr.” followed by the volume and page number. Citations to exhibits are designated as “P” for Petitioner, and “R” for Respondent, followed by the exhibit number. Several exhibits were entered jointly. Those exhibits are designated as “R,” followed by the exhibit number.

1. The Student resides within the geographical boundaries of the Lindale Independent School District. At the time Petitioner filed this request for due process hearing, the Student was a \*\*\* year old, \*\*\* grader.
2. The Student is eligible to receive special education services from the District under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) under the classification of \*\*\* and speech Impairment (“SI”). Student’s \*\*\* disability is described as \*\*\*. Student has \*\*\* mental deficits and \*\*\* verbal ability. Developmentally, he is \*\*\* his same-age peers. Tr. Vol. I, pg. 63; Tr. Vol. II, pg 209; R-10, R-142, P-140
3. At the time of hearing, the Student had attended the \*\*\*, a \*\*\* school, during the 2009-2010 school year. The \*\*\* is a place owned and operated by \*\*\*. Tr. Vol. I, pg. 79
4. The Student has \*\*\*. \*\*\* is a disorder in which the \*\*\*; however, the \*\*\* is impaired. This impairment causes the Student to \*\*\* when student tries to produce speech sounds and words. The Student requires someone with knowledge in both \*\*\* and \*\*\*. Student requires a very specific way to task analyze the sounds which student is saying. Direct speech services are important for \*\*\* children. Tr. Vol. II, pg. 193-194
5. The Student has limited social skills, lacks self-discipline, has differences in processing capabilities, difficulties with transitions, and needs more intensive support. Student has a history of \*\*\*. \*\*\*. Student’s \*\*\* include \*\*\*. Tr. Vol. I, pgs. 64-65
6. Historically, in the home, the Student’s \*\*\* caused the Parent \*\*\*. Tr. Vol. I, pgs. 66-72
7. The Student has difficulty generalizing information or skills learned in one environment to another environment. Tr. Vol. III, pg. 59
8. On \*\*\*, 2006, by a Resolution Agreement between the District and the Parent, the Student began attendance at \*\*\* at District expense. Student was to attend \*\*\* through May, 2007. Student attended \*\*\* three days per week, for four hours per day. Student continued at \*\*\* until October

when, for personal reasons, the Parent requested that student return to LISD. When student transitioned to LISD, it was necessary for student to \*\*\*. Student attended LISD four days per week for five hours per day, \*\*\*. Student received occupational therapy (“OT”) and adaptive physical education (“PE”) as related services. Student received 30 minutes of direct Speech therapy, one time per week, and 30 minutes of consultation twice each six weeks. Four hours of in-home instruction was given one day per week until Christmas break. Tr. Vol. II, pgs. 54-58; Vol. IV, pg. 379; R-15; R-16

9. The Student began full day attendance in the District in the spring semester, 2007. Tr. Vol. II, pg. 62
10. From at least October, 2006 at LISD, the Student had the same teacher (“the Teacher”). Tr. Vol. II, pgs. 60, 71
11. At some point during the 2006-2007 school year, and continuing throughout the remainder of the Student’s attendance at the District, student had the same paraprofessional (“the Para”). Tr. Vol. II, pg. 61, 71
12. At the Parent’s request, the District provided services during the 2007 Christmas break in the amount of four hours per day for six days. The Parent chose the service provider. Tr. Vol. II, pgs 71-74; R-27
13. The Student’s 2007 ESY program consisted of 16 hours per week for seven weeks. Tr. Vol. II, pgs. 66-68; R-22
14. At the end of the 2006-2007 school year, the District reported that the Student had made academic and behavioral progress. Student transitioned to the cafeteria, made choices of food items, gave student’s card to the cashier, sat at the table and ate with the other students, the Teacher and/or the Para. Student participated in recess with general education students and/or self contained class. Student mimicked behavior, but did not interact with the other students. R-22
15. In the summer, 2007, through the \*\*\*, the District contracted with Dr. \*\*\* to consult on the Student’s educational program for the 2007-2008 school year. The District did not direct Dr. \*\*\* to create a home ABA program, develop forms for use in a home ABA program, or set up a data collection system in the home. Tr. Vol. II, pg. 265; Vol. III, pgs 36-38
16. Until \*\*\*, the Student was in a classroom with the Teacher and the Para only. Tr. Vol. II, pgs. 75-77
17. Anticipating a move to the \*\*\* school in the fall, the Teacher began a gradual transition program for student in \*\*\*. He first drove the Student to the campus. Gradually, the Teacher took student

- in the back door of the \*\*\* school. Then, the Student spent as much as four hours in the \*\*\* school Life Skills classroom. Tr. Vol. IV, pgs. 173-174
18. In \*\*\*, 2008, \*\*\*, and student was moved to the \*\*\*, at which time the Student began regular attendance in the Life Skills classroom with other children. Tr. Vol. II, pg. 75-77
  19. At the May 27, 2008 meeting, at the Parent's request, the ARD committee agreed that, as ESY, the Student would attend \*\*\* for three months, three hours per day, with one hour of in-home community training at District expense. Tr. Vol. II, pgs. 79-80; R-4
  20. The Student attended the \*\*\* from \*\*\*. Due to \*\*\*. The District convened an ARD meeting to revise the Student's 2008 ESY program for the remainder of the summer. The program consisted of seven hours per day, five days per week, in a home setting. The schedule was developed by a District paid trainer and the Parent. Two of the Parent's home trainers, \*\*\* and \*\*\*, provided the training at District expense. ESY goals included work on brushing teeth, showering, making the bed, chores at home, and leisure activities. Then, the Student spent two weeks in the classroom for transitioning purposes. The District paid Dr. \*\*\*, who was \*\*\* mentor, to provide consultation services during that time. Tr. Vol. I, pgs 97-99; Vol. II, pgs. 29; 81-84; 269; Tr. Vol. III, pg. 8; 13-15; R-7; P-27, P-28
  21. While at \*\*\*, the Assessment of Basic Language and Learning Skills ("ABLBS") was administered. The ABLBS, and the newer version called ABLBS-R, show current areas of competency. If all the columns are filled in on an ABLBS-R, a child's developmental level would be at a \*\*\* level. Tr. Vol. III, pg. 182; R-92;
  22. At the end of the 2008 ESY, the Parent had a home program in place and paid \*\*\* to continue to provide services. Dr. \*\*\* consulted on the home program. Vol. III, 15-16
  23. In August, 2008, when steps were being made to transition the Student back to school, student \*\*\*. The Teacher \*\*\* until student calmed. The Parent put student back into the car and took student home. Tr. Vol. I, pgs 99-100; Vol. III, pg.9-13
  24. By the end of the two week transition period in August, 2008, the Student liked to go to the school. Tr. Vol. pg. 88
  25. For the 2008-2009 school year, the Student's LISD program included 15 minutes of OT consultation services three times per six week, 45 minutes per week of Adaptive PE in the general education setting, and 30 minutes, nine times per six weeks of direct speech and language therapy. In addition, the program provided speech therapy consultation services in the amount of 30 minutes, one time per six weeks. The Student was assigned to a Life Skills classroom with at least one trained adult working with student at all times. ABA compliance techniques were to be used as positive behavior support strategies. A Behavior Intervention Plan ("BIP") was

- developed. The Parent was pleased with the Teacher's strategies and commented that the Student had been asking for the Teacher by name and wanted to attend school each day. The Parent reported that behavior was improving and asked the school to spend time working on the Student's articulation rather than behavior. She asked that the District refrain from trying too much because she believed that behaviors would escalate. The Student was tolerating both disabled and non-disabled peers. The Parent agreed to the ARD decisions. Tr. Vol. II, pg. 89; R-8
26. The District contracted with Dr. \*\*\* as consultant for the 2008-2009 school year. She was to provide in home services to address appropriate leisure activities and activities of daily living. Dr. \*\*\* was the responsible party for community experiences and acquisition of daily living skills. She was not contracted to set up a home ABA program, create forms for data collection or create a data collection system. During the course of the year, Dr. \*\*\* and the Parent presented several data collection forms on which they wanted the District to track data. Tr. Vol. IV, pgs. 51-53; R-8
27. In \*\*\*, 2008, the Student \*\*\* the Parent when she insisted that student go inside an LISD bathroom. The Teacher disagreed with the Parent's insistence because the Student was afraid. The Parent testified that the Teacher \*\*\* the Student. The Teacher testified that he attempted to prevent the Student from \*\*\*. After the incident, the Student calmed and stayed at school for the rest of the day. By the end of the school year, the Student was changing student's clothes in that bathroom, sitting on a chair inside the door. Tr. Vol. I, pgs. 114-116; Vol. II, pgs. 89-91; Vol. 201-202.
28. The October 1, 2008 ARD committee added 15 minutes of athletics to the Student's Adaptive PE IEP. The Teacher or the Para were to monitor the Student's daily activities/behavior and send daily communication to the Parent. Group instruction for 30 minutes per day, or 15 minutes twice daily, was added, along with community based activities two times per week outside of school, and three times per week on campus to work on \*\*\* skills. There were no IEP goals for these activities. All of the committee agreed to the changes. Tr. Vol. IV, pgs. 56-58; R-10; P-21
29. An October 23, 2008 Agreement to Change Current IEP replaced an earlier BIP. Goals were to eliminate \*\*\* as listed, eliminate \*\*\*, and eliminate \*\*\*, noncompliance, and other off-task behaviors during instruction. Mastery criteria and reinforcers were listed for each goal. R-11; P-23
30. During the 2008-2009 school year, the Parent continued the home program. The program consisted of behavior trials, "accepting no," and requesting attention. \*\*\* procedures were implemented, as well as variable reinforcement ratio. Data was collected. Tr. Vol. I, pg. 78; Vol. III, pgs. 17-18

31. From \*\*\*, 2009, at the Parent's request, the District sent the Teacher and the Para into the Student's home and trained with \*\*\* who was neither a Board Certified Behavior Analyst ("BCBA") nor a Board Certified Associate Behavior Analyst ("BCABA"). For eight mornings in \*\*\*, 2009, \*\*\* trained with the Teacher and the Para on campus. The training was focused on compliance trials, accepting "no" trials, \*\*\*, and variable ratio reinforcement. Tr. Vol. III, pgs.18-40; 77; 84-85; Tr. Vol. IV, pg. 64; R-51
32. As late as December 11, 2008, the Student \*\*\*. At the time of hearing, the Parent testified that \*\*\* is no longer necessary. Now, \*\*\* is used to serve as a visual barrier for student. Tr. Vol. I, pgs. 66-72, 77-78, 117-118; P-134
33. During Christmas break, 2008, the District paid for \*\*\* to provide in-home services in the amount of 15 hours. The Teacher's contract did not include Christmas break. Tr. Vol. II, pg. 110
34. On \*\*\*, 2009, unhappy with the Teacher's performance and because she felt the Student's behaviors were deteriorating, the Parent pulled the Student from \*\*\* school day. During two months or more, the Student missed opportunities to participate in athletics and community outings which were scheduled in the mornings Tr. Vol. I, pgs. 128-130 Tr. Vol. IV, pgs. 214-215
35. In \*\*\*, 2009, the Life Skills teacher ("the LS Teacher"), for the first time, did a compliance trail with the Student. Student exhibited no \*\*\* behaviors and complied with her requests. Tr. Vol. II, pg. 117
36. During the 2008-2009 school year, the Student exhibited \*\*\* behaviors at home. Tr. Vol. II, pg. 113
37. On the 2008-2009 progress reports, in an effort to correctly record progress, the Teacher changed some of the reports for the second six-weeks. He originally recorded progress as "P-2," which meant consistent and satisfactory progress. He changed the record to "N" which meant the objective was not introduced. P-188 and 189
38. During the 2008-2009 school year, at LISD, the number of \*\*\*, \*\*\* behaviors, and \*\*\* behaviors decreased significantly. Tr. Vol. II, pgs.272-276
39. During the 2008-2009 school year, the District kept Daily Summary Sheets, Antecedent Behavior Consequences ("ABC") Data Sheets, Lesson Plans and/or other data sheets. The District took data during every month except March and August. The District did not send all data sheets for each day of the school year to the Parent. Data was provided periodically throughout the school year to the District's consultant. Tr. Vol. II, pgs. 261-262; Vol. III, pgs. 235-237; R- 31-40; R-55; R-55A; R-56; R-57; R-59-R-66; R-68-R-75; P-15; P-16; P-170; P-171; P-173-175; P-177-184; P-186; P-187; P-217; P-347

40. When the Teacher's computer hard drive crashed, he lost a number of lesson plans, skills tracking sheets, and other documents. Tr. Vol. IV, pgs. 216-219
41. During the 2008-2009 school year, the LS Teacher did pre-reading skills and socialization skills during group instruction. The group asked the Student "yes or no" questions and student would answer. Student progressed to a point where student answered closed sentences. Tr. Vol. IV, pgs. 137-148; P-193
42. On \*\*\*, 2009, the Student participated in PE exercises with other children, but had no social interaction with them. P-211; R-40
43. As the 2008-2009 school year progressed, the Student developed a friendship with one of student's classmates. Student communicated with student's peers during cafeteria time. At the end of the school year, student interacted with some of student's classmates. Student was paired with non-disabled students in PE and tossed the ball with them. Tr. Vol. IV, pgs. 143-144; R-77
44. During the 2008-2009 school year, the Student went to the District cafeteria, walked through the cafeteria line, ordered food, and sat at a table with other students. Student could return to the cafeteria line and order on student's own. If student forgot salt or pepper, student would say, "Salt and pepper," and get it for \*\*\*self. Student went to PE in the District gymnasium alongside a regular education gym class and with student's Life Skills class peers. Tr. Vol. II, pgs 290-293; Vol. IV, pgs. 141-145, pg.241-242
45. By the end of the 2008-2009 school year, the Student worked the pre-vocational tasks boxes independently for approximately 40 minutes. Student played independently with new items for a period of time. Prior to that school year, the Student could not do any work independently. Tr. Vol. IV, pgs. 242-244
46. During the 2008-2009 school year, the Student walked the halls of the \*\*\* school with hundreds of other students, being jostled around. Student knew where the gym and cafeteria were, and where student's room was in relation to the other locations. Toward the end of the school year, student walked the halls without hesitation, the Teacher following perhaps 20-30 feet behind. Tr. Vol. IV, pgs 241-242
47. During the 2008-2009 school year, the LS Teacher used a bingo game with the Student. At the beginning, she matched fast food pictures, and the Student repeated the words after her. Student then learned to match the pictures and say the fast food words. The LS Teacher then made cards with the words only. Student learned to match the words. Student achieved the game quickly. During bingo, the Student reached over and showed a peer what she should have been doing. Tr. Vol. IV, pgs. 147-148

48. The Student \*\*\* on the spring, 2009 Texas Assessment of Knowledge and Skills-Alternate (“TAKS-A”) in \*\*\*. Student \*\*\* standard. R-144
49. The Teacher used \*\*\* during ITT and verbal behavior (“VB”) techniques in 2008-2009. He created 600-700 picture cards. The Teacher touched a card, and the Student was asked to identify the picture. Later, he used the cards to have the Student label or “tact” it, followed by focusing on features of things on the card. The purpose of the card program was to teach the Student to listen and to respond. Gradually, the Student progressed to a level of talking about what student saw on the card. During ITT, the Teacher focused on receptive, expressive, and intraverbal skills. He then took the Student outside the building to generalize the skills. Tr. Vol. IV, pgs. 181-186; R-80
50. Typically, the Student’s 2008-2009 daily schedule consisted of leisure time, followed by ITT and probing of the lesson plan, and another break. Athletics began at approximately 8:45 a.m., and more ITT followed until community outings were initiated. After lunch and an outdoor break, the Student’s afternoon was broken into ITT, reinforcement or leisure time, and later in the year, group time. The Teacher kept daily datasheets during the year. Tr. Vol. IV, pgs. 198-199; R-54A
51. During the 2008-2009 school year, the Teacher and/or the Para did the “no” and “wait” routines regularly. Tr. Vol. IV, pgs. 226-230; 270-271; R-52; R-54
52. During the 2008-2009 school year, the Student’s community outings consisted of trips to various \*\*\*. R-52
53. During the 2008-2009 school year at LISD, the Student had no incidents of \*\*\* behavior or \*\*\* behavior that required student to \*\*\* or return to the school. Tr. Vol. II, pg. 293
54. In \*\*\*, 2009, \*\*\*, a speech/language pathologist and BCBA, performed a speech assessment of the Student. The evaluation revealed that the Student has a \*\*\* and muscle weakness. \*\*\* diagnoses were severe oral and verbal \*\*\*. \*\*\* recommended several long and short term goals. R-141
55. In \*\*\*, 2009, after the Parent and Dr. \*\*\* complained about data collection to \*\*\*, LISD Special Education Director. In response, \*\*\* instructed the Teacher to send weekly documentation to the Parent on the requested forms. Dr. \*\*\* indicated that this data was appropriate. She indicated that the Student had good acquisitions for that period of time, although she felt the District did not have good data the rest of the year. Dr. \*\*\* suggested that the District replace the Student’s teacher. Tr. Vol. IV, pgs. 5-78
56. When new life skills paraprofessionals join LISD, it begins to train them in \*\*\* verbal behavior techniques. Tr. Vol. III, pgs. 29-32



57. Since April, 2006 through the summer, 2009, the Teacher took more than 475 hours of \*\*\* training. The Para received approximately 200 hours of training. The Student's speech and language pathologist, ("the SLP") received approximately 126 hours of training. The LS Teacher received 20 hours of training. Tr. Vol. III, pgs. 29-32; R-137
58. The Student's 2009 ESY was a compromise plan. Although the Parent requested nine weeks of services in the \*\*\* setting, the first portion of the program was for seven weeks for a total of 210 hours. The District paid the service providers chosen by the Parent. The District provided consultation by a BCBA, 1:1 teaching by someone trained in ABA/VB, consultation by a speech language pathologist, and parent training. All data collected during the seven weeks was to be provided to the District. In-home and community based training were to address the Student's ability to occupy student's self with leisure time activities and have appropriate behaviors in the home setting. The remainder of ESY was to be 60 hours at \*\*\* School to enable transition back into the school building, and included no less than four community outings and one peer group activity. After the seven weeks in the \*\*\* setting, the Parent did not bring the Student to the District to complete the ESY. Tr. Vol. II, pgs.129-136; Vol. IV, pgs. 85-86; 93; R-12; P-335
59. The Parent requested private placement \*\*\*, during the May, 2009 ARD meeting. The District refused the request. Tr. Vol. IV, pgs. 83-85.
60. The District provided direct speech therapy services to the Student from 2006 until the Student began at the \*\*\*. The SLP is trained and uses both the Kaufman Method for remediating speech disorders and ABA verbal behavior techniques. In 2006-2007 school year, the Student's attention span was brief, and \*\*\* reinforcers were required frequently. Student's vocalizations were primarily single-syllable words. Articulation was described as word approximations. Tr. Vol. III, pgs. 295-301
61. When the SLP assessed the Student in the spring, 2007 at age \*\*\*, student achieved an age-equivalent score of \*\*\* on the expressive one-word picture vocabulary test. Student scored \*\*\* on the receptive one-word. Tr. Vol. III, pgs 302-303; R-142
62. At the end of the 2007-2008 school year, the Student had acquired two-syllable words, and was progressing toward three syllables. Tr. Vol. III, pg. 308-313; P-25; R-4
63. During the 2008-2009 school year, the Student received direct speech therapy nine times per six weeks. In addition, the SLP consulted for 30 minutes each six weeks with the Teacher and the LS Teacher. The SLP and the Teacher consulted on targets for the Student's ITT card system, and for the achoic section that related to student's articulation goals. Among others, student's goals included correct imitation of two to four word phrases, and imitation of three to four syllable words with a variety of consonant-vowel-consonant combinations. The SLP introduced group

speech therapy for the Student. Student transitioned well into the group setting, was able to stay on-task and participate. For six to seven months of the year, the SLP provided services in a room across the hall from the Student’s classroom. Tr. Vol. III, pgs. 313-319; 365-367

64. By the end of the 2008-2009 school year, the Student had significantly increased student’s spontaneous speech productions. Student was fully integrated in the classroom and able to participate in activities with the other students. Student’s rate of \*\*\* reinforcement reduced. The Student stayed focused and engaged during speech therapy. The SLP detected intrinsic motivation in the Student. At the end of the year, the Student had made good progress on student’s target words, and significant progress on “ch” and “sh” sounds. The SLP used a response stimulus based ABA trained teaching procedure. The Student had no \*\*\* behaviors with the SLP. Student accepted “no” and “wait.” Tr. Vol. III, pgs. 313-319; 373-376
65. Some, but not all of the Student’s 2008-2009 IEP goals and objectives specify the ABLLS-R as the evaluation method to be used. R-8; R-12;
66. The following table compares the District’s behavior data for the 2007-2008 and 2008-2009 school years:

| School Year | ***-Highest Number/Month in School Year | *** Behaviors | ***              | ***           |
|-------------|---|---------------|------------------|---------------|
| 2007-2008   | 29 (October)                            | 797 (October) | 1219 (September) | 697 (October) |
| 2008-2009   | 6 (September)                           | 16 (December) | 59 (April)       | 13 (April)    |

Tr. Vol. IV, pgs. 237-242; R-135

67. During the 2007-2008 school year, the Teacher used a tracking chart that was a daily data sheet to track the Student’s various behaviors. The Teacher made additions to the chart in an effort to get a clearer picture of the Student’s behaviors. Tr. Vol. IV, pgs. 186-193; R-170 and 171
68. During the 2008-2009 school year, the Student’s \*\*\* became less intense to the point that student was \*\*\*. Regardless, the District recorded these incidents as \*\*\*. In prior years, student’s \*\*\* were so frequent and intense that student \*\*\*. Tr. Vol. IV, pg. 176
69. The \*\*\* is in a \*\*\* building. The Student goes to gym in a room that is an extension of the building. Also, the \*\*\* has a classroom, a computer room, kitchen, and a natural environment training room. The \*\*\* is considered to be a \*\*\* school, and consists of four nine-week reporting periods. Tr. Vol. I, pg. 79; Vol. II, pg 140; Vol. III, pg. 108
70. The \*\*\* school program began September 29, 2009 from 8:00 a.m.-3:00 p.m. Instruction was provided by two teachers whose work schedule changed frequently according to their needs. One

teacher was a certified teacher and the other one was a college student. Tr. Vol. II, pgs. 140-151; Vol. III, pg. 95-96

71. The \*\*\* had a \*\*\* therapist on staff from 8:00 a.m.-8:00 p.m. for \*\*\* in the event that the Student is \*\*\*. \*\*\*. The \*\*\* therapists were trained for the first time on July 1, 2010 in \*\*\*. Tr. Vol. II, pgs 153-167
72. The \*\*\* therapists \*\*\* the Student during the 2009-2010 school year while at the \*\*\*. When \*\*\* is used, the \*\*\* records the \*\*\* on ABC data sheets. Tr. Vol. II, pgs. 177-178
73. \*\*\* was one of the Student's teachers at the \*\*\*. When \*\*\* taught the Student, \*\*\*. Tr. Vol. II, pgs. 145-149
74. The \*\*\* brought in three typical peers for benefit of the Student. These children, ages \*\*\*, \*\*\*, and \*\*\*, came to the school for the group activities which included weekly outings. Their schedules at the \*\*\* changed according to the Student's needs. They did not attend during the summer, 2010. Tr. Vol. II, pgs. 145-151; 159-160
75. \*\*\* consulted for the Parent during the 2009-2010 school year. She went either to the home or to the \*\*\* to provide services. Tr. Vol. II, pgs 181-185; Vol. IV, pgs. 337-338; R-333
76. During the 2009-2010 school year at the \*\*\*, the student exhibited \*\*\* behaviors in the form of \*\*\*. Student exhibited \*\*\* behaviors in the form of \*\*\*. Tr. Vol. II, pg. 214; Vol. III, pgs. 106-107
77. On May 4-5, 2010, \*\*\* and \*\*\*, conducted an initial assessment of the Student. They reported that the Student did not independently participate in appropriate leisure activities for more than fleeting minutes, and frequently became \*\*\* when told "no." Student \*\*\*. \*\*\* and \*\*\* made several \*\*\* recommendations. They did not conduct a functional behavior assessment ("FBA") prior to making recommendations. Tr. Vol. III, pgs.154-170; P-333
78. \*\*\* procedures are used at \*\*\* as a behavior reduction procedure. The \*\*\* uses a take-a-minute procedure as a replacement behavior. If that is unsuccessful, as soon as \*\*\* occurs or \*\*\* occurs, the \*\*\* procedure is used. Tr. Vol. III, pg. 107-109
79. The District's proposed program for the Student for the 2009-2010 school year was based on the ABLLS-R and other information and data collected during the 2008-2009 school year. The Parent did not attend the ARD meeting at which time the Student's program was developed as follows:
  - Direct speech therapy in the amount of 30 minutes, 10 times per six weeks; small group instruction; IEP objectives including imitation of multiple-syllable words, imitation of vocal volume intensities, articulation goals to achieve spontaneous use of words in less structured environments, and spontaneous use of medial and final consonants of familiar words
  - BIP in consultation with \*\*\*, M.Ed., BCBA, of \*\*\*, targets included \*\*\*

- IEP in consultation with \*\*\*; goals included behavioral goals related to \*\*\*; motor imitation; vocal imitation; requesting skills including requests for help, attention, requests to remove an item or stop an activity, and requests using adjectives; labeling skills to include common actions, pictures of common actions, sequential labeling, and features of objects; labels adjectives, associated pictures, labeling items when told function, feature, and class; intraverbal skills; reading skills to include receptive letters, letter labels, and receptive letter sounds; math skills to include rote counting, counting objects, naming numerals in sequence, counting objects from a larger set; naming numbers and matching numbers with the same amount of objects; social skills; vocational skills, and overall motor skills
- Educational setting: \*\*\* campus life skills classroom
- Adaptive P.E., general education for 45 minutes a day
- Inclusions for 60 minutes per day through a \*\*\* school program called \*\*\*. Regular education students in the \*\*\* school are paired with a class in the District to come in and do activities with the Student and other life skills classmates. \*\*\* school \*\* would go into the life skills classroom to work with the students, too.
- \*\*\* services through the \*\*\* where students learn how to \*\*\*, how to \*\*\*, how to be \*\*\*, and how to \*\*\*. Tr. Vol. III, pgs 350-353; pg. 360; Vol. IV, pgs. 94-98; R-1

80. \*\*\* knew the Student when student received intensive center-based behavioral intervention at \*\*\* in 2006. During that time, \*\*\* trained LISD staff, including the Teacher. At the District's request, in August, 2009, \*\*\* reviewed the Student's records, teacher records, data collection, and records from the Parent in order to provide her opinion of the Student's progress in the 2008-2009 school year, whether or not student's IEP is appropriate and to make recommendations for improvements in student's educational programming. \*\*\* reported that the Student made progress, and had moved from a classroom with the Teacher and the Para to a Life Skills classroom and nine students. Student's \*\*\* was limited to one time \*\*\*. Student participated in a limited capacity in \*\*\* with the \*\*\*. Student mastered 10 out of 23 goals, and of the 13 remaining goals, he achieved at least 50% progress on 6. The ABLLS-R indicated progress during that school year. Tr. Vol. IV, pgs. 365-394; R-140

81. In her January 17, 2010 Expert Report, \*\*\*, an educational consultant retained by the District, considered six elements of effective educational practices for a student with \*\*\*. She looked at individualized supports and services, systematic instruction, comprehensible/structured learning environment, specialized curriculum content, functional approach to problem behavior, and family involvement. She concluded that the District is the least restrictive environment ("LRE") because it is the Student's community and offers the opportunity for him to work with the peers who live around him. Having visited the \*\*\* and having seen three other children at the \*\*\* school, one of which appeared to be \*\*\* age, she concluded that the \*\*\* program cannot offer the depth or breadth of programming that the District can offer when considering LRE. She concluded that the 2008-2009 IEP delivered both academic and nonacademic benefit as

demonstrated by the Student's progress on goals and objectives, and opined that the proposed 2009-2010 IEP would provide continued and meaningful academic and nonacademic benefit for student in the LRE. Tr. Vol. IV, pgs. 303-337; R-87

82. \*\*\*, Ph.D., BCBA is \*\*\* consultant. At the District's request, on January 27, 2010, Dr. \*\*\* reported her professional impressions regarding the District's strategies and educational program and staff training as they relate to the Student. First, Dr. \*\*\* identified the Student's needs in terms of priorities, as follows: communication and behavior; self-care and independence; social skills; functional academics, increased independence in the community, and \*\*\* skills; fine and gross motor skills. Second, Dr. \*\*\* determined that the \*\*\* for students with \*\*\* as set forth in the Texas Education Agency's \*\*\* were implemented by the District in 2008-2009. Third, she determined that the Student's 2008-2009 IEP resulted in academic and non-academic benefit that was meaningful in light of student's disabilities. Fourth, Dr. \*\*\* reported that both the District's 2008-2009 and 2009-2010 educational programs for the Student were the LRE. She pointed out that, at the \*\*\*, the peers were not always age appropriate and the two and three children with whom the Student had opportunity for social interactions remained constant, as did the teaching staff. Dr. \*\*\* noted that such arrangement decreases the Student's opportunities for generalizing across a variety of people and settings. Fifth, Dr. \*\*\* reported that the amount of ongoing staff training and supported was clearly sufficient as the Student made significant progress on student's IEP goals. Tr. Vol. IV, pgs. 339-364; R-86
83. \*\*\*, Ph.D., BCBA, reviewed District data and documents, and reported that the Student did not receive an appropriate education at LISD. He testified that the District did not consistently and accurately collect the data specified in the Student's 2008-2009 IEP. Dr. \*\*\* believed that an extended-day program would be important for the Student, and that the \*\*\* is the appropriate program for Student. Tr. Vol. III, pgs. 290-291; Vol. IV, pgs. 444
84. As part of the District's three year re-evaluation of the Student, a speech-language evaluation was conducted July 20, 2010. The report reflects that the \*\*\* year old Student's speaking vocabulary age equivalent is \*\*\*. Student's receptive or hearing vocabulary is an age equivalent of \*\*\*. The evaluator recommended speech-language therapy in individual and small group settings to assist communication in every area of functioning, including behavior. R-175
85. The District did not complete an ABLLS-R as part of its three year-re-evaluation. Its failure to do so was the result of the Parent's reticence to allow the Student to return to the school for the assessment. The \*\*\* did the ABLLS-R assessment. Tr. Vol. IV, pgs. 103-104.

## Discussion

**Data Collection:** Although Petitioner alleged that the District failed to devise an appropriate IEP by its failure to provide the Student with an appropriate amount of ABA, at hearing, petitioner devoted a great deal of time to the District's data collection. Petitioner contended that the District failed to take consistent, accurate data. Petitioner's premise was that, without consistent, accurate data, one could not determine progress. Thus, Petitioner argued that the Student made no progress during the 2008-2009 school year because there was missing, inconsistent, or inaccurate data during the relevant time period on which to base a determination of progress. One of Petitioner's witnesses stated, "If it's not documented, it didn't happen."

ABA requires that data be taken and analyzed in order to determine the effectiveness of a program. The effectiveness of an ABA program is not judged by the volume of data that is produced. Petitioner's witnesses admitted that there are other pieces of information in a classroom in addition to written data. For example, data can be a person's observations. Dr. \*\*\* agreed that a teacher of several years could have a broad base of knowledge of a student based on daily direction observation and interaction of the student and of student's interactions with other students and adults.

As for the amount of data collected, it is true that the District lost some of the data when the Teacher's computer crashed. The evidence shows that the rule of thumb for data collection is that it is sufficient when data is collected twice weekly. Respondent's expert witnesses testified that the amount of District data exceeded what they saw in other schools. Despite the loss of some of the data, the documentary evidence at hearing included a massive amount of District data regarding the Student's education program.

The Parent and consultant wanted the Teacher to record data on forms that they provided, and return the data on a regular basis. Dissatisfied with the data collection and reporting, the Parent spoke to the Special Education Director who then talked with the Teacher about providing the requested data and lesson plans. It is important to note that the IEP required daily communication sent to the Parent, and did not require provision of data or lesson plans. It did not specify the form on which data was to be collected. While it is accurate to say that the Teacher failed to send daily communication to the Parent per the IEP, such failure to do so was *de minimis* and caused no substantive harm to the Student.

Petitioner elicited testimony that the District's data was inconsistent. For example, notations such as "no data" or "no \*\*\*" appeared on a few of the data sheets. While one who did not speak with the Teacher may not have understood the notations, the credible evidence reflected that the Teacher knew what was meant. A failure of a third party to understand such notations does not invalidate the accuracy of the data.

Petitioner elicited testimony regarding discrepancies between the District's raw data and its corresponding graphs. Considering the amount of data collected, the errors were not of a significant number. The Petitioner failed to show that the errors were of such magnitude as to render all of the District's data invalid.

The IDEA does not require a particular form of data collection. As long as IEP goals provide a reasonable interpretation of a student's needs at the time of the IEP, and are reasonably calculated to provide a student with some educational benefit, they are sufficient to constitute a FAPE. Disputes involving data collection methods or measurement techniques will not in themselves invalidate a goal. *Anaheim City School District*, 110 LRP 15988 (SEA Cal. 2010). The District has discretion to select its method for recording data to measure the Student's progress. *Clark Co. Sch. Dist.*, 106 LRP 38948 (SEA Nev. 2003). Petitioner failed to show that the IEP was inappropriate or that the District's data collection was inconsistent or inaccurate so as to render it inadequate to show whether the Student made progress during the 2008-2009 school year.

**2009 ESY Services:** For 2009 ESY, rather than the Parent-requested nine weeks of services in the Parent's private setting, the District agreed to fund seven weeks, with an additional two weeks, six hours per day, at the LISD to work toward transition back into school. The Student's program included implementation of specified goals, BCBA services, community outings, peer group activity, and parent training. While in the private setting, the Parent was allowed to select the service providers.

Petitioner failed to show that the Student did not make meaningful progress during the seven weeks of ESY in the private setting. The Parent failed to take advantage of the available remaining two weeks of ESY. The 2009 ESY program was appropriate.

**Highly Trained Staff:** While the IDEA requires special education teachers teaching core subjects to be highly *qualified*, Petitioner complained that the LISD staff who worked with student was not highly trained. As noted in the above Findings of Fact, the staff who worked with the Student had many hours of training in the area of \*\*\*. The staff implemented verbal behavior techniques, used \*\*\*, reinforcers, "no" and "wait" routines, and collected data regularly. The SLP utilized ABA verbal behavior and the Kaufman methodologies with the Student. The videotape evidence was compelling in that it showed the teacher working with the Student. Rather than standing above the Student during ITT, the Teacher sat across a table from student, at eye level, and spoke calmly. Both were relaxed, and the Student was able to take instruction without \*\*\*. The Teacher delivered reinforcers. There was a steady response rate.

The Teacher's testimony displayed an understanding of \*\*\* techniques, and "tact" and "feature, function and class" as they are used with the Student. It further displayed a full understanding of how and when behavior interventions come into play. He was able to explain any questions regarding his implementation of the Student's BIP and data collection methods.

**Implementation of IEP:** In challenging the implementation of the IEP, a party must show that a school district failed to implement substantial or significant provisions of the IEP. A failure of a school to provide all the services and modifications in an IEP does not constitute a per se violation of the IDEA. *HISD v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

Petitioner attempted to show that group instruction and community outings in the 2008-2009 IEP were not implemented as required. The IEPs did not include goals or objectives for these activities. While the Parent kept the Student at home to work on the home program, student missed the opportunities to take community outings or participate in group instruction.

In the spring, 2009, on two occasions, the Teacher did not implement behavior consequences when the Student displayed \*\*\*. He satisfactorily explained the circumstances of the two incidents and his reasons for failing to explicitly follow the BIP.

**Private Placement:** When Petitioner filed petitioner's request for due process hearing, petitioner requested private placement at the \*\*\*. By the time the case was heard, the Petitioner had attended the \*\*\* for approximately one year, and the request for private placement morphed into a case of parental placement at a private facility and reimbursement request. Regardless, the question for this hearing officer is whether the District's program provided a FAPE to the Student; thus, the focus is first on the District's program, rather than the \*\*\* program. If the District's program is found inadequate, then attention is drawn to the \*\*\* program's appropriateness.

**Did the District deny the Student a free, appropriate public education?**

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate services as necessary to provide a FAPE. The educational program must be meaningful, and reasonably calculated to produce progress as opposed *de minimis* advancement. 20 U.S.C. § 1412(a)(1); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997).

The Fifth Circuit has further defined a free appropriate public education by delineating 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 child'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? *Cypress Fairbanks*, 118 F.3d at 253.



**Is the Educational Program Individualized on the Basis of the Child's Assessment and Performance?**

The Teacher and the SLP developed the Student's 2008-2009 IEP based on student's performance on the previous year's IEPs, their observations of the Student during the year, and the ABLLS assessment performed by the \*\*\*. The ARD committee, including the Parent, discussed the proposed IEP. The goals and objectives targeted specific needs of the Student. Based on a FBA, the committee devised a BIP. Later, when the Parent presented a different BIP, the District accepted it. I find that the District individualized the Student's education program on the basis of student's assessment and performance. I find that the District satisfied the first prong of the test for FAPE.

**Is the Program Administered in the Least Restrictive Environment?**

The Fifth Circuit developed a two prong test to examine LRE issues: 1) Can education in the regular classroom with supplementary aids and services be achieved satisfactorily for the student; and 2) Is the student mainstreamed to the maximum extent appropriate? *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989).

The Student's unique needs are such that education in a regular classroom with supplementary services and aids cannot be achieved satisfactorily. In earlier years, student needed a classroom setting without any peers at all. Due to student's \*\*\* behaviors, student \*\*\*. During the last semester of the 2007-2008 school year, and throughout the 2008-2009 school year, the Student progressed to a Life Skills classroom with other children. Student received more mainstreaming opportunities such as participation in group activities, PE and athletics. Student continued to require an adult with student at all times. Student's unique needs in the areas of behavior and speech/communication continued to require a highly structured environment. Based on the evidence presented, I find that the second prong of the test for FAPE was satisfied.

**Are the Services Provided in a Coordinated and Collaborative Manner by the Key Stakeholders?**

Continuing from the 2006-2007 school year, the Teacher, the Para, and the SLP coordinated the Student's program. Admirably, the Parent actively advocated for the Student and regularly communicated with the District staff regarding student's program. The LS Teacher regularly collaborated with the SLP and the District's BCBA consultant about the Student and student's education program. The SLP offered in-home assistance to the Parent. The occupational therapist consulted throughout the school year. The Teacher coordinated with the PE instructor regarding targeted skills and pairing with non-disabled children. The third prong of the test for FAPE was satisfied.

### Are Positive Academic and Non-Academic Benefits Demonstrated?

In this due process matter, the fourth prong is the key to the determination of a FAPE. For many years, at home, the Parent worked tirelessly with the Student and believes that the home program and the \*\*\* program are best for her child.

The IDEA guarantees a basic floor of opportunity, but the public program is not required to be the best possible placement for a student. *Adam J. ex rel. Robert J. V. Keller Independent School District*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003). It is not necessary for the handicapped student to improve in every area to obtain educational benefit from student's IEP. *Bobby R.*, 200 F.3d at 350.

**Non-Academic Benefits:** The Student's behavior at LISD improved markedly during the 2008-2009 school year. As noted in the Findings of Fact, the frequency of \*\*\* behaviors and \*\*\* was greatly reduced from the prior year. There were no \*\*\* behaviors toward other students or staff. The Teacher was able to walk 20-30 feet behind the Student while traversing the hallways of the \*\*\* school. The Student was able to tolerate the jostling that occurs in a school hallway.

In addition, the intensity of the Student's \*\*\* reduced. Historically, student \*\*\*. During the 2008-2009 school year, the \*\*\* reduced to a level of the Student merely \*\*\*. Student's \*\*\* were reduced from \*\*\* to \*\*\*. Student had few incidences of \*\*\*. The Student accepted being told "no" and "wait" without behavioral incidents.

The Student interacted with general education students during PE. Student was paired with non-disabled students and passed a basketball back and forth with the student. Student was able to navigate the cafeteria-line and sit with student's classmates. Student could return to get salt and pepper or request more food.

Student was fully integrated in the classroom. Student progressed from tolerating other children to interacting with them. Student made a friend during the year. Student was able to generalize to different people as reflected in the successful way that student responded when the LS Teacher did a first-time compliance trial with student. Student participated in group activities, even showing a classmate the correct way to play a game. Student could work independently for as much as 40 minutes.

**Academic Benefits:** Case law is clear that FAPE need only be an education that is specifically designed to meet a special education student's unique needs, supported by services that will permit student to benefit from instruction. *Rowley*, 458 U.S. 176, 188-191. One measure of educational benefit is the achievement of goals and objectives. Mastery of each IEP goal and objective is not required for the provision of FAPE. However, a District should not be held accountable if the projected growth in an IEP is not achieved. *Socorro Indep. Sch. Dist.*, 102 LRP 11576 (Tex. Spec. Educ. Hearing Officer, June 20, 2001). "A court should examine a child's entire academic record when determining the existence of an educational benefit." *Houston Indep. Sch. Dist. V. Caius R.*, 30IDELR 578 (S.D. Tex. 1998).

The Student has a severe speech and language impairment and student's \*\*\* is considered \*\*\*. Student's cognitive functioning in \*\*\* grade was at a \*\*\* range and student's communication skills were at a \*\*\* range. As recently as July, 2010, student's expressive language age equivalent was \*\*\*, and student's receptive language age equivalent was \*\*\*. In the summer, 2010, student had not achieved completion of all parts of the ABLLS-R. Completion of all portions of the ABLLS-R indicates a \*\*\* level.

On the spring 2009 TAKS-A, the Student \*\*\* standard in \*\*\*. For the 2008-2009 school year, the Student's IEP contained 33 objectives. Student did not master all of student's goals. However, student mastered over one-half of student's objectives. Student showed good or satisfactory progress on most all of the remaining objectives. Some IEP goals were carried over from the 2007-2008 school year which, according to Petitioner's witness, \*\*\*, is to be expected with a student like Petitioner.

The Student mastered three of the four speech therapy objectives, and was making good progress on the fourth objective. Student increased student's spontaneous speech productions significantly. The SLP saw a reduction in the rate of \*\*\* reinforcement. She detected intrinsic motivation from the Student.

The District tailored the Student's IEP to student's unique needs. Student's school day was highly structured. The Teacher, Para, and SLP were trained in ABA/VB techniques and implemented them with the Student. The evidence supports a finding that, in 2008-2009 positive academic and non-academic benefits were demonstrated sufficiently to satisfy the fourth prong of the test for FAPE.

**LISD's Proposed 2009-2010 IEP:** Based on the most recent ABLLS-R, and the observations of staff members who worked with the Student the previous year, the August, 2009 ARD committee developed the IEP for 2009-2010. \*\*\* consulted with the District in the development of goals and objectives. The Student's areas of need were communication and behavior; self-care and independence; social skills; functional academics, increased independence in the community, and \*\*\* skills; fine and gross motor skills, and as such, were targeted in the IEP.

The Teacher, the Para, the LS Teacher, and the SLP were to continue to work with the Student in 2009-2010. In prior years, these individuals collaborated with each other regarding the Student's program, and the evidence indicated that they would continue to work together in 2009-2010.

The Student's placement in 2009-2010 was to continue in the Life Skills classroom, with PE and lunch in the general education setting. The Student was to have more interaction with nondisabled students as they would come into the Life Skills classroom to work with the Student. Community outings would further provide generalization of skills opportunities.

There is every reason to predict that the 2009-2010 IEP would have resulted in positive academic and non-academic benefit to the Student. The staff and the Student had worked successfully together in 2008-2009 and meaningful progress was made. Additional \*\*\* opportunities had been put into the LISD

curriculum and were to be available to the Student in 2009-2010, as well. The Teacher was to continue using accepted ABA/VB practices.

### Conclusions of Law

1. Student, Petitioner, is eligible for special education and related services under the IDEA, and the Lindale Independent School District is the local education agency responsible for providing those services to student. *20 U.S.C. § 1400 et seq. and its implementing regulations.*
2. Lindale Independent School District's educational program is entitled to a legal presumption of appropriateness. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); The Petitioner has the burden of proving that student's special education program was not appropriate, or that the District did not comply with the procedural requirements of the IDEA and denied student a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005). Petitioner failed to carry petitioner's burden of proof. During the applicable time period, Respondent's educational program for the Student was appropriate and Lindale Independent School District provided student FAPE.

### **Order**

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is **ORDERED** that Petitioner's requests for relief are **DENIED**.

**SIGNED** on October 31, 2010.

/s/ Brenda Rudd

Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas

### 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

DOCKET NO. 275-SE-0709

|                     |   |                            |
|---------------------|---|----------------------------|
| STUDENT             | § | BEFORE A SPECIAL EDUCATION |
| b/n/f PARENT        | § |                            |
|                     | § |                            |
| V.                  | § | HEARING OFFICER FOR THE    |
|                     | § |                            |
| LINDALE INDEPENDENT | § |                            |
| SCHOOL DISTRICT     | § | STATE OF TEXAS             |

SYNOPSIS

**Issue Number 1:** Whether the District denied Petitioner FAPE through its failure to devise and/or implement an appropriate Individualized Education Program (“IEP”)

**Held:** For the Respondent, Lindale Independent School District

**Citation:** *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984);  
*Schaffer v. Weast*, 126 U. S. 528 (2005)  
34 C.F.R. §§ 300.17, 300.324, 300.106;