

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE SCHWAGER, Individually,  
RICHARD SCHWAGER, Individually,  
And as next friends of Z.S., a disabled  
Child,

*Plaintiffs*

CIVIL ACTION NO: 4:10-cv-01866

JURY DEMAND

VS.

CLEAR CREEK INDEPENDENT SCHOOL DISTRICT ("CCISD"), a "Person", and Jeffrey Rogers, RMG Law Firm f/k/a Feldman Rogers Morris & Grover L.L.P., Gregory R. Smith, Steven Ebell, Holly Hughes, Sheila Haddock, Jerry Klekotta, Jennifer Martinez, Jim Stephen, Donna Hartness, Lois Fair, Brenda Lutz, Heather Gaspard, Brandy Hester, Teri Tran, Debra Wesson-Klinger, Marie Woods-Pettiti, as "persons" under the RICO Statute, Individually, and in their official capacities as agents, employees, and/or representatives of CLEAR CREEK INDEPENDENT SCHOOL DISTRICT ("CCISD")

RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS ACT, 18 U.S.C. §1961, §1962, et seq., ("RICO"), CONSPIRACY, SCHEMES AND ARTIFICES TO DEFRAUD OF SERVICES Title 18, Chapter 63 § 1346 and §1349, WIRE FRAUD Title 18 Chapter 63 §1343, MAIL FRAUD, Title 18 Chapter 63 §1341, ILLEGAL DISCRIMINATION, RETALIATION, DISABILITY HARASSMENT IN VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973, 42 U.S.C. § 1983, TITLE II OF THE AMERICANS WITH DISABILITIES ACT ("ADA"), Title 42 Chapter 126 Subchapter 12101 et seq. as amended, AND ADA AMENDMENTS ACT OF 2008 ("ADAAA"), INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, ACCESSORY, ACCESSORY, ACCESSORY AFTER THE FACT, AND RAFTIFICATION

**PLAINTIFFS' FIRST AMENDED VERIFIED COMPLAINT  
AND APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE VANESSA GILMORE:

**A. PRELIMINARY STATEMENT**

1. COMES NOW, Candice Leonard Schwager and Richard Schwager, Individually and as next friends of Z.S., a disabled child, against Clear Creek Independent School District ("CCISD"), Jeffrey Rogers, (as a Person, Individually, in his capacity as lead partner of RMG Law Firm, and

agent/representative of CCISD), Rogers, Morris, & Grover L.L.P. f/k/a Feldman Rogers Morris & Grover L.L.P. ("RMG Law Firm"), Gregory R. Smith, Steven Ebell, Holly Hughes, Sheila Haddock, Jerry Klekotta, Jennifer Martinez, Jim Stephen, Donna Hartness, Terri Heintschel, Lois Fair, Brenda Lutz, Debra Wesson-Klinger, Marie Woods-Pettiti, Heather Gaspard, Teri Tran, and Brandy Hester, Individually, as "Persons" under 18 U.S.C. § 1961, § 1962, et seq, and in their official capacities as agents, employees, and/or representatives of CCISD, for violations of Racketeering Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, §1962, et seq., Title 18, Chapter 63 § 1349 (attempt or conspiracy to defraud), Title 18, Chapter 63 § 1346 (schemes and artifices to defraud), Title 18 Chapter 63 §1343 (wire fraud), Title 18 Chapter 63 §1341 (mail fraud), discrimination, retaliation, and disability harassment under Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act ("ADA")(ADA AMENDMENTS OF 2008 OR ADA AAA), and Intentional Infliction of Emotional Distress. Plaintiffs further plead that Defendants are liable as accessories, accessories after the fact, and/or ratified fraudulent criminal conduct, for which CCISD remains liable.

## **B. JURISDICTION**

2. The Southern District Court of Texas, Houston Division, has subject matter jurisdiction over this matter pursuant to "federal question" jurisdiction in connection with Defendants' violations of the Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. §1961, §1962, et seq. ("RICO"), Attempt and Conspiracy to Defraud a Disabled child of federally mandated special education services, Title 18, Chapter 63 § 1346 and §1349, wire fraud, Title 18 Chapter 63 §1343, mail fraud, Title 18 Chapter 63 §1341, discrimination, retaliation, and disability harassment under Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 42 U.S.C. § 1983, and Title II of the Americans with Disabilities Act ("ADA")(ADA AMENDMENTS OF 2008 OR ADA AAA). Defendants violated the RICO Statute through multiple federal statutory fraud and civil rights violations in Defendants' association-in-fact and conspiracy to defraud, discriminate, and retaliate has the sufficient causal nexus on interstate commerce, given the Federal

Government's provision of Funds for the benefit of disabled children in need of special education services under the Individuals with Disabilities in Education Act ("IDEA") and the American Recovery and Reinvestment Act, as well as Defendants' multiple statutory fraud violations involving the use of electronic mail, telephones, and the United States Postal Service. The interstate commerce nexus is necessarily established by the commission of the underlying federal crime. *See United States v. Urban*, 404 F.3d 754, 767 (3d Cir. 2005).

3. Jurisdiction further lies in Defendants' deliberate and/or conscious indifference to the disability harassment suffered by Z.S., a disabled child, over the course of six to eight months, resulting in emotional disturbance, in violation of Section 504 of the Rehabilitation Act of 1973, 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act ("ADA"), Title 42 Chapter 126 Subchapter 12101 et seq. as amended, ADA Amendments Act of 2008 ("ADAAA"). This Court has pendent jurisdiction over Plaintiffs' State law claim for Intentional Infliction of Emotional Distress, as this claim is inextricably intertwined with all other allegations.

### **C. VENUE**

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) since all Defendants reside in Harris and/or Galveston County, within the jurisdictional boundaries of the Southern District of Texas' Houston Division and a substantial part of the events or omissions giving rise to these claims occurred. Clear Creek Independent School District ("CCISD") is a publicly funded School District and is subject to federal anti-discriminatory laws through receipt of federal funds. Defendants are employees, agents, attorneys, and/or representatives of CCISD and committed the acts alleged *Individually, as agents and/or representatives of CCISD, and/or in their official capacities as CCISD employees* as more fully described herein. All defendants "persons" within the meaning of the RICO Statute, 18 U.S.C. § 1961, 1962 et seq.

### **D. JURY DEMAND**

5. Plaintiffs request a trial by jury on all issues of fact for which a determination must be made.

## E. ADMINISTRATIVE EXHAUSTION UNNECESSARY

6. Plaintiffs attempted to exhaust all remedies through their Section 504 Hearing concerning Child Find violation and disability harassment as a denial of a free appropriate public education (“FAPE”) and would have obtained rulings on all issues but for Defendants’ deceit and bad faith acts which impeded the exhaustion of Plaintiffs’ disability harassment claim. Plaintiffs do not assert “educational deprivation” claims in this federal case. As such, the claims asserted by Plaintiffs herein for conspiracy to defraud, discrimination, retaliation, racketeering, disability harassment, and retaliation—*do not require administrative exhaustion*. 18 U.S.C. § 1341, § 1343, § 1346, and § 1349, 18 U.S.C. § 241, 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act, ADA Amendments Act of 2008 (“ADAAA”), or Section 504 of the Rehabilitation Act of 1973 (“Section 504”). To the extent that any issues otherwise subject to administrative exhaustion remain, exhaustion is excused due to futility and irreparable harm.

7. Exhaustion is not necessary whenever it is clear that the continued pursuit of administrative remedies would be futile or only result in further irreparable injury. *Howard S. v. Friendswood Independent School District*, 454 F. Supp. 634 (S.D. Tex. 1978). Exhaustion is also “futile” where Defendants’ intentional misconduct impeded Plaintiffs’ ability to exhaust administrative claims. As a result of Defendants’ persistent abuse of process, Plaintiffs were forced through a five-six hour due process hearing in which (a) Plaintiffs’ disability harassment claims was dismissed due to Defendants’ “bad faith” objection (jurisdiction was conceded and suddenly denied), (b) Plaintiffs were forced to proceed without evidence concerning Z.S.’s Attention Deficit Disorder (“ADD”) and visual impairment due to Defendants’ failure to test in violation of the IDEA, (c) Defendants’ refusal to conduct an official meeting denying eligibility resulted in the Judge’s inability and refusal to rule on a key issue—eligibility (rendering the hearing largely harassing), (d) Plaintiffs suffered financially through five days of missed work as well as the stress of having to proceed ill pushing Ms. Schwager to the point of stress induced exhaustion, for which she sought emergency IV therapy. Defendants engaged in harassing misconduct as set forth below:

- March 1, 2010 – After hearing that Lois Fair, VI, failed to conduct a formal vision assessment, ignored Z.S.’s known lack of peripheral vision and visual spatial impairment (Ms. Schwager had already explained to Defendants that these issues contributed to dyscalculia math learning disability and were critical to assess), Schwager emailed Martinez and Rogers, objecting to the VI simply observing Z.S. in his classroom and requested a formal vision consultant, including tests for low vision and visual spatial problems. *In fact, Z.S. was diagnosed with a two year developmental delay in visual spatial ability by an Optometrist on June 15, 2010, who referred him to a developmental Optometrist to further evaluate Z.S.’s severe visual spatial impairment, visual motor integration disorder, the adverse effect on these severe impairments on Z.S.’s ability to learn, and develop techniques to overcome his many disabilities.*
- March 29, 2010 – Martinez emailed Klekotta about how Dr. Gail Cheramie “offered some great suggestions to beef up our evaluation.” Dr. Gail Cheramie questioned why they are rushing to complete this evaluation when there is an outside evaluation being completed.
- April 29, 2010 – Plaintiffs requested continuance to obtain evidence for ADD and visual impairment as well as an ARD meeting.
- April 29, 2010 – Rogers opposed Plaintiffs’ Motion for Continuance and precluded Plaintiffs from the opportunity to obtain evidence concerning ADD and visual impairment. Despite the fact that CCISD had not conducted an ARD/Section 504 meeting to officially deny eligibility, Rogers states, “The school district is opposed to a continuance of the disclosure deadline or the hearing.”
- April 30, 2010 – Schwager emailed Martinez requesting expedited ADD testing and ARD meeting, explaining frequent morning vomiting, dysphagia, swallowing disorder, lung disease, asthma, P.E. restriction.
- April 4, 2010 – Marie Woods-Pettiti emailed Jennifer Martinez, stating that Zachary “scored below average perception skills that could interfere with him performing academic skills at skills.”

- April 28, 2010 – Schwager visited the Emergency Room for exhaustion and saw her Internal Medicine Physician, Dr. Patricia Salvato the next day to obtain an IV treatment.
- April 29, 2010 – Parent Feedback meeting in which Lois Fair, Marie Woods-Pettiti, Brenda Lutz, Debra-Wesson Klinger, Jennifer Martinez, Irene Fellows told Plaintiffs that Z.S. did not qualify for any reason under Section 504, at which time Ms. Schwager walked out crying, knowing they were defrauding her son. Knowing then that Defendants were intentionally defrauding her family, Ms. Schwager emailed Rogers/Schexnayder, stating that as after seeing CCISD’s fraudulent report and having every bit of relief she (even trivial) denied, she no longer believed in justice for disabled children.
- April 30, 2010 – Schwager emailed Rogers, requesting ADD, peripheral vision testing and ARD Meeting.
- May 1, 2010 – Schwager emailed Rogers/Schexnayder asking to reconsider motion for continuance. CCISD has known since 1<sup>st</sup> grade that Z.S. has no peripheral vision and still refuses to test or perform a low vision exam, yet they admit this will impact his ability to learn. Objecting to Fair’s fraudulent evaluation, given that she has no qualifications to read medical records and never tested Z.S.’s known disabilities.
- May 1, 2010 – Schwager emailed Schexnayder/Rogers regarding additional basis for continuance, stating that they did not understand a psychological assessment was needed for ADD and needed to complete testing, further expressing willingness to waive 5 day waiting period.
- May 1, 2010 – Schwager emailed Schexnayder/Rogers stating that since CCISD does not have evidence on Z.S.’s lack of peripheral vision, they should be amenable to continuance to allow all parties to obtain evidence on disability for which Z.S. may qualify under 504.
- May 1, 2010 – Schwager emailed Rogers (upset) stating that CCISD has one more chance to do

right thing, demanding low vision testing for lack of peripheral vision / retinopathy and an ARD meeting denying eligibility prior to the hearing, asking Jeff to not challenge his own admission that bullying could be heard, stating that he knows Z.S. qualifies for any number of disabilities based upon “other health impairment,” explaining misconceptions concerning special education and psychological testing/ADD, begging him to show good faith and realize that the person he is hurting is Z.S. and imploring him to just be honest because Z.S. qualifies.

- May 1, 2010 – Schwager requested that Martinez complete formal vision screen and psychological evaluation for ADD prior to May 13<sup>th</sup> hearing, requesting low vision exam
- May 1, 2010 – Rogers emailed Schwager in an effort to convince her to dismiss the case, fraudulently stating that Z.S. does not qualify, but can still receive help in other ways (knowing Z.S. was receiving special education services since January, but failing to disclose this).
- May 3, 2010 – Rogers emailed Response to Plaintiffs request for two week continuance due to medical necessity and callously states that Plaintiffs are “not without recourse”—they can dismiss and re-file (despite the obvious prejudice due to limitations and *per se* harm to Z.S. in the delay).
- May 3, 2010 – Schwager emailed Schexnayer/Rogers stating physically unable to go forward with hearing and going to get IV treatments on the 4<sup>th</sup>.
- May 4, 2010 – Schwager received IV treatment for stress induced exhaustion and fatigue at Dr. Salvato and Dr prepared note stating that Schwager was under her care and should not proceed to trial for two weeks.
- May 4, 2010 – Schwager stayed up all night reading Public Documents to prepare for Resolution session, given Defendants’ last minute notification that documents were ready to retrieve.
- May 5, 2010 – Resolution session attended by Candice and Richard Schwager, Jennifer Martinez, Steven Ebell and Jerry Klekotta in which Klekotta and Ebell offered Section 504 “coverage” for Z.S. due to math problems, in addition to summer math Kumon services. Defendants

acknowledged eligibility in doing this but when Plaintiffs were unhappy with the proposed services, Rogers began fraudulently denying eligibility again.

- May 5, 2010 – Schwager emailed Schexnayder and Rogers stating ARD meeting (denying eligibility) not completed.
- May 5, 2010 – Schwager emailed Martinez stating that refusing the ARD meeting denying eligibility and forcing them through due process hearing is not due process, agreeing to waive 5 days notice period for ARD.
- May 5, 2010 – Rogers opposed Plaintiffs’ motion for continuance, alleges Ms. Schwager was not ill on the basis that she email him all night long—when Rogers knew Schwager emailed him about the horrific, despicable emails and plan to defraud her son that she found as she read documents all night long that could have been provided weeks ago.
- May 6, 2010 – Schwager emailed Jerry Klekotta demanding that CCISD test Z.S.’s known peripheral vision loss and ADD, requesting Independent Education Evaluation.
- May 6, 2010 – Schwager emailed Martinez (upset) about stalling ADD and vision testing, ordering them to get it done or Plaintiffs will file in federal court.
- May 6, 2010 – Schwager emailed Judge Schexnayder (upset) discussing the many due process violations wrought upon them by being forced to hearing without evidence or a formal denial of eligibility, upset about discrimination and forcing her to go through hearing sick, and denying even the smallest requests for relief.
- May 6, 2010 – Schwager emailed Judge Schexnayder and Rogers regarding denial of “ARD” and IEE, stating “maybe you can declare him disabled and covered by 504.”
- May 6, 2010 – Schwager emailed Ebell (due to Klekotta and Martinez’s failure to respond to requests) asking Ebell to arrange ADD consult prior to hearing so Plaintiffs get due process.
- May 6, 2010 – Schexnayder denied continuance for lack of good cause despite Candice



representing she could not go forward and will too ill due to witness availability (same witnesses were needed for 6/18/10 IDEA hearing), stating that Plaintiffs could dismiss.

- May 6, 2010 – Schwager emailed Schexnayder and Rogers objecting to due process violation, stating that she will go forward sick if necessary to protect Z.S.’s rights.
- May 10, 2010 – Schwager Letter to Klekotta stating that they have requested an IEE and ARD meeting at least five times, they rejected the “result oriented FIE” and “bad faith” discrimination for which legal redress will be sought.
- May 11, 2010 – Schwager emailed Klekotta asking for ADD and comprehensive low vision assesment, stating that his attempts to limit testing are illegal, commanding him to re-write the letters limiting their IEE.
- May 11, 2010 – Two days before hearing, Rogers finally responds to request for ARD Meeting. Despite pleas to hold ARD prior to hearing so Plaintiffs are not denied due process, Rogers refuses to schedule the meeting *until after the hearing. Notably, the ARD Meeting/Section 504 was scheduled for 24 hours after Math TAKS results were due.*
- May 16, 2010 – Schwager (very upset) emailed Klekotta stating that they will obtain psychological testing and low vision and reminding him that his actions are illegal, imploring him to stop.
- May 18, 2010 – Klekotta continued to refuse low vision evaluation as part of Plaintiffs’ Functional Visual Evaluation in their IEE on the basis that CCISD did not conduct one, despite Schwager’s insistence that his actions are illegal.

8. Plaintiffs knew without doubt that Defendants were conspiring to defraud Z.S. of federally mandated special education assistance once they received CCISD’s Full Individual Evaluation (“FIE”) at CCISD’s April 29, 2010 parent-feedback meeting. Despite raw data revealing significant impairment in Attention Span, Math, Vision, and Writing (consistent with Plaintiffs’ expert’s conclusions), every individual participating fraudulently concluded that Z.S. did not qualify under Section 504 for services.

Plaintiffs suspected that an ARD meeting was required (unaware that the proper terminology was “Section 504” meeting). Despite numerous requests for an ARD Meeting *prior to hearing* so that they were not deprived of due process. Rogers, Klekotta, Martinez, and Ebell ignored Plaintiffs’ requests until just a few days prior to the May 13, 2010 hearing. Though undoubtedly Judge Schexnayder was aware through multiple emails that no Section 504 meeting had occurred when she forced Plaintiffs through a non-sense due process hearing in which little relief could be had because the meeting had not been held. Plaintiffs never imagined that a trial would proceed if Schexnayder had no authority to rule, so they proceeded through a five-six hour due process hearing in which they called two experts to testify. At the end of six hours, Judge Schexnayder refused to rule because Defendants had not granted Plaintiffs many requests for a meeting “officially” denying eligibility. Though Rogers claims that he was technically in compliance with statutory time schemes, this was clearly abuse of process meant to retaliate and harass Plaintiffs.

9. Z.S. has finally been deemed eligible for special education services through the IDEA and Section 504, leaving most issues moot. To the extent necessary to proceed, Plaintiffs will waive compensatory education claims for denial of FAPE because the essence of this case is fraud, conspiracy, racketeering, discrimination, retaliation, and disability harassment and Plaintiffs are unwilling to return their precious son into the hands of criminals. The fact that Defendants engaged in a criminal conspiracy to defraud a disabled child (as opposed to Medicaid/Medicare) does not morph this Complaint into an IDEA claim. For this reason, administrative exhaustion is not required in order for Plaintiffs to pursue this lawsuit. *Futile* includes the inadequacy of administrative remedies and cases in which *Defendants have deliberately placed an impediment in Plaintiffs’ path*, making an attempt to exhaust a worthless endeavor. Where Defendants’ persistent “bad faith” acts and abuse of process precluded administrative exhaustion, Defendants cannot now complain that Plaintiffs failed to exhaust. Defendants should not be rewarded for clearly dishonest, harassing conduct with more opportunities to harass by forcing Plaintiffs to exhaust administrative remedies on this claim.

10. Plaintiffs pled disability harassment in connection with Z.S.'s severe and persistent bullying, constituting a hostile environment which impeded his ability to learn. Though Rogers was well aware of the facts giving rise to this claim and even conceded that to the extent Plaintiffs' alleged disability harassment constituted a denial of FAPE, it was properly before the Court, once Rogers saw the opportunity to violate Plaintiffs' rights again, he suddenly began objecting and impeded Plaintiffs' ability to present evidence on bullying. In response to Judge Schexnayder's dismissal of Plaintiffs' disability harassment claim, Plaintiffs urged and re-urged this claim and were denied due to Rogers' misconduct.

- April 29, 2010 – Schwager emailed Schexnayder asking to reconsider ruling given Rogers' concession that bullying claim could be heard as denial of FAPE.
- April 30, 2010 – Schwager e-mailed Schexnayder & Rogers and cites language wherein Plaintiffs' disability harassment claims as a denial of FAPE are properly before the Court
- May 1, 2010 – Plaintiffs filed a Brief, establishing that federal law provides Plaintiffs with the right to present evidence and obtain a ruling on disability harassment claims asserted as a denial of FAPE under Section 504.
- May 1, 2010 – Schexnayder states that “If Respondent is not contesting jurisdiction as to the bullying claim, then I will obviously not be dismissing it.”
- May 3, 2010 – Rogers suddenly flip-flopped and began objecting to Plaintiffs' disability harassment claim heard, callously states that Plaintiffs are not without recourse on their claims, suggesting that Plaintiffs can dismiss and re-file when Rogers knows this is very prejudicial to Z.S.
- May 5, 2010 – Schwager emaild Schexnayder and Rogers legal authority from OCR that “[p]arents may initiate administrative due process procedures under IDEA, Section 504, or Title II to address a denial of FAPE including a denial that results from disability harassment.”
- May 5, 2010 – Schwager emailed Schexnayder and Rogers further legal briefing proving Plaintiffs right to present disability harassment (as a denial of FAPE) claim, objecting to CCISD's

## Unconstitutional Board Policy.

- May 6, 2010 – Schwager sends Motion to Reconsider ruling excluding disability harassment claim, stating that Plaintiffs will amend their petition if it is unclear but Defendants never objected. Schwager asks Judge to let her know if a pleading amending would fix the problem. No response.

12. Plaintiffs were left with two undesirable choices: Dismiss Z.S.'s case and re-file (prejudicing Z.S.'s rights due to limitations issues and denying Z.S. relief). To avoid prejudicing Z.S.'s rights, Schwager proceeded to trial – unaware that the Section 504 Hearing Officer would not rule on eligibility. Though Plaintiffs believed that an “official” meeting denying eligibility was needed, after disclosing this to Judge Schexnayder and asking her to rule on eligibility, Plaintiffs assumed she could render an opinion concerning eligibility. At the end of five to six hours of testimony, the Judge indicated that no ruling could be had on eligibility—due to the Parties’ failure to conduct the Section 504 meeting denying eligibility “officially.” Due to Defendants’ knowing deception and harassment, this trial resolved nothing other than a Child Find violation—which the Parties expect to receive a ruling any day now. The only issue to be resolved at the administrative level is the relief to be granted Plaintiffs for CCISD’s violation of Child Find and additional disabilities for which Z.S. is eligible for services under the IDEA. However, after discovering that more than twenty people conspired against Z.S.’s ability to receive even the remotest degree of assistance in connection with his disabilities—in violation of federal law—Plaintiffs are unwilling to place their child in the hands of criminals.

13. CCISD cannot provide an appropriate program for Z.S. Given their bad faith refusal to even test his severe visual impairment after being informed since January that visual spatial impairment is a frequent cause of dyscalculia math learning disability (based upon Ms. Schwager's Google research), confirmation by two separate experts that Z.S. has visual motor integration disorder and a two year delay in visual spatial impairment, resulting in a referral to a Developmental Optometrist to fully assess the degree of impairment and help Plaintiffs find ways to help their son learn and overcome his math learning

disability, CCISD can hardly argue that it is remotely *capable or willing* to provide an appropriate program for Z.S. Even if they could, placement in CCISD “not an option.” Though Plaintiffs have the option of seeking one year of private school tuition against CCISD for educational deprivation, the emotional pain, suffering, harassment, retaliation, and financial ruin Defendants will inflict upon Plaintiffs over the course of the next three months, the IDEA hearing is futile, inadequate, and cannot grant the relief to which Plaintiffs desperately need. For this reason, whether deemed futile, based upon irreparable injury or even if Plaintiffs must relinquish their claim for compensatory education, they wish to do so and proceed with this federal action. Plaintiffs seek a temporary restraining order, temporary injunction and permanent injunction against CCISD, Defendants, Jeff Rogers, and RMG Law Firm—from further acts of retaliation and abuse against her or her business (clients).

14. Rogers’ misconduct has left the Schwager family in a very abusive administrative exhaustion purgatory, much like “*Ground Hog Day*” in which Plaintiffs are forced to endure senseless administrative due process hearings, in which no ruling may be had due to Defendants’ misconduct, necessitating further administrative due process hearings which similarly fail to deny relief and are solely intended to trap Plaintiffs and preclude their ability to move forward. To the extent Plaintiffs ever get to move forward, it will not be without an enormous amount of harassment and suffering. Notably, Plaintiffs asked Schexnayder/Rogers for a stipulation that no argument based upon failure to exhaust administrative remedies. Predictably, Rogers asserts failure to exhaust administrative remedies as a means to dismiss this case—when Defendants’ misconduct stood in the way of administrative exhaustion with this plan in mind. With Defendants’ degree of malice, deceit and abuse of process is so great that CCISD would deny any assistance for his many disabilities—irreparable harm is obvious.

15. Irreparable injury is presumed by the delay which has already been wrought upon Z.S. On January 17, 2010, Ms. Schwager requested that Z.S. receive comprehensive testing in all areas according for qualification under the IDEA based on a suspected *math learning disability and visual impairment*.

Instead of admitting obvious fault and attempting to do the right thing, Defendants concoct a scheme to defraud him of all help involving more than 20 people and paid Jeff Rogers what is very likely 3-4x that amount to harass, retaliate and punish Ms. Schwager. Rogers and his clients have arrogantly controlled special education in CCISD and Region 4 much like a “legalized mafia” for years with no accountability. Defendants dictate the details of the minimal assistance children receive through coercion and intimidation, citing the “flood gate” of needy children they would have to help if they helped just one.

16. Due to the intolerable arrogance of Rogers, Haddock, Feldman, Smith, Klekotta, and their inability to see the only thing that matters— “adults” purporting to be “professionals” have inflicted irreparable harm on Z.S by depriving him of years that he can never reclaim and suffering that is complete. CCISD’s LSSP diagnosed Z.S. with “emotional disturbance,” noting his frustration with perceived failures and poor resilience to victimization. He has fears that no ten year old child should have—that he’ll be a “failure in life,” has made alarming statements about wanting to harm himself, is clearly distressed, and continues to be deprived a free appropriate public education (“FAPE”) by Defendants’ callous disregard.

17. Z.S. had an opportunity to receive the assistance so clearly lacking in CCISD –before Rogers incessant abuse and delays caused him to be rejected for the 2010-2011 school year. The Joy School is one of the few area schools capable of teaching a learning disabled / visually impaired student like Z.S. and sorting out the complexities attendant to his many disabilities in an effort to find a recipe for future success. Z.S. has a three year discrepancy in Math, a two year delay in visual spatial development, and Joy places students in classes according to ability, rather than grade. Stressing the significant detriment that even small delays pose to disabled children, Senator Harrison Williams, stated: “I cannot emphasize enough that delay in resolving matters regarding the education program of a handicapped child is extremely *detrimental to his development*. The interruption or lack of the required special education and related services can result in a *substantial setback to the child's development*.” *Spiegler v. District of Columbia*, 866 F.2d at 467

(citing 121 CONG. REC. 37,416 (1975) (statement of Senator Williams)). Defendants are well aware of the harm they continue to inflict—making this particularly egregious.

18. Rogers' persistent harassment on CCISD's behalf continues to wreak havoc and cause irreparable injury to Ms. Schwager and Z.S. After pleading with Superintendent Gregory Smith to remove Jeff Rogers from her case and stop the "shark attack." Schwager testified in a Level Three Grievance Hearing about all of the people who intentionally sought to harm Z.S., the devastation these acts have wrought upon the Schwagers. Shockingly, Smith refused to discipline anyone involved, refuses to remove Jeff Rogers from this case, and demonstrated a callous disregard for the Schwager family's suffering—as evidenced by his "mocking" response. *See Exhibit AA, Ruling on Level Three Grievance from G. Smith.* Defendants have made it clear—they have no intent to stop the abuse of process, harassment and retaliation inflicting so much pain and suffering on the Schwager family.

19. Ms. Schwager has lost ten pounds, hardly sleeps, eats, or drinks, suffers constantly at what has been done to her child, and continues to suffer inexcusable harassment by Rogers. Defendants are damaging her business continually by precluding her ability to work in any District they represent (most of Houston) for fear of what they will most certainly do to her clients—harass, retaliate and inflict pain on them. *See Affidavit of Christina Stevens.* Though outrageous, this belief is shared with several "would be" clients who desperately wanted her services but decline once Ms. Schwager notifies them that she cannot ethically undertake their representation. The business injury continually inflicted upon Ms. Schwager by Rogers and his partners' intimidation of families continues to wreak irrevocable damage upon Ms. Schwager, which cannot be compensated in damages due to the speculative nature of these damages, for which a finding of irreparable injury to support injunctive relief is requested. Plaintiffs respectfully request that this Honorable Judge do what Superintendent Smith and Jeff Rogers lack the decency to do—stop the abuse and harassment—by issuing a temporary restraining order, temporary injunction, and permanent injunction. Plaintiffs are clearly entitled to a preliminary injunction since (a) Plaintiffs will

prevail on the merits, (b) Plaintiffs continue to suffer irreparable harm, (c) the irreparable injury suffered by Plaintiffs outweighs any potential harm to Defendants, and (d) the injunction will not disserve any public interest. *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5<sup>th</sup> Cir.1985).

#### **F. PARTIES**

20. Candice Leonard Schwager is a licensed attorney (Texas Bar No. 24005603 and Federal Identification Number 30810) proceeding *pro se* Individually as the “Mother” Z.S., a disabled child. Ms. Schwager is the Sole Proprietor of the *The Schwager Law Firm*, represents disabled children in the area of special education in addition to general civil litigation, President of *Attorneys for Special Needs Children, a Texas Non-Profit Corporation*, and host of a weekly internet radio program for special needs children. Richard Schwager is the father of Z.S., Secretary & Treasurer of *Attorneys for Special Needs Children*, and proceeds Individually and *pro se* on behalf of Z.S. a disabled child.

21. Z.S. is a ten year old boy with multiple disabilities as a result of his severely premature birth. Z.S. was born at 25 weeks and 6 days gestation, weighing one pound at 11 ¼ inches in length. Z.S. required life support and intubation for more than thirty days, resulting in chronic lung disease, broncho-pulmonary dysplasia with a current diagnosis of severe chronic asthma and/or reactive airway disease. He remained in intensive care for four months, two days, required “PDA Ligation” (heart surgery), suffered a level one brain bleed, jaundice, and required retinal ablation surgery to 360 degrees in both eyes, has high myopia (severe nearsightedness), and remains severely visually impaired, requiring corrective lenses with a prescription of -12 and -12.5, respectively. Children with high myopia have a high risk of retinal detachment and blindness. Z.S. required continuous oxygen, nursing services, and was fed through a naso-gastric tube during the first six to ten months of life. His prematurity resulted in dysphagia swallowing disorder, vomiting, and gastric reflux. Z.S. has a well documented history of failure to thrive, developmental delay, chronic lung disease requiring nebulizer treatments, bronchodilator, and steroidal inhaler breathing treatments since birth. Z.S. continues to receive medication to stimulate weight gain.



His low birth weight qualified Z.S. for social security disability until statutorily excluded due to family income during the first year of his life. *Exhibit A, Affidavit of Candice Schwager.*

22. Z.S. has received occupational therapy services for developmental delay and dysphagia swallowing disorder since infancy, with approximately two years of intermittent gaps—due to lack of health insurance coverage and Z.S.'s Occupational Therapist's 2009 death. Z.S. continues to suffer from many disabilities and weighs only 52 pounds in comparison to his 70+ pound peers. On April 13, 2010, Dr. Mike Assel, Ph.D. of the University of Texas' Children's Learning Center, diagnosed Z.S. with Dyscalculia Math Learning Disability, Developmental Coordination Disorder<sup>1</sup>, Visual Spatial Integration Disorder, Visual Spatial Impairment, Attention Deficit Disorder, discussing the significant adverse impact of Z.S.'s visual impairments on his ability to write and perform mathematics calculations. *Exhibit B, Report from Dr. Mike Assel, Ph.D. of the Children's Learning Center.* Z.S. was evaluated by an optometrist on June 15, 2010, who confirmed that Z.S. has a two year developmental delay in the area of Visual Spatial impairment. He has been referred to a Developmental Optometrist to determine the depth of adverse effect these impairments have on his ability to learn and to develop techniques to overcome this debilitating condition so that Z.S. can succeed in math, handwriting and other subjects—as Ms. Schwager has insisted ad nausea since January of 2010.

23. Clear Creek Independent School District ("CCISD") is the Local Education Agency encompassing the two elementary schools attended by Z.S. since Kindergarten—McWhirter Elementary School and Robinson Elementary School. Clear Creek Independent School District was served with process by hand delivery to Deputy Superintendent Steven Ebell at CCISD's Administration Building, 2425 E. Main Street, League City, Texas, 77573.

24. Jeffrey Rogers ("Rogers") is a partner with Rogers, Morris, & Grover L.L.P. f/k/a Feldman Rogers Morris & Grover L.L.P. ("RMG Law Firm"). Rogers and served as principal and/or "ring leader" in

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<sup>1</sup> Consistent with Z.S.'s 10 year history of developmental delay provided to CCISD in March of 2010 through Plaintiffs' Release of Medical Records.

this conspiracy to defraud a disabled child of federally mandated services. An email from Jennifer Martinez to several individuals in April of 2010 demonstrates that Rogers' led this conspiracy to defraud Z.S. and had last "editing privileges" for three weeks to conclude that a very disabled child received nothing. Martinez's emails show that CCISD (in concert with Rogers) created a "result oriented" FIE--*the result being Z.S. discriminated against and denied federally mandated assistance.* Rogers knew by January 25, 2010 that Z.S. had many disabilities qualifying him for Special Education under Section 504 and the IDEA—and participated in the scheme to provide special education accommodations to Z.S. *to fraudulently assert Z.S. has no disabilities qualifying him for Special Education services.*

24. Rogers had several meetings with the individuals involved in this conspiracy beginning just a few days after Ms. Schwager sent a notice of intent to sue. Documents from the Office of Public Records of CCISD show months of e-mails between Rogers and the other named Individuals in this lawsuit—some of which are shocking "prima facia" evidence of fraud. CCISD's Lead Diagnostician, Jennifer Martinez, sent a series of e-mails to the diagnostic team in April of 2010, showing intent to defraud. Of the many emails Ms. Martinez sent, she states that Mr. Rogers was sent the unsigned FIE (technically dated 4/5/10 and ultimately dated 4/29/10) and they were instructed to do nothing without further notice of the "game plan" from Rogers. Only in Jeff Rogers' corrupt world do attorneys have access to unsigned diagnostic test results used to deny disabled children eligibility to federally mandated services. Martinez's emails propose having a signing party to celebrate the fact that a disabled child was denied all assistance, acknowledge the sensitive nature of this case, have suggestive language for Ms. Lutz to "do her magic", reveal conversations with University of Houston Psychologist Dr. Gail Cheramie, in which Cheramie wondered why Defendants were rushing testing and proposed stalling it so they could "beef up" the FIE after they reviewed Plaintiffs' outside testing, expressing the need to "look GOOD at trial ☺," and *celebrates the many absences Z.S. has in connection with his many illnesses (of which CCISD has been aware since Kindergarten with little change in pattern), stating how great the absences look.* Ms. Martinez is a

Diagnostician charged with conducting unbiased evaluations of students with disabilities for purposes of determining eligibility for federal funds and these statements show much more than bias—they show intent to defraud. In a 2007 racketeering lawsuit brought against Rogers and his firm, *Kathleen Thomas* accused Rogers of "scorched earth retaliation" and Rogers lived up to this reputation through his abusive retaliation against the Schwager family. *United States of America ex rel Kathleen Rogers v. Jeffrey Rogers, Feldman Rogers et al.; In the Southern District of Texas, Houston Division; Civil Action No. 4:07-cv-01212 (2007)*. Jeffrey Rogers is sued Individually and as principal of RMG Law Firm, accepting service for both at his usual place of business, 5718 Westheimer Road, Houston, Texas 77057.

25. David Feldman is Rogers' prior law partner and was used by CCISD to harass, threaten, and retaliate against Ms. Schwager through a frivolous libel threat, and veiled threats to Ms. Schwager's lawyer and mentor of "ethical problems" by his association with Ms. Schwager. *See Exhibit H, Libel threat and Exhibit I, Ms. Schwager's Response to Libel accusation*. Shortly after Ms. Schwager was threatened with a knowingly frivolous libel lawsuit, RMG Law Firm began conducting surveillance of Ms. Schwager's internet advocacy efforts—with the intent to intimidate and silence criticism. Whether meant to retaliate and intimidate or simply preclude Ms. Schwager from working in this area of law (for lack of an experienced mentor), Feldman's interference ultimately resulted in the withdrawal of Z.S.'s attorney, leaving Ms. Schwager to proceed *pro se*—*a sitting duck for Rogers' harassment*. CCISD and RMG Law Firm have been sued for illegal retaliation, racketeering, and Intentional Infliction of Emotional Distress in connection with actions of agents/representatives hired by CCISD to violate laws.

26. Erik Nichols is a partner with RMG Law firm, used by CCISD and Jeff Rogers to retaliate against Ms. Schwager and damage her business by intimidating prospective clients from retaining her services and creating an *ethical* conflict in Ms. Schwager's representation of families residing in the many Districts RMG Law Firm represents. Ms. Schwager lives and works in Harris County and RMG Law Firm represents Harris County ISD, Galveston ISD, Pasadena ISD, Clear Creek ISD, Conroe ISD, Texas City

ISD, and a large number of Districts in Region 4. In April of 2010, Ms. Schwager assumed the representation of Kevin and Christina Stevens on behalf of their autistic son, H.S. Though Ms. Schwager naively assumed Nichols would conduct himself as a professional—laying aside personal animosities of his partners, Nichols viciously harassed the Stevens family in what can only be described as outrageous abuse and retaliation. After their child was beaten on PISD's premises, his physician prohibited his return to the same campus and suggested that evaluations were necessary to determine whether H.S. suffered post traumatic stress, ADHD, or something more. As a special education student, H.S. was entitled to evaluation by PISD. Though Ms. Schwager only sought testing and a transfer for a severely distressed child from Nichols and PISD, Nichols resisted the simplest of demands, harassed this family and Ms. Schwager—sending a clear message that Ms. Schwager was not going to work in special education in Region 4. *See Exhibit J, Affidavit of Christina Stevens and Exhibit K, Letter from Dr. Stephanie Posick concerning H.S.* Evidence of malicious intent far exceeding "zealous advocacy" is Nichols' blasé attitude towards a seven year old child believed to be suicidal. *See Exhibit L, Nichols' responses to Ms. Schwager's urgent emails concerning H.S.'s precarious mental state, in which Nichols casually comments that "this does sound serious," "tell James hello for me."* Realizing that her continued representation would only result in further harassment, Ms. Schwager obtained substitute counsel, withdrew, and forfeited her right to a retainer fee so that H.S. could get help. *Exhibit A.* Unable to witness the Stevens' suffering any longer, Ms. Schwager filed a grievance against Nichols and informed his partner of the same. The very next day, Nichols backed off, H.S. was transferred to a nearby school, PISD began immediate testing of H.S., and the Stevens' nightmare ended. *Exhibit J.*

26. Sheila Haddock is an employee of RMG Law Firm, employed as General Counsel of CCISD. CCISD has been sued for violating Section 504 in connection with Haddock's conscious indifference to the disability harassment and suffering of Z.S. Despite the obvious violation of Section 504 given Z.S.'s many disabilities, when asked to intervene and stop further abuse, Haddock refused on the grounds that

Plaintiffs had "no private right of action" under the Anti-Bullying Statute, Texas Education Code § 37.001. Haddock further participated in intentional bad faith retaliation against Ms. Schwager through the frivolous libel threat asserted on her behalf. Haddock has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 and the IDEA concerning Z.S.'s disability harassment. Haddock was personally served at her usual place of business, CCISD's Administration Building, 2425 E. Main Street, League City, Texas, 77573.

27. Gregory R. Smith is the Superintendent of CCISD. Smith has known of the abusive, retaliatory acts committed against the Schwager family for months in violation of Section 504, the illegal conspiracy to discriminate against Z.S. and defraud the Schwagers, constituting racketeering and continues to refuse Ms. Schwager's pleas to remove Jeff Rogers from her case to stop the harassment and abuse. Though Ms. Schwager testified tearfully through a Level Three Grievance about the horrendous retaliatory conduct of CCISD's attorneys against her family, he continues to allow Rogers to harass the Schwager family—leading to the obvious conclusion that he approves through ratification.<sup>2</sup> Gregory Smith has been sued Individually for violations of the RICO Statute in his participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 retaliation. Smith accepted service at his usual place of business, CCISD's Administration Building, 2425 E. Main Street, League City, Texas, 77573. Dr. Smith's June 8, 2010 letter is evidence of ratification, making him an accessory-after-the-fact at the very least. As the CEO of CCISD, his actions render CCISD liable to Plaintiffs in damages.

28. Steven Ebell is the Deputy Superintendent of CCISD. Mr. Ebell met with the Schwagers after Heather Gaspard, Jim Stephens, Holly Hughes and Sheila Haddock refused to take action to protect their disabled son on or about January 20, 2010. Apologizing for Ms. Haddock's insensitive comments, Mr. Ebell assured Plaintiffs that Haddock and Stephen would be disciplined appropriately, suggesting that

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<sup>2</sup> Even after testifying through a Level 3 Grievance in which Ms. Schwager tearfully begged Smith to remove Rogers and exposed his conduct, Smith did nothing.

*administrative leave without pay* was the most probable remedy. Mr. Ebell agreed to rescind the "bad faith" trespass letter as to Mr. Schwager,<sup>3</sup> stated that he had never heard of the IDEA, and led Ms. Schwager to believe that CCISD intended to work with Ms. Schwager to obtain assistance for Z.S. pursuant to the IDEA. Mr. Ebell also granted Principal Stephen permission to have Mrs. Weiss, a personal "special education" aide to follow Z.S. to every class for several months. *Exhibit A*. Mr. Ebell has been sued Individually for violations of the RICO Statute in his participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 through retaliation and libel threats—with knowledge of the false accusations. Steven Ebell was personally served at his usual place of business, CCISD's Administration Building, 2425 E. Main Street, League City, Texas, 77573. Mr. Ebell also accepted service on behalf of CCISD.

29. Holly Hughes is the Assistant Superintendent who refused to take action to stop Z.S. from being further bullied and abused. She attended the January 19, 2010 meeting in which General Counsel Haddock refused to enforce the law and protect Z.S., despite the obvious violation of federal law. Hughes is also the author of the frivolous Trespass Letter sent to Ms. Schwager to intimidate and harass her—despite the liaison officer's conclusion that Ms. Schwager did nothing wrong. *See Exhibit K, Trespass Letter from Holly Hughes*. Hughes has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 for conscious indifference to disability harassment and retaliation through her "bad faith" trespass letter. Hughes was personally served at her usual place of business, CCISD's Administration Building, 2425 E. Main Street, League City, Texas, 77573.

30. Jerry Klekotta is the Director of Special Education and has participated in this campaign to defraud, discriminate against Z.S., and harass the Schwager family. He continues to illegally discriminate

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<sup>3</sup> Though Ms. Schwager does not believe this trespass letter should have been issued against her either, the issue seemed hardly worth arguing about given the bullying, abuse and severe problems Z.S. was experiencing in Math—the reason for the Schwagers' visit.

against Z.S. on the basis of his visual impairment disability. Though asked approximately 8-10 times to test Z.S. visual field due to his lack of peripheral vision, visual spatial problems, and visual motor integration problems, he refuses. Given Z.S.'s confirmed impairment by two separate experts—a Ph.D. in Child Development and Optometrist, and need for accommodation which Defendants refuse to acknowledge or provide, this is blatant discrimination. Klekotta further participated in the conspiracy to harass and retaliate against the Schwagers by ignoring or refusing more than ten requests for an ARD meeting and/or meeting to officially deny Section 504 eligibility—so that CCISD and Rogers could punish Ms. Schwager by forcing her through a 5-6 hour hearing in which no ruling could be had because he refused to grant the meeting. Klekotta has been sued Individually for violations of the RICO Statute in his participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 for retaliation and discrimination. Klekotta was personally served at his usual place of business, CCISD's Special Education Facility in Webster, Texas.

31. Jennifer Martinez is CCISD's Lead Diagnostician whose e-mails indicate that the Full Individual Evaluation ("FIE") created for Z.S. was created with the intent that he not qualify for special education—period. Martinez proposed having a "signing party" when they signed the FIE that denied Z.S. help, had conversations with University of Houston Learning Disabilities Expert, Dr. Gail Chermie about stalling CCISD's FIE to "beef up" their report (after reviewing Plaintiffs), and look "GOOD at trial 😊." She made strange statements to Brenda Lutz, instructing her to "do her magic" and is very likely to know what the FIE looked like on 4/5/10 (when all of the diagnostic professionals had completed their assessments and made conclusions) as compared with how it appeared once Rogers had access to it for almost three weeks. She certainly knows about the editing changes made by Rogers and the team's conspiracy to defraud Z.S. of services from the outset. Jennifer Martinez consulted with Learning Disabilities Expert, Dr. Gail Chermie,<sup>4</sup> who suggested means by which CCISD could "beef up" their FIE

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<sup>4</sup> Presumably in math given the fact that no other learning disability is suspected.

denying eligibility. Martinez took information from each teacher and therapist, incorporated the information into CCISD's fraudulent Full Individual Evaluation, and sent the unsigned FIE to Jeff Rogers for editing to conclude that Z.S. would receive no assistance. Martinez has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 for discrimination against Z.S. Martinez was personally served at her usual place of business, CCISD's Special Education Facility in Webster, Texas.

32. Jim Stephen is Robinson Elementary School's Principal, who sought authorization for special education services (the provision of a 1/1 aide, Mrs. Weiss) for Z.S. from S. Ebell and never disclosed this to the Schwager family. Stephen was also found by CPS to be liable for negligent supervision in connection with escalating bullying suffered by Z.S., when he failed to take adequate action to stop the abuse. *See Exhibit M, CPS Report.* Mr. Stephen was copied on the e-mail about Rogers having last editing rights on Z.S.'s FIE. During trial, he attempted to testify honestly about just how much Mrs. Weiss did for Z.S.-when Rogers abruptly stopped the trial and dismissed him. Jim Stephen has been sued Individually for violations of the RICO Statute through participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 for conscious indifference to disability harassment and discrimination. Stephen was personally served at his usual place of business, Robinson Elementary School at 451 Kirby Dr., Seabrook, Texas 77586.

33. Donna Hartness is the Assistant Principal of Robinson Elementary School who failed to disclose to the Schwagers that Z.S. was receiving private TAKS testing in all subjects as well as special education services through 1/1 math teaching with Michelle Frost and a personal aide, Mrs. Weiss. Hartness was asked about the duration of Ms. Frost's services and lied. Hartness has knowledge of the continuing disability harassment and bullying of Z.S., through her confirmation of a game, "Kick Z Day." Ms. Hartness knew that Jeff Rogers had last editing privileges of the diagnostic testing that would deny Z.S. help and facilitated that ARD Meeting—at which Z.S. was suddenly granted special education



services under the IDEA within twenty four hours of Defendants' notice that Z.S. failed TAKS Math. Hartness has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 for conscious indifference to disability harassment and discrimination. Hartness was personally served at her usual place of business, Robinson Elementary School, 451 Kirby Dr., Seabrook, Texas 77586.

34. Terri Heintschel is CCISD's TAKS testing coordinator who refused to respond to the Schwager's requests for information about Z.S. private TAKS accommodations—limited by TEA to students with "special needs", linguistic needs, or special education students. Z.S. was provided with private Math TAKS accommodations in 3<sup>rd</sup> and private TAKS testing in all subjects for 4<sup>th</sup> grade—unbeknownst to his parents. Texas Education Agency requires a basis for private TAKS testing. When Ms. Schwager requested the basis (special need) from Rogers, he responded "*that [Z.S.] would be more successful in a small group setting.*" See Exhibit N, E-mail From J. Rogers to C. Schwager dated May 7, 2010. Though Hartness acknowledges the "huge difference" these private TAKS administrators make in students' performance on TAKS, Rogers insists "*[m]y statement that [Z.S.] would be 'more successful' in a small group setting is not meant to imply that he would score higher on the test.*" Exhibit O, E-mail from J. Rogers to C. Schwager dated May 7, 2010. If Defendants did not believe that private TAKS accommodations would cause Z.S. to score higher on the test, it seems a waste of resources for Z.S. to have been provided this accommodation. Heintschel has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD. Heintschel was personally served at her usual place of business, CCISD's Administration Building, 2425 E. Main Street, League City, Texas, 77573.

35. Lois Fair is CCISD's Visual Impairment consultant, who participated in this conspiracy to discriminate against Z.S. and defraud the Schwagers by knowingly failing and refusing to test Z.S.' known disabilities—after Ms. Schwager repeatedly requested a "formal vision assessment." Fair refused to test

Z.S.'s lack of peripheral vision and defrauded the Section 504 Hearing Tribunal by knowingly testifying about medical records which she was admittedly unqualified to testify about. Her egregious fraud is noted in the fact that she tested two issues never in dispute—Z.S.'s ability to see and nearsightedness. She failed to mention that when given the choice, he selected the 20 point font. Though she testified concerning medical records she admits she lacks qualifications to interpret, a mere dictionary would have revealed to her that "peripheral retinal ablation" means destruction of the peripheral retina. This would concern even the most incompetent vision impairment expert. Fair's collusion with Klekotta and Rogers is evident. Rogers worked in concert with Fair to perpetrate fraud on the Section 504 tribunal by asking Ms. Fair questions which he knew she was not qualified to testify about. Ms. Fair is known to have defrauded another child who attended CCISD in 2008-2009 through falsification of documents which misrepresented statements concerning the child's visual impairment in order to preclude CCISD's provision of services. *Exhibit A.* Of the few clients Ms. Schwager represents, Ms. Fair was the VI responsible for this fraud, proving that CCISD has defrauded children of visual impairment eligibility more than once to show a pattern for RICO purposes. Fair has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 discrimination and retaliation. Fair was personally served at her usual place of business, CCISD's Special Education Facility in Webster, Texas.

36. Teri Tran is Z.S.'s 3<sup>rd</sup> grade Math Teacher who knowingly participated in CCISD's conspiracy to defraud Z.S. of special education services CCISD knew Z.S. needed by falsifying Z.S.'s grade to force him to 4<sup>th</sup> grade (despite requests to hold him back based upon clear math deficits), withholding CCISD's provision of private TAKS testing to Z.S. in 3<sup>rd</sup> grade Math (restricted to children with special needs) and served as an accessory and/or "accessory after the fact" though participating the conspiracy to defraud Z.S. by virtue of attending meetings at which CCISD's scheme was discussed. Teri Tran participated in the January 25, 2010 meeting with the Principal Stephen, Assistant Principal Donna Hartness, 3<sup>rd</sup> grade

teachers, 4<sup>th</sup> grade teachers, Diagnostician Ann Mai, Lead Diagnostician Jennifer Martinez, Sharon Taggart, Jill Hughes, CCISD's coordinator of all elementary school campuses, therapists, employees of CCISD's Special Education Department and Jeffrey Rogers. This meeting was held eight days after Ms. Schwager requested evaluation under the IDEA based upon a suspected learning disability. See *Exhibit Z, Request for IEP plan*.

37. Brenda Lutz is the physical therapist who was instructed to "do her magic" on the FIE that ultimately denied Z.S. any assistance. A review of the report suggests that the magic referred to by Jennifer Martinez was concluding that Z.S. did not require special education services despite raw data indicating that Z.S. was severely visually impaired. Brenda Lutz also tested things never in dispute and ignored Z.S.'s obvious disabilities—particularly with respect to Z.S.'s severe visual impairment. Lutz has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 discrimination. Lutz was personally served at her usual place of business, CCISD's Special Education Facility in Webster, Texas.

38. Debra Wesson-Klinger and Marie Woods-Pettiti were Occupational Therapists who claim to have assessed Z.S., but concluded that he did not qualify for Occupational Therapy services, despite Z.S.'s qualification and receipt of Occupational therapy services for 8 years. Though Wesson-Klinger testified that Z.S. was not eligible for Occupational therapy, Woods-Pettiti told Ms. Schwager on May 5, 2010 that she believed Z.S. qualified for special education for Occupational Therapy, but [shrugging her shoulders], she is not the one who "makes the decisions." *Exhibit A*. Wesson-Klinger and Woods-Pettiti have been sued Individually for violations of the RICO Statute through participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 discrimination. Both were personally served at their usual place of business, CCISD's Special Education Facility in Webster, Texas.

39. Heather Gaspard is Z.S.'s 4<sup>th</sup> Grade Math Teacher, who neglected him, permitted him to fail for five months through three failed Math benchmarks and five months of consistent F's and suffer disability

harassment through conscious indifference to Z.S.'s suffering. One she realized she was guilty of neglect, Gaspard suddenly began to blame Z.S. and his family<sup>5</sup> for his math difficulties. Gaspard was Z.S.'s *only teacher* participating in the ARD Committee Referral of Z.S. for evaluation for special education services based upon a suspected "learning disability," leading to the obvious conclusion that she suspected Z.S. had a *math learning disability*,<sup>6</sup> which is consistent with the special education math services provided to Z.S. since January of 2010 and to be provided next year. This is also consistent with Dr. Assel's dyscalculia diagnosis and the documented failures despite Tier II Interventions—in contradiction of her false testimony that she only had the opportunity to implement Tier I Interventions. Gaspard has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 discrimination and conscious indifference to disability harassment. She was personally served at her usual place of business, 451 Kirby Dr., Seabrook, Texas, 77586.

40. Dr. Mike Assel, Ph.D is Plaintiffs' expert witness. Dr. Assel is employed with the University of Texas Children's Learner Center, has substantial experience in special education, and is an expert with respect to severely premature babies and the common disabilities seen in these children. Dr. Assel was involved in a longitudinal study, following the prognosis of severely premature babies and published articles concerning severe premature babies and testified that Z.S. is a textbook micro-preemie. He confirmed Ms. Schwager's suspicion that Z.S. suffers from Dyscalculia Math Learning Disability, Developmental Coordination Disorder, Visual Motor Integration Disorder, Visual Spatial impairment, and Attention Deficit Disorder. He testified extensively concerning the connection between Dyscalculia, Z.S.'s severe writing impairment, Visual Spatial impairment, Visual Motor Integration (eye-hand coordination) and delayed processing speeds. His conclusions were supported by the raw data in CCISD's report. Dr.

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<sup>5</sup> In contradiction of SST Referral Committee documents in which Heather Gaspard states that there is nothing about Z.S.'s home life that would explain the learning disability suspected.

<sup>6</sup> Z.S.'s math learning disability was confirmed by Dr. Mike Assel, Ph.D. on April 13, 2010.

Assel graciously testified on Z.S.'s behalf at no charge with one motive—ensuring that a sweet little boy receives help.

41. Dr. Angelina Farella is Z.S.'s Pediatrician who qualified Z.S. for Section 504 based upon "other health impairment" in March of 2010. Though Dr. Farella also graciously testified on Z.S.'s behalf at no charge and has one motive—to help Z.S.—Defendants continued to deny eligibility even after she testified, until Defendants *were backed in a corner by fraud and Z.S. failed Math TAKS testing*. Dr. Farella.

42. Brandy Hester is Z.S.'s 4<sup>th</sup> grade Language Arts Teacher who falsified progress reports and misrepresented information provided to CCISD's Diagnostic team—used to deny Z.S. the help he desperately needs. Despite Z.S.'s failure of October 2009 Writing Benchmark Testing with a 55%, a January Writing Benchmark Score of 62%, known problems in speed and spacing with Z.S.'s writing, requires spacers to separate his letters, his inability to write in cursive, and handwriting deemed by Hester as 15% illegible, Brandy Hester testified that Z.S. is on track with his peers in the area of Writing, gave him an 88 for the 4<sup>th</sup> quarter (despite D's before the lawsuit was filed). Hester has been sued Individually for violations of the RICO Statute in her participation in this conspiracy and as agent of CCISD for purposes of Defendants' violation of Section 504 discrimination. Hester was personally served at her usual place of business, 451 Kirby Dr., Seabrook, Texas 77586.

### **G. FACTUAL BACKGROUND**

43. Between March and April of 2010, Clear Creek Independent School District ("CCISD") conducted diagnostic testing regarding Z.S. *See Exhibit P, CCISD's FIE, dated 4/29/10*. On April 13, 2010, Dr. Mike Assel, Ph.D., a learning disabilities expert specializing in the area of severely premature infants, performed comprehensive diagnostic testing on Z.S. *See Exhibit B, Mike Assel, Ph.D.'s Diagnostic Report*. Dr. Assel diagnosed Z.S. with Dyscalculia Math Learning Disorder, Developmental Coordinator Disorder, Attention Deficit Disorder, Visual Spatial Impairment, and Visual Motor Integration Disorder—consistent with CCISD's *raw data* and concluded that he was clearly in need of special

education services for Dyscalculia and Attention Deficit Disorder, at the least. Though the *raw data* in CCISD's FIE reveals clear deficits in math, writing, and vision (consistent with Dr. Assel's diagnoses), Defendants conspired to ensure that *despite the data, Z.S. did not qualify for special education services and was not disabled*. The motive for this conspiracy to defraud is clear—illegal retaliation based upon Ms. Schwager's public criticism of CCISD officials and partners of RMG Law Firm for reprehensibly abusive conduct, discrimination based upon CCISD's unwillingness to pay for the level of expense involved in accommodating Z.S.'s many disabilities, and desperate attempt to avoid paying a mere year of compensatory education in connection with CCISD's egregious Child Find violation and educational deprivation due to CCISD's failure to provide a free appropriate public education ("FAPE") to Z.S. for years. Regardless of how egregious the neglect, School Districts fight viciously against paying for compensatory private school tuition in fear of the "flood gates" it would open. *Exhibit A*.

44. Jeffrey Rogers, Steven Ebell, Sheila Haddock, Jim Stephen, David Feldman, and other high level administrators remain visibly upset about Ms. Schwager's public criticism of CCISD officials' failure to enforce the law and her perceived lack of competency in the area of special education. *See Exhibit H, David Feldman's Libel Threat to Ms. Schwager & Exhibit I, Ms. Schwager's Response to Libel Threat*. Defendants fail to realize that their abusive and/or insensitive refusal to stop Z.S. from being abused Z.S. is the reason for the criticism. Ms. Schwager sent more than four letters concerning the urgency of the situation to CCISD administrators and educators, including Superintendent Gregory R. Smith, Assistant Superintendent Hughes, Principal Jim Stephen, Heather Gaspard, and Brandy Hester. *See e.g., Exhibits S and T, January 14<sup>th</sup> and 15<sup>th</sup> letters from C. Schwager to CCISD*. After Principal Stephen and Gaspard refused to act, the Schwagers met with General Counsel Sheila Haddock and Assistant Superintendent Holly Hughes on January 19, 2010, who refused to take action to protect Z.S. from further abuse on the grounds that Plaintiffs had no "private right of action" to enforce the Texas Anti-Bullying Statute (despite the obvious violation of federal with given Z.S.'s disabilities).

45. Based upon Stephen, Haddock, and Hughes' refusal to act, Ms. Schwager visited the campus in an attempt to speak with Gaspard, hoping that Gaspard would remove the student from the classroom.<sup>7</sup> Upon realizing that Gaspard was unavailable, the Schwagers visited Z.S. with their 18 month old son. Shocked by CCISD's continuing failure to protect Z.S. from further abuse, with two much larger students threatening to beat up Z.S. if he did not "watch what he [said]," Ms. Schwager spoke to both students and admonished them to stop, who were defiant. While sitting at the table, approximately fifteen other students gathered around to tell their stories of how these same bullies hurt them—at which time M became upset by the disclosure. Ms. Schwager reassured M that he was not in trouble to comfort him and left. Robinson Elementary School's liaison officer concluded that Ms. Schwager did nothing wrong, yet Holly Hughes threatened Mr. and Mrs. Schwager with criminal trespass. *See Exhibit H, Trespass Letter.*

46. Ms. Schwager began blogging about the incidents to raise public awareness of CCISD's lax law enforcement of Anti-Bullying laws designed to protect children. *See Exhibit U, Blog concerning Haddock.* On January 19, 2010, Children's Protective Services completed their investigation, charging Principal Stephen with negligent supervision for failing to intervene to protect Z.S. from escalating bullying and school violence. *See Exhibit M, CPS Report.* Despite CCISD's knowledge of CPS's conclusions, CCISD continued to do nothing to ensure Z.S. safety or stop the disability harassment suffered by Z.S. and falsely accused Ms. Schwager of libel for representations made regarding Mr. Stephen's failure to act.

47. On or about January 20, 2010, the Schwagers met with Deputy Superintendent Steven Ebell concerning the bullying and Z.S.'s need for special education, handing him an IDEA manual based upon his representation that he was unfamiliar with this key federal statute protecting students with disabilities. Superintendent Ebell apologized for the offense conduct of Haddock, reassured Ms. Schwager that Z.S. would be protected, discussed the disciplinary action to be taken against Haddock and Stephen—leaving administrative pay without leave as the most viable option, and agreed to begin assessing Z.S.'s educational

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<sup>7</sup> CCISD's Code of Conduct permits a teacher to override a Principal's failure to act in a bullying/assault situation and remove the offending student from the classroom.

needs pursuant to IDEA. Defendants knew that she did not commit libel, but CCISD nonetheless had its lawyers threaten Ms. Schwager with a frivolous libel lawsuit in violation of 18 U.S.C. § 241.

48. Ms. Schwager continued to blog and through grassroots efforts, founded the 800 member Texas Non-Profit Corporation, *Attorneys for Special Needs Children* to help disabled children obtain legal representation in the area of special education. In apparent efforts to preclude Ms. Schwager's ability to represent disabled children (for lack of an experienced mentor) and cause friction between Ms. Schwager and her attorney, CCISD used its attorneys to e-mail Ms. Schwager's attorney and mentor veiled threats of "ethical problems" in his association with her. RMG Law Firm began monitoring Ms. Schwager's internet activities in an apparent attempt to collect evidence and threaten further libel actions. CCISD's persistent harassment through the use of its lawyers violates Section 504's prohibition on illegal retaliation and contributed to the withdrawal of Ms. Schwager's attorney.

49. CCISD held a "parent feedback" meeting with the Schwagers on April 29, 2010 and denied all eligibility to Z.S. in an obvious conspiracy of fraud and discrimination. CCISD's Irene Fellows, Jennifer Martinez, Debra-Wesson Klinger, Marie Woods-Pettiti, Ann Mai, Brenda Lutz, and Lois Fair were present. *Despite raw data revealing severe impairments*—each concluded that Z.S. did not qualify for special education even under the broad protections of Section 504. Despite Ms. Schwager's request for a formal vision assessment, Lois Fair tested two issues never in dispute, failed to test based upon conclusions derived from medical records she admitted that she was unqualified to read, and refused to seek formal vision assessment after Ms. Schwager demanded it, knowing Z.S. suffered from severe visual impairments (no peripheral vision, visual spatial problems, -12 and -12.5 prescription, and high myopia). Fair recommended against low vision testing despite communications with Jennifer Martinez, concluding that Z.S.'s "below average visual perception skills..could interfere with him performing academically at school." CCISD's counsel did not anticipate that Ms. Schwager would perform research and discover their heinous fraud and discrimination. In what can only be described as further efforts to harass and abuse,



Jerry Klekotta and Jeff Rogers refuse to test Z.S.'s visual impairment and deny a publicly funded IEE testing loss of visual field—simply because they refuse to do it, in violation of the IDEA. See *Exhibit V, Letter to Klekotta demanding low vision evaluation.*

50. CCISD could have qualified Z.S. for services under Section 504 and the IDEA for any number of health impairments. Section 504 defines a person with a "disability" as any person who (a) has a physical or mental impairment which substantially limits one or more major life activities, (b) has a record of such impairment, or (c) is regarded as having such impairment. 34 C.F.R. 104.3(j)(2)(i). Regulations define "impairment" to include a number of body systems, including special sense organs (eyes), respiratory, specific learning disabilities, and includes a broad category for "other health impairments." 34 C.F.R. 104.3(j)(2)(i). Major life activities include "seeing, breathing, learning and thinking," among other things. Z.S. has problems in all of these areas and Defendants have at all times, known this.

51. Distraught by the obvious fraud being wrought upon her disabled child, Ms. Schwager walked out of the Section 504 Parent Feedback meeting in disgust and tears. Upon crossing Marie Woods Pettiti (Occupational Therapist)—the only individual whose observations seemed remotely accurate, Ms. Schwager asked if Pettiti believed he qualified—at which time Pettiti agreed that he should qualify, but stated "I'm not the one who makes the decisions." *Exhibit A.* It suddenly became clear who "made the decisions"—Rogers and Klekotta, with the blessing of CCISD's Superintendent, rendering CCISD liable for discrimination, fraud, RICO violations, and retaliation.

52. Aside from CCISD's unwillingness to fund the assistance so desperately needed by Z.S.—discrimination on the basis of his disability in violation of Section 504, Rogers and his law firm are the only individuals with enough malice to purposefully harm a disabled child. Knowing that she was now a target of corruption and weary of fighting, Ms. Schwager almost dismissed her case, informing Rogers and the Hearing Officer that she lost faith in justice for disabled children. Rogers responded, [t]he fact that a student does not qualify for special education does not mean that he may not receive instructional

been secretly providing special education services to Z.S. since January 25, 2010.

53. Just prior to dismissing, on May 4, 2010, the Schwagers received "smoking gun" documents indicating a conspiracy to defraud Z.S. and the Schwager family from the beginning. Mr. and Mrs. Schwager stayed up all night reading reprehensible documents—showing a clear intent to defraud as evidenced by Jennifer Martinez's: (a) proposal for a "signing party" to celebrate a disabled child being denied help, (b) conversations with University of Houston Learning Disabilities Expert, Dr. Gail Chermie about why CCISD were rushing through testing and proposed that CCISD stall until the Schwagers' testing was complete in an effort to "beef up" CCISD's report, (c) request for Brenda Lutz to do her magic, (d) commented about how "great" Z.S.'s absences looked, (e) spoke about the sensitive nature of the case and how they needed to "look GOOD ☺ at trial," and (f) stated that the "draft FIE has been sent to the lawyers \_\_\_\_\_".  
The report provided to the Schwager family, denying eligibility, was dated 4/29/10, providing Jeffrey Rogers with three weeks to edit out any federal assistance otherwise recommended for Z.S.

54. May 4<sup>th</sup> was the date that the Schwagers discovered a lot of things—never disclosed to them by anyone within CCISD. They discovered that Steven Ebell authorized Jim Stephens to hire a personal 1/1 aide to follow Z.S. to every class and ensure he passed. Less than ten days after they threatened suit, CCISD hired a private math teacher, Michelle Frost, to work 1/1 with Z.S. to endure that he passed Math TAKS and grade level—to use the scores as weapons against him. Though Defendants misrepresented that Z.S. had only received Tier I Interventions<sup>8</sup> and small group math tutoring with five other students, documents received from the Office of Public Records reveal unsuccessful Tier II interventions and

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<sup>8</sup> Heather Gaspard fraudulent testified that she had only had the opportunity to provide Tier I interventions when documents reveal that she instituted Tier II interventions (deemed successful with a 52%).

services that only a child qualified under the extensive protections provided under the IDEA would receive.

55. Heather Gaspard fraudulently testified at Z.S.'s Section 504 due process hearing (in direct contradiction to information discovered in documents obtained from CCISD's Office of Public Records and statements made to Jennifer Martinez which were included in CCISD's FIE). Though Gaspard testified that Z.S.'s math problems were attributed to 9 hours of missed instruction (tardies) and five 30-minute tutoring sessions deemed worthless by Dr. Mike Assel, Ph.D., Public Records reveal that Gaspard was part of an SST Referral team that decided to refer Z.S. for special education assessment based upon a suspected learning disability.<sup>9</sup> The Schwagers further discovered that their son was 1 of 3 general education students in the entire 4<sup>th</sup> grade to be pulled from class for private TAKS testing in all subjects, when TAKS accommodations are limited to students with "special needs," linguistic problems, or those already enrolled in special education.

56. Realizing the egregious conspiracy to defraud their disabled child in which more than twenty people participated, the Schwagers decided to pursue the maximum relief available to their child. On May 5, 2010 Candice and Richard Schwager attended a resolution solution, in which Jerry Klekotta and Steven Ebell admitted that Z.S. was eligible for Section 504 by attempting to negotiate with the Schwager family for Section 504 "coverage." Unwilling to bargain for their own civil rights, the Schwagers walked out. Even after this admission, Rogers continued to fraudulently deny Z.S.'s eligibility and forced the Schwagers through an abusive Section 504 Hearing in which no ruling could be had by persistent objections to Ms. Schwager's motions for continuance and refusing six to ten requests for an ARD Meeting or meeting "officially denying Section 504 eligibility." Rogers brazenly presented false testimony that even contradicted information in CCISD's FIE.

57. With fraud upon fraud, Defendants continue to deny Z.S.'s ADD diagnosis—despite CCISD's suspicion of ADD since 3<sup>rd</sup> grade and red flags of ADD splashed through almost every page of the FIE that

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<sup>9</sup> January 26, 2010 Student Success Team Referral Summary Report signed by Math Instructor, Heather Gaspard, Sharon Taggart, and Donna Hartness (ARD facilitator).

ADD, Plaintiffs provided consent for psychological testing (never realizing a psychological test was needed for ADD since a Dr's diagnosis is required). Suspecting that Klekotta, Martinez, or Rogers would delay testing to harass Plaintiffs further by preventing Plaintiffs' access to significant evidence concerning ADD, Plaintiffs filed three motions for continuance. Though Ms. Schwager was ill and her physician wrote an order in support of two weeks' continuance for exhaustion, Defendants refused to allow Plaintiffs any additional time and forced Candice to pursue the hearing ill or dismiss their case. *See Exhibit Y, Physician's Note from Dr. Patricia Salvato.* Plaintiffs first available Pediatrician appointment to test for ADD was May 13, 2010—the day of the hearing.

59. *Though Rogers fraudulently points to the difficulty in determining the point at which a general education student becomes a special education, Z.S. became a special education student when CCISD began providing special education services to him—3<sup>rd</sup> grade.* CCISD's fraudulent scheme was to *secretly* provide months of special education services to prove that he did not need special education services. There were only two problems with Defendants' scheme—Ms. Schwager discovered the fraud and despite aggressive efforts to ensure that Z.S. passed all TAKS tests, he failed the Math TAKS test—consistent with his Dyscalculia Math Learning Disorder. Though CCISD allowed Z.S. to miserably fail with F's for five months, Defendants would have been largely redeemed in Plaintiffs' eyes by simply providing Z.S. with the services he desperately needed—and *told them.* CCISD had every reason to alert Plaintiffs (given how upset they were and to mitigate damages once they were sued) of the significant effort and expense provided to Z.S. to help him and *one motive to lie.* If CCISD could secretly provide special

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<sup>10</sup> Each teacher and/or therapist noted Z.S. staring into space, pulling the strings out of his socks like floss, playing with shoestrings, and admitted having to constantly redirect Z.S.—even during the testing process. CCISD's Martinez admits that despite spacing the test out over three days, she could not get through a single portion without having to constantly redirect Z.S., showing clear evidence that everyone within CCISD knew Z.S. had ADD and failed to mention it.

education services, aggressive 1/1 tutoring, and ensure that Z.S. passed grade level and TAKS, CCISD would have a strong case against Z.S. receiving the very services CCISD knew he needed to succeed. Though Z.S. was qualified under the IDEA within twenty-four hours of CCISD discovering that Z.S. failed the Math TAKS test, CCISD has provided special education Math TAKS accommodations since 3<sup>rd</sup> grade and provided aggressive 1/1 math tutoring available only to special education students under the IDEA, and Z.S.'s only educational goals for the 2010-2011 school year include math inclusion, Defendants continue to deny Z.S.'s dyscalculia math learning disability.

60. Z.S.'s math learning disability, dyscalculia, is akin to the proverbial "pink elephant" —it is so big, it is irrefutable. Though they are "treating" it, they do not dare acknowledge it because of the ramifications it presents—violation Child Find regulations and *fraud*. Where Z.S.'s mother (a lawyer) is able to diagnose Z.S.'s math learning disability through the simple use of Google and a Dictionary—CCISD's egregious neglect is a clear violation of Child Find. Rogers continues to assert the fraudulent misrepresentation that this is a simple difference of opinion among experts, rather than bad faith or gross misjudgment. Defendants' criminal conspiracy to discriminate, defraud and retaliate is far beyond bad faith or gross misjudgment. To avoid a simple Child Find violation meriting compensatory education for one year and/or punish a disabled child's mother for trying to ensure he is protected from abuse and receives help, Defendants conspired to rob a disabled child of any meaningful opportunity for a future—based upon the fact that "depriving a disabled child of an education is not a crime" (Rogers' statement in Defendants' Motion to Dismiss). While the mere deprivation through educational neglect is certainly not criminal, a conspiracy involving more than 20 people to violate federal fraud laws, illegally discriminate and retaliate in violation of Section 504, and suppress evidence to cover it up is certainly illegal.

61. While this case was once about issues that could have easily been resolved through honesty and compliance with the minimal requirements of federal law, it is now about an egregious illegal and pervasive pattern of illegal racketeering activities involving Jeffrey Rogers, RMG Law Firm, and the

Districts they represent (including CCISD) whose common purpose is to discriminate and defraud disabled children of a free appropriate public education (“FAPE”) by providing the minimal level of services required through by law. Through a well-established discriminatory and abusive system in which his firm is known to participate, families of disabled children: (a) are forced to spend thousands of dollars and months fighting to obtain the services to which their children are already entitled by federal law, (b) are coerced into accepting the minimal services the District will provide because Districts hold all of the cards<sup>11</sup> with little to no threat of accountability, (c) families who advocate too strongly are used as “examples” to intimidate others from doing the same, (d) professionals deceive parents by fraudulently failing to perform tests despite knowing the essential nature of the test, (e) School Districts illegally deny disabled children services and treat the IDEA and Section 504 like an insurance policy over which it can grant or deny coverage on a whim, (f) School Districts would rather pay hundreds of thousands of dollars to pay lawyers than help children, and (g) due process is anything but "due process," and (h) disabled children are the ultimate victims. *Exhibit A.*

#### **H. QUALIFIED IMMUNITY INAPPLICABLE**

62. Though most professional employees of a school district have a qualified *good faith* immunity from liability for federal civil rights violations, this immunity protects school employees who perform discretionary acts from liability for civil damages, *as long as their conduct does not violate an established statutory or constitutional right of which a reasonable person should have known.* Where Defendants have engaged in an intentional conspiracy to defraud a disabled child of special education services to which he is clearly entitled under Section 504 and the IDEA, the defense of "qualified immunity" does not preclude personal liability for their fraudulent conduct violating the Constitutional rights of Z.S. Defendants are clearly ineligible for "qualified immunity" for the federal civil rights, discrimination, and statutory fraud

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<sup>11</sup> School Districts control all of the witnesses and can fire them at will, have unlimited funds to pay lawyers to fight parents from receiving even basic services (yet somehow lack funds to appropriately educate children), control access to all documents,

allegations in this lawsuit because their conduct violated established statutory Constitutional rights of a disabled child—of which Defendants knew or should have known.

63. Though the Texas Tort Claims Act provides qualified immunity to government employees absent particular circumstances, the immunity provided by State law is limited to *state law claims*. While the District employees may potentially invoke the doctrine of "qualified immunity" for Intentional Infliction of Emotional Distress, Jeffrey Rogers and Rogers, Morris, & Grover L.L.P. f/k/a Feldman Rogers Morris & Grover, L.L.P. clearly may not. Individuals who are not "employees" of CCISD, such as Jeff Rogers and his law firm, remain liable for intentional state law torts. Though Rogers asserts the disingenuous position that Intentional Infliction of Emotional Distress is a "gap filler" tort, this is precisely the type of gap this tort was meant to fill.

### **I. SUMMARY OF RELIEF SOUGHT**

64. This action seeks declaratory, injunctive and equitable relief, compensatory damages, damage for business injury and loss of business income, punitive damages, court costs, pre-judgment and post-judgment interest, damages for mental anguish, pain and suffering, due to Defendants' intentional, deliberate association-in-fact consisting of a well designed scheme of racketeering activities violating the Racketeer Influenced Corrupt Organizations Act. 18 U.S.C. §1961 and §1962, et seq. ("RICO") through attempts and schemes to defraud (Title 18 Chapter 63 § 1349 and Title 18 Chapter 63 § 1346) through mail fraud (Title 18 Chapter 63 § 1341) and wire fraud (Title 18 Chapter 63 §1343) with the intent to deprive a disabled child of federally mandated special education services and civil rights in violation of the Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 42 U.S.C. § 1983, and Title II of the Americans with Disabilities Act, (and amendments to the ADA by the ADAAA of 2008),. Defendants are liable to Plaintiffs in damages under the civil liability provision of RICO in Section 1964(c) by multiple violations of the federal statutes listed herein. Furthermore, the enterprise itself, CCISD remains civilly liable for the many fraudulent acts of its employees who committed these acts in the course of their employment with

CCISD and in their official capacities as educators, administrators, diagnosticians, therapists, directors, agents, and/or representatives of CCISD. For Jeff Rogers and RMG Law Firm's clear intent to inflict severe emotional distress upon Ms. Schwager and evidence proving his success in doing so, Rogers and RMG Law firm are liable in tort to Ms. Schwager for Intentional Infliction of Emotional Distress.

**J. RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS 18 U.S.C. §1961 & §1962**

65. Defendants conspired to defraud Z.S. of special education services to which he is entitled by the Individuals with Disabilities in Education Act (“IDEA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”) through a well established pattern of racketeering and corruption, posing a significant threat of continued criminal activity for which civilly liability should attach under the Racketeering Influenced Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961(4), 18 U.S.C. § 1961, and 18 U.S.C. § 1962. The predicate offenses for which Defendants are civilly liable to Plaintiffs consist of attempts to defraud (Title 1 Chapter 63 § 1349), schemes and artifices to defraud (Title 18 Chapter 63 § 1346), mail fraud (Title 18 Chapter 63 § 1341), and wire fraud (Title 18 Chapter 63 §1343). A sufficient nexus with interstate commerce exists in the predicate act itself—statutory fraud violations. CCISD’s receipt of federal funds from the United States Government to assist students with disabilities under the Individuals with Disabilities in Education Act (“IDEA”) and American Recovery and Reinvestment Act and perpetration of this criminal scheme to defraud through the use of electronic mail, the United States Postal System, and fax/telephone wires merely provide additional grounds upon which to find a strong nexus with interstate commerce for purposes of civil racketeering liability.

66. Plaintiffs dispute the argument that Defendants have not engaged in these criminal activities to a sufficient degree to indicate a risk of a continuing threat of racketeering activity in the future. *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). In addition to *Kathleen Thomas’* 2007 racketeering lawsuit against Jeffrey Rogers and Feldman Rogers Morris & Grover, L.L.P.(“Feldman Rogers”) for egregious abuse and retaliation in connection with gross discrimination against a severely



disabled child, *Kathy Byrd* sued Jeffrey Rogers and Feldman Rogers for conspiracy to defraud her disabled child of special education services—the same fraudulent activity alleged in this lawsuit. *See Exhibits U, United States ex rel Kathleen Thomas vs. Jeffrey Rogers et al and Exhibit V, C.M. b/n/f Kathy B, and Kathy Byrd, Individually vs. Conroe ISD, Feldman Rogers et al; In the Southern District of Texas, Houston Division (conspiracy to defraud and deprive a disabled child of services)*. Ms. Schwager was a first hand witness to the egregious abuse Erik Nichols inflicted upon the Stevens family and in one week, Ms. Schwager has had contact with four families who allege the same pattern of discriminatory, abusive acts of retaliation experienced by her family. *Exhibit A*. Though several of these families have agreed to testify at trial, they are currently afraid of revealing their identities for fear of the punishment their families will endure at the hands of their District and RMG Law Firm. *Id*. These families say the same thing—they had to fight too hard for their disabled children to receive the minimal assistance they received and fear retaliation for stepping forward because they have seen it happen. *Id*. RMG Law Firm and many Districts they represent a sort of "legalized" mafia—for which a racketeering action was tailor-made. Moreover, in what is certainly no coincide, one of the few clients Ms. Schwager represents was also defrauded by CCISD's Lois Fair, while her child attended CCISD in 2008-2009. Ms. Fair prepared fraudulent documents which misrepresented the substance of representations made by his Physician concerning his degree of near blindness—resulting in Waller ISD getting sued for her fraud. *Exhibit A*.

67. Defendants formed an association-in-fact or enterprise to defraud the Schwager family, illegally discriminate against Z.S. on the basis of his disabilities, and retaliate against Ms. Schwager for asserting claims on his behalf in violation of Section 504. Defendants further conspired to cover up knowingly adverse findings by Children's Protective Services in January of 2010 by fax that Jim Stephen was guilty of negligent supervision in failing to intervene to stop escalating violence and bullying perpetrated upon Z.S. Defendants' discriminatory acts violate Section 504, Title II of the Americans with Disabilities Act ("ADA") and 2008 amendments to the ADA ("ADAAA"), 42 U.S.C. § 1983.

68. The RICO Statute, Section 1962(c) prohibits any defendant person from operating or managing an enterprise through a pattern of racketeering activity. In this instance, Jeffrey Rogers and his law firm in collusion with Superintendent Gregory R. Smith are the apparent "managers" of the enterprise and/or association-in-fact of racketeering activity.<sup>12</sup> Though Rogers points to *Kathy Byrd's* lack of success (largely due to pleading defects as opposed to the merits) as a failure to establish a sufficient "pattern" of illegal activities, he has not once denied the egregious, criminal allegations fails to deny the racketeering allegations alleged in *Thomas'* petition (ultimate disposition sealed).

69. For purposes of this Statute, two or more instances of similar conduct constitute a "pattern." Though the Schwager, Stevens, Thomas', Byrd's, and families referenced in the *affidavits of Candice Schwager and Christina Stevens*, a pattern has been established—not to mention the sheer coincidence that CCISD's visual impairment consultant, Lois Fair, defrauded Z.S.'s and Ms. Schwager's client by knowingly preparing false reports to deny visually impaired students services. In 2007, Jeffrey Rogers and his law firm were sued in concert with Conroe Independent School District for egregious violations of the RICO and civil rights Statutes in connection with outrageous allegations of abuse and retaliation against Kathleen Thomas in connection with her efforts to seek assistance for a very disabled child, S.S. *See Cause No. H-07-1212; United States of America, ex rel Kathleen Thomas, Individually, and as next friend of S.S. vs. Jeffrey Rogers, Individually, and Feldman Rogers, L.L.P., Conroe Independent School District, et al.* Though these Plaintiffs are admittedly from different Districts, the one common thread if Jeff Rogers and his law firm—that is what creates a substantial certainty of future criminal activity in CCISD. The fact that one of the few disabled children Ms. Schwager knows from CCISD was defrauded last year through the same visual impairment consultant, Lois Fair, suggests a high likelihood of future criminal activity.

69. Defendants need not be criminally convicted before a civil plaintiff can sue for treble damages under RICO. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 493 (1985). It should suffice that in the four

short months in which Ms. Schwager has known Rogers, six families allege the same abusive, discriminatory pattern of racketeering activity suffered by her family. Whether due to Hans Graf's abuse in HISD, Erik Nichols' conduct in PISD, Jeffrey Rogers conduct in Galveston and Clear Creek ISD, the common denominator is RMG Law Firm and the clients they represent. Lois Fair's multiple fraudulent acts against children, Superintendent Smith's blasé egregious "mocking" of Plaintiffs' suffering, and the obvious fact that Greg Smith cannot possibly be so in the dark concerning horribly abusive conduct which Ms. Schwager discovered in a few months demonstrates that Smith knows what is really happening and ratifies it. His June 8, 2010 letter clearly reveals that he has no intention of stopping it.

70. The pattern of illegal activities includes covering up fraud, Districts spending hundreds of thousands of dollars to fight children from receiving minimal services (two weeks of services in the *Thomas* case), egregious retaliation (as evidence by many families who fear even being identified), aggression tactics against parents (of which Ms. Schwager is living proof), attempts to exhaust families' finances or ruin businesses (suffered by Ms. Schwager and Ms. Thomas), frivolous libel threats and harassing internet surveillance. In 2007, RMG Law Firm was reportedly paid \$300 per hour to spend months monitoring a Galveston mother, Sandra Tetley's internet activities. In fact, RMG Law firm threatened to sue her for libel for exposing corruption and incompetency—pattern?

71. The common purpose is providing as little assistance to disabled children as possible. Though the Districts represented by RMG Law Firm seem to have an endless source of funds to fight children, these same Districts complain of a complete deficit of funds to educate special needs children. After paying RMG Law Firm thousands upon thousands to harass the Schwager family for five months with no end in sight just to avoid one year of private school tuition totaling \$26,000, Defendants are now desperately resisting Ms. Schwager's attempts to discover how much Rogers and his firm was paid to harass her. The victims are always the same—disabled children and their families. Indisputably, the money Rogers earned through five months of fraud, civil rights violations, and harassment constitute ill gotten gains for which

to Rogers to be reinvested in his criminal "law firm" so that other children are hurt.

72. If a Civil RICO Plaintiff is injured by reason of the defendant's operation or management of the enterprise through a pattern of racketeering, the plaintiff is entitled to treble damages, attorneys' fees and costs under section 1964(c) (commonly referred to as RICO's civil liability provision). Ms. Schwager has been grievously injured in her business through loss of income on her current job, loss of legal fees in the representation of clients, and lost business opportunities due to the onslaught of eight lawyers assigned to prevent her from working by bombarding her with frivolous, fraudulent, and harassing motions so that she is precluded from doing anything else. The object is the same as was done to Kathleen Thomas—financial ruin designed to cause Ms. Schwager to abandon this pursuit. Candice has lost thousands of dollars that she would have received in the Stevens case and several cases she has had to refer to other attorneys for fear that these abusive lawyers would continue this vendetta against would be clients. Candice has missed several weeks' worth of work and lost income that would otherwise have been earned had CCISD's lawyers not set out to cripple her financially. The entire family has suffered by a 30% reduction in the family's income since February of 2010, notwithstanding the thousands she would otherwise have made representing children against civil attorneys.

72. CCISD has invested thousands of educational dollars to perpetrate this fraud and conspiracy to deprive a disabled child of federally mandated civil rights and education. CCISD is a participant in this activity through high level administrators such as Greg Smith, Steven Ebell, Holly Hughes, and General Counsel Sheila Haddock in concert with its outside counsel, Jeffrey Rogers and Rogers, Morris, & Grover L.L.P. f/k/a Feldman Rogers Morris & Grover L.L.P. Plaintiff clearly has standing by reason of injury in the use of these funds for racketeering activities All of the foregoing defendants are liable because they: (1) are persons (2) employed by or associated with an enterprise (being CCISD) (3) that engaged in or affected

interstate commerce and (4) the defendant person (namely Jeff Rogers, Feldman Rogers n/k/a Rogers, Morris, & Grover L.L.P. and its partners, Sheila Haddock, Greg Smith, Steven Ebell, Holly Hughes, Jerry Klekotta, and Jennifer Martinez) operated or managed the enterprise (5) through a pattern (6) of racketeering activity, and (7) Ms. Schwager was injured in her business by the actions stated herein. CCISD and the Defendants named herein are all "persons" for purposes of the RICO Statute.

73. Section 1964(c), RICO's civil liability provision, states, however, that any "person injured in their business...by reason of a RICO violation" is entitled to damages under the statute. Person, under section 1964(c), refers to the plaintiff, the victim, or the party injured by the criminal acts. Ms. Schwager was grievously injured in her business, losing thousands on her regular job due to Defendants' persistent illegal retaliation against Ms. Schwager in both her law firm and Non-Profit, *Attorneys for Special Needs Children*. Defendants participated in a criminal enterprise to deprive a disabled child of civil rights and violate the law. CCISD and these defendants constitute an enterprise or association-in-fact, at a minimum. *United States v. Turkette*, 452 U.S. 576, 580-81 (1981). Although an enterprise can be a legal entity, such as a partnership, corporation or association, it can also be an individual or simply a relatively loose-knit group of people or legal entities. These latter groups are referred to as "association-in-fact" enterprises under the statute. 18 U.S.C. § 1961(4).

74. An association-in-fact enterprise may be a group of individuals, or a group of corporations, or a group that includes both individuals and legal entities. At the very least, CCISD, Jeffrey Rogers, Rogers, Morris, & Grover L.L.P. and the other named Defendants constitute an association-in-fact. An association-in-fact enterprise possesses three characteristics: (1) a purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit these associates to pursue the enterprise's purpose. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules and regulations, disciplinary procedures, or induction or initiation ceremonies. While the group must

function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of acquiescence.

75. Where an entity engages in a pattern of racketeering through persons such as law firms or other independent persons including independent contractors over which CCISD has no control, the requirements are satisfied to maintain this claim. See *Living Designs, Inc. v. E.I. Dupont De Nemours and Co.*, 431 F.3d 353, 362 (9th Cir. 2005) ("[j]ust as a corporate officer can be a person distinct from the corporate enterprise, [the corporate defendant] is separate from its legal defense team"). The foregoing demonstrates Defendants' use of the U.S. mail system, e-mail, and/or telephone wires to commit this pattern of illegal conspiracy and racketeering and as such, the interstate commerce prong is met. The Constitution confers the postal powers upon the federal government, acts of mail fraud, even intrastate use of the mails, have an inherent nexus with interstate commerce. *United States v. Elliott*, 89 F.3d 1360 (8th Cir. 1996). The use of telephone wires or internet services to perpetrate fraud violates the wire fraud statute, 18 U.S.C. §1343. The elements of wire fraud under Section 1343 directly parallel those of the mail fraud statute, but require the use of an interstate telephone call or electronic communication made in furtherance of the scheme. *United States v. Briscoe*, 65 F.3d 576, 583 (7th Cir. 1995) (citing *United States v. Ames Sintering Co.*, 927 F.2d 232, 234 (6th Cir. 1990) (per curiam)); *United States v. Frey*, 42 F.3d 795, 797 (3d Cir. 1994) (wire fraud is identical to mail fraud statute except that it speaks of communications transmitted by wire); see also, e.g., *United States v. Profit*, 49 F.3d 404, 406 n. 1 (8th Cir.)

76. Defendants collectively and individually (1) voluntarily and intentionally devised or participated in a scheme to defraud another; (2) did so with the intent to defraud; (3) it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used. Those elements are clearly met in this case through phone calls and hundreds of emails, proving the scheme and artifice to defraud. *United States v. Faulkner*, 17 F.3d 745, 771

(5th Cir. 1994). Only a de minimus connection with interstate commerce is required, clearly established in this case by the federal government's provision of special education funds which Defendants have conspired to defraud Z.S., a disabled child of the benefit. The foregoing named Defendants clearly knew that the actions and fraud in which they were engaged were in bad faith and violated federal law. Such action taken in the official capacity of CCISD's Superintendent and high level administrators renders CCISD liable to Plaintiffs.

77. For intentional, deliberate and purposeful engagement in this egregious racketeering activity, Defendants are liable to Plaintiffs for treble damages pursuant to 18 U.S.C. §1961, §1962, § 1964 et seq. ("RICO"), in connection with violations of Title 18, Chapter 63 § 1346 (Schemes and Artifices to Defraud of Services), Title 18 Chapter 63 §1343, (Wire Fraud), Title 18 Chapter 63 §1341, (Mail Fraud), and/or Title 18, Chapter 63 §1349 (Attempt or Conspiracy to Commit Fraud). Defendants illegal acts intended to defraud Z.S. of federal civil rights and services related to his many disabilities constitutes illegal discrimination and retaliation under Section 504 of the Rehabilitation Act of 1973 ("Section 504")(ADA Amendments Act of 2008, ADAAA), 42 U.S.C. § 1983, and constitutes Intentional Infliction of Emotional Distress. Defendants are further liable for the extreme emotional harm inflicted on Z.S. by their deliberate and/or conscious indifference to the persistent, pervasive "disability harassment" suffered by Z.S., resulting in a diagnosis of emotional disturbance, in violation of Section 504.

78. Jeffrey Rogers states that RICO was never intended to reach his conduct because *denying a child an education is not a crime*. While RICO certainly has its limits, "there should not be one set of rules for people whose collars are blue or whose names end in vowels, and another set for those whose collars are white and have Ivy League diplomas." Alain Sanders and Priscilla Painter, Showdown at Gucci, Time Magazine (September 30, 2009). Congress obviously failed to anticipate a day where an Attorney and School District charged with educating children would intentionally seek to deprive a disabled child of an

education simply because it's not criminal. While the mere deprivation may not be criminal, the means by which Defendants chose to conspire to do so in this case clearly are.

79. Defendants' gross misconduct, fraud, conspiracy, retaliation, harassment, and RMG Law firm's known pattern of illegal conduct leave little doubt that his representation of School Districts is a form of "legalized mafia activities" for which RICO was designed. The association-in-fact in this case is the group of lawyers, educators, therapists, diagnosticians, teachers, and employees of CCISD who conspired on behalf of CCISD, but in doing so, formed a close knit group of individuals to defraud Z.S. of federally mandated services in violation of federal fraud and civil rights statutes. The association lasted months but is by no means a one-time deal. Other families are assured of suffering the same reprehensible conduct if this corrupt system is not dismantled.

**K. ATTEMPT AND/OR SCHEMES TO DEFRAUD IN  
VIOLATION OF TITLE 18 CHAPTER 63 § 1346 AND §1349**

80. Jeffrey Rogers knew when he assumed representation of this case in February of 2010 that CCISD had miserably violated Child Find, the IDEA, and Section 504. While all attorneys are charged with zealous representation, attorneys cannot counsel clients to commit fraud or violate the law. Upon learning that a client intends to use the attorneys' services to commit fraud or violate the law, the attorney must withdraw. Far from withdrawing, Rogers participated and devised a plan to avoid the ramifications of their miserable failure. The plan was simple: CCISD would secretly institute aggressive special education services for Z.S. in the area of Math because they did not want to be found liable for a Child Find violation for Dyscalculia. Ms. Schwager alerted Defendants in January that she suspected Z.S. could have Dyscalculia math learning disability after a few days of research on Google –given his visual impairment and the curious relationship between Dyscalculia and visual spatial impairment. If Z.S. had Dyscalculia and his math teacher was so incompetent that she allowed him to suffer for five months by not knowing that (when a few days on Google and some common sense would have revealed it), CCISD violated Child Find. In an effort to avoid paying one year of private school tuition, Jeffrey Rogers and CCISD created a train



wreck of epic proportions.

81. Rogers knew well before the Section 504 Hearing that Z.S. qualified under Section 504 and the IDEA (CCISD twice tried to negotiate for both), yet Rogers continued to perpetrate this fraud on the Section 504 Hearing Officer by eliciting knowingly false testimony from witnesses and taking the fraudulent position that Z.S. did not qualify and simply needed to show up on time and do his homework. A mere comparison of documents obtained from CCISD's Office of Public Records with CCISD's FIE and testimony provided at the Schwagers' Section 504 hearing demonstrates an egregious level of fraud and professional misconduct. *See Rogers' closing statement.*

82. Red flags indicating a math learning disability are clear in Z.S.' failing three Math Benchmarks in a five month period, F's, his inability to do multiplication or division, difficulty borrowing in subtraction, confusing signs and place values, becoming lost in multi-step problems, leaving question marks on "in class" assignments or simply writing "I don't get it." Despite this knowledge and tier II interventions deemed unsuccessful, Z.S. was not referred for special education assessment until Ms. Schwager threatened to sue. Though CCISD's raw data in their FIE shows significant weakness in the area of Math and Dr. Mike Assel diagnosed Z.S. with dyscalculia, CCISD continues to deny this diagnosis despite the provision of Math inclusion special education services in his IEP. CCISD's denial of math learning disorder is fraudulent given the inclusion math services and clandestine private Math TAKS testing for the past two years. Further evidence of this fraud lies in the fact that his math teacher referred him for special education assessment based upon a suspected learning disability and CCISD's Lead Diagnostician consulted with Dr. Gail Chermie—an expert in the area of learning disabilities.

83. Rogers perpetuated this fraud on the Section 504 Hearing Officer by intentionally eliciting false testimony from several witnesses with targeted questions: (a) Nurse Hughes testified that Z.S. has not visited the clinic for vomiting "this year" without mentioning the 15 incidents of vomiting reflected in CCISD's nurses records in the past two years, (b) several other witnesses testified that they had never seen

Z.S. vomit when the issue was whether CCISD knew, (c) Heather Gaspard falsely testified that Z.S. successfully multiplies and divides (after telling the diagnostic team that he cannot), has had only Tier I interventions, (public records show Tier II unsuccessful despite false testimony on p. 209), can easily succeed by getting to class on time and doing homework (when she referred Z.S. for assessment based upon as suspected learning disability)<sup>13</sup> and testifying that he only small group tutoring once per week for 45 minutes with several other students (omitting the 1/1 math tutoring with Ms. Foster and had an aide, Mrs. Weiss), (c) Lois Fair testified at length about medical records she had already admitted she was unqualified to read, (d) Rogers abruptly removed Jim Stephen from the hearing when he truthfully testified Mrs. Weiss "did much more than that," Transcript p. 204, and (e) Brandy Hester testified that Z.S. has *no difficulties in writing and is confident in his writing* right after Z.S. said he not (with evidence in CCISD's FIE that he writes at the speed of 4.8 words per minute in comparison to the 8-12 wpm average of his peers and Hester's admission that his writing is 15% illegible).<sup>14</sup>

#### **L. DISCRIMINATION IN VIOLATIONS OF SECTION 504**

84. CCISD is liable for illegally discriminating against Z.S., in violation of Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. 1400 et seq. Under Section 36.206, public and private entities are prohibited from discriminating against any individual in connection with the person's filing of charges, claims, investigations, testifying, or otherwise participated in any Section 504 proceeding. CCISD is required by the IDEA and Section 504 to evaluate students in all areas of suspected disability, including vision, academic performance, and motor abilities. Z.S. has disabilities in all of these areas and CCISD has known of his severe visual impairment and Retinopathy of Prematurity since Kindergarten (2005). 34 C.F.R. § 300.303. Despite a Kindergarten questionnaire providing this information, a panicked call from his 2nd grade nurse about the

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<sup>13</sup> When Gaspard clearly knows part of his "homework" problems are related to ADD and the fact that he cannot successfully complete work in class, much less at home.

<sup>14</sup> This would be consistent with Dr. Assel's diagnosis of Developmental Coordination Disorder, Visual Motor Integration Disorder, resulting in slower speeds at which Z.S. can visually perceive and write and developmental delay associated with his 14 week premature birth (weighing 1 pound).

severity of his visual deficit and failed visual examination, and a multitude of e-mails to CCISD repeatedly asking (and outright demanding) a low vision evaluation to test Z.S.'s visual field, CCISD refuses to do it in violation of federal law.

86. The Individuals with Disabilities in Education Act defines "disability" as a child with "visual impairments (including blindness)...,other health impairments, or specific learning disabilities [such as dyscalculia math learning disorder] and by reason thereof needs special education and related services." 20 U.S.C. § 1401. Moreover, if a child qualifies for services under the IDEA, 504 qualification is automatic. Section 504 qualification is much easier to obtain and Z.S. qualifies based on Z.S. having physical and/or mental impairments that substantially limit one or more major life activities, such as seeing, breathing, thinking, writing, and performing math calculations. Clearly CCISD acknowledged that Z.S. is eligible for qualification for special education under the IDEA and Section 504 in its attempt to "bargain" for this very qualification as if it were some sort of "insurance policy" over which CCISD tightly held the purse strings and denied or granted access as they chose. The disabilities for which a child may be deemed eligible under the IDEA are clear. It either exists or does not. By attempting to bargain for this with the Schwager family in a non-confidential setting, CCISD admits that he qualifies.

86. One significant basis for which a child may qualify under the IDEA is visual impairment. 20 U.S.C. § 1401. Knowing of Z.S.'s severe visual impairment with Martinez admitting that it could affect his ability to learn, Lois Fair in collusion Jerry Klekotta, Jeffrey Rogers, Rogers, Morris, & Grover L.L.P., Jennifer Martinez, and Brenda Lutz, intentionally refused to conduct a low vision evaluation to test Z.S.'s complete lack of peripheral vision. Moreover, Lois Fair and CCISD failed to assess visual spatial problems which are known to contribute to dyscalculia and the spacing problems exhibited in Z.S.'s writing with full knowledge of these problems. On June 15, 2010, an optometrist diagnosed Z.S. with a two year developmental delay and visual spatial impairment and referred him to a developmental Optometrist for comprehensive evaluation concerning the obvious impact visual impairment has on a child's ability to

learn. This is not educational neglect, but fraud. Had Defendants been willing to simply test, they might be capable of arguing that this is a mere disagreement among experts. The egregious violation of the IDEA in failing to even test is clear evidence of fraud, discrimination, and retaliation.

87. “A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss must be stated in exact *measures of visual field* and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist.” Section 89.1040 of the Texas Administrative Code mirrors 34 CFR § 300.8 and further emphasizes that a child may be qualified as “visually impaired” if they are expected to progressively lose vision. Z.S.’s Optometrist, Dr. Paul Steinkuller, stated that Z.S. was to avoid contact sports due to the high risk of retinal detachment associated with high myopia and his optometrist continues to confirm that Z.S. is at high risk for retinal attachment (blindness). The primary means of assessing visual impairment under the regulations and administrative code is through the provision of a Functional Vision and Learning Media Assessment. CCISD, Rogers, Klekotta, Martinez, and Fair deliberately deny Z.S.’s right to be evaluated in all areas of suspected by disability by refusing to test his visual field and other visual impairments—with knowledge that Z.S. has no peripheral vision as a result of Retinopathy of Prematurity and peripheral retinal ablation laser surgery to save his eyesight.

88. Despite Ms. Schwager's research revealing to Rogers, Klekotta and Martinez that Dyscalculia and writing / spacing problems exhibited by Z.S. are associated with visual spatial problems and Z.S. confirmed diagnosis of both, they fraudulently deny Plaintiffs' federal right to an IEE in this area based upon their fraudulent refusal to test KNOWN disabilities. CCISD *known that* Z.S. had peripheral retinal ablation laser surgery, has no peripheral vision, visual spatial impairment, and high myopia, yet illegally refuses to test what they do not want to know—another pink elephant—severe visual impairment.

89. Dr. Assel testified that Z.S.'s weaker visual field may very well significantly contribute to Z.S.’s severely impaired writing. He testified that Z.S.'s severe visual spatial problems and visual motor

integration disorder affects the speed at which Z.S. is capable of writing (output) and significantly impairs his ability to keep pace with peers—a common problem with very premature babies. *See Transcript from Section 504 Hearing Page 109, lines 7-21.* This is consistent with the raw data in CCISD's FIE, showing that Z.S.'s output was 4.8 words per minutes in comparison to the 8-12 word per minute average. Dr. Assel testified at the Section 504 hearing that extremely pre-term children like Z.S. having a history of Retinopathy of Prematurity (known by CCISD since 2005) have significantly weaker visual fields with the ultimate potential to impair their writing. With the egregious level of impairment in Z.S.'s handwriting and his history of developmental delay, CCISD's failure to evaluate visual motor integration problems demonstrated by Dr. Mike Assel, Ph.D. and their own raw data reveals blatant discrimination.

90. Dr. Assel further testified that the visual motor integration disorder would pose significant problems in mathematics, specifically in subtraction when line spacing is inadequate or in *borrowing/regrouping and keeping columns straight—two significant areas of problem on CCISD's FIE Mathematics Checklist Chart, See Exhibit H, page 17 (assessment date 3/29/10).* Plaintiffs suspect CCISD's reasons for intentionally discriminating against Z.S.'s visual impairments are threefold: retaliation, CCISD's unwillingness to fund very expensive testing requiring a multidisciplinary team to evaluate the complexities and interrelationships between Z.S.'s disabilities, expensive accommodations which may be required as a result of such testing.

91. Dr. Gail Cherie of the University of Houston was consulted in this case. As an educational diagnostician employed with the University of Houston, Dr. Cherie would certainly have known of *Project DOVES, a low vision evaluation sponsored in conjunction with the University of Houston, Center for Sight Enhancement.* Simple due diligence, a dictionary, or a five minute Google search prompted by the constant demands of Ms. Schwager for comprehensive vision testing would certainly have led even the most incompetent Lead Diagnostician or Visual Impairment Specialist to conclude that this testing is necessary under the IDEA. Low vision is permanent and significant loss of visual function that cannot be

corrected with glasses, surgery or medication *and includes the loss of visual field*. The eye exam typically involves special techniques and equipment, a team of professionals including an ophthalmologist and/or optometrist, and an interdisciplinary team which includes a psychologist, social worker, rehabilitation counselor, teacher, and low vision device technician. It involves multiple visits, is time consuming and expensive—which is undoubtedly the reason why CCISD, Jeff Rogers, Rogers, Morris, & Grover L.L.P., Jerry Klekotta, Jennifer Martinez, Lois Fair and Brenda Lutz appear to have conspired to defraud Z.S. of these critical educational services and egregiously discriminate against a ten year old disabled child.

92. Z.S.'s medical records clearly show that he is nearsighted and has no peripheral vision. The IDEA unambiguously requires that assessments be performed by "trained and knowledgeable personnel" and children be assessed "in all areas of suspected disability," requiring that all existing data concerning the child be considered. 20 U.S.C. § 1414. Jennifer Martinez consulted with two undisclosed physicians, Dr. Gail Cheramie and Dr. Andrea Oblonosky, both of whom were most assuredly qualified to interpret medical records—particularly if Ms. Schwager can. Where a loss of visual field is known to exist, it is illegal to refuse testing of Z.S.'s peripheral vision loss. Functional Visual Examinations may not be limited with conditions or timelines without violating the IDEA. 20 U.S.C. § 1414. Yet, this is precisely what CCISD, through Klekotta and Rogers, continues to do to defraud Z.S. of a free appropriate public education. Klekotta adamantly denies that a low vision assessment is the appropriate test—constituting blatant fraud. Of many sources discovered in Ms. Schwager's Google search, the Vision Enhancement Journal includes an article published by Richard L. Windsor, O.D., F.A.A.O and Laura K. Windsor, O.D., F.A.A.O., discussing in "easy to read" language the educational concerns of a child suffering from low vision—specifically attributed to high myopia and retinopathy of prematurity.

93. CCISD's own data demonstrates severe impairment with eye-hand coordination in the 9%, Spatial Relations impairment in the 37%, *Visual closure less than 1%*, Visual motor speed in the 25%, form constancy 15%, general visual perception 13%, and visual motor integration impairment in the

21%--consistent with Dr. Mike Assel, Ph.D.'s diagnosis of visual motor integration disorder and visual spatial impairment. Dr. Gail Cheramie was consulted in this case. As an educational diagnostician with the University of Houston, Dr. Cheramie would certainly have known of *Project DOVES, a low vision evaluation sponsored in conjunction with the University of Houston, Center for Sight Enhancement*. Jerry Klekotta continues to fraudulently deny that a low vision assessment is the appropriate test to assess Z.S. complete absence of peripheral vision—yet Ms. Schwager confirmed through a Google search that extremely premature children with Retinopathy of Prematurity and high myopia—like Z.S.—suffer with low vision problems. Vision Enhancement Journal, Educational Concerns of Children suffering with Low Vision, Richard L. Windsor, O.D., F.A.A.O and Laura K. Windsor, O.D., F.A.A.O. Dr. Assel testified that visual motor integration disorder poses significant problems in mathematics, specifically in subtraction when line spacing is inadequate or in *borrowing/regrouping and keeping columns straight—two significant areas of problem for Z.S. by CCISD's data, Mathematics Chart, Exhibit H, page 17 (assessment date 3/29/10)*. Without unraveling the complexity of Z.S.'s severe visual impairment, dyscalculia, and writing impairment, Z.S. does not stand a chance and CCISD knows it.

### **M. OTHER HEALTH IMPAIRMENT**

94. Though Jeffrey Rogers, Rogers, Morris, & Grover L.L.P., Brenda Lutz, Jerry Klekotta, and Jennifer Martinez know Z.S. has chronic lung disease, dysphagia, resulting in frequent vomiting and have been informed that Z.S.'s tardies are largely due to these disabilities, CCISD would pin his own disabilities on him as a reason for the legitimate diagnosis of dyscalculia math learning disorder provided by Mike Assel, Ph.D. A review of Z.S.' records reveals significant absences since Kindergarten due to Z.S.'s many disabilities, so tardies and/or absences are not unusual and CCISD acts in bad faith to pin a disabled child's disabilities on him to deny him services. CCISD reached an absurd conclusion that Z.S. is just like every other student in physical education, when their own nursing records reveal 15 incidences of vomiting—some of which occurred while attempting to participate in P.E. with severe, chronic lung

disease and asthma. Defendants knowingly defrauded Z.S. of special education services to which he has been eligible for since Kindergarten or before—and definitely by the time that Defendants received Dr. Angelina Farella’s endorsement of Z.S. for services based upon “other health impairment” related to his prematurity (March, 2010). Though Z.S. has now been qualified under the IDEA as a special education student for “other health impairment” and “emotional disturbance”, the only reason Z.S. received assistance was because Ms. Schwager discovered the fraud, clandestine, aggressive 1/1 math tutoring and provision of an aide, private TAKS testing for all classes (undisclosed), *but most of all—because CCISD’s plan failed and Z.S. failed TAKS despite CCISD’s aggressive efforts to ensure otherwise. Hardly a coincidence*, CCISD and Rogers received notice that his “plan” failed on May 24, 2010—when he learned that Z.S. failed Math TAKS. *In a sudden change of heart, Z.S. was immediately qualified for services May 25, 2010 for “other health impairment” related to his prematurity—the same grounds for which CCISD and Rogers denied him qualification and forced Plaintiffs to endure a pointless Section 504 hearing on May 13, 2010. This is fraud.*

#### **N. SECTION 504 DISABILITY HARASSMENT**

95. CCISD through its agents, Jim Stephen, Donna Hartness, Heather Gaspard, Brandy Hester, Sharon Taggart, Gregory Smith, Holly Hughes, Sheila Haddock, Jeff Rogers, and Rogers, Morris, & Grover L.L.P., were deliberately indifferent to the concerns of “disability harassment” causing Z.S. to suffer for months in violation of Section 504. Despite more than four letters threatening to sue CCISD and responsible parties, neither Jim Stephen, Donna Hartness, Brandy Hester, Heather Gaspard, Sheila Haddock, Sharon Taggart, nor Holly Hughes would do anything to protect Z.S. from further disability harassment. Z.S. began experiencing bullying in September of 2009. Z.S. visited the Counselor in October and December of 2009 and spoke with his teachers and Principals in December of 2009 or earlier. On January 14, 2010, Z.S. came home and said “I feel like I’m going to be a failure in life” to his parents’ horror—at which time Ms. Schwager had a serious conversation. In twenty minutes, Z.S. was able to



identify a long list of physically and emotionally abusive acts committed against him by two students, J.G. and M. Plaintiffs were absolutely livid that so much abuse had been wrought on Z.S. without one person mentioning it or stopping it. Ms. Schwager sent four letters concerning the abuse to Gregory R. Smith, Jim Stephen, Brandy Hester, and Heather Gaspard, demanding that they take action in accordance with State Law. *Exhibits CC, DD, EE, FF*. Though Stephen had a “talk” with the boys, they immediately began threatening to beat Z.S. up if he talked and nothing further was done. Plaintiffs met with Holly Hughes, Sheila Haddock, and Deputy Superintendent Ebell and the abusive students were only removed once Ms. Schwager began blogging—at which time she was threatened with libel. Despite the foregoing, Z.S. suffered through the end of the year with the Assistant Principals minimizing "Kick Z Day" in an April 15, 2010 email as a child's game.

96. Though CCISD officials continue to deny knowledge of the physical assaults and relentless emotional harassment suffered by Z.S. over the course of 4-6 months, Children’s Protective Services concluded otherwise. *See Exhibit C, CPS Report dated January 19, 2010*. After interviewing witnesses and completing an investigation, CPS concluded that Jim Stephens was liable for negligent supervision, confirming that Z.S. was the victim of escalating bullying at Robinson Elementary School and that despite the Principal, Counselor, and Assistant Principal’s knowledge of these incidents, they refused to take appropriate action. Z.S. was subject to physical assault and egregious emotional damage, resulting in a diagnosis of emotional disturbance—a condition which Z.S. showed absolutely no signs of prior to this prolonged, severe disability harassment and abuse. *See Exhibit F, Psychological Assessment*. Significantly Dr. Mike Assel, Ph.D exhibited serious concerns about the bullying experienced by Z.S. and its effect on his psychological, emotional, and physical well-being, as well as his ability to learn in a non-hostile environment. *Id.*

97. CCISD is liable to Plaintiffs for the damage inflicted upon Z.S. by its conscious and deliberate indifference to this abuse. Conscious indifference exists in Jim Stephens failure to stop two abusive

children from continuing to bully, assault, harass and humiliate Z.S. despite: (1) Z.S. reporting the bully in October 2009, (2) Z.S. seeking counseling for bullying December 9, 2009, (3) Ms. Schwager threatening to sue in four separate letters e-mailed between January 14-19, 2010 to Gregory Smith, Steven Ebell, Holly Hughes, Jim Stephen, Sheila Haddock, Heather Gaspard, and Brandy Hester citing Texas Anti-Bullying law and CCISD's Code of Conduct, (4) Multiple follow up e-mails to Jim Stephens, Heather Gaspard, Brandy Hester, Gregory Smith, and Steven Ebell, demanding that action be taken in the classroom, lunchroom, and playground, (5) Rick and Candice Schwager meeting with Assistant Superintendent Holly Hughes and General Counsel on or about January 19, 2010—who refused to appropriately take action based upon Plaintiff's lack of a "private right of action" to sue CCISD under the Anti-Bullying Law, (6) Candice and Rick Schwager meeting with Deputy Superintendent Steven Ebell or about January 20, 2010, (7) Investigations by CPS and the Chief Liaison Officer, (8) Notice that despite the Principal's speaking to the offending students, they continued to threaten Z.S., (9) A Broad range of authority to impose various forms of discipline outlined in CCISD's Code of Conduct, and (10) Concerns by Z.S.'s Parents about "Kick Z.S. Day," which were represented as an innocent game by the Assistance Principal in an April 15, 2010 e-mail but concerned the Schwagers' Diagnostician due to the many statements Z.S. made about bullying; and (11) Confirmation that as recent as late May, 2010, another student is bullying Z.S.

#### **O. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

98. Finally, contrary to Jeffrey Rogers and RMG Law Firm's assertions that Plaintiffs cannot maintain a claim for Intentional Infliction of Emotional Distress against it *because* they are serving in the capacity as CCISD's attorneys is irrelevant because Rogers cannot, under the Texas Rules of Disciplinary Procedure, use seemingly legitimate legal process to inflict pain on a third party—which a simple review of the evidence clearly shows. Jeffrey Rogers and RMG Law Firm are liable because: (1) Rogers and/or RMG Law Firm acted intentionally and/or recklessly, (2) the conduct was extreme and outrageous, (3) Defendant's actions caused Plaintiff emotional distress, and (4) the resulting distress was severe.

*Hoffman-La Roche*, 144 S.W.3d at 355. Plaintiffs' claim for Intentional Infliction of Emotional Distress against Jeffrey Rogers and RMG Law Firm is for compensatory and punitive damages as a result of the extreme emotional distress intentionally inflicted upon Candice by Rogers' illegal and outrageous conduct.<sup>15</sup> Jeffrey Rogers and RMG Law Firm deliberately and with malice inflicted severe emotional distress upon Candice, resulting in a 10 pound weight loss, three emergency IV treatments for stress induced exhaustion as a result of not being able to sleep, eat, or drink for nearly four months. *See Exhibit A, Ms. Schwager*. To state a prima facie claim for **intentional infliction of emotional distress** under Texas law, a plaintiff must show "(1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe." *Hoffman-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438, 445, (Tex. 2004). Even if Rogers' claim that Intentional Infliction of Emotional Distress is a "gap filler" tort where Defendant inflicts such egregious harm so unusual that Plaintiffs have no other theory of redress, as to Rogers and RMG Law Firm, should the Court fail to find them liable pursuant to the civil RICO Statute, Plaintiff has no redress for Rogers and his firm's egregious conduct against Ms. Schwager—since Rogers and RMG Law Firm cannot be held liable under Section 504 or the Rehabilitation Act of 1973. This is the precise gap this tort was meant to fill—the outrageous circumstance where an attorney would use "seeming legal procedures" and his law license as a weapon to harass and inflict pain on a family. One can hardly imagine more outrageous conduct than this. *Id.* at 447 ("The tort's clear purpose . . . was to supplement existing forms of recovery by providing a cause of action for egregious conduct that might otherwise go unremedied." (internal quotation marks omitted)). In fact Rogers and RMG Law firm seek dismissal of every other claim against them in an effort to avoid the ramifications for their outrageous, abusive conduct—under the guise of attorney-client privilege. Since the ethical rules prohibit Rogers' conduct on so many levels, the argument that he is merely doing what his client asks does not relieve him of

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<sup>15</sup> Jeffrey Rogers

liability for intentionally inflicting pain, harassment and suffering on the Schwager family. Despite knowledge that Candice was receiving emergency IV treatments and suffering from exhaustion, he would not even demonstrate the human decency to agree to a two week continuance. Knowing of the irreparable harm Rogers will cause Z.S. by purposefully seeking to deprive him of the minimal level of assistance to which he is clearly entitled, he demonstrates wantonness in his complete disregard for the intentional deprivation of another year of education he seeks to inflict on Z.S. simply based upon “convenience” and ill will. With knowledge that his conduct is inflicting extreme stress induced exhaustion, he intends to inflict more pain. Ms. Schwager’s health is suffering with insomnia, weight loss, the inability to eat or drink, dehydration, exhaustion, and severe emotional suffering and Rogers has no regard for her suffering.

99. Defendants, Rogers and RMG Law Firm request that this claim be dismissed based upon the fact that their conduct was not “outrageous” enough. In response to this ingenuous objection, Plaintiffs would point out the elevated standard of appropriate conduct imposed on attorneys by virtue of the Texas Disciplinary Rules of Professional Conduct and Local Rules of the Southern District Federal Court, Houston Division. What might fail to meet this standard for a layperson does not excuse an attorney with more than twenty years of experience for egregious violations of Texas ethics and disciplinary rules or this Court’s Rules. For this reason, Plaintiffs request that Honorable Vanessa Gilmore apply the more stringent standards of conduct governing licensed Texas Attorneys admitted to this Court, given that deviations from elevated ethical standards of conduct would tend to establish the element that such behavior be “outrageous” as defined in this Tort.

100. Jeffrey Rogers and Rogers, Morris, & Grover L.L.P. are liable to Plaintiffs intentional infliction of emotional distress. This tort does not require proof of malicious intent to harm—though the proof undoubtedly exists. Recklessness is sufficient. At a minimum, it is clear that Jeffrey Rogers and Rogers, Morris, & Grover L.L.P. acted in reckless disregard for the severe emotional distress wrought upon Z.S., Richard, and Candice Schwager. There is little doubt that this egregious conduct was extreme and

outrageous by the standards of any reasonable person. One could hardly imagine more abusive behavior being inflicted upon a family of a disabled child needing help. In a level of emotional suffering that Ms. Schwager never imagined possible, she cried for days, could not sleep or eat just reading the malicious intent to harm her precious child. Defendant's actions caused extreme emotional distress, as evidenced by Z.S.'s recent diagnosis of "emotional disturbance", severe distress and anguish suffered by Richard Schwager, and Candice Schwager's ten pound weight loss, inability to eat, sleep, or drink for months, three emergency IV treatments due to stress induced exhaustion, depression, anxiety, inability to work, and extreme fear—leading the family to hire a bodyguard for fear of their safety. For this outrageous, intentional infliction of emotional distress, the foregoing Defendants are liable in damages for pain, suffering and punitive damages.

#### **P. BUSINESS INJURY AND LOSS OF INCOME**

101. Defendants intentional violations of federal statutes prohibiting conspiracies, schemes, and artifices to defraud and egregious acts of illegal retaliation have inflicted extreme emotional distress and significantly damaged Ms. Schwager's business by precluding Ms. Schwager from *ethically* accepting the representation of a child in any District represented by Rogers Morris & Grover L.L.P. f/k/a Feldman Rogers Morris & Grover L.L.P. ("RMG Law Firm") for fear of the punishment they are almost certain to receive through their association with Ms. Schwager. *See Exhibit B, Affidavit of Candice Leonard Schwager.* In a mere week, Ms. Schwager has had to decline representation of four children when the families sincerely desired her services. *See Exhibit A.* In fact, parents of special needs children in Houston Independent School District, Clear Creek Independent School District, Galveston Independent School District, and Pasadena Independent School District are afraid to even submit affidavits demonstrating the pattern of racketeering activities engaged in by RMG Law Firm, Jeffrey Rogers and Districts they represent for fear of retaliation against their families and discrimination against their children—in the form of reduced services. One mom stated that she simply had to fight too hard against this law firm and her

district to risk it. Id.

102. Defendants have further damaged Ms. Schwager's business by forcing Ms. Schwager through a vexatious, harassing Section 504 due process hearing which Defendants knew would afford Z.S. no relief and only serve to interfere with Ms. Schwager's ability to work and exhaust their family's finances. As a result of Defendants' illegal racketeering activities, Candice Schwager has suffered substantial business injury and loss of income. Defendants have illegally retaliated against Ms. Schwager and committed overt acts with the deliberate intent to destroy Ms. Schwager's business and preclude her ability to practice special education law. RMG Law Firm continues to retaliate against Ms. Schwager in connection with Z.S.'s case by using other RMG Law Firm partners to harass Ms. Schwager and attack Ms. Schwager's clients and/or preclude their ability to get any relief from their school district strictly for vengeance and to inflict pain on innocent families and children. Defendants acts are intended to destroy Ms. Schwager's business and preclude her ability to represent disabled children for fear of the pain they will inflict on their families by her association. During the last week of May, 2010, Ms. Schwager was compelled to refer three clients to another attorney so that they are not harassed like the Stevens.

103. On the 3<sup>rd</sup> of June, 2010, Ms. Schwager referred a client to another lawyer because she learned that Hans Graf (RMG Law Firm) was the attorney harassing her family for which she needed representation. Knowing that this woman's plight would only worsen by Ms. Schwager's association due to this firm's vendetta intended to ruin Candice's law practice, Ms. Schwager declined a fourth client. CCISD, Rogers and RMG Law Firm should be enjoined from this vicious, unethical conduct and Plaintiffs request significant fines for violation of said Injunction. Jeffrey Rogers' harassing, vexatious style litigation has precluded Ms. Schwager from working for three weeks to date simply due to harassing interference. Contrary to Defendants' representations, Ms. Schwager's lost income is almost wholly business related.

## Q. DAMAGES AND RELIEF REQUESTED

104. For the egregious discrimination, retaliation, fraudulently criminal activities in violation of a disabled child's civil rights and Defendants' conscious indifference to the extreme suffering Z.S. experienced for the better part of 2009-2010 school year, Plaintiffs seek damages from Defendants to the extent of each Defendants' liability for the harm inflicted, whether individually or as agent/employee of CCISD, or jointly/severally. For the many violations of law resulting in damage, both economic and emotional to Plaintiffs and Z.S., Plaintiffs requests an Order of the Court granting the following relief:

1. Disgorgement of all profits made by Jeff Rogers and RMG Law Firm in connection with claims asserted on Z.S.'s behalf vs. CCISD, given the fact that CCISD's use of Rogers as a "legalized" hit man clearly shows these profits constitute ill gotten gain. Plaintiffs request a judgment that all sums paid to RMG Law firm and Jeff Rogers in this case be placed in trust for Z.S.'s education. Since Rogers believes it is not a crime to rob disabled children of an education, his fraudulent, criminal efforts to ensure Z.S. did not get an education should not be awarded. Rather, Z.S. should get the education Rogers was so intent in robbing him.
2. A declaratory judgment that all administrative remedies have been exhausted on Plaintiffs' Section 504 and/or IDEA claims for futility or irreparable harm or otherwise
3. A temporary restraining order, temporary injunction and permanent injunction against Jeff Rogers, RMG Law Firm, CCISD, and all Defendants prohibiting further retaliation, harassment, or intimidation of the Schwager family.
4. Reasonable attorneys fees to hire a civil rights attorney to assume lead in this case in addition to the \$1600.00 in attorney's fees incurred in the Section 504 case prior to counsel's withdrawal,
5. Lost income suffered by Ms. Schwager on her primary job and in her special education practice as a result of Jeff Rogers, Rogers, Morris, & Grover L.L.P., Erik Nichols, and CCISD's intentional and egregious attempts to destroy Ms. Schwager's law practice, intentional stress-induced

exhaustion and infliction of emotional distress, and lost income as a result of having to withdraw from a client's case due to outrageous abuse inflicted upon the client's 7 year old autistic son by Rogers, Morris, & Grover L.L.P. in their conspiracy with CCISD to serve as agent to retaliate and punish Candice for advocating for her disabled child and preclude her ability to work in special education law.

5. \$500 for IV treatments for stress-induced exhaustion caused by Defendants' illegal retaliation and abuse and \$150 per treatment needed throughout the pendency of this trial by Jeff Rogers frequent use of eight lawyers to bombard the Plaintiff with documents and prevent Ms. Schwager from working or working to the point of exhaustion, a 10-pound weight loss and the inability to eat, drink or sleep.

6. \$75,000 for mental anguish and suffering, resulting in a 10-pound weight loss, the inability to eat or sleep, stress induced exhaustion, depression, anxiety, and extreme emotional pain and suffering caused by Defendants' conspiracy to defraud Z.S. of federal assistance, refusal to stop Ms.Schwager's child from being bullied and abuse, resulting in a diagnosis of emotional disturbance and severe self esteem problems, and five month campaign of harassment and retaliation in an effort to exhaust the Schwagers financially, emotionally, and physically—in which Ms. Schwager suffered severely by being physically and emotionally exhausted and distressed, to the point at which she was rarely able to participate in family events in comparison with the time period prior to CCISD using its lawyers to engage in a full frontal assault of illegal harassment, intimidation, and retaliation, causing Ms. Schwager to hire a body guard to assure her family's safety.

7. \$75,000 for mental anguish, loss of consortium, extreme stress from loss of income and the emotional anguish suffered by Richard Schwager as a result of Defendants' illegal conspiracy to defraud the Schwager family of assistance for their disabled son, refusal to stop their disabled child



from being bullied and abused (resulting in a diagnosis of emotional disturbance), and five month campaign of harassment and retaliation in an effort to exhaust the Schwagers financially, emotionally, and physically—with the hope that they would give up on their quest for help for their disabled son. Mr. Schwager was further damaged by having to experience the anguish of watching his wife's health deteriorate, leaving her unable to participate in family events to the level she was able prior to CCISD's campaign of harassment and retaliation through Rogers, Morris, & Grover L.L.P. and its lawyers, and his son's emotional suffering as a result of the illegal "disability harassment" he suffered by CCISD's refusal to help him. After discovering the gross level of corruption in which this law firm and Jeffrey Rogers frequently engaged, the Schwagers experienced such a high degree of fear for their safety and hired a body guard to ensure that their children remained safe.

8. \$75,000 for mental anguish, pain, suffering, resulting in the need for psychological counseling for Z.S. as a result of the conscious and deliberate indifference to the emotional, psychological, and physical abuse suffered by Z.S. while attending CCISD's Robinson Elementary School.

9. Punitive Damages to the maximum amount allowable by law pursuant to the Americans with Disabilities Act ("ADA"), as amended, Rehabilitation Act of 1973, 29 U.S.C. § 794, 42 U.S.C. § 1983, the 14th Amendment to the U.S. Constitution, fraud, RICO, and Intentional Infliction of Emotional Distress or other Statutes Pled.

9. Pre-Judgment interest in the amount of 18% and Post-Judgment interest in the amount of 6% and costs of court

10. Payment in full for an Comprehensive Independent Educational Evaluation in all areas of suspected disability, with an interdisciplinary team of professionals to work together and create an educational plan to help Z.S. overcome the areas of learning and scholastic functioning in which he demonstrates such severe impairment, such as math, writing, spelling, visual motor integration

disorder, developmental coordination disorder, dyscalculia, Attention Deficit Disorder, low vision impairment through the lack of peripheral vision, visual spatial difficulties, and learning to type so that a computer can be used as a accommodation for his impaired ability to write at a speed remotely close to the average child his age. This team should include an optometrist and/or very qualified specialist in the area of Z.S.'s unique set of severe visual impairments, a specialist in the area of Attention Deficit Disorder, Dyscalculia, Developmental Coordination Disorder (contributing to impaired penmanship), a neuropsychologist and psychologist to assess the complex interactions of his multiple disabilities and create a plan that will help him to succeed academically and emotionally.

11. Payment for one year of counseling services for Z.S. at \$120 per hour from a qualified child psychologist chosen by Plaintiffs.

12. Punitive damages are justifiable due to the extreme outrageous conduct Defendants engaging to, resulting in extreme mental anguish and suffering by the Schwager family is evidenced in: (a) Ms. Schwager's three visits to receive emergency intravenous treatment for stress-induced exhaustion, persistent insomnia, pronounced anxiety, depression, anguish, a ten pound weight loss due to the inability to eat, and significant missed work due to stress-induced exhaustion and illness, (2) disability harassment suffered by Z.S. leading to the need for psychological counseling due to Clear Creek Independent School District's ("CCISD") conscious and/or deliberate indifference to Zachary's extreme emotional suffering, leading this ten year old child to want to "run away," believe he would be "a failure in life," "on the streets," "with no talents or abilities," "was stupid and a dork," and stating that he thought about hurting himself and was observed banging himself against a wall—all of which is attributed to the persistent, severe emotional and physical bullying and abuse inflicted upon Z.S. by two or more Robinson Elementary School students (much larger than Z.S.) by CCISD's deliberate and conscious indifference to the "disability harassment" and

emotional turmoil suffered by Z.S. Plaintiffs request such all other and further relief to which they are justly entitled.

Respectfully Submitted:

/S/ Candice Schwager

CANDICE LEONARD SCHWAGER,  
Individually and as next friend of Z.S.,  
A disabled minor child  
4307 Long Grove Dr.  
Seabrook, Texas 77586  
(281) 508-8648  
schwagerlawfirm@yahoo.com  
Texas Bar. 24005603  
Federal I.D. 30801  
Pro Se Litigant

/S/Richard Schwager

RICHARD SCHWAGER, Individually and as  
next friend of Z.S., a disabled minor child  
4307 Long Grove Dr.  
Seabrook, Texas 77586  
(832) 274-0832  
Rick77059@yahoo.com  
Pro Se Litigant

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing First Amended Petition has been served in accordance with the Federal and Local Rules of Civil Procedure. Pursuant to Rule 11, I hereby certify that to the best of my knowledge, information, and belief, this filing is not presented for any improper purpose, such as to harass, delay or needlessly increase the costs of litigation. This 1<sup>st</sup> Amended Petition is filed so that justice may be had on the \_\_\_\_\_ day of June, 2010.

\_\_\_\_\_  
CANDICE LEONARD SCHWAGER

**Clear Creek ISD  
Full and Individual Evaluation (FIE): Title/Overview**

**Date of Report:** 4/29/2010

**Student ID:** 001-05-6530

**Student's Name:** Zachary D. Schwager      **DOB:** 2/11/2000      **Age:** 10      **Gender:** M

**Current Campus:** G. W. Robinson Elementary      **Grade:** 04

**Parent's Name:** Richard Schwager

**Parent's Address:** 4307 Long Grove Dr,      **Home Phone:** (281) 957-9028  
Seabrook, TX 77586-      **Work Phone:** (832) 274-0832 Ext. 0000

The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include an appropriately certified or licensed practitioner with experience and training in the area of the disability, or a licensed or certified professional for the specific disability category.

Information for this evaluation has been provided by the following individuals:

Name (*= Case Manager)	Position
*Jennifer Martinez	Diagnostician
Ann Mai	Diagnostician
Brandy Hester	Teacher
Brenda Lutz	Physical Therapist
Debra Wesson-Klinger	Occupational Therapist
Heather Gaspard	Teacher
Lois Fair	Vision Teacher
Marie Woods-Petitti	Occupational Therapist

**Reason for Referral:**

Zachary is a 10 year old, 4th grade student at Robinson Elementary. Zachary was referred for a Full and Individual Evaluation by his parents due to concerns of him being legally blind, possibly having a learning disability in mathematics and visual-spatial problems possibly needing Occupational Therapy. Zachary has received Tier I support in Mathematics within the general education setting, with growth evidenced through his classroom report card grades in the Third Nine Week grading period.

The purpose of this evaluation is to determine if Zachary has a speech, language, or learning deficit and/or physical, mental, emotional condition that requires special education and/or related services in order for the student to be successful in an educational setting.

**Other Information:**

On February 4, 2010, Ann Mai and Jennifer Martinez met with Mr. Schwager to review the Procedural Safeguards, Notice of Assessment/Evaluation and obtain Consent for Evaluation. A request for consultation with the Occupational Therapist, Teacher of the Visually Impaired, and Licensed Specialist in School Psychology (LSSP) were generated due to Mrs. Schwager's concerns regarding alleged bullying in school and other disabilities. When the Consent for Evaluation was received on February 24, 2010 it was indicated, by the parent, on the Consent that no Psychological Evaluation was to be completed.

Consent for an Occupational Therapy Evaluation was obtained on March 11, 2010.

The parent signed that the Consent for a Consultation with the LSSP was denied in writing on March 11, 2010.

Consent for a Visual Impairment and Physical Therapy Evaluation was obtained on March 29, 2010.

**This student is a new referral to special education.**

(Refer to the end of this report for recommended disability changes.)

\*\*Student must be assessed in all areas relat

Medicaid #: \_\_\_\_\_ (Added: \_\_\_/\_\_\_)

CFR 300.532(f), if appropriate.

tle/Overview (4/29/2010) Page 1 of 3

*Exhibit 50*

Yes     No

Assessment/evaluation of this student was conducted using standard measurement procedures for all tests administered. If no, explain the rationale for deviating from procedures, interpreting results and determining educational needs.

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**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

# Overview of Full and Individual Evaluation

Student ID: 001-05-6530

Date of Report: 4/29/2010

Student's Name: Zachary D. Schwager

Home Campus: G. W. Robinson Elementary

Previous Records (if applicable): N/A

This Full and Individual Evaluation includes the following sections:

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Language             | <input checked="" type="checkbox"/> Sociological                                 | <input checked="" type="checkbox"/> Assistive Technology               |
| <input checked="" type="checkbox"/> Physical             | <input checked="" type="checkbox"/> Intellectual/Cognitive                       | <input type="checkbox"/> Functional Vocational                         |
| <input checked="" type="checkbox"/> Emotional/Behavioral | <input checked="" type="checkbox"/> Educational/Developmental Performance Levels | <input checked="" type="checkbox"/> Summary and Conclusions (Required) |

## Disability and Other Reports

- Part 2 - Present Levels of Academic Achievement and Functional Performance - is attached.
- Recommendations and Assurances (including signatures) is attached.

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**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

Clear Creek ISD  
Full and Individual Evaluation  
Language

Date of Report: 4/29/2010

Student's Name: Zachary D. Schwager

Current Campus: G. W. Robinson Elementary

**Language Proficiency:**

Student's Dominant Language:  English  Spanish  Other \_\_\_\_\_  
Other Language

Student's Level of Proficiency: \_\_\_\_\_ English \_\_\_\_\_ and/or \_\_\_\_\_

	<u>Receptive</u>	<u>Expressive</u>	<u>Receptive</u>	<u>Expressive</u>
Above Average	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Average	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Below Average	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

LPAC Information: Test: \_\_\_\_\_ Results/Score: \_\_\_\_\_  
 Yes  No The student is limited English proficient.

LPAC Recommendations/ Other Language Dominance Information: During informal observations and formal portions of this evaluation, Zachary demonstrated average receptive and expressive language skills.

Student expresses himself/herself best:  Orally  Other method of communication

If other, specify method for determination: \_\_\_\_\_

Based on the assessment of the student's language abilities, the remainder of the assessment was conducted in:

- English
- Combination \_\_\_\_\_
- Bilingual assessor conducted the assessment
- Interpreter was used

Specify language or mode of communication: \_\_\_\_\_

Other language, specify: \_\_\_\_\_

Yes  No Testing modifications were needed to address the student's language needs. If yes, describe:

**Communication Evaluation:**

**Sources of Data:** - No formal sources of data

**Language:**

Yes  No Informal observation during testing and information obtained from the classroom teacher(s) and parent(s) indicates that language appears to be within normal limits. If no:

Expressive:  Above Average  Average  Below Average  
Receptive:  Above Average  Average  Below Average

Additional Information:

On the Parent Information form Mr. Schwager indicated that Zachary speaks minimal Spanish. This was not assessed as he is currently being educated in an English speaking classroom and his Verbal Ability on the Woodcock-Johnson III Tests of Cognitive Abilities was in the average range.

\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.

Yes  No Informal observations during testing and information obtained from classroom teacher(s) and parent(s) indicates that speech appears to be within normal limits. If no, complete the sections on articulation, fluency and voice below.

**Articulation:**

Yes  No Informal observation during testing and information obtained from the classroom teacher(s) and parent(s) indicates that articulation appears to be within normal limits. If no, provide details below.

Oral Peripheral Results:

Oral Motor Control:  Normal  Abnormal

Oral Structure:  Normal  Abnormal

Additional Information

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**Sources of Data:** - No formal sources of data

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**Fluency:**

Yes  No Informal observation during testing and information obtained from the classroom teacher(s) and parent(s) indicates that fluency appears to be within normal limits. If no:

Type:  Primary  Secondary      Severity:  Mild  Moderate  Severe  
 Mild  Moderate  Severe

**Voice:**

Informal Observation

Date: \_\_\_\_\_

Pitch Level:  Normal  Abnormal

Volume Level:  Normal  Abnormal

Vocal Quality:  Normal  Abnormal

**Results and Interpretation:**



Clear Creek ISD  
Full and Individual Evaluation  
Physical

Date of Report: 4/29/2010

Student's Name: Zachary D. Schwager

Current Campus: G. W. Robinson Elementary

**Vision:**

- Within gross normal limits  
 Without Glasses     With Glasses

Not within normal limits

Ophthalmologist Report    (Date: 6/19/2009 )

Optometrist Report    (Date: \_\_\_\_\_ )

Explain:

**Hearing:**

- Within gross normal limits  
 Unaided     Aided

Not within normal limits

Otologist Report    (Date: \_\_\_\_\_ )

Audiologist Report    (Date: \_\_\_\_\_ )

Explain:

Yes     No     N/A    Fine and gross motor skills appear to be age appropriate.

**Health History:**

Zachary was born by cesarean at twenty-six weeks gestation, weighing one pound. During her pregnancy, Mrs. Schwager was on Zofran for nausea. She also had intrauterine growth retardation.

Zachary was in an incubator for five months. Zachary suffered with "multiple issues; vision, respiratory" while in the hospital after his birth. He had vision correction surgery and now wears glasses. According to Mr. Schwager, Zachary is "legally blind without the aid of eye glasses." After Zachary's birth Mrs. Schwager also suffered with Chronic Fatigue.

During infancy the following problems were noted more frequently than normal; difficulty sucking, choked easily, vomited or spit up frequently, had allergies, sleep apnea and feeding issues.

Zachary completed bowel and bladder training at two and a half years of age with no relapses. Zachary was delayed with walking, dressing himself, riding a bicycle, holding a crayon/pencil and cutting with scissors. Zachary's language development was reported to be normal.

Zachary has experienced the following; frequent colds (ages 1 – 5), frequent ear infections (ages 1 – 3), throat problems (tonsils removed at 4 years), headaches (ages 8 – present), problems with eating (birth – present), other aches and pains (ages 4 – present), vomiting or nausea (birth – present).

Zachary wears glasses due to retinopathy due to premature birth. Zachary currently takes medication for his asthma and an appetite stimulant. Mr. And Mrs. Schwager reported that he uses an Albuterol inhaler and an Xopenex inhaler.

**Sources of Data:** - No formal sources of data

**Assessment: Physical Therapy Evaluation**

Description:

Assessment Date: 3/31/2010

\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.

**Results/Interpretation/Other Information:**

DATE OF EVALUATION: 3/31/2010

Sources of Information

School Observations

Review of Confidential Folder

Range of Motion, Strength and Reflex Screening

School Function Assessment

Interviews with Art teacher, PE teacher, classroom teacher and Music teacher

PROFESSIONAL EVALUATOR: Brenda Lutz, PT

REASON FOR REFERRAL AND BACKGROUND INFORMATION:

Zachary was referred for evaluation due to his medical physician requesting physical therapy. Consent for a physical therapy evaluation was obtained to address any physical concerns which may affect Zachary's educational day.

Please refer to Zachary's the Health History section of this FIE for significant history.

EMOTIONAL AND BEHAVIORAL FUNCTIONING:

During this evaluation session, Zachary was cooperative for all tasks presented. Zachary was observed in his homeroom classroom, art classroom, in the hallway and in the cafeteria.

Testing conditions were considered to be adequate. Evaluation results are considered to be a reliable estimate of his abilities.

POSTURE, POSITIONING AND SEATING:

Zachary is able to sit in a regular classroom chair. He is able to pull the chair out from under a desk or table and assume sitting in the chair. He is able to scoot his chair forward under the desk or table independently and scoot it back out to assume standing independently. He was observed to sit in the chair on his buttocks independently as well as sit on the edge of the chair without difficulty. At times, he would sit on one leg folded under him as well. The chairs that he used in the classroom as well as in the art class are tall for him and a smaller chair might be more comfortable for him to sit in. When sitting at the desk as well as the table the writing surface was tall for him. A shorter table and desk could also place him in a better position for written output.

Zachary sits in a desk in close proximity to the teacher when she is teaching.

RANGE OF MOTION AND STRENGTH:

Zachary demonstrates range of motion within normal limits. He demonstrates functional strength and normal muscle tone in all extremities.

REFLEX DEVELOPMENT:

By observation during testing activities, Zachary demonstrates no evidence of primitive reflexes and present protective and equilibrium reactions.

GROSS MOTOR DEVELOPMENT:

This area was not formally tested.



Zachary's PE teacher was asked if he demonstrates difficulty with participation in PE class with his peers. She stated that he does not have difficulty and that he passed all parts of his fitness test this year.

Zachary is able to walk and run on even as well as uneven surfaces. When walking on the grass surface in the front of the school building he recognized changes in the surface and adjusted his speed when an uneven surface neared him. He is able to get up and down from the floor independently without difficulty.

Zachary was observed to be walking from his art class to his classroom in line with his peers. When doing this it was noted that there was a distance between him and the student in front of him. He was carrying his back pack to the classroom and was adjusting it and looking at it during the transition. His teacher instructed him to place the back pack on with both straps on his shoulders and he was then able to complete the transition without difficulty. The teacher was questioned if Zachary had difficulty keeping pace with his peers when walking in a line. She stated that when he is attending to what is going on he is able to keep up without difficulty. She was asked if he is able to evacuate the school when fire drills happen and she stated that he has no problem with this task.

Zachary is able to get on and off a school bus independently, alternating feet on the steps of the bus as he ascended and

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**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

descended the steps. He demonstrated his ability to ascend and descend the steps in the gym to the stage. He alternated feet and did not use the rail. He is able to walk safely up and down ramps as well as curbs.

Zachary demonstrated his ability to push and pull open doors to the classroom, office, and outdoors.

Zachary is transported to school by car. From report from the music teacher who assists with dismissal, he is able to get in the car independently and is able to fasten his seatbelt. He was observed to get on and off a bus without difficulty. In the event that he rides a school bus for field trips, he is able to do so without assistance.

#### SCHOOL FUNCTION ASSESSMENT:

(by Wendy Coster, Theresa Deeney, Jane Haltiwanger, & Stephen Haley)

The School Function Assessment (SFA) was developed for students in elementary school to assist education team members with assessing a student's ability to meet the functional demands in the student's curriculum. Tasks and activities included are nonacademic, but are tasks and activities that must be performed for a student to be successful in elementary school. Information collected in this assessment should assist the team with identifying areas of limitation, but should also highlight areas of strength that may help the student overcome his/her challenges.

The SFA is a criterion referenced test, allowing for measurement of a student's functional performance relative to the overall continuum of function.

Summary of Results:

	Criterion Score	Criterion Cutoff Score
Travel:	100	100
Maintaining and Changing Positions:	100	100
Manipulation with Movement:	100	100

#### ACTIVITIES OF DAILY LIVING:

Zachary is independent in the cafeteria in accessing the tray and the food choices. He demonstrated his ability to log in his number independently and carry his tray to the table without difficulty. He is able to sit on the stool seat at the cafeteria table independently.

### Assessment: Functional Vision and Learning Media Assessment (FVA)

**Description:** The Functional Vision Assessment provides a description of the student's typical use of vision during everyday activities in a variety of environments. It may predict the potential use of vision by the student in certain conditions.

**Assessment Date:** 4/1/2010

#### Results/Interpretation/Other Information:

Dates of Evaluation: 3/30/2010, 3/31/2010, 4/1/201

Formal and Informal Measures Used: Teacher observation, teacher interview, student interview, Barraga's Visual Efficiency Scale, Puzzles, Sequencing Cards, Heidi Expression Cards, Jerry Johns Basic Reading Inventory, Frostig Picture and Pattern Worksheets, Various objects from child's environment, New York Lighthouse Near Vision Test Cards, Sloan Reading Cards, Michigan Tracking Program

#### A. Functional Vision Evaluation

##### 1. Summary of most recent eye exam:

Eye Specialist: Paul Steinkuller, MD

Most recent exam date: 6/19/2009

Cause of Visual Impairment: 26 week premature infant who underwent laser surgery for ROP in both eyes at age 2 months.

Distance Vision: Right eye 20/25

Left eye 20/40

Near Vision: Right eye J1+

Left eye J1+

Prognosis is stable. Intra-ocular pressure and muscle function is normal. Color vision and photophobia were not tested and they were unable to do the Visual Field Test due to age or cooperation. The doctor states that he is not legally

**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

blind and that this patient does not have a serious visual loss after correction. The treatment recommended was glasses and annual eye examinations.

2. Procedures and results of Functional Vision Evaluation (performance of tasks in a variety of environments using both near and distance vision):

Heidi Expression Cards: Zachary was able to sort all of the boy expression cards with 100% to 2.5% contrast

New York Lighthouse Near Vision Test Cards: Using the number and the word card at 16" he read down to 4 pt font (J1) which is consistent with what the doctor reported. This is smaller than newspaper size print.

Sloan Reading Cards: Read 1M (9 pt font) print at 16"

Puzzles: Worked a 25 piece spiderman puzzle. He referred to the picture on the box to help with placement of the pieces. He tried to put on one piece and said "No that doesn't match."

Colors: identified white, black, brown, purple, green, orange, blue, yellow, red, and pink

Shapes: identified a diamond, triangle, square, star, hexagon, pentagon, rectangle, circle, and oval

Frostig Pictures and Patterns Worksheets: Independently completed 3 worksheets 1) maze, 2) tracing lines to get to like animal, 3) copied dot picture

Michigan Tracking Program: Independently completed visual tracking worksheet where he had to find the letters of the alphabet starting with 'a' by tracking across nonsense words from left to right and from line to line.

Visual Efficiency Scale: Showed satisfactory visual efficiency. He missed one visual closure item and two items in spatial perspective.

Read school menu: Noticed that they did not have the right date on the school menu for today since it was April Fools Day. Was able to read items on menu from 10"

Identify coins: identified quarter, nickel, dime, penny, \$1 bill and \$5 bill from 12". He was able to read the date on each coin from approximately 5". He thought the 'D' was for the President's middle initial. He was able to count 1 quarter, 5 dimes, 3 nickels, and 2 pennies and came up with 92¢.

Computer: Was able to log onto computer in the computer lab. He was able to follow the small white arrow cursor and click on icons on the desktop sitting 12" from the computer monitor. He typed using his index fingers. Zachary got onto internet and typed web address in (cartoonnetwork.com). He clicked on the speaker on the bottom right toolbar and muted the volume. He used the arrow keys and the spacebar to play a game. When he finished, he logged off.

Cutting: Cut out simple shapes holding paper at a distance of approximately 9"; cut out spiderman picture from a coloring book staying on lines when he went around his legs from a distance of 6".

Writing: Using regular lined notebook paper, he was able to print his name, age, address, and phone number.

Copying: He was able to copy information from a poster in the computer lab 5 ft away with ¼" black letters on a white background. He typed the definition for floppy disk into a word document.

Walk in the hallway: Zachary was able to walk in line with his class. He was able to find his way to the office, lunchroom, and back to his classroom. Read 1" black room numbers on a gray background from 6 ft. He read the time on a clock from approximately 24 ft. He said he wasn't very good at telling time. He said it was 1:26 when it was really 1:29.

Recess: Outside was a bright sunny day. Zachary was seen running from concrete sidewalk to the grassy area. He climbed on the playground equipment. He and several other boys were playing a video game and were seen rolling down the hill.

Lunchroom: He went through the lunch line and selected the items he wanted to eat. He was able to put in his pin number, carry his tray and locate an empty seat at his class table. He opened containers without help and was mostly turned around so that he could talk to his friend sitting at the table behind him.

PE: Playing a game with 2 teams. A Spring bucket was placed on floor between the 2 teams. The student had to get the bucket when they showed your number and take it back to your home base without the other team pulling off your flag. Zachary was able to see 2 ½ inch black number on a white background from approximately 60 feet.

3. Implications for student's education including need for assistive technology devices or services:

Zachary should use materials found in a regular classroom to access the school curriculum and environment.

No modifications to the school environment are necessary at this time.

No modifications are necessary for physical education.

PE restriction

4. Recommendations concerning the need for a clinical low vision evaluation:

A low vision evaluation is not recommended.

5. Recommendations concerning the need for an orientation and mobility evaluation:

An Orientation and mobility evaluation is not recommended.

B. Learning Media Assessment

1. Efficiency with which the student gathers information through the use of vision, touch, and hearing:

\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.

Vision: Teacher reports that Zachary is reading at a DRA 44 which is 5th grade and the highest they go. On the Johns Basic Reading Inventory, Zachary read a 3rd grade passage at 187 wpm with 90 % comprehension using regular print. He read a 4th grade passage 162 wpm with 80 % comprehension using regular print. He read a 5th grade passage 139 wpm with 70 % comprehension using regular print.

He was able to read silently on a 4th grade level with 90 % comprehension.

Hearing: When a 4th grade passage was read to him, he comprehended with 70 % accuracy and a 5th grade passage with 90 % comprehension. He is able to follow class directions.

Touch: He uses his sense of touch similar to non-visually impaired peers.

He primarily uses his vision to gather information.

*dispute*

2. Recommendations for appropriate learning media or a statement of need for ongoing evaluation to determine appropriate learning media:

a. Variety of methods and materials the student uses to accomplish learning tasks:

All regular materials can be used.

b. Primary literacy medium the student will use for reading and writing:

print

3. Based on the data from the Learning Media Assessment and Functional Vision Evaluation, the student is not functionally blind and should not receive Braille instruction.

C. Recommendations for the Full and Individual Evaluation

The teacher of the visually impaired consulted with the educational diagnostician during the Full and Individual Evaluation.

1. Areas to be evaluated:

Vision  
Achievement  
Cognition  
Fine motor  
Gross motor

2. Appropriate evaluation techniques:

Regular

3. Evaluation modifications necessary because of the visual impairment (Braille, print size, lighting, etc.):

no modifications necessary

4. Evaluations completed by the VI teacher or Orientation and Mobility Specialist.

Functional Vision Evaluation and Learning Media Assessment

After the Full and Individual Evaluation, the teacher of the visually impaired consulted with the educational diagnostician regarding data interpretation to ensure consideration and understanding of the educational, psychological, and social implications of the visual impairment.

Based on the information gathered, this student is not eligible for services from a certified vision teacher as a student with a visual impairment.

*data inadequate*

Lois Fair

Teacher Certified in the Education of Students with Visual Impairments

*- incompetent / lying*

### Assessment: Occupational Therapy Evaluation

#### Description:

**Results/Interpretation/Other Information:**

Sources of Information:

Classroom Observation (3/30/2010, 3/31/2010)  
Teacher Information (3/30,2010, 3/31/2010, 4/1/2010)  
Developmental Test of Visual Perception – (DTVP-2) (3/30/2010)  
Range of Motion, Strength and Reflex Screening (3/30/2010)  
Sensory Profile School Companion (3/30/2010)  
Work Samples (3/30/2010, 3/31/2010)  
DeCoste Written Productivity Profile (3/30/2010)

BACKGROUND INFORMATION:

Zachary is 10 years old and attends the fourth grade at Robinson Elementary. He was referred to occupational therapy due to parent's concern of fine motor and handwriting difficulties. Please refer to the Health History section of this FIE for significant (medical) history.

EMOTIONAL AND BEHAVIORAL FUNCTIONING:

During this evaluation session, Zachary separated easily from his classroom. He was cooperative and very social, initiating conversation often. At times his talking interfered with the evaluation and he had to be redirected to the task and asked to continue after the task was completed. Good effort was noted throughout the assessment when attending to activities presented. He did require frequent redirection during the visual perception testing. Zachary was wearing his glasses during the evaluation. Testing conditions were considered to be adequate. Evaluation results are considered to be a minimal estimate of Zachary's abilities due to his difficulty in attending and focusing on the various tasks presented to him.

POSTURE, POSITIONING AND SEATING:

Zachary was observed while in his classroom and the hallway. He is able to sit in a standard chair with feet flat on the floor in motor lab. He is able to assume and maintain posture during writing activities. His feet do not rest on the floor in the classroom chairs. A foot rest is recommended as well as lowering his desk to accommodate for his height. During the evaluation Zachary sat on his foot playing with his shoe laces which were touching his leg.

RANGE OF MOTION AND STRENGTH:

Through observation, Zachary appears to demonstrate range of motion and strength within functional limits for educational related activities.

REFLEX DEVELOPMENT:

By observation during the testing session, Zachary demonstrates present mature reactions of protective extension in sitting and standing as well as intact equilibrium reaction in standing and sitting.

GROSS MOTOR DEVELOPMENT:

Please refer to Physical Therapy Evaluation which is included in the full evaluation for further information regarding this area.

EDUCATIONAL FINE MOTOR DEVELOPMENT:

Manipulation with Movement: Zachary is able to retrieve small items from floor, place spillable substances on table without spillage, move objects (e.g. chair) along the floor, and pick up materials from desk.  
Using Materials: Zachary is able to sharpen a pencil with a pencil sharpener, erase pencil marks without tearing the paper, use a stapler or paperclip to fasten two or more sheets of paper, take off and replace caps on pens, turn single pages in a book, and cut out complex shapes within ¼ inch of line.  
Written work: works from left-to-right, forms some letters top-to-bottom, uses a tripod grasp with his right hand, keeps place on a worksheet with multiple items, copies from a nearby source, has good number alignment, does not space between words and sometimes uses heavy pressure, has inconsistent sizing, does not produce written work at a pace similar to peers.

Developmental Test of Visual Perception – (DTVP-2)

(by Donald D. Hammill, Nils A Pearson, Judith K. Voress))

Developmental Test of Visual Perception – Second Edition (DTVP-2)

is designed to assess the extent to which individuals can integrate their visual and motor abilities. It consists of six subtest. .

Results on the follow: Developmental Test of Visual Perception – Second Edition (DTVP-2)

8-12

Subtests	Percentiles	Standard Scores	Motor Involvement	Motor Reduced
Eye Hand Coordination	9%	6	X	
Position in Space	37%	9		X
Copying	50%	10	X	
Figure-Ground	75%	12		X
Spatial Relations	37%	9	X	
Visual Closure	<1%	2		X
Visual Motor Speed	25%	8	X	
Form Constancy	16%	7		X

Composites	Percentiles	Standard Scores	Quotient	Description
General Visual Perception	16%	63	85	Below Average
Motor-Reduced Visual Perception	13%	30	83	Below Average
Visual-Motor Integration	21%	33	88	Below Average

Requires a lot of Attn (distraction)

Visual Motor Integ. Disorder is clear

Although Zachary appeared to be attending to the items within the visual perception test the evaluator needed to redirect him to scan all the options before making a choice. His scores indicate errors on earlier and easier items within a subtest and success in later more difficult items. This inconsistency may be due to difficulty focusing for the duration of the subtest not an indication of gaps in his ability. His actual visual motor scores are greater than his "motor reduced" visual perception scores which indicates this is not exclusively a motor concern.

REVIEW OF CURRENT ASSESSMENT DATA, REVIEW OF HANDWRITING AND WRITTEN LANGUAGE WORK SAMPLES:

Assistive Technology Assessment: Developing a Written Productivity Profile by Denise DeCoste provided the following information:

Handwriting Assessment:

	WPM	Average 4th grader WMP (Ammundson, 1995) (Graham, Beringer, Weintraub, & Schafer 1998)
Alphabet	4.8	
Sentence Copy	6.8	8-13 WMP
Dictated sentence	9.6	
Independently composed sentence	5.4	4-5 WMP

	WPM
Keyboarding Assessment	
Alphabet	10.2
Sentence copy	7.4
Dictated sentence	10.6
Independently composed sentence	13.2

Developmental Delay

Typing

would give keyboard

Zachary was asked to write the alphabet, copy a sentence, write a dictated sentence, and write one or two sentences that he composed himself. He was then asked to perform the same tasks using a keyboard. Results indicated that Zachary types a sentence that is copied, dictated, or independently composed more quickly than when typing. Overall, there was a significant increase in quantity between sentences typed and those that were handwritten. Therefore, Zachary would benefit at this time using word processing for lengthy written assignments. Word processing is an instructional technology available to all students and should be continued to made available to him.

OBSERVATION AND TEACHER INTERVIEW:

Ms. Hester and Ms. Gaspard, Zachary's fourth grade teachers, both reported Zachary's primary means of writing when completing classroom assignments is in manuscript with consistent legibility between 85%-90% in English Language Arts and 95% in Math. They reported his speed of writing is slower than those of his peers, endurance is a problem in English Language Arts and he has difficulty with spacing between words. Ms. Gaspard reports that Zachary rushes his work to be completed at the last minute; "if he is given 20 minutes to complete an item he will finish it in the last 5 minutes." Zachary is successful in the classroom copying from the board and from a desk copy, and completing fill-in-the-blank worksheets, short answers, short in class assignments of 1 to 4 paragraphs, note taking in both classes. In addition, in English Language Arts he is successful in written reports longer than 1 page and written homework. Currently in English Language Arts he has received additional handwriting practice, verbal redirection to complete assignments, support with spacing between words, and an additional 10-15 minutes when copying from the board. The teacher reported that Zachary has made progress with his overall writing. The first benchmark taken in October of 2009 Zachary scored a 55% (no grade level average) on the editing portion of the test and a 1 on the composition. The second benchmark taken in December of 2009 Zachary scored a 61% (86.5% grade level average) on

150% illegible 4th g.

\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.

the editing portion and a 3 on the composition part of the writing benchmark.

**ACTIVITIES OF DAILY LIVING:**

Zachary displays age appropriate self-help skills required within the educational setting.

**Setup and Cleanup:** Zachary is able to open sealed bags and cartons, remove pull-off lids from containers, obtain personal items from own bag, take out and put away books in desk, remove materials from large and small containers, stack materials. Place and carry food on a lunch tray without spillage.

**Eating and Drinking:** Zachary is able to drink from student-accessible water fountain, drink without spilling, utilize a spork in the cafeteria, and insert his cafeteria code.

**Hygiene:** Zachary is able to care for toileting needs, obtain paper towel and soap from dispenser, and wash/dry hands

**Clothing Management:** Zachary is able to put on and take off backpack and sweatshirt. He stated he manages his fasteners on his clothing while demonstrating he is able to button/unbutton buttons on a button board and tie his own shoes.

**SENSORY MOTOR DEVELOPMENT:**

Sensory Profile and Sensory Profile School Companion

(by Winnie Dunn, Ph.D., OTR, FAOTA)

The Sensory Profile provides an evaluation tool for professionals to gather information from caregivers and teachers about a student's sensory processing characteristics that support and/or interfere with functional performance.

Zachary's teacher completed a Sensory Profile in which the teacher indicates how Zachary responds to a variety of sensory input. The teacher reports he misses oral directions in class more than his peers, seems oblivious within an active environment, watches other students when they move around the room, seeks all kinds of movement, and is inefficient in doing things.

Scoring of the Sensory Profile indicates Zachary performs typically in the areas of School Factor 2 and 3 which address his awareness and attention in the classroom and range of tolerance for sensory input. He scored with a probable difference in the Factor 1 which indicates a need for external supports. He may need additional sensory input to activate his high threshold or the teacher's attention. He scored with a definite difference in Factor 4, relating to his availability for learning. Students having difficulty in this area tend to need redirection in order to attend to what is being taught, rather than attending to the activities in his surrounding environment.

**ASSISTIVE TECHNOLOGY:**

Assistive technology needs were considered, and based on the previously addressed competencies: Assistive technology devices and services are not recommended for Zachary at this time in the areas of fine motor, gross motor, and self care skills. Zachary is able to access a typical computer and keyboard. He demonstrates familiarity with the key location and function to draft, edit and produce a final copy. Campus may want to consider Zachary accessing word processing which is available to all general education students. Testing indicated he self generates writing at a faster rate than compared to manuscript. He types using hunt-and-peck to locate keys. Zachary would benefit from becoming more familiar with using the traditional two-hand QWERTY model to access the keys. Zachary may benefit from reducing his far-point copying by having a desk copy of classroom notes.

Yes  No  N/A Based on the above information, Adapted Physical Education is indicated.

**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

Medicaid #: \_\_\_\_\_ (Added: \_\_/\_\_/\_\_\_\_) (Locked)

Full and Individual Evaluation: Physical (4/29/2010) Page 8 of 8



Clear Creek ISD  
Full and Individual Evaluation  
Sociological

Date of Report: 4/29/2010

Student's Name: Zachary D. Schwager

Current Campus: G. W. Robinson Elementary

Yes  No  N/A Based on data reviewed, the student's level of intellectual functioning is consistent with his/her adaptive behavior. If not, include an explanation in the Results field(s) below. (Default for text version.)

**Results:**

A parent information form was completed by Mr. Schwager and received by the school on 2-24-2010, portions of this information are included in the health history and emotional/behavioral sections.

Zachary lives at home with his mother, father and two younger brothers, ages four and one. His mother is employed as an attorney and his father works from home in sales. They have lived in their current home for approximately nine years.

As reported by the parents, Zachary attended summer school several times while attending McWhirter Elementary. In addition, Zachary does not like "math, because of falling behind and fear of bullying is distraction." Zachary does like science. In response to the question, does your child like being in school, Mr. Schwager responded "not much."

Mr. Schwager reported that, Zachary has had adjustment and learning problems in school, and "does not perform academically unless under constant supervision."

Yes  No Cultural and/or lifestyle factors influence this student's learning and behavioral patterns. If yes, explain:

See Below

Yes  No This student's sociological status indicates a lack of previous educational opportunities. If yes, explain:

Zachary has an excessive number of tardies and absences that have incurred in the 3rd and 4th grades, resulting in an a large amount of missed instruction in mathematics.

	Total Absences	Total Tardies	Appx. Amt. Of Inst. Missed due to Tardies
Grade 3	6	50	12hrs. 35min.

Grade 4 (as of 03/30/10)	14	30	9hr. 7min.
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**Intellectual functioning was assessed using:**

- informal measures and appears to be within normal limits.
- informal measures.
- Assessment: Woodcock-Johnson III - Tests of Cognitive Abilities, III

**Description:** A comprehensive set of individually administered tests for students ages two and up, which measures general intellectual ability, specific cognitive abilities, oral language and academic achievement.

**Assessment Date:** 3/24/2010

Assessment Components	Standard Score	Percentile Rank	Range	RPI	
01 Analysis Synthesis	101	53	Average	91/90	
02 Concept Formation	90	24	Average	85/90	
03 Matrices (DAS-II)	T-Score 48	42	Average	NA	
04 Seq. and Qual. Reas. (DAS-II)	T-Score 49	46	Average	NA	
05 Numbers Reversed	111	76	Average	98/90	
06 Auditory Working Memory	130	98	Superior	99/90	
07 WORKING MEMORY	122	93	Superior	99/90	
08 Spatial Relations	105	64	Average	93/90	
09 Visual Matching	101	53	Average	91/90	
10 Pair Cancellation	104	61	Average	94/90	
11 Visual Auditory Learning	93	31	Average	85/90	
12 Retrieval Fluency	114	83	Average	93/90	
13 LONG TERM RETRIEVAL	99	47	Average	90/90	
14 Verbal Comprehension	112	78	Average	97/90	
15 General Information	97	42	Average	87/90	
16 VERBAL ABILITY (Ext)	105	62	Average	93/90	
17 Sound Blending	112	79	Average	97/90	
18 Auditory Attention	99	48	Average	90/90	
19 AUDITORY PROCESSING	111	76	Average	94/90	
20 Planning	105	64	Average	94/90	
21 EXECUTIVE PROCESSES	97	42	Average	88/90	
22 BROAD ATTENTION	119	90	Average	97/90	

**Results/Interpretation/Other Information:**

Current research in the area of Mathematics has linked specific core cognitive abilities (narrow ability) to the areas of Math Calculation and Math Reasoning. As all broad cognitive ability areas were measured adequately, the scope of this evaluation, due to the academic area of concern was to look specifically for a pattern of assets and deficits as related to mathematics. The subtests below are discussed in the order of their importance to Math Reasoning as identified through current research defined by Dr. Gail Cheramie. Any links to Mathematics Calculation will be included in the discussion of that specific core cognitive ability or will follow later in the interpretations section. Unless otherwise specified, subtests from the Woodcock-Johnson III - Tests of Cognitive abilities were used and all score reported are based on age norms.

**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

#### Gf

Fluid Reasoning represents Zachary's ability to use and engage in various mental operations when faced with a relatively novel task that cannot be performed automatically. Fluid reasoning has been found to be significantly important to the area of Math Problem Solving. Three narrow abilities important to the area of Math Problem Solving were assessed. Overall, Zachary performed within the average range for all measures administered.

General Sequential Reasoning is the ability to start with stated rules, premises or conditions and to engage in one or more steps to reach a solution to a problem. This specific core cognitive ability is also linked to Math Calculation abilities. This narrow ability was measured by the Analysis-Synthesis subtest which required Zachary to analyze the presented components of an incomplete logic puzzle and to identify the missing components. Overall, Zachary performed in the average range for this subtest.

Inductive Reasoning is the ability to discover the underlying characteristic that governs a problem or set of materials. This narrow was measured by a task requiring Zachary to identify the rules for concepts when shown illustrations of instances of the concepts and non-instances of the concepts (Concept Formation). Throughout this subtest Zachary continuously kicked the chair and desk with his foot. When asked to stop, he would momentarily, however as he became more engaged in the tasks involved he would continue kicking his foot. While this area was in the average range, it was found to be a relative weakness for Zachary in comparison to his other cognitive abilities. Therefore, the Matrices subtest from the Differential Abilities Scale – Second Edition (DAS-II) was administered. In this measure Zachary was required to complete a matrix of abstract designs by choosing the correct design from among four or six designs. On this measure he performed in the average range.

Quantitative Reasoning is the ability to inductively and deductively reason with concepts involving mathematical relations and properties. This narrow ability was measured using the Sequential Quantitative Reasoning subtest on the DAS-II. This measure required Zachary to complete a series by providing the missing figure, then determining the relationship between two pairs of numbers, apply the relationship to an incomplete pair of numbers, and provide the missing number. On this narrow ability measure Zachary performed in the average range.

#### Gsm

Working Memory is a critical process to all areas of cognitive processing and learning including math calculations. Students with deficits in this area have a difficult time thinking and acquiring skills. Working memory is considered to be where learning occurs. Short-term memory and working memory are closely interrelated. The difference between the two is that short-term memory requires storage of information for a brief period of time, whereas working memory requires the need to manipulate the information in some way. Working Memory was measured using two subtests. Overall, Zachary performed in the above average range.

The first subtest, Numbers Reversed, required Zachary to repeat a series of number sequences in reverse order presented orally via an audio recording. On this subtest Zachary performed in the average range.

The second subtest, Auditory-Working Memory, required Zachary to retain two types of orally presented information (numbers and words) and then repeat them in a specified order. The task required the Zachary to perform two different mental operations simultaneously (i.e., to retain and manipulate stimuli). During this subtest, Zachary frequently squirmed in his seat and played with a string, however he performed in the superior range on this measure.

#### Gv

Visual Processing is the ability to generate, perceive, analyze, synthesize, manipulate, transform, and think with visual patterns and stimuli. The narrow ability is correlated to math reasoning is, Spatial Relations, which is the ability to rapidly perceive and manipulate visual patterns or to maintain orientation with respect to objects in space. The Spatial Relations subtest, which required Zachary to identify from a series of shapes the pieces needed to form a given whole shape, was in the average range.

#### Gs

Processing Speed is the speed that a person is able to automatically perform relatively easy or over learned cognitive tasks requiring simple decisions. The narrow ability related to mathematics is Perceptual Speed which is the ability to fluently perform cognitive tasks automatically, especially when under pressure to maintain focused attention and concentration. This narrow ability was measured by two subtests; overall he performed in the average range.

In the first subtest, Zachary was required to match two identical numbers in a row, ranging from one- to three- digit numbers (Visual Matching). When the page was initially shown to Zachary he took a very deep breath, but worked diligently with no

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**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

reminders to stay on task. He did not squirm in his seat or attempt to fidget with his socks. On this subtest he performed in the average range.

On the second subtest, Zachary was required to identify and circle instances of a repeated pattern as quickly as possible (Pair Cancellation). Again when this page was initially shown to Zachary, he inhaled sharply, but he again worked diligently with no reminders to stay on task. On this subtest he performed in the average range.

#### Glr

Long-Term Retrieval is the process of storing information in long-term memory and fluently retrieving it later. This broad processing area has been identified as being important to math calculations. Two different narrow abilities were assessed. Overall, Zachary's Long-Term Retrieval was found to be in the average range.

The first narrow ability measured was Associative Memory. This is the ability to recall one part of a previously learned but unrelated pair of items when the other part is presented. This narrow ability was assessed through the Visual-Auditory Learning subtest. On this task Zachary was required to associate novel visual symbols with familiar words in oral language and to translate a series of symbols into verbal sentences.

The second narrow ability measured was Ideational Fluency, which is the ability to rapidly produce a series of ideas, words, or phrases related to a specific condition or object. The Retrieval Fluency subtest, measures this narrow ability. On this subtest Zachary was required to retrieve the names of objects fluently from three different given categories. Zachary had tendency to name items rapidly and fluently, then he would have a long (5-7 second) pause, before he would begin naming items again.

#### Gc

Comprehension-Knowledge is the breadth and depth of a person's acquired knowledge of a culture and the effective application of this knowledge. In her book, Essentials of Cross-Battery Assessment-Second Edition, Dawn Flanagan identified comprehension-knowledge as being strongly related to math achievement. Two different narrow abilities were assessed to measure Zachary's Comprehension-Knowledge. Overall, Zachary's Comprehension-Knowledge, also identified by the WJ-III as, Verbal Ability (Ext) was found to be in the average range.

The first narrow ability measured was Lexical Knowledge, which is the extent of vocabulary that can be understood in terms of correct word meanings. This was assessed by the Verbal Comprehension, subtest, which required Zachary to state a word similar in meaning to the word presented, state a word that is opposite in meaning to the word presented, name familiar and unfamiliar pictured objects, and completing a given analogy. On this subtest Zachary performed in the average range.

The second narrow ability measured was General Information, which is a measure of Zachary's general knowledge. On this task Zachary was first required to specify where objects would usually be found, then he was required to tell what people would do with a specified object. On this subtest Zachary performed in the average range.

#### Ga

Auditory Processing is the ability to perceive, analyze and synthesize patterns among auditory stimuli. This processing area is not linked to achievement in mathematics, but it is very important to the area of reading, in which Zachary performs very well. This processing area was assessed using two subtests. Overall, Zachary's auditory processing was found to be in the average range.

Phonetic Coding: Synthesis is the ability to process speech sound, as in identifying, isolating and blending or synthesizing sounds. This was assessed through the Sound Blending subtest, which required Zachary to integrate and then say whole words after hearing syllables and/or phonemes of the words presented on an audio recording. On this subtest Zachary performed in the average range.

The other narrow ability measured was Speech/General Sound Discrimination, which is the ability to detect differences in speech sounds under conditions of little distraction or distortion. On this subtest, Zachary was required to discriminate similar-sounding words in the presence of increasing noise. This subtest also helps to measure Broad Attention, which will be discussed further below.

Executive Processes as measured by the WJ-III is comprised of three subtests that measure aspects of executive functioning.

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**\*\*Student must be assessed in all areas related to the suspected disability, including requirements of CFR 300.532(f), if appropriate.**

The concept formation subtest (previously discussed) requires the ability to shift ones mental set repeatedly, Pair Cancellation (also previously discussed) requires proactive interference control, and Planning, which required Zachary to trace a form, covering as many segments of a visual pattern as possible without retracing or lifting the pencil, requires strategic planning. Overall, Zachary performed in the average range.

Broad Attention as measured by the WJ-III is comprised of four subtests that measure aspects of attention. Numbers Reversed requires attentional capacity, Auditory Working Memory requires the ability measures one's attention, Auditory Attention requires selective attention, and Pair Cancellation requires sustained attention. Overall, Zachary performed in the superior range.

Zachary's performances on these tasks do not indicate a lack of attention or concentration impairing performance.

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**Adaptive behavior was assessed using:**

- informal measures.  
 formal measures.

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**Sources of Data:** - No formal sources of data

- 
- Yes  No Based upon the data reviewed, the student's level of intellectual functioning is consistent with his/her adaptive behavior. If No, explain.

**Summary:**

Overall, Zachary's intellectual performance was average in compassion to his same-aged peers. When looking for a learning disability one must investigate whether Zachary exhibits a normative pattern of assessts and deficits. Upon analysis of his narrow abilities it has been determined that he does not exhibit any normative weaknesses.



Mike A. Assel, Ph.D.  
Associate Professor, Department of Pediatrics

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Houston, Texas 77030

713 500 3714  
713 500 3705 fax

## PSYCHOLOGICAL EVALUATION

**NAME:** Zachary Schwager  
**DOB :** 02-11-2000  
**DOE :** 04-13-2010  
**PARENTS:** Richard & Candice Schwager  
**ADDRESS:** 4307 Long Grove Drive  
Seabrook, TX 77586  
**PHONE:** 832-274-0832

### Referral Information:

Zachary is a ten year, two month old male whose parents were referred to this clinic by professionals at The Joy School. Zachary is attending 4<sup>th</sup> grade at Robinson Elementary within Clear Creek ISD. Zachary's parents would like to determine if Zachary has any underlying weaknesses in terms of his ability to attend and concentrate in the classroom. In addition, parents also report concerns about Zachary's academic skills (i.e., particularly in the mathematics and writing domains). Mr. & Mrs. Schwager would like to better understand Zachary's academic strengths and weaknesses and determine appropriate therapeutic options.

### Birth and Developmental History:

Zachary is the product of his mother's first pregnancy and first live born child. Zachary has two younger brothers (i.e., 4 year old Joshua & 1 year old Adam). The family history is significant for [REDACTED]. In terms of pregnancy complications, Zachary's mother experienced severe nausea, which was treated with Zofran. She was also given a steroid treatment two weeks prior to delivery to accelerate fetal maturation. Zachary was delivered prematurely, by cesarean section, at the sixth month of pregnancy (i.e., approximately 26 weeks gestational age). He weighed 1 pound, 0 ounces at birth. In terms of neonatal complications, Zachary needed help breathing for the first 10 months of life, received supplemental oxygen during the first 2 years of life, had jaundice during the first week of life, and needed blood transfusions. Shortly after birth, Zachary had surgery to correct a heart/lung defect, had tests for infection, and received antibiotics. Cyanosis, apnea and difficulty feeding were also reported. Zachary was discharged from the hospital at 5 months. In short, Zachary experienced the full gamut of medical complications that typically accompany Extremely Low Birth-Weight infants. In terms of feeding difficulties, parents reported that Zachary had colic, was formula fed and required 5 formula changes until he finally accepted Nutramagen. As expected following delivery at 26 weeks of gestation, motor milestones were delayed. For instance, Zachary did not walk until 18



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months of age (14.5 months when corrected for prematurity). However, most language developmental milestones were achieved at age-appropriate times (e.g., using single words at 10 months and speaking in simple phrases at 20 months). Zachary was described as being a happy and pleasant baby.

In terms of health history, Mr. Schwager reported that Zachary had chronic ear infections until 2 years of age and sustained a head injury from falling off of his bicycle at 8 years of age. Mr. Schwager also reported that Zachary suffers from asthma, allergies, headaches and occasional dizziness. Concerns about Zachary's inability to pay attention and remember were reported as well. Zachary has undergone four surgical procedures. The first surgeries were performed at birth, including a procedure to repair a heart/lung blood vessel and laser surgery to correct retinopathy of prematurity. Zachary also had a double hernia surgery in 2001 and his tonsils removed somewhere between 2003 and 2004. Zachary was previously prescribed Xoponex until age 5 and Pulmicort until age 8 for Bronchial Pulmonary Dysplasia. He is currently prescribed Flovent and Singular for his asthma. Zachary has had his vision evaluated at Texas Children's Hospital in 2009, which resulted in a prescription for glasses. Zachary's pediatrician is Dr. Angelina Farrela. His last physical examination occurred in March of 2010. In terms of development, Zachary was diagnosed in 2000 with motor and developmental delays, and received extensive OT treatment until approximately 8 years of age.

In terms of educational history, Zachary attended Gloria Dei Church from 3 to 4 years of age. He attended Kindergarten through 2<sup>nd</sup> grade at McWhirter Elementary and is currently enrolled in 4<sup>th</sup> grade at Robinson Elementary, where he also attended 3<sup>rd</sup> grade. Zachary's current teacher is Ms. Heather Gaspard. Ms. Gaspard reported that Zachary's math skills were "somewhat below grade level". She also reported that his science, social studies, reading and writing skills were "at grade level". Zachary's teachers expressed concern in Zachary's math abilities. In terms of positives, Zachary's teachers reported that he reads very well and is very creative in his written expression.

During the parent interview, Mr. Schwager reported that the family has been concerned about Zachary's ability to attend and academic skills throughout his academic career. Mr. Schwager reported that Zachary attends tutoring sessions provided by professionals in the district in mathematics. He was uncertain about the extent of the tutoring provided by teachers but suspected that Zachary was receiving at least 30 minutes of specialized assistance in mathematics per week. Although, Zachary has continued to pass the Math section of TAKS, parents wonder how this is possible when report card grades in math typically hover at 70 or below. Zachary's academic difficulties are pervasive and long standing. For instance, he was required to attend summer school following Kindergarten and 1<sup>st</sup> grade. In addition, Zachary has received fairly consistent specialized support in reading and math (i.e. from parental descriptions this sounded

In terms of Zachary's ability to attend and concentrate within the academic setting, parents report that teachers have consistently mentioned that Zachary has difficulty sustaining attention within the classroom. Parents report that Zachary's second grade teacher attempted multiple classroom accommodations in efforts to improve attention (e.g., preferential seating and peer support). However, Zachary has always struggled following multi-step instructions. In addition, Zachary typically needs extra time to complete assignments. Within the home setting, parents report that Zachary needs multiple reminders to complete simple chores and completion of homework requires that parents provide Zachary with a distraction free environment and constant supervision. Zachary was described as being a child who is much better able to regulate his attention when he is working in a one on one setting. Zachary also has trouble keeping up with homework and assignments. He is not described as being hyperactive.

Parents also report that Zachary was the target of bullying throughout the current academic year. Mr. Schwager indicated that most of the bully surrounded threats and intimidation with some instances of physicality. After multiple complaints by the family, the two children were removed from Zachary's classroom. Parents also reported that Zachary's grades, while never stellar, dropped significantly during the portion of this school year when bullying was occurring. The bullying incidents were extremely difficult for Zachary and he routinely made negative comments about himself (e.g., "I am going to be a failure", "I had the worse day ever", and at one point difficult point Zachary threatened to run away from home). Zachary had difficulty sustaining peer relationships during the current academic year but has been friendlier with several classmates after the bullying incidents were stopped.

Zachary lives in Seabrook with his parents. He is described as a good reader when the subject is of interest to him who likes science and playing video games.

#### **Behavioral Observations:**

Zachary arrived at the evaluation with his father and baby brother. He presents as an attractive child with blond hair who was wearing his prescription lenses. In terms of stature, Zachary seems somewhat small for his age. Zachary was comfortable during social introductions and easily answered questions about his family and school performance. During the initial stages of testing, Zachary did a nice job attending to the examiner and test materials. When concentrating, Zachary occasionally makes noises (e.g., humming, swirling spit in his mouth, and clucking sounds). Inattention and distractibility increased as morning progressed. Attention problems were most evident during portions of the evaluation assessing academic skills. For instance, Zachary would occasionally stop and stare into space when writing or completing math problems. Some visual motor difficulties were noticed. For instance, Zachary has poor penmanship and struggled copying geometric forms. In addition, he tends to mix upper and lower case letters when writing individual words (e.g., fLooR) and has an interesting approach to forming letters and numerals (i.e., unconventional way of forming letters and numbers). Zachary has good social language skills and openly discussed the bullying incidents that occurred earlier in the current school year. Zachary also made a rather interesting comment that seemed to indicate that some forms of bullying (or



physically inappropriate play) might still be occurring. Zachary commented "I am glad I am not at school today because it's kick Zachary day today and it was not supposed to be my turn until October 25<sup>th</sup>". The results reported below are likely to be a reliable and valid estimate of Zachary's current cognitive, academic, and neuropsychological skills.

**Procedures Employed:**

Wechsler Intelligence Scale for Children-IV  
Clinical Evaluation of Language Fundamentals-IV  
Woodcock-Johnson - Tests of Achievement -- III  
Test of Reading Word Efficiency  
Auditory Analysis Subtest  
Beery Developmental Test of Visual-Motor Integration  
Grooved Pegboard Test  
Random A's Cancellation Test  
Continuous Recognition Memory Test  
Conners' Continuous Performance Test  
Child Behavior Checklist  
    Parent Form  
    Teacher Form  
Parent Interview  
Clinical Observation

**Test Results and Interpretations:**

**IQ Testing:** On the Wechsler Intelligence Scale for Children – IV (WISC-IV), Zachary received a Full Scale IQ score of 109, which indicates overall intellectual functioning at the top end of the Average range at the 73<sup>rd</sup> percentile. In terms of Verbal Comprehension subtests, Zachary scored within the High Average range. Zachary scored within the High Average range on subtests evaluating a child's ability to describe how two objects are similar (Similarities) and ability to answer questions to demonstrate social and factual knowledge (Comprehension). On a subtest evaluating the ability of children to define words (Vocabulary), he scored at the top end of the Average range. Zachary scored within the Average range on the Perceptual Reasoning subtests. Zachary scored at the top end of the Average range on a subtest evaluating a child's ability to solve matrix puzzles (Matrix Reasoning). He scored within the Average range on subtests evaluating a child's ability to re-create block designs given a visual representation (Block Design) and evaluating the ability to find similarities in visual stimuli (Picture Concepts). Zachary's scores ranged from Average to High Average on the Working Memory subscale of the WISC-IV. Zachary scored in the Average range on the Letter-Number Sequencing subtest which evaluates the ability of children to remember a series of numbers and letters in order. He scored within the High Average range on the Digit Span subtest which evaluates numerical memory skills. Zachary's performance on Processing Speed subtests ranged from Low Average to Average. He scored within the Low Average range on the Coding subtest which evaluates freedom from distractibility, visual motor coordination, and psychomotor speed. He scored within the Average range on the Symbol Search subtest which evaluates visual recall and attentional skill. Zachary's Processing Speed subscale score was significantly lower

than other WISC-IV areas (i.e., next closest subscale score was 25 points higher). This is important secondary to the fact that children with attention problems often struggle on these subtests. The following scores were obtained on the WISC-4<sup>th</sup> Edition:

**WISC-IV Factor Table**

<u>Factor – Description</u>	<u>Standard Score</u>	<u>%</u>
<b>Verbal Comprehension</b> - fund of information, abstract and social reasoning, vocabulary	114	82
<b>Perceptual Reasoning</b> - visual reasoning and sequencing abilities	108	70
<b>Working Memory</b> - holding and manipulating information in short-term/working memory	113	81
<b>Processing Speed</b> - visual attention and motor speed on paper/pencil tasks	88	21

**WISC - IV Subtest Table**

<u>Factor – Description</u>	<u>Scaled Score</u>	<u>Percentile</u>
<b>VERBAL COMPREHENSION</b>		
<b>Similarities</b> - abstract verbal reasoning; telling how objects or concepts are alike	13	84
<b>Vocabulary</b> - defining words orally	13	84
<b>Comprehension</b> - social reasoning, understanding social conventions	12	75
<b>PERCEPTUAL REASONING</b>		
<b>Block Design</b> - nonverbal reasoning; copying two-dimensional designs using patterned blocks	11	63
<b>Picture Concepts</b> - identifying similarities in pictured objects	11	63
<b>Matrix Reasoning</b> - visual reasoning using spatial figures	12	75
<b>WORKING MEMORY</b>		
<b>Digit Span</b> - holding and manipulating numbers in short-term memory	14	91
<b>Letter-Number Sequencing</b> - manipulating information in short-term memory	11	63
<b>PROCESSING SPEED</b>		
<b>Coding</b> - speed and accuracy of paper and pencil task requiring transferring visual symbols; focused attention	7	16
<b>Symbol Search</b> - speed and accuracy of scanning visual symbols	9	37

**Language:** On the Clinical Evaluation of Language Fundamentals – Fourth Edition (CELF-IV), Zachary completed only two subtests. In terms of Receptive language performance, he scored within the Low Average range on the Concepts and Following Directions subtest, which evaluates the ability of children to follow complicated forms of verbal instructions (e.g., touch the small blue triangle, touch the black balloon, go). Lower scores on the Concepts and Following Directions subtest are sometimes obtained by children who struggle sustaining their attention.

In terms of Expressive language performance, Zachary scored within the Average range on the Formulated Sentences subtest, which evaluates a child's ability to produce grammatically correct sentences given a target word. The following scores were attained on the Clinical Evaluation of Language Fundamentals -IV Edition:

**CELF-IV Subtest Table**

<u>Factor</u>	<u>Description</u>	<u>Scaled Score</u>	<u>Percentile</u>
<b>RECEPTIVE LANGUAGE SCALES</b>			
	Concepts & Following Directions – the ability to (a) interpret spoken directions of increasing length and complexity that contain concepts requiring logical operations; (b) remember the names characteristics, and order of mention of objects; and (c) identify the pictured objects that were mentioned from among several choices	7	16
<b>EXPRESSIVE LANGUAGE SCALES</b>			
	Formulated Sentences – the ability to formulate complete semantically and grammatically correct sentences of increasing length and complexity within given semantic, syntactic, and pragmatic constraints	10	50

**Academic Achievement:** Academic screening was undertaken with the Woodcock-Johnson Test of Academic Achievement-Third Edition (WJ-III, **Form B**). As the school district has just recently tested Zachary, a decision was made to use an alternative form of the WJ-III. Nine WJ-III subtests were completed. On subtests evaluating Zachary's reading skills (i.e., Letter Word Identification, Reading Fluency, Passage Comprehension, and Word Attack), Zachary's scores were tightly clustered mostly in the Average range. In terms of positives, Zachary has well developed abilities in relation to reading sight words. When words became more difficult, he occasionally made some careless mistakes (e.g., read "thermometer" when the word was actually "thermostat". In addition, it is clear that specialized support within Tier II reading intervention programs have been effective at helping Zachary learn to decode phonetically. Specifically, he has adequate skills in relation to reading nonsense words phonetically. Zachary's only High Average score on the WJ-III was on the Reading Fluency subtest (i.e., 76<sup>th</sup> percentile). Passage Comprehension skills were also adequately developed at the 50<sup>th</sup> percentile. Overall, Zachary appears to have sufficient skills to be an independent reader at grade level. In terms of written expression, Zachary scored within the Average range on the Spelling subtest. While his penmanship is messy, it is legible. Zachary has an interesting way of writing some letters (almost seems to be some confusion surrounding the most efficient way to form a letter). When asked to write sentences on the Writing Samples subtest, Zachary tended to write simple sentences that lacked detail, were poorly spaced, and contained a large number of misspelled words. In addition, most sentences contained poor or non-existent punctuation which is typically not penalized on this subtest. However, like his score on the Spelling subtest, Zachary scored at the 50<sup>th</sup> percentile on the Writing Samples subtest. Zachary's lowest scores by far were on the Calculation and Math Fluency subtests (i.e., 85 and 80 respectively). Zachary had difficulties efficiently recalling simple math facts, made multiple careless mistakes, and struggled with subtraction



problems that involved regrouping. He also refused to attempt to complete multiplication and division problems (even with encouragement). In terms of positives, Zachary scored within the Average range on the Applied Problems subtest which was quite surprising to parents given Zachary's long standing difficulty completing mathematical word problems in school. The following scores were obtained on the WJ-III:

Subtest <i>Description</i>	Grade Equivalent	Age Norms	
		SS	%
Word Attack – applying phonetic rules to decode nonwords	6.0	105	63
Letter Word Identification – accuracy reading letters and words	5.5	105	64
Passage Comprehension – reading comprehension of sentences and short passages	5.4	103	58
Reading Fluency - evaluates children's ability to read sentences and answer simple questions	6.9	111	76
<b>BRIEF READING CLUSTER</b>	<b>5.5</b>	<b>105</b>	<b>64</b>
Calculation – paper/pencil computation of mixed problem types	3.5	85	16
Applied Problems - ability to solve mathematical word problems	4.8	100	51
Math Fluency – ability to quickly and efficiently solve simple math problems	2.7	80	9
<b>MATH CALCULATION SKILLS CLUSTER</b>	<b>3.3</b>	<b>80</b>	<b>9</b>
Spelling – writing letters and words to dictation	4.8	100	50
Writing Samples – producing written sentences that describe pictures or link information	4.9	100	51
<b>BRIEF WRITING CLUSTER</b>	<b>4.8</b>	<b>100</b>	<b>50</b>

Zachary completed the Test of Word Reading Efficiency which evaluates reading fluency and accuracy for both real words and nonsense words (e.g., zoop). Zachary scored within the Average range on the TOWRE. This score is comparable to his performance on the Woodcock-Johnson and provides further evidence that Zachary does not display significant weaknesses in the reading area that would warrant a learning disability label in the area of reading. In addition, I suspect that the specialized instructional supports that have been provided by the school district have been quite helpful.

#### **Test of Word Reading Efficiency (TOWRE)**

Subtest	Standard Score	Percentile	Estimated Grade Equiv.	Estimated Age Equiv.
Sight Word Efficiency	105	64	5.6	11 yr, 0 mo
Phonemic Decoding Efficiency	97	42	4.6	9 yr, 9 mo
<b>Total Word Reading Efficiency</b>	<b>101</b>	<b>52</b>		

Zachary was also administered the Auditory Analysis test, which is a measure of the ability to break apart words heard orally, a key indicator of phonological processing skills. An example of an item from this test is to "say cowboy without the boy." Items become progressively harder as children are asked to isolate first sounds, last sounds, and ultimately sounds contained within words. Zachary scored within the Superior range when compared to other 4<sup>th</sup> graders on this test that requires that children separate words into their component parts.

**Motor Functioning:** Additional neuropsychological testing was conducted. Zachary was administered the Beery Developmental Test of Visual Motor Integration. This measure was used to provide an indication of child skills using paper and pencil (i.e., copying geometric figures). Zachary received a standard score of 83 (Low Average range) and an Age Equivalent score of 7 years, 1 month on the Beery. In terms of qualitative observations, Zachary has an adequately developed pencil grip and is comfortable drawing and writing. He was able to copy easy and moderately difficult figures with relative ease. However, Zachary struggled on some of the more difficult items and did not take time to carefully consider figures (i.e., impulsive response style). Fine motor speed and coordination was assessed with the Grooved Pegboard task. Zachary demonstrated Average fine motor speed and coordination with his dominant hand (i.e., Right) and with his non-dominant hand. The previous two measures evaluate some of the necessary precursors that make writing tasks easier for children.

#### Beery Visual-Motor Integration

Test	Standard Score (M=100, SD=15)	Percentile	Estimated Age Equiv.
Beery Visual-Motor Integration	83	13	7 yr, 1 mo

#### Fine-Motor Test (Grooved Pegboard)

Hand (Indicate dominant)	Z-Score (M=0, SD=1)	Qualitative Description
Left	-0.05	Average
Right (dominant)	-0.31	Average

**Memory & Attention:** The Random A's cancellation task presents children with a jumbled page of letters (or nonsense symbols) and asks them to underline a target stimulus. Children who score poorly on this measure are often at risk for attention problems. Zachary's performance was variable and decreased over time. Specifically, scores ranged started off in the Average range and Decreased to the Significantly Delayed range across the multiple trials. This pattern of scores is oftentimes seen in children with weak resources in the area of attention and concentration.

#### Random A's Cancellation Test

Subtest	Z-Score (M=0, SD=1)	Qualitative Description
Letters - Random Arrangement	-0.94	Low Average
Squiggles - Random Arrangement	-0.05	Average
Letters - Rows	-2.56	Significantly Delayed
Squiggles - Rows	-1.33	Borderline
Boxes - Rows	-2.30	Significantly Delayed

On Continuous Recognition Memory Test children are asked to view 120 line drawings and indicate which pictures have been previously presented. Zachary scored within the High Average range in terms of identifying the repeated pictures. In addition, he had a tendency to over-identify pictures as being previously seen (i.e., significantly higher number of false alarms). Zachary's scores on this measure are similar to children who have difficulty sustaining their attention and concentration.

#### **Continuous Recognition Memory Test (CRM)**

Measure	Z-Score (M=0, SD=1)	Qualitative Description
Hits	0.67	High Average
False Alarms	-4.55	Significantly Delayed

Zachary was also administered the Verbal Selective Reminding Test (i.e., 12 item Word Memory Task). Zachary received an Average score in terms of being able to encode information into his long-term storage. Continuous long-term retrieval skills were developed to the High Average range. This pattern of scores is NOT seen in children who have difficulty sustaining their attention.

#### **Verbal Selective Reminding Test (VSR)**

Memory	Z-Score	Qualitative Description
Long Term Storage	0.00	Average
Continuous Long Term Retrieval	0.90	High Average

Zachary also completed the Conners' Continuous Performance Test-II (i.e., CPT). The CPT is a computerized test of sustained concentration and attention. On this computer test, children are asked to "watch the computer screen and hit the spacebar for every letter that they see flashing across the screen; do not hit the spacebar when you see the letter "X" flash across the screen". There were multiple indications of inattention and impulsivity on the Conners' CPT. This profile of scores is similar to children with attention problems. Zachary's performance on measures evaluating a child's ability to sustain attention was mixed. In general, it does appear that Zachary has deficits in terms of his ability to attend and concentrate.

**Parent & Teacher Checklists:** Zachary's father and teachers completed the Child Behavior Checklist for ages 6-18 (CBCL) and the Teacher's Report Form for ages 6-18 (TRF). The CBCL is a checklist that evaluates children's emotional and behavioral functioning. The CBCL completed by Mr. Schwager revealed Clinically Elevated Scale scores (i.e., significant problems when Zachary's behavior is compared to the normative sample of other 10 year old children) on the Somatic Complaints and Attention

Problems subscales (i.e., >97<sup>th</sup> percentile). In terms of attention problems, parent's indicated that Zachary struggles with concentration and attention, daydreaming and has difficulty sitting still. In terms of Somatic complaints, parents reported nightmares, dizziness, headaches and vision difficulties. Zachary is described as a good reader, when the subject is of interest to him, who likes science and playing video games.

The TRF completed by Zachary's teachers, Ms. Gaspard and Ms. Hester, revealed NO Clinically Elevated Scale scores. High elevations were reported on the Somatic Complaints (i.e., 89<sup>th</sup> percentile) and Attention Problems (i.e., 81<sup>st</sup> percentile) subscales. Specific attention problems reported by teachers include frequent difficulty concentrating, fidgety behavior, daydreaming, inattention and staring blankly. While not clinically elevated, it is clear that Zachary's teachers have noticed a range of problems relating to Zachary's ability to sustain attention within the classroom setting. I suspect that the Attention Problems subscale was not clinically elevated due to the fact that Zachary is well behaved and does not suffer from significant hyperactivity. Ms. Gaspard and Ms. Hester indicated concerns about Zachary's math skills. In terms of comments, Zachary's teachers reported that he reads very well and is very creative in his written expression.

### Conclusions and Recommendations:

Zachary is a ten year, two month old male whose parents were referred to this clinic by professionals at The Joy School. Zachary's parents would like to determine if Zachary has any underlying weaknesses in terms of his ability to attend and concentrate in the classroom. In addition, parents also report concerns about Zachary's academic skills (i.e., particularly in the mathematics and writing domains). Mr. & Mrs. Schwager would like to better understand Zachary's academic strengths and weaknesses and determine appropriate therapeutic options. Zachary presents with an interesting developmental history and profile of scores. Specifically, Zachary presents almost a textbook example of academic and behavioral difficulties that are typically seen in children who are born prematurely. For instance, Zachary has difficulties in multiple areas including visual motor skills, has visual perceptual difficulties (e.g., decreased peripheral vision), struggles sustaining his attention, and has struggled in some academic areas (i.e., reading in the past and math currently). In addition, preterm children also occasionally have difficulty making and sustaining appropriate peer relations and I suspect that some of these social difficulties were likely one of several reasons that bullying behavior developed during the current school year. In terms of his performance on today's evaluation, Zachary scored at the 73<sup>rd</sup> percentile on the WISC-IV Full Scale IQ. His relative weakness on the Processing Speed subscale of the WISC-IV (21<sup>st</sup> percentile), is likely related to attention regulation difficulties and weak visual motor skills. In terms of positives, Zachary scored well within the Average range on all of the reading subtests of the WJ-III Tests of Academic Achievement (Form B). However, he received a Math Calculation Cluster score of 80 (Low Average range). This provides evidence for a diagnosis of **Mathematics Disorder (315.1)**. In addition, Zachary presents with a profile of test scores and parent ratings that would lead to a diagnosis of **Attention Deficit Hyperactivity Disorder/Inattentive Type (314.00)**. Either one of these conditions would appear to be enough to allow school officials to have him classified as a special education student. The following recommendations were offered to the family:




1. Based upon the low scores Zachary obtained on measures evaluating math calculation skills, I would recommend that Zachary be classified as a Special Education student with a qualifying condition of Math Disability.
2. If district personnel have difficulty justifying a Math Disability label, I would suggest he would also qualify for classification as a Special Education student under the Section 504 regulations. In short, protections provided by Section 504 statute would be available to Zachary secondary to his diagnosis of ADHD.
3. In addition, Zachary's long standing difficulties within the mathematics realm did NOT just spring up over the recent past (i.e., this year). He is a child who has attended at least two summer school sessions and has been enrolled in Tier II services over the last several years. It is rather perplexing as to why he was not evaluated sooner by district personnel. While CCISD can make a strong argument that Tier II intervention services have been effective in terms of helping Zachary's reading improve, they have not been successful in terms of math. In short, he is a child who should have been evaluated for placement into more intensive math interventions earlier in his academic career. Therefore, I would also recommend that the district provide compensatory instructional services that might have a chance to address this oversight. Compensatory services that might be effective at addressing Zachary's math difficulties would be an intensive program of specialized support/tutoring program over the summer.
4. Zachary is also a child who would thrive at any number of private school placements that specialize in working with children with learning differences. For instance, The Joy School or The Briarwood School would be a wonderful fit for a Zachary's pattern of strengths and weaknesses.
5. While it is recognized that classroom accommodations are determined with the ARD meeting, some of the following suggestions might be helpful for teachers and parents. Secondary to the ADHD and Math Disorder diagnoses, Zachary will likely need intensive instructional support within a 1:1 setting. At the minimum, I would recommend at least one hour of specialized math support per day. The focus of the intervention efforts would included the following:
  - a. Mastery of addition, subtraction math facts (once sufficient mastery in these areas has been achieved then expanding to multiplication and division math facts would be recommended).
  - b. Zachary will continue to need practice with regrouping of mathematical operations. Teachers would be encouraged to provide written steps detailing how to solve specific problems.
  - c. Use of mnemonic devices could also be helpful when learning math facts.
  - d. Secondary to inattention, teachers should ask Zachary to repeat steps necessary to solve problems (verbally).
  - e. Multi-modal instructional strategies would be recommended (e.g., verbal explanations, visual explanations, etc.).
  - f. Inattention will require that teaching of new concepts be provided at a slow pace and time/effort must be utilized to ensure that Zachary has incorporated new information.

- g. Most students who struggle with math will benefit from repeated opportunities to practice.
  - h. Individually working with Zachary to go over assignments, homework, and tests would be recommended in order that he learns from his mistakes.
  - i. Zachary will benefit from strategies that teach him how to break down complex problems into simpler steps.
  - j. While learning new procedures, Zachary will likely benefit from being allowed to use a calculator or chart.
  - k. Secondary to inattention teachers should remember that Zachary will learn math best when environmental distractions are minimized, when examples are related to the real world, and when consistent procedures for checking work are utilized.
6. Many children who struggle with math benefit from the services provided by Kumon Learning Centers. While not a "cure all" for math difficulties, many children have benefited from the systematic instruction and progress monitoring that math tutoring at Kumon can provide.
  7. Zachary In regards to the bullying reported by Zachary and parents, it is incumbent on schools to provide a safe environment for all children. Even after the main instigators have been removed from the classroom, Zachary continues to make comments about acts of physical aggression occurring on school grounds (e.g., I am glad I am not at school today because it is kick Zachary day). I have little doubt that Zachary's teachers are working diligently to provide all of their students with a safe environment and it is next to impossible to remove all forms of teasing, I felt compelled to urge faculty and administration to be mindful that Zachary is a child who might be more prone to bullying secondary to conditions outside of his control (e.g., small stature, need for corrective lenses, attention problems, and possible subtle social differences that are all tend to occur more in children with a significant pre-term birth history).
  8. I would also encourage parents to have a conversation with Zachary's pediatrician surrounding the risks and benefits of a potential medication trial to address inattention and distractibility.
  9. I would also encourage the family to continue to allow Zachary to enjoy extracurricular activities (e.g., Boy Scouts). Children with similar histories often benefit from the chance to engage in activities outside of the school setting which have the potential to allow Zachary to develop a range of appropriate friendships.
  10. I would also encourage parents to consider purchasing Russell Barkley's book entitled ADHD: The Complete Authoritative Guide for Parents (easy to find at Amazon.com or Borders.com).
  11. Children who have difficulty sustaining their attention/concentration can often benefit from modifications within the academic setting.
    - a. Seat students who might struggle maintaining their attention near the teacher's desk, but include them as part of the regular class seating.
    - b. Place these students up front with their backs to the rest of the class to keep other students out of view.

- c. Avoid distracting stimuli. Try not to place students with subtle attention problems near air conditioners, high traffic areas, heaters, or doors or windows.
  - d. Maintain eye contact during verbal instruction.
  - e. Make directions clear and concise. Be consistent with daily instructions.
  - f. Simplify complex directions. Avoid multiple commands.
  - g. Make sure students comprehend the instructions before beginning the task.
  - h. Help the students feel comfortable with seeking assistance (most students with attention problems will not ask for help).
  - i. Give out only one task at a time.
  - j. Monitor frequently. Maintain a supportive attitude.
  - k. Keep in mind that students with attention and learning problems are easily frustrated. Stress, pressure, and fatigue can break down their self-control and lead to poor behavior.
  - l. Children who are inattentive also might benefit from extended time to complete tests and/or assignments.
  - m. Teachers would also be encouraged to ask Zachary to check all work prior to turning it in for grading.
12. If Zachary continues to struggle academically even after some of these recommendations are put into place, please contact me so that we can discuss options (713-500-3714).

Zachary was a pleasure to evaluate.

Sincerely,



Mike A. Assel, Ph.D.  
Licensed Psychologist (TX License Number 3-1387)  
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Children's Learning Institute  
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Houston, TX 77030  
713-500-3714

# FAX

Date: January 28, 2010

12 Pages, Including Cover Page

## *Robinson Elementary*

*Principal - Jim Stephens*  
*Assistant Principal - Donna Hartness*

*451 Kirby Drive*  
*Seabrook, Texas 77586-5200*  
*Phone - 281-284-6500*  
*FAX - 281-284-6505*

TO: Shelia Haddock  
281-284-0013

Fax No.:

FROM: Jim Stephens

Fax No.: 281-284-6505

Comments: Dr. Ebell wanted the following faxed to you. Jim

---

---

If you do not receive all pages, please call 281-284-6500.

Comments: \_\_\_\_\_

---



# FACSIMILE TRANSMISSION

STATEWIDE INTAKE

AUSTIN, TX

MAIL CODE: 0193

---

Phone: 1-800-252-3223 (DFPS WORKER LINE ONLY)  
1-800-252-5400 (PUBLIC LINE)

Fax: 512-339-5900

TO: 50396925 Seabrook Rd  
FAX NUMBER: (281) 291-5620

CASE NAME:

CASE ID:

NOTES: 34936769  
Stephens, Jim

---

Date and time of transmission: Tuesday, January 19, 2010 8:42:50 PM

Number of pages including this cover sheet: 10

The documents accompanying this FAX cover sheet contain confidential information, belonging to the sender, that is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking any action in reliance on the contents of this faxed information is strictly prohibited. If you have received this FAX in error, please notify us by telephone immediately to arrange return of the documents to us.

IF YOU DID NOT RECEIVE THE COMPLETE TRANSMISSION, OR IF THE TRANSMISSION IS NOT READABLE, PLEASE CALL STATEWIDE INTAKE AT 512-929-6780

Case Name: Stephens,Jim  
Case #: 34938769

**INTAKE REPORT  
CHILD PROTECTIVE SERVICES**

**SUMMARY**

<b>Intake #:</b> 50396925	<b>Date Reported:</b> 1/19/2010
<b>Primary Allegation:</b> Neglectful Supv.	<b>Time Reported:</b> 07:10 PM
<b>Worker Safety Issues:</b> N	<b>L/E Notification Date:</b> 1/19/2010
<b>Sensitive Issues:</b> N	<b>L/E Jurisdiction:</b> Seabrook Pd
<b>Suspected Manufacturing of Methamphetamines:</b> N	
<b>Special Handling:</b>	
<b>Priority Determination:</b> 2	<b>Reason for Closure:</b>
<b>Determination Factors:</b> Injury could have occurred, but did not	<b>Worker Taking Intake:</b> Mccalla,Elizabet
Child accessible to AP	AUSTIN
Inadequate supervision	(512) 929-6784
Abuse/neglect premeditated	Ext. 1374
Insensitive toward child	
Abuse/neglect occur now	
Special medical/behavioral needs	
Child unprotected	
Caretakers don't control child	
Caretakers don't/can't monitor child	

If this report is sent to you by facsimile and you are unable to read any of the pages, please call  
(512) 929-6784 Ext. 1374

**TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**  
**NOTIFICATION TO LAW ENFORCEMENT AGENCY OF ABUSE/NEGLECT REPORT**

SECTION 261.106 (T.F.C.) Requires that Children's Protective Services notify the appropriate law enforcement agency of all reports of abuse/neglect received by the Department other than reports received from such agencies. This letter confirms that CPS has notified you of the report of child abuse/neglect specified below.

**TO:** Seabrook Pd **DATE:** 1/19/2010  
**FROM:** Austin - S W I **PHONE:** (512) 929-6784 Ext.

**CONFIDENTIAL**

<b>CASE NAME:</b> Stephens,Jim	<b>DATE OF REPORT:</b> 1/19/2010
<b>CASE NUMBER:</b> 34936769	<b>TIME OF REPORT:</b> 07:10 PM
<b><u>HOUSEHOLD ADDRESS</u></b> 4307 LONG GROVE DR SEABROOK, TX 77586-4309	<b><u>INVOLVING ALLEGATION TYPES</u></b> Neglectful Supv.

**ACTION TAKEN BY CPS:**

**ACTION REQUESTED:** Please notify CPS staff at the above listed CPS office of all actions planned or taken in this case so that we can coordinate our respective investigations and services. If you determine that this case should be reported to another law enforcement agency, please forward this notification to the appropriate agency.

**SECTION 261.201 (T.F.C.)** The name of the complainant (i.e. reporter or informant) is confidential. Consequently, identifying information about the complainant is not included in this report. If this information is needed to conduct the criminal investigation, the assigned Child Protective Services worker or supervisor may orally share information about the complainant's identity with the assigned investigating officer.

Case Name: Stephens, Jim Case #: 34936769
--

## INTAKE REPORT CHILD PROTECTIVE SERVICES

### PRINCIPAL INFORMATION

<b>Zachary Schwager</b>	<b>Oldest Victim</b>	<b>Alleged Victim</b>
-------------------------	----------------------	-----------------------

<b>Approx:</b> N	<b>Age:</b> 9 <b>DOB:</b> 2/11/2000 <b>Sex:</b> Male <b>In-Law:</b> N	<b>SSN:</b> <b>DOD:</b> <b>Reason:</b>	<b>Language:</b> English <b>Ethnicity:</b> White (non-Hispanic) <b>Marital:</b> Child, not applicable
------------------	--	--	---

**Addresses:**

**Residence** 4307 LONG GROVE DR  
SEABROOK, TX 77586-4309  
HARRIS

**Attn:**  
**Notes:**

**Phones:**

**Residence** (281) 326-0425 Ext.

**Notes:**

**Aliases:****Notes:**

<b>Jim Stephens</b>	<b>School Personnel</b>	<b>Alleged Perpetrator</b>
---------------------	-------------------------	----------------------------

<b>Approx:</b>	<b>Age:</b> <b>DOB:</b> <b>Sex:</b> Male <b>In-Law:</b> N	<b>SSN:</b> <b>DOD:</b> <b>Reason:</b>	<b>Language:</b> English <b>Ethnicity:</b> White (non-Hispanic) <b>Marital:</b>
----------------	--	--	---

**Addresses:**

**Residence** 451 KIRBY RD  
SEABROOK, TX 77586-5200  
HARRIS

**Attn:**  
**Notes:**

**Phones:**

**Residence** (281) 284-6500 Ext.

**Notes:**

**Aliases:**



Case Name: Stephens,Jim  
Case #: 34935769

**INTAKE REPORT  
CHILD PROTECTIVE SERVICES**

Notes: Is school principal

Case Name: Stephens, Jim Case #: 34936769
--

## INTAKE REPORT CHILD PROTECTIVE SERVICES

### COLLATERAL INFORMATION

Richard Schwager	Parent	No Role
------------------	--------	---------

Approx: N	Age: 41 DOB: 3/31/1968 Sex: Male In-Law: N	SSN: DOD: Reason:	Language: English Ethnicity: White (Hispanic) Marital: Married
-----------	---	-------------------------	--

**Addresses:**

Residence 4307 LONG GROVE DR SEABROOK, TX 77586-4309 HARRIS	Attn: Notes:
---	-----------------

**Phones:**

Residence (832) 274-0832 Ext.	Notes:
-------------------------------	--------

**Aliases:** Rick N Schwager**Notes:**

Heather Gaspard	School Personnel	No Role
-----------------	------------------	---------

Approx:	Age: DOB: Sex: Female In-Law: N	SSN: DOD: Reason:	Language: English Ethnicity: White (non-Hispanic) Marital:
---------	--	-------------------------	--

**Addresses:**

Residence 451 KIRBY RD SEABROOK, TX 77586-5200 HARRIS	Attn: Notes:
---	-----------------

**Phones:**

Residence (281) 284-6500 Ext.	Notes:
-------------------------------	--------

**Aliases:**

Case Name: Stephens, Jim Case #: 9426766
---

### INTAKE REPORT CHILD PROTECTIVE SERVICES

Notes: OV's homeroom teacher.

<b>Shelia Haddock</b>	<b>School Personnel</b>	<b>No Role</b>
-----------------------	-------------------------	----------------

<b>Approx:</b>	<b>Age:</b> <b>DOB:</b> <b>Sex:</b> Female <b>In-Law:</b> N	<b>SSN:</b> <b>DOD:</b> <b>Reason:</b>	<b>Language:</b> English <b>Ethnicity:</b> White (non-Hispanic) <b>Marital:</b>
----------------	--	--	---

Addresses:

Residence 451 KIRBY RD  SEABROOK, TX 77586-5200 HARRIS	<b>Attn:</b> <b>Notes:</b>
---	-------------------------------

Phones:

Residence (281) 284-6500 Ext.	Notes:
-------------------------------	--------

Aliases:

Notes:

<b>[REDACTED]</b>	<b>Other</b>	<b>No Role</b>
-------------------	--------------	----------------

<b>Approx:</b>	<b>Age:</b> <b>DOB:</b> <b>Sex:</b> Male <b>In-Law:</b> N	<b>SSN:</b> <b>DOD:</b> <b>Reason:</b>	<b>Language:</b> English <b>Ethnicity:</b> White (Hispanic) <b>Marital:</b> Child, not applicable
----------------	--	--	---

Addresses:

School 451 KIRBY RD  SEABROOK, TX 77586-5200 HARRIS	<b>Attn:</b> <b>Notes:</b>
--	-------------------------------

Phones:

School (281) 284-6500 Ext.	Notes:
----------------------------	--------

Aliases:

Notes:

Sex: Male  
In-Law: N

Reason:

Marital: Child, not applicable

**Addresses:**

School 451 KIRBY RD  
SEABROOK, TX 77586-5200  
HARRIS

Attn:  
Notes:

**Phone:**

School (281) 284-6500 Ext.

Notes:

**Aliases:**

**Notes:** also in 4th grade, not in OV's homeroom but on same rotation.

---

**ALLEGATION DETAIL**

Victim  
Schwager, Zachary

Allegation(s)  
Neglectful Supv.

Alleged Perpetrator(s)  
Stephens, Jim

---

**CALL NARRATIVE**

*Document worker safety issues, special or sensitive case handling information on the Special Handling Window.*

**GENERAL INFORMATION/DESCRIPTION:**

OV (9 yo, m) lives with MO and FA.

OV is a student at Robinson Elementary school. OV is legally blind and wears very thick glasses. OV has an as yet unidentified learning disability and has asthma. OV was born premature and weighed only one pound at birth. OV was on life support for 4 months after the birth.

OV is being bullied at school by two fellow students, XX [REDACTED] who is in OV's homeroom and XX [REDACTED] who is not in OV's homeroom but is on the same rotation as OV.

OV stated that he feels like he's going to be a failure in life. OV said that [REDACTED] and [REDACTED] tell OV that he's a dork and that he's stupid. They tell OV "you suck at math, you suck at spelling and nobody likes you". [REDACTED] and [REDACTED] also started tripping, shoving and kicking OV and purposely kicking balls at OV so it will hit him in the stomach. [REDACTED] and [REDACTED] tell OV that he has no talent and that he cracks under pressure. OV can "barely function" due to the stress he is experiencing over the situation.

OV went to speak the school principal/AP regarding the abuse and AP called in [REDACTED] and [REDACTED] to discuss the bullying also. The next day, [REDACTED] shoved OV and threatened to beat OV up and told OV to "watch what you say". MO requested that [REDACTED] be removed from the school campus, but AP refuses to take any action. AP was briefly talking about possibly removing [REDACTED] from OV's homeroom today, but when AP was asked to take more drastic measures such as giving [REDACTED] an in school suspension, AP refused. It was pointed out to AP that [REDACTED] and [REDACTED] conduct is defined as bullying in the school policy and that the school policy states that steps will be taken against bullies, but AP is not willing to take any of the steps as laid out in the school policy.

OV's home room teacher was first made aware of the abuse approximately a month ago, and OV also spoke to the school counselor. MO sent OV for additional counseling to help OV deal with the bullying. OV's homeroom teacher has not been directed by AP to take any steps to ensure OV's safety, and on 01/19/2010 at lunch, [REDACTED] and [REDACTED] were sitting close to OV at lunch and there were no SCs overseeing the situation. MO requested that SCs supervise OV during lunch, gym and playground time to ensure OV's safety, but AP told MO that they would not be doing that.

On the evening of 01/19/2010, a lawyer representing the school stated that MO's only option is to move OV to another campus and that MO does not have any rights.

Liza McCalla, SWI II

**CONCLUSIONS:**

26311305  
Investigation PRN

CPS CLD Leonard-Schwag, Candice HARRIS Butler, Kalika N

**LOCATING INFORMATION:** Directions. When the family is home. Where the victim can be seen.

**WORKER SAFETY ISSUES:**

**SUSPECTED MANUFACTURING OF METHAMPHETAMINES:**

**From:** Donna Hartness  
**To:** 5th grade; Gaspard, Heather; Pauli, Liz; Vaughn, Nathan  
**Date:** 4/22/2010 6:19 PM  
**Subject:** science small group TAKS  
**Attachments:** TAKS MATH grades 3 and 4 April 27, 2010.doc

**CC:** Carter, Terry; Collins, Jessica; Stillwell, Sheryl Dawn; Taggart, Sha...  
Please see the attached. Let me know of any corrections or revisions that need to be made.

Say hello to those kids you will be testing in small group sometime.  
Science is on page 3 of the attachment. You will need to scroll down a little.  
Donna



Exhibit 52

April 28, 2010

Third Grade

Individual TAKS ACC. Dyslexia Bundle (2 day test)	Individual TAKS M Test questions read aloud by test administrator	Individual TAKS M Test questions read aloud by test administrator Student will read passages aloud to himself
[REDACTED]	[REDACTED]	[REDACTED]
J. Collins rm#107	Rhoten Rm# 172	Z. Blank rm# 104

Small group TAKS Dyslexia Bundle (2 day test)	TAKS
[REDACTED]	[REDACTED]
Stillwell rm. 170	Parker rm# 158

## Fourth Grade Reading

Individual TAKS	Small Group TAKS	TAKS Dyslexia Bundle (2 day test)	TAKS M	TAKS M
[REDACTED]	Zachary Schwager Gaspard	[REDACTED]	[REDACTED]	[REDACTED]
Taggart rm# 417	Frost rm# 119	Terry Carter rm# 169	Wampler rm#171	Cates rm# 161



### TAKS MATH Small Groups April 27, 2010 Third Grade

Individual Administration TAKS ACC Oral Admin.	Individual Administration TAKS M Oral Admin	Individual Administration TAKS ACCOMM. Oral Admin
[REDACTED]	[REDACTED]	[REDACTED]
J. Collins rm# 107	Rhoten rm#167  Manipul. Supp aids	Z. Blank rm# 104  Manip. supp aids

TAKS individual	TAKS Oral administration
[REDACTED]	[REDACTED]
[REDACTED]	
Dieter rm# 158 speech room	Stillwell rm# 170

### Fourth Grade Math

TAKS	TAKS	TAKS M	TAKS OA
[REDACTED]	Zachary Schwager - Gaspard	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
Taggart rm# 417	Frost rm#119	Wampler rm# 171	Nelson rm#161

TAKS ACC. Oral administration	TAKS LAT Spanish
Marcus Townsend - Hester Manipu. suppl. aids	[REDACTED]
Macey Westall - Vaughn Calculator suppl. aids	
T. Carter rm# 169	

**TAKS WRITING  
MARCH 3, 2010  
SMALL GROUPS**

<b>TAKS M</b>	<b>TAKS M</b>
<b>Wampler room#161</b>	<b>Jessica Collins room#104</b>

<b>TAKS</b>	<b>TAKS</b>	<b>TAKS</b>
	Zachary Schwager - Gaspard	
<b>Dawn Stillwell room #170</b>	<b>Michelle Frost room #107</b>	<b>Terry Carter Room #169</b>

# FAX

Date 3-25-10

RECEIVED  
3-26-10  
On desk

4 Pages, Including Cover Page

## Robinson Elementary

Principal - Jim Stephens  
Assistant Principal - Donna Hartness

451 Kirby Drive  
Seabrook, Texas 77586-5200  
Phone - 281-284-6500  
FAX - 281-284-6505

TO: Dr. Angeline Farrella Fax No. 281-332-0049

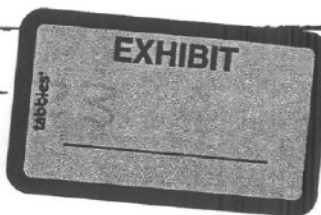
FROM: Ann Mai Fax No. 281-284-6505

Comments Please read cover letter.  
Records request.

If you do not receive all pages, please call 281-284-6500.

Comments: \_\_\_\_\_

Exhibit



1/4

DATE: 3-25-10

REGARDING: Zachary Schwager

TOTAL NUMBER OF PAGES INCLUDING COVER: 5

PHONE NUMBER FOR FOLLOW-UP: 281-332-0500

COMMENTS:

FILE: Disability Report



THIS FAX IS INTENDED FOR THE PERSON OR ENTITY TO WHICH IS ADDRESSED AND MAY OTHERWISE CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR OTHERWISE PROTECTED FROM DISCLOSURE. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE DESTROY THE ORIGINAL, ALL COPIES, AND NOTIFY THE SENDER AT THE NUMBER BELOW.

A BRIGHTER TOMORROW PEDIATRICS  
425 HENRIETTA AVE. WEBSTER TEXAS 77598  
PHONE: 281-332-0500 | FAX: 281-332-0049

RECEIVED  
3-23-10

Clear Creek Independent School District  
Department of Special Education Services

NOTICE/CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

Student: Zachary Schirger ID# 1056530  
School: Robinson Elementary Grade: 4th DOB: 2-11-2000  
Requester name: Ana Mai/Jennifer Martinez Address: 451 Kirby  
Position: Diagnostician Seabrook, TX 77586  
Telephone: 281-284-16500 FAX # 281-284-16505

Requested From/ Released To: Dr. Angelina Farella Complete Mailing Address: \_\_\_\_\_  
AGENCY or INDIVIDUAL

Telephone: 281-332-0500 FAX# 281-332-0049

We are asking that you authorize the person/agency named above to release/request specific records containing confidential information regarding the above-named student. Authorization includes verbal communications.

Type of Information Requested

- General medical data and reports
- Health History
- Audiologist or Otologist reports
- Ophthalmologist or Optometrist reports
- Social and developmental history
- Full and Individual Evaluation including Disability Report
- General Education records (including state assessment information)
- Individualized Educational Plans / ARD
- Occupational or Physical Therapy evaluation/records
- Speech and Language reports
- Information pertaining to vocational programs
- Psychological Evaluation/data

Other: Other Health Impairment Form

This information is needed for:

- Immediate special education placement
- Verification of student's disability condition(s)
- General planning of the student's educational program
- Assistance in understanding complex behaviors and needs ✓
- Vocational / transitional planning
- Other: \_\_\_\_\_

yes no  
  I have been fully informed and understand the school's request for my consent, as described above. This information will be released/requested upon receipt of my written consent.  
  I understand that my consent is voluntary and may be revoked anytime.

Your rights were explained to you when your child was initially referred for special education evaluation. Federal regulations (IDEA 2004) require that parents and adult students be provided a full explanation of the Notice of Procedural Safeguards: Rights of Students with Disabilities in their native language or other mode of communication one time a year. §300.504(1)(2)

Districts are obligated by TEC 25.002 to provide the required information within 10 days of a request by the receiving school district. The FERPA 20 USC §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR §99.31 (a2) and § 99.34.

EXCEPTION to FERPA 20 USC §1232g for Private School students: Federal Register § 300.622 (8-14-06) (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

[Signature] Father  
Signature of parent, guardian, surrogate parent or adult student

X 3-21-10  
DATE

\_\_\_\_\_  
Address of Parent

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Interpreter (if used).

\_\_\_\_\_  
DATE

(4/4)  
TOTAL P. 03

RECEIVED  
3-26-10  
on desk

Clear Creek ISD  
FIE Disability Report: Other Health Impairment

Date of Report: 3/25/2010  
Student's Name: Zachary D. Schwager  
Date of Birth: 2/11/2000 Grade: 04  
School: G. W. Robinson Elementary

- Initial Assessment
- Reevaluation
- Special Request by ARD Committee

PROFESSIONAL EVALUATORS The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed medical doctor.

Yes  No \*Based on my examination, this student appears to meet the criteria for other health impairment due to chronic or acute health problems, such as asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, tuberculosis, or Tourette's Disorder which adversely affect his/her educational performance.

Type of Impairment (i.e., diagnosis): Retinopathy of prematurity that has impeded his vision (legally blind), extreme prematurity/developmental delay.  
Severity of impairment (e.g., mild, moderate, severe): moderate -> severe

17

\*Implications of the impairment for the educational process (check all that apply):

- difficulty transferring on and off the bus independently
- difficulty with mobility and seating within a general classroom
- difficulty with self-help skills, i.e., feeding/dressing/toileting
- difficulty performing activities found in a general classroom (i.e., cutting, writing) and may require special adaptations to the general program, including:
- difficulty maintaining alertness in the general classroom
- taking the following medication:  
which is expected to have the following effects on classroom functioning:

- needs additional rest periods
- needs physical therapy
- needs occupational therapy
- other:
- other:

ANGELINA FARELLA, M.D., P.A.  
(281) 332-0500 OFFICE  
(281) 332-0049 FAX

A BRIGHTER TOMORROW PEDIATRICS  
ANGELINA FARELLA, M.D., P.A.  
425 HENRIETTA  
WEBSTER, TEXAS 77598

Angelina Farella  
\*SIGNATURE OF LICENSED MEDICAL DOCTOR (DO NOT STAMP)

ADDRESS:

TELEPHONE NUMBER:

SIGNATURE DATE: 3/25/10

Please Print Name

Diagnostician   
\*Position

Ann Mai

Ann Mai  
\*Multidisciplinary Team Member

Return completed form to: Ann Mai at G. W. Robinson Elementary  
NAME 451 Kirby Seabrook  
Seabrook, TX 77586

3/4

Educational Diagnostician  
Clear Creek Independent School District

RE: Form

Date: 3-25-10

Attached is a **Full and Individual Evaluation Physician's Information Report** for Zachary Schirger who is a student at Robinson Elementary.

Parent has signed permission granting us permission to request records.

Your assistance with completing and returning the attached form is greatly appreciated

Please note:

1. Check the condition box as it impacts the student.
2. Both diagnosis and severity must be addressed.
3. Functional implications of the diagnosis as it relates to the educational setting must be addressed. Please check all that apply.

Thank you for your attention to these details. Should you have any questions, please do not hesitate to contact me at 281-284-6500.

You can either mail or fax the form back to:

Robinson Elementary  
c/o Ann Mai  
451 Kirby  
Seabrook, TX 77586  
FAX 281-284-6505



2/4

Work  
Samples

Desireing mixchere

9:40 AM

MIXCHER - 2 or MORE SUBSTANCES MIXED TOGETHER

SUBSTANCE - ANY KIND OF MATTER, INCLUDING MIXCHERS

PROPERTY - SOMETHING ABOUT A SUBSTANCE THAT YOU CAN SEE, HEAR, SMELL, TASTE OR FEEL

GLUE PROPERTIES

1. NO SMELL
2. SILENT
3. STICKY
4. INHABITS OBJECT
5. NOT ALIVE
6. SLIMY, MOIST, COLD OR HOT
7. THE COLOR CAN BE WHITE
8. CAN RUN DOWN PAPER
9. SCORCH
10. COMES IN A LIQUID OR SOLID
11. MULTIPLE



Exhibit 48

ingredient - flour SALT baking powder



**From:** Schwager Law firm (schwagerlawfirm@yahoo.com)  
**To:** jklekott@ccisd.net;  
**Date:** Thu, May 6, 2010 6:31:36 PM  
**Cc:**  
**Subject:** Fw: RE: RE: Re: Bullying issue

Why would you offer to qualify someone under 504 protection who's not disabled? Just curious. See request again below.

Candice Leonard Schwager  
The Schwager Law Firm  
(281) 508-8648  
schwagerlawfirm@yahoo.com

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT OR CONSULTING EXPERTS ARE SUBJECT TO THE ATTORNEY-CLIENT, WORK PRODUCT, CONSULTING EXPERT, CONSULTANT, TRCP 165, AND ALL OTHER STATE AND FEDERAL LAW CONCERNING CONFIDENTIALITY AND PRIVILEGE. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, THE SENDER AND/OR CLIENT DOES NOT WAIVE PRIVILEGE AND REQUESTS THAT YOU RETURN IT IMMEDIATELY TO THE ATTORNEY AND DELETE ANY AND ALL COPIES, AS IF YOU HAD NOT RECEIVED IT.

----- Forwarded Message -----

**From:** Candice Schwager <candiceschwager@yahoo.com>  
**To:** schwagerlawfirm@yahoo.com  
**Sent:** Wed, May 5, 2010 12:42:55 PM  
**Subject:** Fw: RE: RE: Re: Bullying issue

Candice Lee Schwager  
Attorney at Law  
281.508.8648  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

--- On Mon, 5/3/10, Jeff Rogers <JRogers@rmgllp.com> wrote:

From: Jeff Rogers <JRogers@rmgllp.com>  
Subject: RE: RE: Re: Bullying issue  
To: "Candice Schwager" <candiceschwager@yahoo.com>, "schexnayderm@sbcglobal.net" <schexnayderm@sbcglobal.net>  
Cc: "Jennifer Cronkhite" <jcronkhite@rmgllp.com>  
Date: Monday, May 3, 2010, 5:11 PM

Exhibit 165



---

From: Jennifer Martinez  
To: Fair, Lois; Lutz, Brenda; Mai, Van; Petitti, Marie Woods; Wesson-Klinger, Debra  
Date: Monday - April 5, 2010 3:19 PM  
Subject: Robinson Eval

---

Hi! I just wanted you to know, that I completed the FIE for our friend. I have printed off a draft copy for Jerry, Jeff, and Pam. As soon as I get feedback about what to do now, I'll let you know! We may need to figure out a nice relaxing place to have a signing party (like we have time!). If you would like to look at the eval, you can look at it in SEM!

Jennifer

Jennifer Martinez  
Lead Educational Diagnostician  
Clear Creek ISD  
281-284-0729



I just want to say I'm sorry for coming across so angry. I've never been so hurt in my entire life. The pain that I feel as a mommy is excruciating. I feel pain beyond even Zach's.

Zachy is the most special child I've ever known. He is a fighter. When he was born, it was devastating. I remember one day when he was laying in his crib in a sling a 45 degree angle because of reflux. He was on oxygen and a feeding tube and began to choke. He was turning blue and I had to perform CPR on him. He almost died in my arms. It's so hard to accept that someone you love more than anyone in the world--a little baby-- is disabled. If I could take his place, I would in a heartbeat. I'm intelligent, have always excelled in school, and was homecoming princess, class favorite, student council president, you name it. I was very popular and I had everything.

Zachy has none of those things. I read in his records that he's a loner and how hard school has been for him. This year, when [REDACTED] did that to him, the children would not speak to him. He had 1 friend. He was so lonely and depressed, he just clung to me. We are as close as any mother and son could be--closer.

He tells everyone that I am #1 in his life. I build him up and tell him how wonderful he is because he's special. I'm not. But he tells me that I'm the most beautiful, sweet, wonderful, amazing, strong, loving, best mom in the whole world and he loves me to "infinity and beyond." The bond between Zachy and me is stronger than any love I've ever felt.

It's so hard to accept that he has problems. I was hoping that he'd overcome them all. But he hasn't. Every level, every person, every time someone hurt him, they hurt me. When I feel like no one cares, no one's helping him, people are failing him, I'm so hurt. To know that he's been beaten emotionally to the point where he feels as if he has no talents and is going to be a "failure in life" is a pain that is indescribable.

His self esteem is zero. What those children did to him was to take away any confidence he ever had about himself. To know that he was abused hurts me more than anything that has ever happened to me--even his birth. It's like pouring gasoline on a smoldering fire. Everytime people lie and deny what happened, more gasoline.

When Sheila "spit in my face" and told me I could do nothing about it, I had no rights--other than to move Zachy--when he finally has some friend a girlfriend made me more angry than I've ever been in my life. The only thing keeping Zachy going is me and his friends. He stood up for himself and now he has friends. I stood up for him and his friends think I'm the strongest woman they've ever met. (Besides [REDACTED] who thinks I'm a dork [laughing]).

I've cried all weekend because I didn't know and I didn't protect him because I wasn't there. I don't want to hurt anyone. I don't want Jim Stephen to lose his job or go to jail. He's a good man, just not stern enough. There's so many people who have hurt him and failed him, but most of all, it's the system in place--whether in CCISD--or everywhere.

The only person that I am truly upset with is your lawyer, Sheila. As a lawyer, the head lawyer, she should know the laws, educate all of you, and then I believe they might have been enforced. Had people known what the law requires, Zachy wouldn't have been hurt and I wouldn't be in so much pain.

Not being an educator, I never knew how to help him. I tried everything I could. He had the most wonderful, loving Occupational Therapist who built him up, but she died. The only true advocate Zachy has is me.



Last night, we went to my father's 60th birthday. He's a great man who taught me that there was nothing I couldn't do. As a result of that, he's right. The sky has always been the limit. Last night my dad said, "I know that if there's something you want, you're going to get there, whether there's blood in the streets or not." He knows me. They had a mariachi band and guess who Zachy chose to dance with all night--me. He clung to me all night. We had virgin pina colodas. When he went to toast my dad for being such a great grandfather, he turned around and started toasting me. I had to whisper "It's grandpa's birthday, toast him Zach." My sister asked if he loved her, and he pointed to me. I'm not mean spirited. I love deeply. My family knows that I'm just determined.

I've had some devastating health issues of my own, but I researched and found a way to overcome them. When no doctors could help me, I diagnosed myself, found a specialist (the only one in Houston) and she confirmed that I was right on. I fought for 7 years against Chronic Fatigue Syndrome and I won. I've never faced anything in my life that I couldn't beat. In law school, the first semester I was first in almost every class of 90 students. Ask Paul. I was the most hated girl in school. When I interviewed for my last job, a fellow student from S. Texas told the managing partner, "hire her, she's brilliant." There has never been one challenge I haven't won.

Zachy has not won yet. And I don't know what to do. This is the first time in my life where I couldn't make it happen, find a solution, and fix the problem. I don't like powerlessness because I've never been there.

I thought to myself yesterday that I wished we hadn't gotten off on bad footing. You know why? I'd be the best darn General Counsel you ever had. I'm passionate about children and I'm brilliant and I know it. In three months as a contract lawyer, I have replaced the guy who has hired to work for the Senior Counsel, investigated an expert and found a way to impeach him in 1/4 of the cases our client has, and convinced a UT grad with 35 years of experience to assign 2 associates to work for me (contract lawyer) and pursue an avenue that he didn't think existed. We stand to win a \$60 million dollar case based on my ideas and the other side may get nothing.

I've decided not to write this story in the news. Instead, I'm going to ask the Galveston Daily News to let me be their legal correspondent. I have big goals, big dreams, and they're gonna happen. I have those same desires for Zach and they're gonna happen. He's gonna beat this if it kills me.

Thank you for helping us. I go from anger to depression to devastation in a day. Everyone who knows Zach knows that he is truly special. He's the most kind person I've ever met. I want him to have everything and be everything. Thank you for continuing to make it happen. With your help, we can do it.

Talk to you soon.

Candice

Candice Leonard Schwager  
Attorney at Law  
4307 Long Grove Dr.  
Seabrook, Texas 77586  
281-271-0700

**From:** Jennifer Martinez  
**To:** brenดาลutz1@yahoo.com  
**Date:** 4/3/2010 4:11 PM  
**Subject:** Re: Fwd: AT and Recommendations



I want us to look GOOD if we end up having to testify! :) 

Jennifer Shelton  
Educational Diagnostician  
League City Intermediate  
281-284-3400

>>> <brenดาลutz1@yahoo.com> 04/03/10 3:50 PM >>>

I have no recommendations for AT. It is a ok with me to take parts of my report.  
Thanks for paying attention to detail!  
Brenda  
Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: "Brenda Lutz" <BLUTZ@ccisd.net>  
Date: Sat, 03 Apr 2010 15:43:47  
To: <brenดาลutz1@yahoo.com>  
Subject: Fwd: AT and Recommendations



**From:** Jennifer Martinez  
**To:** Debra Wesson-Klinger, Marie Woods Petitti  
**Date:** 4/3/2010 2:51 PM  
**Subject:** OT Evaluation

Good Afternoon!

I'm working on our evaluation!!! I THINK I'm at the editing and formatting section. I took the liberty to delete some little formatting squares that occur when you copy and paste.

If it's okay with you, I'd like to change the following sentence, because this is the student's initial evaluation.

Please refer to his Confidential Special Education Folder for significant (medical) history.  
Change to: Please refer to the Health History section of this FIE for significant medical history.

On the DPVT I took the liberty to line up the columns, but I do not know where the x's go under Motor Involvement, Motor Reduced, and Motor Enhanced for the various subtest. Due to the formatting it was not clear where they were intended to go.

<off the subject questions - Do we need to add that assessment to SEM?>

OMG...I'm writing this as I'm reading and formatting and I just erased the number under Keyboarding Assessment Alphabet I have 10. but don't remember what the number after the point was.....

Finally, I have taken out the statement at the end about the Student not qualifying for Special Education Services, because that determination is not made by the evaluation, and the disability condition would only be determined at the conclusion of the FIE, which your information is somewhat integrated into. It now reads as follows:

Occupational therapy evaluation results indicate that Zachary's self care, fine motor, gross motor skills are within functional limits within the educational setting. He scored below average visual perception skills that could interfere with him performing academic skills at school. The evaluation indicates a need to utilize a word processor to facilitate written legibility and speed similar to peers.

Please let me know if that is a huge problem, as we will need to discuss that further!

Thank you for all you guys have done! The content of your stuff looks great and in line with everyone else!

Jennifer

Jennifer Shelton  
Educational Diagnostician  
League City Intermediate  
281-284-3400



**From:** Jennifer Martinez  
**To:** Klekotta, Jerry  
**Date:** 3/30/2010 9:25 AM  
**Subject:** Re: Robinson

Okay we will do our best.....

Jennifer Martinez  
Lead Educational Diagnostician  
Clear Creek ISD  
281-284-0729

>>> Jerry Klekotta 3/30/2010 8:32 AM >>>  
As Jeff said we need to complete the evaluation now.

Jerry K.

Jerry Klekotta,  
Special Education Director  
Clear Creek Independent School District  
(281) 284-0095  
(281) 284-9909 fax

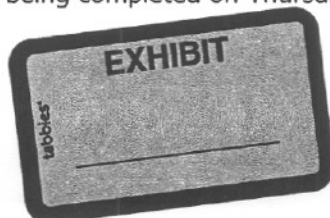
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>>> Jennifer Martinez 03/29/10 9:42 PM >>>

Hi. I talked with Dr. Cheramie for 45 minutes this evening about our case at Robinson. She offered some great suggestions to beef up our evaluation. She was curious why we are rushing to complete this eval, when we know there is an outside evaluation being completed on April 14th. Wouldn't we want to ensure that our eval is MUCH better than the outside eval, especially if it goes to hearing and they bring the outside eval to represent their side? Is there a date already set or are we working under a different timeline than our 60 day timeline (April 26)? After talking to her I'd ideally like to finish up the report after the outside evaluation is completed and I can call the doctor (we have consent to talk) and get an interview with him to enter in our report.

The additional area she suggested for me to address were some specific cognitive subtests and then attention and how it may be effecting the student's performance in school.

This week (Tues and Wed) the student will be being receiving VI, OT, PT and my additional subtests as evaluations, with an anticipated report being completed on Thursday.





# FELDMAN ROGERS

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Board Certified Labor and Employment Law  
Texas Board of Legal Specialization

February 15, 2010

Via E-mail [candiceSchwager@yahoo.com](mailto:candiceSchwager@yahoo.com)

and Certified Mail RRR

Ms. Candice Schwager  
Attorney at Law  
4307 Long Grove Drive  
Seabrook, Texas 77586

Re: False, Misleading and Libelous Postings and Blogs

Dear Ms. Schwager,

Please be advised that I serve as outside counsel for Clear Creek Independent School District and have done so for many years. In that capacity, I have become aware of numerous blog postings you have made in recent weeks surrounding your dealings with the School District and its officials regarding your son, Zachary, who is a student at Robinson Elementary. This letter is written on behalf of the School District and certain of its personnel in their official capacities, including the in-house General Counsel of the District, Ms. Sheila Haddock, and the Principal of Robinson Elementary, Mr. Jim Stephens, to demand that you cease and desist from making and maintaining postings on the Internet regarding them that are false, misleading and libelous in nature.

The offensive postings that I am aware of appear (or have appeared) on two primary blog sites – “*cafemom*” and “*topix*.” Without going through all of the postings, it is appropriate to point out some of the more recent ones that are particularly egregious:

- In a posting on *cafemom* dated January 21, 2010, you state that “educators at Robinson Elementary ... allowed children to be mentally and physically abused,” and that, somehow General Counsel Haddock and Principal Stephens “failed to protect [your] disabled child,” from such abuse.
- In a posting on *cafemom* dated January 23, 2010, you clearly indicated that you are providing legal advice to the CCISD Administration, in your capacity as a “local attorney...” to educate them on IDEA and other statutes...”
- In a posting on *cafemom* dated January 25, 2010, you accuse Ms. Haddock of providing the District with inadequate or improper legal representation.





- In a posting *topix*, dated Saturday, February 6, 2010, you declared “I shook up my District from the bottom up and heads rolled!” Then in a follow-up posting dated Sunday, 7, 2010, in response to a query as to “who’s heads rolled,” you gave the clear impression that Ms. Haddock and Mr. Stephens were placed “on Administrative Leave Without Pay for allowing [your] special needs child to be emotionally and physically tormented.” In that same posting you claim to have turned CCISD “upside down with legal action.”

I am fully aware that, as a citizen, you are entitled to publicly express your opinion as to the performance of the School District and its officials. There is a clear difference, however, in expressing an opinion and making statements, purported to be factual, that are false and misleading and place individuals in a position of disrepute in their profession or community, as you have done. This is particularly troubling in light of the fact you are an attorney with presumed knowledge of relevant laws and applicable disciplinary rules, and that you seek self-promotion as an attorney in your postings, outrageously claiming that you both provide legal advice to the District and have turned it “upside down with legal action,” all the while defaming their in-house counsel. Having practiced and taught the law as long as I have, I am disappointed that someone with your background and apparent qualifications has seen fit to engage in such discourse.

Demand is hereby made that you cease and desist from engaging in any further false, misleading and defamatory communications, as referenced above, whether by blog postings or otherwise, and that you take all necessary steps to take down or remove the offensive postings noted. Be advised that your failure to do so may result in appropriate legal action being taken against you by the affected personnel in order to protect their individual rights and reputations.

Very truly yours,



David M. Feldman

cc: Dr. Greg Smith  
Ms. Sheila Haddock  
Mr. Jim Stephens

**From:** Steven Ebell  
**To:** Stephens, Jim  
**Date:** 2/15/2010 4:58 PM  
**Subject:** Re: Aide  
**Attachments:** Steven Ebell.vcf

**CC:** Hughes, Holly  
Jim:

Absolutely, this request is approved. Please let me know how things are going at the end of these next two weeks.

Thank you,

Steven Ebell, Ed. D.  
Deputy Superintendent of Curriculum and Instruction  
Clear Creek Independent School District

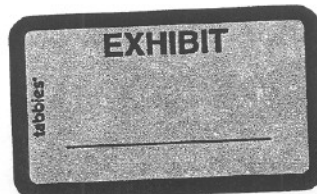
The mission of the Clear Creek Independent School District, a diverse community unified by a spirit of exploration and excellence, is to develop students who will lead the way to the future by educating and equipping them with the skills necessary to excel in the 21st century through a system characterized by meaningful community relationships and a comprehensive curriculum facilitated by a highly qualified team committed to Courage, Collaboration, Innovation, and Self-Direction.

>>> Jim Stephens 2/15/2010 9:57 AM >>>  
Dr. Ebell,

The 2 week period you approved for the aide to assist teachers in the classrooms with Zachary S. ends tomorrow. I am requesting a two week extension to get us farther into the SST process for the student.

Thanks,  
Jim Stephens

*Exhibit 6*



**From:** Jeff Rogers (JRogers@rmgllp.com)  
**To:** schwagerlawfirm@yahoo.com;  
**Date:** Fri, May 7, 2010 3:33:24 PM  
**Cc:**  
**Subject:** RE: TAKS fraud

That he would be more successful in a small group setting.

## Jeff Rogers

---

**From:** Schwager Law firm [mailto:schwagerlawfirm@yahoo.com]  
**Sent:** Friday, May 07, 2010 3:12 PM  
**To:** Jeff Rogers  
**Cc:** Myra Schnexnayder  
**Subject:** Re: TAKS fraud

TEA told me that you have to have a finding or a basis to pull him. What is it???

Candice Leonard Schwager  
The Schwager Law Firm  
(281) 508-8648  
schwagerlawfirm@yahoo.com

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT OR CONSULTING EXPERTS ARE SUBJECT TO THE ATTORNEY-CLIENT, WORK PRODUCT, CONSULTING EXPERT, CONSULTANT, TRCP 165, AND ALL OTHER STATE AND FEDERAL LAW CONCERNING CONFIDENTIALITY AND PRIVILEGE. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, THE SENDER AND/OR CLIENT DOES NOT WAIVE PRIVILEGE AND REQUESTS THAT YOU RETURN IT IMMEDIATELY TO THE ATTORNEY AND DELETE ANY AND ALL COPIES, AS IF YOU HAD NOT RECEIVED IT.

---

**From:** Jeff Rogers <JRogers@rmgllp.com>  
**To:** Schwager Law firm <schwagerlawfirm@yahoo.com>  
**Sent:** Fri, May 7, 2010 2:50:23 PM  
**Subject:** RE: TAKS fraud

I'm not sure I understand the nature of your complaint. He took the 4<sup>th</sup> grade TAKS. You will receive a copy of the results when they are in and will be able to verify this. He took it in a small group. The fact that there were 3 other students or 30 doesn't make any difference. It was a valid administration of the test.

## Jeff Rogers

---



**From:** Jennifer Martinez  
**To:** Brenda Lutz  
**CC:** Rhonda Meyers-Paal  
**Date:** 3/26/2010 9:02 PM  
**Subject:** PT Evaluation Needed

Hi! I am going to start this email off by saying I am so sorry. I told Rhonda I would email you as soon as I got back to my office, but as usual these days I got interrupted and it completely went out of my mind until dinner! Now I'm home and emailing!

There is a very sensitive case at Robinson Elem and we are needing a PT evaluation, specifically to address mobility and getting on and off the bus. I will be doing the Notice and Consent over the weekend to have the school try to get that on Monday. Jerry and the lawyer (Jeff Rodgers) have asked that we finish the eval yesterday day, but I talked them into this coming Thursday!! The OT on the campus, Debra, is also working on an OT eval. I believe she is going to work on that on Tuesday. Assuming we have consent by that time....it might be a great time for you do your magic!

Again I am so sorry for having to throw this on you at this time of year and with such short notice. If you have any questions or if I can assist you in anyway, please let me know as I'm doing the formal parts of this evaluation, too!

My extension is 40729 or you can get me on my cell at 281-851-6532!

Thanks,

Jennifer

Jennifer Shelton  
Educational Diagnostician  
League City Intermediate  
281-284-3400

Exhibit 3



Ann,

I received your voice mail today regarding a staffing and ARD on Z. I spoke with Jerry and Pam regarding yesterday. The draft FIE has been sent to the lawyers for review. It technically is dated 4/5/2010, however per Jerry we are to do nothing until we here from Jeff as to how to proceed. There are still edits to be made for the FIE and I am working through that now, so we can date the FIE the date all the information is edited and the report is truly complete.

I hope this helps for the time being.  
Lead Educational Diagnostician  
Clear Creek ISD  
281-284-0729

Exhibit 4



**From:** Marie Woods Petitti  
**To:** Jennifer Martinez  
**Date:** 4/4/2010 2:06 PM  
**Subject:** Re: OT Evaluation

All your changes are great. Thank you so very much. We can add it to SEM or leave it where it is. The table and squares are a hassle in SEM. Debra has his folder so I don't know what the DeCoste keyboarding alphabet was we can ask her.

Thank you again I hope you were able to enjoy some of your weekend.

Marie

>>> Jennifer Martinez 04/03/10 2:51 PM >>>

Good Afternoon!

I'm working on our evaluation!!! I THINK I'm at the editing and formatting section. I took the liberty wo delete some little formatting squares that occure when you copy and paste.

If it's okay with you, I'd like to change the following sentence, because this is the student's initial evaluation.

Please refer to his Confidential Special Education Folder for significant (medical) history.  
 Change to: Please refer to the Heath History section of this FIE for significant medical history.

On the DPVT I took the liberty to line up the columns, but I do not know where the x's go under Motor Involvement, Motor Reduced, and Motor Enhanced for the various subtest. Due to the formatting it was not clear where they were intended to go.

<off the subject questions - Do we need to add that assessment to SEM?>

OMG....I'm writing this as I'm reading and formatting and I just erased the number under Keyboarding Assessment Aplhabet I have 10. but don't remember what the number after the point was.....

Finally, I have taken out the statement at the end about the STudent not qualifying for Special Education Services, because that determination is not made by the evaluation, and the disability condition would only be determined at the conclusion of the FIE, which your information is somewhat integrated into. It now reads as follows:

Occupational therapy evaluation results indicate that Zachary's self care, fine motor, gross motor skills are within functional limits within the educational setting. He scored below average visual perception skills that could interfere with him performing academic skills at school. The evaluation indicates a need to utilize a word processor to facilitate written legibility and speed similar to peers.

Please let me know if that is a huge problem, as we will need to discuss that further!

Thank you for all you guys have done! The content of your stuff looks great and in line with everyone else!

Jennifer

Jennifer Shelton  
 Educational Diagnostician  
 League City Intermediate  
 281-284-3400

*Exhibit 17*





*The Schwager Law Firm*  
&  
Attorneys for Special Needs Children  
(281) 508-8648

February 15, 2010

**Via Certified Mail RRR**

David Feldman  
Feldman Rogers  
5718 Westheimer Rd, Suite 1200  
Houston, TX 77057

Dear Mr. Feldman:

Attorney aside, I am a *mother—a mother of a special needs child that has been abused and neglected by people I trusted*. Second, I am an advocate. Far from self promotion, advocacy for children comes from my heart. I am not a disability lawyer “for profit.” I am learning the law so that I can further my “non-profit”, *Attorneys for Special Needs Children*. This Organization was brought about through my experience with CCISD and countless stories of other parents with similar situations. If you read the parent resource page, maybe you will understand.

Concerning your letter, timing is certainly everything. I should have saved my stories about how “CCISD’s Superintendent Ebell and Heather Gaspard Love Your Kids!” Those were posted after Ebell and Gaspard took action. While I can’t speak highly enough of Heather Gaspard and Stephen Ebell, it is no secret that I do not care for Haddock and Hughes. But, that would not motivate me to commit libel or post inaccurate articles. I was certainly excited when someone finally decided to help us, but I believe everything I posted is true. It amazes me how fast CCISD acts when it involves something they actually care about. We really should be addressing Zach, rather than discussing internet blogs. Nevertheless, here are my responses to your complaints:

While I failed to find “your” quotes anywhere in my blogs, isn’t CCISD’s failure to protect Zach from abuse, *by something as simple as moving the abuser to another classroom*, with knowledge that Jadon was continuing to emotionally (and physically) abuse and chastise Zach the same thing as “allow[ing] children to be mentally and physically abused”? I requested that Jadon be moved in four letters and countless e-mails, but my requests fell on deaf ears—those of Jim Stephens, Sheila Haddock, and Holly Hughes. I would characterize that as failing to protect Zach and completely accurate. For reference, the article:

“Our Principal would not even remove a child from my disabled child’s classroom, much less take appropriate measures after knowing that [the abuser] threatened his safety.”<sup>1</sup>

“Even if your child is assaulted or humiliated and bullied to the point of feeling as if they’ll be a ‘failure in life’, the CCISD District will do nothing to protect them.”<sup>2</sup>

“General Counsel Haddock will mock you for not knowing your rights, tell you that mandatory disciplinary provisions aren’t mandatory simply because you cannot sue. Where is the justice for abused children?” Regarding my son, it simply states that “My child is disabled, legally blind and has learning disabilities. He’s so stressed by the changes to his education plan and the relentless emotional abuse, he can’t even take a test.”

**2. In a posting on *cafemom* dated January 23, 2010, you clearly indicated<sup>3</sup> that you are providing legal advice to the CCISD Administration, in your capacity as a “local attorney...” to educate them on IDEA and other statutes...”**

This one is almost funny, but it’s actually true. During my meeting with Mr. Ebell, he stated that he had never heard of IDEA, so I gave him my copy and explained Part B to him—private school tuition at the District’s expense. When he said that he had never heard of it, I was not surprised. After five years with not one teacher identifying and addressing my child’s needs, discovering that the 2<sup>nd</sup> in command of a 37,000 District was unaware of a major disability Statute that could have helped Zach years ago, it was my perception that CCISD’s attorneys were not adequately educating others in this area of law. Knowing the complexities of IDEA, I asked Mr. Ebell to get some bright attorneys on it. We agreed to work together for Zach’s sake and I e-mailed him resources, including a request for an IEP sent to Stephens, Hughes, Haddock, Smith, and Gaspard. That e-mail painstakingly detailed

---

<sup>1</sup> We asked Principals Stephens to move Jadon Garcia and he said no.



the procedure for creating an IEP. Mr. Ebell was receptive and that is the only basis of this benign statement that has been blown out of proportion. Consider the disclaimer: "I'm a litigator, not a disability lawyer."

**3. In a posting on *cafemom* dated January 25, 2010, you accuse Ms. Haddock of providing the District with inadequate or improper legal representation.**

- This one is a stretch. My post says only "Parents should demand that CCISD have the best legal representation available." This was based on a perception of widespread failure in the system. But, given her suggestion that I sue you, hmm?

**"According the General Counsel for CCISD, Sheila Haddock, the Zero Tolerance Laws designed to protect your children from bullying and abuse in schools have been softened. This question has been posed to a Local State Representative for Galveston County. We'll see what he has to say. Ever wonder why someone has to make them enforce rules? Why does CCISD need a zero tolerance law to say "we're not tolerating this?" I certainly don't need one. I don't tolerate it in my house or with my kids. Just turned CCISD upside down. Will let you know what the Legislature's stance is on this issue. Parents should demand that CCISD have the best legal representation available. The District, Administrators, Educators, Counselors, and parents need to be informed! My son formed an anti-bullying committee in 4th grade so that all the kids would band together and tell on this punk. They said, 'Got a bullying problem? Call Zach's mom!' Makes you wonder!"**

**4. February 15, 2010 Page 2 • In a posting *topix*, dated Saturday, February 6, 2010, you declared "I shook up my District from the bottom up and heads rolled!" Then in a follow-up posting dated Sunday, 7, 2010, in response to a query as to "who's heads rolled," you gave the clear impression that Ms. Haddock and Mr. Stephens were placed "on Administrative Leave Without Pay for allowing [your] special needs child to be emotionally and physically tormented." In that same posting you claim to have turned CCISD "upside down with legal action."**

- I spoke to a very competent source about action that would be taken against the adults who failed to protect my son. Alternatives were discussed and while I did not get to choose, administrative leave without pay was one of them. You forget, I know people in this District. *Also, see February 3, 2010 post wherein it simply says "a few*

a different rotation, adults involved are being held accountable, and CCISD is finally evaluating Zach for special needs services. I call this a huge victory! But it was a tough fight to get there. It should not be this way.

Rest assured, I have no plans to blog. While the Galveston Daily News wants to print Zach's story in April 2010, I have declined. I am not running for your Board. I just want for CCISD to do what's right for Zach. You have failed him for 5 years. Now that we all have lawyers, I think that will happen.

As far as your professional opinion of me, you're not looking at a lawyer right now. You are seeing a mother of a special needs child who has been very hurt and is failing because you have failed him. Imagine your baby being born 3 ½ months early, weighing 1 pound, and having multiple long standing health issues. You always knew a time would come when life would not be so easy for him, so you build him up as much as you can to believe in himself. Then you discover he has learning disabilities on top of the other health issues. Now imagine someone abusing and chastising him to the point where he no longer has any self esteem and thinks he's going to be a "failure in life." The qualified attorney goes out the window. I have retained a disability lawyer, James Holtz. You should hear from him soon.

Sincerely,



Candice Leonard Schwager

Candice Leonard Schwager  
Attorney At Law  
4307 Long Grove Dr.  
Seabrook, Texas 77586  
(832) 274-0793  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

Greg Smith, Ph.D.  
Superintendent CCISD  
Jim Stephens, Principal,  
Robinson Elementary School  
451 Kirby Dr.  
Seabrook, Texas 77586

*Re: Notice of Intent to Sue District, Robinson Elementary, Responsible Agents /  
Representatives of the School, and the Parents of [REDACTED] and [REDACTED] (Ms.  
Hester's 4<sup>th</sup> Grade Class)*

To whom it may concern:

Please accept this letter as formal notice to Clear Creek ISD, Robinson Elementary School, Superintendent Smith, Principal Stephens, and the parents of [REDACTED] and [REDACTED] (of Ms. Hester's 4<sup>th</sup> Grade Class) of my intention to file a lawsuit if [REDACTED] continues to verbally or physically harass or abuse my son, Zachary Schwager. Please forward a copy of this letter to the parents of [REDACTED] and [REDACTED] (Ms. Hester's 4<sup>th</sup> Grade Class), provide the full names of [REDACTED] and [REDACTED] parents, and mail a copy of Clear Creek ISD and/or Robinson's Code of Conduct to all parents involved.

My son, Zachary Schwager, is a fourth grade student at Robinson Elementary School. Immediately upon entering 4<sup>th</sup> grade, he began to suffer harassment, verbal threats, physically abusive behavior, bullying, criticizing, belittling, and embarrassment at the hands of [REDACTED] and [REDACTED]. This behavior has caused my son, Z[REDACTED], to become anxious, depressed, withdrawn, unable to focus, and afraid to go to school. He cries, says that he feels like an outcast, and that he's afraid that he's going to be "a failure in life." It is affecting his school work and he now has an "F" in Math.

If you are wondering why [REDACTED] and [REDACTED] would choose Zachary as their victim, ask them because they know why. They may not know that Z[REDACTED] was born 3 ½ months premature, weighing one pound, almost lost his eye-sight, suffers from severe asthma as a result of being on life support, but they do know that he's significantly smaller, wears glasses, vomits

go to school. I spent about twenty minutes, asking him to tell me everything that he recalled. In twenty minutes, Z [redacted] told me:

- M [redacted] and J [redacted] began harassing and bullying Z [redacted] in September of 2009.
- J [redacted] and M [redacted] have intimidated, harassed, embarrassed, threatened, bullied and criticized Z [redacted]'s abilities relentlessly—to the point where he said, “I feel like I’m going to be a failure in life.”
- Every chance he gets (when Ms. Gaspard is distracted), J [redacted] insults Zach
- Both J [redacted] and M [redacted] have been physically abusive towards Z [redacted].
- J [redacted] purposefully kicked a basketball into Z [redacted]'s ankle so hard, it almost made him cry
- Wednesday, January 13, 2010, M [redacted] shoved Z [redacted], threatened to beat him up, telling him to “watch what you say.”
- J [redacted] kicked Z [redacted] last Monday when they had Math benchmarks
- J [redacted] and M [redacted] tell Z [redacted] that he has no talent and can’t do anything.
- Z [redacted] has been having problems with Math. Observing the extra time that Zach needs to complete his work, J [redacted] began teasing Z [redacted] and incited M [redacted] to join him.
- M [redacted] exploited this by telling Z [redacted] that he “sucks at math.”
- With the difficulties Z [redacted] has in Math and their relentless criticism, Z [redacted] is so nervous; he can barely take a test. A few weeks ago, Z [redacted] came home upset because M [redacted] said “Z [redacted], you crack under pressure”—observing that Z [redacted] was having problems with his Math test. Z [redacted] was so nervous, upset and distracted, he got an F.
- Last Thursday, after the spelling bee, M [redacted] told Z [redacted], “You suck at Spelling.”
- Making fun of Z [redacted]'s glasses and size, J [redacted] called Z [redacted] a dork last week
- J [redacted] said “Z [redacted], you are a short wimp and a sissy” and “you’re stupid.”
- M [redacted] tries to trip Z [redacted] when he’s walking with his lunch tray.

I can barely read this list without going ballistic. I’m shocked that Z [redacted] could list this many horrible things in under 20 minutes. Z [redacted] also told me about an incident where J [redacted] tried to practically kill [redacted] by placing peanut butter down his shirt, **knowing** that [redacted] was severely allergic to peanuts and **it could kill him**. J [redacted] thought this was very funny. I wonder how funny A [redacted]'s parents thought it was. I wonder if A [redacted]'s parents even know.

While all 3 boys have spoken to Principal Stephens and the School Counselor, it’s simply not enough. Z [redacted] has told me about your Counselor’s pathetic recommendations. This is completely naïve. J [redacted] and M [redacted] are already **mocking Z [redacted] for tattling**. I cannot

stand back and allow my very gifted, sensitive child to be tormented and abused by two juvenile delinquents. **Therefore, I am demanding in writing now that [REDACTED] be moved to a different classroom and rotation and that [REDACTED] be moved to a different rotation so that Z [REDACTED] has no contact with either of them. If you can't enforce this, I will by a permanent injunction from the Court. If Z [REDACTED] suffers any further abuse, emotional or physical, I'm filing a lawsuit.**

Moreover, Z [REDACTED] **IS NOT TO BE MOVED.** Section 37.001 addresses removing the juvenile delinquent, not THE VICTIM. To remove Z [REDACTED] would further victimize him by forcing him to make new friends when he's done nothing wrong. Z [REDACTED] is shy and has finally made some friends in Ms. Gaspard's class. He wants to stay there. Further, moving Zach would reward bad behavior and reinforce it. **The perpetrator is the one who should be punished, not Z [REDACTED].** Section 37.001 requires you to manage students in the classroom and on school grounds. Tex. Educ. Code § 37.001. **The Code not only requires that you deal with disciplinary issues such as bullying, but PREVENT THEM.** Id. Despite knowledge that Z [REDACTED] was being bullied for more than one month now, you've done little. You have had more than adequate notice. It is your responsibility to ensure my child's emotional and physical well-being while on your premises. You have my request—remove [REDACTED] and keep [REDACTED] away from Z [REDACTED]. I expect that it will be honored. Z [REDACTED] has done nothing wrong. Please also forward this letter to their parents.

Section 37.001 of the Texas Education Code requires you to have an established Code of Conduct to **prohibit bullying and harassment AND “ensure that district employees enforce those prohibitions.”** Tex. Educ. Code § 37.001. This Statute gives you the authority to **remove a student that is bullying and harassing another child from a classroom—and even send them to an alternative school.** Tex. Educ. Code § 37.001. In my opinion, [REDACTED] belong in an alternative school. Z [REDACTED] isn't the only child they harass. You should poll the others. YOU have the right and responsibility to protect Z [REDACTED] under Section 37.001. The only way that you can ensure Z [REDACTED]'s emotional and physical safety and not punish Z [REDACTED] is to remove [REDACTED]. If you have to place [REDACTED] on a different rotation, do it.

Now that you all are aware of [REDACTED]' propensity towards emotional and/or physical threats, abuse, bullying, and harassment, and the boys have expressed anger and criticism towards Z [REDACTED] for telling on them, there is a risk of harm to Z [REDACTED]—both emotionally and physically. **If you do not exercise reasonable care to prevent harm to my child, armed with this knowledge, Texas law says that you are liable, whether under principles of vicarious liability, negligent supervision, or negligent entrustment.** If the parents think that ten years of age is too young for a Court to hold them liable, they are wrong and should consult an attorney. I have seen multiple cases where parents were fined \$25,000 or more for the acts of children as young as six. I do not want to file a lawsuit. But, you are pushing my back to the wall. If you fail to honor my request, I will file a lawsuit. Whether it be injunctive relief or

damages, I will do it. If [REDACTED] parents cannot control their sons' behavior, maybe a \$25,000 or \$50,000 judgment will motivate them to do so.

As you can see from the tone of my letter, I am very unhappy and very serious. Z [REDACTED] has been through enough. I am happy to speak with you on the phone, meet with you in person, or speak to the parents with you mediating, but I will not speak to the parents without school personnel present, nor will I budge from my demand that J [REDACTED] be removed from Zachary's class. Please consider what you intend to do to insulate Z [REDACTED] from [REDACTED] as well. Please contact me as soon as possible. For your convenience, I have attached a copy of Texas Education Code 37.001.

Respectfully,

*Candice L. Schwager*

Candice Leonard Schwager

CS/lb

Attachment

cc: Ms. Heather Gaspard

Ms. Hester

Cc: "Rick" <[rick77059@yahoo.com](mailto:rick77059@yahoo.com)>

Date: Tuesday, March 23, 2010, 4:28 PM

Ms Mye,

I understand that Zachary was "observed" to determine if he qualifies for vision services and you have determined that he does not. I believe it is wholly inadequate and request that you reconsider this. Zachary is legally blind and has no peripheral vision. When I mentioned to his Pediatrician that you determined he doesn't need services, she was shocked.

A vision screen was not even completed and I am very concerned that his vision is related to writing and math problems. While we do not yet have a diagnosis, I have a strong suspicion that Zach has dysgraphia (at the very least motor issues with writing) and might even have dyscalculia based on having a 50 in math. Both of these issues are related to spatial orientation and I seem to recall "spacers" discussed for use to assist him with writing? This is unacceptable.

While I am happy to hear that he will receive OT for handwriting, I do not believe that he can finish assignments in the time allotted with the labor it requires for him to write. I believe that Zach should be accommodated with a laptop to help him keep up with the rest of the class. Are services available to teach him to type? If so, I'd like for that to be done.

Also, 30 minutes of tutoring once a week is doing nothing to improve his 50 in Math. As we approach April, I can only assume that he's going to fail. Everyone knows this is major problem. I realize the process takes time and we have scheduled testing as quickly as we were able. However, Zach needs help now. Without giving him obvious help that I wouldn't think would have to be part of an IEP, he is sure to fail. If you wait until this IEP is ready, the year will be over.

I'd like to know what can be done during the summer? private tutoring? typing? While I realize that much of this will be part of an IEP, we are supposed to be on that team, right? I know you're coordinating with Rick, but I am not happy that intervention is not being made now to address these obvious issues.

Candice

Candice Lee Schwager  
Attorney at Law  
281.508.8648  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)



**From:** Candice Schwager (candiceschwager@yahoo.com)  
**To:** schwagerlawfirm@yahoo.com;  
**Date:** Sun, May 2, 2010 6:34:51 PM  
**Cc:**  
**Subject:** Fw: RE: Proposal

Candice Lee Schwager  
Attorney at Law  
281.508.8648  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

--- On **Thu, 4/29/10**, Jeff Rogers <[JRogers@feldmanrogers.com](mailto:JRogers@feldmanrogers.com)> wrote:

From: Jeff Rogers <[JRogers@feldmanrogers.com](mailto:JRogers@feldmanrogers.com)>  
Subject: RE: Proposal  
To: "Candice Schwager" <[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)>  
Date: Thursday, April 29, 2010, 3:51 PM

I can assure you that I will be civil, but I don't know that we will be able to get anything done. I will inquire of the district as to whether or not they will agree to the abatement. I can tell you, from experience, that abatement usually doesn't work very well because it requires that resources continue to be devoted to the litigation, and the school has no assurance that anything it does will resolve the cases. As long as the cases are pending, I have to do the best I can to insure that the result is favorable to my client. I am truly sorry you feel the way you do. Let's keep talking. Maybe we can work something out in the next week and no abatement will be necessary as you may feel comfortable enough to dismiss the cases.

**Jeff Rogers**

---

**From:** Candice Schwager [<mailto:candiceschwager@yahoo.com>]  
**Sent:** Thursday, April 29, 2010 3:31 PM  
**To:** Jeff Rogers  
**Subject:** Proposal

Mr. Rogers,





I have thought about this and while I do wish to work with the school on Zachary's behalf and try to resolve this, CCISD apparently thinks that Zach does not qualify for anything, so I do not see how they can work anything out. I know that a child must qualify for services to be given services and they haven't even admitted that yet.

I am very glad that you called and do appreciate the call. I'm not "Darth Vader" either. But CCISD has put me through months of anxiety, stress, hurt, and has failed my son in every way possible. They continue to fail him by denying anything is wrong. I never wanted to make an enemy out of anyone, but I refused to be pushed around and treated poorly. I have been treated very poorly and people aren't even managing to ensure that Zach is eating. The lunch ladies say that he rarely eats and today, I was asked whether I wanted for my son to eat or learn socialization skills. He will likely fail this year because CCISD has failed him.

So, I'm willing to enter into discussions about what's going to be done. I do want an IEE (which I'll ask for after the ARD) because apparently, this report concludes that nothing is wrong with Zach and he doesn't qualify for special education services. I don't see how they can do anything with that report. I have a report showing that a lot is wrong with Zach and I know it's true.

I have lost faith in the entire educational system after these past few weeks. I've lost faith in CCISD and your law firm. I'm willing to talk but I am not willing to dismiss my claims (until I see action) because I'm not just claiming educational deprivation for this year. I'm claiming it for every day that I can because he's been denied a FAPE since at least 2nd grade, if not before. While I know that I can't go that far back, I can't prejudice his rights by dismissing his cases.

I asked Donna Hartness to hold him back because he was transferring from McWhirter's 2 way immersion program and knew he wasn't ready and was told no. Donna admitted this. I asked Terri to also. She said they couldn't with a 70. I don't trust that 70 because I've seen him do math.

I agree to abate all deadlines and the hearings pursuant to an agreement that we would work out so that I can try to work with CCISD and I don't want to make enemies of anyone but I must do what's best for Zachary. I hope they'll try to work with me anyway because it is in Zach's best interest that people do so. I will be cooperative and give CCISD a chance to make it right, but since I don't trust them, I cannot dismiss.

If the trust is rebuilt, maybe I will dismiss then. I hope you understand and I hope that even if

we go forward, you will continue to be civil.

Regards,

Candice

Candice Lee Schwager

Attorney at Law

281.508.8648

[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

**From:** Candice Schwager (candiceschwager@yahoo.com)  
**To:** schwagerlawfirm@yahoo.com;  
**Date:** Sun, May 2, 2010 12:55:09 AM  
**Cc:**  
**Subject:** Fw: Medical Records

Candice Lee Schwager  
Attorney at Law  
281.508.8648  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

--- On Sun, 5/2/10, Candice Schwager <[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)> wrote:

From: Candice Schwager <[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)>  
Subject: Medical Records  
To: [jrogers@feldmanrogers.com](mailto:jrogers@feldmanrogers.com)  
Date: Sunday, May 2, 2010, 12:53 AM

Mr. Rogers,

CCISD was provided with medical records for Zachary more than six weeks ago. I'm not sure who is qualified to read them, but my nurse paralegal is and summarized the following, which I already knew:

Zachary has severe asthma/lung disease which limits his ability to breathe and participate in PE and frequently vomits when eating or after becoming winded - has been on breathing treatments since birth and even received treatments by your school nurse at McWhirter.

Zachary has feeding problems/dysphagia, for which he has received OT services since birth. Zachary had retinopathy of prematurity and had laser surgery as an infant with "residual peripheral laser scarring." This surgery involves peripheral retinal ablation [destruction] and has left Zach with no peripheral vision. This substantially limits Zach's field of vision and affects his ability to learn and receive instruction.

A low vision test would have found this and CCISD failed to do it. Your VI recommended against it.

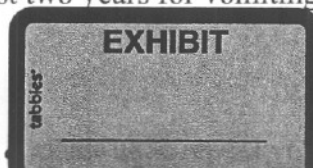
Motor Coordination Disorder

OT as recent as 2008 states that Zach was still having problems with letter formation and goals were to improve legibility and top/bottom right/left

Fine and Gross motor delays as recent as 2008

Diagnosed with BPD (bronchopulmonary dysplasia) aka chronic lung disease after being on life support for more than 30 days

Your own nurse has more than 20 visits in last two years for vomiting, etc. (missing instruction)  
Dyscalculia is related to vision problems



Zach's ability to write is poor by your own testing, as is visual integration, which my expert found too

In short, you have the medical records and with both of our reports, there is no way CCISD will prevail on keeping Zach from qualifying under 504. He will very likely qualify under the IDEA as well. So, we can go to hearing if you want and if I lose, I'll just file in federal court. Or, we can begin talking about options for Zach. You will just be racking up legal bills for your own client and at the end of the day, he'll qualify anyway. Just food for thought. I know that you know he qualifies and your VI was either not sufficiently educated or purposefully didn't test for low vision because she didn't want to find out what I already know - he has no peripheral vision.

I just thought I'd let you know my thoughts. If you truly want to resolve this, I believe you'll read the records for yourself and acknowledge it.

I do appreciate your attempts to resolve our issues.

Candice

Candice Lee Schwager  
Attorney at Law  
281.508.8648  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

**From:** Schwager Law firm [mailto:schwagerlawfirm@yahoo.com]  
**Sent:** Thursday, May 06, 2010 3:13 PM  
**To:** Myra Schexnayder  
**Cc:** Jeff Rogers  
**Subject:** Re: Document from Jeff Rogers

Ms. Schexnayder:

Just to be clear, the due process violations that I allege include: failing to allow time to finish testing for ADD (with CCISD taking their time to do the testing), failing to allow time for Zach to visit his eye Dr. so that I can obtain information proving he has no peripheral vision, all objections stated in my Motions for Continuances, failing to extend deadlines with a Dr's note that I'm ill (causing me to stay up 48 hours straight to read through documents for my "resolution hearing"), failing to grant the recusal, failing to allow me permission to use a video camera and other simple items I asked for, and to the extent my bullying claim and retaliation claim is not permitted, failing to hear those claims. I guess I was wrong about saying there isn't "discrimination" so I'll include that as a claim under 504. I've never heard of a school district bargaining with you for 504 coverage. I'll let you know if I think of anything else. But because I've been pushed to do it, I'm ready for Thursday. Maybe you could obtain a stipulation from Mr. Rogers that Zachary's ADD evidence can be considered too since it's all over their report and their records for 5 years and they didn't test then or ever ask to do it.

Candice Leonard Schwager  
The Schwager Law Firm  
(281) 508-8648  
schwagerlawfirm@yahoo.com

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT OR CONSULTING EXPERTS ARE SUBJECT TO THE ATTORNEY-CLIENT, WORK PRODUCT, CONSULTING EXPERT, CONSULTANT, TRCP 165, AND ALL OTHER STATE AND FEDERAL LAW CONCERNING CONFIDENTIALITY AND PRIVILEGE. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, THE SENDER AND/OR CLIENT DOES NOT WAIVE PRIVILEGE AND REQUESTS THAT YOU RETURN IT IMMEDIATELY TO THE ATTORNEY AND DELETE ANY AND ALL COPIES, AS IF YOU HAD NOT RECEIVED IT.

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**From:** Myra Schexnayder <schexnayder@sbcglobal.net>  
**To:** Schwager Law firm <schwagerlawfirm@yahoo.com>; jeff rogers <jrogers@feldmanrogers.com>  
**Sent:** Wed, May 5, 2010 4:59:27 PM  
**Subject:** Re: Document from Jeff Rogers

Dear Ms. Schwager:



As things stand right now, are you still requesting a continuance? The e-mail below seems to suggest that you might now desire to proceed as scheduled on May 13th. If you are requesting a continuance, I will rule on your pending Motion. However, as I have previously expressed, as a general rule, I am extremely reluctant to continue hearings into the summer months absent very extenuating circumstances.

As for your concerns that the hearing itself may be stressful, please be assured that I will do everything within my power to see that the proceeding is conducted in a professional, courteous, and nonconfrontational manner. Frankly, that is my expectation for every Section 504 hearing that I convene.

Thank you, in advance, for clarifying your position. I look forward to hearing from you shortly.

Kind regards,  
Myra Schexnayder.

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**From:** Schwager Law firm <schwagerlawfirm@yahoo.com>  
**To:** Jennifer Cronkhite <jcronkhite@rmgllp.com>; "Myra Schexnayder <(schexnayderm@sbcglobal.net)>" <schexnayderm@sbcglobal.net>  
**Sent:** Wed, May 5, 2010 2:37:32 PM  
**Subject:** Re: Document from Jeff Rogers

Mr. Rogers,

You received e-mails because you failed to provide a huge box of documents to me until yesterday and I had a short meeting after which I was forced to stay up all night long to read documents that could easily have been provided before. I did not sleep last night, as you well know it, thanks to the delay. You received e-mails because of the reprehensible things I found in those documents--thinking maybe you'd change your position. I do need to rest. The problem is - you won't let me. I'll do it sick or well.

Candice Leonard Schwager  
The Schwager Law Firm  
(281) 508-8648 begin\_of\_the\_skype\_highlighting (281) 508-  
8648 end\_of\_the\_skype\_highlighting  
schwagerlawfirm@yahoo.com

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT OR CONSULTING EXPERTS ARE SUBJECT TO THE ATTORNEY-CLIENT, WORK PRODUCT, CONSULTING EXPERT, CONSULTANT, TRCP 165, AND ALL OTHER STATE AND FEDERAL LAW CONCERNING CONFIDENTIALITY AND PRIVILEGE. IF

**From:** Jeff Rogers (JRogers@rmgllp.com)  
**To:** schwagerlawfirm@yahoo.com;  
**Date:** Fri, May 7, 2010 3:58:37 PM  
**Cc:**  
**Subject:** RE: TAKS fraud

My statement that Zach would be “more successful” in a small group is not meant to imply that he would score higher on the test. Those were my words based on a general understanding of the process, not the District’s “official” explanation. The specific information will be supplied to you when I receive it. Sorry for any confusion, but I wanted to respond to you quickly.

## Jeff Rogers

---

**From:** Schwager Law firm [mailto:schwagerlawfirm@yahoo.com]  
**Sent:** Friday, May 07, 2010 3:12 PM  
**To:** Jeff Rogers  
**Cc:** Myra Schnexnayder  
**Subject:** Re: TAKS fraud

TEA told me that you have to have a finding or a basis to pull him. What is it???

Candice Leonard Schwager  
 The Schwager Law Firm  
 (281) 508-8648  
 schwagerlawfirm@yahoo.com

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT OR CONSULTING EXPERTS ARE SUBJECT TO THE ATTORNEY-CLIENT, WORK PRODUCT, CONSULTING EXPERT, CONSULTANT, TRCP 165, AND ALL OTHER STATE AND FEDERAL LAW CONCERNING CONFIDENTIALITY AND PRIVILEGE. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, THE SENDER AND/OR CLIENT DOES NOT WAIVE PRIVILEGE AND REQUESTS THAT YOU RETURN IT IMMEDIATELY TO THE ATTORNEY AND DELETE ANY AND ALL COPIES, AS IF YOU HAD NOT RECEIVED IT.

---

**From:** Jeff Rogers <JRogers@rmgllp.com>  
**To:** Schwager Law firm <schwagerlawfirm@yahoo.com>  
**Sent:** Fri, May 7, 2010 2:50:23 PM  
**Subject:** RE: TAKS fraud



I’m not sure I understand the nature of your complaint. He took the 4<sup>th</sup> grade TAKS. You will receive a copy of the results when they are in and will be able to verify this. He took it in a small group. The fact that there were 3 other students or 30 doesn’t

Candice Lee Schwager  
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281.508.8648  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

--- On **Thu, 4/29/10**, Jeff Rogers <[JRogers@feldmanrogers.com](mailto:JRogers@feldmanrogers.com)> wrote:

From: Jeff Rogers <[JRogers@feldmanrogers.com](mailto:JRogers@feldmanrogers.com)>  
Subject: RE: Results of Rulings  
To: "Candice Schwager" <[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)>  
Date: Thursday, April 29, 2010, 4:32 PM

Ms. Schwager—Let's focus on the services or instructional accommodations that Zach may need, rather than the eligibility issue. The fact that a student does not qualify for special education does not mean that he may not receive instructional accommodations to meet his needs. I daresay that all of Zach's educational needs can be met via structured interventions provided through the regular education department. I doubt that you want him in special education classes. Therefore, we should direct our attention to what can be done in the regular education environment to address his math problems. Additionally, special education does not immunize a child from bullying. Those issues are always dealt with by the regular education administration. I think if we look more closely at what we can do now, you will see that he does not need to be in special education.

## Jeff Rogers

---

**Sent:** Thursday, April 29, 2010 1:24 PM  
**To:** [schexnayderm@sbcglobal.net](mailto:schexnayderm@sbcglobal.net)  
**Cc:** Jeff Rogers  
**Subject:** RE: Results of Rulings



DIVERSIFIED MEDICAL PRACTICES, P.A.

6300 Richmond, Ste. 202

Houston, TX 77057

713-961-7100

Fax: 713-961-3085

Patricia D. Salvato, M.D.

Jacqueline S. Hart, M.D.

Date: 05/04/2010

TO: Whom it May Concern

Candace Schwager is under my care.

The patient has been placed under these restrictions:

- 1)        No restrictions at this time.
- 2)        Light duties.
- 3)        Bed rest until further notice.
- 4) X Other; see comment below:

Comments: Patient seen today and due to her current clinical status  
she does not need to proceed with trial x 2 weeks.

Sincerely,

*Patricia D. Salvato M.D.*

Patricia D. Salvato, M.D.

PDS/ck





Greg Smith, Ph.D.  
Superintendent of Schools

2425 East Main Street  
League City, Texas 77573-2799

(281) 284-0002  
FAX (281) 284-0005  
Email: grsmith@ccisd.net

June 8, 2010

Via US Mail and Certified Mail RRR

Mr. and Mrs. Richard Schwager  
4307 Long Grove Drive  
Seabrook, Texas 77586

Dear Mr. and Mrs. Schwager,

Thank you for meeting with me and Dr. O'Neill on Wednesday, May 26, 2010. During the course of the Level 3 Grievance, Ms. Schwager provided information by telephone while Mr. Schwager was tending to your child outside the conference room. I would also like to thank you both for taking time to advocate for your child.

After I explained the opening procedures to you, you gave me a history of your son's illnesses since birth and addressed concerns about his learning, particularly in the area of mathematics. You expressed your frustration regarding students who were reportedly picking on Zachary and the lack of support from the Robinson and CCISD staff. You also reported that Zachary had low self-esteem and was depressed.

You expressed your belief that Robinson Elementary School Principal, Mr. Jim Stephens, was disciplined and placed on administrative leave because of his mishandling of the situation. You claimed that Jeff Rogers and his law firm were abusing your son and your family. You claimed that everyone, except Jim Stephens, lied in the recent 504 hearing.

Additionally, you made claims that CCISD personnel and the Feldman and Rogers Law Firm defrauded your family and were involved in racketeering.

After you relayed your concerns to me, I then asked what relief you sought and you responded as follows:

1. CCISD should no longer engage the services of Feldman and Rogers Law Firm because they abuse children, are corrupt, have a pending RICO suit against them, and are incompetent.
2. Ms. Sheila Haddock should be disciplined because she insulted you by telling you to get an attorney because you did not know education law.
3. The District should reimburse you and your family for your pain and suffering, lost wages, and out of pocket medical expenses.
4. I should discipline everybody connected to your son's situation.
5. Specifically, Mr. Jerry Klekotta should be disciplined for his incompetence and refusal to do a vision assessment for Zachary.

Finally, I asked that you submit all your evidence that supported your claims by the end of the working day. One set of documents (time lines and events) was electronically forwarded to me; two other sets were hand delivered to my office to consider as evidence for the relief you seek. One set of documents contained emails and the other set was a copy of your suit against CCISD and twenty-three other individuals. The text of the 504 Hearing was not available at the time of my review of this matter.

The following day after our Level 3 Grievance you also sought via email the removal of Mr. Rogers and his firm from representing CCISD in an IDEA Due Process Hearing currently scheduled for June 18, 2010.



*Educate, Equip, Excel*  
Clear Creek Independent School District

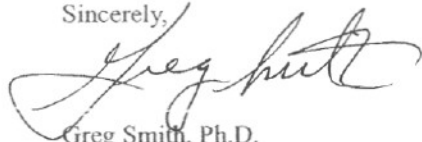
After reviewing all of your documents I conducted an inquiry to determine if the relief you sought was justified. I have concluded that it is not.

Responses to Relief Sought:

1. The Feldman and Rogers Law Firm (now known as Rogers, Morris & Grover, LLP) has served CCISD for approximately 32 years. The firm has served CCISD in issues related to real estate and construction, personnel matters, student rights and student discipline, special education services, and policy development. The fact that you do not agree with Mr. Feldman and Mr. Rogers' interpretation of your particular situation is not compelling enough for me to recommend disengaging their services. Your perception of the law firm as being corrupt, fraudulent, and involved in racketeering is not shared by me or others familiar with education law, nor is it consistent in my findings in this matter. Therefore, Mr. Rogers will continue to represent CCISD in the upcoming hearing.
2. Ms. Haddock has not and will not be disciplined for expressing an opinion to you regarding consultation with another attorney. When one disagrees with another regarding the interpretation of the law it does not compel me to view that person as incompetent or abusive. Ms. Haddock has served as the in-house counsel for CCISD for 4 years. Her reputation is impeccable and she is highly regarded by parents, staff, and administration. The same can be said about Mr. Stephens, who you maintain was placed on administrative leave. The only person that can place a professional employee on administrative leave is the superintendent and leave without pay requires board action. Mr. Stephens was not placed on administrative leave by me or anyone else.
3. You are correct in assuming that I cannot reimburse you and your family for your reported pain and suffering as that would be a gift of public funds and unlawful.
4. You requested that "everybody" be disciplined. I can only assume that you mean the personnel over whom I have authority. Although I am sensitive to your frustration, the preponderance of evidence does not merit the discipline of the 17 employees listed on the lawsuit you filed recently.
5. You requested a vision assessment for Zachary which had been denied by Mr. Klekotta in a recent ARD meeting. Although I have authority over Mr. Klekotta, I do not have authority over an ARD Committee's decision. It is best that this request be considered by the Hearing Officer during the upcoming IDEA Due Process Hearing currently scheduled for June 18.

In summary, I want to thank you again for advocating for your child. If you do not agree with my decision, you may appeal to the Board of Trustees by submitting a written request to the Superintendent within ten (10) business days of receipt of this decision. Written notice of the date, time, and place of the Board's review will be provided after the receipt of the appeal request.

Sincerely,



Greg Smith, Ph.D.  
Superintendent of Schools

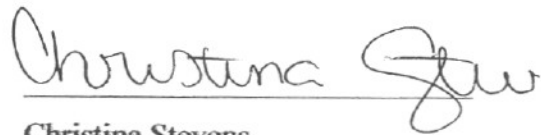


so desperately needed help, Erik Nichols continued to harass and abuse our family with \$1000+ charges to obtain my son's records, repeatedly ignoring my Pediatrician's pleas to transfer him from Frazier Elementary to Southbelt because he was saying he wanted to kill himself. I read one e-mail from Mr. Nichols to my lawyer, begging him for help and imploring him to act because my child's life seemed in danger and Mr. Nichols said basically thanks for the update and to tell our fellow counsel he said "hi". My son's pediatrician insisted that he not be returned to Frazier and felt it would be very disturbing to his mental health and despite Mr. Nichols' power to help him, he refused.

He spiraled downward to a point where the doctor sent 2 notes, one in great detail and they were sent to the attention of an Erik Nichols who seemed to not take the fact that they clearly stated he wanted to kill himself. He then lied and promised a transfer and testing in emails only to blame me for not filling out transfer paperwork which I did within 5 minutes of my email. Against my doctors best wishes and after my son missed a week and a half of school and was thrashing on the floor, thinking he was a bad kid because they would not allow him to return and he even stopped eating and sleeping due to a post-traumatic depressive like state, Mr. Nichols refused the transfer. I filed an open records request and he billed us \$1000 plus for our child's records and some others we requested—at which time the Attorney General implored us to file a complaint. It seemed that he was refusing to provide us with any relief out of vengeance for our lawyer and also because of the records request and not wanting us to see them. We only wanted what our doctor requested for our sons health which he cared NOTHING about. He seems cruel and does not seem to have the interest of the special needs child at heart. We had to represent ourselves because he has a grudge against the attorney we hired and I have read the nasty emails he sent with a blasé attitude of not even caring for a seven year old child's life. This man is despicable and has no business practicing law. I have spoke with other parents in my district and though they have suffered abuse by this law firm, they are afraid to come forward for fear of retaliation because they have had to fight so hard to get the services they have. My attorney was compassionate and unable to watch our family suffer, filed a grievance against Nichols. As soon as that was done, Nichols was out of the picture, our nightmare ended and our child received the help he so desperately needed. Even though I served as PTO President and gave so much to my community, it still amazes me that I was forced to suffer so horribly at the hands of the legal system—just to get help for my disabled child.

Since this happened I have been under a doctors' care for anxiety and stress, my son has as well, in addition to my daughter spending a week in the hospital with a very unknown disorder that can be triggered by stress in the family. He did nothing to help us and our family FINALLY got peace when he was out of the picture. We solved the issue ourselves today and it was deemed in and IEP that my son is now hopefully protected by the laws put in place for children like him. When a doctor sends over a letter dictating a 7 year old wants to kill himself it is no matter to not take seriously. He hurt our family in ways I cannot describe and as a volunteer in this community I have heard countless parents tell me they are afraid they would be ostracized by the school system and Feldman Rogers, like we were if they came forward and tried to get legal help. I pray I can help in the fight against the current system and people like this Nichols person who thought a child suicide watch letter from one of the best pediatricians in Houston was a insignificant matter. Our family will never know why my daughter laid in a hospital bed for a week but they do feel it could have been stress induced. I cannot tell you how much stress, trauma, and heartbreak this has caused us. We pray the stress that was not brought onto our family did not cause her condition which is still being diagnosed by several doctors and neurologists. Today my son was helped but I had to fight, get dirty looks, beg for the public schools to even take him in a safe environment which his doctor still is not happy that he was placed back into but I pray for the children who are at the mercy of this mans hands. You would think he would want to help the kids and spend less in legal fees in an effort to help our state allocate money where it belongs. A concerned and forever changed mother of the sweetest children I am blessed to have.

FURTHER AFFIANT SAYETH NOT."

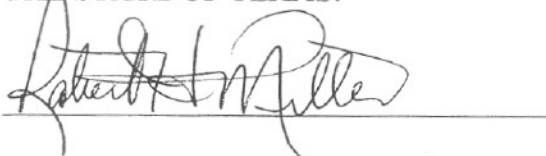


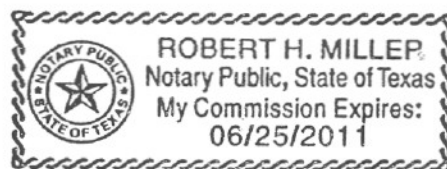
Christina Stevens

409-443-8959

NOTARY PUBLIC IN AND FOR

THE STATE OF TEXAS:





**From:** Schwager Law firm (schwagerlawfirm@yahoo.com)  
**To:** grsmith@ccisd.net;  
**Date:** Sun, June 13, 2010 6:34:25 PM  
**Cc:**  
**Subject:** Request for Appeal of your decision and to appear before the Board

Mr. Smith,

I have reviewed your decision, appeal to the Board, request to appear before the Board for hearing, and hereby ask for time, place, procedures to do so. Please also provide a copy of the audio-taped hearing:

4307 Long Grove Dr.  
Seabrook TX 77586

I will be the first to admit that when I testified, I was justifiably upset and nearly distraught. While it may have sounded a bit much to ask for you to "discipline everyone connected with Zachary's situation", mere due diligence would have undoubtedly showed you that this request was absolutely justifiable and should have been done.

I find your failure to seriously conduct the due diligence which you could easily have done by asking your lawyer for the 139 exhibits from the trial and the transcript--inexcusable and given your attorneys months of relentless harassment such that I can hardly work much less sit and copy exhibits for you that you already have. The tone of your letter is "angry" which is so peculiar given the fact that I've never done anything wrong. All I ever asked for from CCISD was to step in and stop allowing ZACHARY to be abused--at which time your insensitive GC steps in. I'm shocked that Mr. Ebell immediately recognized the complete insensitivity Haddock showed to parents of a disabled child being abused and her refusal to act despite the obvious violation of federal law--given his disabilities. By now, I'm sure you know that. Mr. Ebell apologized for her behavior, acknowledged that it was inexcusable and agreed to "deal with her". Knowing that CPS found you liable for negligent supervision resulting in escalating violence and bullying against a disabled child which your educators refused to address, I cannot believe you're still taking the position that this is remotely appropriate treatment of parents whose children are being abused.

On the argument that despite knowledge that your lawyers have been twice sued for racketeering and subjected even YOU to liability for their trainwreck of a conspiracy that didn't work out because didn't get it - dyscalculia means a kid isn't going to pass TAKS once they have a 3 year deficit regardless of all the secret services you give him behind a parent's back

The fact that Rogers is just too good of a friend of CCISD and has been there 32 years is an insufficient justification upon which to refuse to even conduct due diligence and allow

him to violate children's civil rights for YOU. I can't imagine a more frightening situation than finding out I'm being sued because of what my lawyer did. They're supposed to "watch your back" not subject you to egregious liability and public disgrace. Whether you wish to acknowledge his abusive acts and that of his firm or avert your eyes to the suffering of families like mine is your choice. Undoubtedly, to the extent that you would step in and stop this man's abusive conduct towards families, you would not be personally liable or violate any of the very high ethical standards a man in your position is undoubtedly aware. Your failure to act is "ratification" of his conduct, endorsement to move forward full steam ahead and continue subjecting you to liability. If you are upset that you're part of this, it's because you won't do anything to stop it--with months of knowledge that it's happening. If you had the decency to conduct the most remote level of due diligence, you'd find something so atrocious, it would shock your conscience--if you don't already know.

I hardly think a technical failure to give you exhibits that the district already has will excuse this ruling. I didn't ask you for pain and suffering - merely mentioned that you don't have authority to grant what we are really entitled to. I've given you months. I've emailed you begging for you to intervene for months--nothing. How many families must suffer for it to matter to you? Is it not sufficient what's been done to mine?

Though you're undoubtedly angry that you're in this, if you'd simply have the decency to do the right thing--which you are undoubtedly obligated by law and your very high Rules of Ethics imposed on Superintendents--you wouldn't be. If you are intent on protecting who I consider a criminal and keeping him as your lead counsel, when this all goes down in flames, you will have much to brag out, won't you?

Though it may seem extreme to request that you deal with a long list of employees who have set out to hurt our child, your failure to do so is the very basis of your liability in the lawsuit--and most likely why you refuse to do it. That is where your lawyer should explain what "accessory after the fact" and ratification means. Were you to simply do the right thing, this dispute would no longer concern you. But since January, you have placed your stamp of approval on Jeff Rogers knowing what he's doing and tears of a suffering family are hardly enough just to have the decency to assign another lawyer -- there's several you can choose from with this firm.

While you may have no authority to order Jerry Klekotta to comply with federal law, you certainly have authority to fire him for violating it and engaging in corruption. So many of your employees engaged in this corrupt plan to harm my child and knowing that, if you refuse to do anything about it, you're guilty too. As superintendent, you have jurisdiction to hire/fire and know when your own lawyer has engaged in acts which have subjected a 37,000 well recognized district to egregious allegations of corruption.

Though you take issue with "competency" that was not the point of the Level Three Grievance. Should you wish to retain incompetent employees, that's purely up to you.



That was not my purpose. That hearing had one purpose--to appeal to your humanity and ask you to stop this abusive behavior. Though I really do not care if they are incompetent, I do care if they engage in criminal behavior that hurts families and you refuse to make them stop. In reading the standards to which the Texas Board of Education holds Superintendents, I was impressed and baffled that anyone could rise that high to ever meet it. But unquestionably, you have not.

It is truly unfortunate that you intend to risk it all for a criminal. Families of disabled children know what I know and I think you know it too. It is a sad thing when your longstanding friendship has blinded your ability to see or hardened your heart to the suffering of the very students and families who dependent on you.

Turning a blind eye to the suffering of the children over whom you have been granted the extraordinary privilege of governing and hiring lawyers with reputations for hurting children (ignored and denied by you but known by just about every family in special education in HISD, Galveston, CCISD, PISD, etc). What I see is that you approve of their abuse because it's been effective up to now.

Extraordinarily, though you could so easily extrapolate yourself from liability by doing the right thing, you don't. You make absolutely no effort to even try. I now see that my pain and tears expressed to you in my Level 3 Grievance were worthless--other than to reveal that you don't care about the very children you are charged with overseeing. Oh--and exhausting more administrative remedies. I'll be sending your callous response to the Senate and House Committee's on Special Education, as well as the Board of Education so they can see how reputations are overrated.

In summary, I could care less if you wish to retain incompetent "so called" professionals. But yours are not--they are much more than that--frauds and some even borderline criminal. If you wish to retain liability for their acts, it's certainly your decision--albeit a poor one. Should you simply lifted one finger to stop this abuse and harassment through the many emails begging for you to do so, you would not be involved in this anymore. But I see you are unwilling, so please let me know when I may appeal to your board.

Candice Schwager

Candice Leonard Schwager  
The Schwager Law Firm  
(281) 508-8648  
schwagerlawfirm@yahoo.com

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT OR CONSULTING EXPERTS ARE SUBJECT TO THE ATTORNEY-CLIENT, WORK PRODUCT,



*Candice Leonard Schwager*

4307 Long Grove Dr.  
Seabrook, Texas 77586  
Tel: (281) 508-8648  
Fax: (832) 201-5309  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)

April 24, 2010

Via E-Mail  
Attention: CCISD Superintendent  
P.O. Box 799  
League City, Texas 77574

Subject: Request to Address School Board Meeting re grievance below  
Date: May 24, 2010 at 6:00 p.m.

*Re: Grievance regarding disability harassment, bullying, and illegal retaliation against my efforts to obtain assistance for my disabled child.*

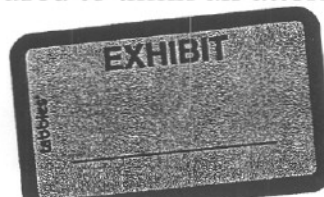
Dear Superintendent Smith:

Please accept this grievance on behalf of my child and family. In a letter dated 4.16.10, Jeff Rogers complains that my family's discrimination, bullying, and retaliation claims should be brought through CCISD's grievance process. Though I dispute the argument that I HAVE to file a grievance, I believe that as a professional, I SHOULD. Having already spoken to Zachary's teachers, Principal, Holly Hughes, Sheila Haddock, and Deputy Superintendent Ebell, my understanding is that our family is required to file this with you now. As I read your website today, I noted the following statements:

"Honor, integrity, and respect for others will be evident in everything we do."

"Leadership: The highest standards of leadership will be modeled in our actions and expected throughout the organization."

Lawyers have similar creeds and I used to think all attorneys observed them.



4. *A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others.* A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.

9. *Each lawyer's own conscience is the touchstone* against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. *The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.*

I read this and sigh as I think of the hundreds of parents with whom I have met that have disabled children and are being ignored, harassed, and treated like 2<sup>nd</sup> class citizens. This precisely the type of firm that has caused families to lose faith in the system. They all believe they've lost before they even begun. Despite the high duties of ethics we have as licensed professionals, one's own moral compass should be sufficient to guide one's life, represent your clients with zeal, and still show respect for the rights of third parties—particularly disabled children. I have practiced civil litigation for 13 years and now I know why they call it “civil”.

So, my grievance concerning retaliation stems from the reprehensible conduct of your lawyers—Feldman Rogers. You can thank your attorneys for bringing things to this point through many violations of the Professional Ethics rules and cruel, unbelievable behavior. Since I perceive you to be a very ethical leader in the community, I can only presume that you do not know what so many disabled kids' parents know.

In what I can only describe as the cruelest behavior I have ever witnesses in an attorney, Nichols recently misused “procedures” to inflict extreme emotional pain on a family and a seven year old child. Despite more than five notices that this child was suicidal, Nichols blew us off and twisted the knife. He was hardly moved when I told him that the child was rocking in his room, thrashing, thinking he was a bad child, did not understand why he was being denied access to school, did not sleep or eat, cried constantly, and said he no longer believed in God. The mother and father cried for a week and could no work. Zealous advocacy? That is beyond the bounds of legal ethics. Due to this child's extreme emotional distress, I gave the family my \$1000 retainer to take their child to a psychiatrist. They have consented to the release of this information—in case you are wondering. They are so devastated; they are moving and will never send their children to any school represented by Feldman Rogers. Can you

and now I see he isn't a professional. After speaking with so many families and learning what I know about Rogers, I am shocked that this is your counsel of choice. Zealous advocacy is one thing—what they are doing to families is another.

*If you truly have integrity, as I believe you do, I am asking you to remove Feldman Rogers from my case and assign another attorney from a different firm. This is a complete conflict of interest and I will expose it..* It is stressful enough to have a disabled child and then to have your school's lawyer at your juggler is just another level that is beyond anything I have ever seen.

and even a 7 year old little boy I represent. Since they are acting as your agents, you cannot sit back and allow them to violate federal law and purposefully hurt people with your funds. All I am asking for is a fair hearing with a civil lawyer. I know that I have probably been painted out to be the bad guy, but that's where you're misled. If they were out, this situation would instantly be diffused. I am fair and reasonable if treated the same way. But, I will not be bullied.

I am going to fight for my child as long as I perceive the process to be civil and fair. If Zachary is not entitled to relief, that's fine, but the process should be fair. Thank you for considering my grievance.

Sincerely,

/s/ Candice Schwager

Candice Schwager



*Candice Leonard Schwager*

*Candice Leonard Schwager  
4307 Long Grove Dr.  
Seabrook, Texas, 77586  
Tel: (281) 508-8648  
Fax: (713) 583-7127  
[candiceschwager@yahoo.com](mailto:candiceschwager@yahoo.com)*

June 15, 2010

**Via Facsimile & Certified Mail RRR**

Superintendent Greg Smith  
Clear Creek Independent School District,  
2425 E. Main Street  
League City, Texas 77573

Superintendent Smith:

Attached please find my request to appeal before the Board of Trustees concerning your denial of all relief in my Level Three Grievance. Please have your office notify me when I may appear before the Board. I would like a copy of the audiotape recording of the Hearing and request that it be sent to each Board Member so that they can see why I was there, what I was complaining of, and the relief requested.

Though I do not believe it is remotely possible for that much to have been lost in translation, I sincerely hope that they see why I was there—to beg for mercy and ask you to make Rogers stop harassing me. Of the many things you have the power to do, removing Jeff Rogers from my disabled son's case is the easiest, most humane, free relief at your disposal, but apparently you are pleased with his abusive conduct towards my family and wish for it to continue.

As a member of the Bar, President of an 800 member Texas Non-Profit Corporation for disabled children, and mother of a disabled child whose rights have been horribly violated through the fraudulent acts of a team of individuals led by Rogers, I asked you to consider retaining other lawyers for the benefit of other children who are suffering. It was an appeal to humanity that apparently is not there. I did not ask you to discipline Ms. Haddock for mocking me—I asked you to discipline her for refusing to intervene and stop my son's abuse based on my inability to sue you. When a child is suffering, the parent suffers horribly. It is inexcusable for a supposed professional to mock a parent who's just seeking help for their child's bullying and abuse. Now that I know Stephen was found liable for "negligent supervision" by CPS in connection with escalating violence against my disabled child, your callous disregard is inexcusable. Rather than "hear me," your June 8, 2010 letter "mocks me." It is unbelievable to me that I could appeal to you through a thirty minute hearing of tears and pain, and you mock my suffering by mischaracterizing everything I asked for with your ridiculous response.

When asked of the relief I sought, you know that I did not ask you for damages. I merely used the reference to show you that what I want—you have no ability to give. In truth, there is nothing that could compensate me for the suffering I've endured over the past five months. No amount of money could take away the pain or take away my son's "emotional disturbance" (your diagnosis) as a result of victimization and failure—leading him to think of killing himself. What amount of money would you take to allow someone to hurt your child until he or she wanted to die? There is no amount of money that I would place on my child's suffering, so regardless of what happens, I still come out losing. So, I wasn't asking for damages. I was making a point. You know that and your statement that paying me damages would be an "inappropriate use of public funds—a gift" is shocking and insulting. Trust me, even if you could do it, it would by no means be a gift. But you know that is hardly what was intended.

When I asked you to discipline the 20+ people involved in this fraudulent scheme, that is hardly a favor. If your employees are abusing families, violating federal law, committing fraud (criminal), and defrauding a Section 504 Hearing Officer (particularly given that I should never have had to go through that given that you already knew Zachary was qualified given your secret special education services behind my back since January), they should be fired. They are violating federal law and that doesn't matter? That is not good cause to even discipline them?

This morning, I confirmed what I already knew to be true about your Special Education Director, Jerry Klekotta, Visual Consultant Lois Fair, Lead Diagnostician Jennifer Martinez, Brenda Lutz, and Jeff Rogers. Though I represent only a few children, one of them was similarly defrauded by Lois Fair and denied services based upon her fraudulent report—for which another District is being sued—given their reliance on her report. The child's physician confirmed that the representations in Fair's report were fraud.

If you wish to be an "ostrich" and bury your head in the sand, I cannot change that. But if this man has worked for you for 32 years, clearly you know what I was able to glean in a few short months. Somehow, everyone but you knows. Since you refuse to grant the least level of human decency to my family by removing Rogers from my case, I appeal to the Board of Trustees. I have already endured a 6 hour hearing in which no relief could be granted due to your esteemed counsel's deception and harassment. Please let me know the next step.

Sincerely,

*/s/ Candice Schwager*

Candice Leonard Schwager

WRITTEN REPORT OF ELIGIBILITY FOR SPECIAL EDUCATION SERVICES  
DETERMINATION OF DISABILITY: VISUAL IMPAIRMENT  
Part A — Visual Examination

To be forwarded to: Lois Fair or Janis Brooks, Lead Teachers of the Visually Impaired  
Clear View Education Center 400 S Walnut, Webster TX 77598

Student Zachary Schwager School Robinson Elementary  
Birthdate 2-11-00 Age 10

VISUAL ACUITY:

If the acuity can be measured, complete this box using Snellen acuities or Snellen equivalents or NLP, LP, HM, CF.

Without Glasses		With Best Correction	
Near	Distance	Near	Distance

If the acuity cannot be measured, check the most appropriate estimation.

- Legally Blind
- Not Legally Blind

VISUAL FIELD TEST:

- There is no apparent visual field restriction.
- There is visual field restriction. Describe: \_\_\_\_\_

The visual field is restricted to 20 degrees or less:  Yes  No

If visual field cannot be tested, state best estimate: \_\_\_\_\_

TYPE OF IMPAIRMENT:

Diagnosis \_\_\_\_\_

Severity of Impairment \_\_\_\_\_

Etiology \_\_\_\_\_

Age of onset if acquired \_\_\_\_\_

Prognosis \_\_\_\_\_

Condition:  Stable  Recurrent  Progressive  Improving  Communicable

(continued on reverse)



3/4

BINOCULARITY:  Normal  Abnormal

Supressions \_\_\_\_\_

Muscle function:  Normal  Abnormal If abnormal, please describe:

\_\_\_\_\_

COLOR VISION:  Normal  Abnormal

PHOTOPHOBIA:  Yes  No

EYE MOVEMENTS:

Tracking ability \_\_\_\_\_

Fixation ability \_\_\_\_\_

RECOMMENDATIONS FOR TREATMENT:

Revisit \_\_\_\_\_ If so, how often? \_\_\_\_\_

Glasses: Rx \_\_\_\_\_ When worn? \_\_\_\_\_

Medication \_\_\_\_\_ Surgery \_\_\_\_\_

ARE THERE ANY RESTRICTIONS ON PHYSICAL ACTIVITIES? \_\_\_\_\_

If so, please explain \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<b>IMPORTANT</b>	<b>CHECK THE MOST APPROPRIATE STATEMENT:</b>
<input type="checkbox"/>	This patient appears to have no vision.
<input type="checkbox"/>	This patient has a serious visual loss after correction.
<input type="checkbox"/>	This patient does not have a serious visual loss after correction.

SIGNATURE \_\_\_\_\_ Date of Exam \_\_\_\_\_  
(Licensed Ophthalmologist or Optometrist)

TYPED NAME OF EYE SPECIALIST \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_

(4/4)



Mrs. Schwager,

Per our phone conference on April 15, 2010, we discussed your concerns about a kicking day that involved your son. After investigating this situation, I was able to share with you that the suggestion of kicking came from a chasing game. If you have any questions or concerns that I can be of further assistance, please do not hesitate to give  
Donna Hartness

Donna Hartness  
Assistant Principal  
Robinson Elementary  
281-284-6500  
dhartnes@ccisd.net

