

SENATE INTERIM HEARING ON EDUCATION
August 18, 2008

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

My name is [REDACTED] and I have a 10 year old child with autism named [REDACTED]

Last legislative session I was a part of a group of parents who supported a bill that would have provided students with autism education scholarships. If this plan had been implemented it would have given children with autism more educational options which would improve their chances of living happy, fully independent lives — and thereby decreasing their burden on the taxpayers.

This plan was rejected by supporters of the status quo — who seem content going down the old same road. Well we already know where that road leads—under-trained teachers forcing their outdated methods on parents who have no other options. Now today, Texas leads the nation with the most people with disabilities in institutional facilities (1). If we want different result we have to try a new path.

None of you were elected to keep things the same in Texas. None of you ran on a platform for the status quo. You were elected to make our state better.

So, are we going to keep going down the same path? The road which for some with autism leads to a \$139,000.00 per resident per year at the state school for a lifetime or turning off that road and trying something new.

1) National study competed by the University of Minnesota

[REDACTED]

August 11, 2008

The Honorable Florence Shapiro
P.O. Box 12068
Capitol Station
Austin, Texas 78711

Re: Public Education of Autistic Children in the State of Texas

Dear Senator Shapiro:

My daughter, soon to be [REDACTED] is severely autistic, and was diagnosed shortly after her second birthday. We applaud the time, energy, and attention that you have devoted to autism during the last several years. We believe that our own senator, Craig Estes, also understands many of the issues we face, and we are proud that he has co-sponsored bills with you in the past.

This summer, we actually took a vacation, which is a rare event for us in our circumstances. One of the things that we did was visit Central High School in Little Rock, Arkansas, tour the exhibit at the National Parks Service Building across the street, and buy a number of books about the integration of Central High School in 1957. A number of these books contain verified documentation of statements made by Little Rock School Superintendent Virgil T. Blossom that his approach toward integration would be "... to do as little as possible, as slowly as possible, and still comply with the United States Supreme Court's decision in *Brown v. Board of Education*."

Although I disagree with Superintendent Blossom's approach, I have to admire his honesty and frankness. It has been my family's experience that this is the same approach school districts now have toward the education of autistic children; however, they are too hypocritical to admit it. I believe that the existence of this attitude (to do as little as possible for autistic students and still be legal) is evidenced by the numerous seminars and workshops sponsored and attended by public educators at the expense of local taxpayers where attorneys specializing in education law are the keynote speakers. Wouldn't the money spent on these presentations be better spent on learning new and better educational interventions for autistic children? I apologize for the length of this letter, but please consider the following:

Walsh, Anderson, Brown, Schulze & Aldridge

Nona Matthews, an attorney practicing school law, testified before your committee on June 23, 2008, about the deplorable expense of due process proceedings and laid the blame on the hearing

The Honorable Florence Shapiro

August 11, 2008

Page 2

officer system that compensates hearing officers on the basis of the length of the hearing, giving the hearing officers incentive to prolong hearings. Couldn't the same be said of attorneys representing school districts? They are paid on an hourly basis, and school districts spare no expense in defending a due process proceeding. What if Nona Matthews, and other attorneys of her ilk, were paid a flat rate for due process proceedings? I submit that would be result in a tremendous savings of tax dollars and streamline due process proceedings.

Ms. Matthews also testified on June 23, 2008 that “. . . I'm concerned that requiring or providing specific services or benefits for children based solely on a particular disability is unfair. It's discriminatory against other children with equally challenging disabilities who deserve those same opportunities. There are limited funds available to educate all of our children with disabilities in the State of Texas. Providing services solely as the result of a specific disability rather than the individual needs of children limits the funds that are available to other equally needy and deserving children . . .”

I am amazed by this testimony. School districts are prohibited from discussing the cost of services that are necessary to provide a child eligible for special education with a free appropriate public education. It is up to the ARD Committee to determine what is appropriate without consideration of cost, and then the school district administration must fund the determination of the ARD Committee. Yet, all parents know, even though it is not discussed, that cost is driving the decisions of the ARD Committee. Ms. Matthews' testimony confirms this.

This testimony also makes me question just what Ms. Matthews has against autistic children. Attached hereto are excerpts from a presentation entitled “Autism: The Sky is Falling” that Ms. Matthews made to the Texas Council of Administrators on Special Education (T-CASE) in which she portrayed Henny Penny. I obtained this via an open records request made to the Weatherford Independent School District, and the handwritten notes attached to it were made by then Weatherford ISD Special Education Director Darlene Chapman. Note that, according to Ms. Matthew's presentation, the most important factor for a school district to address when faced with an autistic student is “money for good attorney.” If, instead, funds were spent on a good, scientifically-based program, wouldn't the involvement of an attorney become irrelevant?

Also attached is a copy of an invitation published by Ms. Matthews' law firm, Walsh, Anderson, Brown, Schulze & Aldridge, that was printed in a T-CASE publication, inviting public school educators to attend a reception to receive FAPE's – firewater, alcoholic potions & elixirs and IEP's – individual edible portions. I, along with other parents of disabled children, take their right to a free appropriate public education (FAPE) delivered pursuant to an individual education plan (IEP) very seriously. I am deeply offended by the cavalier manner in which this law firm has recast these terms. Its doing so underscores the contempt with which they deal with parents when representing school districts.

The Honorable Florence Shapiro

August 11, 2008

Page 3

Henslee, Schwartz, LLP

Attached are handout materials prepared by Henslee, Fowler, Hepworth & Schwartz, LLP, now known as Henslee, Schwartz, LLP, for a presentation made to the Texas Association of School Boards ("TASB"). Please note that they recommend that school districts script ARD meetings, that meetings rooms be kept cool, that straight back chairs without pads be used, and that school districts recognize an increased level of parent awareness. This clearly promotes ARD meetings being adversarial, which is contrary to the intent and purpose of the Individuals with Disabilities Education Act.

Cynthia S. Buechler

Attached is an excerpt of handout materials from a presentation made by Cynthia S. Buechler on November 1, 2007, to the Houston Metropolitan Educational Diagnosticians' Association. Please note the title – "Students on the Autism Spectrum: Creating Legally Defensible Programs." I submit to you that this is merely a more politically correct way of saying "how to do as little as possible for autistic students and still be legal."

Finally, attached is an e-mail from National Educators Law Institute, an organization that invites Ms. Buechler to speak frequently, to Kay Lambert of Advocacy, Inc., cancelling Ms. Lambert's reservation at a presentation by Ms. Buechler on autism because "... NELI conferences are for school district personnel only. The content is designed for educators, not attorneys or advocates, or parents. I'm sure you will understand that based on the curriculum in the brochure, our regular attendees would be a bit nervous to have a representative from Advocacy, Inc., in the audience."

Public school teachers, diagnosticians and administrators attended this presentation. Local tax dollars paid from their travel to the site of the presentation, local tax dollars paid for their hotel if they required overnight lodging, and local tax dollars paid for their tuition to this presentation. Yet, the content is a secret. What are they being taught that would make them a bit nervous if they knew someone who advocates for children was in attendance?

Solutions

The attitude of "how to do as little as possible for autistic students and still be legal" cannot be changed overnight. However, I submit that the following steps would begin to have a positive impact on beginning a change:

1. Transfer the hearing officer function for due process proceedings from the Texas Education Agency to the Office of Administrative Hearings. TEA is the only state

The Honorable Florence Shapiro

August 11, 2008

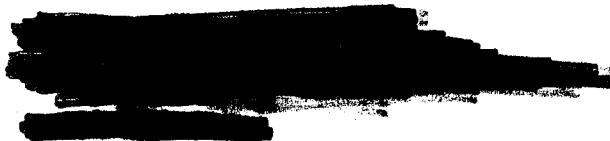
Page 4

agency that selects and pays its own hearing examiners, and this certainly creates an appearance of impropriety.

2. Adopt Ms. Matthews' suggestion that the compensation of hearings examiners not be based upon the length of a due process proceeding. However, make this concept equally applicable to attorneys representing school districts. Additionally, for every dollar that a school district expends on special education attorneys, require the school district to put a matching dollar into a fund accessible to parents to use in obtaining representation in due process proceedings.
3. Require that school districts not be allowed to spend funds attending any presentation that parents, private consultants, and advocates of children with disabilities are not allowed to attend.

Thank you very much for your consideration of this information and your continued efforts to improve the plight of all children with disabilities, and particularly those with autism.

Sincerely yours,

A large, solid black rectangular redaction covers the signature area, completely obscuring the name and any handwritten notes or dates that might have been present.

Enclosures

Autism:

The Sky Is Falling



By: Chicken Little
Nona Matthews, as Henny Penny
Pamela Carroll, as Goosey Lucy
Bobbye Records, as Ducky Lucky

100 Day 100 Training:	
5	
4	
3	
2	
1	

NOTES

- 10 - Just basic not easy
- 9
- 8 - Art of Lang
- 7 - List w/ not said
- 6 - Courage to elim. people who get in the way
- 5 - A Best Prac
- 4 - Int. of job
- 3 - Inv. parents to training
- 2 - Courage to write boldacious goals
- 1 - Money for good attorney

Non negotiable

Integrated Goals + Obj.
drafted by all team
members before ARD.

Attachment #7

Non negotiable - " No silent partners at the ARD table
must support each other in the ARD
Practice ARD language

Attachment #8

WALSH, ANDERSON,
BROWN, SCHULZE
& ALDRIDGE P.C.

ATTORNEYS AT LAW

Invites you to our
Annual TCASE Reception
at the
IRON CACTUS NORTH

10001 Stonelake Blvd.

*FAPE's & IEP's will be served

*"Firewater, Alcoholic Potions & Elixirs" (FAPEs)
& "Individual Edible Portions" (IEPs)

Walsh Anderson - 512-454-6864
Iron Cactus - 512-794-8778

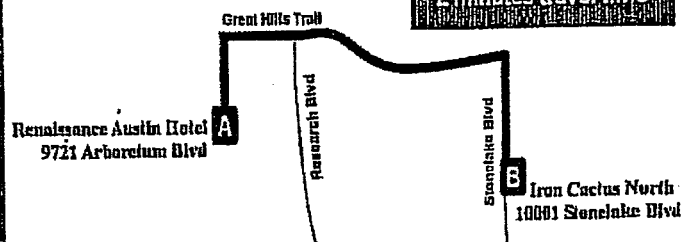
A Austin Renaissance Hotel

B Iron Cactus North

Directions:

- From 9721 Arboretum Blvd
- Turn R on Great Hills Trail
- Cross R Research Blvd. (US-183)
- Turn R on Stonelake Blvd
- Iron Cactus is on the L

Approximately 4.1 miles
2 minutes travel time



*HENSLEE, FOWLER,
HEPWORTH & SCHWARTZ, LLP
Attorneys At Law*

DONALD G. HENSLEE

ERIK NICHOLS

DIFFICULT ARDs

*A Presentation To Hou-Met,
November 2001*

*HENSLEE, FOWLER,
HEPWORTH & SCHWARTZ, LLP
Attorneys At Law*

FIND THESE NOTES AT

www.school-law.com

Go to "speaking engagements"

Who We Are

Henslee, Fowler, Hepworth & Schwartz

- **School Law Firm With Special Education Division**
- **Founded in 1938**
- **Thirty Attorneys in Six Cities**
- **Newly Expanded Houston Office**

Henslee, Fowler, Hepworth & Schwartz
DIFFICULT ARDs

- **Who's here?**
- **Tone of presentation**
- **Organization of presentation**
 - **How special ed legal system works**
 - **Difficult ARDs**
 - **How to avoid these difficulties**
 - **Questions during presentation and later by e-mail**

Special Education Experience
Don Henslee

- **Former TEA Director of Hearings**
- **Designed and Implemented Current System of Due Process Hearings**
- **Experience in Hundreds of Special Education Hearings, Appeals and Contested ARD's**
- **Editor and Publisher-How It Works...Special Education Assessment; Texas School Law News**
- **Publications Used by 16 Texas Universities to Teach School Law, Including Special Education Law**

Special Education Experience
Erik Nichols

- **Managing Partner Of Houston Office**
- **Experience in Special Education Hearings and Appeals**
- **Experience With Difficult Advocates, Attorneys and Advocates**
- **Conducts Special Ed In-Services and Trainings**

**HENSLEE, FOWLER,
HEPWORTH & SCHWARTZ, LLP**
Attorneys At Law

◦ **HOW IT ALL BEGAN**

- PARC v. Pennsylvania
- Congressional Response
- PL 94-142
- How It Was Meant To Work
- Texas Response
 - The hearing system
- The IDEA & Re-authorizations

**HENSLEE, FOWLER,
HEPWORTH & SCHWARTZ, LLP**
Attorneys At Law

◦ **HOW IT WORKS**

- Referral
- Assessment & Evaluation, CIAs & IEEs
 - Parental Permission
- The ARD
 - Determining competencies & handicap
 - The IEP
 - Placement

**HENSLEE, FOWLER,
HEPWORTH & SCHWARTZ, LLP**
Attorneys At Law

◦ **TYPES OF CASES**

- Residential Placement
 - Medical v. Educational
- The IEP
- Assessments & IEEs
- Autism
- The ED Issue and Discipline
 - How Special Ed Discipline Works

The Players

- **The Chairperson**
- **Parent Only**
- **Parent and Advocate**
 - **Get Details of Advocate's Role**
 - **Practicing Law Without A License**
 - **Don't Accept Their Signature for the Parents**
- **Advocate Only**
 - **Don't Do It!**
- **Parent and Attorney**
 - **Make Sure They're Really Attorneys**

Preparation

- **Send Materials to School Attorneys**
 - **Assessments and Previous ARD's**
- **Conference with Attorney On-Site**
 - **Allow Plenty of Time**
- **Be Very Candid About Difficulties**
 - **Assessment and Previous Interaction**
- **Script the Proceedings**
 - **No "Let's Get Into This and See How It Develops"**
- **Record parent conversations prior to and after this type of ARD**

Setting The Stage

- **Check and Double Check Recording Devices**
 - **Multiple Microphones Are Best**
 - **Always Have A Back-up**
- **Cool Rooms Are Best**
 - **Tempers and Time Spent There**
- **Plenty of Table Space**
- **Straight Back Chairs Without Pads**
- **Arrange Room So That Papers Are Private**
- **Prepare Table in Advance for Wheelchairs**
- **Location of Handicapped Restrooms**

Demeanor of Participants

- ~~Announce A Time Limit~~
- Allow Everyone To Talk, But Move Proceedings Along.
- Stay Focused.
- Avoid Rabbit Trails.
- **DO NOT** Let Advocates or Attorneys Run the Proceedings
 - Recess At A Blow-Up
 - May Have to Conduct ARD In Front of Hearing Officer or Court

Demeanor of Participants

- Demand Courtesy and Respect for Others.
- State So At The Beginning If You Have Previously Experienced Difficulties
- Run the ARD Just As Any Other, Except For The Script & More Formal Demeanor
- This Is Not The Time For Gratuitous Apologies or Self Deprecating Humor. It Will Come Back To Haunt You
- Be Firm, Be Fair
- Never, Under Any Circumstances, Become Angry
- Do Not Match Volume With Volume

Carve These Rules In Stone

- Recognize Increased Level of Parent Awareness
 - Internet
 - Advocacy Groups
- Anticipate Parental Perception of How You Feel About Their Child (Careful of What They Might Overhear, Idle Chitchat, etc.)
- Assume Everything is Being Recorded
- Watch Your Body Language (How You Sit, Doodling, Looking at Watch, Reading Other Materials, Rolling of Eyes, etc.)
- Don't Appear To Let Program Availability, Trustees or Money Drive Decisions

Carve These Rules In Stone

- **Spend Much Time With Competencies**
 - Remember, It Is the Concept of Reasonable Progress That Wins Hearings
 - Go Over Those Goals and Objectives, Both Past and Proposed, and Make Sure They Are Clear and Quantifiable
 - Make Sure Teachers Have Filled In IEP Progress
 - Remember, Lay Persons Will Be Reviewing Them
- **Consider Bringing Your Outside Expert To the ARD**
 - Some Parents See Them As Conciliatory
- **TREAT EVERY DIFFICULT ARD AS IF IT'S GOING TO A HEARING**

Eight Things You Can Do To Help Prevent Difficult ARD's

- Co-opt the Difficult Parents
- In-Service for the Regular Education Staff
- Specific In-Service for Principals
- Review of Likely Litigation Files, With Attorneys
- Spot Check of Other Files-Send Administrators To Advocacy Conferences
- Early and Frequent Communications With Attorneys
- Keep Checking Out Those Web Sites
 - Both By Subject Matter and By Events

Ten Most Common Mistakes In Difficult ARD's

- **Trying To Handle Things Without Legal Counsel**
- **Failure To Bring Your Expert to the ARD**
- **Allowing Positions to Become Brittle**
- **Communication Breakdown**
- **Not Being Firm With Advocates and Attorneys**
- **Inadequate Preparation-Knowing the Facts**
- **Inadequate Preparation-Knowing the Issues**
- **Poor Participant Preparation**
- **Allowing Parents to Get Out of Hand With Behaviors**
- **Lack of Focus-Knowing the Issues and Staying With Them**

Our Philosophy

- **CHOOSE YOUR ATTITUDE**
- Preventive Law is the Key to Success
 - Early Communication
 - Ensures Likelihood of Prevailing
 - Decreases Cost
 - In-Service for Teachers and Administrators
 - Board Member Training
- Avoid Litigation if Possible
 - At the Courthouse, Only the Lawyers Win
- When Litigation is Necessary or Desirable, Go Only if You Plan to Prevail

*Henslee, Fowler, Hepworth &
Schwartz, LLP*

Donald G. Henslee

Erik Nichols

www.school-law.com

Go to “speaking engagements”

"STUDENTS ON THE AUTISM SPECTRUM":

CREATING LEGALLY DEFENSIBLE PROGRAMS

Presented by:
Cynthia S. Buechler
Attorney at Law
Buechler & Associates, P.C.

Presented by: *Henrietta Metropolitan Educational Superintendents*
Meeting Nov 1 2017

GENERAL OBSERVATIONS REGARDING AUTISM AND ASD CASES

- Issues tend to become very emotional
- Causes and treatments continue to evolve
- Strong and well-organized legislative efforts
- Severe forms of the disorder are manifested academically and behaviorally
- Advocacy of specific methodologies is passionate
- Schools must devote substantial resources
- Reimbursement cases are common

August 12, 2008

TO:

Senator Florence Shapiro, Chair, Education Committee
Senator Kip Averitt
Senator Steve Ogden
Senator Dan Patrick
Senator Leticia Van de Putte
Senator Royce West
Senator Tommy Williams
Senator Judith Zaffirini

Senate Education Committee,

I thank our Senators for this Public Hearing on August 18, 2008 on transitional services for Special Need adults and for evaluation and consideration of programs that can help our children/adults become contributors in our communities. I am a father to a [REDACTED] Asperger son in the Autism Spectrum Disorder (ASD) and am committed to helping ASD families in Texas.

One thing I believe that must stop in Texas is the injustice that is occurring each school year by the Texas Educational Agency through their willingness and complicity to pay attorneys to deny Special Need educational services and programs to desperate families in Texas.

The families who are being greatly affected by the present litigation and Due Process system in Texas are those with loved ones in the Autism spectrum (ASD), Down Syndrome, Cerebral Palsy, MR, and other physical and neurological differences. It truly saddens me that I must write a letter like this, but I must.

During the last few months, I have been shocked at the information and documentation I gathered on our public schools on legal expenditures in denying FAPE to Special Education families.

Generally, in my opinion, law firms who go from ISD to ISD and offer their legal expertise to deny benefits and options for Special Need families are NOT providing any meaningful opportunities and hope for

Special Need families. They provide no ABA therapy ... programs ... curriculum ... occupational or speech therapy ... interaction ... social skill support to our children. Their existence is mainly to confine, reduce and even eliminate options for families who seek help in the present Special Education system in the TEA.

In recent efforts and through the incredible determination, knowledge, professionalism and compassion of other Special Need families in Texas, I have learned the following:

1. Almost all ISDs have a law firm on retainer to deny FAPE to Special Need families in Texas. These firms receive a thousand dollars immediately if they can enter into an agreement with an ISD. The sole purpose of these law firms is to deny Special Need families options and services that could help a Special Need child. There are over a 1000 ISDs in Texas. If you do the math, there is immediately 1 million taxpayer dollars expended by the TEA to deny Special Need family options and help.
2. It gets worse quickly. There are many ISDs that will spend anywhere from \$35000 to a hundred thousand dollars (even more) to win a legal battle against a pro se parent(s) who wishes to help their son be an adult and contributor to our society and community. All this money is not contributed to the needy family, but instead goes into attorney's pockets. Honestly, how does this help a Special Need young man, woman and family move ahead? If anything, this litigation only buries a Texas Special Need family.
3. To prove a point ... I will share what I learned from one ISD in Texas. This ISD serves around 5300 Special Need families in their area, and yet they spent during a two year period over

\$821,387.31

to deny FAPE. More importantly though is to look at the impact to each family (probably over 20 families). The damage to each family the ISD legally fought is unspeakable and unjustified. Each one of these families suffered financially,

endured emotional pain and lost time and energy to find solutions for their child. Further, these families suffered terribly because they had to share their personal struggles and expose the uncertainties of their future. It is hard for me to even accept the indignity of this contrived and foul system. Is it right to blame the parents for fighting for their child? I don't think so, when their goal was to find options, programs and services that would help their child become an adult that would contribute to the community they live in. Should an ISD spend hundreds of thousands of dollars to beat down these families?

4. I have gathered documentation for months on ISDs throughout the State on legal expenditures and it became clear that every ISD had a law firm on retainer. Many of the large ISDs have in-house Chief Counsel and yet they still hire outside law firms to do the dirty work of denying FAPE and services. Some of these large ISDs spend over a hundred thousand dollars in a school year defeating families. Even the smaller ISDs can quickly roll up legal expenditures in the \$20 to \$60K if they decide to shut the door on a desperate family.
5. One could argue that these law firms are providing a necessary balance, but I find that argument to be without merit when you consider the huge amount of money that is being spent on legal expenditures. When Texas ISDs are spending money time and time and year after year to deny Special Need families services and options then something is broken in the system or requiring change.

Furthermore, the attitude of some of these law firms is oppositional and insulting to disability families.

The next two pages include conference handouts/brochures in regards to Special Education. These documents clearly display arrogance and a callous disregard for families dealing with disability issues.

Autism:

The Sky Is Falling!



By: Chicken Little
Nona Matthews, as Henny Penny
Pamela Carroll, as Goosey Lucy
Bobbye Records, as Ducky Lucky

Families that have a loved one with Autism Spectrum Disorder are offended at the implicit message our families are "exaggerating" and frivolously calling for help.

WALSH, ANDERSON,
BROWN, SCHULZE
& ALDRIDGE P.C.

ATTORNEYS AT LAW

Invites you to our
Annual TCASE Reception
at the
IRON CACTUS NORTH

10001 Stonelake Blvd.

*FAPE's & IEP's will be served

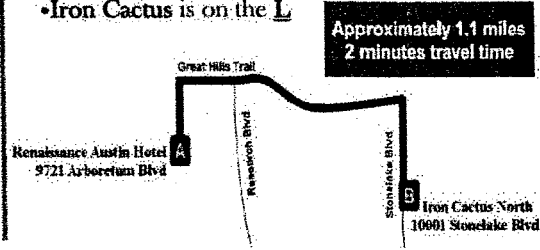
*"Firewater, Alcoholic Potions & Elixirs" (FAPEs)
& "Individual Edible Portions" (IEPs)

Walsh Anderson - 512-454-6864
Iron Cactus - 512-794-8778

- Austin Renaissance Hotel
- Iron Cactus North

Directions:

- From 9721 Arboretum Blvd
- Turn **R** on Great Hills Trail
- Cross Research Blvd. (US-183)
- Turn **R** on Stonelake Blvd
- Iron Cactus is on the **L**



Special Need families don't appreciate how FAPE and IEPs should be thrown back in our faces as a joke for drinking alcohol and eating hors d'oeuvres at a swank Austin hotel and conference on Special Education

Something must be done to correct the injustice that is occurring to Special Need families in Texas **NOW**. I think this Senate Hearing needs to hear how cruel the present system is.

I thank the Senators for reading my letter. I know it is hard to believe that our society would actually deny Special Need families options and services. I am convinced though a State investigation conducted into this matter and presented as a public document to Texas citizens will prove the burden and injustice that is being suffered day after day in our public schools against Special Need families in Texas.

As a minimum, I ask that the Senate conduct an investigation into Special Education legal expenditures against Texas families in public schools. It is really my hope that this system would be abolished in our State. It is a terrible injustice to burden Special Need families

with legal opposition when it is clear they are ONLY trying to help their son and daughter who has a disability. I request a change to the present system and to provide alternatives and opportunities for a Special Need child and family in reaching for a "star" when services are limited in an ISD. Our children and young adults CAN contribute to a community and they have so, so much potential and strength.

Sincerely

[REDACTED]