

DOCKET NO. 173-SE-0220

**STUDENT, B/N/F PARENT and
PARENT,
Petitioner**

v.

**NORTH EAST INDEPENDENT
SCHOOL DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by next friends Parent and Parent (collectively, Petitioner),

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following items of relief:

1. Compensatory education services;
2. Reimbursement for private education services provided by Student's parents;
3. Prospective private placement for Student; and
4. Training for District staff who work with Student.

VI. FINDINGS OF FACT

1. Student is a *** year-old child who attended *** in the District during the 2017-18 and 2018-19 school years. Student is eligible for special education services under the categories of Emotional Disturbance (ED), Other Health Impairment (OHI) due to Attention Deficit Hyperactivity Disorder, and Autism.¹
2. Student withdrew from the District on or about February ***, 2019, and has been homeschooled since that time.²
3. Student is able to stay on task and complete Student's work during structured time at school. Student is, however, often inattentive and disruptive during unstructured time. Student has difficulty with social interactions with peers, at times resulting in ***. Student struggles with emotional regulation, ***, resulting in ***, ***.³
4. Student has deficits in articulation and pragmatic language which have an adverse impact on Student's ability to effectively communicate. The District provided Student with ***-minute speech therapy sessions each *** week grading period through December 2018.⁴
5. Student's IEP included a goal to address *** and a goal to address situations that cause Student to become frustrated. Student received *** minutes per day in the *** classroom, g

VII. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free, appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). The District has a duty to provide FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001. Here, Petitioner alleges the District violated its duty to provide Student a FAPE by failing to implement Student's IEP and BIP.

The District is responsible for providing Student with specially designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.²⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District failed to provide Student a FAPE *and* offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*

²⁰ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir. 2009).

C. FAPE

The basic inquiry in this case is whether the IEP implemented by the District “was reasonably calculated to enable [Student] to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017). A school district must both adequately design a student’s IEP and adequately implement the IEP. *Rene J., as next friend of C.J. v. Houston Indep. Sch. Dist.*, 913 F.3d 523, 528 (5th Cir. 2019). In this case, Petitioner does not challenge the design of Student’s IEP. Instead, Petitioner challenges the District’s implementation of the IEP. In particular, Petitioner raised concerns about the implementation of Student’s IEP and BIP on February ***, 2019.

When determining whether a school district failed to adequately implement a student’s IEP, a Hearing Officer must determine whether a FAPE was denied by considering whether there was a significant or substantial failure to implement the IEP and whether there have been demonstrable academic and nonacademic benefits from the IEP. *Spring Branch Indep. Sch. Dist. v.*

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Petitioner did not show the District denied Student a FAPE by failing to adequately implement Student's IEP and BIP. *O.W. by Hannah W.*, 961 F.3d at 796.

VIII. CONCLUSIONS OF Unc -10.291i1i1i7P

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