

TEA DOCKET NO. 067-SE-1109

STUDENT bnf PARENTS
Petitioner

v.

PLANO
INDEPENDENT

§
§
§
§
§
§
§

BEFORE A SPECIAL
EDUCATION

HEARING OFFICER FOR THE

FINDINGS OF FACT

1. Student currently (2009-2010 school year) attends *** grade at *** and lives with parents and sibling within the geographical boundaries of PISD. During the 2008-2009 school year, Student was enrolled as a *** grader at *** within PISD.
2. PISD is a political subdivision of the State of Texas and a duly incorporated independent school district.
3. Student is eligible for special education and related services from PISD as a student with a disability under the IDEA. Student is eligible for services under the disability categories of
4. ed for small group instruction in a special education setting for ***; with *** instruction in the general education setting. Student received modified instruction on the *** TEKS. In all other areas, Student was instructed on unmodified grade level TEKS. (Transcript, pages 155, 157; hereinafter cited at T. 155, 157; R2:16)
5. ***.
(R1, R2).¹
6. eceive the other accommodations, such as administration of tests in small groups and reading math questions aloud. (R1:10, R2: 10).
7. remi notebook and for checking it. (T. 189-190). On occasion, Student would resist writing down the assignment. (C5:4).
8. -8, 11, 14-17, 19-24, 29, 31-32).
9. The ac ssignments from (T. 32-35, 73-75).

1

10. Throughout the fall of Student

24. *** student began *** grade, as measured by the Independent Reading Inventory (IRI), which placed Student at a *** grade level for independent conclusion of the first semester of *** grade, Student had closed the gap in reading and was measuring at a *** grade reading level. (T. 216, 233-234, 237-238).
25. *** cores in Math showed continual improvement, with a gain of 12 points over *** level proficiency. (R6:11; T. 175). Student took and passed the grade level TAKS in Math in *** grade. (R10: 1-2).
26. *** over the course of *** grade. In Science Concepts, Student gained 15 points during *** grade year. (R10:16; T. 181-182). Student placed him within the *** range of general education *** grade students. (T. 211). Student failed to pass the grade level TAKS test in science, missing a passing score by one question. (T. 180).
27. *** loss during *** grade year; but rather stayed the same with a RIT score of ***. Student scored in the proficiency range for general education *** grade students in the area of Language Usage. (R10:16; T. 182).
28. *** *** grade year and the first semester of *** grade (R10:16; T. 182).
29. *** student continually made satisfactory progress on all goals and objectives and obtained mastery of many of them. (R10:25-30).
30. Student made meaningful academic progress in *** grade at PISD.

DISCUSSION

The sole issue presented by Student is whether PISD failed to implement those portions of the IEP for the *** grade year.

As the party challenging the implementation of the IEP, Student has the burden of proof in this matter. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Van Duyn v. Baker School District 5J*, 481 F.3d 770 (9th Cir. 2007).

I. Legal Standard Governing Claims of Failure to Implement An IEP

The Fifth Circuit has clearly set forth the legal standard governing a claim of failure to implement an IEP must show more than a *de minimis* failure to implement all elements of that IEP. This approach affords local agencies some flexibility, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful education. *Houston ISD v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000), *writ*

denied, 531 U.S. 817 (2000). To determine what constitutes a substantial or significant provision of the IEP, the Court explained that one important factor to consider is whether the IEP services provided actually conferred an educational benefit on the student. *Id.* See also, *Van Duyn, supra*.

The legal standard for determining whether a student received educational benefit under an IEP is also clear: did the student obtain more than trivial progress under the IEP? Progress is measured by looking at various indicia of a student's progress rather than with respect to other peers. *Id.*

Thus, in order to prevail on [redacted] claim that PISD failed to implement [redacted] IEP with regard to [redacted] agenda for homework assignments, Student must show that any failure by PISD amounted to a substantial or significant failure to provide services under [redacted] IEP. Evidence of [redacted] *** and *** grade years is probative of whether any shortfall in services by PISD rises to the level of a denial of a free appropriate public education.

II. Application of Legal Standard To The Facts of This Case

Student argues that the PISD failed to implement those portions of [redacted] IEP pertaining to [redacted] homework assignment notebook: an accommodation that [redacted] general and special education teachers check [redacted] agenda for homework assignments and an objective in the area of Social Skills that student write the assignments in [redacted] notebook independently.² Specifically, Student argues that [redacted] teachers failed to implement these portions of [redacted] IEP between approximately February 1, 2009 and April 17, 2009.

A) Did Respondent Actually Fail to Implement Portions of Student's IEP?

The first issue is whether PISD actually failed to implement the portions of the IEP as Petitioner alleges. Petitioner did not prove that PISD failed to implement these portions of IEP. With regard to the accommodation of checking teacher testified to a regularly followed procedure for prompting Student to write in agenda and for checking to see if student had actually written in the agenda. The record also includes email

indicates that the teacher checke

Parents in case Student failed to write them in notebook. (*See for example*, R9: 20, 22). Student presented no evidence to counter ank agenda

agenda; they could also reflect that Student had no homework or that student failed to record

educational benefit under

ORDER

After due consideration of the record, and the foregoing findings of fact and conclusions of law, this Hearing Officer hereby **ORDERS** that all relief sought by Petitioner is **DENIED**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately.

SIGNED and **ENTERED** this 4th day of March 2010.

/s/ Lynn E. Rubinett

Lynn E. Rubinett

Special Education Hearing Officer for the State of Texas

TEA DOCKET NO. 067-SE-1109

STUDENT bnf PARENTS	§	BEFORE A SPECIAL
Petitioner	§	EDUCATION
	§	
v.	§	
	§	HEARING OFFICER FOR THE
PLANO	§	
INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether PISD failed to implement that portion of S

Held: For Respondent. Student failed to show that PISD did not provide the accommodation of checking assignment notebook. Further, Student failed to show that PISD did not make efforts to support Student in making progress on related objective of independently writing assignments in assignment notebook. Even if Respondent did fail to provide the accommodations, Student has failed to show a material failure to implement IEP in light of

Cite: *Houston ISD v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000), *writ denied*, 531 U.S. 817 (2000); 34 C.F.R. § 300.323; 19 T.A.C. § 89.1050; § 89.1075.