

DOCKET NO. 037-SE-0903

Student, BNF Parent, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
VS.	§	HEARING OFFICER FOR
	§	
LEANDER INDEPENDENT SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

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**DECISION OF THE HEARING OFFICER**

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STUDENT, BNF PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
VS.	§	HEARING OFFICER FOR
	§	
LEANDER INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, Student, by his next friend Parent, brought this action against Leander Independent School District (hereafter Leander ISD) pursuant to the Individuals with Disabilities Education Act (hereafter IDEA), as amended by the IDEA Amendments of 1997, 20 U.S.C. §1400 *et seq.* claiming that Student’s IEP for the 2003-2004 school year does not contain annual measurable goals and short term objectives for the course of “Social Skills Strategies” and that he has not been provided with a certified teacher for his Foundations of Personal Fitness (P.E.) and Art Level 1 classes.

The hearing in this matter was held on December 16, 2003. Petitioner was represented by his legal counsel, Mr. Mark Berry. Leander ISD was represented by its legal counsel, Ms. Denise Hays and Ms. Susan Graham with the law firm of Walsh, Anderson, Brown, Schulze & Aldridge, P. C.

Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:

Findings of Fact

1. Student is a \*\*\*-year-old, \*\*\* grade student, who resides with his mother within the jurisdictional boundaries of Leander ISD.
2. Leander ISD is a political subdivision of the State of Texas and a duly incorporated independent school district located in Williamson County, Texas.
3. Student qualifies for and receives special education and related services from Leander ISD as a student with an emotional disturbance and other health impairment (Attention Deficit Hyperactivity Disorder).
4. Student’s educational difficulties are in the areas of social skills and behavior. Academically, Student is capable of performing grade level work in all subject areas.
5. Student’s IEP for the 2003-2004 was developed at the May 8, 2003 ARD Committee meeting. This IEP provided for Student to receive regular education services with modifications in the subject areas of English, Algebra, Future Careers and Health and one unspecified elective. It also provided for Student to receive special education services in the subject areas of World Geography, P.E., and two unspecified electives. The special

- education services were to be provided in the Behavior, Education and Skills Training (BEST) classroom.
6. The duration of Student's IEP developed at the May 8, 2003 ARD Committee meeting was from May 20, 2003 to May 20, 2004.
  7. One of the unspecified special education electives assigned to Student was "Social Skills Strategies." This elective is assigned to all students in the BEST classroom and is incorporated into and made a part of the BEST classroom program by Leander ISD. It is not a state recognized elective but is a local district elective for which Student receives \*\*\* school credit.
  8. There was no IEP developed by Leander ISD for the Social Skills Strategies course by the May 8, 2003 ARD Committee.
  9. The Behavior IEP developed by Leander ISD contains the goals and objectives which Leander ISD considered to be part of the Social Skills Strategies course.
  10. The Behavior IEP developed by Leander ISD does not comport to nor does it provide notice to Student or his parent that the goals and short-term objectives identified therein were to be implemented as part of his Social Skills Strategies course.
  11. The curriculum developed by the Florida Department of Education to teach social skills was obtained by Student's teacher during the summer of 2003. It was subsequently approved for use in the BEST classroom by the campus administrator for the 2003-2004 school year. This curriculum was not available at nor reviewed or discussed by the May 8, 2003 ARD Committee and Student's Behavior IEP goals and short-term objectives were not specifically derived from that curriculum.
  12. Student's behavior IEP contains two goals. The goals are, "Student will exhibit improved interpersonal/social skills in a school setting as demonstrated by measurable progress on following short-term objectives" and "Student will exhibit increased responsible behavior in a school setting as demonstrated by measurable progress on the following short-term objectives."
  13. Student's behavior IEP contains three short-term objectives. The short-term objectives are, "Student will be able to identify and demonstrate three anger management strategies when agitated (e.g. ask for a break, stop and count, ask for a self time-out, verbalize frustration);" "Student will comply with teacher directions following one verbal reminder or warning;" and "Student will improve his peer relationships by interacting cooperatively with peers 9 out of 10 opportunities (e.g. giving and receiving feedback appropriately, listening, taking turns, staying focused, offering ideas, refraining from negative comments, etc.)."
  14. The two goals contained in Student's behavior IEP are measurable.
  15. While at \*\*\* school, Student received his Foundations of Personal Fitness instruction (P.E.) and Art I instruction from his special education teacher in the BEST classroom. According to his IEP, Student was to meet the \*\*\* grade level Texas Essential Knowledge and Skills (TEKS) in these subject areas.

16. Student's special education teacher is not specially certified by the State Board of Educators Certification to teach Physical Education or Art. Instead, she has a generic special education certification that allows her to teach Pre-K through 12<sup>th</sup> grade.
17. Student's special education teacher has a Bachelor's degree in Business Administration and received her generic certification to teach special education through the Alternative Certification Program in May, 2003. She does not have any type of degree in Art or Physical Education or Kinesiology.
18. Student's special education teacher, although minimally qualified, had the necessary skills and knowledge to instruct Student in physical education. She took a P.E. course in college, taught P.E. to students as a substitute teacher and as an instructional assistant to another special education teacher. She also assisted and worked with the general education P.E. coach when she escorted the students to P.E. She also has experience in sports outside of the school setting, having coached basketball, soccer and T-ball.
19. Student's special education teacher has no formal Art degree or training. She did work as an instructional assistant with Student's previous teacher who is a professional artist and helped initiate the Art projects for the students. Additionally, in her alternative certification process, she attended several workshops associated with teaching Art in the classroom.
20. Although Student's special education teacher had some rudimentary Art training, it was not shown that she had specialized training or skills to provide the Art I general curriculum to special education students.
21. During the three weeks that Student was in school, his special education teacher collaborated with the regular education Art teacher in developing Art projects for Student. Such collaboration is some evidence of the special education teacher attempting to acquire the necessary skills and knowledge in Art and based on the fact that Student's only in this class for three weeks of school, I find that it is sufficient evidence that Leander ISD undertook to provide Student's special education teacher with the necessary skills and knowledge to teach the Art I curriculum.
22. During the 2003-2004 school year, Student attended \*\*\* school only during the first three weeks of school. He was placed into a homebound placement on September 17, 2003, where he remained through the date of the hearing.

### Discussion

Two issues were presented for adjudication in this matter. The first involved whether Student had measurable annual goals and short-term objectives for the elective class entitled "Social Skills Strategies."<sup>1</sup>

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<sup>1</sup> Student's IEP does not indicate that Student would receive a Social Skills Strategies class as an elective. It does indicate that two electives will be provided through special education and one elective will be provided through regular education. Although the ARD Committee determined that Student would receive Art and Social Skills Strategies as his electives through special education, they did not document this in the ARD Committee Report.

The IDEA and its implementing regulations require that an IEP for each child with a disability include a statement of measurable annual goals, including benchmarks or short-term objectives related to meeting (i) the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum; and (ii) meeting the child's other educational needs that result from the child's disability. See 34 C.F.R. §300.347(a)(2). Petitioner established that Leander ISD placed Student into an elective course entitled "Social Skills Strategies" and that this course, including its curriculum, was to be implemented in the BEST classroom. Petitioner further established that there were no IEP goals and objectives developed for the Social Skills Strategies class notwithstanding Respondent's assertion that such goals and objectives were contained in Student's behavior IEP. Social Skills Strategies was described as a specific subject for which Student was to receive \*\*\* school credit. The behavior IEP as developed at the May 8, 2003 ARD Committee meeting was not identified as an IEP for this class. Instead, it was identified as a related service IEP for counseling and psychological services. Moreover, although Respondent contended that this IEP was designed for implementation as part of the BEST program and that the Social Skills Strategies course was incorporated into that program, the evidence established otherwise. The curriculum for the Social Skills Strategies class utilized by Student's teacher for the 2003-2004 school year was not obtained by his teacher until the summer of 2003. Consequently, it was not available for consideration or use by the May 8, 2003 ARD Committee when it developed Student's IEP for the 2003-2004 school year.

However, in reviewing and applying applicable law, I find that there is no legal requirement that an IEP be developed for each specific course taken by Student in \*\*\* school, whether it be a regular education course or a special education course. Instead, to comply with the IDEA, Student's IEP need only include a statement of measurable annual goals, including benchmarks or short-term objectives that relate to meeting his social skills and behavioral needs resulting from his emotional disturbance and his attention and hyperactivity disabilities to enable him to be involved in and progress in the general education curriculum. That is, his IEP statement of measurable goals and short-term objectives need not be course specific but must address his specific educational needs resulting from his disabilities with the target or expectation of enabling him to be involved in and progress in the general curriculum. Although in many instances, developing of such goals and objectives for each course may be the best practice and the most appropriate approach for providing and implementing an appropriate IEP, it is not mandated by the IDEA. See 34 C.F.R. §300.347(a)(2).

I find that Student's Behavior IEP developed by the May 8, 2003 ARD Committee contained a statement of measurable annual goals relating to meeting Student's needs in the areas of social skills and behavior. There is one goal for social skills which requires "improved interpersonal/social skills in the school setting" and one goal for behavior which requires "increased responsible behavior in the school setting." Generally, goals that simply require a student to "improve" or "increase" in a particular area are too vague to be measurable. See, *Jasmine B. v. Socorro Independent School District*, SEA Tex. No. 235-SE-0401 (2001). However, in the instant action, each goal was to be measured based on "measurable progress on the short-term objectives." I find that each of the short-term objectives is measurable in that the teaching staff can gauge from the parameters described in each objective whether the objective has been accomplish or whether progress is being made toward meeting the objective. Accordingly, I find that Student's goals of improvement in social skills and increased responsible behavior are measurable since they will be measured through progress on the short-term objectives. Accordingly, I find that Petitioner failed to affirmative established that Student's IEP for the 2003-2004 school year did not contain a statement of measurable annual goals, including benchmarks or short-term objectives for meeting Student's social skills and behavior needs.

The second issue is whether Student's special education teacher had the State mandated credentials to teach Student the Art I and Physical Education general curriculum in the BEST classroom.

Under the IDEA, each state must have a comprehensive system of personnel development to "ensure that all personnel who work with children with disabilities . . . have the skill and knowledge necessary to meet the need of children with disabilities . . ." 20 U.S.C. §1412(a)(14) and 1453(c)(3)(D). According to the IDEA regulations, "qualified personnel" are defined as those who meet state educational agency (SEA) approved or SEA recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services. 34 C.F.R. §300.34. Texas Education Agency (Commissioner's) Rules require that all special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 C.F.R. §300.23 and §300.126; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials. *See* 19 Tex. Admin. Code §89.1131(a). Additionally, the Commissioner's Rules provide that a teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, in accordance with the limitation of their certification with certain exceptions. 19 Tex. Admin. Code §89.1131(b).

For physical education, the Commissioner's Rules provide that when an ARD Committee has made the determination and the arrangements are specified in the student's IEP, physical education may be provided by the following personnel: (1) special education instructional or related service personnel who have the necessary skills and knowledge; (2) physical education teachers; (3) occupational therapists; (4) physical therapists; or (5) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession. It further provides that when these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to inservice records, evidence of attendance at seminars or workshops or transcripts of college courses. 19 Tex. Admin. Code §89.1131(b)(6).

The evidence established that Student's special education teacher, although minimally qualified, had the necessary skills and knowledge to instruct Student in physical education. She took a P.E. course in college, taught P.E. to students as a substitute teacher and as an instructional assistant to another special education teacher. She also assisted the general education P.E. coach when she escorted the students to P.E. She also has experience in sports outside of the school setting, having coached basketball, soccer and T-ball.

For Art, the Commissioner's Rules do not contain any specific exceptions relating to special education teachers. The Rules only specify that a teacher who holds a special education certificate or endorsement may be assigned to any level of a basic special education instructional program serving eligible students. 19 Tex. Admin. Code §89.1131(b). Additionally, 19 Tex. Admin. Code §89.230.601(f), page 102, provides that "[T]eachers whose salaries are paid from special education funds must hold special education certification or endorsement and demonstrate the necessary skills for the particular assignment. In most cases, generic certification is appropriate; however, the District should make every effort to secure educators trained in the specialized skills needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the District will make provisions for the person to acquire the necessary skills and knowledge." In the instant action, Student's special education teacher was assigned to provide Student with the general curriculum of the Art I course

in a special education setting for the 2003-2004 school year. Although Student's special education teacher had some basic rudimentary Art training, it was not shown that she was trained or had the specialized skills to provide the Art I general curriculum to Student or other special education students. However, this does not preclude her from teaching Art I to Student. Pursuant to 19 Tex. Admin. Code §89.230.601(f), page 102, Leander ISD had the right assign her to the BEST class and could thereafter make provisions for her to acquire the necessary skills and knowledge to teach Art I to Student and the other students. In this regard, the evidence established that during the three weeks that Student was in school, his special education teacher collaborated with the regular education Art teacher in developing Art projects for Student. Such collaboration is some evidence of the special education teacher attempting to acquire the necessary skills and knowledge to teach Art I and based on the fact that Student was only in this class for three weeks of school, I find that it is sufficient evidence in this case that Leander ISD undertook to provide Student's special education teacher with the necessary skills and knowledge to teach the Art I curriculum. Accordingly, I find that Student's special education teacher, having a special education generic certification, was properly certified to teach Student the Art I general curriculum in a special education setting since she was in the process of acquiring the necessary skills and knowledge in Art to teach this course.

#### Conclusion of Law

After due consideration to matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Student's IEP for the 2003-2004 school year developed by Leander ISD at its May 8, 2003 ARD Committee meeting included a statement of measurable annual goals and short-term objectives that relate to meeting Student's social skills and behavioral needs resulting from his emotional disturbance and his attention and hyperactivity disabilities to enable him to be involved in and progress in the general education curriculum. 34 C.F.R. §300.347(a)(2).
2. The IEP statement of measurable goals and short-term objectives need not be course specific but must address Student's specific educational needs resulting from his disabilities with the target or expectation of enabling him to be involved in and progress in the general curriculum. 34 C.F.R. §300.347(a)(2).
3. Student's special education teacher, although minimally qualified, had the special education generic certification and the necessary skills and knowledge to instruct Student in physical education. 19 Tex. Admin. Code §89.1131(b)(6).
4. Student's special education teacher was properly certified through her special education generic certification to teach Student the Art I general curriculum in a special education setting since she was in the process of acquiring the necessary skills and knowledge in Art to teach this course. 19 Tex. Admin. Code §89.230.601(f).

#### ORDER

After due consideration of the record and the foregoing findings of fact and conclusions of law, I ORDER that all relief sought by Petitioner is DENIED.

Finding that the public welfare requires the immediate effect of this Final Decision and ORDER, I hereby make it effective immediately.

SIGNED this 13<sup>th</sup> day of January, 2004.

/s/ James W. Holtz  
James W. Holtz  
Special Education Hearing Officer

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LEANDER INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS
	§	

SYNOPSIS

Issue: Whether student’s IEP for the Social Skills Strategies course contained measurable goals and short-term objectives?

Held: For School District. Although there were no specific goals and short-term objectives for student’s Social Skills Strategies course, such goals and short-term objectives were not required. The IDEA requires only that his IEP contain a statement of measurable goals and short-term objectives which address the student’s specific educational needs resulting from his disabilities with the target or expectation of enabling him to be involved in and progress in the general curriculum. It does not require course specific goals and objectives. The School District had measurable goals and short-term objectives listed in its Behavior IEP that addressed the student’s specific educational needs resulting from his disabilities designed to enable him to be involved in and progress in the general curriculum.

Cite: 34 C.F.R. §300.347(a)(2).

Issue: Whether student’s special education teacher had the certification, knowledge and skills necessary to teach student Physical Education and Art I in the special education setting?

Held: For School District. Student’s special education teacher, although minimally qualified, had the special education generic certification and the necessary skills and knowledge to instruct Student in physical education. Additionally, she was properly certified through her special education generic certification to teach Student the Art I general curriculum in a special education setting since she was in the process of acquiring the necessary skills and knowledge in Art to teach this course.

Cite: 19 Tex. Admin. Code §89.1131(b)(6); 19 Tex. Admin. Code §89.230.601(f).