

TEA DOCKET NO. 024SE-0915

STUDENT	§	BEFORE A SPECIAL
BNF PARENT	§	EDUCATION
Petitioner	§	
v.	§	HEARING OFFICER FOR THE
	§	
GREGORY PORTLAND ISD	§	
Respondent	§	
	§	STATE OF TEXAS

FINAL DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Petitioner \*\*\*, Student, and Student's next friend and parent, \*\*\* (hereinafter referred to collectively as Petitioner and individually as Student or Parents) brings this action against Respondent Gregory Portland Independent School District (hereinafter referred to as Respondents) (pon2 1(ponhs)-1 ISiD1e1)]TJ 0 T(052Taf052T) 052T11E -15.35 -1.15 Td [(f)3(c) Student's classroom at GPISD, independent educational evaluations as recommended by \*\*\*'s Board Certified Behavior Analyst (hereinafter BCBA), reimbursement to Petitioner for private evaluations for which Petitioner has paid, and documentation of training of BPISD staff.

## PROCEDURAL HISTORY



to observe \*\*\* working with Student. (T. 232). Further, \*\*\*'s treatment plan was not made available to District staff prior to the due process hearing even though it was requested (T. 225).

13. On \*\*\*, the BCBA from \*\*\* observed Student at school for two hours to make recommendations to the ARDC about Student's program and services. During the observation, the BCBA observed the teacher and paraprofessionals redirecting Student; Student responding to individual teacher instruction, but not to group direction; Student attending well in a group activity; Student \*\*\* and \*\*\* correctly, and Student \*\*\* and leaving the table where Student was working to wander the classroom multiple times during table time (P4). The BCBA observed some 1:1 instruction of Student by Student's teacher (approximately 15 minutes), but did not observe data collection. (T. 125).

14. The BCBA expressed to Parent that Student's teacher at GPISD was "really wonderful." (P340; T. 143). Parent concurred with the BCBA's opinion. (T. 190).

15. Based on her observation, the BCBA recommended that a \*\*\* behavior technician accompany Student at school for at least two hours per day to help Student engage in the classroom without \*\*\*, generalize \*\*\* and \*\*\* skills to the classroom setting, and improve Student's ability to sustain attention rather than engage in escape behavior (P4-5, 6). \*\*\* recommended their program for Student in the school setting because of Student's difficulties accessing group instruction. With the proper 1:1 support, \*\*\* staff believed that Student could make progress. (T. 177-179).

16. The observation of \*\*\*'s BCBA demonstrates that Student was able to participate and receive instruction in the classroom despite periods of inattentiveness. The observation was based solely on Student's behavior during a drop period on one school day, a day with a different routine due to \*\*\*, and cannot be extrapolated to establish Student's behavior in the classroom over time.

17. The ARDC recommended on \*\*\*

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## DISCUSSION

### I.

#### Issues Newly Raised by Petitioner in Post-Hearing Brief: Procedural Violations and Failure to Implement IEP

The sole issue raised by Petitioner prior to the due process hearing was whether ISD failed to provide Student with FAPE by providing only consultative ABA services through Student's Teacher, who is not a trained and certified BCBA, and by failing to provide an appropriate level of qualified ABA therapy at Student's campus. (*Petitioner's Post-Hearing Argument and Brief, p. 2*). Although this was the only issue raised by Petitioner in advance of the hearing, Petitioner raises new grounds to support an alleged denial of FAPE, for the first time, in Petitioner's Post-Hearing Brief: 1) procedural violations that denied Parent effective participation in the ARD process and caused a deprivation of educational benefits to Student; 2) failure to implement Student's IEP with respect to the provision of trained staff and approp

implemented both the Texas \*\*\*





Petitioner urges that the District's documentary evidence of data collection does not demonstrate progress and that Student's Teacher's testimony was too speculative to establish positive benefits or meaningful progress.

The weight of the evidence in this case supports the District's contention that Student made significant progress in Student's \*\*\* \*\*\*, both academically and non-academically. While the data collection sheets and IEP progress reports do not match the type of data kept in a clinical setting by \*\*\*, they do provide a reliable basis for assessing progress in an educational setting. More importantly, Teacher's testimony was highly persuasive as to Student's progress because of Teacher's credibility, level of training and expertise, and the specificity with which she discussed Student's gains. Finally, Student's documented progress on the District's benchmark testing is a reliable indicator of academic progress.

Petitioner's focus on whether Student made more progress than Student did at GPISD is misplaced. Legally, the question is whether GPISD provided Student with FAPE, not whether involvement by additional providers could increase the rate or level of progress obtained. Factually, the evidence demonstrates that services were not academic in nature and did not address any of Student's educational needs. Further, the progress made by Student as reflected on \*\*\* data is not consistent or meaningful in all areas.

I have no doubt that \*\*\* provides Student with important and effective services to address many of Student's needs as a Student with Autism; however, the determination as to whether GPISD has denied Student a FAPE by failing to provide ABA during the school day must focus on whether Student has made the requisite progress academically and non-academically under IDEA with the services provided Student. Petitioner failed to prove that the District's programs as currently constituted did not provide Student with FAPE because of the lack of direct ABA therapy during the school day.

### CONCLUSIONS OF LAW

1. Responder Gregory Portland ISD is an independent school district duly constituted in and by the state of Texas, and subject to the requirements of the IDEA and its implementing federal and state regulations. Student is Student's resident district under IDEA for all time periods relevant to this action and is responsible for providing Student with a free appropriate public education under the IDEA 20 U.S.C. §1400, et. seq.
2. Student is eligible for special education and related services under IDEA. 20 U.S.C. Section 1400, et. seq.
3. Petitioner bears the burden of proof on all issues raised in this proceeding. *Schaffer ex. rel. Schaffer v. Weast*, 546 U.S. 49 (2005).
4. Petitioner failed to meet Petitioner's burden to demonstrate a violation of IDEA, or to prove that GPISD failed to provide Student with a FAPE during the school year. 34 C.F.R. §§ 300.101, 300.116.

5.

