

TEA DOCKET NO. 020-SE-0904

***		§	
	Petitioner	§	BEFORE A
		§	SPECIAL EDUCATION
		§	
v.		§	HEARING OFFICER
		§	
PROGRESO		§	FOR THE
INDEPENDENT SCHOOL DISTRICT		§	STATE OF TEXAS
Respondent		§	

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

Student (failed to appear)

Appearances for Respondent:

Kevin O'Hanlon (counsel)
O'Hanlon & Associates
808 West Avenue
Austin, TX

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		§	SPECIAL EDUCATION
		§	
v.		§	HEARING OFFICER
		§	
PROGRESO		§	FOR THE
INDEPENDENT SCHOOL DISTRICT		§	STATE OF TEXAS
	Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

Statement of the Case

The Petitioner, **, brings this action against the Respondent, Progreso Independent School District (PISD), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq. The issue to be heard at the Due Process Hearing is:

1. Whether Progreso Independent School District failed to accept and register **for the 2004-05 school year?

As relief, the Petitioner requests an order directing the Respondent to accept Student as a student at ** School, Progreso, TX.

Procedural History

On September 15, 2004, the Texas Education Agency (TEA) received correspondence from the Petitioner complaining that he had not been allowed to enroll at PISD. The TEA regarded the Petitioner's letter as a Request for a Due Process Hearing under the IDEA. This Hearing Officer issued a Notice of Request for Due Process Hearing on September 30, 2004. The Notice informed the parties of the case and requested a reply if they had any request regarding the scheduling of case proceedings. No reply was received from the Petitioner. The Hearing Officer was not able to make contact with the Petitioner by phone.

After notice in writing was provided, a due process hearing was held on October 26, 2004 at ** School in Progreso, TX.

The Notices, Orders and Decision in this case were issued in both English and Spanish for the benefit of the Petitioner. The official version of the Notices, Orders and Decision is the English version.

Findings of Fact

The Hearing Officer makes the following findings of fact:

1. Student is ** age.
2. Petitioner had timely notice in both English and Spanish of the Due Process Hearing.
3. Petitioner failed to appear at the Due Process Hearing.
4. Progreso ISD will enroll Student if he appears in person at ** School, Progreso, TX, to register.

Discussion

This case should be closed on two grounds. Primarily, there is no dispute to resolve. The sole issue raised by the Petitioner – the status of his enrollment in PISD – is not a matter of disagreement because the school district’s counsel stated during the hearing that PISD will grant Student the opportunity to enroll in the district if he wishes to do so. The school district will not bar Student from enrolling **. ¹ The principal of the ** and the director of the special education cooperative that serves PISD were present at the hearing to ensure that the Respondent’s position on accepting Student is understood and will be followed when Petitioner comes in to complete the necessary registration forms.

In the alternative, this case should be closed because the Petitioner has failed to prosecute ** claim against the Respondent. The Petitioner did not appear at the Hearing. Petitioner did not notify the Hearing Officer or the Respondent of any conflict with appearing at the Hearing. The start of the Hearing was delayed for 15 minutes to allow for ** late arrival but ** did not appear.

Conclusions of Law

After due consideration of the foregoing findings of fact, the Hearing Officer makes the following conclusion of law:

1. There is no live case or controversy between the Petitioner and the Respondent. Thus, the Hearing Officer is deprived of subject matter jurisdiction.

¹ **

Order

Based upon the foregoing findings of fact and conclusion of law,

IT IS HEREBY ORDERED THAT:

1. This case shall be and is **DISMISSED WITHOUT PREJUDICE.**

SIGNED this 28th day of October, 2004.

/s/ Steven R. Aleman _____

Steven R. Aleman
Special Education Hearing Officer

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Respondent		§	

SYNOPSIS

ISSUE 1: Whether Progreso ISD failed to accept and register ** for the 2004-05 school year?

CITE: 34 C.F.R. § 300.300

HELD: Issue is moot. The Respondent is granting the relief requested; the Petitioner may enroll in the district by personally appearing at ** School to register and enroll.