

TEA DOCKET NO. 054-SE-1003

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

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

Student (failed to appear)
Parent (attended)

Appearances for Respondent:

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

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Student	§	
	§	BEFORE A
Petitioner	§	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, Student, brought 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 was:

1. Whether Progreso Independent School District has failed to provide appropriate assistive technology services (auditory trainer) to Student?

As relief, the Petitioner requested: (1) ear moldings; and (2) an auditory trainer.

Procedural History

On October 9, 2003, the Texas Education Agency (TEA) received the Petitioner's request for a Due Process Hearing. On October 20, 2003, the Respondent filed a Motion to Dismiss. The Hearing Officer determined in the First Interim Order of November 5, 2003, that the circumstances of the case required an in-person prehearing conference. The in-person prehearing conference was held in Mercedes, TX on November 20, 2003. The Petitioner, Student, did not appear. The Hearing Officer permitted the Petitioner's parent in attendance, Parent, to speak on behalf of the Petitioner. An interpreter was present to allow the Petitioner's parent an opportunity to participate in the prehearing conference in his native language. Subsequently, the Hearing Officer issued the Second Interim Order of November 24, 2003, that, among other things, ruled on the Respondent's Motion to Dismiss, identified the issue and relief, set a hearing date and extended the decision due date (Jan. 12, 2004).

The hearing was conducted in Weslaco, TX on December 9, 2003. An interpreter was present and available at the hearing. The Petitioner, failed to appear. The Petitioner's parent, Parent, was in attendance. The Respondent Student, moved for judgment on the merits of the Petitioner's claim. The Hearing Officer granted the motion and determined that a written Final Decision would be issued.

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 of the age of majority.
2. Student had timely notice in both English and Spanish of the Due Process Hearing.
3. Student failed to appear at the Due Process Hearing.
4. Student failed to comply with a valid subpoena issued by the Hearing Officer at the request of PISD. The subpoena commanded Student to appear as a witness at the Due Process Hearing.
5. Student failed to meet his burden of proof.

Conclusions of Law

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

1. The Respondent, PISD, did not violate the IDEA in its provision of services to the Petitioner, Student.

Order

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

IT IS HEREBY ORDERED THAT:

1. The Respondent is entitled to, and there shall be, entry of a final judgment in favor of the Respondent. This Decision and Order shall have a preclusive effect on any subsequent claim of the Petitioner as allowed by law.
2. All relief sought by the Petitioner shall be **DENIED**.

SIGNED this 13th day of January, 2004.

/s/Steven R. Aleman
Steven R. Aleman
Special Education Hearing Officer

TEA DOCKET NO. 264-SE-0403

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

SYNOPSIS

ISSUE 1: Whether Progreso ISD has failed to provide appropriate assistive technology services (auditory trainer) to Student?

CITE: 34 C.F.R. §300.300

HELD: For the Respondent. The Petitioner failed to appear and, thus, did not meet his burden of proof.