

DOCKET NO. 273-SE-0404

Student bnf § **BEFORE A SPECIAL EDUCATION**
Parent, §
§
VS. § **HEARING OFFICER FOR**
§
WYLIE INDEPENDENT § **THE STATE OF TEXAS**
SCHOOL DISTRICT §

DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Student (Petitioner) through his next friend Parent, requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et. seq.* as amended. The Respondent is the Wylie Independent School District.

Petitioner alleged that Respondent denied Student a Free Appropriate Public Education (“FAPE”) by failing to identify Student as a student with a disability and to provide services to him as an eligible student under the IDEA. The parties agreed that the sole issue in this case is whether or not Student has a qualifying disability under the IDEA and is eligible to receive special education services.

HELD, for Respondent.

PROCEDURAL HISTORY

Petitioner’s request for hearing was received by Texas Education Agency on April 19, 2004, and assigned to Special Education Hearing Officer Sharon M. Ramage. ***’s parent and next friend, Parent, represented him Pro Se and will hereinafter be designated as Petitioner. Jill Nikirk, of Irving, Texas, represented the Wylie Independent School District.

The hearing was initially scheduled for May 17, 2004, with a decision due date of June 3, 2004. A telephone prehearing conference was held on April 28, 2004 and was transcribed by a court reporter. Following the pre-hearing conference, Petitioner filed a Motion to Recuse the Hearing Officer, which was denied on May 7, 2004. Special Education Hearing Officer Lucius Bunton considered the recusal motion on May 17, 2004, and denied Petitioner’s motion. The matter was returned to the undersigned Hearing Officer for consideration on May 17, 2004.

On May 20, 2004, after unsuccessful attempts to obtain agreeable dates from the Petitioner, the Hearing Officer issued a Scheduling Order which specifically designated a June 25, 2004, hearing date, with a disclosure deadline of June 17, 2004. The scheduling order was forwarded to

Petitioner at the address provided by Petitioner. Good cause existed to continue the matter for a period of 39 days due to the recusal proceedings, and the decision due date was extended to July 12, 2004.

The due process hearing commenced on June 25, 2004. Petitioner failed to appear, and therefore failed to produce any evidence or meet his burden of proof on all issues. This Decision was orally rendered on the date of hearing, and the written Decision was issued and forwarded to all parties on June 30, 2004.

I make the following findings of fact and conclusions of law. (All references to the transcript will be designated as "Tr." followed by the page number; all references to Petitioner's and Respondent's exhibits will be designated as "R" and "P", followed by the exhibit number.)

FINDINGS OF FACT

1. Student is a ***-year old child who resides within the boundaries of the Wylie Independent School District. R.2.
2. On May 20, 2004, a scheduling order was forwarded to Petitioner reflecting a hearing date of June 25, 2004. On June 25, 2004, at the time and place designated in the scheduling order, the matter was called for hearing. Petitioner did not appear. The hearing officer made multiple attempts to contact Petitioner by phone from the hearing and left voice mail messages for him. Petitioner attempted to contact the District following one phone call, but would not accept two immediate return phone calls from hearing officer. The calls to the Petitioner were transcribed by a court reporter. Additionally, counsel for the District testified that she left two messages for Petitioner during the week preceding the hearing, with an explicit explanation that the hearing was scheduled for June 25, 2004. All calls to Petitioner were placed to the phone number provided by Petitioner. All orders and correspondence to Petitioner reflecting the date of the hearing were forwarded to Petitioner at his last known address. I find that Petitioner had adequate notice of the time and place of hearing but willfully refused to appear. Tr. 4-13.
3. Student's parents referred him to WISD for a speech and language evaluation to determine eligibility for speech and language therapy services. Student had previously received speech and language services through ECI. R.1.
4. Petitioner failed to appear and produce any evidence with regard to the identification, evaluation and appropriate placement for Student. Petitioner failed to meet his burden of proof on all issues.

5. Respondent produced testimony from Ms. ***, the Speech and Language Pathologist and Lead Supervisor for the Collin County Special Education Cooperative. Ms. *** conducted the speech and language evaluation for Student on behalf of the District. The ARD Committee considered the evaluation of Ms. ***, ECI data, as well as Independent Educational Evaluations, and determined that Student did not meet the eligibility criteria to receive special education services and that he did not have a disability. R.4; Tr. 42-44, 50-52, 55.

DISCUSSION

In order to qualify for special educational services, a child must have a specified disability under IDEA which results in a need for special education and related services. 34 C.F.R. 300.7(a). School districts must identify, locate, and evaluate all children within their jurisdictional boundaries who have disabilities and need special education services. 34 C.F.R. §§300.125 and 300.128. WISD satisfied its Child Find obligations under the IDEA by evaluating Student to determine whether there was a need for services in the area of his suspected disability, Speech Impairment. The multidisciplinary evaluation team included a licensed speech/language pathologist. 19 Tex. Admin. Code §89.1040(c)(10). After reviewing all collected data, the ARD Committee concluded that Student did not have a communication disorder and did not meet the eligibility criteria for special education services.

CONCLUSIONS OF LAW

1. Student resides within the jurisdictional boundaries of the Wylie Independent School District, a legally constituted independent school district within the State of Texas.
2. Petitioner bears the burden of proof when challenging the educational program proposed by the WISD. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883 (1984); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).
3. Petitioner failed to meet his burden that WISD wrongfully denied Student access to special education services. The ARD Committee's decision to deny special education services was appropriate based on Student's failure to meet eligibility requirements for special education and failure to demonstrate an educational need for such services. 34 C.F.R. §300.7(a).
4. WISD met its burden to assess Student in all areas of suspected disability. 20 U.S.C. §1414(a)(1)(A); 34 C.F.R. §300.125; 19 Tex. §89.1040.

ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the relief requested 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 30th day of June, 2004.

/s/Sharon M. Ramage

Sharon M. Ramage

Special Education Hearing Officer

