

Student b/n/f Parent, PETITIONER	§ § §	SPECIAL EDUCATION
VS.	§ §	HEARING OFFICER
PROSPER ISD, RESPONDENT	§ §	STATE OF TEXAS

DECISION OF HEARING OFFICER

This matter was presented to this Hearing Officer after Parent, the parent of the child, filed for a Due Process Hearing pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA 04”), 20 U.S.C. §1400 et.seq., on August 22, 2005. The decision due date of November 5, 2005 was rescheduled by agreement.

On the 16th day of November, 2005, the petitioners and the respondent appeared at the *** School for a Due Process Hearing pursuant to IDEA 04, and the hearing concluded on the same date.

Parent, parent of Student, (“the petitioner”) appeared in person and through his attorney or record, Christopher Jonas, and announced ready.

Prosper ISD (“the respondent”) appeared through its district representative, ***, and through its attorney, Marianna M. McGowan, and announced ready.

Issues Raised and Relief Sought

The petitioner raised three issues/complaints about the district in the Prehearing Conference heard on October 31, 2005:

1. The district failed to provide the child a free, appropriate public education (“FAPE”);
2. The district failed to provide an appropriate evaluation on the child; namely, it failed to classify the child as hearing impaired; failed to classify the child with a specific learning disability; and failed to conduct a functional behavioral assessment in order to draft a behavior intervention plan; and
3. The district failed to provide appropriate support services to the child; namely, it failed to provide appropriate modifications; and it failed to provide modifications related to a hearing disability and learning disability.

The petitioners sought the following relief from the outcome of the Due Process Hearing:

1. That the district be required to provide an appropriate evaluation for the child;
2. That the district be required to provide one year of compensatory educational services for the child; and
3. That the district be required to provide compensatory services or an amount of compensatory educational services as deemed appropriate by this hearing officer.

The hearing began on November 16, 2005 and concluded on the same date. After hearing the testimony of the witnesses presented, reviewing the exhibits from both parties which were admitted into evidence, and weighing such evidence in light of current law, the relief requested from the petitioners is hereby DENIED.

HELD, for the respondent.

Findings of Fact

1. The child is an *** grade student with a hearing impairment, (See, Petitioner's Exhibit #3) who along with his father, Parent, resides within the district boundaries of Prosper Independent School District. (Trial transcript, p. 10).
2. The child began receiving services in 1999 as a student with a hearing impairment under section 504 of the Rehabilitation Act. (Trial transcript, p.17, See Also, Petitioner's Exhibit # 9 and 10). The district has in place a 504 Academic Modification plan for the child's hearing impairment needs. (Petitioner's Exhibit #3, Trial transcript, pp. 12-14, 21-22).
3. The child has had two surgeries on his ears; one in the *** grade and the other in the *** grade. (Trial transcript, pp. 16-17).
4. The child has done well in his classes and is passing them all. (See, Respondent's Exhibit #4 and #6, Trial transcript, pp. 68, 76). The child passed his most recent TAKS testing given in his *** grade year. (Respondent's Exhibit # 5, Trial transcript, p. 38).
5. The child is not a behavioral problem at the school. (Trial transcript, p. 78). Most of his discipline slips have been over dress code violations or failure to attend TAKS tutorial sessions. (Trial transcript, pp. 34-36, 78; See Also, Petitioner's Exhibit #14).
6. The parent's concern regarding the child's educational needs is based upon a future contingency which may or may not occur during the time the child is a student in the district; namely that the child may lose his hearing and thus will

fall behind in his education due to the district's failure to have a plan in place to deal with such a hearing loss. (Trial transcript, pp. 27-29).

7. The district referred the child to a RESULTS committee to determine whether the child should be tested for Special Education placement. (Trial transcript, pp. 79, 111; *See Also*, Petitioner's Exhibit #2). The child was found by the RESULTS committee not to need Special Education placement/testing since he was presently being served under section 504 and was doing academically well. (Respondent's Exhibit #9, 3rd page [Bates no. 0078]).

DISCUSSION - APPLICATION OF FACTS AND LAW

Petitioner failed to provide evidence that the child was eligible for services under IDEA04

The petitioners complain that the district failed to provide the child with an appropriate evaluation for special education services under IDEA04. To be entitled to an evaluation, however, it must first be demonstrated that the child is eligible for such services under IDEA04. Eligibility under IDEA04 is satisfied when a child is a "child with a disability" and has an academic need due to that disability. **20 U.S.C. §1401(3)(A)(I)-(ii); 34 C.F.R. §300.7(a)**. In this case, the child does not meet the eligibility requirements of IDEA04. While it is undisputed by any party to this proceeding that the child has a recognized disability, his hearing impairment, no evidence has been presented that the child has a need for special education services due to his hearing impairment.

Since 1999, the district has provided the child with a 504 Academic Modification plan to accommodate his hearing disability. (Trial transcript, p.17, *See Also*, Petitioner's Exhibit # 9 and 10). That plan is apparently working since the only evidence presented is

that the child is passing his classes with good grades and passed his most recent TAKS testing. (Respondent's Exhibit #4, #5, and #6, Trial transcript, pp. 38, 68, 76). The petitioner might accurately point out that the evidence also indicated that the child *** portion of his *** grade TAKS testing. (Respondent's Exhibit #5). That fact alone, however, fails to prove the child has an academic need, since all other evidence seems to indicate the child is learning and receiving an educational benefit under his current 504 plan. (Respondent's Exhibit #4, #5, and #6, Trial transcript, pp. 38, 68, 76). Furthermore, the district convened a RESULTS committee to review whether the child should be evaluated for special education services on March 7, 2005 and it determined that the child is "doing well academically" and is being appropriately served by the 504 plan. (Petitioner's Exhibit #3, page 3). The petitioner was present at this meeting and no objection of any sort was noted in the minutes of the meeting. (Trial transcript, p. 111).

Because the petitioner failed to prove that the child is eligible for special education services under IDEA04, the relief sought must be denied as a matter of law.

Conclusions of Law

1. The child is an *** grade student with a hearing impairment.
2. Prosper ISD is the local education agency responsible for the providing the child with his education, and is a legally constituted independent school district operating as a political subdivision of the State of Texas.
3. The child's academic needs are being satisfied under the current 504 Academic Modification plan.
4. The child is not eligible for special education services under IDEA04 since he does not demonstrate an academic need for such services based upon his

hearing impairment.

5. The district did not violate the provisions of IDEA since the child does not meet the eligibility requirements to obtain such services.

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 the petitioner is DENIED.

SIGNED this 6th day of December, 2005.

Tomas Ramirez III,
Special Education Hearing Officer

TEA DOCKET NO: 391-SE-0805

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SYNOPSIS

ISSUE: Whether the district denied the child a free, appropriate public education under IDEA04 by failing to evaluate the child and provide appropriate modifications.

HELD: For Respondent.

Statutes and Regulations Cited

Section 504 of the Rehabilitation Act
20 U.S.C. §1400 et.seq.
20 U.S.C. §1401(3)(A)(I)-(ii)
34 C.F.R. §300.7(a)