

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION BUREAU
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER

Case Number: NMPED DPH 1213-38

ABSTRACT

Parent challenged the services delivered to her 15 year old son, who was born with Down Syndrome and eligible for services as intellectually disabled, over the period spanning the eighth and ninth grades. Having chronic otitis media with effusion secondary to Down Syndrome, her son was known to experience a mild to moderate fluctuating hearing loss depending on the status of the middle ear. Parent contended that her son's undisputedly severe deficits in communication were due to the hearing loss as opposed to his intellectual disability, that the school district denied her son a FAPE by failing to acknowledge or identify him as deaf/hard of hearing and evaluating him and providing services accordingly. Specifically, FAPE allegedly required the incorporation of deaf education and staff with specific experience and training in deaf education into her son's educational program planning.

Parent generally failed to prove her allegations and the preponderance of the evidence indicated that her son's communication deficits were primarily, if not wholly, due to his intellectual disability. Parent failed to meet the burden of showing that the school district's placement of her son in its intensive support program ("ISP") denied him FAPE. The preponderance of the evidence suggested that the multisensory, multimodal approach utilized in this self-contained program conferred education benefit and that her son achieved more than *di minimus* progress toward his educational goals and in the program's curriculum. Her son's ISP classes served multiply or intellectually disabled children and had no more than five students each with a high staff to student ratio. Her son's individual pre-primer, functional academic programs were addressed primarily on a one-to-one basis with appropriate emphasis on daily living and prevocational skill development.

Parent failed to prove a deprivation of a FAPE occurred as a result of the remainder of her claims. Parent's evidence focused on her unproven presumption that her son's hearing loss rendered him incapable of developing an oral language and the further unproven presumption that he had sufficient intellectual ability to develop a visual language. Rather, the preponderance of the evidence established that he had sufficient usable hearing to develop language absent the intellectual deficits. The Hearing Officer questioned the minimal speech and language therapy service provided by the school district but the record was insufficient to establish a deprivation of FAPE on that basis. So although it was undisputed that the school district did not identify her son as deaf/hard of hearing and did not have deaf education staff attend his IEPs, Parent failed to prove that it was required to do so. Parent also failed to prove that the school district did not adequately consider her son's communication needs. Accordingly, Parent's Request for Due Process was dismissed with prejudice.