

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Fairfield Board of Education
Fairfield Board of Education v. Student

Appearing on behalf of the Parent:

Parent

Appearing on behalf of the Board:

Attorney Marsha Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing before:

Attorney Brette Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the District fail to propose a program for Student that would have provided Student with a Free Appropriate Public Education ("FAPE") for that portion of the 2013-2014 school year, beginning on October 28, 2013 and ending in June of 2014?
2. Did the District fail to propose a program for Student that would have provided him with a FAPE for the 2014-2015 school year?
3. Did the District fail to propose a program for Student that would have provided him with a FAPE for the 2015-2016 school year?
4. If any or all of the District's proposed programs for the school years identified in Issues 1, 2, and 3 were not appropriate, are Parents entitled to reimbursement for their unilateral placement of Student in other private programs?
5. Did the District commit procedural violations of the Individuals with Disabilities Education Act ("IDEA") between October 28, 2013 and October 28, 2015; and if so, did such violations operate to deny Student a FAPE?
6. Was the Board's 2015 triennial evaluation of the Student appropriate?
7. If not, is the Student entitled to:
 - a. An independent social skills assessment at public expense; and/or
 - b. An independent functional behavioral assessment at public expense; and/or
 - c. An independent speech and language evaluation at public expense?

PROCEDURAL HISTORY:

The Parent's witnesses were the Father, Ryan Passerelli (School Psychologist), Sharon Mulligan (Speech Language Pathologist), Suzanne Redgate (School Psychologist), Dawn Jara (Special Education Teacher) and Cynthia Chick Hoffkins (Speech Language Pathologist). The Board's witness was Andrea Leonardi (Director of Special Education).

The Parent submitted exhibits numbered P-1 to P-52. P-1 was marked for identification. P-2 through P-6 were entered as full exhibits over the objection of the Board. P-7 was entered as a full exhibit. P-8 was excluded. P-9 and P-10 were entered as full exhibits. P-11 was entered as a full exhibit including the last page which was objected to by the Board. P-12 was withdrawn. P-13 and P-14 were entered as full exhibits. P-15 was entered as a full exhibit over the objection of the Board. P-16 and P-17 were entered as full exhibits. P-18 was excluded. P-19 through 25 were entered as full exhibits. P-26 was withdrawn. P-27 was a blank page. P-28 was excluded. P-29 through P-30 were full exhibits. P-31 was withdrawn. P-32 and P-33 were excluded. P-34 was a full exhibit. P-35 and P-36 were excluded. P-37 was a full exhibit. P-38 was excluded. P-39 was a full exhibit. P-40 through P-49 were entered as full exhibits. P-50 was excluded and P-51 and P-52 were entered as full exhibits.

The Board submitted exhibits numbered B-1 to B-122. B-1 through B-26 were entered as full exhibits. B-27 was entered as a full exhibit over the objection by Parent. B-28 through B-67 were entered as full exhibits. B-68 was marked for identification. B-69 through B-84 were entered as full exhibits. B-85 previously marked for identification was subsequently entered as a full exhibit. B-86 through B-122 were entered as full exhibits.

The Parent's Due Process complaint was entered as HO-1. The Board's Due Process complaint was entered as HO-2, Ryan Passerelli's Curriculum Vitae ("CV") was entered as HO-3, Sharon Mulligan's CV was entered as HO-4, Suzanne Redgate's CV was entered as HO-5, Dawn Jara's CV was entered as HO-6, Cynthia Chick Hoffkin's CV was entered as HO-7, and Andrea Leonardi's CV was entered as HO-8.

All motions and objections not previously ruled upon, if any, are hereby overruled. To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

On October 28, 2015, the Board received a special education due process hearing request filed by Student. The undersigned Hearing Officer was appointed on October 29, 2015. During the prehearing conference held on November 18, 2015, a hearing date of February 2, 2015 was set and the deadline for mailing the final decision and order was established as Monday, January 11, 2016. This deadline was extended during the prehearing conference at the request of the parties in order to accommodate the agreed upon hearing date schedule and February 10, 2015 was set as the new deadline for the mailing of the final decision and order.

On November 19, 2015, the Board filed a separate request for a due process hearing which was assigned to Hearing Officer Bird and was assigned the case number 16-0255. On December 28, 2015, the Board filed a motion with Hearing Officer Bird in which she moved to consolidate the two cases. On January 14, 2016, Hearing Officer Bird ordered a consolidation of case 16-0221 and 16-0225 with the undersigned Hearing Officer. At the time of the consolidation, Case 16-0255 had a mailing deadline of January 29, 2016, as this was the earlier of the two existing deadlines in the separate matters; the undersigned Hearing Officer adopted January 29, 2016 as the mailing deadline for the consolidated

matter pursuant to her authority under R.S.C.A. §10-76h-10(f)(3) to make any orders concerning proceeding as may tend to avoid unnecessary costs or delay. On January 25, 2016, a second prehearing conference was held to address scheduling issues resulting from the consolidation. During the conference, the parties requested that the February 2, 2016 hearing date be postponed and the mailing deadline be extended due to the need to prepare to present evidence on both cases in the same hearing. These requests were granted. The parties agreed to set new hearing dates of March 30, 2016, April 4, 2016, April 5, 2016, April 7, 2016, April 28, 2016 April 29, 2016 and May 2, 2016 and the deadline for mailing the final decision and order was extended to February 26, 2016.

Another request to extend the mailing deadline was made on February 26, 2016 in order to accommodate the agreed upon hearing date schedule and this request was granted. The new mailing deadline was established as March 25, 2016. Via email dated March 17, 2016, Board's attorney requested a thirty day postponement of the mailing deadline in order to accommodate the first scheduled hearing date. On March 21, 2016, Parent sent an email in which he also requested an extension of the mailing deadline in order to accommodate the first scheduled hearing date. These requests were granted and resulted in a mailing deadline of April 22, 2016. On March 29, 2016, Parent requested the postponement of the April 4th, 5th and 7th hearing dates due to an unforeseen, urgent need to travel for business. The Board did not object to Parent's request, which was granted by the Hearing Officer after a consideration of all of the relevant factors under R.S.C.A. § 10-76-h(9)(d)(1-4).

On the first hearing date of March 30, 2016, the parties jointly requested an extension of the deadline for the mailing of the final decision and order in order to accommodate the additional hearing dates which were scheduled to make up for the three dates that had been postponed at Parents' request. This request was granted and resulted in a new deadline for the mailing of the final decision and order of May 20, 2016. A Revised Notice of Hearing Dates was issued on April 18, 2016 which included the following dates which had been chosen by the Parties on the March 30, 2016 hearing date: April 28, 2016, April 29, 2016, May 2, 2016, May 11, 2016 (this date was noted as tentative as it was contingent on another matter, in which Attorney Moses was involved, settling), May 24, 2016, June 22, 2016 and June 24, 2016.

On May 2, 2016, Parent requested an extension of the mailing deadline to accommodate the May 24, 2016 hearing date. There was no objection to this request from the Board and the request was granted and resulted in a new deadline for the mailing of the final decision and order of June 17, 2016. This extension was also documented in an email sent to the Parties on May 18, 2016. Additional dates of hearing were held on April 28, April 29, and May 2. May 11, 2016 was not utilized as a hearing date because Attorney Moses's other matter on that date did not settle.

On May 16, 2016, Parent filed a Motion for Postponement of Hearing, in which he requested that the next scheduled hearing date of May 24, 2016 be postponed, due to another business trip. On May 17, 2016, the Board filed an Objection of Fairfield Board to Parent's Motion for Postponement of Hearing. Although Parent's motion to postpone the hearing date was filed more than 5 business day before the hearing date and thus timely pursuant to R.C.S.A. § 10-76h-9, the granting of requests for postponement are discretionary. Under R.C.S.A. § 10-76h-9, a postponement request may only be made after consideration of the cumulative impact of the following factors: (1) the extent of danger to the child's educational interest or well being which might be occasioned by the delay; (2) the need of a party for

additional time to prepare and present the party's position at the hearing in accordance with the requirements of due process; (3) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and (4) whether there has already been a delay in the proceeding through the actions of one of the parties. After a full consideration of these factors, Parent's request to postpone a fourth hearing date was denied on May 19, 2016.

On May 19, 2016, the Hearing Officer informed the Parties that if Parent's remaining witness was not available on May 24, 2016, then the Board would be directed to begin its case and Parent's last witness would be taken out of turn. Parent responded indicating again that he was not available next week. On May 23, 2016, the Hearing Officer sent an email to the parties in which she stated that if either party did not appear the matter was subject to dismissal and/or default pursuant to the Regulations of Connecticut State Agencies. Parent responded with an email indicating that the Parents were resting their case and didn't plan to call any more witnesses and moved to cancel the next day's hearing date. It should be noted that Parent was not in a position to rest his case because cross-examination of Parent's witness had not yet been completed and the Hearing Officer would not accept such a representation off the record, while the hearing was in progress.

On May 24, 2016, the Hearing Officer appeared at the Fairfield Board of Education building at 10:00 a.m. and waited 15 minutes for either of Student's Parents to appear. Neither Parent appeared. At this time the Hearing Officer went on the record. The Attorney for the Board who was present at the hearing, moved for a dismissal of Parent's due process hearing request filed under case number, 16-0221, with prejudice.

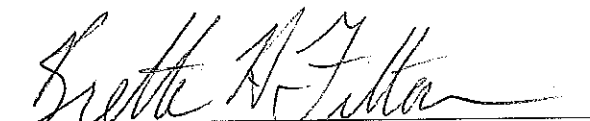
This Hearing Officer has the authority to grant a motion for an entry of default in or dismissal of a hearing for failure of a party to appear at a properly noticed scheduled hearing. R.S.C.A. Section 10-76h-18. The Hearing Officer also has the authority to order a default in or dismissal of a hearing sua sponte. (Id.) Pursuant to this authority, the Hearing Officer granted the motion to dismiss Parent's due process hearing request with prejudice on the record as a result of Parent's failure to appear at a properly noticed hearing. A default judgment in favor of the Board was granted by the Hearing Officer in resolution of the issues presented in the Board's request. The Board then requested that the Board be permitted to provide testimony from the Director of Special Education regarding the appropriateness of its evaluations. R.C.S.A. §10-76h-18 (b) provides that upon granting a motion for default a hearing officer may take evidence and issue such orders as may be necessary, including but not limited to ordering an educational placement for the child. While the Hearing Officer permitted additional testimony from the Director of Special Education regarding the evaluations conducted, consideration of such testimony was not deemed necessary to a resolution of the issues before the Hearing Officer, because the appropriateness of the District's evaluation had been resolved in favor of the District by virtue of the default judgment and the placement or program for the child was not an issue presented in the Board's hearing request.

FINAL DECISION AND ORDER:

In light of the above facts, Parent's due process hearing request as set forth in issues 1-5 is dismissed with prejudice and a default judgment in favor of the Board is entered in the resolution of Issues 6 and 7.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).


Hearing Officer Signature

Brette H. Fitton
Hearing Officer Name in Print