

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Ridgefield Board of Education

Appearing on behalf of the Student: Attorney Deborah Stevenson
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Appearing on behalf of the Board: Attorney Linda Yoder
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Appearing before: Attorney Brette H. Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is Winston Preparatory School the current educational placement in which Student must remain, per Parents' request, during the pendency of the instant hearing pursuant to 20 U.S.C. 1415(j) and 34 CFR §300.518(a)?
2. Did Student have a right to a stay-put placement during the period of time beginning on September 20, 2014 and ending on September 20, 2016, and if so did the District violate this right?
3. Did the District deny Student a Free Appropriate Public Education ("FAPE") in the Least Restrictive Environment ("LRE") for that portion of the 2014-2015 school year beginning on September 20, 2014, and ending on the last day of the 2014-2015 school year, by, including, but not limited to:
 - a. denying Student a placement and/or a placement that conferred a meaningful educational benefit;
 - b. failing to offer Student an appropriate Individualized Education Program ("IEP") in a timely fashion;
 - c. failing to offer an IEP that included private tutoring and/or homebound instruction; and/or
 - d. denying Student access to any related services to which Student was entitled?
4. If the District denied Student a FAPE in the LRE during that period of time beginning on September 20, 2014 and ending on the last day of the 2014-2015 school year are Parents entitled to reimbursement for costs of Student's private tutoring and/or homebound instruction during that same time period?
5. Did the District deny Student a FAPE in the LRE for the 2015-2016 school year by, including, but not limited to:
 - a. denying Student a placement and/or a placement that conferred a meaningful educational

- benefit;
 - b. failing to offer Student an appropriate Individualized Education Program (“IEP”) in a timely fashion;
 - c. failing to offer an IEP that included private tutoring and/or homebound instruction; and/or
 - d. denying Student access to any related services to which Student was entitled?
6. If the District denied Student a FAPE in the LRE for the 2015-2016 school year, are Parents entitled to reimbursement for costs of Student’s private tutoring and/or homebound instruction during the 2015-2016 time period?
 7. If the District denied Student a FAPE in the LRE for the 2015-2016 school year, did Winston Preparatory School, where Parents unilaterally placed Student, provide Student with an appropriate program, thereby entitling Parents to reimbursement for costs of Student’s placement running from February through June of 2016?
 8. Did the District offer an appropriate IEP to the Student for the 2016-2017 school year because the IEP:
 - a. did not offer Student a placement and/or a placement that conferred a meaningful educational benefit; and/or
 - b. was not developed and proposed in a timely fashion;
 9. If the District failed to offer an appropriate IEP for the 2016-2017 school year, does Winston Preparatory School, where Parents have unilaterally placed Student, provide Student with an appropriate program, thereby entitling Parents to reimbursement for costs of Student’s enrollment for the 2016-2017 school year?
 10. Were the District’s evaluations appropriate to identify all of Student’s unique needs and disabilities during the period beginning on September 20, 2014 and ending September 20, 2016?
 11. Did District err when the District refused Parent requests to change the eligibility category to OHI at PPT meetings during the period beginning on September 20, 2014 and ending September 20, 2016?
 12. Did the District err by identifying the Student as eligible for special education under the disability category of Autism during the period September 20, 2014-September 2016?
 13. Did the District commit procedural violations of the Individuals with Disabilities Education Act (“IDEA”), during the period running from September 20, 2014 through September 20, 2016 by, including but not limited to:
 - a. misstating actions and statements of Parent resulting in Parent requests for corrections to the record;
 - b. failing to invite Winston Preparatory School staff to a PPT;
 - c. failing to consider outside evaluations of Student at a PPT;
 - d. failing to provide PPT meetings in a timely fashion to develop an IEP prior to the beginning of each school year;
 - e. failing to invite private tutors to a PPT;
 - f. failing to provide homebound instruction to the child; and/or
 - g. failing to place Student in the least restrictive environment?
 14. If the District committed a procedural violation or violations of the IDEA, did such violation or violations operate to deny Student a FAPE?
 15. Did the District improperly retaliate against Parents by compelling Parents to re-enroll the Student in the District on November 10, 2015, when the Parents never withdrew the Student from the District in violation of the IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and the Civil Rights Act?
 16. Did the District improperly retaliate against the Parents by filing a complaint with the Department of Children and Families in which the District made false allegations of educational neglect in

violation of the IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and the Civil Rights Act?

PROCEDURAL HISTORY AND SUMMARY:

On September 8, 2016, the Parents filed two documents with the State Department of Education. The first document was a completed Connecticut State Department of Education ("CSDE") Complaint form and the second was a letter which was addressed to the Bureau of Special Education - Due Process Unit. These two documents were initially accepted by the CSDE as a complaint rather than a request for a due process hearing, but after review of the pleading the CSDE directed Parents to refile their letter with a completed CSDE Due Process Hearing Request form which Parents did on September 20, 2016. The Board received both the original set of documents and the second set of documents at the time each set was filed with the State. On September 20, 2016, the CSDE appointed the undersigned Hearing Officer to preside over the matter. During the prehearing conferences held on September 27, 2016 and on November 4, 2016, Attorney for the Parents registered her objection to using the second filing date, arguing that the District had notice as of September 8, 2016 of the Due Process Hearing Request. The Hearing Officer determined that since the original filing contained documents which conflicted with each other as to the procedure being sought, it was proper to use the secondary filing date in which both documents indicated that Parents were requesting a due process hearing, rather than a complaint. Parents' objection to this determination was noted for the record. During the initial prehearing conference, hearing dates of November 15, 2016, and November 21, 2016 were set and the deadline for mailing the final decision and order was established as December 2, 2016. Also at the prehearing conference, Parents' attorney indicated that Parents' letter, which had not accompanied the Due Process Request form when it was sent by the State to the Hearing Officer contained more specific information, which she felt needed to be included as part of the hearing request. On September 27, 2016, Attorney for the Parent forwarded Parents' letter which accompanied the Due Process Hearing Request form. On October 4, 2016, after a review of Parent's letter, the Hearing Officer sent an email to the Attorney for the Parent requesting clarification of the basis for Parents' claim for a retroactive violation of stay put. Attorney for the Parent sent a substantive email in response and the Board was allowed time to respond to the questions posed by the Hearing Officer and to Parent's response to same. On October 25, 2016, the Hearing Officer sent a memorandum to the Parties with a list of issues which included the issue of stay put during the current hearing and Parent's claim of an ongoing stay-put violation spanning the statutory two-year period. On November 1, 2016, Attorney for the Parent sent an email which set forth a number of what she termed "corrections/amendments" to the list of issues generated by the Hearing Officer after the prehearing conference and sent to Counsel. In response to the November 1, 2016 email from Attorney for the Parent, Hearing Officer sought clarification as to whether Parent was proposing clarifications or amendments and determined that a second prehearing conference was needed to clarify and identify Parents' issues.

On November 9, 2016, permission was granted to Parent to amend the hearing request and an amended request was filed on November 11, 2016. This amendment restarted the deadlines for a resolution conference and for holding the hearing and a new deadline of January 25, 2016. The hearing dates of November 15, 2016 and November 21, 2016 were postponed due to the restarting of the resolution period. On November 14, 2016, the Board filed a Motion to Dismiss and Sufficiency Challenge. On November 23, 2016, Parents filed an Objection to Board's Motion to Dismiss and Sufficiency Challenge. In this Objection, Parents withdrew issue 15 and 16 from consideration by the Hearing Officer without prejudice. On November 25, 2016, Parents filed a separate request for a due process hearing in which they sought to have the two issues which had been withdrawn from the 17-0141 hearing request adjudicated by a different hearing officer. The separate hearing request was assigned to Hearing Officer Sylvia Ho and given the

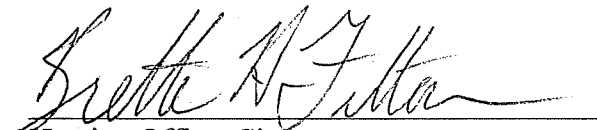
hearing number of 17-0235. On December 9, 2016, the Board filed a motion to consolidate the 17-0141 and 17-0235. This motion was granted by Hearing Officer Ho who issued an order consolidating Case 17-0235 and 17-0141 with this Hearing Officer on December 12, 2016, effectively restoring Issues 15 and 16 to the list of issues for consideration by this Hearing Officer. Another prehearing conference was scheduled for December 6, 2017 to identify new hearing dates. Attorney for Parent was unable to join the conference at the appointed time and so additional hearing dates of January 10, 2017, January 11, 2017, January 23, 2017, February 7, 2017, February 9, 2017, February 10, 2017 and February 16, 2017 were scheduled by email. Attorney for the Parent filed a request for a 30 day extension of time for the hearing on December 6, 2016. As the agreed upon replacement hearing dates fell beyond the thirty day extension requested by Attorney for the Parent, the request was moot and a ruling unnecessary. Parties were informed that the stay put issue relating to Winston Preparatory School was a threshold issue, which would be litigated at the outset of the hearing and that the ruling on the motion to dismiss would be issued on the first date of hearing as well. The first rescheduled hearing dates, January 10, 2016 and January 11, 2016 were postponed. On January 23, 2017, the hearing was opened and Counsel indicated on the record that they had entered into a settlement agreement. Counsel were reminded that there were jurisdictional challenges pending, and confirmation was sought from Counsel that the agreement resolved all 16 issues set forth above in this decision. Attorney for the Parents and Attorneys for the Board confirmed that all issues were resolved by the agreement. The parties jointly requested an extension of the deadline for mailing the final decision and order to January 30, 2017 and this request was granted after a consideration of all of the relevant factors under R.C.S.A. 10-76-h-9(d). Attorney for the Student then withdrew the amended request for a hearing with prejudice.

FINAL DECISION AND ORDER:

In light of the above facts, the case is dismissed.

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