

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student¹ v. Preston Board of Education and Norwich Free Academy

Appearing on behalf of Student: Student's Mother, *Pro Se*

Appearing on behalf of the Board of Education: Attorney Kyle McClain
Siegel O'Connor O'Donnell & Beck PC
150 Trumbull Street 5th Floor
Hartford, CT 06103

Appearing on behalf of Norwich Free Academy: Attorney Marsha Belman Moses
Berchem Moses & Devlin PC
57 Broad Street
Milford, CT 06460

Appearing before: Janis C. Jerman, Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing in the above-captioned matter was requested by Student's Mother via Request for Impartial Special Education Hearing dated April 2, 2014.² It was received by the Board of Education ("BOE") on April 3.

A pre-hearing conference was scheduled for April 17. On April 16, BOE and NFA filed a Joint Sufficiency Challenge alleging that the Request For Hearing failed to set forth "a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem." The Hearing Officer issued a written decision deeming the Request for Impartial Special Education Hearing to be insufficient under 20 U.S.C. 1415; 34 CFR 300.508; and Connecticut State Regulations Section 10-76h-3. Student was given leave to amend the Request by May 3. The pre-hearing conference was postponed pending filing of an amended Request.

Student's Mother filed an Amended Request for Impartial Special Education Hearing ("Amended Request") on May 2. It was received by BOE's Attorney and Norwich Free Academy's ("NFA's") Attorney on May 2. On May 16, BOE and NFA filed a Joint Sufficiency Challenge alleging that the Amended Request For Hearing failed to set forth a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem. The Hearing Officer issued a written decision deeming the Amended Request for Impartial Special Education Hearing to be sufficient under 20 U.S.C. 1415; 34 CFR 300.508; and Connecticut State Regulations Section 10-76h-3.

The timelines reset based on the filing of the Amended Request. The 30-day resolution period ended June 1. The original deadline to mail the final decision and order was July 16.

¹ In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student", "Parents", "School" and titles of school staff members and certain other witnesses in place of names and other personally identifiable information.

² All dates are 2014 unless otherwise indicated.

A telephonic pre-hearing conference was held on May 21. Student's Mother appeared on behalf of Student, Attorney McClain appeared on behalf of BOE, and Attorney Moses appeared on behalf of NFA.

The following issues were identified:

1. Did the Board of Education and Norwich Free Academy appropriately implement Student's January 2014 IEP after February 6, 2014?
2. Did the Board of Education and Norwich Free Academy propose an appropriate IEP for Student in April 2014?
3. If the answer to any of the above Issues One through Two is in the negative, what shall be the remedy?

A hearing convened on June 18, at which Student's Mother made an opening statement and put on three of the seven witnesses identified on her witness list. A second day of hearing was scheduled for July 11.

On June 19, NFA's Attorney filed a request for extension of the mailing date to accommodate the July 11 hearing. Student's Mother agreed with the request for an extension. After fully considering the parties' positions, the request for an extension of the mailing date was granted. The deadline to mail the final decision and order was extended thirty days to August 10.

On June 20, Student's Mother filed a motion to dismiss the case without prejudice. She indicated that "[s]hould further explanation be required to substantiate my request, I will certainly expound upon your directive." The Hearing Officer asked her to indicate the basis for the request to dismiss without prejudice.

On June 22, Student's Mother filed Motion With Basis to Dismiss Without Prejudice. Her motion indicated that, on June 19, she was required to begin a new medical treatment that cannot be delayed. She further indicated that she is concerned about the conflict remaining unresolved.

On June 27, NFA's Attorney and BOE's Attorney filed a Joint Objection to the Motion to Dismiss Without Prejudice. The motion did not identify the length of medical treatment or whether Student's Mother can continue to participate in the case after an extension to allow her to complete her medical treatment.

Because the parties committed time and resources to the hearing, including filing and responding to motions and other requests; filing exhibits; preparing witnesses; and taking testimony from three witnesses, it was deemed that a dismissal without prejudice was not appropriate and would be prejudicial to BOE and NFA. The Motion to Dismiss Without Prejudice was denied. Student's Mother was given the option to proceed to hearing on July 11; request a reasonable additional extension of the mailing date to allow her to proceed with hearing after completion of her medical treatment; or request dismissal *with* prejudice.

On June 30, Student's Mother filed Parent Motion with Basis to Dismiss With Prejudice. The motion stated that Student and Student's Parents wish to "assure both the BOE and [NFA] that we have never wanted to have any claims against them, nor do we ever want to have any claims against them."³

FINAL DECISION AND ORDER

In light of the above facts, the above-captioned case is dismissed with prejudice.

³ The Motion asks for advice on the status of the proposed April 2, 2014 Individualized Education Program ("IEP"). Student's Mother has decided to request dismissal of the case as opposed to continuing the hearing to completion. Therefore, a substantive ruling on the issues will not be made and the Hearing Officer will not provide legal advice or otherwise comment on the status of the IEP.

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

JANIS C. JERMAN

Hearing Officer

Name in Print