

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Region 13 Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Sylvia Ho, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board violate the terms of the parties' settlement agreement?
2. Should the Board be required to offer a program to Student for the 2013-2014 school year when the Board breaches the confidentiality clause in the parties' settlement agreement?
3. Did the Board disclose the terms of the parties' settlement agreement in breach of the settlement agreement's confidentiality clause?
4. If there was such a disclosure, did such disclosure violate the procedural safeguards of the Individuals with Disabilities Education Act ("IDEA")?
5. Did the Board disclose the Student's program in breach of the settlement agreement's confidentiality clause?
6. If there was such a disclosure, did such disclosure violate the procedural safeguards of the IDEA?

**PROCEDURAL HISTORY:**

Parents and Student filed the Due Process Complaint and Request for Hearing on August 1, 2013. The Hearing Officer conducted a Prehearing Conference on August 7, 2013. The Board filed a Motion to Dismiss and supporting memorandum of law on August 16, 2013. The Parents and Students filed a Reply to the Board's Motion to Dismiss with supporting memorandum of law on August 26, 2013. On September 13, 2013, the Parents and Student filed a Motion for Stay Put Placement. On September 24, 2013, the Board filed an Opposition to the Parents and Student's motion. The Hearing Officer held a hearing on

September 30, 2013, to consider both the Board's Motion to Dismiss and the Parents and Student's Motion for Stay Put Placement.

**SUMMARY:**

The Parents and Student brought the Due Process Complaint alleging that in March of 2013 the Board had violated the confidentiality provision of a previously executed settlement agreement. The private settlement agreement was negotiated between the parties with the assistance of their counsel and without resort to the IDEA regulatory mediation or resolution processes contained in 34 CFR §508 or 34 CFR §510. The settlement agreement contained a provision requiring the parties to keep the terms of the settlement agreement "confidential except insofar as is necessary to enforce the Agreement." The settlement agreement anticipated that Student would graduate from the negotiated educational placement in August 2012 and released the Board from obligations to provide further programming for the 2013-2014 school year. The settlement agreement states that the agreement is binding and enforceable in any state court of competent jurisdiction or in a Federal District Court.

The Complaint alleges that the breach of the confidentiality provision of the settlement agreement is a violation of 20 U.S.C. §1417(c) and 34 CFR 300.622, 34 CFR 300.623 and 34 CFR 300.625. The Complaint also alleges that the violation of the confidentiality provision nullifies the entire agreement and thus, the Board was required to develop and plan an appropriate program for Student for the 2013-2014 school year. Parents and Student allege that the Board was required to plan and develop a second transition year at the Grove School because of the Board's alleged breach of confidentiality.

The Due Process Complaint seeks 1) a determination that the Board violated the IDEA by failing to plan and develop an appropriate educational program for Student for the 2013-2014 school year when it allegedly breached the confidentiality provision of the Settlement Agreement and 2) a determination that the alleged breach of the confidentiality of the settlement agreement is a due process violation under the Individual Disabilities Education Act, 20 U.S.C. §1417(c). The Parents and Student also filed a Motion for Stay Put Placement under 20 U.S.C. § 1415(j) and 34 CFR 300.518.

The Board moved to dismiss the entire Complaint on the grounds that 1) the Hearing Officer lacks jurisdiction to enforce the parties' settlement agreement and 2) the Hearing Officer lacks jurisdiction to consider violations of confidentiality under 20 U.S.C. §1417(c) because those rights are enforced under 20 U.S.C. §1232g (also known as "FERPA").

**STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

**FINDINGS OF FACT:**

The following facts are undisputed by the parties and are material to the Hearing Officer's decision.

1. Student is now 19 years of age (birth date July 6, 1994) and was receiving special education services under the category of disability of Emotional Disturbance. (Due Process Complaint.)
2. Student was placed at Grove School, a therapeutic day clinical program, under an Individualized Education Program (IEP) dated December 20, 2011. (Board's Opposition to Parents and Student's Motion for Stay Put Placement, Exhibit A)
3. Subsequently, Parents unilaterally placed Student in the residential program at Grove School. (Due Process Complaint)
4. Thereafter, the parties entered into a private settlement agreement ("Settlement Agreement") after a Planning and Placement Team (PPT) meeting. The parties arrived at the settlement agreement as a result of direct negotiation with the Board agreeing to pay certain amounts in consideration for releases and waiver of future claims under the IDEA, FERPA, and Section 504 of the Americans with Disabilities Act by the Parents and Student as to the Board's obligations to provide programming for the 2011-2012 school year and beyond. (Representations of Board and Parents and Student counsel at September 30, 2013 hearing)
5. Both parties and their counsel signed the Settlement Agreement in October of 2012. Paragraph 8 of the Settlement Agreement states:

*The Parents and Student acknowledge that they have at all relevant times been represented by counsel experienced in this area of the law and this Agreement has been fully explained to them by such counsel...The Parents and the Student warrant that they are entering into this Agreement voluntarily and knowingly, with a full and complete understanding of the terms of this Agreement. (Board's Motion to Dismiss, Exhibit A)*

6. Paragraph 4 of the Settlement Agreement states:

*In consideration of the above payments, the Parents and Student willingly and voluntarily agree that such payments are being made in full and final settlement of all fees, costs and/or damages for any claims relating to Student's educational program including compensatory education, through the Student's agreed upon exit from eligibility for IDEA services in August 2013, whether or not the Student completes the program at Grove School, as the Student has already completed his requirements for a high school diploma from the Board. The Parents and Student agree that the Board will issue, and the Student will accept, a high school diploma from the Board in August 2013.*

*The Parent and the Student expressly agree that they will not seek additional services or funding for any services, other than those indicated above, for the remainder of the 2012-2013 school year through August 2013 in any forum. The Parties further expressly agree that after 2013, other than those costs specifically stated above in Paragraph 2, the Board will no longer be responsible for any educational services and/or related costs for the Student; and the Parents and the Student will be solely responsible for any such educational and related services after August 2013 at any point in the future.* (Board Motion to Dismiss, Exhibit A) (Emphasis supplied)

7. Paragraph 12 of the Settlement Agreement states:

*The Parents and the Student agree this Agreement shall be kept confidential except insofar as is necessary to enforce the Agreement. The parties acknowledge that the terms of this Agreement may not be disclosed and/or used as evidence in any subsequent due process hearing or civil proceeding except as necessary to enforce the Agreement.*

8. Paragraph 13 of the Settlement Agreement states:

*The Parties acknowledge that this Agreement is legally binding upon the parties and enforceable in any State court of competent jurisdiction or in a district court of the United States.*

**CONCLUSIONS OF LAW AND DISCUSSION:**

1. This administrative hearing was commenced pursuant to the IDEA and applicable Connecticut special education law. Pursuant to the IDEA, a local educational agency ("LEA") is responsible for providing disabled children within its jurisdiction with a free and appropriate public education program ("FAPE") in the least restrictive environment ("LRE"). See 20 U.S.C. §§ 1412(a)(1); 1412(a)(5)(A). When there is a disagreement between the parents of such a child and the LEA over whether the LEA has satisfied its obligations under the IDEA, the parents may commence a special education due process hearing and thereafter seek review of the hearing officer's decision by a court if they are aggrieved by that decision.
2. Under the IDEA, where the parents of a child challenge a special education program proposed by an LEA, the issue to be resolved is whether the LEA's proposed program provides the child with a FAPE as determined by applying the two prong test stated in *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 206-07 (1982).
3. Under *Rowley*, the Board's program would provide the Student with a FAPE if the proposed Individualized Education Plan ("IEP"): (1) was developed in compliance with the IDEA's procedural requirements; and (2) was "reasonably calculated to enable [the Student] to receive educational benefits," or, in other words, "likely" to produce more

than trivial or *de minimis* progress. *Id.* The IDEA does not require that the Board provide the best program money can buy or provide a program that has all of the features that the Parents desire.

4. The subject matter jurisdiction of IDEA due process hearings and impartial hearing officers is defined under state and federal law. The IDEA states that impartial hearing officers and due process hearings are to decide issues outlined in 20 U.S.C. §1415(b)(6)(A) or (k)<sup>1</sup>. 20 U.S.C. §1415(b)(6)(A) defines the subject matter as “*matter[s] relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child*”. 20 U.S.C. §1415(b)(6)(A) and see also, 20 U.S.C. §1415(f)(1)(A). The hearings are a means of resolving complaints when an LEA either “(A) *proposes to initiate or change; or (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.*” 20 U.S.C. §1415(b)(7)(A)(III).
5. §10-76h of the Connecticut General Statutes confines the jurisdiction of Hearing Officers to confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of FAPE to a child, to determining the appropriateness of a unilateral placement of a child or to prescribing alternative special education programs for a child.
6. The Due Process Complaint alleges that the Board breached the confidentiality of the Settlement Agreement in violation of the confidentiality provisions of the IDEA in 20 USC §1417(c); 34 CFR §300.622; 34 CFR §300.623 and 34 CFR §300.625. The sole issue here is the alleged disclosure of the terms of Settlement Agreement itself and not anything relating to the LEA’s conduct in the “identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such child.” 20 USC §1415(b)(6)(A). The IDEA requires the promulgation of regulations with regard to student and parent rights of confidentiality under 20 U.S.C. §1232g (FERPA), which has regulatory mechanisms to enforce Parents and Student’s privacy rights under §1417(c). These procedures are distinct from the present due process hearing convened under 20 U.S.C. §1415. While there may be instances in which violations of FERPA may be decided as part of a due process hearing convened under 20 U.S.C. §1415 to determine the identification, evaluation or educational placement or the provision of FAPE to a child, this is not such an instance.
7. The Board also argues in its Motion to Dismiss that the Hearing Officer lacks jurisdiction to enforce settlement agreements. The Board argues that the Settlement Agreement was a mediation agreement under 34 CFR §300.506.

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<sup>1</sup> Due Process Hearing Officers also have jurisdiction to decide issues involving alternative educational settings under 20 U.S.C. §1415(k). The present Due Process Complaint does not raise any issues relating to alternative educational settings and thus, no discussion is required.

8. Parents and Student disagree with the Board's characterization of the Settlement Agreement as a mediation agreement. They also argue that the Hearing Officer always has jurisdiction to enforce settlement agreements including the jurisdiction to decide whether they have been breached. Parents and Student argue that the Hearing Officer should first find the Board in breach and nullify the Settlement Agreement and then determine whether the Board provided FAPE by failing to develop and plan an appropriate educational program for the 2013-2014 school year.
9. Both parties agree that the Settlement Agreement settled the Board's obligations and the provision FAPE for the 2013-2014 school year. Both parties agree that the alleged breach of the agreement is what gives rise to the Due Process Complaint in this case. Both parties agree that the issues of FAPE in the 2013-2014 school year cannot be addressed by the Hearing Officer without first deciding the enforceability and facts relating to the alleged breach of the Settlement Agreement. Parents and Student do not make any claims that the Board violated FAPE by failing to implement the Settlement Agreement.
10. The Settlement Agreement at issue is a private agreement outside the IDEA statutory mechanisms. It is neither a mediation agreement arrived at after mediation with a SEA appointed mediator under 34 CFR §506 nor an agreement as a result of the resolution process described in 34 CFR §510. The IDEA confers jurisdiction on state and federal courts to enforce these mediation and resolution agreements.
11. Private settlement agreements lie outside the purview of the IDEA's statutory framework and are matters for state courts. *See Hoeoye Central School District v. S.V., 56 IDELR 6 (USDC Western District NY)(2011)*. The present Settlement Agreement states in paragraph 13 that "this Agreement is legally binding upon the parties and enforceable in any State court of competent jurisdiction or in a district court of the United States." Determining whether there has been a breach by the Board under these circumstances necessarily involve interpretation of state common law of contracts and fact-finding unrelated to the jurisdiction of the Hearing Officer to determine "identification, evaluation or education of or provision of FAPE to the student, or the determination of unilateral placement of the student or alternative education programs for the student." See Conn. Gen. Stat §10-76h(d)(1) and R.C.S.A. §10-76h-3. The Hearing Officer thus concludes that she does not have subject matter jurisdiction to determine the enforceability of the Settlement Agreement. *See H.B. v. Colton-Pierrepont Central School District, 341 Fed.Appx 687, 690 (2d Cir 2009)*.
12. There is no need to address the issues of Stay Put placement because the Hearing Officer lacks subject matter jurisdiction to decide the issues raised in the Complaint. Accordingly, the Board's Motion to Dismiss is granted.

#### **FINAL DECISION AND ORDER:**

The Board's MOTION TO DISMISS is hereby GRANTED and the matter is DISMISSED.