

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Connecticut Technical High School System (“CTHHS”)

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 provide appropriate programs for the 2012-2013 and 2013-2014 school years?
2. Did the Board provide an appropriate transition program?
3. Should the Board be required to fund an independent psychoeducational evaluation of Student?
4. Should the Board be required to fund an independent evaluation through a plumbing apprenticeship to confirm his credentials as an “advanced apprentice”?
5. Should the Board be required to fund Student’s attendance at a Connecticut community college for post secondary education?

PROCEDURAL HISTORY:

Parent filed the Due Process Complaint and Request for Hearing on June 17, 2014. The Hearing Officer conducted a Prehearing Conference on June 23, 2014. The Hearing was scheduled for August 5 and 6, 2014. The mailing date of the Final Decision was August 29, 2014.

The Board filed a Motion to Dismiss issues 4 and 5 of the Hearing Request on June 30, 2014. The Parent did not file an opposition to the Board’s Motion to Dismiss. On July 11, 2014, the Board requested that the Board Motion to Dismiss be granted. On July 17, 2014, the Hearing Officer granted the Board’s unopposed Motion to Dismiss. On July 29, 2014, Parents filed a Request for Postponement of the hearing and for an Advisory Opinion. In response, the Hearing Officer inquired of Parent’s counsel whether the Request for Advisory Opinion had been filed with the Connecticut State Department of Education’s Due Process Unit because the Hearing Officer could not be assigned to render an Advisory Opinion on the same case. Parent’s counsel responded that he had not. Later, Parent’s counsel advised that the Board was not in agreement with the Parent’s Request for an Advisory Opinion. On July 31, 2014, Board’s counsel indicated that the Board would object to proceeding to

hearing on August 5 and 6 because the Board had not received the Parent's list of witnesses and exhibits. The hearing date was rescheduled to August 13, 2014. Two days prior to the hearing, Parent's counsel informed the Hearing Officer and Board counsel that he had been handling the matter on a pro bono basis and that he would be withdrawing as Parent's attorney on August 15 because he would be starting a new position and could not continue as counsel. He further stated that he had informed the Parent of this. He also informed the Hearing Officer and the Board's attorney that the Parent had health issues and was undergoing an operation.

The Hearing commenced on August 13, 2014. The Hearing Request was entered into evidence as Exhibit H.O.-1. The issues of the Hearing were identified and it was noted on the record that issues 4 and 5 above were dismissed because the Hearing Officer lacked jurisdiction to decide these issues in a Special Education Due Process Hearing. Prior to the presentation of evidence, two issues were before the Hearing Officer. First, the Hearing Officer received into evidence as H.O.-2, a document confirming the Parent's appointment as the Student's Conservator and H.O.-3, a Power of Attorney signed by the Student to allow Parent to represent the Student since Student is over eighteen (18) years old. Second, Parent's attorney stated that he would not be able to continue with the hearing after August 13, 2014. A second hearing date of August 27, 2014 had been identified for Board witnesses to be available for Parent's examination but the Parent attorney could not be available during the day because he was beginning new employment. The Board objected to commencing the hearing on August 13, 2014 on the grounds that continuing with a *pro se* Parent or a new attorney would be confusing and prejudicial to all parties. The Hearing Officer encouraged the Parent's attorney to contact Statewide Legal Services to help secure another attorney for Parent.

Parent also inquired of the Hearing Officer through his attorney the ramifications of withdrawing the Due Process Complaint/Hearing Request at that time. The Hearing Officer informed the Parent that prior to the presentation of evidence, the Parent would be able to withdraw the Hearing Request and that the dismissal would be without prejudice to the case, which meant that it could be filed again at a later time. If the Parent decided to go forward with the hearing and presented evidence, he would not be able to withdraw the matter without prejudice. The hearing was adjourned so that the Parent and his attorney could decide whether to withdraw the matter without prejudice. After a short conference, the Parent's attorney stated that the Parent had decided to go forward.

The Parent presented two witnesses on August 13, 2014. They were Parent and Michael Scott, a regular education shop teacher in the field of plumbing. The Parent presented Exhibits P-1 through P-8; P-10 and P-11; P-13 through P-18; and P-20 through P-27 as full exhibits. P-9 and P-17 were admitted for identification only. P-19 was not admitted as an exhibit. The Parent listed as witnesses: Parent; Student and a number of Board employees, including the Special Education Teacher; Guidance Counselor; Plumbing Department Head; Plumbing Trade Instructor; Social Worker; Career Development Teacher and the Board's Special Education Consultant. Board Exhibits B-1 through B-31 were admitted as full exhibits. The resume of Michael Scott was later provided by the Board and accepted into evidence subsequently as B-32.

On August 20, 2014, the Parent sent an email correspondence to the Hearing Officer and the Board attorney stating that his health condition had gotten worse, that he was being attended to by a doctor and advised to stay off his feet and could not do anything until further notice. The Parent stated that the Hearing Officer and the Board's attorney would receive a note from the Parent's doctor the next day.

H.O-4. On August 21, 2014, the Hearing Officer wrote back to the Parent and Parent's former attorney inquiring of whether the Parent had substitute counsel. The Hearing Officer further stated that the mailing date of the Final Decision was August 29, 2014 and that Parent's former counsel should consult with Parent about his legal options. The Hearing Officer further informed Parent's former counsel that the hearing was going forward and Parent was in need of substitute counsel. Parent's attorney wrote back that he had advised Parent to file a *pro se* appearance with the Hearing Officer and the Connecticut State Department of Education Due Process Unit and that he had contacted Statewide Legal Services to seek alternate counsel for the Parent. The Hearing Officer stated that the matter was scheduled for August 27, 2014 and that the Hearing Officer had no authority to extend the mailing date of the Final Decision.

On August 27, 2014, the Parent's now former attorney stated that he had not heard from Parent and had no idea whether the Parent had secured a new attorney and that he had not received any response to his voicemails or emails to Parent. He stated that he was unavailable to attend the hearing until 4:00 pm. Having not heard from the Parent, he could not say whether the Student would be a witness. The Hearing Officer responded that the hearing was going forward as noticed and that the Parent's former attorney was not expected to appear since he had withdrawn and was newly employed.

The hearing commenced at 10:20 am. Neither the Parent nor substitute counsel appeared at the hearing. The Hearing Officer noted on the record that she had not received any doctor's note from the Parent's doctor as promised by the Parent. The Hearing Officer inquired of the Board's attorney as to whether the Board had received any correspondence from Parent; the Board had not. The Board's attorney had received a voicemail from Parent's former attorney offering to appear at 4:00 pm to examine the CTHHS Board's Educational Consultant. The Hearing Officer dismissed the matter under R.S.C.A. 10-76h-14(a) for the Parent's failure to meet his burden to go forward with the evidence and R.S.C.A. 10-76h-18(a)(1) for failure to prosecute the Hearing Request.

SUMMARY:

Parent of a 18 year old Student studying plumbing at a vocational and technical program brought a Due Process Complaint/Hearing Request seeking an independent psychoeducational evaluation, an evaluation of the Student's plumbing competencies and community college at Board expense. Prior to the commencement of the hearing, the Parent's volunteer attorney informed the Hearing Officer that he planned to withdraw from representation of the Parent at the end of the first hearing day. Parent's attorney was encouraged to seek substitute legal counsel for the Parent. The Parent, who was having health issues, considered withdrawing the matter without prejudice and refiling the matter, and was informed that the matter could not be withdrawn without prejudice after the presentation of evidence. Parent, who had the advice of counsel, chose to go forward with the evidence. The Parent testimony revealed that his main concerns involved the Student's competency in the plumbing trade and how the Student would fare after high school. On the day of the hearing, the Parent did not produce evidence involving the appropriateness of the Student's special education program or transition plan. Seven days prior to the second hearing date, Parent sent an email stating that his health issues precluded him from attending the second hearing because he was under a doctor's care. He stated that he would be sending a doctor's note the next day. The hearing reconvened and neither Parent nor substitute legal counsel appeared. The matter was dismissed pursuant to Regulations of Connecticut State Agencies

("R.C.S.A.") Section 10-76h-14(a) for Parent's failure to meet the burden to go forward with the evidence and Section 10-76h-18(a)(1) for failure to prosecute the hearing.

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 18 years of age (birth date November 19, 1995) and was receiving special education services under the disability category of Autism at EC Goodwin High School. The Student attended EC Goodwin for four years and participated in graduation but did not receive a diploma. (Due Process Complaint) (Testimony, Parent)
2. The Hearing Request alleged that Student was denied a free and appropriate public education ("FAPE") because the Student did not receive an appropriate program designed to meet his unique needs; that his program lacked measurable post secondary goals and that he was not prepared to exit special education and related services. The Due Process Complaint, among other things, requested that an independent evaluator be appointed to confirm Student's "credentials as an advanced apprentice" at the Board's expense and that Student be enrolled at a Connecticut Community College at Board expense. Further, the Complaint requested that the Student undergo an independent psychoeducational evaluation at Board expense so that a new IEP could be developed for Student. (Due Process Complaint)
3. The Parent presented his testimony during the first day of the hearing, which testimony was completed and cross-examined. The Parent testified that he was not satisfied that the Student's regular education plumbing program was an effective program. The Parent testified that the Student was lost in trying to repair a friend's garbage disposal. Further, he did not trust the EC Goodwin's regular education plumbing teacher because the teacher had not given him proof that the Student was able to install a toilet. The Parent has no plumbing experience. He was also dissatisfied that he did not see the Student's homework although he never asked for homework at a PPT meeting. He also did not understand and disagreed with the differences in results of the Student's CAPT scores and his higher grades in his regular education classes. The Parent feels that the School should provide more services for Student in plumbing, math, writing and reading. The Parent testified that the Student should be "at least...be able to read and write add and subtract...as a high school graduate." (Testimony, Parent)
4. The Student's regular education plumbing teacher, a Parent witness, testified that Student was performing well and kept up with his non-disabled peers both in academic work on the theories behind plumbing and in practical application of what he had learned. The teacher testified that although Student had the accommodation of extra time on tests and quizzes on his IEP, Student did

not need to use extra time and generally performed well on tests and kept up with non-disabled peers. The Student was competent and was able to perform plumbing work on a hands-on basis at a skill level similar to that of non-disabled peers. His grades in academic performance, without utilizing special education accommodations, and in Plumbing were similar to non-disabled peers. His teacher testified that the next step for the Student was to gain a driver's license and to obtain an apprenticeship with a plumber. (Testimony, M. Scott)

5. The Parent's primary complaint with the Board is his general concern about the preparedness for life after high school. The Parent's testimony about his concerns was extensive and none of these concerns involve the special education program or services. In fact, the Student performed similarly to non-disabled peers without utilizing special education supports or accommodations. There is neither evidence from Parent's witnesses' testimony nor from the educational record to draw a conclusion that the Student's special education program was inappropriate or to support other claims in the Due Process Complaint. The evidence did not support the Parent's general statements that the Student could not read or write or do math. The evidence showed that the Student was in fact prepared to exit special education services and leave high school and continue training as an apprentice in the plumbing field. There was no evidence that Student's special education or transition program was inappropriate. (Testimony, M. Scott; Testimony, Parent; Exhibits P-21 and P-24).

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 Program ("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. The IDEA requires the "doors of public education [to] be opened for a disabled child in a "meaningful" way." *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132.

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)¹. 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 Parent’s concerns do not involve special education. The Parent is generally concerned about whether the Student would be a competent plumbing apprentice. (Finding of Fact No. 3)
7. "When the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit." *Rowley* at 207 n.28. Although the Student was eligible for special education services, the Student performed similarly to non-disabled peers and was ready to graduate and become a plumbing apprentice, which would have been the next step in his training to become a plumber. (Finding of Fact No. 4)
8. R.C.S.A. Section 10-76h-14(a) places the burden on the party who filed for due process with the burden of going forward with the evidence. The Parent had not brought forward any evidence to support the claims in the Due Process Complaint that the Student’s special education program was inappropriate. Furthermore, the Parent’s concerns do not involve the Student’s special education program but a general concern about how the Student would fare after high school. The Parent has not met this burden.
9. R.C.S.A. Section 10-76h-18(a) provides that “the hearing officer may order, sua sponte, an entry of default or dismissal for failure of any party (1) to prosecute a hearing.” The Parent was aware on the first day of the hearing that his attorney was planning to withdraw. The Parent was aware of his own health problems. He considered withdrawing the Due Process Complaint without prejudice and was informed of the consequences of going forward with the hearing by the Hearing Officer. He had the benefit of legal advice from his counsel. He nevertheless decided to proceed with the hearing; he testified and presented the testimony of the regular education-plumbing teacher. He neither secured a new counsel nor responded to his former counsel nor sent a doctor’s note as stated in his correspondence with the Hearing Officer.

¹ 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.

10. R.C.S.A. Section 10-76h-7(c) states that “[t]he hearing, including the mailing of the final decision and order, shall be completed within the forty-five day timeline established in Part B of the Individuals with Disabilities Education Act, 20 USC 1400, et seq. and the regulations adopted thereunder, as amended from time to time... A specific extension of the forty-five day timeline may be granted at the request of a party to the hearing...” 34 C.F.R. § 300.515 (a) states that “[t]he public agency must ensure that no later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)- (1) a final decision is reached in the hearing; and (2) a copy of the decision is mailed to each of the parties.” 34 C.F.R. §300.515(c) states that [a] hearing officer may grant specific extensions of time beyond the periods set out in paragraph (a) and (b) of this section at the request of either party.” Neither Parent nor Parent’s former counsel requested an extension of the 45-day timeline. The Board has not requested an extension of the 45-day timeline. The Hearing Officer lacks the authority to extend the timeline under these circumstances and is bound to render a decision in this matter and does so for the reasons cited herein.

FINAL DECISION AND ORDER:

The matter is DISMISSED with prejudice.

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

Sylvia Ho
Hearing Officer Name in Print