

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Windsor Board of Education

Appearing on behalf of the Student: Parent

Appearing on behalf of the Board: Attorney Leander Dolphin
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103

Appearing before: Attorney Brette H. Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the District deny Student a Free Appropriate Public Education ("FAPE") for that portion of the 2013-2014 school year beginning on February 9, 2014 and running through the end of the academic year?
2. Did the District deny Student a FAPE for the 2014-2015 school year?
3. Did the District deny Student a FAPE for the 2015-2016 school year?
4. Did the District commit a procedural violation of the Individuals with Disabilities Education Act ("IDEA") during the period of February 9, 2014 through February 17, 2015 by:
 - a. suspending student multiple times;
 - b. not following the procedures for changing a Student's placement under the IDEA; and/or
 - c. failing to conduct a manifestation determination hearing after a change in placement?
5. If the District committed one of the procedural violations listed under Issue 4, was the Student denied a FAPE as a result?

PROCEDURAL HISTORY AND SUMMARY:

On January 26, 2016, Parent filed a Request for Impartial Special Education Hearing on the form provided by the Connecticut State Department of Education for such requests. Under the heading "Description of the nature of the issues in dispute, including related facts", Parent wrote the word "Complaint" followed by a number and then the word "Complaint" again followed by another number. Under the heading "Proposed resolution (to the extent known and available at this time)" on the form, Parent requested only "monetary damages". On February 3, 2016, the Board filed a Motion to Dismiss/Sufficiency Challenge.

During the prehearing conference held on February 5, 2016, the Motion to Dismiss was denied, and Parent was given the opportunity to amend his request to specify the issues in dispute and include specific descriptions of the facts relating to the issues. The deadline for mailing the Final Decision and Order was identified as April 8, 2016. Parent filed an amended request on February 9, 2016, which resulted in a new mailing deadline of April 22, 2016. Under the heading, "Description of the nature of the issues in dispute, including related facts" on Parent's amended complaint he added "to CT State Board of Education" next to the Complaint numbers and wrote "See Exhibit A (Attachment) Denial of FAPE". Exhibit A was a two page

document which contained a list of 20 alleged substantive violations and 3 alleged procedural violations. In addition, Parent modified his proposed resolution of the issues to include a claim for compensatory education, in addition to the original claim for monetary damages in the amended complaint.

On February 22, 2016, the Board filed a second Motion to Dismiss/Sufficiency Challenge in which the Board alleged that the amended complaint still did not contain adequate descriptions of the issues and facts, that the Parent was still requesting an impermissible remedy of monetary damages, and that the complaint did not make clear the time period in which the Parent was claiming the denial of a Free Appropriate Public Education.

On February 24, 2016, the Parent filed a Motion to Deny in response to the Board's Motion to Dismiss/Sufficiency Challenge. Parent claimed that the Board had actual notice of Parent's claims through prior complaints filed with the Connecticut Commission on Human Rights and Opportunities, the Office for Civil Rights and the Connecticut State Department of Education and referenced Exhibit A in support of his statement that the Board had been given sufficient information to proceed.

In her ruling on the Board's Motion to Dismiss and the Parent's Motion to Deny, issued on March 18, 2016, the Hearing Officer found that prior complaints filed with other agencies and prior hearing requests filed with Connecticut State Department of Education were separate and distinct matters and would not be incorporated by reference into the instant hearing. The Hearing Officer found that the inclusion of the phrase "denial of FAPE" on the amended request in conjunction with the very specific descriptions of alleged conduct by the District found in Exhibit A, provided sufficient detail for the amended request to survive the Board's Motion to Dismiss.

The Hearing Officer went on to find that the Attorney for the Board was correct in her assessment that Parent did not identify a time frame for Parent's allegations and Parent was ordered to revise Exhibit A to include dates for any alleged incidents described and send the revised Exhibit A to the Attorney for the Board with a copy to the Hearing Officer. The Hearing Officer went on to rule that to the extent the Board's Motion to Dismiss/Sufficiency Challenge was seeking that Parent's request be dismissed in its entirety, that motion was denied. However, the Board's motion to limit the hearing to the consideration of claims arising during the applicable statute of limitations was granted and the issues set forth above were determined to be the issues in dispute.

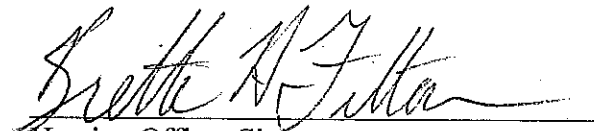
On March 21, 2016, Parent sent an email in which he indicated all allegations in Exhibit A occurred before February 9, 2014. On March 28, 2016, Attorney for the Board renewed her Motion to Dismiss given this new information. The IDEA provides that: "A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows." 20 U.S.C. §1415(f)(3)(C) As Parent is seeking a hearing on events which occurred before the two years preceding the filing of Parent's amended complaint, Parent's claims are time-barred by the IDEA's statute of limitations.

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