

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education

Appearing on Behalf of the Parent:

Pro Se

Appearing on Behalf of the Board:

Michelle Laubin, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Ct 06460

Appearing Before:

Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Was the program offered by the Board for the 2011-2012 school year appropriate and did it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE)?
2. Should the Student be placed at Area Cooperative Educational Services (ACES) for the 2012-2013 school year in order to be provided with FAPE in the LRE?

SUMMARY:

The Student has been as identified with Autism and is entitled to receive FAPE as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a et seq. At a planning and placement team (PPT) meeting, the Parent rejected the program offered by the Board for the 2011-2012 school year. The Parent requested placement at ACES for the 2012-2013 school year at the Board's expense. The Board refused the Parent's request.

JURISDICTION:

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

PROCEDURAL HISTORY:

On August 9, 2012, the Board received notice of the Parent's request for due process. The parties agreed to go to a resolution meeting. The matter was not resolved at the resolution meeting.

An impartial hearing officer was appointed on August 8, 2012 and a pre-hearing conference was held on August 17, 2012. Hearing dates of September 18 and September 26, 2012 were chosen by the parties. At the request of the Parent an additional hearing date of October 15, 2012 was provided to the parties. At the request of the parties, the September 18, 2012 hearing date was cancelled so that the parties could conduct a PPT to see if they could resolve the matter. The PPT was not able to resolve the matter. The Board submitted Exhibits 1 through Board's Exhibit 62. The Parent did not submit any exhibits.

A Spanish speaking interpreter was present to assist the Parent during the prehearing conference. The Spanish speaking interpreter was present at the September 26, 2012 hearing date. The Parent did not attend the September 26, 2012 hearing date because the Student was home and could not be left alone.

The date for the mailing of the Final Decision and Order was extended to accommodate the hearing dates. The date for mailing the Final Decision and Order is October 22, 2012.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. SAS Institute Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and Bonnie Ann F.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student is diagnosed with Autism. He has been found eligible to receive special education and related services under IDEA. (Board's Exhibit¹ No. 48)
2. On February 27, 2012, the Board provided the Parent with a Childhood Autism Rating Scale 2 (CARS2) assessment of the Student. The evaluator recommended that the Student's IDEA classification be changed from Intellectual Disability to Autism. The PPT reviewed the evaluation and agreed with the evaluator and changed the Student's classification to Autism. (B-44 and 45)
3. At the April 26, 2012 PPT meeting, the team recommended that the Student transition to the Board's High School for the 2012-2013 school year. The Parent was not in agreement with the transition to the Board's High School. (B-48)
4. The Parent attend the June 5, 2012 PPT meeting. The team, once again, recommended the Board's High School. The team also recommended that the Parent tour the school and see the program that was being recommended for the Student. (B-54)

¹ Hereafter Parent's Exhibits will be noted as "P" followed by the exhibit number, Board Exhibits will be noted with a "B" followed by the exhibit number and Hearing Officer's Exhibits will be noted as "HO" followed by the exhibit number.

5. A PPT was held on September 13, 2012 to review the transition of the Student to the Board's High School. The PPT decided to place the Student at ACES as requested by the Parent. (Testimony Supervisor of Special Education (SSE))
6. The Parent did not attend the September 26, 2012 hearing date. At the request of the hearing officer, the SSE called the Parent. The SSE stated that the Parent would not be attending the hearing and was satisfied with the placement. The Board made an oral Motion to Dismiss. The Parent expressed to the SSE that she was in agreement with the dismissal of the due process matter because the Student was at the placement she had requested. (Testimony SSE)
7. On September 27, 2012, a letter was sent to the Parent informing her of the results of the September 26, 2012 due process hearing. It was requested that the Parent advise the hearing officer if she was in agreement with the dismissal of the matter. (HO-3)
8. On October 2, 2012, the Parent sent an electronic transmission to the hearing officer requesting another hearing date. (HO-4)
9. On October 12, 2012, the Parent sent an electronic transmission to the hearing officer advising the hearing officer that she was satisfied with the Student's placement and did not want to continue with the due process hearing. (HO-5)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The Student is diagnosed with Autism. He has been found eligible to receive special education and related services under IDEA. (B-48)
2. A party to a hearing may file a motion to dismiss in order to contest the jurisdiction of the hearing officer. The motion shall be accompanied by a memorandum of law and filed with the hearing officer and with the other party. The party opposing the motion to dismiss shall be allowed seven business days after the hearing officer receives the motion to dismiss to file an amended hearing request prior to the hearing officer's consideration of the motion to dismiss, provided all other requirements contained in Sections 10-76h-3 and 10-76h-4 of the Regulations of Connecticut State Agencies are met. Regulations of Connecticut State Agencies (RCSA) §10-76h-8(f)(2)
3. RCSA § 10-76h-8(g) states that, "Strict adherence to the formal motion practice shall not create unfair surprise or injustice. The hearing officer shall have the authority to waive any requirement in the interest of a fair and expedient resolution of the issues presented."
4. At the September 26, 2012 hearing date, the Board made an oral motion to dismiss the matter since the Parent had informed the SSE that she was satisfied with the placement. There was no request that the Board file a memorandum of law with the requested oral Motion to Dismiss. Strict adherence to the formal motion practice and requiring a

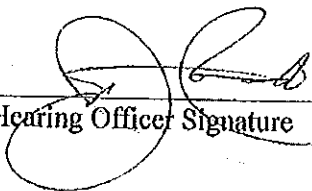
memorandum of law would have been an unnecessary expense to the Board and would have delayed the matter since the Parent was satisfied with the placement. (Findings of Fact No. 6) On further inquiry by the hearing officer, the Parent advised that she wished to continue with the hearing. (Findings of Fact No. 8) An October 15, 2012 hearing date was set. On October 12, 2012, the Parent informed the hearing officer that she did not want to continue with the due process hearing. (Findings of Fact No. 9)

FINAL DECISION AND ORDER:

1. The Board's September 26, 2012, oral Motion to Dismiss is GRANTED.
2. 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

Justino Rosado
Hearing Officer Name in Print