

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Guilford Board of Education

Appearing on behalf of the Student: Attorney Christine H. Barrington
ACCESS! Education Consulting
94 Park Terrace Ave.
West Haven CT 06516

Appearing on behalf of the Board: Attorney Alyce Alfano
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06901-3522

Appearing before: Attorney Brette H. Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the District fail to provide the Student with an appropriate reading program, and thus a free appropriate public education, during the 2016-17 school year?
2. If so, does the Eagle Hill Southport School provide the Student with an appropriate program?
3. Are Parents entitled to reimbursement for out of pocket expenses incurred for supplemental literacy instruction by the Learning House provided to the Student from September 7, 2016 through October 26, 2016?

PROCEDURAL HISTORY AND SUMMARY:

On November 29, 2016, the Board received a special education due process hearing request filed by Student's Guardians and the Connecticut State Department of Education appointed the undersigned Hearing Officer to preside over the matter. On December 7, 2016, Attorney Barrington filed her appearance on behalf of the Guardians. During the prehearing conference held on December 9, 2016, January 30, 2017 was set as the hearing date and the deadline for the mailing of the final decision and order was established as February 10, 2016. Attorney for the Board tendered exhibits to the Hearing Officer 5 days before the hearing. Attorney for the Guardians did not.

Upon arriving for the hearing the Hearing Officer inquired of the Attorney for the Guardians as to whether she had prepared exhibits for the Hearing Officer. The Attorney for the Guardians responded she had not. The hearing was then opened on January 30, 2017 and Counsel indicated on the record that the parties had entered into and executed a settlement agreement resolving the issues before the Hearing Officer. The parties also indicated that a dispute had arisen subsequent

to the execution of the agreement and prior to the opening of the hearing. At this point Attorney for the Guardians tendered to the Hearing Officer a Motion for Withdrawal of Complainant's [sic] Request for an Impartial Due Process Hearing *without* Prejudice (hereinafter "Motion"). The Attorney for the Board objected on the record to the Guardians' Motion and moved for a dismissal with prejudice or an order that the hearing commence.

In support of her Motion, the Attorney for the Guardians argued that to not dismiss the Guardian's hearing request without prejudice would be unfair and unjust because it would presumptively, prohibitively, or punitively deny the Guardians due process "...should a dispute over his special education programming arise." While the use of the word "arise" in the motion might suggest concern about disputes involving future actions by the Board, it must be inferred from the relief sought, that the Guardians were seeking a dismissal without prejudice so that they would retain the right to relitigate, through another due process hearing, the very issues the parties had just agreed to resolve via a settlement agreement *in lieu of* proceeding to the hearing.

Attorney for the Guardians also stated in her Motion that the Hearing Officer lacked the authority to interpret or enforce a settlement agreement and cited case law supporting this assertion. Such case law was irrelevant to consideration of the Guardian's Motion, because neither party had tendered a written agreement for the Hearing Officer to enforce or interpret.

The Attorney for the Guardians went on to state in her Motion that while lacking the authority to interpret or enforce agreements, the Hearing Officer's authority is to at all times ensure the rights of the children with disabilities and their Guardians are protected. These protections were afforded Student when the Hearing Officer opened a due process hearing for the express exercise of Student's right to an administrative hearing and decision on the merits. The due process hearing had been opened that day in order to provide the parties with the opportunity to present testimonial and documentary evidence on the three issues set forth above, so that such evidence could be considered by the Hearing Officer when she rendered a final decision and order. At no time after the hearing was opened, did the Guardians request to go forward with the due process hearing, despite being offered that opportunity. Instead, Guardians affirmatively chose to withdraw their request rather than have the hearing. The parties were sworn in and canvassed by the Hearing Officer and each testified that the three aforementioned issues were entirely resolved by the settlement agreement which they had executed.

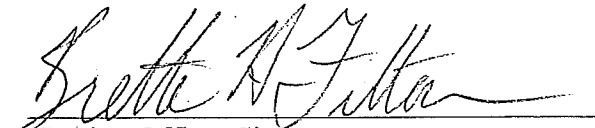
Having found that the parties had settled all three issues before the hearing officer and that Guardians wished to rely on the resolution negotiated in their settlement agreement rather than have the matter heard, the Guardian's Motion was denied and the matter was dismissed on the record with prejudice. As noted on the record the Hearing Officer's ruling on the Guardian's Motion does not prohibit the Guardians from filing a request for a special education due process hearing on ANY issue other than the three cited listed in this decision. 34 CFR § 300.513 (c)

FINAL DECISION AND ORDER:

In light of the above facts, the case 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

Brette H. Fitton
Hearing Officer Name in Print