

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing on behalf of the Parent: Attorney Lynn Cochrane
Greater Hartford Legal Aid
999 Asylum Street
Hartford, CT 06105

Appearing on behalf of the Board: Attorney Melinda B. Kaufmann
Assistant Corporate Counsel
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Hartford, CT 06103

Appearing before: Justino Rosado, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Was the program offered by the Board from the start of the 2011-2012 school year to April 26, 2012 appropriate and did it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE)?
2. Is the Student entitled to compensatory education for the Board's denial of FAPE?

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 Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

SUMMARY:

The Student has been identified with a Specific Learning Disability and is entitled to receive FAPE as defined in 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 stated that the program offered the Student for the 2011-2012 school year to April 26, 2012 was not appropriate and requested compensatory education. The Board denied the Parent's request. The parties were not able to conduct a resolution meeting. The matter proceeded to hearing.

PROCEDURAL HISTORY:

On April 15, 2013, the Board received notice of the Parent's request for due process. The parties attempted to go to a resolution meeting.

An impartial hearing officer was appointed on April 16, 2013 and a pre-hearing conference was held on April 24, 2013. Hearing dates of May 23 and 24, 2013 were chosen by the parties. These hearing dates were cancelled because the Parent's attorney was not able to contact the Parent. The matter proceeded to hearing on June 17, 2013. The Board presented Exhibits 1 to 8 which were full exhibits of the hearing. The Parent did not present any exhibits.

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).

The date for the mailing of the Final Decision and Order was extended to accommodate the hearing date. The date for mailing the Final Decision and Order is July 5, 2013.

FINDINGS OF FACT:

1. The Student is diagnosed with Specific Learning Disability and is eligible to receive special education and related services as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.
2. At the November 2, 2012 PPT meeting, the team noted that the Student was having trouble understanding math but was making progress in reading. The Parent's attorney informed the Board that she would be seeking 540 hours of compensatory education for the denial of FAPE. (Hearing Officer's Exhibit¹ No. 4)
3. On April 25, 2013 the Board sent an electronic transmission to the Parent's attorney regarding the Parent's availability for a resolution meeting. The Parent's attorney was not able to contact her client. (Board's Exhibit² No. 2)
4. On April 30, 2013 the Board offered the Parent additional dates for a resolution meeting. The Parent's attorney was not able to make contact with her client. (B. Nos. 3 and 4)

¹ Hereafter Hearing Officer Exhibits will be noted as "H.O." followed by the number of the exhibit.

² Hereafter Board's Exhibits will be noted as "B" followed by the number of the exhibit.

5. On May 10, 2013 the Parent's attorney requested cancellation of the hearing dates because she was not able to contact her client. The request was granted. (B.-6, H.O.-3)
6. On May 14, 2013 the Parent's attorney informed the Board that they would attend a resolution meeting; May 22, 2013 was chosen by the parties for the meeting. The Parent's attorney was present but the Parent did not appear. Attempts by the Parent's attorney to contact her client were futile. (B.-7 and B.-8)
7. On May 24, 2013, the Board filed a Motion to Dismiss arguing that the Parent has failed to engage in good faith in the resolution process. The Parent did not file an objection. (H.O.-5)
8. On June 18, 2013, a due process hearing was scheduled and attended by the Board, their attorney and the Parent's attorney. The Parent did not attend even though she was informed of the hearing. There was no excuse provided for the Parent's absence to object to the Motion to Dismiss and prosecute the hearing.

CONCLUSIONS OF LAW and ARGUMENT:

1. It is undisputed that the Student is eligible for special education and related services as set forth in IDEA, 20 U.S.C. Sec. 1401, et seq. FAPE is defined as special education and related services that are provided at public expense, meet the standards of the state educational agency, include an appropriate school education, and that are provided in conformity with the IEP. 20 U.S.C. §1401(8).
2. IDEA requires that the parties to a due process hearing hold a resolution meeting, "[w]ithin 15 days of receiving notice of the due process complaint, and prior to the initiation of the due process hearing." 34 C.F.R. §300.510(a)(1)
3. The meeting gives the Board an opportunity to ascertain the facts that are the basis for the Parent's filing the complaint and conduct a discussion to see if the matter can be resolved quickly and reduce the cost of a due process hearing. 34 C.F.R. §300.510(a)(2)
4. IDEA also provides safeguards to ensure that the resolution process is followed:
 - a. If an LEA is unable to obtain the participation of the [P]arent in the resolution meeting after reasonable efforts have been made, and documented (using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the [P]arent's due process complaint. 34 C.F.R. §300.510(b)(3).
 - b. If the LEA fails to hold the resolution meeting within 15 days of receiving notice of a [P]arent's due process complaint or fails to participate in the resolution meeting, the [P]arent may seek the intervention of a hearing officer to begin the due process hearing timelines. 34 C.F.R. §300.510(b)(4).

5. The Board complied with IDEA and made reasonable efforts to attempt to provide a resolution meeting in order to ascertain the issues and see if the matter could be resolved. (Findings of Fact Nos. 3, 4 and 6)
6. After the thirty (30) day resolution period, the Board filed a Motion to Dismiss based on the Parent's failure to participate in the resolution meeting. The Parent did not file an objection and at the hearing on June 18, 2013, the Parent failed to appear and did not provide a reason for not appearing or failing to respond to the Board's attempt to conduct a resolution meeting.
7. The Motion to Dismiss was taken on the papers and the matter was dismissed according to 34 C.F.R. §300.510(b)(3) and "failure to prosecute a hearing." Regulations of Connecticut State Agencies (RCSA) 10-76h(18)(a)(1).

FINAL DECISION AND ORDER:

THE MATTER IS DISMISSED WITH PREJUDICE.