

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. East Lyme Board of Education

Appearing on behalf of the Parents: Student's Mother, pro se.

Appearing on behalf of the Board: Attorney Frederick L. Dorsey
Siegel, O'Connor, Zangari,
O'Donnell & Beck P.C.
150 Trumbull Street
Hartford, CT 06103

Appearing before: Attorney Patricia M. Strong
Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY:

This hearing was requested on January 10, 2003. This hearing officer was assigned to the case on that date. A prehearing conference was held on January 17. The Parent requested that the Board attorney's law firm be disqualified because another attorney from the firm represented the Board at an expulsion hearing of the student and allegedly threatened the Parent. She asserted she is planning to file a grievance against that attorney. She was advised to put the motion in writing. The Parent claimed that the student should have been classified as eligible for special education at a Planning and Placement Team (PPT) meeting held on December 13, 2002. The Parent was advised that there was no issue in this hearing regarding the expulsion or the failure to hold a manifestation determination meeting. The sole issue would be whether the student should have been found eligible for special education. Hearing dates were agreed on for February 6 and March 14. On January 21 the Parent sent a written request to disqualify the Board's law firm. This was to be ruled on at the February 6 hearing, however, on February 5, the parties requested a postponement of the hearing because it appeared likely that the case would be settled. On February 4 a PPT meeting was held at which the student was found eligible for special education as a student with other health impairment (OHI). The parties requested that the hearing be postponed until March 14. The request was granted. The decision deadline was extended to March 24.

On March 13, the hearing officer received correspondence from the Board attorney stating that the matter had been resolved and that the March 14 hearing was cancelled.

The hearing officer directed the Board attorney to provide something in writing from the Parent to indicate that she wished to withdraw the hearing. The Parent telephoned the hearing officer late in the afternoon on March 13 and stated that she wanted a postponement. The Parent was advised that she must withdraw the case or appear at the hearing on March 14. The Parent stated she would fax a withdrawal to the Hearing Officer at 8:00 a.m. on March 14. The hearing officer cancelled the March 14, 2003 hearing. The Parent did not withdraw the case. On March 14 at 3:51 p.m. she faxed a letter to the Hearing Officer in which she requested that the hearing for March 14 be postponed and stated several concerns about finalizing the IEP and a statement in the February PPT minutes regarding the student not being permitted on school grounds. She wished to have the minutes corrected to remove it because the student's expulsion had been reversed at a manifestation review.

CONCLUSIONS OF LAW:

1. The jurisdiction for this hearing is provided by Conn. Gen. Stats., Section 10-76h(a)(1), which provides in relevant part:

A parent or guardian of a child requiring special education and related services pursuant to sections 10-76a to 10-76g, inclusive . . . may request, in writing, a hearing of the local or regional board of education or the unified school district responsible for providing such services whenever such board or district proposes or refuses to initiate or change the identification, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil. . . .

The sole issue in the hearing is whether the Student should have been identified as eligible for special education in December 2002. Since the Student was identified in February 2003, there is no issue in dispute for the hearing to adjudicate. See also Section 10-76h(c)(3)

2. It appears that the case is moot based on the actions at the February 4 PPT meeting. If there is no issue in dispute, the case is moot and there is no jurisdiction to proceed further. "[M]ootness is evaluated throughout the pendency of the litigation." Fetto v. Conn. State Dept. of Education, 181 F.Supp.2d 53 (D. Conn. 2002). See also Board of Education of the Town of Stafford v. State Department of Education, 243 Conn. 772, 777 (1998). "A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists."
3. Section 10-76h-9 requires requests for postponement of a hearing to be made in writing five business days before a hearing. The Parent was not in compliance with this rule.
4. The Parent's belated request for a postponement was apparently made in an attempt to keep this case pending until she was completely satisfied with the Board's

implementation of the IEP. This is an inappropriate use of due process. If the Board fails to implement the IEP, the Parent has the remedy of filing a new due process complaint. Conn. Gen. Stats. 10-76h.

5. Section 10-76h-18 permits the hearing officer to order, sua sponte, the dismissal of a case for failure of a party to prosecute a hearing.

FINAL DECISION AND ORDER:

The Parent has failed to withdraw the case as settled or to prosecute the case, and, therefore, it is ordered that this case shall be **dismissed** without prejudice.