

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education

Appearing on behalf of the Parents:

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Appearing on behalf of the Board of Education:

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Appearing before:

Attorney Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUE

- I. Whether the hearing officer should dismiss the captioned action as requested by the New Haven Board of Education.

SUMMARY

The student is 19 years old, the action is initiated by a letter signed by the mother, uncle and grandmother (“the representatives”) dated June 17, 2003. The “representatives” did not provide a FAX or phone number, where they could be reached, to receive notice of a prehearing conference call. The prehearing conference convened on July 8, 2003. The New Haven Board of Education (LEA) participated and requested the representatives provide the LEA with a more precise statement of issues. An additional prehearing conference convened on July 18, 2003. The first day of hearing convened on July 21, 2003, to address preliminary issues. The LEA filed a motion to dismiss and the “representatives” requested a postponement of the hearing to give them time to obtain counsel. When the “representatives” counsel appeared they requested additional extensions of time to prepare for the hearing.

FINDINGS OF FACT:

The “representatives” filed a claim for due process is dated June 17, 2003.

A prehearing conference convened on July 8, 2003. The parents did not participate in a prehearing conference because they did not provide the State Department of Education with a FAX or telephone number.

Another prehearing conference convened on July 18, 2003.

A hearing was set to present preliminary motions on July 21, 2003 to provide the “representatives” an additional opportunity to participate in a prehearing conference.

By motions dated July 21, 2003 the LEA moved to dismiss the action claiming the “representatives” are not the legal guardian of the 19 year old student; the “representatives” failed to participate in the prehearing conference call; the “representatives” failed to specify the issues for hearing in a timely manner and are not prosecuting the case in a timely manner. By oral motion made July 22, 2003. The “representatives” requested a postponement to retain counsel.

An attorney for the “representatives” communicated more than two weeks after the July 21, 2003 hearing. The uncle and mother were appointed co-conservators of the student and the attorney stated she would be representing the student in the due process action after a vacation ending August 14, 2003. The communication requested additional time to prepare the case for hearing.

The date for final decision in the matter is August 11, 2003. An extension for time for final decision was granted to provide time for the motions to be decided.

CONCLUSIONS OF LAW:

The Regulations of the State Connecticut Agencies (RSCA) § 10-76h (b) provides in part, upon request for hearing the state will schedule a hearing which shall be held and the decision written and mailed within forty-five days of the receipt of the request for hearing.

The request was made by the “representatives” who did not provide a telephone or FAX number, which caused delay in scheduling the hearing, the “representatives” made a request not to dismiss the case but to extend time for the date of final decision. The “representatives” requested time to retain counsel in the case.

The hearing officer agreed on July 21, 2003, not to dismiss the matter, immediately; but the ruling on pending motions could result in a dismissal.

Additional time elapsed, when counsel for the “representatives” communicated with hearing officer there was mention of the counsel’s vacation and a request for additional time to prepare for the hearing.

The claimant was not prepared to proceed with the Due Process hearing. There was no hope of concluding the hearing or even beginning the hearing until the original date of final decision in the matter. It is unlikely the “representatives” would have been able to begin the hearing until some time after a 30 day extension would have expired. There was no indication on the record the student would be harmed by dismissal without prejudice.

FINAL DECISION AND ORDER

1. The due process hearing is dismissed without prejudice.