

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Windsor Board of Education

On behalf of the Parents:

Mother, *Pro Se*

On behalf of the Board of Education:

**Attorney Susan C. Freedman
Shipman & Goodwin, LLP
One American Row
Hartford, CT 06103-2819**

Hearing Officer:

Stacy M. Owens, Esq.

FINAL DECISION AND ORDER

ISSUES

1. Whether the Student should be identified as a child requiring special education services.

SUMMARY/PROCEDURAL HISTORY

On December 5, 2003, the State of Connecticut Department of Education received a request for hearing from the Parent. On December 5, 2003, the undersigned was appointed as hearing officer to preside over the hearing, rule on all motions, determine findings of fact and conclusions of law, and issue an order. **(H.O. Exh. 1)**

A prehearing conference was scheduled for December 19, 2003. During the prehearing conference, Attorney Susan C. Freedman appeared on behalf of the Board. The Parent failed to appear. **(H.O. Exh. 2)**

On December 19, 2003, Attorney Freedman filed a Motion to Dismiss the above-referenced matter based on the Parent's failure to appear for the prehearing conference and failure to raise jurisdictional issues. In consideration of the Parent's *pro se* status and right to due process, an interim decision and order was issued on January 5, 2004, denying the Motion. **(H.O. Exh. 4, 5)**

By letter dated January 5, 2004, the hearing was scheduled to convene on January 16, 2004. Notice went to both parties via facsimile and first class mail. Notice of the hearing was sent to the Parent certified mail, return receipt requested. Such notice was returned on January 28, 2004 and marked "Unclaimed." **(H.O. Exh. 7)**

On January 14, 2004, Attorney Freedman filed a Motion to Dismiss based on the Student's removal by the Parent from the school district. **(H.O. Exh. 10)**

Due to inclement weather and the district schools closing, the hearing scheduled for January 16, 2004, was postponed. **(H.O. Exh. 8)** Notice was sent to the Parties via facsimile rescheduling the hearing for January 23, 2004. **(H.O. Exh. 9)** The hearing convened on said date. Attorney Freedman appeared with Leo Salvatore, Assistant Superintendent, for the Board. The Parent failed to appear for the hearing. **(See Transcript)**

During the hearing on January 23, 2004, exhibits were entered into the record, the Hearing Officer presented an Amended Interim Decision and Order providing technical corrections **(H.O. Exh. 6)**, and the Hearing Officer ruled on Attorney Freedman's January 14, 2004 Motion to Dismiss. The Motion was denied on the record based on the Hearing Officer's finding that the Student was enrolled in the district and receiving educational services during the relevant time frame as set forth in the Complaint/Request for Hearing. However, the Hearing Officer noted that based on the Student's removal from the district, the claims were such that if the Parent were to prevail, it was likely relief could not be granted. **(See Transcript)**

CONCLUSIONS OF LAW

Section 10-76(h)(1) of the Connecticut General Statutes provides, in pertinent 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 . . . responsible for providing such services whenever such board or district proposes or refuses to initiate or change the identification . . . of or provision of a free appropriate public education to such child or pupil . . .

In this particular case, the Parent sought for the Student to be identified as eligible for special education services. Although, the Parent availed herself of her due process rights on behalf of her son and her claim was found to be jurisdictional, she failed to appear for the hearing on January 23, 2004, at which she would have been given the

opportunity to present evidence and argument on all issues and conduct cross-examination.

In accordance with Section 10-76h-18 of the Regulations of the Connecticut State Agencies, “. . . the hearing officer may order, sua sponte, . . . dismissal of a hearing for failure of any party to prosecute a hearing . . .”

FINAL DECISION AND ORDER

Based on the Parent’s failure to withdraw her complaint and her failure to prosecute her claims, despite adequate notice, this matter is **dismissed without prejudice**.