

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on Behalf of the Parents: Attorney Celia M. Barnum
103 South Main Street
Newtown, CT 06470

Appearing on Behalf of the Board: Attorney Daniel P. Murphy
Siegel, O'Connor, Zangari, O'Donnell & Beck
150 Trumbull Street
Hartford, CT 06103

Appearing Before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the school district fail to provide a Free and Appropriate Public Education to the Student during the 2003-2004 school year by:
 - a. failing to fully implement the IEP;
 - b. failing to implement the previous Hearing Officer's decision; and
 - c. failing to provide the Student with an appropriate educational research-based program?

2. If the school district did fail to provide FAPE during the 2003-2004 school year, is the Student entitled to placement at the Ben Bronz Academy for the 2004-2005 school year as compensatory education?

PROCEDURAL HISTORY:

This hearing was requested on March 31, 2004. A prehearing conference was convened on April 6, 2004 at which time hearing dates were set for May 7 and June 1, 2004. The Board moved to dismiss the hearing and provided a memorandum of law in support of their motion to dismiss on April 27, 2004. The Parents objected to the motion to dismiss in a written memorandum dated April 28, 2004. The hearing convened on May 7, 2004 at which time the motion to dismiss was argued.

SUMMARY:

The Student is twelve years old and is eligible for special education services as a student with learning disabilities. Prior to the current hearing, the Parents requested a hearing on July 7, 2003. The appropriateness of the program offered by the Board for the 2003-2004 school year was the issue presented during that hearing (Hearing No. 03-215). The Hearing Officer in that hearing decided that the Board had offered an appropriate program for the 2003-2004 school year and, in addition, ordered that a computer be provided for the Student's personal use while in school. The Parents now claim that the IEP the Hearing Officer ordered to be implemented did not provide FAPE, and, that the Hearing Officer's decision was not fully implemented. They seek placement at the Ben Bronz Academy for the 2004-2005 school year as compensatory education.

FINDINGS OF FACT:

1. This hearing was requested on March 31, 2004. During the prehearing conference, the Parents stated that the 2003-2004 IEP as ordered by the Hearing Officer in Hearing Decision 03-215 did not provide FAPE and that the IEP had not been fully implemented. They requested placement at the Ben Bronz Academy for the 2004-2005 school year as compensatory education for the Board's failure to provide FAPE during the 2003-2004 school year.
2. The Board argued that the issues the Parents were now raising were compliance issues with regard to the decision rendered in Hearing No. 03-215. In addition, the Parents' issue as to the adequacy of the 2003-2004 IEP had been fully litigated during the previous hearing and thus was barred by the doctrine of Res Judicata. In either case, the Board argued, the Hearing Officer lacked jurisdiction.

CONCLUSIONS OF LAW:

1. There is no dispute that the Student, who has been identified as learning disabled, is eligible for a free and appropriate public education ("FAPE") with special education and related services as provided for under the provisions of the Connecticut General Statutes Sections 10-76 et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et seq.
2. The Parents do not dispute that the IEP for the 2003-2004 school year was the subject of Hearing No. 03-215 and that a final decision was rendered after a fully litigated hearing. The Parents did not argue that their right to present evidence and argument on all issues or to present expert witnesses and to cross-examine other witnesses had been abrogated in any way during that hearing. Their dispute is with the adequacy of the IEP ordered by the Hearing Officer; in addition, they believe that the Board did not comply with the Hearing Officer's order in that the IEP was not fully implemented.

3. In challenging the appropriateness of the IEP ordered by the Hearing Officer in Hearing Decision No. 03-215, the Parents are essentially asking to relitigate issues that had already been heard and ruled upon in a final decision. Due Process Hearing Officers do not have the authority to overrule or modify the decision of another Hearing Officer. In addition, 34 C.F.R. Section 300.661(c)(2) states that an issue raised in a complaint that has been previously decided in a due process hearing involving the same parties is binding. If any party is aggrieved by a Hearing Officer's decision, they have the right to appeal the decision to state or federal court. State or federal court would have been the appropriate forum for the Parents in this hearing to take their complaint. The Parents certainly had the opportunity to file an appeal upon their receipt of Hearing Decision No. 03-215; they did not do so nor do they claim that they were denied that right.

4. If a party believes that a school district is not implementing the final decision of a Hearing Officer, then the due process unit of the State Department of Education is the appropriate forum for complaint. Hearing Officers do not have the authority to order a school district to comply with the order of another Hearing Officer. Regulations of Connecticut State Agencies Section 10-76h-16(e) identifies the due process unit as the agency responsible for ensuring compliance with the final decisions of Hearing Officers. This avenue is available to the Parents for such complaints of non-compliance.

5. Therefore, Hearing Officers have no authority with regard to issues that have been the subject of an earlier final decision. In addition, Hearing Officers do not have authority to hear issues relating to a school district's failure to comply with a previous due process order. In both cases, there are other avenues through which parents can pursue such complaints.

6. As there is no issue in this hearing over which the Hearing Officer has jurisdiction, the claim for compensatory education can not be considered and the hearing must be dismissed.

FINAL DECISION AND ORDER:

This hearing is dismissed for lack of jurisdiction. This dismissal is with prejudice with regard to the 2003-2004 school year.