

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Amity Regional School District No. 5 v. Student

Appearing on behalf of the Parents: Parents pro se

Appearing on behalf of the Student: Attorney Gwendolyn K. McDonald
Office of Protection and Advocacy
60B Weston Street
Hartford, CT 06120-1551

Appearing on behalf of the Board: Attorney Craig S. Meuser
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

On November 15, 2004 the Board of Education filed a due process request seeking to override the Parents' refusal to permit the district to speak with the Student's physicians in order to learn how her alleged medical condition may affect her ability to receive an education in the least restrictive environment at Amity High School and to override Parents' refusal to make the Student available to receive educational services at Amity High School. Hearing Officer ("HO") Exhibit 1. On November 24 a prehearing conference was held. Attorney McDonald, who was originally representing the family, stated that the Parents would sign the requested medical releases. Attorney McDonald indicated there were additional issues the family wished to raise. Hearing dates were agreed on for December 13 and 22. On November 26 the Board's attorney requested a postponement of the December 13 hearing because the Acting Director of Pupil Personnel Services was not available on that date. The request was granted. On December 6 the Parents' attorney filed a Request for Inspection and Change in Hearing Location asking for an order to permit her to test and inspect the air quality at Amity High School and to change the location of the hearing from Amity High School to another location. On December 7 the Board's attorney filed an objection to the request for an inspection, but offered to look for another hearing location. The Board's attorney also objected to Attorney McDonald representing the Parents and the Student. On December 13 the Board's attorney sent a letter offering two alternate locations for the hearing. On December 15 the Parents' attorney wrote a letter setting forth the issue of

whether the Board provided the student with FAPE. She also selected the Orange Public Library as a hearing location. Exhibit HO 2. The Parties filed timely exhibits and witness lists on December 15. The Parents filed Exhibits 1-21; the Board filed Exhibits B1-B43. On December 17 the Board's attorney filed a formal objection to the Parents' request for an inspection and asked for a dismissal of the request on the grounds that the Hearing Officer lacked jurisdiction to order prehearing discovery. On December 20 the Hearing Officer granted the request to change the location of the hearing and issued a new hearing notice for December 22. The Board's attorney sent a letter to the Hearing Officer on December 20 outlining objections to Parent Exhibits 4, 6, 7, 8, 9 and 13.

The hearing convened on December 22. Preliminary matters were addressed concerning exhibits. Parents withdrew Exhibits 4, 6, 7, 8 and 13. Exhibit 9 was marked for identification only. The Board's Exhibits B1-B43 were accepted as full exhibits. The Request for Inspection was discussed and postponed pending receipt of a brief within 5 days from Parents' attorney. Attorney McDonald clarified the request for hearing stating that she intended to argue denial of FAPE for the 2003-2004 and 2004-2005 school years. Attorney McDonald stated that since the student reached age 18 in October 2004, she is an adult. Attorney McDonald would represent only the Student for the remainder of the hearing. The Parents were both present and elected to proceed pro se. Two additional hearing dates were scheduled for January 12 and 24. The Board and the Parents presented opening statements. The Student's attorney reserved her opening for her case-in-chief. The Board presented testimony from Amity High School staff Karen Freedman, special education teacher, Cathy Austin, school psychologist and Derek Wilson, biology teacher. At the end of the day the Mother asked to move the hearing to another location stating that the Student was ill from allergies caused by the library building. After some discussion, the parties were directed to communicate with the Hearing Officer regarding any change in location for the next hearing dates. On January 5 the Board's attorney filed Exhibits B44-B50. On January 10 the Student's attorney sent a letter to the Hearing Officer stating that the Student had withdrawn from school due to serious health issues. She also stated that the Student would no longer participate in the due process hearing. On January 11 the Board's attorney wrote to the Hearing Officer that the issue should be addressed at the January 12 hearing.

On January 12 the hearing convened at the Orange Public Library. The Student and her Parents did not attend. The Student's attorney presented two documents signed by the Student, one a letter dated January 7 indicating that she would not be completing her studies at Amity High School and the other a statement dated January 10 signed by the Student and witnessed by her attorney stating that she withdrew from school against the advice of her attorney. The statement also included the Student's understanding that the Office of Protection and Advocacy would no longer represent her in the due process hearing. HO3 and HO4. Attorney McDonald stated that the Parents no longer wanted to participate. The issue of mootness was discussed. The Board requested a continuance to explore its options. Deborah Farber, Acting Director of Pupil Personnel Services, stated that the Student could revoke her withdrawal from school at any time. The Hearing Officer found that the Board's case was not moot. The continuance was granted to January 24. The hearing was relocated to Amity High School. Attorney McDonald

stated that the family objects to the hearing going forward without them. The Hearing Officer directed Attorney McDonald to inform the Student that the hearing would go forward in her absence and that she had the right to have counsel present her case in her absence. On January 19 the Student's attorney wrote a letter to the Hearing Officer confirming that she had communicated with the Student as directed and that the Student did not want to participate in the hearing and did not want counsel to represent her or present claims on her behalf. Attorney McDonald requested to withdraw as counsel effective immediately. On Friday, January 21 Attorney McDonald wrote to the Hearing Officer that the Student had entered into a settlement agreement with the Board and had authorized the attorney to withdraw her due process claims with prejudice. Later that day the Board's attorney wrote a letter to the Hearing Officer stating that based on the Student's withdrawal with prejudice, the Board wished to withdraw its due process request. Based on these letters, the Hearing Officer cancelled the January 24 hearing.

FINAL DECISION AND ORDER

It is ordered that the case be dismissed with prejudice.