

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student¹ v. Hartford Board of Education

Appearing on behalf of Student: Student's Mother, *Pro Se*

Appearing on behalf of the Board of Education: Attorney Christine L. Chinni
Chinni & Meuser LLC
One Darling Drive
Avon, CT 06001

Appearing before: Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

A special education hearing in the above-captioned matter was requested by Student's Mother via Request for Impartial Special Education Hearing dated February 17, 2015.² The Board of Education ("BOE") received the Request for Hearing on March 2.

On March 5, BOE timely filed a Sufficiency Challenge. The undersigned Hearing Officer held that the Request for Hearing was deemed insufficient and granted Student leave to amend the Request for Impartial Special Education Hearing by April 9. On April 8, Student's Mother filed a document titled "Information for the Decision Re: Sufficiency Determination and Orders." This filing was treated as a timely amendment of and supplement to Student's initial Request for Hearing.

Via e-mail dated April 9, BOE's Attorney renewed its sufficiency challenge. The two-part (initial and supplemental) Request for Impartial Special Education Hearing was deemed sufficient. The case timelines reset with the filing of the supplemental amendment. The 30-day resolution period ended May 8 and the deadline to mail the final decision and order was set as June 22.

A telephonic pre-hearing conference was scheduled for April 20 but neither party appeared. The pre-hearing conference was rescheduled for and held on May 4. Student's Mother appeared on behalf of Student and Attorney Chinni appeared on behalf of BOE.

At the pre-hearing conference, Student's Mother indicated her intention to retain an attorney and requested a 30-day extension of the deadline to mail the final decision and order to allow her to retain an attorney. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to July 22.

The following issues were identified for hearing:³

¹ In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student" and "Student's Mother" in place of names and other personally identifiable information.

² All dates are 2015 unless otherwise indicated.

³ During discussion to clarify the issues, Attorney Chinni indicated that following the pre-hearing conference she would send the Hearing Officer and Student's Mother the date of the current Individualized Education Program

1. Is the Individualized Education Program (“IEP”) in place for Student as of May 4, 2015 appropriate?
2. Did the Board of Education provide Student’s Parents with a meaningful opportunity to participate in the IEP process?
3. If the answer to Issues One or Two above are in the negative, what shall be the remedy?

Via Memorandum and Orders dated May 18, the parties were notified that witness lists and exhibits must be exchanged by the parties and provided to the Hearing Officer no later than five business days prior to a scheduled hearing date. They were also notified that “[i]f Student does not file its witness list and exhibits five business days in advance of the scheduled hearing, they must notify the Hearing Officer of the status of the case and make appropriate requests for scheduling or the case will be dismissed for failure to prosecute.”

On May 23, a hearing was scheduled for July 9. The hearing date was cancelled when Attorney Chinni indicated that she was not available.

Via e-mail on June 17, BOE’s Attorney indicated that Student’s Mother had not contacted her regarding mediation or a resolution session and stated that she moved to dismiss the case for failure to prosecute. BOE’s Attorney’s motion did not include a memorandum of law as required by Connecticut Regulation 10-76h-8. Regardless of that procedural deficiency, the motion was considered and denied.

A hearing was scheduled for June 30. The parties failed to file their witness lists and exhibits five business days in advance (June 23) as required by law and by the Hearing Officer’s Orders. In response to the Hearing Officer’s inquiry as to why she did not file a witness list and exhibits, on June 25 Student’s Mother indicated that she was hospitalized and completely bed-ridden until further notice.

On June 27, the Hearing Officer indicated sympathy to Student’s Mother’s medical condition and inability to attend the hearing and presented Student’s Mother with the options to request a reasonable extension or to withdraw her request for Due Process without prejudice subject to refile when her medical condition allowed her to participate (subject to the two year statute of limitations).

On July 7, Student’s Mother indicated in writing the nature of her medical issues and requested an extension of time to deal with her medical issues and get the case in order. After fully considering the positions of the parties, the request for an extension of time was granted and the deadline to mail the final decision and order was extended until August 21, 2015.

On August 9, Student’s Mother indicated that she was bedridden but that she “can and would be available in the next 30 days.” Student’s Mother’s e-mails indicating her availability were treated as a request for an extension of the mailing date. After fully considering the positions of the parties and the circumstances, the request for an extension was granted and the deadline to mail the final decision and order was extended until September 18.

In the August 16 Order extending the mailing date, Student’s Mother was reminded that the parties had to submit their witness lists and exhibits no later than five business days prior to a scheduled hearing date and that if she does not timely respond to order or continues to be unavailable due to her medical condition, the case will be dismissed without prejudice for failure to prosecute. She was further informed that, if the case is dismissed for failure to prosecute, it

(“IEP”) that is in place. Attorney Chinni did not supply the information even after follow-up request of the Hearing Officer.

will be dismissed without prejudice, which means that Student's Mother can re-file the case as soon as she is available to participate and present evidence and that she will have up to two years from the date that she claims BOE violated Student's rights to re-file the case.

Via Notice of Hearing dated August 19, a hearing was scheduled for September 14. In that notice, the parties were reminded that "[w]itness lists shall be exchanged by the parties and provided to the Hearing Officer no later than five business days prior to the scheduled hearing date" and that "[a]ll documentary evidence shall be disclosed to the other party and the Hearing Officer at least five business days prior to the scheduled hearing date." The notice also stated that "[i]f Student does not file its witness list and exhibits five business days in advance of the scheduled hearing, they must notify the Hearing Officer of the status of the case and make appropriate requests for scheduling or the case will be dismissed for failure to prosecute."

Due to the Labor Day holiday, witness lists and exhibits were due on or before Friday, September 4. As of Tuesday, September 8, neither party had filed witness lists or exhibits and Student's Mother had made no request for alternative scheduling.

Throughout this case, Student's Mother was repeatedly informed that she must file her witness list and exhibits or notify the Hearing Officer of the status of the case and make appropriate requests for scheduling or the case will be dismissed for failure to prosecute. Throughout the pendency of this hearing, the Hearing Officer has been very clear as to the consequences of Student's Mother's failure to comply with orders.

This Hearing Officer has made every effort to inform Student's Mother of the process and expectations for her to move her case forward and to avoid having it dismissed for failure to prosecute. Throughout the pendency of these proceedings, both parties have been non-responsive to certain of the Hearing Officer's orders and requests. Student's Mother has been given ample opportunity to participate in this case but has apparently been unable to as a result of her current medical condition. She has failed to adequately prosecute the case.

FINAL DECISION AND ORDER

In light of the above facts, the above-captioned case is dismissed without prejudice for failure to prosecute.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20 United States Code 1415(i)(2)(A)..



Hearing Officer Signature

JANIS C. JERZMAN

Hearing Officer

Name in Print