

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Southington Board of Education

Appearing on behalf of the Parents: Pro Se

Appearing on behalf of the Board: Attorney Craig Meuser
Chinni & Meuser LLC
One Darling Drive
Avon, CT 06001

Appearing before: Justino Rosado, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the hearing officer clarify The Final Order and Decision rendered on November 14, 2016, where orders for an IEE were give?

SUMMARY AND PROCEDURAL HISTORY:

The Student has been identified as Other Health Impaired and is entitled to receive a free and appropriate public education (FAPE) as defined in the Individuals With Disabilities Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a et seq.

At a planning and placement team (PPT) meeting, the Parents requested an independent evaluation based on an agreement of a due process request dated September 13, 2016, Student v. Southington Board of Education Case No. 17-0135. At the November 14, 2016 hearing, in Case No. 17-0135, the District offered to conduct an Independent Education Evaluation (IEE) and the Parents accepted the District's settlement agreement. Based on the Parents agreement, the District withdrew their request for due process and the hearing officer dismissed the matter with prejudice¹. The Parents now request that this hearing officer clarify the decision of Case No. 17-0135 and order the district to conduct an IEE.

The Board received notice of the request for due process on October 24, 2017. A prehearing conference was scheduled for November 2, 2017 and notice sent to the parties (Hearing Officer's

¹ The Final Decision and Order on Student v. Southington Board of Education Case No. 17-0135 was published on December 5, 2016.

Exhibit No. 4)². The District requested a change in the pre-hearing conference date and it was rescheduled by the hearing officer for November 8, 2017. On November 7, 2017, the Parents emailed that they could not make that time and offered a rigid schedule of her availability for the pre-hearing conference. The Parent was informed that she confers with the District and between the parties obtain an agreed upon date and in the alternative the pre-hearing conference would go as scheduled.

The parent did not attend the prehearing conference and the parties were advised to brief the issue, "Whether the issue raised by the Parents was res judicata?" The parties were to file the briefs on November 20, 2017. A pre-hearing Conference Memo was sent to the parties. (H.O. No. 6) detailing the briefing schedule and the briefing issue. The Districts brief was timely filed and requested that the matter be dismissed. (H.O. No. 3) The Parent did not file a brief. A hearing date of December 5, 2017 was set (H.O. No. 7)

On December 4, 2017, the Parent emailed that the hearing officer requesting that the hearing be rescheduled. The hearing went forward on December 5, 2017 and the Parent did not appear. On the day of the hearing, December 5, 2017, the Parent called the District that she would not be attending the hearing.

The District's Motion to Dismiss the matter was granted.

Hearing Officers have no authority regarding issues that have been the subject of an earlier decision. In addition, hearing officers do not have authority to hear issues related 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.

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 a complaint. Regulations of Connecticut State Agencies Section 10-76h-16(e)

In this matter, the settlement agreement of the parties at the November 14, 2016 hearing for Case No. 17-0135 was not a final decision of the hearing officer but a settlement agreement reached by the parties. "A settlement agreement shall not constitute a final decision, prescription or order of the hearing officer." Regulations of Connecticut State Agencies Section 10-76h-16(d) The Case No. 17-0135 was dismissed with prejudice based on the request of the parties to withdraw their request for due process.

Therefore, this hearing officer has no jurisdiction to hearing this matter.

The mailing date for the Final Decision and Order is January 5, 2018.

FINAL DECISION AND ORDER:

THE HEARING OFFICER DOES NOT HAVE SUBJECT MATTER JURISDICTION.

² Hereafter Hearing Officer's Exhibits will be noted as "H.O." followed by the number of the exhibit.

January 5, 2018

Final Decision and Order Case No. 18-0171

THE MATTER IS DISMISSED.