

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Milford Board of Education¹

Appearing on behalf of Student: Attorney Jennifer Laviano
Law Offices of Jennifer Laviano LLC
76 Route 37 South
Sherman, CT 06784

Appearing on behalf of the Board of Education: Attorney Michelle Laubin
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Connecticut 06460

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 Attorney via letter dated December 12, 2017.² It was received by Board of Education ("BOE") on December 13, 2017. The 30-day resolution period ended January 11 and the original deadline to mail the final decision and order was February 25. A telephonic pre-hearing conference was held on January 12. Attorney Laviano appeared on behalf of Student and Attorney Laubin appeared on behalf of BOE.

The following issues were identified:

1. Did the Board of Education offer Student a free appropriate public education for the period from December 12, 2015 to the end of the 2015-16 school year?
2. Did the Board of Education offer Student a free appropriate public education for the 2016 extended school year?
3. Did the Board of Education offer Student a free appropriate public education for the 2016-17 school year?
4. Did the Board of Education offer Student a free appropriate public education for the 2017 extended school year?

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," "Parents," and titles of certain school staff members and witnesses in place of names and other personally-identifiable information.

² All dates are 2018 unless otherwise indicated.

5. Did the Board of Education offer Student a free appropriate public education for the 2017-18 school year?
6. If the answer to any of the above questions is in the negative, is F.L. Chamberlain School an appropriate placement for Student?
7. If the answer to Issue 8 is in the affirmative, is Student entitled to reimbursement for tuition?

Via letter dated January 24, Student's Attorney requested an extension of the deadline to mail the final decision and order to accommodate mediation scheduled for February 16. After fully considering the positions of the parties, the request was granted. The deadline to mail the final decision and order was extended to March 27. Hearings were scheduled for March 1 and 2.

The parties participated in mediation on February 16. On February 20, BOE's Attorney indicated that the parties did not reach an agreement but did agree to have a BOE representative conduct a school visit where Student is unilaterally placed in an effort to gain additional information that may help get them to an agreement. BOE's Attorney requested a postponement of the scheduled hearing dates to accommodate the school visit and facilitate settlement negotiations.

On February 21, Student's Attorney responded that there were a number of factors influencing the timing of the school observation and that Student's Parents authorized her to withdraw the matter without prejudice to allow the parties to schedule the school visit and to avoid proceeding to hearing without knowing BOE's position on Student's current program.

BOE's Attorney objected to a dismissal without prejudice and moved for a dismissal with prejudice for failure to prosecute on the basis that the matter has been pending for a couple of months, that Student was not prepared to proceed to hearing, and/or that Student was forum-shopping for another hearing officer. BOE's Attorney requested that, if the motion to dismiss for failure to prosecute is denied, the matter be re-assigned to the undersigned hearing officer if the case is re-filed in order to avoid forum-shopping issues.

Student's Attorney rebutted BOE's argument indicating that the request was timely made within days of mediation, prior to submission of witness lists and exhibits, and in good faith that it would potentially alleviate costly litigation pending the outcome of the school visit.

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Based on the above facts, the case is dismissed without prejudice.