

April 2, 2020

Final Decision and Order 20-0186 and 20-0233

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Meriden Board of Education

Appearing on behalf of the Student:

Parent, pro se

Appearing on behalf of the Board:

Attorney Leander Dolphin
Shipman & Goodwin
One Constitution Plaza
Hartford, CT 06103

Appearing Before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

20-0186:

1. Is the Student presently eligible for Special Education Services and, if so, are they now being provided to him?
2. Is the Meriden Board of Education (“Board”) denying Student a Free and Appropriate Public Education (“FAPE”) by its having discontinued Special Education Services to him?
3. Are the testing and/or evaluation(s) presently requested by the Board reasonably necessary to determine services?
4. Should the Board provide an Independent Educational Evaluation (“IEE”) to Student by an agency approved by Parent in the areas it has previously tested ?
5. Did the Board provide adequate notice of a PPT meeting to Parent?
6. Was Parent denied the opportunity to participate in the PPT meeting and did the lack of parental participation affect the outcome of the meeting?

20-0233:

1. Are the Evaluations provided by the Board appropriate?
2. If not, are the Parents entitled to an Independent Educational Evaluation at public expense?

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Conn. Gen. Stat. § 10-76h and related regulations, 20 United States Code § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedures Act, Conn. Gen. Stat. §§ 4-176e to 4-178, inclusive, and 4-181a and 4-186.

All evidence presented was considered in deciding this matter. To the extent that findings of fact actually represent conclusions of law, they should be so considered and vice versa, *SAS Institute, Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985); *Bonnie Ann F. v. Callallen Ind. Sett. Bd.*, 835 F. Supp. 340 (S.D. Tex. 1993).

PROCEDURAL BACKGROUND:

The Parent filed a Request for a Due Process Hearing on October 23, 2019. A Hearing Officer was assigned and a hearing date was set for December 11, 2019. In the interim, the Board filed its own Request for Hearing. The two cases (20-0186 and 20-0233) were consolidated shortly thereafter. Due to the recusal of the originally-assigned Hearing Officer, the hearing set for December 11 was cancelled, and the case was reassigned to the undersigned Hearing Officer on December 19, 2019. A Prehearing Conference was held on January 8, 2020, at which the hearing date was set for February 26, 2020, and the date for mailing the final decision was set for March 23, 2020. The Parent did not call in to the Prehearing Conference. Because the Parent stated she did not communicate by email, all correspondence including notices regarding the matters was sent to the Parent by regular first class mail. No further communication in any form was received from the Parent to the date of the hearing.

The hearing was held on February 26, 2020. The Parent failed to appear. The Hearing Officer waited approximately twenty minutes past the scheduled time for the Parent to appear before convening the hearing. The Parent was uncommunicative. At the hearing, the Board requested the opportunity to file a memorandum regarding the finality of the dismissal. The Board's counsel requested the case be dismissed with prejudice due to the repeated noncompliance with orders and failure to appear by the Parent. The Hearing Officer allowed the Board until March 11, 2020 to file its memorandum and gave the Parent until March 25, 2020 for submission of a reply. On motion of the Board, the deadline to file the final decision was extended to April 8, 2020. The Board filed its memorandum on March 11, 2020. The Parent did not file any type of response or request for extension of time by March 25, 2020.

DISCUSSION and CONCLUSIONS OF LAW:

While a Student, or Parent on Student's behalf, is unquestionably entitled to request a Due Process hearing if the complainant alleges a violation of the Individuals with Disabilities Education Act (“IDEA”) 20 U.S.C. 1401 et seq, such an action nevertheless requires compliance with the established applicable procedures, rules and laws. Failure to comply with orders regarding pre-hearing procedures

can result in sanctions or potentially a dismissal. Failure to prosecute a complaint by appearing at a properly scheduled hearing are much more serious issues and may constitute grounds for dismissal, with or without prejudice. In the case she filed, the Parent failed to: 1) submit a clear and precise statement of the issues and the relief sought in the complaint; 2) failed to submit a list of exhibits and witnesses five (5) days prior to the hearing date; and 3) failed to participate in the prehearing conference. R.C.S.A. 10-76h-12 Most significantly, however, and fatal to the Parent's case, the Parent did not appear at the hearing. A dismissal is warranted pursuant to R.C.S.A. 10-76h-18.

Under 20 U.S.C. S1414(a)(1)(A), 34 C.F.R. §300.15 of the IDEA and R.C.S.A. 10-76d-9, the school district is responsible for an initial evaluation to determine if a child is a child with a disability. Because the Parent refused consent for such evaluation, the Board brought a complaint to obtain an order permitting the evaluation.

Normally, before a school district performs an assessment of a child with a disability, the district obtains parental consent for the assessment. 20 U.S.C. §1414(a)(1)(D)(i)(1). However, in the event that a parent or student does not provide consent, the district may bring a due process complaint seeking an order allowing it to conduct the proposed assessment. 20 U.S.C. § 1414(a)(1)(D)(ii)(I), 34 C.F.R. § 300.300(a); *Schaffer v. Weast* (2005) 546 U.S. 49, 53, 126 S. Ct.. 528, 163 L.Ed.2d 387; see 20 U.S.C. § 1415(i)(2)(C)(iii).

In the case brought by the Board, I find there is a preponderance of evidence that an order regarding the educational evaluation is warranted. Conn. Gen. Stat. 10-76h(d)

FINAL DECISION AND ORDER:

The case bearing Docket Number 20-0186 is DISMISSED with prejudice.

In the case of Docket Number 20-0233, the mandate of the Board to perform an eligibility examination of the Student is recognized and therefore an initial educational evaluation may be conducted without the consent of the Parent.