

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student vs. Simsbury Board of Education

Appearing on behalf of the Board:

Attorney Julie C. Fay
Attorney Thadius L. Bochain
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103

Appearing on behalf of the Student:

Parent, *Pro Se*

Appearing before:

Attorney Jane Ford Shaw
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is there a denial of FAPE for 2016-2017 and 2017-2018 school year?
2. If so, is the Student entitled to reimbursement or compensatory education?

PROCEDURAL HISTORY:

The Hearing Request was brought by the Student, on January 2, 2020 against the Simsbury Board of Education. On January 10, 2020, the Simsbury Board of Education filed a Motion to Dismiss/Sufficiency Challenge on the grounds that the Student's complaint is moot because the Student has graduated high school; the Board is not an appropriate party given the fact that the Student transferred out of the district after completing his 11th grade in good standing and later graduated from the New Hartford, New York school district; the complaint is insufficient and fails to state a claim for which relief can be granted and the Student's claim constitutes a claim for educational malpractice which is not actionable in the State of Connecticut.

On January 14, 2020, a Pre-Hearing conference was held and as a result the Student was afforded an opportunity to amend his request for due process.

The Student filed an amended request for due process on January 24, 2020 and the Board renewed and supplemented its Motion to Dismiss. On February 10, 2020, this Hearing Officer denied the Board's Motion to Dismiss and entered an order requiring the Student to amend the complaint:

to identify the specific Planning Placement Team ("PPT") meeting which occurred between January 2, 2018 and June 2018 and gave rise to a disagreement regarding the proposed and/or refused initiation or change to the Individual Education Program ("IEP") and provision of services, including facts relating to the problem;

to provide *with specificity* what actions and/or omissions on behalf of the Board which occurred between January 2, 2018 and June 2018 constituted a “gross failure on part of the current SES teacher to effectively provide services and support as the IEP prescribed.” identify the relevant goal(s) and objectives;

to provide *with specificity* what actions and/or omissions on behalf of the Board which occurred between January 2, 2018 and June 2018 constituted a “gross failure to permit Student to participate in the decision making process around and overall provision of the FAPE;” and,

to provide a proposed resolution which is reasonably calculated to provide the educational benefits that likely would have accrued from special education services that the Board did not provide but should have provided from January 2, 2018 through June 2018, given the fact that the student has graduated high school and is presently attending college.

The Student filed the third amended complaint on February 18, 2020. The Board filed its reply on February 25, 2020. The Board continues to argue that the allegations asserted by way of the Student’s accumulative pleadings are insufficient to support an actionable complaint under the IDEA; that the Student’s request for due process fails to identify a gross educational harm to the Student as a result of the Board’s alleged actions or inactions; and that the Student fails to request remedies which are logically connected to any specific alleged failures on part of the Board to provide the Student FAPE – particularly given his uncontested graduation from high school.

In addition to the two amended requests for due process, the Student filed “Reply” motions on February 11, 2020 and February 26, 2020 which will be treated as supplemental to his amended request for due process.

FINAL DECISION AND ORDER:

1. The Student’s request for due process is insufficient under the Individuals with Disabilities Education Act (hereinafter referred to as “IDEA”). A parent or a public agency may file a due process complaint on any of the matters “...relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.” 34 CFR §300.507(a)(2). Furthermore, when so doing, a request for due process must include “...(5) a description of the nature of the problem of the child, relating to the proposed or refused initiation or change, including facts relating to the problem and (6) a proposed resolution of the problem to the extent known and available to the party at the time. 34 CFR §300.508(b)(5) and (6); *See also*, Conn Reg 10-76h 10-76h-3(4). Thus, the IDEA requires both a sufficient description of the nature of the problem and a proposed resolution be included in a Student’s request for due process; not one or the other.
2. Moreover, a party shall have two years to request a hearing from the time the party knew or should have known about the public agency proposal or refusal to initiate or change the identification, evaluation or educational placement of, or

the provision of a free appropriate public education to the child. 34 CFR §300.507(a)(2) *See also*, Conn. Reg. §10-76h-4(a).

3. The amended request for due process filed by the Student on February 18, 2020 does not meet the mandate of the IDEA, nor the order of February 10, 2020. The Student's request fails to provide the required "description of the nature of the problem of the child, relating to the proposed or refused initiation or change, including facts relating to the problem and ... a proposed resolution of the problem to the extent known and available to the party at the time." It fails to set forth claims that give rise to a disagreement regarding a proposed and/or refused initiation or change to the Student's March 2, 2018 IEP. In fact, the Student's amended request does not allege any disagreement on part of the Student regarding a proposed and/or refused initiation or change to the March 12, 2018 IEP.
4. The Student's request for due process alleges a February 2018 request for the production of documents. Allegations involving violation(s) of The Family Education Rights Privacy Act ("FERPA") on part of the Board for failing to produce documents, are outside the jurisdiction of the authority granted to a hearing officers. 34 CFR §300.507(a)(2).
5. In addition, any of the Student's assertions involving allegations that are stated to have occurred prior to January 2, 2018 are beyond the statute of limitations. 34 CFR §300.507(a)(2) *See also*, Conn Reg. §10-76h-4(a).
6. A request for due process must also include a sufficient description of a proposed resolution which relates to nature of the problem described. Here, the Student's request for compensatory education as a proposed resolution, quite simply fails to identify how such an award would be reasonably calculated to provide an educational benefit that the Board did not provide but should have between January 2, 2018 and June 2018. Accordingly, the Student's request for due process does not meet the requirements of the IDEA. §300.503(a)(1) and (2); *see also* Conn Reg §10-76h 10-76h-3(4).
7. The Board's Motion to Dismiss is granted and the Amended Complaint filed by the Student on February 20, 2020 is dismissed.

THEREFORE, it is hereby **ORDERED**:

The Student's request for due process is **DISMISSED**.