

July 30, 2021

Case No. 21-0437

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on behalf of the Student:

Parent, pro se

Appearing on behalf of the Board:

Attorney Andreana Bellach
Shipman & Goodwin LLP
1 Constitution Plaza
Hartford, CT 06103

Appearing before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board offer Student a program that would provide her with a Free and Appropriate Public Education (“FAPE”) for the school years 2019-2020, 2020-2021 and 2021-2022?
2. Did the Board offer Student FAPE during the period when her educational program was affected by the Covid-19 crisis?
2. Did the Board offer Student adequate and appropriate transition planning and services?

PROCEDURAL BACKGROUND:

The Parent filed this Request for Due Process Hearing on June 19, 2021. The case was initially assigned to an Impartial Hearing Officer who recused herself upon Motion of the Parent, and the undersigned Impartial Hearing Officer was assigned the case on June 28, 2021. A Prehearing Conference was held on July 14, 2021. The Board filed a written Motion to Dismiss (“Motion”) with an accompanying Memorandum of Law on July 20, 2021. The Parent filed a Letter on July 27, 2021.

The grounds for Board's Motion are that since the Parent's rights under the Individuals with Disabilities Education Act (“IDEA”) transferred to the Student on her eighteenth birthday, therefore the Parent no longer has standing to bring a Due Process Request on behalf of the Student.

SUMMARY:

The Parent brought this Due Process Request claiming denial of FAPE to the Student during the years 2019-2020, and 2020-2021, and particularly as a result of the Covid-19 crisis. There is no dispute that the Student turned eighteen on June 15, 2019. The Parent lacks standing to bring a Due Process request on behalf of the Student inasmuch as all rights under the IDEA transferred to the Student upon her eighteenth birthday under Connecticut law.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 United States Code (“U.S.C.”) §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes (“C.G.S.”) §10-76h and related regulations, and in accordance with the Connecticut Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

The following facts, as stated or apparent in the Parent's Due Process Request, are taken as true for the purposes of this Motion:

- 1 The Student's date of birth is June 15, 2001; therefore she is twenty (20) years of age as of the date of the Parent's Request.
2. The Student resides in Westport, Connecticut.
3. The Student is identified as eligible for special education and related services under the disability category of Multiple Disabilities.
4. There is no evidence that the Student notified the Board in writing after reaching the age of eighteen (18) that she authorized her Parent to have the right to make educational decisions on her behalf.
5. There is no evidence that the Student is under a guardianship or conservatorship.

DISCUSSION AND CONCLUSIONS OF LAW:

Under the IDEA, parents have “independent, enforceable rights” regarding educational issues of their children, but individual states “may allow for the transfer all of those rights to the child when a child with a disability reaches the age of majority under State law.” 20 U. S. C. §1415(m)(1) *Doe v. Westport Board of Education*, _____ F. Supp. 3d. _____ 2020WL869861, 76 IDELR 42 (D. Conn. 2020) Connecticut has enacted such a transfer provision which plainly and unambiguously codifies the transfer of rights from the Parent to the Student, as follows:

(b) Transfer of rights; exception. When a child with a disability reaches the age of eighteen, (1) the board shall provide any notices required by the IDEA ... to such child and the parents of such child, and (2) all other rights accorded to the parents of such child under the IDEA ... shall transfer to such child

(e) A child with a disability who has reached eighteen years of age may notify, in writing, the board of education that the parent of such child shall continue to have the right to make educational decisions on behalf of such child notwithstanding the fact the child has turned eighteen years of age

(f) Any child with a disability who has been determined to be incapacitated by a court shall be represented by the legal guardian appointed by the court

Regulations of Connecticut State Agencies ("R.C.S.A."), Section 10-76d-12

Under our law, from June 15, 2019 and onward, the Parent does not have standing to bring a Request on behalf of the Student. Therefore, the Hearing Officer has no jurisdiction over the case and the case must be dismissed

FINAL DECISION AND ORDER:

1. All of the Parent's rights under IDEA, including the right to pursue the claims made in this case, transferred to the Student when she turned eighteen on June 15, 2019. The Parent therefore lacks standing to pursue the claims made in this case under IDEA and Connecticut special education law and the claims must be dismissed.
2. The Hearing Office lacks jurisdiction over the Parent's claims and these claims must be dismissed.
3. The mater is dismissed in its entirety for lack of standing and lack of jurisdiction.