

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Bolton Board of Education

Appearing on behalf of the Parent:

Pro se

Appearing on behalf of the District:

Linda Yoder, Esq.  
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Hartford, CT 06103

Appearing before:

Patrick L. Kennedy, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the District fail to provide an appropriate program to the Student for the 2021-22 school year?
2. Did the District fail to provide an appropriate program to the Student for the 2022-23 school year?
3. If the District has failed to provide an appropriate program to the Student, what remedies should be ordered?

**SUMMARY AND PROCEDURAL HISTORY:**

Case 23-0090 was commenced by the Parent by request received by the District on September 7, 2022. A prehearing conference was held on September 16, 2022. At the prehearing conference, a hearing date was set for November 1, 2022 and the decision date was determined to be November 21, 2022.

On September 26, 2022, the District filed a Motion to Dismiss on the grounds that the action was barred by res judicata and collateral estoppel. On October 11, 2022, the Parent filed a response to the motion.

**DISCUSSION:**

On March 22, 2022, the Parents filed a special education due process request against the District, which case was assigned the number 22-0331 and assigned to Hearing Officer Susan Dixon. The case was heard and a decision rendered on June 10, 2022. Issues in the case were determined to be:

1. Did the Bolton Board of Education offer a Free and Appropriate Public Education (“FAPE”) to the Student for the school year 2021-22?
2. If not, should the goals and objectives of Student’s Individualized Education Program (“IEP”) be revised?
3. If not, should the Student’s IEP be additionally be revised to provide additional services and supports?
4. If the Board was unable to provide FAPE, should the Board have placed Student at Board expense at a school that can appropriately address his educational needs?
5. If the Board is unable to provide FAPE, should the Board place Student at a school that can appropriately address his educational needs?

After hearing the case, the Hearing Officer rendered the Final Decision and Order:

1. The Bolton Board of Education did not offer a Free and Appropriate Public Education (“FAPE”) to the Student for the school year 2021-22.
2. The Student’s IEP should be revised to include a placement at a therapeutic day program at Board expense. This may include EastConn or such other comparable educational facility that provides appropriate personnel and treatment programs for Student.

The undersigned concludes that the first issue in this case—that of whether the District provided an appropriate program to the Student for the 2021-22 school year—is barred by *res judicata*. Parties are barred from relitigating claims that were adjudicated in a prior action between the parties if (1) the previous action was adjudicated on the merits, (2) the previous action involved the same parties or those in privity with them and (3) the claims asserted in the subsequent action were raised or could have been raised in the prior action. *Student v. Hartland Board of Education*, Case No. 07-122 (CT SEA 6/27/07). In the prior case, the sole issue from the standpoint of liability was whether the District had provided FAPE to the Student for the 2021-22 school year. Therefore, that issue cannot be relitigated in this case.<sup>1</sup>

The undersigned further concludes that the second issue in the case—that of whether the District is now providing an appropriate program to the Student for the 2022-23 school year—is barred by collateral estoppel. Parties are barred from relitigating

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<sup>1</sup> It should be noted that the Parents prevailed on that issue in the prior litigation.

issues that were litigated between them in a prior proceeding if (1) the identical issue was raised in the prior proceeding, (2) the issue was actually litigated and decided in the prior proceeding, (3) the parties had a full and fair opportunity to litigate the issue and (4) resolution of the issue was necessary to the determination on the merits. *Student v. East Lyme Board of Education*, Case No. 07-277 (CT SEA 10/31/07).

The parties in the prior case fully litigated what the current placement should be and the prior Hearing Officer issued an order determining that issue, an order with which the parties are required to comply. If there was an issue as to whether the current placement complied with the order, the litigation could go forward on that narrow issue. However, the order specifically states that the options for placement “may include EastConn”. Since the Student is, in fact, placed at EastConn, the placement complies with the order by its terms and there is no issue to litigate.

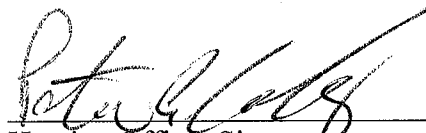
The third issue, concerning remedies, is rendered moot by the determination that the Parent’s claims concerning liability are barred by collateral estoppels and res judicata.

**FINAL DECISION AND ORDER:**

The matter is dismissed.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).

  
Hearing Officer Signature

Patrick L. Kennedy

Hearing Officer      Name in Print