

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Region 13 Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Sylvia Ho, Esq.  
Hearing Officer

**MEMORANDUM OF DECISION AND ORDER  
ON MOTION TO DISMISS AND MOTION FOR STAY PUT**

**ISSUES:**

1. Does the Hearing Officer have jurisdiction to decide whether the Board violated the Student's rights under the Individuals with Disabilities Education Act ("IDEA") and/or Section 504 of the Rehabilitation Act of 1973 ("Section 504") when it withdrew Student from public education due to a failure to comply with Conn. Gen. Stat. §10-204a(c) which mandated immunizations for preschoolers attending public schools?
2. If so, should the Hearing Officer issue an order of Stay Put during the pendency of the hearing?

**PROCEDURAL HISTORY/SUMMARY:**

The Parents filed the Due Process Complaint and Request for Hearing dated on November 9, 2022. The Hearing Officer was appointed on November 14, 2022, and conducted a Prehearing Conference on November 30, 2022.

The Board filed a Motion to Dismiss the Due Process Complaint on November 23, 2022. The Parents filed a Motion for Stay Put the same day. This Memorandum of

Decision addresses the two pending motions. Hearings on the two motions were convened on December 23, 2022 and January 17, 20 and 27, 2023. The Board presented the testimony of the Special Education Director; School Principal, Nurse Coordinator and Elementary School Nurse. The Parents presented the testimony of Student's Mother. The Due Process Complaint was entered as HO-1. A Stipulation of Facts was entered as HO-2. Board Exhibits B1-B20 were entered as full exhibits. Parent Exhibits P1-P18 were entered as full exhibits. Parent Exhibits P19 and P20 were marked for identification only.

**FACTUAL BACKGROUND:**

At the time of the hearing, Student was four (4) years old and not attending school. (Stipulation of Facts). Student's birthday is March 7, 2018. (Stipulation of Facts.) Student lives with Parents and is a resident of the school district. (Stipulation of Facts). Student was involuntarily withdrawn from public school on October 21, 2022 by the school district administration due to noncompliance with the immunization requirements under Connecticut state law. See Conn. Gen. Stat. §10-240a. (Stipulation of facts).

Prior to Student's withdrawal from school, Student was identified as a Student with a Disability and was receiving Special Education and related services and attending the Board's preschool 4 program. (Stipulation of Facts and B-4). The Individualized Education Program ("IEP") dated February 24, 2021 was in effect at the time of Student's involuntary withdrawal. (Stipulation of Facts and B-4). Student had been attending the four-year-old preschool program located at the school district elementary school. Student was in school for 26.00 hours per week. He spent 24.25 of the 26 weekly hours in general education classrooms with non-disabled peers. (B-4 p. 25 of 32).

Student was initially enrolled in the school district on March 4, 2021. (Stipulation of Facts). State law provided that students should be immunized from a variety of illnesses in accordance with Connecticut Department of Public Health guidelines. Student was not

immunized at the time of enrollment. Parents had provided the school with a valid religious exemption. (B-3 and Stipulation of Facts).

On April 28, 2021, Public Act 21-6, “An Act Concerning Immunizations” was enacted. The law updated Connecticut’s immunization requirements in Section 10-204a of the Connecticut Statutes for students attending pre-K-12 schools by removing religious exemptions. (P-14). Conn. Gen. Stat. Section 10-204a(c) was amended to require children in preschool or other prekindergarten programs who had previously presented religious exemption statements prior to April 28, 2021, either to be fully immunized in accordance with Department of Public Health guidelines; or to provide a medical exemption; or to provide a statement from a physician, physician assistant or an advanced practice registered nurse that the child was in the process of additional immunizations under the medical provider’s recommendation. The statute mandated a compliance date of September 1, 2022. See Conn. Gen. Stat. Section 10-204(a)(c).

On September 21, 2022, the school district’s Nurse Coordinator was undertaking a review of elementary school health records for compliance with the new state law. The Nurse Coordinator noted that Student was missing an updated Early Childhood Health Assessment Record (a State of Connecticut health form) for the 2022-2023 school year. Although Student had a valid religious exemption for the 2021-2022 school year, there was no updated health information about immunizations on file. In a telephone call with Mother, Nurse Coordinator explained the need for an updated Early Childhood Health Assessment Record and asked if there was a “catchup schedule” - an alternative immunization schedule recommended by a medical provider. The Mother agreed to call

Student's pediatrician's practice to send updated information. (Testimony, Mother and Nurse Coordinator).

Student's updated Health Assessment Record was faxed to the school with no information indicating that Student had received the required immunizations nor any medical exemption nor any statement of that Student was being immunized on an alternative "catchup schedule" under the pediatrician's recommendation. (Testimony, Nurse Coordinator, B-6). The Nurse Coordinator reviewed the Connecticut State Department of Education's "CSDE guidelines regarding Public Act 21-6, 'An Act Concerning Immunizations'" (P-14) She made note to the Elementary School Nurse that Student was not in compliance with the new state law. (Testimony, Nurse Coordinator)

On Monday, October 17, 2022, the Elementary School Nurse called Mother to discuss Student's immunization status. Mother was under the impression that if the Student had a catchup schedule, Student's religious exemption was valid. Elementary School Nurse advised Mother that the religious exemption was no longer valid under state law. (Testimony, Mother). Following the conversation, the Elementary School Nurse e-mailed links to the State of Connecticut website information regarding school immunizations to Mother and asked the Mother to follow up with her before Friday, October 21, 2022. (B-11). On Friday, October 21, 2021, Elementary School Nurse and Mother had a telephone conversation. Following the conversation, Elementary School Nurse noted in Student's school records as follows: "TC to mom regarding catch up schedule for immunizations. Mom reports that she does not want to vaccinate student at this time and the MD will not fill out a medical exemption. Mom informed per state law and [Special Education Director] student cannot attend until beginning vaccination

schedule. Mom reported that she had questions regarding IEP, central office number provide, and mom transferred to central office.” (B-8). On the same day the student was involuntarily withdrawn as a student of the school district by the school administration. (B-9 and Stipulation of Facts).

On October 24, 2022, Mother brought Student to school and was met by the School Principal and Elementary School Nurse. Mother was notified that the Student could not attend school. Mother was dissatisfied with the response and requested special education services for Student. (B-10). On October 28, 2022, counsel for the Parents wrote the Special Education Director to request reasonable accommodations for Student’s disability and a return to school. (B12) The letter included a letter from the Student’s pediatrician which stated, “[w]e do not recommend (sic) he continue vaccines at this time. It will be detrimental to his physical and mental health if he is not allowed in school with reasonable accommodations (sic)...Without going to school he will not be receiving the services within his IEP which is in violation of the IDEA Act passed in 2004. It is incredibly important to everyone involved that he remain in school with reasonable accommodation in order to continue meeting the goals within his IEP.” (B-13)

The Due Process Complaint and Hearing Request proposed the following resolutions: 1) that the Hearing Officer assume jurisdiction over the Parents’ and Student’s claims that allege a denial of a Free Appropriate Public Education (“FAPE”) substantively and procedurally under the IDEA; 2) that the Hearing Officer assume jurisdiction over the Parents and Student’s Section 504 claims in order to resolve Section 504 claims that the Student was being denied substantive rights and procedural safeguards as the direct and proximate result of the school district’s complete failure to provide the Student with

reasonable accommodations/modifications that would ensure he would have equal access to the school district's program of instruction. The Complaint alleges that Student's withdrawal from school was a "change in placement" and exit from special education in violation of the IDEA. The Complaint further alleges that the school district violated the IDEA because it should have completed a comprehensive evaluation of Student and given prior written notice to Parents; considered the Parent's concerns and provided a program of reasonable accommodations before excluding the Student from school. The Complaint further alleges that the withdrawal of Student from school was a unilateral decision to exit the Student from special education and requests that the Hearing Officer reinstate the IEP. (HO-1).

On November 23, 2022, the Board filed a Motion to Dismiss the entirety of the Due Process Complaint for failure to state claims upon which relief can be granted and lack of subject matter jurisdiction under Sections 10-76h-8(f)(2) and 10-76h-18(a)(5) of the Regulations of Connecticut State Agencies. The Parents filed a Motion for Stay Put on the same day. After a review of the evidence and the below analysis of relevant law, the Board's motion is hereby GRANTED. The Parents' motion is DENIED as MOOT.

**DISCUSSION:**

The purposes of the IDEA is "ensure that all children with disabilities have available to them a free and appropriate public education and related services designed to meet their unique needs and prepare them for further education, employment and independent living" and to provide funding to state and local educational systems to accomplish the purposes of the IDEA. See 20 U.S.C. §1400(d); 34 CFR 300.1(a)

Individuals with Disabilities Education Act (“IDEA”) regulations at 34 CFR 300.511 entitled “Impartial due Process hearing” delegates to State Educational Agencies (“SEA”) or the public agency directly responsible for the education of the child, as determined by State statute, State regulation or a written policy of the SEA, the responsibility to conduct a hearing whenever parents of the Local Educational Agency (“LEA”) are involved in disputes relating to the *identification, evaluation or educational placement of a child with a disability or the provision of a Free Appropriate Public Education* (“FAPE”) to the child under 34 CFR 300.507; or *in disciplinary actions* under 34 CFR 300.532, where parents appeal a LEA’s decision to change a student placement when a LEA believes that maintaining the placement of the child in school is substantially likely to result in injury to the child or others.

Section 10-76h(d)(1) of the Connecticut General Statutes, which confers authority to hearing officers in Impartial Due Process Hearings states that “the hearing officer ...shall have the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent...has placed the child or pupil in a program other than that prescribed by the planning and placement team, or (C) to prescribe alternate special educational programs for the child or pupil”

The issues raised in the Complaint do not concern a disagreement over the identification, evaluation, or the Student’s Individualized Education Program. The parties do not disagree about the identification, evaluation, or the appropriateness of Student’s IEP.

In fact, Parents want services in the February 24, 2021 IEP to continue in school or at home.

Instead, Parents claim that the Student's withdrawal from school is itself a change in placement under the IDEA. Issues of "changes in placement" or "stay put" placement normally are a part of administrative proceedings concerning disagreements between the parties over the appropriateness of a special education program or disciplinary removal of a child with a disability. No such issue has been raised in the Complaint.

Parents also allege that the school district has violated Section 504 of the Rehabilitation Act of 1973. During the closing arguments, Parents' counsel argued that the school district also has violated the Student's rights of due process under the United States Constitution. While these issues may be worthy of consideration, this Hearing Officer has no statutory authority to address them. The statutory authority of an Impartial Due Process Hearing is narrowly focused on disputes over the identification of a child with a disability, the evaluation process leading to eligibility for special education instruction or the appropriateness of a special education program for a student in a public school, or the appropriateness of a parent funded private special education program when the school has failed to provide an appropriate publicly funded program. See 20 U.S.C. §1400 and Conn. Gen. Stat. Section 10-76h(d)

The issues in this case do not involve any of the above issues. Student was involuntarily withdrawn from the public education system by the school administration on October 21, 2022, because of noncompliance with state immunization requirements. As a result of the disenrollment from the public education system, the Board has altogether denied responsibility for providing public education. The issues raised do not fall within



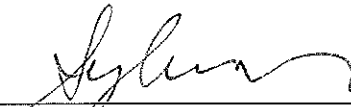
the purview of the jurisdiction of this Impartial Due Process Hearing. The Hearing Officer does not have statutory authority to provide the relief Parents seek.

**FINAL DECISION AND ORDER:**

1. The Hearing Officer does not have jurisdiction to decide whether the Board violated the Student's rights under the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act of 1973 when it withdrew Student from public education due to a failure to comply with Conn. Gen. Stat. §10-204a(c) which mandated immunizations for preschoolers attending public schools.
2. The Parents' Motion for an Order of Stay put during the pendency of the hearing is MOOT.
3. The Due Process Complaint/Hearing Request 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).



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Hearing Officer Signature

Sylvia Ho

Hearing Officer

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Name in Print