

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Fairfield Board of Education

Appearing on behalf of Parents:	Parent, Pro Se
Appearing on behalf of the Board:	Andreana Bellach, Esq. Shipman & Goodwin 400 Atlantic Street, 4 th Floor Stanford, CT 06901
Appearing before:	Adrienne Lawston, Esq. Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student's due process complaint should be dismissed for failure to prosecute.
2. Whether the Student's due process complaint should be dismissed for failure to state a claim upon which relief can be granted and lack of jurisdiction.
3. Whether the Student's due process complaint is sufficient.

SUMMARY AND PROCEDURAL HISTORY

Case 25-0469 was commenced by the Parent, by request received by the Board of Education on March 10, 2025.¹ The Hearing Officer was appointed on March 13, 2025. A prehearing conference telephone call was initially scheduled for March 28, 2025 by Notice dated March 18, 2025, and the parties were advised that if not available, they should propose other dates/times, and notify the Hearing Officer immediately by email. The Board advised via email that they were not available at the scheduled date/time and provided other potential dates/times for the conference. The Parent did not communicate his availability. By email communication dated March 24, 2025, both parties were given alternate dates/times for the prehearing conference, and asked to provide the Hearing Officer with their availability by the end of the business day. The Parent did not respond, and a Notice of prehearing conference was sent to both parties at the end of the business day for March 27, 2025 at 9:00am. Both parties were advised that if they were not available for the

¹ It is noted that the request for a due process hearing is dated March 12, 2025, but that counsel for the Board indicates in her Motion to Dismiss that the Board received the request by email on March 10, 2025.

scheduled prehearing conference call, they should notify the Hearing Officer immediately by email and provide alternate dates/times when they were available. The Parent did not contact the Hearing Officer and did not appear at the prehearing conference.

The 30 day resolution period was determined to be April 9, 2025. The deadline to mail the final decision and order was determined to be May 23, 2025.

Prior to the prehearing conference, the Board filed a timely Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, under §§ 10-76h-8(f)(2) and 10-76h-18(a)(5) of the Regulations of Connecticut State Agencies. In the Alternative, the Board challenged the sufficiency of the Parent's Due Process complaint. *See* 20 USC § 1415(b)(7)(A); 34 CFR § 300.508(b); Conn. Agencies Regs. § 10-76h-3(d)(4).

This decision will address whether the due process complaint should be dismissed for failure to prosecute, and the issues raised in the Board's Motion to Dismiss or in the Alternative, Sufficiency Challenge.

FACTUAL BACKGROUND

Starting in the 2024-2025 school year, the Student attended the preschool program at New Fairfield Elementary School. At the time that the Student attended school, their Individualized Education Program ("IEP") covered Speech Therapy, Occupational Therapy and Physical therapy (*see* Parent's Request for Due Process Hearing ("Complaint")). The Student's eligibility for special education services is not in dispute; the special education services provided in the Student's IEP are also not in dispute.

The Student attended the school until the December 2024 holiday break, and was not permitted to attend school thereafter (*see* Complaint, pp. 1-2). The Student was involuntarily withdrawn from school based on noncompliance with Connecticut's statutory requirements for influenza immunization for preschool students (*see* Complaint, p. 2).

Connecticut's student immunization requirements provide that students attending preschool or other prekindergarten programs must be fully immunized for influenza in accordance with Department of Public Health guidelines in order to attend school. This requirement applies to all preschool students, regardless of whether they are eligible for special education services (*see* Conn. Gen. Stat. § 10-204a(a)-(c); Conn. Agencies Reg. § 10-204a-2a(k)).²

After the Student's withdrawal from school, the Student did not receive IEP services, and this is the basis for the Parent's Complaint. The Parent states that they requested that the Student's IEP be changed to allow for IEP services to be provided outside of the school building at a February 29, 2025 Planning and Placement Team meeting, but that their request was denied. As a proposed resolution, the Parent requests that the Student's IEP be amended so that services can be provided at a location outside the school building. (Complaint, p. 1).³

² Students who provide certification that an immunization is contraindicated, or provide documentation that they are receiving an alternate schedule for the immunizations are not subject to the mandatory vaccination requirement). *See* Conn. Gen. Stat. § 10-204a(a)-(c); Conn. Agencies Reg. § 10-204a-2a(k).

³ The Parent also requests that the New Fairfield Board of Education (NFPS) provide transportation from NFPS to ABA therapy when she starts kindergarten and as long as she attends any ABA clinic; that the NFPS be

DISCUSSION

Consistent with the Individuals with Disabilities Education Act ("IDEA"), Connecticut regulations provide that parents may initiate a due process complaint with respect to a public agency's proposal or refusal to initiate or change the " identification, evaluation or educational placement of a child or the provision of a free appropriate public education of the child" (Conn. Agencies Regs. §10-76h-3(a); 20 U.S.C. § 1415[b][6]); 34 C.F.R. § 300.507(a)(1)).

Initiation of a due process complaint does not automatically entitle a party to a due process hearing. Under § 10-76h-18 of the Regulations of Connecticut State Agencies, titled "Default or dismissal," a hearing officer may order, *sua sponte*, an entry of default or dismissal of a hearing for the failure of any party to participate in the prehearing conference (*see* Conn. Agencies Reg. § 10-76h-18(2)). Regarding the prehearing conference, the facts show that the Parent did not communicate with the Hearing Officer about available dates to attend the prehearing conference, although he was given more than one opportunity. The facts also show that the Parent did not appear on the date/time of the scheduled preconference hearing, and did not contact the Hearing Officer to provide explanation for nonappearance. Participating in the prehearing conference is an important part of prosecuting a complaint under the IDEA. As such, the Hearing Officer finds that the facts warrant dismissal of the complaint for failure to prosecute.

In addition to providing a basis for dismissal of the Parent's due process complaint for failure to prosecute, the facts warrant dismissal based on failure to state a claim for which relief can be granted and lack of jurisdiction.

It is undisputed that the Student does not meet the requirements to attend school because Connecticut public health law does not allow preschool students to attend/enroll in school if not in compliance with vaccination requirements (*see* Conn. Gen. Stat. § 10-204a(a)-(c); Conn. Agencies Reg. § 10-204a-2a(k)). Under this set of facts, where the student has been withdrawn from school, the Hearing Officer does not have authority to order that IEP services be provided to the Student outside of the school environment. The problem defined by the Parent does not involve an IDEA issue that concerns identification, evaluation or the provision of a free appropriate public education to the Student. The mandatory vaccination issue and the restriction on attending/enrollment in school applies to all students, not just those students eligible for special education services.

As previously indicated, there are specific provisions under which parents may initiate a due process complaint under the IDEA, which are defined as a proposal or refusal to initiate or change the " identification, evaluation or educational placement of a child or the provision of a free appropriate public education of the child" (Conn. Agencies Regs. §10-76h-3(a); 20 U.S.C. § 1415[b][6]); 34 C.F.R. § 300.507(a)(1)).

State Educational Agencies or the public agency directly responsible for the education of the child, are responsible for conducting a hearing where there are disputes relating to the identification, evaluation or educational placement of a child with a disability

required to fully pay for a private facility that provides all the services, including transportation to and from this private facility for K-12 if the Board does not comply with the Parent's requests (*see* Complaint, pp. 1-2).

or the provision of a Free Appropriate Public Education. *See* 34 C.F.R. §§ 300.511, 300.507.

Section 10-76h(d)(1) of the Connecticut General Statutes, which confers authority to hearing officers in Impartial Due Process Hearings, provides that the hearing officer has the authority to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the Student.

Based upon the above, the issues that may be raised in a due process hearing are narrowly focused. The parent's complaint in this case does not fit within these allowable parameters because the issues raised are not related to identification, evaluation, or educational placement of a child or the provision of FAPE. The parent's complaint is focused on (1) seeking IEP services (that are already part of the Student's IEP); (2) at a location outside of the school building; and (3) during the time period when the Student was withdrawn from public school due to noncompliance with the vaccination mandate.

Accordingly, the facts stated in the Parent's complaint do not meet the legal requirements for a claim under the IDEA, and the Hearing Officer does not have statutory authority to provide the relief requested by the parents.

In light of the determinations made herein, the Board's alternative motion for a finding that the Parent's complaint does not meet sufficiency requirements is moot.

FINAL DECISION AND ORDER

1. The parent's failure to appear at the scheduled prehearing conference, and failure to actively pursue the complaint constitute failure to prosecute.
2. The facts stated in the Parent's complaint do not meet the legal requirements for a due process complaint under the IDEA.
3. The Hearing Officer does not have jurisdiction to order that the Board provide special education services outside the school building, where the Student is not eligible to attend preschool due to noncompliance with Connecticut's immunization requirements under Conn. Gen. Stat. § 10-204a.
4. The Board's alternate request that the Hearing Officer find that the complaint does not meet sufficiency requirements is moot.
5. The Due Process Complaint/Hearing Request is Dismissed with Prejudice.

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

x Adrienne Lawston

Hearing Officer Name (Print)