

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Mansfield Board of Education

Appearing on behalf of the Parent:

Attorney Walter R. Keenan
165 Coventry Road
Mansfield Center, CT 06250

Appearing on behalf of the Board:

Attorney Michael P. McKeon
Sullivan Schoen Campana & Connon LLC
646 Prospect Avenue
Hartford, CT 06105

Appearing before:

Attorney Janis C. Jerman, Hearing Officer

FINAL DECISION AND ORDER

A special education hearing in the above-captioned matter was requested by the Student via complaint dated April 24, 2009. It was received by the Board of Education on April 27, 2009. The 30-day resolution period ran through May 27, 2009. The original deadline for mailing the final decision and order was July 11, 2009.

Via Motion dated May 20, 2009, Student, by and through his attorney, filed a Motion for Designation of Current Educational Placement Pending Administrative Due Process Proceedings. The motion sought to maintain Student's "current educational placement, including the current individualized education program... during the pendency of these due process administrative proceedings." The motion for stay-put was granted.

A pre-hearing conference was held on May 21, 2009. Attorney Walter Keenan appeared on behalf of the Student and Attorney Michael McKeon appeared on behalf of the Board of Education. The following issues were identified:

1. Whether the Board of Education provided a free appropriate public education to Student;¹
2. Whether the Board of Education developed an appropriate IEP on June 12, 2008;
3. Whether the June 12, 2008 IEP adequately stated Student's present level of academic achievement and functional performance;
4. Whether the Board of Education developed and implemented appropriate measurable annual goals in the June 12, 2008 IEP;
5. Whether the June 12, 2008 IEP stated the special education services to be provided to Student;

¹ At the July 10 hearing, the parties agreed that this issue should be clarified as to the time period. After discussion, the parties stipulated that the issue be restated as "Whether the Board of Education provided a free appropriate public education to Student during the 2008-2009 school year."

6. Whether the Board of Education provided meaningful parent participation in the IEP team process;
7. Whether the Board of Education considered the results of the independent evaluation agreed to by the Board and the Parents;
8. Whether the Board of Education provided a continuum of alternative placements;
9. Whether the Board of Education provided recommended assistive technology devices and services;
10. Whether the Board of Education provided adequate prior written notice.

The Parents waived the resolution hearing and mediation. The matter was scheduled for hearings on Friday, June 26, 2009, and Monday, June 29, 2009.

The parties each filed witness lists and exhibits on June 19, 2009. On June 22, 2009, the Parents filed an objection to the Board's proposed witness list and a motion to sequester witnesses. The Board filed responses to the motions.

The hearing was convened on June 26, 2009 at which time the Board filed a motion to dismiss. The hearing was recessed until July 10, 2009 to give the Parents seven business days to respond to the motion, as permitted by state regulation. The Parents were also given leave to amend the complaint in the event that they felt it would resolve any issues raised by the Board's motion to dismiss. The Parents filed a memorandum in opposition to the motion to dismiss and an amended complaint on July 7, 2009. On July 9, 2009, the Board filed an objection to the amended complaint.

The hearing was reconvened on Friday, July 10, 2009 to permit the parties to make oral argument on the motion to dismiss and the objection to the amended complaint. At that hearing, the Parents filed a request for extension of the mailing date in light of the motion to dismiss and amended complaint. The Hearing Officer granted the request on the record. The deadline for mailing the final decision and order was extended until August 10, 2009.

On July 17, 2009, the Hearing Officer overruled the Board's objection to the amended complaint. The case timelines were reset to reflect the amended complaint which was received by the Board of Education on July 7, 2009. The 30-day resolution period ran through August 6, 2009. The deadline for mailing the final decision and order is September 20, 2009.

The motion to dismiss was considered in light of the Amended Complaint. The motion to dismiss was denied as to issues one through seven and as to issues nine through ten. The motion to dismiss was granted as to issue number eight.

The Statement of Issues was amended as follows to incorporate the agreement of the parties at the July 10, 2009 hearing (with regard to issue number 1) and to reflect the results of the motion to dismiss (with regard to the original issue number 8):

1. Whether the Board of Education provided a free appropriate public education (FAPE) to Student during the 2008-09 school year;
2. Whether the Board of Education developed an appropriate IEP on June 12, 2008;
3. Whether the June 12, 2008 IEP adequately stated Student's present level of academic achievement and functional performance;
4. Whether the Board of Education developed and implemented appropriate measurable annual goals in the June 12, 2008 IEP;
5. Whether the June 12, 2008 IEP stated the special education services to be provided to Student;
6. Whether the Board of Education provided meaningful parent participation in the IEP team process;
7. Whether the Board of Education considered the results of the independent evaluation agreed to by the Board and the Parents;
8. Whether the Board of Education provided recommended assistive technology devices and services;
9. Whether the Board of Education provided adequate prior written notice.

The matter was scheduled to proceed to hearing on July 29, 2009 August 4, 2009 and September 4, 2009. The July 29, 2009 hearing was cancelled due to a family emergency on the part of the Board's attorney.

The hearing convened on August 4, 2009 at which time the Parents testified under oath. The matter was scheduled to reconvene on September 1, 2009 and September 4, 2009. On August 25, 2009, Parents filed a request to withdraw the case without prejudice. Attorney Keenan's cover letter indicates that the decision "was recently made by [Parents] upon consultation and review of all relevant facts pertaining to this case."

The Hearing Officer indicated, in writing, to the parties that the case would not be dismissed *without prejudice* absent an explanation for the withdrawal (i.e. pending settlement). The Parents were notified that absent a reason for the request to withdraw without prejudice, the matter would be dismissed with prejudice. A reason for withdrawal was not provided by the Parents.

FINAL DECISION AND ORDER

In light of the above facts, the above-captioned case is hereby dismissed with prejudice.