

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v East Hartford Board of Education¹

Appearing on behalf of Student: Student’s Mother, *Pro Se*

Appearing on behalf of the Board of Education: Attorney Linda Yoder
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing before: Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing was requested by Student’s Mother via Request for Impartial Special Education Hearing dated March 12, 2024.² At the March 26 telephonic prehearing conference, Student’s Mother appeared on behalf of Student and Mr. Outhouse (Director) appeared on behalf of Board of Education (BOE). BOE received the Request for Hearing on March 13. The 30-day resolution period ended April 12 and the original 45-day deadline to mail the final decision and order was May 27.

The following issues are identified:

1. Did the Board of Education fail to provide Student with a free appropriate public education from May 2023 through the 2023-24 school year by failing to implement appropriate accommodations, failing to provide a safe educational environment, conducting planning and placement team meetings with staff that are not informed on special education or Student’s disability, denying services, and/or developing an individualized education plan that does not provide educational development?
2. If the answer to Issue One is in the affirmative, what shall be the remedy?
3. If the answer to Issue One is in the affirmative, is an out-of-district placement appropriate for Student?

An in-person hearing was scheduled for April 29. Student’s Mother requested that the case be open to the public and expressly stated that she allows Student’s “full legal name, identification and all records of her educational file to be used without redaction in any form.” At Student’s Mother’s request as permitted by 34 C.F.R. § 300.512(c)(2), the hearing was open to the public.

¹ To comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g (FERPA) and related regulations at 34 CFR § 99, this decision uses “Student,” “Parents,” and titles of certain school staff members and witnesses in place of names and other personally identifiable information. The identity of these individuals is included in the detachable Appendix A for reference to authorized individuals.

² All dates are 2024 unless otherwise indicated.

A second telephonic prehearing conference was held on April 24. Student's Mother appeared on behalf of Student and Attorney Yoder, Attorney Reznick, BOE Director Outhouse, and Special Education Supervisor Corey appeared on behalf of BOE. The following topics were addressed at the prehearing conference: process for conducting a public hearing, submission of exhibits, process for objections to documentary evidence and witnesses to be called, and the potential need for an additional hearing date.

Hearing was held on April 29. Student's Mother arrived late to the hearing and indicated that she intends to withdraw Student from BOE schools and that she wishes to proceed with the hearing. The hearing proceeded with BOE calling Student's Mother as their first witness.

Student's Mother did not timely return from the lunch break and could not be reached via email or phone. After waiting an additional 40 minutes, BOE's Attorney made an oral motion to dismiss for Student's Mother's failure to prosecute the case by failing to reappear at the hearing. The motion to dismiss was denied.

On the record at the April 29 hearing, BOE's Attorney requested an extension of the deadline to mail the final decision and order to accommodate a hearing on June 4. The request was granted on the record and the deadline to mail the final decision and order extended 30 days to June 26.

The hearing adjourned for the day in Student's Mother's absence and was continued to June 4. Written notice of the June 4 hearing was provided to Student's Mother by the Hearing Officer on April 29 and by BOE's Attorney on May 21.

Student's Mother appeared at the June 4 hearing with Student and was given an opportunity to testify as the form of her cross-examination. The Hearing Officer also questioned Student's Mother seeking clarification of the issues and concerns that gave rise to the Request for Hearing.

Multiple times, Student's Mother stated that the Hearing Officer could withdraw the case "like another hearing officer did."³ The Hearing Officer explained that only Student's Mother can withdraw the case and described the situations in which the case could be dismissed pursuant to the Hearing Officer's authority.

Student's Mother's tone, language, and volume escalated as she made highly inappropriate, disrespectful, offensive, and dehumanizing comments and accusations directed at BOE's Attorney. Student's Mother stated that Student is her priority; that she was going to leave the hearing; and that she could not make herself available for a hearing due to her need to take care of Student. The Hearing Officer tried to engage in a discussion around scheduling and asked Student's Mother to cease making inappropriate comments. Student's Mother stated that she will say whatever she wants and engaged in more escalated inappropriate comments and said that she is not going to come to hearings. She gathered her materials and left the hearing room prior to completing testimony and cross-examination.

BOE's Attorney made an oral motion to dismiss, on the record. She argues that BOE has offered Student educational resources; that Student made educational progress when she participated in such services; that Student's health issues are not caused by or triggered by BOE's actions or inactions; that BOE offered Student a free appropriate public education (FAPE); that they have five witnesses ready to testify; that they have made tremendous efforts to seek a resolution of Student's Mother's concerns; that Student's Mother has filed three or four requests for hearing, all of which claim FAPE violations; that the cases are for the same issues with variations in the time frame covered; that the other cases did not proceed to hearing; that

³ Student's Mother previously filed a Request for Hearing that was dismissed by another Hearing Officer.

Student's Mother voluntarily withdrew a case and another was dismissed without prejudice; and that Student's Mother did not make efforts to participate in the hearing or to seek a continuance.

BOE's Attorney requests that the case be dismissed with prejudice to stop Student's Mother from continuing to raise the same issues without bringing them to conclusion, or in the alternative, to proceed with hearing in Student's Mother's absence to allow BOE to complete their case and receive a decision on the merits.

Statement of Jurisdiction

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) § 10-76h and related regulations, 20 United States Code (USC) § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (UAPA), CGS §§ 4-176e to 4-178, inclusive, and § 4-181a and § 4-186.

Conclusions of Law

1. Student has the burden of production in a special education due process hearing. Conn.Regs. § 10-76h-14.
2. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Conn.Regs. § 10-76h-14.
3. The hearing officer shall take reasonable measures, including the exclusion from the hearing of parties, counsel, or any other participant, to ensure that the parties, counsel and all other participants comport themselves civilly and that the hearing is conducted in a fair and orderly manner. Behavior which may result in exclusion includes, but is not limited to, abusive speech, inflammatory remarks or disrespectful conduct towards the hearing officer, counsel or any party or party representative, or witnesses. Conn. Regs. § 10-76h-13(a).
4. Any party may move for, or the hearing officer may order, *sua sponte*, an entry of default in or dismissal of a hearing for failure of any party: (1) to prosecute a hearing; (2) to participate in the prehearing conference; (3) to comply with sections 10-76h-1 to 10-76h-18 of the Regulations of Connecticut State Agencies; (4) to comply with a ruling issued by the hearing officer before a final decision is rendered; (5) to state a claim for which relief can be granted; (6) to sustain its burden after presentation of the evidence; or (7) to appear at a properly noticed scheduled hearing. The hearing officer may grant the motion with or without prejudice. Conn. Regs. § 10-76h-18(a).

Discussion

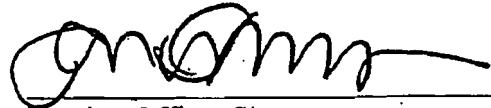
Pursuant to Conn.Regs. § 10-76h-18(a)(1), the Hearing Officer may, *sua sponte*, order a dismissal for failure to prosecute a hearing. Student's Mother repeatedly stated that the Hearing Officer can "withdraw" the hearing and left the hearing prior to completing her testimony and cross-examination. Student's Mother failed to meet her burden of production prior to leaving the hearing. She made it clear that she is not going to participate further in this hearing. Student's Mother abandoned her right to proceed on the merits.

FINAL DECISION AND ORDERS

The above-captioned case is dismissed with prejudice for failure to prosecute.

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

JANIS C. JERMAN

Hearing Officer

Name in Print