

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Madison Board of Education

Appearing on behalf of the Parents: Attorney Howard Klebanoff  
Attorney Courtney P. Spencer  
Howard Klebanoff, P.C.  
433 South Main Street, Suite 102  
West Hartford, CT 06110

Appearing on behalf of the Board: Attorney Donald F. Houston  
Attorney Pamela J. Coyne  
Durant, Nichols, Houston, Hodgson  
& Cortese-Costa, P.C.  
1057 Broad Street  
Bridgeport, CT 06604-4219

Appearing before: Attorney Patricia M. Strong  
Hearing Officer

**FINAL DECISION AND ORDER**

**PROCEDURAL HISTORY**

This hearing was requested on July 29, 2003. This hearing officer was assigned to the case on July 31. A prehearing conference was held on August 12. At that time the Patents' attorney, Ms. Spencer, stated that the Board had refused mediation. The Board's attorney, Mr. Houston, stated that the Board would mediate. The parties requested a 30-day postponement for purposes of scheduling a mediation and exploring settlement options. Hearing dates were agreed on for October 10 and 17, 2003. On August 14, Atty. Spencer filed a written request for a 30-day extension of the September 12 decision deadline. On August 15, the Hearing Officer granted the request and extended the deadline to October 14, the first business day following the 30-day extension. A hearing notice was issued advising the parties to file witness lists and exhibits by October 3 and setting October 10 and 17 as hearing dates. On August 19, the Hearing Officer received a notice from the State Department of Education (SDE) scheduling a mediation on September 26. On September 10, the Hearing Officer received a second notice from SDE rescheduling the mediation to September 30. The parties timely filed their witness lists and exhibits on October 3. The Parent's Atty., Ms. Spencer, also faxed an appearance form and a Prehearing Conference Statement of Issue(s) form on October 3. In the afternoon of October 8, the Board's attorney, Mr. Houston, faxed a letter to the Hearing

Officer requesting a postponement of the October 10 hearing on behalf of both parties "for the purpose of continuing discussion and mediation, with the hope of resolving this matter." The Hearing Officer did not receive this letter until after the close of the business day. On October 9 both Atty. Houston and his secretary called the Hearing Officer to inquire whether the postponement was granted. The Hearing Officer was conducting another hearing that day, but called Atty. Houston's secretary and advised her that the request for postponement was not timely and that the hearing would be held on October 10. She was asked to convey the message to Atty. Klebanoff.

On October 10, the hearing convened with the Parents and their attorney, Ms. Spencer, and the Board's attorney, Ms. Coyne present. No one from the Board staff was present. The Hearing Officer opened the hearing and asked the Parents' attorney if she was prepared to present her case. She said she was not. The attorneys were asked if there was a settlement agreement. They said no, that it was being handled directly by Attys. Klebanoff and Houston and that an agreement had not yet been reached. The attorneys were asked why the case should not be dismissed for failure to prosecute. The decision deadline of October 14 could not be extended further for settlement discussions. After hearing lengthy statements from both attorneys about the reasons why the case could be settled within the next week and the delay which would be involved if the case was dismissed and had to be refiled if the settlement fell through, the Board's attorney stated that the parties had agreed that if the case wasn't settled by October 16, the hearing would go forward on October 17. On that assurance, the Hearing Officer reset the decision deadline to October 17, ordered the Parent attorney's to file a withdrawal of the case not later than noon on October 16 and ordered the parties to proceed with the hearing on October 17 if the withdrawal wasn't filed. The attorneys were advised of the strict rule on postponements and told that October 10 was the last business day to file requests for postponement of the October 17 hearing. The Board's attorney asked if additional hearing dates would be set. The Hearing Officer ruled that no additional dates would be set until the hearing convened on October 17, and it appeared that additional dates were necessary. The hearing was adjourned for the day.

On October 15 at 4:03 p.m. a letter was received by fax from Atty. Klebanoff requesting the Hearing Officer to "reconsider [her] position and allow us a continuation in order to settle this matter and, if necessary, schedule another telephone conference to schedule additional hearing dates." Atty. Klebanoff stated that "Attorney Houston has been unable to pursue a resolution of this matter with his client because of other commitments and I am unavailable on Fridays to handle any legal matters." The Hearing Officer did not review this letter until the following day because of other legal cases. At approximately 3:30 p.m. on October 16 the Hearing Officer faxed a letter to the parties' attorneys reiterating the postponement requirement of 5 days, finding that Atty. Houston's unavailability was not a compelling reason to file a postponement request two days before a hearing and denying the request for a postponement of the October 17 hearing. The attorneys were reminded of the agreement on the record that if the case was not withdrawn by noon on October 16, they would present the case on October 17. The letter ended with: "If the parties are not present tomorrow, the case will be dismissed for failure to prosecute." At approximately 5:00 p.m., Atty. Spencer faxed a letter to the

Hearing Officer stating that the letter from Atty. Klebanoff was in compliance with the October 10 order of the Hearing Officer.

On October 17, the Hearing Officer arrived at Madison school district offices and was told by staff that the hearing was cancelled and that they had sent the court reporter home. The court reporter called moments later and advised that she was told to return by her supervisor. Only the Hearing Officer can cancel a hearing. The Board personnel who directed the court reporter to leave and told the Hearing Officer that the case was cancelled was advised that the Hearing Officer did not cancel the hearing. The Board personnel stated that her attorney told her it was cancelled. Then she called her attorney, Ms. Coyne, who advised the Hearing Officer that Atty. Klebanoff cancelled the hearing in his letter of October 15. The Hearing Officer asked her if she received the letter of October 16 from the Hearing Officer and she said yes. After the court reporter arrived, the Hearing Officer convened the hearing on the record and noted that the case had not been withdrawn by noon on October 16 and that none of the parties or attorneys were present. The case was ordered dismissed without prejudice, to be followed by a written decision and order from the Hearing Officer.

### **FINAL DECISION AND ORDER**

The Parties have failed to comply with the regulations governing postponements of due process hearings as required by Regs. of Conn. State Agencies, Section 10-76h-9(a) and (e). Subsection (e) provides in relevant part:

The hearing officer shall have the authority to grant one 30-day postponement for continued settlement discussions between the parties . . . . At the end of the 30-day period the parties will advise the hearing officer in writing whether or not a settlement has been reached, or they will be prepared to go forward to the hearing. The hearing officer shall not have the authority to grant any further postponements or extensions for continued settlement discussions. If the parties are not prepared to go forward with the hearing, the hearing officer will dismiss the hearing request without prejudice. The parties may refile at a later date.

(Emphasis added). There was no withdrawal filed prior to the hearing. A withdrawal is accomplished by a written statement that the party wishes to withdraw the case. It should be clear and unequivocal. It is not the Hearing Officer's decision whether a party should withdraw a case. Once a withdrawal is received by the Hearing Officer in a timely fashion, the court reporter is notified by the Hearing Officer that the hearing is cancelled. That is not what occurred here. It is ordered that the case shall be dismissed without prejudice pursuant to Sections 10-76h-9(e) and 10-76h-18(a)(1) and (7).