STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Norwich Board of Education

Appearing on behalf of the Student:	Parent, Pro Se
Appearing on behalf of the Board:	Attorney Linda L. Yoder Shipman & Goodwin LLP One Constitution Plaza Hartford, CT 06103-1919
Appearing before:	Attorney Christine B. Spak Hearing Officer

FINAL DECISION

The Norwich Board of Education ("the Board") moved to dismiss the above referenced due process hearing in its entirety on the grounds that the Parent has failed to raise any issues upon which relief may be granted. The parties convened on October 18, 2004 for the first day of hearing and at that time testimony was heard from the mother and from Lanie Kochanski, the Board's Director. For reasons that follow a bench decision was made which granted the Motion to Dismiss with the understanding that this written ruling would follow.

Although the facts have changed in this matter since the evidence closed in the prior case (as is discussed below), the issues as stated by the Parent are the same issues raised and ruled upon in a prior recent due process hearing. *Res judicata* bars the Parent from raising the same issues already decided by State of Connecticut Administrative Due Process Hearing Officer Deborah Kearns in Case No. 03-310. That decision issued on or about August 17, 2004 and the request for the instant due process hearing was made on or about September 10, 2004.

The student has been excluded from school since October 23, ***2003***. There has been some tutoring but of late that has broken down. At hearing the parties agreed that the Board would send the social worker Lisa Allen and another staff member to the student's home to encourage him to participate in both the tutoring and the evaluation and support him in doing so.

In the prior matter Hearing Officer Kearns ruled that a risk assessment and a psychiatric evaluation shall be performed by a specific doctor (Dr. Jamison). After the close of testimony in the prior case, but before the decision issued, the mother, anxious for the student to be readmitted to school for the fall 2004 term, had a risk assessment performed by the Yale Child Study Center. The mother testified that because the decision was late in issuing and sensing which direction the decision would fall, she was concerned that there would not be time to evaluate the student if the mother waited for the decision. However, the Board was not informed of the risk assessment until after it was completed, was not contacted by the evaluator and consequently did not participate. A one paragraph report by the evaluator, Lisa Lochner, MSW implied that the student presented no risk "[the student] did express remorse about singing a rap song with the word "gun" in it while in the classroom." She further reported that the student reported "feeling happy and hopeful about

returning to school." This evaluation was during the summer of 2004.

In the instant matter, it is not disputed that:

1. The Board again denied the student entry to the school for the 2004-2005 school year;
2. The mother and student then consented to an evaluation by Dr. Jamison
3. The evaluation was set for September 9, 2004.
4. The Board failed to provide transportation as promised and rescheduled the evaluation for September 28, 2004.

The student, who the mother reported is a discouraged 17 year old who has cooperated to a large degree throughout this lengthy ordeal, refused to go when the van arrived for this rescheduled appointment. The Board feels it is the mother who must agree to cooperate with the process and the student will then cooperate. Regardless of which of the adults is accurate in this regard, there are some significant facts which are clear: The student has been excluded from the school *for over a year* and has not had a risk assessment by Dr. Jamison because of wrongful actions on the part of both parties.

A challenge based on *res judicata* grounds may be properly raised in a motion to dismiss. See e.g., Rule 12(b)(6) of the Federal Rules of Civil Procedure; Thompson v. County of Franklin, 15 F.3d 245, 253 (2d Cir. 1994) (citing 5A Wright & Miller § 1357, at 356 n. 69) (other citations omitted). A final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. Commissioner v. Sunnen, 333 U.S. 591, 597 (1948); Cromwell v. County of Sac, 94 U.S. 351, 351-53 (1877). The *res judicata* consequences of a final, unappealed judgment are not altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. Angel v. Bullington, 330 U.S. 183, 187 (1947); Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371 (1940); Wilson's Executor v. Deen, 121 U.S. 525, 534 (1887).

Therefore, due to the fact that the issue as framed by the mother in the instant request for due process is the same one already heard and decided by a hearing officer in a prior due process hearing, this matter must be dismissed.

FINAL DECISION AND ORDER:

The matter is **DISMISSED**.