

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Manchester Board of Education

Appearing on behalf of the Student: Attorney James C. Wing, Jr.  
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Appearing before: Attorney Deborah R. Kearns  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES**

- I. Whether the child can challenge the terms of a settlement agreement executed by his parent in February 2003 by a request for a hearing dated June 30, 2005?
- II. Whether the child is eligible to receive special education and related services from the local educational agency after his graduation from high school with a regular high school diploma?
- III. Whether the child can challenge his June 20, 2003 exit from special education on June 30, 2005?
- IV. Whether the child's claim that the local educational agency failed to provide a free and appropriate public education in 2000-2001 and 2001-2002 school years is barred by Connecticut General Statute § 10-76h(a)(3) which provides for a two year statute of limitation?
- V. Whether the child can avoid dismissal required by Connecticut General Statute § 10-76h(a)(3) in a claim the local educational agency failed to provide a free and appropriate public education if his claims relate back to the claims made by his mother in the December 2002 case?

**PROCEDURAL HISTORY**

The child through counsel commenced the action on June 30, 2005. The matter was assigned to the hearing officer on July 7, 2005. A prehearing conference

convened on July 13, 2005. Another prehearing conference convened on July 29, 2005. At the prehearing conference the local education agency (LEA) claimed the matter should be dismissed. It was agreed the motion was to be reviewed on the papers. The motion to dismiss and objection did not indicate there was agreement as to the material facts. The parties were notified to prepare argument of their respective motions at a hearing. Both parties requested leave to submit stipulated facts and extend the final decision date to allow time to schedule hearing dates. The hearing convened on November 30, 2005 and December 19, 2005. The date for final decision in the matter is February 7, 2006.

### **SUMMARY**

The child claims he can maintain an action for a denial of a free and appropriate public education more than two years after his graduation from the LEA high school with a regular high school diploma and more than two years after his exit from special education. The child claims the parent brought a due process action case No.02-350 in December 2002, three weeks prior to the child's 18<sup>th</sup> birthday and settled the case four weeks after the child's 18<sup>th</sup> birthday. The child now claims, through counsel, the settlement agreement his parent reached with the LEA was executed after he became 18 year of age, he was therefore a necessary party to the agreement. He claims the settlement agreement did not provide him with a FAPE. The child claims he can avoid dismissal of the action brought two years after exit from special education because the original case the parent filed in December 2002 was timely.

### **FINDINGS OF FACT**

1. The parties agree to certain facts and reduced them to Stipulated Facts dated December 19, 2005.
2. The parties agree the child was identified as a student with a specific learning disability and eligible to receive specialized instruction and services pursuant to the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.*, as amended, for the 2002-2003 academic year. (Stipulated Facts, No. 1.)
3. The record establishes the child was eligible to receive special education and related services during the school years in question 2000-2001 and 2001-2002. (Stipulated Facts, Exhibit B-1)
4. In December 2002, the parent commenced a due process action (case No. 02-350) on behalf of the then minor student. The student became eighteen years of age on his birthday in January 2003. In case No. 02-350 the parties disputed the appropriateness of the child's special education and related services received in school years 2000-2001 and 2001-2002, and the IEP planned for his senior year of high school, 2002-2003. On or about February 6, 2003 the parent executed a settlement agreement with the local education agency (LEA) resolving all the issues for the prior school years and establishing the outline of an appropriate program for the 2002-2003 school year. Upon execution of the settlement agreement the parent

- agreed to withdraw her request for a hearing with prejudice. (Stipulated Facts, Exhibit B-1)
5. The same day the agreement was made, February 6, 2003, the IEP team met to plan an appropriate program for the child for the remainder of the school year. The LEA paid the fees of the consultant, named in the 2/6/03 agreement to represent the interests of the child. The student did not dispute the terms of the settlement agreement nor did he dispute that his parent signed the agreement on his behalf until June 30, 2005. (Exhibit B-1; Stipulation of Facts No. 2, 9; Request for Hearing and attachments, June 6, 2005)
  6. The settlement agreement made provisions for specific people to attend IEP and PPT meetings for the purposes of revising the IEP for the second semester of 2002-2003, his senior year. A board of education employee acceptable to both parties was assigned to act as a liaison for meetings concerning educational program issues for the child. (Exhibit B-1)
  7. The parties agree the child's program was appropriate through the end of the 2002-2003, school year. (Stipulation of Facts No.9)
  8. The agreement made specific provisions to clarify the extent of the child's eligibility to receive special education services from the LEA; stating once the child graduates from the board's high school he shall no longer be eligible for special education and related services. The agreement made specific provisions to assure the child continued to receive an appropriate education for the entire time he remained a student at the high school and remained eligible to receive special education and related services. (Exhibit B-1)
  9. On March 17, 2003 the February 6, 2003 settlement agreement was amended to incorporate the child's desire to change tutors. The child successfully completed his high school education, received a regular high school diploma and exited from special education on June 20, 2003. (Exhibit B-1, Stipulation of Facts)
  10. The child attended at least two IEP/ PPT meetings after the time he turned eighteen. An IEP team meeting convened on April 6, 2003 to review the child's progress. Both the parent and the child attended the meeting; at the time the child was over eighteen years of age. Both the parent and the child received a copy of the procedural safeguards. On June 4<sup>th</sup> 2003, prior to graduation, both the parent and the child attended a meeting and received notice of procedural safeguards. The meeting convened to review the child's progress, plan for graduation and the child's exit from special education. (Exhibit B-1, Stipulation of Facts).
  11. The child and the parent received verbal and written notice of graduation and exit from special education. At the conclusion of the child's senior high school year, he earned 24.75 credits, exceeding the 22 credit requirement for a regular high school diploma. The child was able to earn passing grades in all second semester subjects including, Senior English - C+, and Algebra II – B. The child graduated from the LEA high school on June 20, 2003. (Stipulation of Facts)

### **CONCLUSIONS OF LAW**

1. The student is identified as a student with disabilities pursuant to the Individuals with Disabilities Education Act 20 U.S.C. § 1400 *et seq* as amended, (IDEA) and the 2004

amendments, Individuals with Disabilities Education Improvement Act (IDEIA); 34 C.F.R. § 300.7(a) and Conn. Agencies Regs. § 10-76a-1(d). There is no dispute between the parties as to the child's eligibility to receive a free and appropriate public education (FAPE). The hearing record establishes that the child was eligible to receive a FAPE for the 2000-2001, school year and the 2001-2002 school year. The parties stipulate the child is eligible for special education and related services due to his specific learning disability for the 2002-2003, school year.

2. The child through counsel makes a request for due process dated June 30, 2005 stating the following: The parent and LEA executed a settlement agreement in a previous due process case (No. 02-350) which denied the child a FAPE for the school year 2002-2003. The claim states the settlement to the case No.02-350 is not binding on the child because he had reached the age of majority at the time the agreement was executed; and therefore, he is a necessary signatory to the agreement. The child claims even though he was a minor at the commencement of case No. 02-350 he turned eighteen during the course of negotiating a settlement in the case. Good legal practice would dictate the child should sign the agreement after he turned eighteen, but the parent is authorized by statute to represent the interest of her child. Prior to his eighteenth birthday she was the appropriate person to file for a hearing. Connecticut General Statutes §10-76h(a)(1) provides that "a parent or guardian of a child requiring special education and related services pursuant to 10-76a to 10-76g..., a pupil if such pupil is an emancipated minor or eighteen years of age or older requiring such services... may, request in writing a hearing... whenever such board or district proposes or refuses to initiate or change the identification, evaluation, or educational placement of or the provision of a free and appropriate public education to such child or pupil". The issue in case No. 02-350 was whether the child was denied a free appropriate public education (FAPE) for the 2000-2001, 2001-2002 and 2003-2004 school years. The parties reached a settlement to resolve all the outstanding issues regarding the child's special education program. The parent is authorized by the statute to commence such an action on behalf of herself and the minor child. Once the parent was satisfied the matter was resolved she had a right to enter into a settlement agreement to resolve the claim for due process and avoid costly litigation. The settlement agreement required the parent withdraw the action as a condition of receiving benefits promised to her and her child. If after the date of settlement the child was dissatisfied with the agreement, the child (as a non-minor) had a right to claim he does not receive a free and appropriate public education from the LEA. A substantive claim would result in a rescission or breach of the settlement agreement with the matter being resolved in a due process action commenced by the child.
3. If it is the child's claim the agreement with the LEA is in any way based on the parent's misrepresentation, fraud or negligence, such matters are not within the subject matter jurisdiction of a Department of Education hearing officer as authorized by IDEA. Connecticut General Statutes § 10-76h(d)(1) provides a hearing officer may confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free and appropriate public education to the child or pupil.
4. Is the child eligible to receive special education and related services from the local educational agency after his graduation from high school with a regular high school

diploma? The request for hearing implies the February 6, 2003 settlement agreement was not appropriate in its provision to exit the child from special education upon graduation from the LEA high school. The LEA states the child's education record reflects he met his 2002-2003 IEP goals and objectives. At the conclusion of the child's senior high school year, he earned 24.75 credits, exceeding the 22 credits required for a regular high school diploma. The child was able to earn passing grades in all second semester subjects including, Senior English - C+, and Algebra II – B, (Stipulated Facts). The parties stipulate the child and parent both received a copy of the procedural safeguards, attended a PPT meeting on June 4, 2003. At the June 4, 2003 meeting the parties reviewed the child's plans for the change of placement with his exit from special education, once he successfully completed his senior year courses. The child and the parent received verbal and written notice of exit from special education upon graduation. There is no challenge to any inadequacies related to the prior written notice requirements of 34 C.F.R. § 300.503. Furthermore, the February 6, 2003 settlement agreement provided notice the child would no longer be eligible to receive special education and related services. The child graduated from the LEA high school on June 20, 2003.<sup>1</sup> IDEA at 20 U.S.C. 1412(a)(1)(B) and its regulations at 34 C.F.R. §300.122(a)(3)(i) provides the general obligation to make FAPE available to all children with disabilities does not apply with respect to the following... “[s]tudents with disabilities who have graduated from high school with a regular high school diploma.” Once the child graduates from high school he is no longer afforded the legal protections provided by IDEA under federal and state law, the child is no longer entitled to a FAPE. Even if the child was not a party to the agreement between his parent and the LEA, by his own admission the program for the 2002-2003 school year was appropriate. All the requirements necessary for graduation from the LEA high school have been satisfied. Graduation from high school and exit from special education are appropriate based on the facts in the record.

5. The child's request for the present hearing claims the LEA failed to provide a FAPE because the February 6, 2003 settlement agreement denied the child a FAPE. The Stipulated Facts provide the child received an appropriate program for the 2002-2003, school year. Any claim the child did not receive a FAPE can only relate to the years 2000-2002.
6. Is the child's claim that the local educational agency failed to provide a free and appropriate public education in 2000-2001 and 2001-2002 school years barred by Connecticut General Statute § 10-76h(a)(3) which provides for a two year statute of limitation? The child through counsel makes a request for a hearing dated June 30, 2005 which states the settlement agreement failed to provide the child with a FAPE. School years 2000-2002 are the only years which remain in question because the child stipulates the program for 2002-2003 was appropriate. Even if the child is not bound by the terms of the February 6, 2003 settlement agreement, whether he received a FAPE in 2000-2002 is not within the jurisdiction of the hearing officer.

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<sup>1</sup> The settlement agreement makes provision for the child to receive post high school graduation accommodations, the appropriateness of the provisions are not addressed in this decision as any events which occurred after the child's eligibility to receive special education services from the LEA is outside the scope of the hearing officer jurisdiction.

Connecticut General Statutes § 10-76h(a)(3) provides that “a party shall have two years to request a hearing from the time the board of education proposed or refused to initiate or change the identification, evaluation, educational placement or the provision of a free and appropriate public education placement to such child or pupil ...”. . If the non-minor child, reached a conclusion that the LEA did not provide a FAPE during the school years 2000-2002 the child could have raised the issue at any time within the statutory limits for each of the respective school years. The student admitted to receipt of the procedural safeguards on April 6, 2003 and again on June 4, 2003, allowing for any tolling of the statute to accommodate any period in which the child had not received the procedural safeguards, the time to make a claim for the denial of FAPE for the 2000-2002 school years has long since passed. The time to challenge the graduation or exit from special education expired two years after the date of graduation.

7. Whether the student can avoid Connecticut General Statute § 10-76h(a)(3) which provides for a two year statute of limitation in a claim the local educational agency failed to provide a free and appropriate public education if his claims relate back to the claim commenced by his mother in December 2002? The claim is that the statutory period of two years is met by the fact that the parent made a timely claim for due process in December, 2002. The case is detailed in finding of fact No. 4. The child claims, since the parent and LEA entered into an agreement which failed to provide the child with a FAPE, the case was not properly resolved. The agreement provided for substantial payments to be made on behalf of the child and the parent. The IEP which the child claims was appropriate for the year 2002-2003 was modified on March 17, 2003 to meet the child’s changing needs during his senior year of high school. The agreement was by no means inflexible and unresponsive to the child’s needs. It is unlikely that litigating the present case would in anyway reform the terms of the previous settlement agreement. The child cannot come back years later and reform the plan established in February 2003. IDEA intends for parties to promptly assert a child’s educational rights. One fundamental goal of the statutory scheme codified in the IDEA is to promote the expeditious resolution of educational programming disputes *M.D., Mr. and Mrs. D. v. Southington BD. of Education* , 334 F.3d 217 (2003). This case in essence claims there is some form of continuing jurisdiction in due process matters, such is not the case. Case No. 02-350 was concluded with a settlement agreement, withdrawn with prejudice and dismissed by the hearing officer. To permit years to pass and have children reach post high school education only to request special education services years after they were originally claimed and resolved would undermine the concept of reaching agreements without litigation. The child cannot avoid dismissal for failure to file a claim within the statutory time frame by relating the claim back to a matter previously resolved by way of a settlement agreement.

### **FINAL DECISION AND ORDER**

1. The child cannot invalidate the February 6, 2003 settlement agreement executed by his parent with current litigation of the same issues.

2. The child cannot avoid being bound by the terms of a settlement agreement by claiming he did not sign the agreement.
3. The child is not entitled to receive special education and related services from the local education agency after he has graduated with a full high school diploma and has been exited from special education.
4. The child's claim that the local educational agency failed to provide a free and appropriate public education in 2000-2001 and 2001-2002 school years is barred by Connecticut General Statute § 10-76h(a)(3).
5. The child cannot avoid dismissal as required by Connecticut General Statute § 10-76h(a)(3) by claiming the present action relates back to his mother's December 2002 action, because although the action was filed the matter was properly resolved.