STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Hartland Board of Education

Appearing on behalf of the Student: Parent, Pro Se

Appearing on behalf of the Board of Education: Attorney William R. Connon
646 Prospect Avenue
Hartford, CT 06105

Appearing before: Atty. Christine B. Spak
Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL SUMMARY:

Subsequent to a prehearing conference a Motion to Dismiss was filed by the Hartland Board of Education (hereinafter "Board") for reasons of collateral estoppel and res judicata. The Parent, representing the Student, (hereinafter "Parent") opposed the Motion. Both parties filed briefs and presented arguments. This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc., 605 F. Supp. 816, (March 6, 1985)* and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student, through his Parent, filed a request for due process dated May 2, 2007 and received by the Due Process Unit of the State Department of Education on May 4, 2007. The issue in dispute was stated, in its entirety, as follows: "The issue(s) in dispute are as follows: The Hartland District failed to comply with procedural requirements of IDEA in failing to assess [the Student] "in all areas related to the suspected disability" from the time of his classification-specifically failing to assess his social and emotional status, neurological processing difficulties, impaired sensory difficulties, and his hypersensitivity relating to his disability of Autism and negatively affecting his ability to obtain FAPE as a direct result. This is directly contrary to 34 CFR 300.304 (c) 3 and 4. His 2005-2006 and 2006-2007 school year IEP's have not been reasonably calculated to enable [the Student] to receive educational benefits and appropriateness for his disability. Nor did it take into account his severe emotional status/anxiety, as testified to by his psychiatrist and the district's school psychologist that he now has as a secondary disability due to the inappropriateness and findings of the 2004-2005 IEP."

2. The Parent did not identify a proposed resolution but rather wrote: "I suggest the

following resolution to the dispute: Hartland School has been so unworkable in that they don't respond to my recent emails to discuss or mediate this situation and continue their ongoing process of ignoring my attempts to communicate, along with many others [sic] issues still existing. This has left me no choice but to file for a Due Process Hearing." Request for Due Process, May 2, 2007, Case #07-122.

3. A prehearing conference was conducted on May 15, 2007 and both parties participated with the Parent participating pro se and the Board participating through counsel.

4. At the prehearing conference the Board indicated that the parties had just completed a due process hearing and that the decision in that matter had issued on April 10, 2007 (hereinafter "Case 06-297").

5. During the prehearing conference the Board indicated that they would be filing a Motion to Dismiss for reasons of collateral estoppel and res judicata and the parties agreed to a timeline for this submission and the response by the Student. The Parent was specifically directed to provide the Hearing Officer with copies of the relevant portions of the transcript, which she indicated she had in her possession and would provide. The undersigned Hearing Officer indicated that if the parties adhered to the briefing schedule a decision would be issued by the close of business on May 22, 2007. See May 25, 2007 Order, attached.

6. The Board submitted their Motion to Dismiss which included a memorandum of law on May 15, 2007. The Parent submitted her objection to the Motion to Dismiss which she entitled Reply to Motion to Dismiss on May 18, 2007. On May 21, 2007 the Board advised that they would not be filing any response to the Parent's objection.

7. The parties adhered to the deadlines of the briefing schedule but the Parent did not provide copies of the relevant portions of the transcripts as directed and did not present any legal argument. In regard to the transcripts she quoted portions of the transcript, out of context, in her objection to the Motion to Dismiss. In her objection to the Motion to Dismiss the Parent did not cite a single case, statute or regulation and provided no legal analysis. The direction during the prehearing conference to provide the relevant portions of the transcripts did not rise to the level of an Order because there was no suggestion that an Order would be necessary and usually they are not for matters of this type. See May 25, 2007 Order, attached.

8. It was not possible to issue a Ruling on the Motion to Dismiss without the relevant portions of the transcript of the prior proceedings. The portions quoted by the Parent were insufficient in that they were lifted out of context and did not provide the prior hearing officer's responses, if any responses were made, for each quoted passage. Copies of the relevant transcripts would allow the quoted passages to be considered in context. To this end and pursuant to Section 10-76h-8(d) of the Regulations of Connecticut State Agencies on May 25, 2007, it was ORDERED that the first day of hearing, already agreed to by the parties, would be used to hear arguments on the Motion to Dismiss and to receive for consideration the relevant portions of the transcripts. See May 25, 2007 Order, attached.

9. On May 18, 2007 the Parent submitted a three page "Amendment to Complaint" which consisted of six enumerated paragraphs that were rambling and not clear in their intent, included references to an unanswered email and quotes from the prior due process hearing. It appeared to be primarily concerned with allegations regarding the Board's conduct concerning Assistive Technology issues and proper category of identification issues. This "Amendment to Complaint" did not include a proposed resolution. See May 18, 2007 Amendment to Complaint.

10. This hearing convened on May 31, 2007 and the parties presented arguments on the Motion to Dismiss. Again the Parent did not present any legal argument but rather argued that she believed the hearing officer in the prior due process action had declined to address the issues framed in the instant due process action. The prior hearing, #06-297, filed by the Parent, began in November 2006 (although the first two hearing dates were cancelled) and was conducted over nine days concluding on March 7, 2007 with the Final Decision and Order in case #06-297 issuing on April 10, 2007. When asked at what point in the prior hearing the Parent first raised the issues identified in the instant hearing the Parent indicated she thought it was during a hearing date in December, 2006. She indicated she had those records at her home and requested a recess to get them. This was granted. When she returned she indicated that the first time she raised these issues was not in December but, in fact, on February 16, 2007, the next to the last day of the nine day hearing.

11. In the prior hearing, #06-297 the hearing officer held that the program offered by the Board for the 2005-2006 school year was not appropriate and that the program offered by the Board for the 2006-2007 school year was appropriate. See Final Decision and Order, 06-297.

12. On June 7, 2007 the undersigned Hearing Officer informed the parties by way of written notice that the Decision in the instant case would be delayed because "…I anticipated that the parties would present arguments that included law as well as alleged facts as is typically the case. The Parent did not present any law in her brief or argument to refute the legal arguments made by the Board. Therefore, this requires more time to issue the Ruling and has required that the date be extended until such time as the necessary research can be completed."

13. On June 8, 2007 the Board notified the undersigned Hearing Officer that the Parent had filed an appeal in Connecticut Superior Court of case #06-297 (hereinafter the "appeal") on May 17, 2007 and had made no mention of this during the prehearing conference (May 15, 2007) or the oral argument (May 31, 2007). The Board attached a copy of the Complaint which included in the Prayer for Relief: "H. The plaintiff seeks any other such relief as the court deems will protect the student from emotional harm following the Board's failure to properly identify the child, assess the child in all areas of his suspected disabilities of Autism and Emotional Disturbance, classify the child and provide FAPE under IDEA, provide an IEP relating meaningful educational benefit due to the unique needs of the child, and any such relief as the court or Guardian ad Litem determines." See Board correspondence, June 8, 2007.

14. On June 11, 2007, the Parent presented further written argument on the facts, and for the first time, on the law that she felt was relevant. See Parent correspondence, June 10, 2007. The

Parent's delay in presenting a legal argument directly delayed the issuance of this Decision.

15. The prior decision #06-297 specifically stated that "To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit." Final Decision and Order, 06-297 at 14.

16. The Parent at no time submitted a Proposed Resolution as is required by the Connecticut Regulations of State Agencies. This resulted in additional delay as what the Parent was seeking was not clear and appeared to change during the course of these proceedings.

DISCUSSION OF LAW

1. The federal statute (IDEA) permits a parent to bring separate due process actions for separate claims. ''SEPARATE COMPLAINT.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed." 20 USC 1415 (o).

2. Connecticut Regulations require that: "The request [for due process] shall contain the following information and shall be signed and dated by the person who is requesting the hearing: …(5) A proposed resolution of the dispute to the extent known and available to the parent at the time." RCSA Section Sec. 10-76h-3(d)(5). The Parent at no time submitted a proposed resolution thereby causing delay to these proceedings.

3. A Motion to Dismiss may be based on a challenge grounded in res judicata. 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). To establish res judicata "a party must show that 1) the previous action involved an adjudication on the merits; 2) the previous action involved the Plaintiffs or those in privity with them; and 3) the claims asserted in the subsequent action were, or could have been , raised in the prior action." Mohahan v. N.Y. City Dept. of Corrections 214 F.3d 275, 284-285 (2d Cir 2000) citing Allen v. McCurray, 449 U.S. 90, 94 (1980); Burgos v. Hopkins, 14 F. 3d 787, 789 (2d Cir. 1994).

4. Collateral estoppel requires four elements be satisfied to prevent the relitigation of issues. "1) the identical issue is raised in a previous proceeding; 2) the issue was 'actually litigated and decided' in the previous proceeding; 3) the party had a 'full and fair opportunity' to litigate the issue; and 4) the resolution of the issue was 'necessary to support a valid and final judgment on the merits.'" Boguslavsky v. Kaplan, 159 F.3d 715, 720.

5. In the instant case the Parent framed her issue as a procedural violation. In her request for due process she stated: "The Hartland District failed to comply with ***procedural requirements*** of IDEA in failing to assess [the Student] in all areas related to the suspected disability from the time of his classification-specifically failing to assess his social and emotional status,

neurological processing difficulties, impaired sensory difficulties, and his hypersensitivity relating to his disability of Autism and negatively affecting his ability to obtain FAPE as a direct result. This is directly contrary to 34 CFR 300.304 (c) 3 and 4. His 2005-2006 and 2006-2007 school year IEP's have not been reasonably calculated to enable [the Student] to receive educational benefits and appropriateness for his disability. Nor did it take into account his severe emotional status/anxiety, as testified to by his psychiatrist and the district's school psychologist that he now has a secondary disability due to the inappropriateness and findings of the 2004-2005 IEP." [emphasis added].

6. In the Final Decision and Order in case #06-297 the hearing officer stated "To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit." Case #06-297 at 14. Therefore, while a Parent can bring a separate due process action on a separate issue, the issues here are not separate in that the claim is for procedural violations covering specific time periods and the prior hearing officer considered all procedural claims for those time periods, which are the same in the instant case (2005-2006 and 2006-2007). The issues in the instant matter, as framed by the Parent would therefore be barred by res judicata for reason that in the prior due process action there was an adjudication on the merits involving the plaintiff, and the procedural claims for these time periods were addressed by the hearing officer in the prior matter. Further, the Parent is not without a remedy in that the Parent's concerns, at least as set out in her request for due process, are properly addressed through the appeal process and an appeal by the Parent is currently pending.

7. Therefore, due to the fact that the issue as framed by the Parent 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

This matter is **DISMISSED without prejudice.**