

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Britain Board of Education

Appearing on Behalf of the Parents: Pro Se

Appearing on Behalf of the Board: Attorney Michael P. McKeon
Sullivan, Schoen, Campana & Connon, LLC
646 Prospect Avenue
Hartford, Connecticut 06105-4286

Appearing Before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the program offered by the Board for the 2008-2009 school year appropriate and did it provide the student with FAPE as defined in 20 USC 1401 et seq? If not;
2. Is the program at Ben Bronz Academy appropriate and did it provide the Student with FAPE in the LRE?
3. Should the Board be required to pay for an IEE of the Student?
4. Should the Board be required to pay for an independent achievement evaluation of the Student's Goals and Objectives?
5. Did the Board commit a procedural violation by impeding the Parents' meaningful participation in the PPT process which caused a denial of FAPE?

SUMMARY:

The Student is a 17 year 9 months old young man who has been identified as a student requiring special education and is entitled to receive a free and appropriate public education as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.. The Parents were assisted by a parent advocate during the first 2 days of this hearing. The Student's Parents rejected the Board's IEP for the 2008-2009 school year. The Parents were seeking that the Student remain in his current out of district placement, Ben Bronz Academy, and requested an Independent Educational Evaluation. The Board rejected the Parents' request and proceeded with a due process.

The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered and vice versa. see SAS Institute, Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp 816 (M.D. Tenn 1985) and Bonnie Ann F. v. Callallen Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993

DISCUSSION:

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

On or about July 8, 2008 the Parents sent the Board a letter advising them that they were requesting a Due Process hearing. On or about July 8, 2008 an impartial special education hearing officer was appointed to hear the matter. A pre-hearing conference was held on July 18, 2008. The parties had a resolution meeting which did not result in an agreement. The hearing commenced on August 22, 2008, and continued on August 28, 2008, November 14, and November 20, 2008.

On November 20, 2008, the Parents renewed their request for a withdrawal without prejudice and the Board objected to the withdrawal without prejudice and made an oral motion for the hearing officer to dismiss the hearing for the Parents' failure to prosecute the matter.

Prior to this oral motion of November 20, 2008, the Parents, at the August 28, 2008 hearing date, made an oral motion to withdraw the matter without prejudice. The Board objected to the matter and a briefing schedule was agreed upon by the parties.

The Parents were advised that a withdrawal might not be granted and they might be ordered to continue the matter. They were also advised that I could grant the withdrawal as requested or I could grant it with prejudice and they would be barred from raising the same issues in the future. The Parents stated they were aware of the possible consequences. The Parents were offered the opportunity to request an extension of time to continue the hearing but they rejected this offer and requested only a withdrawal. The Parents on September 10, 2008 filed their Motion to Withdraw the Matter without prejudice (Hearing Officer's Exhibit #5) and on September 15, 2008 the Board filed their objection to the Motion. (Hearing Officer's Exhibit #7) A decision was rendered on the Motion. The Parents' request for a withdrawal was denied and orders were issued for the parties to choose hearing dates to conclude the matter. (Hearing Officer's Exhibit #8) Two hearing dates were finally set November 14, 2008 and November 20, 2008.

At the November 14, 2008 hearing date the Parents did not appear The Board contacted the Parents and informed the hearing officer that the Parents were not aware of the

November 14, 2008 hearing date and thought that the hearing dates were November 20 and November 24, 2008. A notice was then set to the Parents with the November 20 and November 24, 2008 hearing dates. (Hearing Officer's Exhibit #13)

The Parents again did not appear at the November 20, 2008 hearing date and instead sent the hearing officer an electronic transmission stating that they were not going to appear and requested again that the matter be withdrawn without prejudice. They were informed to appear at the hearing and place their request on the record. They stated that they could not appear (Hearing Officer's Exhibit #15) even though they had chosen the hearing date. At the November 20, 2008 hearing date the Board, based on the Parents' request for a withdrawal, requested a dismissal of the matter.

The hearing officer has authority to grant or deny a Motion to Withdraw:

- (a) 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 pre-hearing 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. *Connecticut General Statute § 10-76h-18*

The hearing officer may grant the motion with or without prejudice. The Parents in the October 1, 2008 Decision on the Motion to Withdraw Without Prejudice were informed to choose hearing dates in order to conclude this matter and if they did not comply the matter would be dismissed with prejudice. The Congress clearly did not want issues as important as a child's education to take any more time than necessary and clearly defined in *20 USC §1415 et seq.* establishment of procedure and safeguards in an administrative format to ensure that decisions concerning a student's education were treated with priority.

Connecticut Regulations in Sec. 10-76h-14(a) state that "The party who filed for due process has the burden of going forward with the evidence." The Parents on or about July 8, 2008 gave notice to the Board of their request for due process. (Hearing Officer's Exhibit #2) Due to health and work issues the Parents, after 2 full days of hearings, requested to withdraw the matter. (Hearing Officer's Exhibit #5) This request was denied since the only plaintiff witness left to testify was the Parent and the Board already had started their case and had informed the hearing officer that they would conclude the hearing in one day. A withdrawal at this time was clearly not necessary and would have prejudiced the Board. The Parents were given time to pick hearing dates of their choosing as Hearing Officer's Exhibits 9 to 13 clearly show. There was no pressure to conclude the hearing by a certain date just to conclude the due process request. The Parents clearly did not appear to want to conclude their request for due process and a dismissal without prejudice would have left this matter pending. The Parents were given every opportunity to present their evidence and conclude the hearing. In their November 19, 2008 request for a withdrawal, (Hearing Officer's Exhibit #14), the Parents did not

present a reason or excuse for withdrawing the matter or further delaying the due process hearing.

The Parents failed to comply with the interim order to conclude the hearing (Hearing Officer's Exhibit #8), failed to prosecute a hearing and failed to appear at a properly noticed scheduled hearing. *Connecticut General Statute § 10-76h-18*

The Board's request for a dismissal of the matter with prejudice is granted.

At the request of the parties, in order to accommodate the mailing of a final decision and order after the hearing dates, the hearing officer extended the date for the mailing of the Final Decision and Order.

The date for the mailing of the Final Decision and Order is December 26, 2008.

FINAL DECISION AND ORDER:

THE MATTER IS DISMISSED WITH PREJUDICE.