

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student v. East Lyme Board of Education

Appearing on behalf of the Student: Student's Mother, *Pro Se*

Appearing on behalf of the Board: Attorney Frederick L. Dorsey  
Siegel O'Connor O'Donnell & Beck, P.C.  
150 Trumbull Street  
Hartford, CT 06103

Appearing before: Attorney Janis C. Jerman, Hearing Officer

**FINAL DECISION AND ORDER**

A special education hearing in the above-captioned matter was requested by Student's Attorney<sup>1</sup> via Letter dated April 26, 2010.<sup>2</sup> It was received by the Board of Education on April 28. The thirty-day resolution period ran through May 28 and the original deadline for mailing the final decision and order was July 12, 2010.

A pre-hearing conference was held on May 18. Attorney Laviano appeared on behalf of Student and Attorney Dorsey appeared on behalf of the Board of Education. The following issues were identified:

1. Did the Board of Education provide Student with a free appropriate public education for the period from April 28, 2008 through the end of the 2007-08 school year?
2. Did the Board of Education provide Student with a free appropriate public education during the 2008-09 school year?
3. Did the Board of Education provide Student with a free appropriate public education during the extended school year 2009?
4. Did the Board of Education provide Student with a free appropriate public education during the 2009-10 school year?
5. If the answer to any of the above questions is in the negative, what shall be the remedy?

Student's Attorney waived a resolution meeting and agreed to participate in mediation. The Board of Education filed a Motion to Dismiss on May 10. Student's Attorney requested and was granted an extension until June 1 to file a response to the Motion to Dismiss. On June 9, the Board of Education's Motion to Dismiss was denied.

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<sup>1</sup> Student was initially represented by Attorney Jennifer Laviano.

<sup>2</sup> All dates are 2010 unless otherwise indicated.

The hearing was scheduled to convene on June 17. Via e-mail dated June 9, Student's Attorney requested an extension of the mailing date to permit the parties to participate in mediation on June 17. After fully considering the positions of the parties, the request was granted. The deadline for mailing the final decision and order was extended until August 11 and the June 17 hearing was postponed.

The parties were given nine potential hearing dates and given until June 21 to indicate their availability on those dates. On June 21, Student's Attorney withdrew from the case. Student's Mother did not respond with her availability for hearing dates. On June 23, the Board of Education filed a motion to dismiss for failure to prosecute. The motion was denied and the hearing scheduled for July 16.

On July 1, Student's Mother filed a request to postpone the July 16 hearing as long as possible to permit her to retain an attorney and give the attorney time to prepare. Student's Mother also requested that, if the postponement can not be granted, that she be granted additional days beyond July 16 to complete the hearing. The Hearing Officer treated Student's Mother's request as an extension of the mailing date to permit hearing dates beyond July 16, which was the deadline given to the parties by the Hearing Officer given the then-deadline to mail the final decision and order. After fully considering the positions of the parties, the request to postpone the hearing and extend the deadline to mail the final decision and order until September 10 was granted.

The parties were given six additional potential hearing dates and given until July 7 to indicate their availability on those dates. The parties were informed that, if hearing dates are not scheduled so that the hearing can be completed by August 20 or an appropriate extension requested and granted, the matter will be dismissed for failure to prosecute.

Student's Mother indicated her availability on all dates but also indicated that she had not yet retained an attorney and that she preferred later dates to give her time to prepare and, due to vacation schedules, have her witnesses available. The Board of Education indicated their availability on only one of the dates, during which Student's witnesses were not available.

On July 10, Student's Mother requested an extension of the mailing date to permit the parties to schedule the hearing beyond August 20. After fully considering the positions of the parties, the request for an extension of the mailing date was granted and the deadline to mail the final decision and order was extended until October 10. The hearing was scheduled for September 7, 13, 15, and 17.

On August 11, an attorney filed an appearance on behalf of Student and indicated that he was available to proceed on the scheduled dates. On August 20, the attorney withdrew his appearance on behalf of Student.

On August 21, Student's Mother filed another request for extension of the mailing date to permit her time to retain an attorney. After fully considering the positions of the parties and the fact that Student's Mother previously received one extension of the mailing date to permit the parties to participate in mediation and two extensions to permit her to retain counsel and schedule sufficient hearing dates, the request was granted and the deadline to mail the final decision and order was extended until November 9 with the caveat that it would be the last extension to be granted for purposes of permitting Student's Mother to retain an attorney. The hearings scheduled for September 7, 13, 15, and 17 were postponed.

The parties were given ten additional potential hearing dates and given until August 31 to indicate their availability on those dates. The hearing was rescheduled for September 24, October 7, 8, 11, and 12.

On August 31, Student's Mother left the Hearing Officer a voice-mail message indicating that she is concerned that she can not retain an attorney in time for the scheduled hearing and that she can not do the hearing by herself. Via e-mail with a copy to Student's Mother, the Hearing Officer notified the Board of Education's Attorney as to the fact and contents of the voice-mail message and instructed the parties that they are not to have any *ex parte* communications with the Hearing Officer and identified the procedures to follow to request a pre-hearing conference.

On September 8, Student's Mother filed a request to subpoena records from the Board of Education. On September 14, Student's Mother wrote and asked whether the Hearing Officer would dismiss the case without prejudice if she decided not to proceed *pro se* and also raised scheduling concerns. The Hearing Officer responded to the scheduling concerns and asked for confirmation that Student's Mother was requesting that the case be dismissed without prejudice in order to be clear on the request. Student's Mother responded by indicating that she needed time to think and that she was aware of the September 17 deadline to file exhibits and a witness list.

On September 16, Student's Mother requested that the matter be dismissed without prejudice.

### **FINAL DECISION AND ORDER**

In light of the above facts, the above-captioned case is hereby dismissed without prejudice.