

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student and Hebron Board of Education

Appearing on behalf of the Student: Attorney Patricia Cofrancesco
Law Office of Patricia Cofrancesco
89 Kimberly Avenue
East Haven, CT 06512

Appearing on behalf of the Board of Education: Attorney Alyce Alfano
Attorney Julie Fay
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board of Education violate the Student's rights under IDEA as a result of the incident of May 13, 2016?
2. If so, should the Student be placed in another school?

PROCEDURAL HISTORY:

The Student requested a special education due process hearing in the above-captioned matter on July 19, 2016. This Impartial Hearing Officer was appointed to hear the case on July 20, 2016. A telephonic pre-hearing conference was convened on August 5, 2016. Attorney Patricia Cofrancesco appeared on behalf of the Student and Attorney Alyce Alfano appeared on behalf of the Hebron Board of Education (Board). The deadline for issuing the final decision and order was established to be September 30, 2016. An evidentiary hearing was scheduled for September 20, 2016. Finally, a schedule was established for submissions relating to the Board of Education's anticipated motion to dismiss the request for due process.

The Board filed a Motion to Dismiss the request for special education due process hearing on August 22, 2016. The Student filed an Objection to the Board's Motion to Dismiss and a Motion to Disqualify Attorney Julie Fay and Shipman & Goodwin from the case on September 6, 2016.

MOTION TO DISMISS:

The Board's Motion to Dismiss attacks the Hearing Officer's subject matter jurisdiction over this request for due process. The Board argues that the request for due process does not allege a claim over which the Hearing Officer has jurisdiction because it does not challenge the

identification, evaluation, placement or provision of a free appropriate public education for the Student. To the contrary, the Board argues, the claim amounts to an alleged violation of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g (FERPA), a law over which this Hearing Officer has no authority.

The Student disputes these arguments, claiming that the matter is one over which the Hearing Officer has jurisdiction.

The allegations of the request for due process are deemed true for the purpose of this analysis.

The request for due process alleges, in pertinent part, that on May 13, 2016, the school nurse took the Student into a room, removed his clothes and photographed him with her cell phone camera. The nurse then sent the photograph to the "school district's physician" by text message. This was done without the consent or knowledge of the parent. As a remedy, the request for due process asks that the Board provide an alternative placement in a safe educational setting for the Student.

As a due process hearing officer, I have jurisdiction over the identification, evaluation or placement of a student or the provision of a free appropriate public education for a student. Connecticut General Statutes, Section 76h(a); Regulations of Connecticut State Agencies, Section 10-76h-3.

Even if they are assumed to be true, the allegations of the request for due process in this case do not involve the identification, evaluation or placement of the Student or the provision of a free appropriate public education for the Student. There is no suggestion in either the request for due process or the Student's Objection to the Motion to Dismiss, for instance, that the nurse' conduct was mandated in, or prohibited by, the Student's individualized education program. Nor is there any allegation that the incident took place as part of an evaluation requested by the Student's planning and placement team. Accordingly, even if the nurse was motivated by the most nefarious reasons, her behavior falls outside of the scope of my jurisdiction.

The Board also argues that the matter should be dismissed because the proposed remedy – placement in another public school system - is also outside the Hearing Officer's jurisdiction. The Board's argument here, however, reads the remedy requested too narrowly. The Student actually requests only that he be provided an alternative placement, something that is within the Hearing Officer's authority. Connecticut General Statutes, Section 10-76h(d).

For the foregoing reasons, the Board's Motion to Dismiss is granted. The Motion to Disqualify need not be reached.

FINAL DECISION AND ORDER:

It is ordered that the Board's Motion to Dismiss is granted and this matter is dismissed.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature

ANN F BIRD

Hearing Officer Name in Print