

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education: #02-056

Appearing on behalf of the Student: The Student's Mother, *pro se*

Appearing on behalf of the Board: Ann Marie DeGraffenreidt  
City of New Haven  
54 Meadow Street  
New Haven, CT 06519

Appearing before: Attorney Scott P. Myers, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Student is eligible to receive special education services pursuant to the IDEA and applicable Connecticut special education law.
2. Whether the Board properly discharged its obligation to determine whether the Student was eligible to receive special education services pursuant to the IDEA and applicable Connecticut special education law.

**PROCEDURAL SUMMARY/FINDINGS OF FACT:**

To the extent that the procedural summary includes findings of fact or conclusions of law, that the findings of fact are conclusions of law or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 853 F. Supp. 340 (S.D. Tex. 1993).

1. The Parent commenced this due process proceeding by request dated March 12, 2002, seeking review of the district's decision at a PPT held on March 12, 2002 that her son (the "Student") was not eligible for special education services under the Individuals with Disabilities Education Act ("IDEA") or applicable Connecticut special education law.
2. By letter dated March 14, 2002 sent to the Department's Due Process Unit, the Parent requested that this hearing be "postponed" until after a PPT that was then scheduled for March 21, 2002.

3. By notice dated March 15, 2002, a Pre-Hearing Conference was scheduled for March 22, 2002. The Parent appeared *pro se* and the Board appeared through its counsel at that Pre-Hearing Conference.
4. At the March 22, 2002 Pre-Hearing Conference:
  - a. The Parent represented that the March 21, 2002 had not resolved the issues that had prompted her request for due process and that she wished to proceed with hearing.
  - b. The issues for resolution at hearing were framed, hearing dates were scheduled and a schedule for the exchange of documentary records and witness lists was established.
5. On March 22, 2002, the Hearing Officer issued a procedural schedule reflecting the discussion at the Pre-Hearing Conference.
6. On March 22, 2002, after the Pre-Hearing Conference, the Board's counsel submitted a letter:
  - a. Advising that the Board would not be available for the April 15<sup>th</sup> and 16<sup>th</sup> scheduled hearing dates, as that was a vacation week.
  - b. Reporting that the parties had agreed at the March 22, 2002 PPT to undertake a neuropsychological evaluation of the Student, and questioning the necessity of proceeding with hearing prior to the completion of that evaluation.
7. In response to the letter from the Board's counsel, the Hearing Officer contacted the Board's counsel to obtain the minutes of the March 12, 2002 and March 21, 2002 PPTs and arrange a time and date for another Pre-Hearing Conference. The Hearing Officer also contacted the Parent to arrange a time and date for another Pre-Hearing Conference, and was advised by the Parent that she had retained counsel. The Hearing Officer then contacted her designated counsel. That counsel requested that the Pre-Hearing Conference be delayed to allow him an opportunity to become more familiar with the file. The April 15<sup>th</sup> and 16<sup>th</sup> hearing dates were cancelled by agreement, the previously set dates for exchange of documentary records and witness lists were extended, and the parties were directed to arrange a date and time for a Pre-Hearing Conference and contact the Hearing Officer. These events are reflected in the March 26, 2002 First Amended Scheduling Order.
8. As of April 3, 2002, the parties had not contacted the Hearing Officer to arrange a second Pre-Hearing Conference, and the Hearing Officer issued a Notice of Potential Dismissal without Prejudice advising the parties that it was the Hearing Officer's intention to dismiss this matter without prejudice on April 9, 2002 unless on or before

12:00 noon on April 9, 2002, this matter had been withdrawn or a second Pre-Hearing Conference had been convened.

9. The Hearing Officer was subsequently advised by the Parent's sister that the Parent was no longer represented by counsel and that the sister was assisting the Parent in this matter. By agreement of the parties, a second Pre-Hearing Conference was scheduled for April 5, 2002.
10. The Parent and her sister, and the Board's counsel, participated in the April 5, 2002 Pre-Hearing Conference. At that Pre-Hearing Conference:
  - a. The Parent confirmed that she was no longer represented by counsel, but indicated that she might engage another attorney.
  - b. The parties confirmed that the neuropsychological evaluation would take place on April 11, 2002 and that a report was expected to be issued approximately two weeks later or at about the time of the April 26, 2002 date for the issuance of the final decision.
  - c. The difference between a proceeding under the IDEA and a proceeding under Section 504 of the Rehabilitation Act was discussed with the Parent.
  - d. The procedural options in the current due process hearing were discussed with the Parent, including withdrawal without prejudice, dismissal without prejudice or continuing the date for the issuance of the final decision to pursue settlement.
  - e. The Parent indicated that she would prefer not to proceed at this time in light of the pending neuropsychological evaluation and was asked to withdraw this matter without prejudice.
  - f. The Board's counsel agreed to have the director of special education services contact the Parent to discuss the Parent's issues, and to explain the Parent's options under the IDEA and Section 504 of the Rehabilitation Act.
11. On April 10, 2002, the Hearing Officer received a letter from the Parent stating that she was withdrawing her request for due process. The letter did not clearly state whether the withdrawal was with or without prejudice and in light of the Parent's understanding of the process, the Hearing Officer deems it necessary to issue an order clarifying the final outcome of this proceeding based on the off-the-record discussion of the Parent's options at the second Pre-Hearing Conference.
12. The neuropsychological examination is expected to provide additional diagnostic information which, upon consideration by a subsequently convened PPT, may result in the identification of the student as eligible for special education services under the

IDEA, or may lead the Parent to conclude that resolving her issues through a due process proceeding would not be productive.

**CONCLUSIONS OF LAW:**

1. The Parent requested due process seeking a review of the PPT's determination that her son was not eligible to receive special education services. The neuropsychological evaluation that has been scheduled will provide important information pertinent to that issue, and may moot the need for due process. Regardless of whether that neuropsychological evaluation moots the issues set for hearing, proceeding with due process before that evaluation has been completed and reviewed by a PPT would represent a waste of the resources of the parties and the Department and would not advance the educational interests of the Student.

**FINAL DECISION AND ORDER:**

1. This case is dismissed without prejudice to the right of the Parent to seek a due process hearing with respect to the district's determination as to the Student's eligibility to receive special education services at the March 12, 2002 and March 21, 2002 PPTs.