

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Manchester/Trumbull Boards of Education

Appearing on behalf of the Parents:	Student's Father, pro se.
Appearing on behalf of the Manchester Board:	Attorney Craig S. Meuser, Shipman & Goodwin LLP One American Row Hartford, CT 06103-2819
Appearing on behalf of the Trumbull Board:	Attorney Michelle Laubin Berchem, Moses & Devlin, P.C. 75 Broad Street Milford, CT 06460
Appearing before:	Attorney Patricia M. Strong Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY:

This hearing was requested on December 16, 2002. This hearing officer was assigned to the case on that date. Prehearing conferences were held with the Parent and each Board of Education on January 6. The Parent requested that the hearing be delayed until after a mediation was held with the Trumbull Board on January 15. The Manchester Board of Education filed a motion to dismiss on grounds no relief was requested against it. A hearing was scheduled on January 24 regarding Manchester's motion to dismiss. A hearing was scheduled on January 30 on the complaint against the Trumbull Board. Relevant background facts are that the student had attended Trumbull schools during grades 4-7 and was eligible for special education as learning disabled. In May 2000 the student moved to Manchester to live with her mother. In February 2001 the Manchester Board exited the student from special education. In the summer of 2001 the student returned to Trumbull to live with her father. Trumbull did not classify her as eligible for special education. In June 2002 the student was expelled from Trumbull schools because of an incident at the high school. The father attached to his due process request a three-page letter to the Trumbull Superintendent of Schools dated September 25, 2002 detailing numerous grievances against Manchester and Trumbull Boards of Education as well as a hospital and a physician who treated the student. At the prehearing conference, the father

was advised the hearing officer has no jurisdiction over any entities other than Manchester and Trumbull Boards of Education. The issues against Manchester were reframed to allege that the student was improperly exited from special education in February 2001. The issues against Trumbull were reframed as failure to convene a Planning and Placement Team (PPT) meeting in September 2001 when the student transferred to Trumbull schools from Manchester and the continuing failure to convene a PPT during the 2001-02 school year.

On January 15 the hearing officer was advised that the mediation with Trumbull was not successful. On January 21 the father and Manchester Board's attorney filed a joint motion to postpone the January 24 hearing in order to continue settlement discussions. The motion was granted and the hearing against Manchester was rescheduled for February 14. On January 22 the Trumbull Board's attorney requested a postponement of the hearing against Trumbull until after the Manchester hearing. The Trumbull Board's motion was denied because there had been no motion to extend the decision deadline beyond January 30. On January 24 the Trumbull Board filed its list of witnesses and exhibits for the hearing. The father requested a postponement of the January 30 hearing because he had not received certain documents he needed for the hearing. The postponement was granted on January 27 subject to the father's filing a request to extend the decision deadline. On January 28 the hearing officer received conflicting correspondence from the parties regarding the date for rescheduling the Trumbull hearing. On January 29 the hearing officer denied the father's request to schedule the hearing during the February school vacation week and offered several other dates. On February 3, the Trumbull hearing was rescheduled to March 18 with the agreement of the parties and the decision deadline was extended to April 4, 2003. The Parent was allowed until March 11 to file his list of witnesses and exhibits.

On February 7 the father withdrew the complaint against the Manchester Board. On March 14, the hearing officer received a copy of correspondence from the Trumbull Board attorney to the father regarding a PPT on March 11 at which the student was identified as a special education student and providing a program agreeable to the Parent. She asked the father to forward a withdrawal of the complaint to the hearing officer. The Parent had not filed any exhibits or list of witnesses or requested additional time to do so. On March 17, 2003, the hearing officer received correspondence from the father requesting a postponement of the March 18 hearing until sometime in mid-April. The only reason given for the request was that the Parent had a "meeting with Trumbull administration next week." The Board objected to the postponement request and moved to dismiss the hearing for failure to prosecute. The hearing officer cancelled the March 18, 2003 hearing and advised the parties there would be a decision issued on the motions.

CONCLUSIONS OF LAW:

1. The jurisdiction for this hearing is provided by Conn. Gen. Stats., Section 10-76h(a)(1), which provides in relevant part:

A parent or guardian of a child requiring special education and related services pursuant to sections 10-76a to 10-76g, inclusive . . . may request, in writing, a hearing of the local or regional board of education or the unified school district responsible for providing such services whenever such board or district proposes or refuses to initiate or change the identification, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil. . . .

By implication, if the parties are in agreement as to a program and placement, there is no issue in dispute for the hearing to adjudicate. See also Section 10-76h(c)(3).

2. It appears that the case is moot based on the actions at the March 11 PPT meeting. If there is no issue in dispute, the case is moot and there is no jurisdiction to proceed further. "[M]ootness is evaluated throughout the pendency of the litigation." Fetto v. Conn. State Dept. of Education, 181 F.Supp.2d 53 (D. Conn. 2002). See also Board of Education of the Town of Stafford v. State Department of Education, 243 Conn. 772, 777 (1998). "A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists."
3. Section 10-76h-15 requires a party to disclose documentary evidence at least five business days before a hearing. The Parent was not in compliance with this rule.
4. Section 10-76h-9 requires requests for postponement of a hearing to be made in writing five business days before a hearing. The Parent was not in compliance with this rule.
5. The Parent's belated request for a postponement was apparently made in an attempt to keep this case pending until he was completely satisfied with the Board's implementation of the March 11 IEP. This is an inappropriate use of due process. If the Board fails to implement the IEP, the Parent has the remedy of filing a new due process complaint. Conn. Gen. Stats. 10-76h.
6. Section 10-76h-18 permits the hearing officer to dismiss a case for failure of a party to prosecute a hearing or to comply with these regulations.

FINAL DECISION AND ORDER:

The Parent has failed to withdraw the case as settled or to prosecute the case, and, therefore, it is ordered that this case shall be **dismissed** without prejudice.