

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Case #03-085

Student v. Fairfield Board of Education

Appearing on behalf of the Parents:

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Appearing on behalf of the Board of Education:

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Appearing before: Attorney Mary H.B. Gelfman, Hearing Officer

FINAL DECISION AND ORDER

ISSUES

1. Did the Board meet the Child Find requirements of IDEA as regards Student?
2. Is the Individualized Education Program (IEP) presented to Parents at the Planning and Placement Team (PPT) meeting on February 5, 2003, appropriate to Student's special education needs in the least restrictive environment?
3. Did the Board violate procedural requirements at the February 5, 2003, PPT meeting?
4. Is the placement proposed by the Board appropriate to Student's special education needs in the least restrictive environment?
5. If not, is the placement requested by Student's Parents appropriate?
6. Is the Board responsible for reimbursement of approximately 20 hours of [Applied Behavior Analysis] ABA home-based services currently being provided by Parents, and for reimbursement of the cost of an ABA supervisor?

7. Does Student require a year-round program of educational interventions?

PROCEDURAL HISTORY

This hearing was requested by a letter dated March 20, 2003, and the Hearing Officer was appointed on March 25, 2003. A pre-hearing conference by conference telephone call was held on April 2, 2003. At that time, the hearing was scheduled for May 20, 21, 23, and 30, 2003. To accommodate the additional dates and at the request of the parties, the Hearing Officer extended the deadline for mailing of the final decision and order from May 5 to June 4 and thence to July 4, 2003, pursuant to Section 10-76h-9(c) and (a), Regulations of Connecticut State Agencies (RCSA).

When the hearing convened on May 20, 2003, the parties requested time to attempt a settlement. After settlement discussions lasting several hours, the parties reported that they had reached an agreement in principle. They asked that hearing sessions scheduled for May 21, 23 and 30 be cancelled and agreed to either finalize the settlement including withdrawal of the request for hearing or convene the hearing on June 16, 2003. The Hearing Officer granted this request.

The Hearing Officer received a telephone message on June 11, 2003, requesting a continuance due to continuing settlement discussions. The Hearing Officer responded by FAX on June 12:

Requests concerning changes in scheduled hearings must be made in writing and in conformance with Section 10-76h-9, RCSA. Among the requirements is that the parties propose an alternate date. For your information, this hearing officer is available June 23 or 24, and then will not be available again until July 28, 2003. The current date for mailing of the final decision and order is July 4, 2003. Upon request of the parties, the Hearing Officer may grant ONE 30-day extension for the purpose of settlement negotiations.

In response, on the same day the Hearing Officer received a FAX:

We respectfully request that you adjourn the June 16, 2003, hearing until August 18, 2003. Our client is currently engaged in settlement negotiations with the Board. We have spoken with opposing counsel and they are in agreement. This is the earliest date that both offices are available. We are engaged in a 3rd Circuit Appeal and our office was asked to hold one month open for scheduling, currently these dates have not been calendared.

CONCLUSIONS OF LAW

1. Based on the documentation submitted by the Parties, there is no dispute that Student is disabled, that his classification is autism, and that he is eligible for special education.
2. Special education hearings are held pursuant to Section 10-76h, Connecticut General Statutes and related regulations, and 20 United States Code § 1415, and related regulations. Section 10-76h-7(d), RCSA, and 34 CFR §300.511 require that such hearings be completed within 45 days of the request for hearing.
3. Section 10-76h-9, RCSA, provides for limited extensions of the 45-day timeline. The requirements for requesting extensions are specific:
 - Requests must be in writing;
 - Requests must be made “no later than 5:00 p.m. five business days prior to the scheduled hearing ... unless a compelling reason is shown for a later request”;
 - Extensions may not exceed 30 days;
 - One 30-day postponement may be granted to accommodate settlement discussions.
4. The request for a continuance, dated June 11, 2003, was not filed in a timely manner.
5. Section 10-76h-9(e), RCSA, directs that when a hearing has been postponed once for settlement negotiations, no additional postponement may be granted: if the parties are not ready to go forward with the hearing, the matter must be dismissed without prejudice. The parties may re-file at a later date.
6. Granting the request for a continuance to August 18, 2003, would require extending the deadline for mailing of the final decision and order from July 4 to August 3, and thence to September 2, 2003.

FINAL DECISION AND ORDER

The request to continue this hearing to August 18, 2003, to provide for further settlement discussions, if granted, would require two 30-day extensions of the deadline for mailing of the final decision and order. Since a second extension is specifically barred by State regulation, the request is DENIED.

Since the Parties have been unable to complete their negotiations and have requested a further delay in the hearing, which is not allowed under State regulations, this matter is DISMISSED without prejudice.