

Final Decision 03-143

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Ledyard Board of Education

Appearing on Behalf of the Parent: Parent Pro Se

Appearing on Behalf of the Board: Attorney Frederick Dorsey
Siegel, O'Connor, Zangari, O'Donnell & Beck
150 Trumbull Street
Hartford, CT 06103

Appearing before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Whether the Board failed to maintain the confidentiality of the student's educational records and if so, whether this resulted in a denial of a free and appropriate public education ("FAPE")?

FINDINGS OF FACT:

1. This hearing was requested on May 16, 2003. The prehearing conference was convened on May 28, 2003. During the prehearing conference, the Parent alleged that the Board had failed to maintain the confidentiality of the student's records and that because of this lapse, the student had not received FAPE. The Board representative stated that even if these violations were true, they were a violation of the Family Education Rights of Privacy Act ("FERPA"), not the student's educational program; therefore, the hearing officer lacked jurisdiction to hear this complaint. A hearing date was scheduled and briefs were submitted.
2. On June 19, 2003, the school district held graduation exercises; the student did not attend but a regular high school diploma was mailed to the student on June 20, 2003. (See Attachment D to Board brief dated June 24, 2003)
3. The hearing convened on July 1, 2003 at which time the hearing officer stated that the hearing officer did not have jurisdiction over purely FERPA issues. Therefore, for

jurisdiction to exist, the Parent would have to show that violations of student confidentiality had occurred and that such violations had resulted in a denial of FAPE. The Parent stated that the student would testify about the anxiety caused by the alleged breaches of confidentiality, but that in requesting the hearing, his focus was the district's alleged systemic violations of FERPA. The Parent also stated that the student had received substantial educational benefits but that he had not been able to develop to his full potential. He also noted that the student had been accepted to a competitive college nursing program to begin in the fall of 2003, that the student had met all graduation requirements and that the graduation was valid.

CONCLUSIONS OF LAW:

1. The Individuals with Disability Act ("IDEA") requires the promulgation of regulations with regard to student and parent rights under FERPA (20 U.S.C. Section 1417(c)). These regulations can be found under 34 C.F.R. 560 through 577 which set forth a hearing system which is to be provided by the agency that collects, maintains or uses the records in question. These hearings are separate and apart from due process hearings which are convened pursuant to 34 C.F.R. Section 506 et seq.
2. Therefore, issues that relate solely to the maintenance of student records are not within a due process hearing officer's jurisdiction, and certainly not when the Parent's primary issue is alleged systemic FERPA violations. (Although when the focus of a due process hearing is on educational issues, FERPA issues that also arise may be decided.) Other forums are available for such complaints.
3. The Parent was unable to make an offer of proof that could lead the hearing officer to believe that any evidence could ever lead to a finding of a denial of FAPE, even if the alleged violations were proved to be true. Not only has the student graduated with a valid, regular high school diploma (as the Parent agreed), but he has been accepted to a competitive college program that will lead to a Bachelor of Science in Nursing degree. Clearly, the student has received substantial benefit from his educational program; the Parent did not deny this. The IDEA does not require that an educational program be offered that would allow a student to develop to his full potential,
4. Finally, case law is clear that once a student has graduated from high school and does not contest the validity of his graduation, the case is moot and any claim that a FAPE is deficient also becomes moot. In failing to contest the validity of his graduation, the student has conceded that the claimed defects were harmless. (see, for example, T.S. v. Independent School District No. 54, Stroud, Oklahoma, 265 F.3d 1090 (10th Cir. 2001))
5. Therefore, the hearing officer does not have jurisdiction over this case. First, there is no jurisdiction over purely FERPA matters unless it can be shown that a FERPA violation has led to a denial of FAPE. Even if the Parent could have shown the validity of his claims, he essentially conceded that he could not show that the student has not received substantial benefit from his educational program. And second, the Parent has not contested the validity of the student's graduation rendering the case moot.

FINAL DECISION AND ORDER:

This hearing is dismissed.