

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Southington Board of Education v. Student

Appearing on behalf of the Parents: Attorney Philip N. Walker  
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Farmington, CT 06032

Appearing on behalf of the Board: Attorney Nicole A. Bernabo  
Sullivan, Schoen, Campane & Connon LLC  
646 Prospect Avenue  
Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong  
Hearing Officer

**FINAL DECISION AND ORDER**

**PROCEDURAL HISTORY**

This hearing was requested on April 5, 2004. Hearing Officer Exhibit (HO) 1. This hearing officer was assigned to the case on that date. A prehearing conference was held on April 15, 2004 with the Board's attorney. The Parents' attorney did not answer his office telephone. Hearing dates were scheduled for April 29, May 5 and 13. The Parents' attorney filed a request dated April 15 to withdraw the Board's due process request or to postpone the hearing indefinitely until the occurrence of a number of events. The request was denied on April 20 in the absence of the Board attorney's consent or a definite postponement date. On April 23, the Board's attorney notified the Hearing Officer that she did not object to a postponement of the April 29 hearing date and that the parties would meet to discuss a possible resolution of the case. On April 26 the joint request of the parties to postpone the April 29 hearing date was granted. The time to file exhibits and witness lists was extended to April 28. The Board filed its hearing exhibits B-1 through B-99 on April 28. The Board's list of witnesses was filed on April 30. The Parents filed no witness list or exhibits.

The hearing convened on May 5. The parties requested and were allowed time to discuss a settlement of the case prior to the opening of the hearing. No settlement was reached. After the hearing was convened, the Parents' attorney filed a motion to dismiss the Board's due process request with prejudice on the ground of mootness. A discussion took place on the record regarding the status of the three issues raised in the Board's due

process request and whether testimony would be needed. Certain facts were stipulated on the record as set forth below in the Findings of Fact. No testimony was taken. The parties were offered several blocks of time during the hearing to discuss resolution of the issues. Both sides presented argument on the Parents' motion to dismiss.

### **ISSUES:**

1. Is the Board entitled to an order implementing the Student's educational program?
2. Is the Board entitled to an order allowing an updated psychiatric evaluation to be conducted without the Parents' consent?
3. Is the Board entitled to an order allowing its staff to speak with the Student's private therapist regarding his school attendance without Parents' consent?

### **SUMMARY**

In this hearing, the Board is requesting several orders from the Hearing Officer relating to the refusal of the Parents to consent to certain evaluations of the Student and to obtain information as to the reason the Student is not attending school. In the Motion to Dismiss, the Parents' attorney claims the case is moot because the Parents withdrew the Student from the Southington Public Schools on May 3 by filing a Notice of Intent for Home Instruction with the Superintendent of Schools. Exhibit A to Motion to Dismiss. The Notice was received on May 4. Exhibit B to Motion to Dismiss. By reason of the withdrawal of the Student, the Parents claim the Board has no jurisdiction or authority over the Student or the Parents. They request a dismissal with prejudice on the ground of mootness. The Board argues that even if the Student has withdrawn from the district, it has an obligation under the child find statutes to make a determination of eligibility of the Student for special education and related services and that the Hearing Officer has jurisdiction to hear the merits of this case. The Board's attorney also argued that the Parents could change their mind and re-enroll the Student at any time. In view of the Student's withdrawal from the district, the Board requested to withdraw its first issue without prejudice. The Board also requested to withdraw the third issue without prejudice because the Parents had signed the consent. The Parents' attorney requested a ruling on the question of whether the Hearing Officer has authority to hear the second issue on the merits. The parties were advised that that request would be taken under advisement. The Board's attorney objected to postponing the hearing until a ruling could be issued on the jurisdictional question. The Parents' attorney agreed that if the issue were decided in the Board's favor, the Parents would sign the consent and testimony would not be needed. The Hearing Officer advised the parties that if the Parents agreed to sign the consent, the second issue would be moot, and thereby the jurisdictional issue need not be reached. Parents' attorney, after conferring with the Mother, agreed. The parties were advised that a written ruling would be issued dismissing the case because all three issues were moot. Dismissal would be without prejudice.

**FINDINGS OF FACT:**

1. The Student (date of birth 12/27/92), also referred to herein as D., is currently 11 years of age. HO Exhibit 1 and Exhibits A and B to Motion to Dismiss.
2. D. currently resides in the town of Southington with his Parents. Id.
3. D. is no longer enrolled in the Southington Public Schools because, effective May 4, 2004, his Parents filed a Notice of Intent for Home Instruction and signed an acknowledgement of full responsibility for his education. Exhibit B.
4. After discussions off the record with her attorney, the Mother consented to sign the necessary releases for the Board to conduct a psychiatric evaluation with Dr. Black in the next 45 days. She agreed to cooperate in good faith with the evaluation.

**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:

The local or regional board of education or the unified school district responsible for providing special education and related services for a child or pupil requiring such services under sections 10-76a to 10-76g, inclusive, may request, upon written notice to the parent . . . a hearing concerning the decision of the planning and placement team established pursuant to section 10-76d, 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 placement to such child or pupil, including, but not limited to, refusal of the parent or guardian . . . to give consent for initial evaluation or reevaluation or the withdrawal of such consent. . . .

2. The Board is responsible for identification of children requiring special education. Conn. Gen. Stats., Section 10-76d(a)(1). See also 34 CFR Section 300.125.

3. At the time this due process request was filed the Student was enrolled in the Southington schools and the Parents had refused to consent to a psychiatric evaluation or to allow school officials to speak with his therapist. At the time of the hearing, the Parents have elected to home school the Student and have signed or agreed to sign the Board's requested consent forms. "A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists." Hallas v. Windsor, 212 Conn. 338, 347-48 (1989). Board of Ed. of Stafford v. State Bd. of Ed., 243 Conn. 772, 777 (1998). As of the close of the hearing in this case on May 5, all three issues were moot. Since the Parents may decide to re-enroll the Student in the school district or

withdraw the consent given or fail to give the consent agreed on, the Board should have the opportunity to re-file the due process request if circumstances warrant it.

**FINAL DECISION AND ORDER:**

1. The Board's request as to Issue #1 (implementation of the Student's educational program) is dismissed without prejudice based on the Student's withdrawal from the public schools.
2. The Board's request as to Issue #2 (Parent's refusal to consent to an updated psychiatric evaluation) is dismissed without prejudice based on the Parents' agreement to consent.
3. The Board's request as to Issue #3 (Parent's refusal to consent to allow Board staff to speak with Student's therapist regarding his school attendance) is dismissed without prejudice based on Parents' having signed the consent.