

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Groton Board of Education

On behalf of the Parents: Mother, *Pro Se*

On behalf of the Board of Education: Attorney Marsha Belman Moses  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, CT 06460

Hearing Officer: Stacy M. Owens, Esq.

**FINAL DECISION AND ORDER  
(Ruling on Board's Motion to Dismiss)**

**ISSUES:**

1. Whether the program offered by the Board provides the Student a free and appropriate public education to meet his special needs.
2. Whether the Student is entitled to additional "related services."<sup>1</sup>

**PROCEDURAL HISTORY/SUMMARY:**

By letter dated June 2, 2005, Attorney Barry Ward requested a hearing on behalf of the Parent. On June 10, 2005, the undersigned was appointed as the Hearing Officer in the above-referenced matter to preside over the hearing, rule on all motions, and make findings of fact and conclusions of law. H.O. Exh. 1, 2.

On June 23, 2005, a prehearing conference was held via teleconference, at which time Attorney Ward appeared, Attorney Marsha Belman Moses appeared on behalf of the Groton Board of Education ("the Board"). H.O. Exh. 4.

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<sup>1</sup> The issues provided herein were discussed during the second pre-hearing conference on July 8, 2005. During the prehearing conference, Attorney Barry Ward, the Parent's attorney at the time, provided several issues and remedies to be sought (H.O. Exh. 5). Upon the objection of Attorney Marsha Belman Moses, the Board's attorney, relating to several issues that may have been resolved or were inapplicable to the Student, Attorney Ward indicated that the issues needed to be further discussed with the Parent prior to hearing, at which time the issues would be more clearly defined.

During the prehearing conference, Attorney Ward indicated a desire to file an amended request for hearing following Attorney Moses' oral Motion to Dismiss based on lack of jurisdiction and lack of clarity of the issues outlined in the Parent's June 2, 2005, request for hearing. Prior to a formal completion of the prehearing conference, Attorney Ward apparently hung up without notice to the hearing officer and Attorney Moses of his departure from the teleconference.

By letter dated June 24, 2005, Attorney Ward filed an Amended request for hearing. H.O. Exh. 5.

A second pre-hearing conference was conducted on July 8, 2005, via teleconference. Attorney Ward and Attorney Moses were both present. The issues for hearing were partially defined, and the hearing was scheduled for August 8 and 9, 2005. H.O. Exhs. 6, 9, 10.

On July 11, 2005, the parties agreed to engage in mediation and requested a 30-day postponement of the due process hearing. H.O. Exh. 7.

By letter dated July 14, 2005, Attorney Ward indicated his inability to reach the Parent to confirm her availability for a mediation scheduled for July 15, 2005.

By letter dated July 26, 2005, Attorney Moses indicated that the mediation was postponed and rescheduled for August 8, 2005, the original date for the due process hearing to commence, and also requested a postponement of the first day of hearing. Attorney Moses further indicated she received information that Attorney Ward was discharged as counsel for the Parent. Attorney Moses provided such information to the Hearing Officer after recognizing that such notification was sent to the State Department of Education and not to the Hearing Officer.<sup>2</sup> The request for postponement of the first day of hearing was granted. H.O. Exhs. 8, 9, 11, 12.

By letter dated August 8, 2005, Attorney Moses informed the Hearing Officer of the Parent's failure to appear at the mediation scheduled for said date, and Attorney Moses filed a Motion to Dismiss. Such Motion was denied. H.O. Exhs. 13, 14.

The hearing proceeded on August 9, 2005. The Parent failed to appear at the hearing, and a copy of an e-mail written by the Parent and addressed to Donna Koskuba, Attorney Moses' Legal Assistant, was presented by the Board. The e-mail, sent Monday,

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<sup>2</sup> Attorney Ward's discharge as counsel for the Parent is further evidenced by the Parent's direct submission of correspondence on her own behalf.

August 8, 2005 at 9:50 p.m., in conjunction with the Parent's repeated failure to comply with administrative procedures has become the focal point of this decision and the basis of the Board's final Motion to Dismiss.

**FINDINGS OF FACT:**

1. On June 6, 2005, the Parent requested psycho-educational evaluations be conducted for the Student. Tr. 8/9/05, pp. 17, 24.
2. On August 5, 2005, a PPT was held to develop an educational program for the Student based on the evaluations that were completed on June 30, 2005. Tr. 8/9/05, p. 24; B-35.
3. The Parent failed to provide any information requested by the psychologist to complete the social behavioral assessment portion of the evaluations. Tr. 8/9/05, pp. 24, 25.
4. During the August 5, 2005, the Board and the Parent agreed to move forward with mediation, and then a hearing if mediation was unsuccessful. Tr. 8/9/05, pp. 26, 27.
5. The mediation was scheduled for August 8, 2005. The Parent failed to appear for the mediation. H.O. Exhs. 14, 15.
6. On Monday, August 8, 2005 at 9:50 p.m., the Parent sent an e-mail to Donna Koskuba, Legal Assistant. The e-mail included an attached letter addressed to the Hearing Officer. The e-mail specifically stated, "Donna, Please find the attached, as my response to the Groton Board of Education letter to withdraw from the hearings concerning my son . . . ." H.O. Exh. 15.
7. The letter attached to the e-mail from the Parent to Ms. Koskuba on August 8, 2005, provided the following:

. . . After almost 4 hours of convincing the team that they did not and never did consider . . . [the Parent's] relentless requests to provide [the Student] with his entitlement of a free, appropriate, and adequate education for the last three years, *she requested that the meeting be adjourn only "for now"* with the intention that she would meet with [the Student's] new teachers on a quarterly basis. (Emphasis added).

. . . After a few attempts that the team members (other than the parent) suggested, intimidated and coerced, that she . . . not move forward with the Due Process Hearing, she reluctantly agreed after the almost 4 hours she underwent in order to rectify her concerns with the latest testing results. . .

It is [the Parent's] position that she agrees in not moving forward with the mediation nor the hearing *at this time* but, she also understands that this remains her right and that it is her obligation to provide her son . . . with an appropriate adequate education. (Emphasis added).

. . . [the Parent] does not find the needs, well being and education of her son . . . to be a "frivolous matter", and *she has decided that this matter with adjourn only until the Fall 2005-2006 school year begins* when she makes her final decisions of the future of her son . . . educational needs<sup>3</sup> (Emphasis added).

8. The hearing proceeded on August 9, 2005. The Parent failed to appear for the hearing.
9. During the hearing Attorney Moses made an oral Motion to Dismiss based on an interpretation that the e-mail and attached letter dated August 8, 2005 could be deemed a request for adjournment by the Parent, not a withdrawal, and the Parent's "egregious" conduct throughout the process. Tr. 8/9/05, pp. 11, 12.

#### **CONCLUSIONS OF LAW:**

Section 10-76h-14(a) of the Regulation of Connecticut State Agencies ("Regulations") provides that "The party who filed for due process has the burden of going forward with the evidence." In this particular case, the Parent, through her attorney at the time, Attorney Barry Ward, filed a request for hearing by letter dated June 2, 2005, and received by the State of Connecticut Department of Education on June 10, 2005. Being "the party who filed for due process" in this matter, the Parent failed to meet her "burden of going forward with the evidence."

In accordance with §10-76h-18(a) of the Regulations

Any party may move for, or the hearing officer may order, sua sponte, an entry of default in or dismissal of a hearing for failure of any party: (1) to prosecute a hearing; . . . (7) to appear at a properly noticed scheduled hearing.

The record reveals that by July 26, 2005, the Parent was *pro se*, and therefore, was responsible for the advancement of her position relative to the case. The Parent failed to appear for a mediation scheduled for August 8, 2005, and at 9:50 p.m. on that same date,

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<sup>3</sup> The hearing officer notes that though written by the Parent, the Parent refers to herself in the letter in the third person, and is quoted as such.

after Attorney Moses' office was closed, the Parent sent an e-mail to Ms. Koskuba indicating that she was not attending the hearing scheduled for August 9, 2004.<sup>4</sup>

The Parent's e-mail and attached letter are deemed substantively vague. First, the Parent states in her e-mail that the attached letter is her "response to the Groton Board of Education letter to withdraw from the hearings . . ." As written, it appears the Parent is making reference to a withdrawal generated by the Board, to which she is providing a response. Of course, absent the Parent's testimony for clarification, the undersigned cannot expound upon the Parent's intent and must deem such sentence as vague. Furthermore, the Parent makes several references throughout her letter addressed to the undersigned indicating a desire to "adjourn" and revisit the issues in the fall. Again, the Parent's words are left for interpretation by the Hearing Officer, and absent clarification by the Parent, it is impossible to discern whether she, in essence, was seeking a postponement of the due process hearing or a withdrawal of the proceeding.

The processing of this matter, at the very least, has been met with many challenges created by the Parent and/or her former counsel. Attorney Ward not only demonstrated a lack of understanding his client's position and the nature of the administrative procedures, but he also imposed a contentious cloud upon the initial proceedings with an aptly discourteous and unprofessional attitude. Without notice, subsequent to Attorney Ward's dismissal as Parent's counsel, the Parent failed to appear for the mediation on August 8, 2005. At 9:50 p.m. on August 8<sup>th</sup>, when Attorney Moses' office was closed, the Parent clearly demonstrated a lack of good faith in due process and efficiency, by sending an e-mail and letter left only for interpretation, as she indicated her intent to not appear for the hearing on August 9, 2005.

**FINAL DECISION AND ORDER:**

Based on the foregoing, and as stated on the record, Attorney Moses' Motion to Dismiss is granted and above-referenced matter is hereby DISMISSED without prejudice.

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<sup>4</sup> Ms. Koskuba did not retrieve the Parent's e-mail until approximately 9:15 a.m. on August 9, 2005. The hearing was scheduled for 10:30 a.m. on said date.