STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Appearing on behalf of the Parents and Student:	pro se
Appearing on behalf of the Board of Education:	Attorney Michelle C. Laubin Berchem, Moses & Devlin, P.C. 75 Broad Street Milford, CT 06460
Appearing before:	Attorney Deborah R. Kearns Hearing Officer

FINAL DECISION AND ORDER

ISSUE

I. Whether the local educational agency Motion to Dismiss should be granted?

PROCEDURAL HISTORY

On July 12, 2005 the parent and their non-minor child filed a Request for Mediation. At a prehearing conference the parent stated they wanted to pursue mediation, they were told a hearing date would be scheduled which allowed time to hold a mediation session with the State Department of Education (SDE). The matter was assigned a hearing date of August 30, 2005. The local education agency (LEA) made a sufficiency challenge pursuant to the Individuals with Disabilities Education Improvement Act § 615(c)(2) which requires the Request for a Special Education Hearing filed pursuant to section 615(b)(7)(A), to sufficiently set forth a proposed resolution to the dispute. There is no such provision to challenge the sufficiency of a request for mediation. The hearing convened to address all preliminary matters. On the date of hearing the parent/child did not appear, the local education agency (LEA) requested the opportunity to argue the LEA's Motion to Dismiss. The parent/child did not file an objection to the Motion to Dismiss.

FINDINGS OF FACT

1. The parent and their non-minor child wanted to meet with the LEA to discuss an aspect of a matter previously resolved in a December, 2003 settlement agreement. The LEA refused to meet with the parent/child. The parent/child then filed a Request for Mediation with the State Department of Education, page one is a Request for Mediation form; page two is a Request for Special

Education Hearing form, signed by the non-minor child; and page three is a Request for Advisory Opinion form signed by the parent. Description of the issue in dispute entered on the first page states "during our PPT meeting in March, it was agreed that we would have 1 more PPT in June '05. I called Dr. Thomas Lally in June and he stated that it was never agreed on". The next section, proposed resolution of the issues to the extent known and available at this time states the following, "West Haven has agreed to pay for her school portion but not her residential. Living at the facility is part of the learning and developing skills. The child has only one more year left and cannot afford paying the residential @this time." The three page document filed with the SDE is construed as a Request for Mediation.

2. On July 15, 2005 the parent/child participated in a prehearing conference. The LEA, notified the hearing officer of an alternative number where they could be reached for the prehearing conference, the message was not retrieved until after the conference call occurred. The parent /child stated they wanted a mediation, the party was instructed to notify the state. During the prehearing conference the parent/child was verbally notified the hearing would take place on August 30, 2005, if the parties were not successful in resolving the matter in mediation. The State Department of Education (SDE) did not forward the notice typically sent to report the mediation results to the hearing officer. Mediations are voluntary, it does not appear the LEA agreed to mediate the matter.
3. The LEA filed a Sufficiency Challenge stating the Request for Special Education Hearing does not meet the requirements of the Individuals with Disabilities Education Improvement Act 2004 (IDEIA) § 615(b)(7)(A). The LEA referenced the second page of the Request for Mediation form, which is incomplete except for the child's signature. In an attempt to clarify what the parent was seeking, the hearing officer issued a Response to Sufficiency Challenge and mailed it to the parent and child along with a written Notice of Hearing. The parent/child did not send a response, nor did they respond to the LEA attempts to communicate with the parent. The scheduled hearing date was therefore limited to address all preliminary matters.
4. At the hearing the parent and child did not appear. They made no attempt to contact the LEA or the hearing officer to explain their absence. After waiting an hour, the LEA requested the opportunity to argue their Motion to Dismiss and filed a Memorandum in Support of Motion to Dismiss for the following three reasons: the party did not file a response to the Sufficiency Challenge; the request fails to state a claim upon which relief may be granted; and the party did not appear to prosecute their claim
5. The Motion to Dismiss and Memorandum in Support of Motion to Dismiss claims the following: The parent/child and LEA entered into a settlement agreement in December 2003. The child has reached the age of majority and is a party to the action. The terms of the agreement comprehensively set out the parties' respective financial responsibility for the cost of the child's education and residential placement from the date of the agreement through June 30, 2006. (Board Memorandum in Support of Motion to Dismiss)

CONCLUSIONS OF LAW

1. At the prehearing conference it was clear the parties were seeking a meeting with the LEA and filed the form described in Findings of Fact, No.1. All three pages were filed on the same date. It is not clear whether the parent/child ever intended to file anything but the Request for Mediation. The Requests for Special Education Hearing and Advisory Opinion[1] appear to be pages two and three of the form sent to the SDE. On the face of the form, the parent wanted a meeting with the LEA and filed a Request for Mediation. The parent/child did not appear at a hearing to clarify what they intended by filing the documents. Mediation would have clarified all these issues. The parent/child never acted on the matter since the time the mediation was refused. The parent failed to prosecute the hearing.
2. The LEA filed a sufficiency challenge. The parent/child has not submitted a response to the sufficiency challenge. If the parent/child intended to have a hearing they would first have to comply with the requirements of IDEIA 2004, §§ 615(b)(7)(B) and 615(c)(2). IDEIA 2004 § 615(c)(2) which provides the party may not have a due process hearing until it files a proper notice. The Bureau of Special Education brochure, entitled "Steps to Protect a Child's Right to Special Education: Procedural Safeguards", effective date July 1, 2005, provides some instruction to parties filing due process claims. In subsection (E)(5), the notice of hearing is to be provided directly to the other party. The Procedural Safeguards provides at subsection (E)(3) the parent may not a have a hearing until the party provides the information noted in subsection (E)(2) to the LEA. If the parent/child is only making a Request for Mediation, a Sufficiency Challenge is not applicable.
(State of Connecticut Department of Education Division of Teaching and Learning Programs and Services, Bureau of Special Education brochure entitled "Steps to Protect a Child's Right to Special Education: Procedural Safeguard)
3. The LEA requests the hearing officer dismiss the action if it fails to state a claim upon which relief may be granted. If the parent/child simply wanted the hearing officer to review and reform specific terms in the settlement agreement, they are indeed in the wrong forum and fail to state a claim for which relief can be granted. Conn. Agencies Regs. § 10-76h-18(a)(5). In Connecticut, special education due process hearings may be filed by eligible students regarding the "public agency's proposal to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to the child,. Each public agency and unified school district shall provide assistance to the parent as may be necessary to file a written hearing request. Conn. Agencies Regs. § 10-76h-3(a). If the claimed circumstances result in an eligible disabled child not receiving a free and appropriate public education (FAPE) there maybe acclaim

[1] The advisory opinion form is typically submitted by both parties once they mutually decide to request an Advisory Opinion.

for which relief may be granted.[2] The trained mediator would have been in the best position to frame the issue for hearing and clarify all the other uncertainties associated with this matter. Without knowing more from both parties, it is impossible to decide that the relief requested is barred by the terms of a contract.

4. The hearing was convened to address all preliminary matters. The parent/child acting pro se, were not present to argue the Motion to Dismiss. They did not did file an objection to the motion. It is not possible to speculate what the parents intended by the forms they submitted to the SDE. Too little is known to make orders as to the status of the settlement agreement or the child's access to a free and appropriate public education. The matter is therefore dismissed pursuant, Conn. Agencies Regs. §§ 10-76h-18(a)(1) and (a)(7), for failure to prosecute a hearing and failure to appear at a properly noticed hearing.

FINAL DECISION AND ORDER

1. The case is dismissed without prejudice.

[2] Even if there is jurisdiction to hear the matter, it does not appear the parent/child had any desire to go through the complications of presenting the matter in a hearing as pro se parties.