

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing for the Student: Phillip J. Cohn
Law Offices of Phillip J. Cohn, LLC
40 Richards Avenue
Norwalk CT 06854

Appearing for the Board: Marsha Moses
Berchem, Moses & Devlin, PC
75 Broad Street
Milford, CT 06460

Appearing Before: Scott Myers, J.D., M.A. (Clinical Psychology),
Hearing Officer

FINAL DECISION AND ORDER

(November 26, 2008)

This matter was commenced by request for due process dated August 26, 2008 and received by the Board on August 28, 2008. Accordingly, absent modification by the Hearing Officer, the date for mailing of the Final Decision and Order would have been November 12, 2008. The August 26, 2008 request for due process, as amended on October 20, 2008, asserts claims of a denial of FAPE within the meaning of the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, *et. seq.* (the “IDEIA”), with respect to the 2006/2007, 2007/2008 and 2008/2009 school years.

The undersigned was appointed as Hearing Officer on September 3, 2008. At a telephonic pre-hearing conference (“PHC”) convened on September 25, 2008, the parties reported, among other things, that: (1) A resolution meeting had not been successful in resolving the dispute; (2) The Board would not challenge the sufficiency of the request for due process; (3) The parties were not currently pursuing a mediated outcome or other settlement efforts; and (4) The Board has identified certain evaluation-related issues that it intended to present. By agreement of the parties and the Hearing Officer, the Board’s evaluation-related issues were integrated into this proceeding for resolution¹ and, as directed by the Hearing Officer, the Board identified its evaluation issues in a submission on September 25, 2008 and a clarifying submission on October 27, 2008.

¹ Integrating the Board’s issues into this proceeding would reduce the burdens on the parties of pursuing multiple litigations and provide for a more comprehensive and expeditious resolution of issues regarding the Student. After discussing with the parties the Hearing Officer’s concerns regarding compliance with the IDEIA’s procedural requirements arising from integration, the Hearing Officer was satisfied that the parties would work together constructively to develop procedures to be applied in the case to permit both parties to fairly litigate their respective claims.

An initial scheduling order issued on September 27, 2008 (the "September 27 Order"), established November 12, 2008 as the date for the mailing of the Final Decision and Order and identified hearing dates of October 29 and November 5 and 6, 2008.

On October 2, 2008, the Parents requested a 45 day extension of all timelines in the September 27 Order to permit the parties to pursue resolution through settlement, including a CTDOE-sponsored mediation. The Board opposed that request. At a second telephonic PHC convened on October 8, 2008 the parties reported that they anticipated that a CTDOE mediation could not be scheduled before early November and that the Student was entering the District's middle school in the 2008/2009 school year, but that to date she was receiving home bound services with the anticipation that she would transition into the school building in the week of October 14 under the Safe School program arrangements that had been in place in the 2007/2008 school year. By a second scheduling order issued on October 8, 2008 (the "October 8 Order"), the Parents' request for a 45 day continuance was granted in part by providing a 30 day extension. That Order extended the date for the mailing of the Final Decision and Order to and including December 15, 2008 and established hearing dates of November 18, 21, and 24, 2008. Each party thereafter filed pre-hearing submissions as provided in the October 8 Order.

On October 31, 2008, Parents' counsel advised that the parties were actively engaged in settlement discussions, that a CTDOE-sponsored mediation was scheduled for November 6, 2008, that the Parents would consent to the speech and language and psychiatric evaluations requested by the Board thereby "satisfy[ing]" the issues presented by the Board, and that the Parents were withdrawing their request for due process "without prejudice in a good faith effort to continue to work collaboratively with the Board" to address issues regarding the 2008/2009 school year that remained unresolved. The Board responded that it would not object to the withdrawal provided that: (1) The Parents provided an executed consent for Barbara Rickler, M.D. to perform the psychiatric evaluation requested by the Board, (2) The Parents withdrew their request for an independent speech and language evaluation and agreed to allow the Board to perform that evaluation by one of its staff in lieu of that independent evaluation; and (3) In the event the due process request is refiled, the parties agreed it would be assigned to this Hearing Officer.

Another PHC was convened on October 31, 2008. The parties reported, among other things, that efforts to resolve their disputes depended in part on an IEP team meeting scheduled for November 10, 2008 which was after the November 6, 2008 mediation date. Both parties agreed that it made more sense to attempt the mediation after the November 10, 2008 IEP team meeting. By notice dated November 1, 2008, the Hearing Officer advised, among other things, that the request to withdraw the hearing without prejudice filed by the Parents was being held in abeyance.

On November 11, 2008, the Board's counsel advised that the IEP team meeting had convened on November 10, 2008 and that the Parents had not provided their consent to the proposed psychiatric evaluation. The Board's counsel requested a PHC to address these developments. That PHC convened on November 11, 2008, at which time the

parties reported that no progress toward resolving their issues was made at the November 10, 2008 IEP team meeting and that a CTDOE-sponsored mediation has been scheduled for December 3, 2008. The Board requested that hearing proceed on its request for a psychiatric evaluation. Various options for proceeding were discussed and ultimately the parties coalesced around a proposal to conduct a hearing on the psychiatric evaluation issue first under an agreed-upon streamlined format potentially akin to an advisory opinion process, with further phases of the proceeding addressing (a) the issues raised by the Parents (to the extent that they remain unresolved and the Parents wish to proceed) and (b) the Board's issue regarding the speech and language evaluation.

A third scheduling order issued on November 14, 2008 (the "November 14 Order") suspended all further proceedings on all other issues raised in the case pending completion of the CTDOE-sponsored mediation, established a December 18, 2008 date for hearing on the Board's psychiatric evaluation issue, and directed the Board to commence a due process proceeding on that issue on or by December 1, 2008.²

On November 21, 2008, counsel for the Parents advised as follows:

In light of current developments, and after careful consideration of their options, the Parents have decided to withdraw the Student from the Norwalk Public Schools and home school their child. The Parents feel that this is the best option given the Student's current deterioration in health, mental state, and educational progress. Thus, the parents withdraw their request for due process without prejudice...

On November 21, 2008, counsel for the Board advised as follows:

The district did receive yesterday a letter from the parents indicating that they were withdrawing the student from the Norwalk Public Schools, and intended to home school her. Although the district is quite concerned with this decision for both clinical and educational reasons, it has no choice but to honor the parents' decision. Therefore, since the student is no longer within the jurisdiction of the Norwalk Public Schools, we have no basis upon which to pursue a psychiatric evaluation and therefore withdraw that claim without prejudice. We are also assuming that the parents are withdrawing their request for an independent speech and language evaluation, which would also moot the Board's commencement of a due process hearing on the issue of the Board's obligation to provide such an evaluation.

² The Board was also directed to advise the CTDOE that other aspects of a dispute between the parties regarding the Student are pending before this Hearing Officer in CTDOE 09-0104 and that by agreement of the parties and the Hearing Officer, the Board's psychiatric evaluation case may be assigned to this Hearing Officer for resolution without consolidating the two proceedings. The parties were advised that the record in each case would be incorporated into the other.

In light of these communications, the parties were advised on November 22, 2008 that all remaining compliance obligations, including scheduled hearing dates, were cancelled.

IT IS FURTHER ORDERED THAT this matter is hereby DISMISSED WITHOUT PREJUDICE as to all issues raised by each party.