

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. West Hartford Board of Education

Appearing on Behalf of the Parents: Mother, *Pro Se*

Appearing on Behalf of the Board: Attorney Susan C. Freedman
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing Before: Attorney Stacy M. Owens, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Whether the hearing officer has jurisdiction to hear a matter that resulted in a signed agreement.

SUMMARY/PROCEDURAL HISTORY:

On November 21, 2008, the West Hartford Board of Education (“the Board”) received a request for hearing from the Parent. (H.O. Exh. 1)

On November 25, 2008, the undersigned was appointed as hearing officer to preside over the hearing, rule on all motions, determine findings of fact and conclusions of law, and issue an order. (H.O. Exh. 2)

A prehearing conference convened on December 19, 2008. (H.O. Exh. 3) During the prehearing conference, Attorney Susan C. Freedman appeared on behalf of the Board; the Parent appeared *pro se*. The issues were confirmed and the hearing was scheduled for February 5, 6, and 9, 2009, allowing the parties time to engage in mediation. (H.O. Exh. 4)

By letter January 12, 2009, Attorney Freedman informed the undersigned that the earliest date of availability for a mediator was February 5, 2009. (H.O. Exh. 5) As such, the February 5, 2009, hearing date was canceled and the first date of hearing was postponed to February 6, 2009. (H.O. Exh. 6)

By letter dated January 28, 2009, the Parent indicated she would be unable to attend the hearing scheduled for February 6 and 9, 2009 because she could not get the time off from work. (H.O. Exh. 7) As such, a prehearing conference was scheduled for February 6, 2009 via conference telephone call to select new dates for the hearing. (H.O. Exh. 8)

On February 6, 2009, the undersigned called the Parent for the prehearing conference at 8:30 a.m., at which time the Parent indicated that the prehearing conference did not need to move forward, as the parties reached an agreement during the mediation the day before on February 5, 2009, and that she was waiting to finalize some of the terms.

By letter dated February 6, 2009, sent via e-mail at 11:07 p.m., the Parent indicated that “due to extenuating circumstances, mediation was unable to be executed,” and that the Mediator attempted to contact the Board to “continue mediation,” but was unsuccessful. (H.O. Exh. 9)

By letter dated February 10, 2009, Attorney Freedman stated that the Parent “signed a settlement agreement withdrawing the due process hearing request *with prejudice*.” (H.O. Exh. 10).

By letter dated February 17, 2009, the Parent contended that she made a strong effort to continue mediation and the Board declined to continue. (H.O. Exh. 11)

On February 23, 2009, the Board was ordered to produce a copy of the Agreement. (H.O. Exh. 12)

On February 23, 2009, the Board produced a copy of the Agreement and memorandum of law. (H.O. Exh. 13)

On February 24, 2009, the Parent replied to the Board’s memorandum and claimed the Board made misrepresentations. (H.O. Exh. 14)

FINDINGS OF FACT

1. On November 21, 2008, the Parent requested a due process hearing to resolve the following issues:
 - a. Whether the Board is providing the Student a free and appropriate education during the Student’s 2008-2009 school year.
 - b. Whether the Board failed to properly implement the Student’s individualized educational plan for the Student’s 2007-2008 school year.
 - c. Whether the Board failed to properly implement the Student’s individualized educational plan for the Student’s 2008-2009 school year.

2. On February 5, 2009, the Parent and the Board engaged in mediation, which resulted in a fully executed agreement.
3. Upon execution of the Agreement, the Parent agreed to withdraw her request for due process *with prejudice*.
4. The Parent claims the Board made a “misrepresentation of the facts,” which she relied upon to sign the agreement

CONCLUSIONS OF LAW:

The scope of a hearing officer’s jurisdiction is established in §10-76h(d)(1) of the Connecticut General Statutes (“the Statutes”). Section §10-76h(d)(1) of the Statutes provides, in pertinent part, that:

The hearing officer . . . shall have the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education or the pupil if such pupil is an emancipated minor or eighteen years of age or older, has placed the child or pupil in a program other than that prescribed by the planning and placement team, or (C) to prescribe alternate special educational programs for the child or pupil. If the parent or guardian of such a child who previously received special education and related services from the district enrolls the child, or the pupil who previously received special education and related services from the district enrolls in a private elementary or secondary school without the consent of or referral by the district, a hearing officer may, in accordance with the Individuals with Disabilities Education Act, 20 USC 1400 et seq., as amended from time to time, require the district to reimburse the parents or the pupil for the cost of that enrollment if the hearing officer finds that the district had not made a free appropriate public education available to the child or pupil in a timely manner prior to that enrollment. . . .

A fully executed agreement exists in this matter. One of the terms of the Agreement required the Parent to withdraw the request for hearing without prejudice. The Parent does not dispute that she entered into an agreement with the Board, but she challenges the validity of the Agreement on the assertion that she signed the Agreement based on the Board’s misrepresentations. In essence, the Parent claims the Agreement is void.

A hearing officer's authority is clearly enumerated in §10-76h(d)(1) of the Statutes. Whether an agreement is void is a contractual issue outside the scope of a hearing officer's jurisdiction to determine. Issues of law and fact material to the Parent's request for hearing are reflected and addressed in the mediated Agreement. A provision of the Agreement provides that the Agreement "is legally binding upon the parties and enforceable in any State court of competent jurisdiction or in a district court of the United States." As such, the Parent is precluded from circumventing a judicial review of the Agreement in the proper forum by simply ignoring its existence and proceeding with a hearing.

FINAL DECISION AND ORDER

As such, and based on the foregoing, this matter is **dismissed**.