

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Sherman Board of Education

Appearing on Behalf of the Parent: Attorney Josephine Smalls Miller
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Danbury, CT 06810-7773

Appearing on Behalf of the Board: Attorney Frederick L. Dorsey
Siegel, O'Connor, O'Donnell & Beck, P.C.
150 Trumbull Street
Hartford, CT 06103

Appearing Before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board improperly classify the Student as eligible for special education under the category of learning disabled?
2. If so, did this action cause the Student educational delay?
3. If so, is the Board financially responsible to provide the Student with a private school education?

PROCEDURAL HISTORY:

The Parent (Mother) mailed a form to the State Department of Education on November 24, 2008 requesting a due process hearing. She did not send the Board a copy of the request. This Hearing Officer was assigned to the case on November 28, 2008. On December 3, 2008, the Hearing Officer sent a notice to the Parties scheduling a prehearing conference on December 23, 2008. On December 5, 2008, the Board's attorney filed an appearance and a Motion to Dismiss the complaint. On December 22, 2008 the Parent telephoned the Hearing Officer and left a message stating that she was a party in the case and left a telephone number to call her. On December 23, 2008 a prehearing conference was held with the Board's attorney. The Parent did not answer her telephone. The Board's attorney stated that he did not receive a copy of the complaint. A hearing was scheduled on the Motion to Dismiss on January 8, 2009 at the Sherman Public Schools, Sherman Public Library. The Hearing Officer sent the Board's attorney a copy of the complaint on December 23, 2008 which was used as the date of receipt by the Board for purposes of setting the mailing date for the final decision. A

hearing notice and a letter summarizing what occurred at the prehearing conference were sent to the Parent and the Board's attorney on December 23, 2008. The mailing date for the final decision was determined to be March 9, 2009. The Motion to Dismiss was denied without prejudice pending the hearing on January 8, 2009. The Parties were directed to file witness list and exhibits by January 2, 2009. Neither filed any.

On January 8, 2009, the hearing convened in the Superintendent's conference room at the Sherman School. The Parent did not appear for the hearing. The Board's attorney went to the Town Hall to look for her, but she was not there. School staff reported that the Parent was not in the school library. At the Hearing Officer's request, Ms. Susan Wiggins, the Board's Director of Special Education, made several attempts to telephone to numbers the Parent had given the school at various times. There was no response at those numbers or at the number, which the Parent put on the due process request and left on her voice mail message to the Hearing Officer.

The hearing went forward without the Parent. The hearing request was entered into the record as Hearing Officer ("HO") Exhibit HO-1. The Motion to Dismiss was entered as Exhibit HO-2. The Board's attorney presented argument on two issues: first, whether the Parent's November 20, 2008 letter to the school superintendent stating that she was home schooling the Student; Exhibit HO-1 at 2; and second, whether the Parent's failure to present the issues to a Planning and Placement Team ("PPT") meeting deprived the Hearing Officer of jurisdiction. The third issue, concerning the Parent's failure to provide the Board with the hearing request, was withdrawn. Testimony was given by Ms. Wiggins. The Student's current IEP for the 2008-2009 school year was entered as Board Exhibit B-1. The last contact Ms. Wiggins had with the Parent was at the December 5, 2007 PPT meeting. The Parent did not attend the June 11, 2008 PPT meeting. Procedural safeguards were provided to the Parent on May 28, 2008. Exhibit B-1 at 3; and Testimony of Ms. Wiggins. The June 11, 2008 IEP was to begin on August 26, 2008. Exhibit B-1 at 19. The Student did not attend school in Sherman during the 2008-2009 school year. The State Department of Children and Families ("DCF") advised the Board in September that the Student had moved to Jamaica and was attending a private school there. On November 19, 2008 Ms. Wiggins learned that the Student was not attending school in Jamaica. She was advised to file an abuse/neglect petition by DCF, which she did. Testimony of Ms. Wiggins. On November 20, 2008 the Parent brought a letter to the school superintendent stating that she was home schooling the Student "pending a hearing with the department of education." Exhibit HO-1 at 2. The Parent did not request any PPT meeting regarding the issues in the due process request. Testimony of Ms. Wiggins. The Parent never advised the PPT that she did not want her son in special education, nor did she object to any IEP. Id.

On January 8, 2009 the Hearing Officer sent a letter to the Parent and the Board's attorney advising the Parent that the case would be dismissed unless the Parent provided good cause as to her failure to appear at the hearing and that she had evidence to rebut the Board's motion by January 20, 2009. On January 11, 2009, Atty. Miller filed an appearance for the Parent. On January 12, 2009, the Hearing Officer faxed a letter to the attorneys and attached a copy of her January 8, 2009 letter. On January 20, 2009, Atty. Miller left the Hearing Officer a voice mail message requesting additional time to respond to the dismissal. The Hearing

Officer wrote to the attorneys advising that motions must be in writing and allowed the Parent until January 23, 2009 to respond to the Motion to Dismiss. On Friday, January 23, 2009, the Parent's attorney sent a letter via Federal Express requesting a 30-day extension of time until February 23, 2009 to respond to the Motion to Dismiss. The letter was received on Monday, January 26, 2009. The Hearing Officer granted a two-week extension of time until February 9, 2009 noting that the Parent's attorney had not stated whether she contacted the Board's attorney for his position on the extension. The Hearing Officer also attached a copy of the Motion to Dismiss, her December 23, 2008 letter following the prehearing conference and the hearing notice for January 8, 2009. The Board's attorney filed a Motion to Oppose the Parent's Request for Extension. On February 6, 2009, Parent's attorney requested an extension of time until February 16, 2009 in order to "obtain and prepare a position regarding this exhibit," referring to Exhibit B-1, the Student's current IEP. The extension was denied. No response was filed to the Motion to Dismiss.

There are several reasons why this case should be dismissed, including the Parent's failure to participate in the prehearing conference, attend the hearing and to comply with the due process hearing regulations. Regs. of Conn. State Agencies, Section 10-76h-18. The Parent's failure to present the issues to a PPT meeting prior to requesting a hearing, however, requires a dismissal for lack of subject matter jurisdiction. Section 10-76h-3(h).

FINAL DECISION AND ORDER

It is ordered that this case shall be dismissed.