

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Milford Board of Education

Appearing on behalf of the Student: Father, pro se

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

Appearing on behalf of the Commissioner and State Department of Education and the CT Technical High School System: Attorney Jane D. Comerford
Assistant Attorney General
CT Attorney General – Health & Education
55 Elm Street
Hartford, CT 06106

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Parent present any issues in the complaint that satisfy the jurisdictional requirements of the Individuals with Disabilities Education Act (“IDEA”)?
2. If not, should the case be dismissed?

PROCEDURAL HISTORY:

The above-captioned complaint was received by the Milford Board of Education (“Board”) on June 12, 2009. The State Department of Education (“SDE”) received the complaint on or about that date. The CT Technical High School System received a copy of the complaint on June 21, 2009. The complaint was filed by the Student’s father. The Student is 21 years of age (date of birth June 14, 1988). He is not named as a party, nor has the Parent alleged that he is the legal guardian of the Student. Named as “Defendants” are Mark K. McQuillan, Commissioner of SDE, Abigail L. Hughes, Superintendent of the CT Technical High School System, and Attys. Moses and Floyd Dugas, Berchem, Moses & Devlin, P.C. A lengthy (nearly two hours) prehearing conference was held at the offices of the Board on July 30, 2009 with all the parties and/or their representatives. After extensive discussion of the issues, a schedule for the Board and the state defendants to file motions to dismiss by August 13, 2009 and for the Parent to file objections by August 27, 2009 was agreed on by all parties. A hearing was scheduled for September 22, 2009 as to any

issues remaining after the ruling on the motions. The mailing date for the final decision was set at October 19, 2009 with the Parent's consent. Three motions to dismiss and objections to each motion were timely filed. All filings, including memoranda of law, affidavits and other exhibits, were reviewed. On September 3, 2009, the Hearing Officer sent a letter to the parties advising them that the Motions to Dismiss were granted, that the September 22, 2009 hearing was canceled and that a final decision and order would be issued and sent to them by the SDE.

On September 28, 2009, the Hearing Officer received Plaintiff's Motion to Clarify Findings and Decision and Objection to Hearing Officer's Report to Dismiss from the Parent. Both have been reviewed. He argues that the prehearing conference did not comply with the SDE regulation Section 10-76h-7; that the Hearing Officer failed to rule on Plaintiff's motions dated July 29, 2009 requesting production and correction of the Student's records; that the complaint should not have been dismissed in its entirety because there are parties remaining that were not included in the dismissal motions, specifically the Due Process and Complaint Units of the State of Connecticut, the Hearing Officer individually and as an appointed hearing officer, Susan Kelleher, Donald Civitello, Robert Swan, David Hourigan, Joan Politi, Karen Zimmerman, Barbara Mazzona, Attorney General Richard Blumenthal and his Assistant Attorneys General. The Parent also claims that: "There remain outstanding bills, which goes to the complaint's identifying a lack of a free education. There are also now additional numerous copyright violations related to the above bills newly committed by defendants that also go to the free part of FAPE." Plaintiff's Motion to Clarify Findings and Decision at 4. The Parent also claims that the Hearing Officer should have disqualified herself because of personal interest and bias. He also makes accusations of improper ex parte communications between the Hearing Officer and the attorneys in this case. Rulings on the motions to dismiss are as follows.

RULINGS ON MOTIONS TO DISMISS:

1. State of Connecticut's Motion to Dismiss

The Motion to Dismiss the State Department of Education and Commissioner Mark McQuillan is granted. They are not proper parties to this due process complaint under state or federal law. 34 C.F.R., Section 300.507(a); and Conn. Gen. Stats., Section 10-76h. The motion is also granted as to the CT Technical High School System because there is no allegation that the Student attended, enrolled, or even applied for enrollment within the applicable two-year statute of limitations. Id. Further, although the Parent contends that the Affidavits of Karen Zimmerman and Barbara Mazzona are false, he has provided no evidence to contradict them. His allegations to the contrary in the objection, which are not under oath, are insufficient to require this defendant to appear at a formal hearing to defend this complaint.

The Parent's claim that other state officials and employees remain as parties in this proceeding is rejected. Regulations of Conn. State Agencies, Section 10-76h-3(a) provides: "A parent, the commissioner of children and families, or a designee of said commissioner, a public agency or advocate acting on behalf of any of these parties, may request in writing a hearing regarding a public agency's proposal or refusal 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. . . ." (Emphasis added). The SDE, including its Due Process and Complaint Units, CT Technical High School System, its employees and this Hearing Officer (individually or as an appointed hearing officer) are not proper parties. The Attorney General and his Assistant Attorneys General are not proper parties.

2. Motion to Dismiss Berchem, Moses & Devlin and Attys. Moses and Dugas

The Motion to Dismiss Attys. Moses and Dugas and the law firm of Berchem, Moses & Devlin as defendants is granted. Their role is as legal counsel to the Board. They are not proper parties to this complaint. Id.

3. Motion to Dismiss Complaint as to Milford Board of Education

The Motion to Dismiss the complaint as to the Board is granted because it does not allege any issue within the jurisdiction of the due process hearing procedures. Id. The Parent has not alleged any facts within the time period after June 12, 2007 relating to the “identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.” 34 C.F.R. Section 300.507(a).

The Parent claims he has a right to a hearing regarding the production and correction of the Student’s records pursuant to 34 C.F.R. Section 300.619. This regulation is not part of the due process procedures pursuant to Subpart E of 34 C.F.R. Part 300, Sections 300.500 through 300.537. This Hearing Officer has no jurisdiction to convene a hearing pursuant to Section 300.619.

The Parent claims that his complaint has not been dismissed as to several individual Board members and employees. Even if they had been named as parties in his complaint, they would not be proper parties in a due process proceeding. Regulations of Conn. State Agencies, Section 10-76h-3(a). The dismissal of the complaint applies to officials and employees of the Milford Board of Education.

The Parent’s claim that the prehearing conference was improper because members of the public were excluded does not present an issue for a due process hearing. A prehearing conference is not a hearing and is conducted with the parties via telephone only. Regulations of Conn. State Agencies, Section 10-76h-7(b). Because there are more than two parties involved here and the Hearing Officer could not place a conference telephone call with all of them, a prehearing conference was convened at the offices of the Milford Board on a date and time agreed on by all parties. The Parent was advised that the conference was not a hearing, that it was a discussion of administrative matters including scheduling of motions and was not open to the public or recorded by a court reporter.

The Parent has not presented any issues in the complaint that satisfy the jurisdictional requirements of the IDEA for a due process hearing. The complaint should, therefore, be dismissed in its entirety. Any motions not expressly ruled on herein are denied.

PARENT’S STATEMENTS REGARDING THE HEARING OFFICER:

The Parent has made numerous statements regarding the qualifications and impartiality of this Hearing Officer. Abusive speech, inflammatory remarks or disrespectful conduct toward the hearing officer, counsel or any party or party representative are prohibited in the due process hearing regulations. Section 10-76h-13(a). Many of his comments regarding the Hearing Officer, counsel for the Milford Board and the State of Connecticut’s counsel and affiants violate this rule. To the extent that any statements made in the Parent’s Motion to Clarify Findings and Decision and his Objection to Hearing

Officer's Report to Dismiss could be construed as a Motion to Recuse the Hearing Officer, the motion is denied. The Hearing Officer is not an employee of the State of Connecticut, Milford Board of Education or its attorneys. Nor does the Hearing Officer have a personal or professional interest that may conflict with her objectivity in the conduct or disposition of this hearing. Section 10-76h-8(f)(1).

All communications with the parties and counsel have been in writing or at the prehearing conference with all parties present.

FINAL DECISION AND ORDER:

It is ordered that this case shall be dismissed.