

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Newtown Board of Education

Appearing on behalf of Student: Attorney Lawrence Berliner
Klebanoff & Alfano, PC
433 South Main Street, Suite 105
West Hartford, CT 06110

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

Appearing before: Attorney Janis C. Jerman, Hearing Officer

FINAL DECISION AND ORDER

A special education hearing in the above-captioned matter was requested by Student's Attorney via Letter dated October 6, 2010.¹ It was received by the Board of Education ("BOE") on October 8. The thirty-day resolution period ran through November 7 and the original deadline for mailing the final decision and order was December 22, 2010.

A pre-hearing conference was held on October 28. Attorney Berliner appeared on behalf of Student and Attorney Laubin appeared on behalf of BOE. The following issues were identified:

1. Did BOE properly determine that Student was ineligible for special education?
2. Did BOE timely and appropriately evaluate Student?
3. Did BOE provide Student a free appropriate public education from March 9, 2009 to the end of the 2008-09 school year?
4. If the answer to any of the issues one through three is in the negative, what shall be the remedy?
5. Should BOE be required to reimburse Parents for Student's private placement for the period from May 19, 2010 to the end of the 2009-10 school year?
6. Should BOE be required to reimburse Parents for Student's private placement for the 2010 extended school year?
7. Should BOE be required to reimburse Parents for Student's private placement for the 2010-11 school year?

¹ All dates are 2010 unless otherwise indicated.

8. Did BOE fail to schedule a PPT meeting that was mutually convenient for Parents?
9. Did BOE deny Student a free appropriate public education by failing to provide him transportation to and from his IEP placement?
10. Did BOE violate Parents' procedural safeguards by failing to convene a PPT meeting to discuss a change to Student's transportation related service?
11. Should BOE be required to reimburse Parents for the independent educational evaluation conducted by Pauline Bailey?

On October 28, Student's Attorney requested an extension of the mailing date until thirty days after the close of evidence or submission of briefs. The Hearing Officer notified the parties that the request for extension of the mailing date did not comply with Connecticut State Regulations Sections 10-76h-7 and 10-76h-9 and indicated that they could submit a request in compliance with the regulations and that it would be considered immediately.

On November 2, Student's Attorney renewed the request via e-mail addressing the factors identified in Connecticut State Regulations Section 10-76h-9. Student's Attorney also indicated that he did not initially address those factors because the parties consented to an extension of the mailing date during the pre-hearing conference in order to accommodate additional hearing dates. State regulations require the Hearing Officer to consider the factors identified in the above regulation, even where the parties consent to an extension.

Student's Attorney requested an extension of the mailing date until thirty days after the close of the evidence or the submission of briefs. However, the State Regulation states that "[a] request for postponement or extension shall be for a specified period of time that shall not exceed 30 calendar days."

After fully considering the positions of the parties, the request to extend the mailing date thirty days beyond its then-current deadline was granted. The deadline to mail the final decision and order was extended to January 21, 2011. A hearing was scheduled to convene on December 20.

Via e-mail dated November 4, Student's Attorney indicated that the parties resolved issue eleven in that BOE reimbursed Parents for the cost of the independent educational evaluation. Student's Attorney therefore withdrew issue eleven.

Via letter dated December 7, Student's Attorney requested a 30-day postponement of the December 20 hearing to permit the parties to participate in mediation. After fully considering the positions of the parties, the request to postpone the hearing was granted but for a period less than 30 days. The parties were reminded of the deadline to mail the final decision and order and were given until December 13 to notify the Hearing Officer of their availability for hearing on five enumerated dates in January 2011.

Via letter dated December 13, Student's Attorney indicated that the parties have substantial conflicts with the hearing dates offered, that Student's Parents are withdrawing the request for due process without prejudice, that BOE's Attorney does not object with the proviso that, should Student's Parents re-file the request after mediation, the matter be reassigned to the undersigned Hearing Officer, and that Student's Attorney does not object to that condition.

FINAL DECISION AND ORDER

In light of the above facts, the above-captioned case is hereby dismissed without prejudice.



Janis C. Jerman
Hearing Officer