

May 18, 2017

Final Decision and Order 17-0383

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Monroe Board of Education v. Student

Appearing on behalf of the Student: Parents

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

Appearing before: Attorney Brette H. Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Was the psychiatric evaluation conducted by the District appropriate, thereby relieving the District of the obligation to conduct an Independent Educational Evaluation (“IEE”) at public expense?

PROCEDURAL HISTORY AND SUMMARY:

On March 7, 2017, the Parents received a request for a special education due process hearing filed by the Board. On March 8, 2017, the Connecticut State Department of Education assigned the undersigned Hearing Officer to preside over the case. On March 28, 2017, a Notice of Prehearing Conference was sent to Attorney Michael Gilberg, who was representing Parents, and to Attorney Christine Sullivan who was representing the Board, with a proposed prehearing conference date of March 31, 2017. In recognition of the fast approaching deadline for mailing the final decision and order, which was established as April 21, 2017, the Hearing Officer offered April 17, 2017 and April 18, 2017 as potential hearing dates for consideration in an email accompanying the prehearing notice. On March 30, 2017, Attorney for the Board indicated that she was not available for a prehearing conference on March 31, 2017 and would coordinate with the Attorney for the Parents to find a mutually agreed upon alternative. Later that day, Attorney for the Parents confirmed he would work with Attorney for the Board to find a replacement time for the prehearing conference. In response to an inquiry from the Hearing Officer, both Counsel confirmed they were not available on the April hearing dates previously offered. When no agreed upon dates had been tendered by April 6, 2017, the Hearing Officer reminded Counsel of the pending mailing deadline in the matter and indicated she would be available from 8:30 a.m. to 5:00 p.m. on April 7, 2017 for the prehearing conference. The Attorney for the Board indicated she could be available at 8:30 a.m. or 4:30 p.m. for a prehearing conference. Attorney for the Parents indicated he would not be available. The Hearing Officer then gave the Attorney for the Parents until 5:00 p.m. to consult with his clients and determine whether he and/or they objected to the hearing dates of May 16, 2017 and May 23, 2017 and, if so, to provide the basis for such

objection. The Hearing Officer also issued an order that if Attorney for the Parent failed to respond to the Hearing Officer's email by 5:00 p.m., both attorneys would be required to participate in a prehearing conference at 8:30 a.m. on April 7, 2017. Attorney for the Parents subsequently sent an email at 12:33 p.m. stating he had no objection to the May 16, 2017 and May 23, 2017 hearing dates and would check with his clients and stated that he was not available for the 8:30 a.m. prehearing conference call. On April 6, Attorney for the Board requested an extension of the mailing deadline in order to accommodate the hearing date schedule. Attorney for the Parents did not object. This request was granted and resulted in a new mailing deadline of May 19, 2017. On April 7, 2017, the Hearing Officer issued a Notice of Hearing Dates for May 16, 2017 and May 23, 2017. On April 10, 2017, Attorney for the Parents withdrew from the case and informed the Hearing Officer that Parents would be representing themselves. The Hearing Officer sent an email to Parents and the Attorney for the Board offering two appointment times on April 13, 2017 when she could hold the prehearing conference. On April 11, 2017, Parents informed the Hearing Officer that they were seeking new counsel and would prefer to have an attorney participate in the prehearing conference. Based on this representation, the Hearing Officer indicated she would not hold the prehearing conference on April 13, 2017, and gave Parents an additional time in which to find another attorney. Parents informed the Hearing Officer on May 6, 2017 that Parents would be representing themselves in the case going forward. On May 10, 2017, a prehearing conference in which each party was afforded the opportunity to raise questions about the procedure for the hearing was convened. On May 16, 2017, the hearing was opened and the parties indicated that they had reached a settlement. Parents indicated on the record that they were withdrawing their requests for those IEEs which had triggered the Board's obligation under the Individuals with Disabilities Education Act to either pay for the IEEs or file a request for a due process hearing, and which resulted in the instant case. Specifically, Parents withdrew their request for IEEs in the areas of academic achievement and assistive technology and for a neuropsychological evaluation. Based on the Parents' withdrawal of the requests for the aforementioned IEEs, the Board withdrew its request for a due process hearing on the record.

FINAL DECISION AND ORDER:

In light of the above facts, the case is dismissed.