

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Monroe Board of Education

Appearing on behalf of the Parent: Parents, *pro se*

Appearing on behalf of the Board: Attorney Christine Sullivan
Berchem Moses, P.C.
75 Broad Street
Milford, CT 06040

Appearing before: Melinda A. Powell, Esq.

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board provided a free appropriate public education (FAPE) from December 2016 to December 2018?
2. Whether the Board conducted evaluations in a reasonable timeframe after Parents signed consent for the student to be evaluated in the areas of Speech/language/social and Auditory processing?
3. Whether the Parents' procedural rights to participate in the IEP development/ PPT process were violated?
4. Whether the Parents are entitled to an IEE (independent educational evaluation) at public expense?

PROCEDURAL HISTORY/SUMMARY:

The Parents filed the Due Process Complaint and Request for Hearing on December 20, 2018. The Hearing Officer was appointed on that same date. A Prehearing Conference was held on January 8, 2019. The hearing was held on April 26, 2019. Documentary evidence was received into evidence; and the Parties were heard on the Board's motion to dismiss. Hearing Officer Exhibits HO-1 and HO-2 were entered into the record. HO-1 was the Parents' Due Process request, and HO-2 was the Prehearing Conference memo outlining the issues. Board Exhibits B-40 and B-41 were admitted in full.

Emails were exchanged between the Parties and the Hearing Officer wherein the Parents requested that the scope of the hearing be limited the issue of evaluation, and requested that the Hearing Officer dismiss the other issues without prejudice. The Board consented to the limitation of the hearing to the issue of IEEs.

The Board filed a motion to dismiss on April 17, 2019, requesting that the Hearing Officer dismiss the remaining issue regarding the Parents' request for IEEs as moot, because the Board has granted the requested IEEs. The motion was heard at the hearing on April 26, 2019.

The Parents opposed the motion on the basis that there was still an issue in the matter for the hearing concerning the evaluations. The Hearing Officer questioned the Parent about the claims in the complaint, the issues determined for the hearing in the Prehearing Conference Notice, and the emails between the Parties and the Hearing Officer which concerned the limited the scope of the hearing.

The Parent made representations at the hearing that the Parents' intention was to present evidence that some evaluations had not been performed and there was a delay in granting the Parents' IEE request. Upon further questioning, it was established that the Parent was concerned about waiving any claim that the Board's delay in granting the IEEs had caused harm to the Student because the evaluations had not informed the Student's IEP planning. The Parent also stated that there were procedural violations regarding requests for the IEEs. The Parents were concerned that they may be precluded from arguing these issues at a subsequent hearing.

The Hearing Officer ruled that the only issue that remained (that the Parent had not withdrawn without prejudice) was Issue #4, which requested independent educational evaluations. The Hearing Officer also explained on the record that the Parents' claims regarding delay could be addressed under the issue concerning the provision of FAPE (Issue #1) and/ or any procedural violation claim (Issue #3), which were to be dismissed without prejudice. Those specific items were not necessary to the determination of whether the Parent was entitled to the relief requested—to obtain the requested IEEs. In addition, the Parent's claim of delay was discussed as a separate issue in the prehearing conference under Issue #2.

The Hearing Officer also explained that a written decision would follow, that the Parents would have a right to appeal and were entitled to a copy of the transcript.

All motions and objections not previously ruled upon, if any, are hereby denied and/ or overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") Sections 1400 *et seq.* and related regulations, Connecticut General Statutes ("C.G.S.") Section 10-76h and

related regulations, and in accordance with the Connecticut Uniform Administrative Procedure Act (“U.A.P.A.”), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

FINDINGS OF FACT:

1. The Student is eligible for special education and is a student in Monroe Public Schools. (B-41)
2. By email dated April 17, 2019 the Parent requested that the hearing issues be limited to issue of “evaluations” and moved to dismiss all other claims except the evaluations without prejudice. (B-40)
3. The Board responded on April 17, 2019 stating the Board consented to limiting the issue of the parent’s request for IEEs in three areas indicated in the April 12, 2019 email correspondence and understood that the parent was withdrawing without prejudice all remaining issues in the parent’s due process hearing requests and as stated in the prehearing conference memorandum.
4. The Hearing Officer confirmed that the issues would be so limited. (B-40)
5. The Parents did not contradict the Board’s email or state their intention to pursue other issues at the hearing. (B-40)
6. On April 17, 2019, the Board sent a letter to the Parent stating the following:

This letter is to inform you that Monroe Public Schools is in agreement to do the following evaluations at IEE’s:

Academic Achievement; Reading Writing and Math

CAPD-Auditory Processing

Speech and Language-Speech/ Articulation/ Pragmatics; Language-Expressive/ Receptive; Social Thinking Assessment.

(B-41)

7. At the hearing, the Board confirmed that the Board would not first perform the evaluations that had not been performed, as alleged in the due process complaint. Those evaluations would be completed as IEEs per the April 17, 2019 letter to the Parent.

CONCLUSIONS OF LAW:

1. Pursuant to Conn. Gen. Stat. §§ 4-183 and 10-76h(d)(1), Hearing Officers have jurisdiction over contested cases concerning the identification, evaluation or educational placement of or the provision of a free appropriate public education to a student.
2. Similarly, “The jurisdiction of federal courts depends on the existence of a 'case or controversy' under Article III of the Constitution." *PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996) (internal quotation marks omitted). No justiciable controversy is presented where the question sought to be adjudicated has been mooted by developments subsequent to filing of the complaint. *Church of Scientology of Cal. V. U.S.*, 506 U.S. 9, 12, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992).” *M.M. v. Lafayette School District*, Docket Nos. 12-15769, 12-15770, 2014 U.S. App. LEXIS 17920, at *33 (9th Cir. Sep. 16, 2014)(“The District's payment for the full cost of Dr. Guterman's evaluation and completion of its reevaluation have mooted both issues.)
3. The sole issue in the hearing was whether the Parents’ were entitled to an IEE at public expense (Issue #4). The Board granted the Parents’ request on April 17, 2019; therefore, there is no relief that the Hearing Officer can order on this issue.
4. The Parents’ request for an IEE is moot.

FINAL DECISION AND ORDER:

1. Issues 1-3 are dismissed without prejudice to allow the Parents to refile.
2. As to Issue #4, the Complaint is dismissed on the merits as moot because the Board granted the IEE request on April 17, 2018