

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Farmington Board of Education

Appearing on behalf of the Parents: Attorney Jennifer D. Laviano, P.C.
77 Danbury Road – Suite C-6
Ridgefield, Connecticut 06877

Appearing on behalf of the Board: Attorney Craig S. Meuser
Shipman & Goodwin, LLC
One American Row
Hartford, Connecticut 06103-2819

Appearing before: Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

SUMMARY:

The issues in this matter included regular and extended year programming and private placement. The date for mailing of the final decision was July 27, 2001. The parties agreed to four hearing dates at the prehearing conference.

The Student's counsel did not attend the first day of hearing which was July 5, 2001. She had faxed the parties a request for continuance on July 3, 2001 but it was not granted because it was not received in compliance with the regulations and was not seen by the hearing officer until she arrived at the hearing. The request stated: "Please be advised that the parties in the above-referenced matter are actively discussing settlement, and in fact are in the process of formalizing an agreement." (Hearing Officer Exhibit 1.) The Board's counsel attended the first day of hearing.

The Hearing Officer sent the parties notice of the reasons, stated above, that the request for continuance was not granted and further canceling the hearing date of July 9, 2001. The notice further stated: "The continuance request is granted only until the previously scheduled hearing date of July 23, 2001, agreed to by the parties at the prehearing conference. If the matter does not go forward on that day and is not withdrawn by the Student, it will be dismissed by the Hearing Officer." (Hearing Officer Exhibit 2.) On July 19, 2001, the Student's counsel faxed the Hearing Officer another request for continuance stating "The parties have reached an agreement in the above-referenced

matter and expect to execute the agreement over the course of the next week. Accordingly, the parties request that the hearing scheduled for July 23, 2001 be postponed to allow the parties to finalize their agreement.” (Hearing Officer Exhibit 3.)

This request was not timely and the Hearing Officer did therefore not entertain it. On July 20, 2001 the Student’s attorney faxed the Hearing Officer a letter which read: “Having not heard back from you regarding our request of yesterday, made five days in advance of the scheduled due process hearing the parents hereby withdraw their request for a due process without prejudice.” (Hearing Officer Exhibit 4.) This was not seen by the Hearing Officer until she arrived at the hearing. The Student’s counsel did not appear at the hearing. The Board’s counsel appeared and presented the withdrawal letter which has a facsimile time and date of 5:25 p.m. on July 20, 2001. (Hearing Officer Exhibit 4.) Board counsel indicated that he had not received a copy of Hearing Officer Exhibit 3 although the document from the Student’s counsel’s office indicates he was copied on it. (Transcript and Hearing Officer Exhibit 3.) At hearing the Board’s attorney indicated that the matter had not yet settled and after taking a recess to confer with his client he requested that the matter be dismissed with prejudice. (Transcript.)

The Hearing Officer did not receive either of the two continuance requests or the withdrawal in a timely manner.

The Due Process Regulations state “Hearing officers will not entertain requests for postponement or extension unless they are presented as follows: In writing and submitted no later than 5:00 p.m. five business days prior to the scheduled hearing or deadline date.” (Section 10-76h-9 of the Regulations of Connecticut State Agencies.) In this matter the request for continuance of the July 23, 2001 hearing was received two business days (and four calendar days) before the hearing. In accord with the regulations it was not entertained, it was not granted, and the hearing proceeded as scheduled. At the time of sending the July 5, 2001 notice, the Hearing Officer, believing at the time that the parties were working together and acting in good faith, did not anticipate or address the issue of the Student’s attorney not giving reasonable notice of withdrawal under the circumstances. The Hearing Officer indicated in her July 5, 2001 notice that she would dismiss the matter if it were not withdrawn, but did not discuss the possibility of dismissal with prejudice. Although timeliness was implied, it was not explicitly stated in the notice. Therefore, because the Student did not have notice that a dismissal with prejudice was under consideration, either through a notice from the Hearing Officer or a prior written motion from the Board, the Hearing Officer declines to deviate from the options outlined in her earlier notice.

FINAL DECISION AND ORDER:

The hearing is **dismissed**.