

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Stratford Board of Education

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

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

Appearing before: Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board offered the Student an appropriate program for the 1999-2000, 2000-2001 and 2001-2002 school years.
2. Whether the Board properly evaluated the student.
3. Whether the Board offered appropriate extended school year programming.
4. Whether the Parents' private programming for the summer of 2000 should be reimbursed by the Board.
5. Whether the Parents' unilateral placement at the Forman School in Litchfield, CT should be reimbursed by the Board.

SUMMARY:

The prehearing conference in this matter was held on December 21, 2001. At the prehearing the Student's counsel indicated she would be filing a withdrawal that day for reason that the parents could not obtain financing for a unilateral placement. No withdrawal was received and on December 27, 2001 the hearing officer sent a notice referencing the failure to receive the withdrawal and setting the hearing date for January 2, 2002. Further, the notice stated "If the student

does not appear at the hearing the matter will be dismissed without prejudice.” On December 28, 2001 the Hearing Officer received a Motion for Dismissal with Prejudice from the Board. In it the Board claimed that the dismissal should be with prejudice for reason that the Student and counsel had made a similar request for due process on September 26, 2001 and that had been dismissed without prejudice on November 15, 2001 after an untimely request for continuance by the Student had been denied. On December 28, 2001 the hearing officer faxed the parties that the Motion to Dismiss with Prejudice would be considered at the January 2, 2002 hearing.

The Board appeared at the hearing on January 2, 2002 with counsel. Upon arrival the Hearing Officer was handed a letter from the Student’s counsel, dated January 2, 2002, and informing the Hearing Officer that Student’s counsel had just returned from the holiday vacation and that her office was closed from Christmas Eve through New Year’s Eve. She asserted that the counsel for the Board knew of this annual closing. The counsel for the Board, who was present at the hearing, denied that she was notified of or otherwise knew of the vacation schedule(s) of the Student’s counsel’s office.

The Student’s counsel’s letter went on to say that the Parents “maintain their position, as stated to you at the Prehearing Conference, that they are in the process of obtaining the financing to proceed with the unilateral placement and Hearing, and are not prepared to proceed with Due Process at this time.” The Student’s counsel had not asserted at the prehearing conference that the parents were withdrawing for reason that they could not obtain financing for due process but only that they could not obtain financing for the unilateral placement and were withdrawing their hearing request. In the letter presented at hearing the Student’s counsel withdrew her request for due process.

The Board’s counsel argued her Motion to Dismiss with Prejudice and emphasized that the Student has brought their case twice in three months, both times failing to appear, both times making untimely filings and both times forcing the Board to expend and waste public education resources defending the claims.

When the Hearing Officer first noticed this hearing it was intended to be for the practical purpose of disposing of the case. The Student’s counsel had indicated her clear intent to withdraw but had not followed through as she had indicated and there exists no other administrative method for closing out a case other than dismissing it for failure to prosecute. Conn. Agencies Regs. Sec. 10-76h-18(a)(1). The notice given was minimal and the hearing was set for the morning immediately following a legal holiday. For these reasons the matter will be dismissed but not with prejudice.

FINAL DECISION AND ORDER:

The matter is **DISMISSED**, without prejudice.