

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Regional School District 14

Appearing on behalf of the Parent: Attorney Ann E. Rose
Law Office of Ann E. Rose LLC
6 Nelson Lane
Newtown, CT 06470

Appearing on behalf of the Board: Attorney Michael P. McKeon
Sullivan, Schoen, Campane & Connon, LLC
646 Prospect Avenue
Hartford, CT 06105

Appearing before: Attorney Janis C. Jerman, Hearing Officer

FINAL DECISION AND ORDER

A special education hearing in the above-captioned matter was requested by the Student via letter dated September 30, 2009. It was received by the Board of Education on October 1, 2009. The 30-day resolution period ran through October 31, 2009. The deadline for mailing the final decision and order is December 15, 2009.

A pre-hearing conference was held on October 21, 2009. Attorney Rose appeared on behalf of the Student and Attorney McKeon appeared on behalf of the Board of Education. The following issues were identified:

1. Did the Board of Education provide Student with a free appropriate public education during the 2007-08 school year?
2. If the answer to number 1 above is no, is Student entitled to compensatory education?
3. Did the Board of Education provide Student with a free appropriate public education during the 2008-09 school year?
4. If the answer to number 3 above is no, is Student entitled to compensatory education?
5. Did the Board of Education properly exit the Student from special education services during the 2009-10 school year?
6. If the answer to number 5 above is no, is Student entitled to compensatory education?

The parties agreed to waive, in writing, participation in mediation and/or a resolution meeting.

The Student anticipated his case to take four days. The parties agreed that Student will call Board of Education staff as witnesses during his case in chief and that the Board of Education can question those witnesses for their case in chief at that time without need to call them again as witnesses after the Student

rests. In light of that agreement, the Board of Education anticipated their case to take one to two days. The case was scheduled for hearings on November 9, 2009 November 18, 2009 and November 19, 2009.

The Board of Education filed a motion to dismiss on October 30, 2009. The Student filed an objection to the motion to dismiss on November 6, 2009. In light of the pending motion, the Student requested that the November 9, 2009 hearing date be cancelled and that the hearing convene on the next scheduled date – November 18, 2009 – in order to allow the parties time to coordinate exhibits after resolution of the motion to dismiss. The request was granted. An additional hearing date was scheduled for December 3, 2009.

The motion to dismiss raised as issues the two-year statute of limitations and failure to state a claim upon which relief can be granted. As to the statute of limitations argument, the motion to dismiss was granted with respect to any claims arising before October 1, 2007 and was denied with respect to any claims arising on or after October 1, 2007. The motion to dismiss for failure to state a claim upon which relief can be granted was denied. The decision was issued on November 10, 2009.

The parties' witness lists and exhibits, which were due on November 11, 2009, were not submitted. On November 12, 2009 and November 14, 2009, the Hearing Officer inquired of the parties as to the status of the case and the failure to submit witness lists and/or exhibits. The Student responded that family medical emergencies interfered with the retrieval of all necessary documents on a timely basis. The Student requested a continuance until the December 3, 2009 hearing date. The Board of Education moved to have the case dismissed for failure to prosecute.

Thereafter, on November 17, 2009, the Student requested that the case be dismissed without prejudice since he was not able to proceed at this time. The Board of Education requested that the aspects of the case that were dismissed through the motion to dismiss be dismissed with prejudice as they have been considered and adjudicated.

FINAL DECISION AND ORDER

In light of the above facts, the above-captioned case is hereby dismissed *with* prejudice as to the issues that were dismissed in the Hearing Officer's November 10, 2009 Decision and Order Re: Motion to Dismiss. The case is hereby dismissed *without* prejudice as to the issues that remained pending on November 17, 2009.