STATE OF CONNECTICUT DEPARTMENT OF EDUCATION

Student v. Darien Board of Education

Appearing on behalf of the Parent: Attorney Peter L. Truebner

100 Prospect St. (South Tower)

Stamford, CT 06901

Appearing on behalf of the Board: Attorney Susan C. Freedman

Shipman & Goodwin, LLP

One American Row

Hartford, CT 06103-2819

Appearing before: Mary H.B. Gelfman, Esq.

Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

- 1. Has the Board offered a free appropriate public education in the least restrictive environment for Student?
- 2. If not, is placement at Hazelden Treatment Center appropriate to Student's special education needs?
- 3. Is the Board responsible for funding Student's placement at Hazelden?

PROCEDURAL HISTORY:

This hearing was requested on November 17, 2003, and assigned to this hearing officer on November 18, 2003. Initially, the Parent was Pro Se, and an attempt to schedule a pre-hearing conference failed. A pre-hearing conference, by conference telephone call, was held on December 8, 2003: Attorney Truebner appeared for the Parent, and Attorney Freedman appeared for the Board.

At the pre-hearing conference, the parties requested a continuance to provide for settlement negotiations. The hearing officer granted their request, pursuant to Sec. 10-76h-9(e), R.C.S.A. An advisory opinion proceeding was held on November 20, 2003.

Mediation scheduled for November 25, 2003, did not forward. At the pre-hearing conference the hearing officer extended the deadline for the final decision and order from January 2 to February 1 and the hearing was scheduled for January 30, 2004.

On January 29, the hearing officer received a FAX dated January 28, requesting another continuance. The reason given was a fluid family situation: Student, who is 18 years of age, had moved from his mother's home to his father's home in another state. The hearing officer's response to this request for a continuance is included as Appendix A to this decision.

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, 20 IDELR 736 (S.D. Tex. 1993)

CONCLUSIONS OF LAW AND DISCUSSION:

- 1. Sec. 10-76h-9, R.C.S.A., provides for one 30-day continuance for settlement negotiations. Other requests for continuance of a scheduled hearing must meet specific requirements, including filing five days prior to the scheduled hearing and provision of a proposed alternative date for convening the hearing.
- 2. In order to comply with the requirements of Sec. 10-76h-7(d), R.C.S.A., and 34 C.F.R. § 300.511, a special education hearing must be completed and a decision rendered within forty-five days of the request for hearing. Specific extensions of this deadline may be made by a hearing officer pursuant to state regulations at Sec. 10-76h-9.
- 3. Special education hearing requests dismissed without prejudice may be requested again at any time. If the parties wish, they may request appointment of the hearing officer previously appointed to hear the case: if that hearing officer agrees, such appointment will be made by the Due Process Unit, State Department of Education.

FINAL DECISION AND ORDER:

This matter is **DISMISSED WITHOUT PREJUDICE**.

Appendix A

CONNECTICUT STATE DEPARTMENT OF EDUCATION

January 29, 2004

Re: Student v. Darien Board of Education Case #03-370

To: Attorney Peter L. Truebner

100 Prospect St. (South Tower)

Stamford, CT. 06901

Attorney Susan C. Freedman Shipman & Goodwin, LLP

One American Row Hartford, CT 06103-2819

From: Mary H.B. Gelfman, Hearing Officer

374 North Salem Road Ridgefield, CT 06877

Telephone/Telecopier 203-438-3091

Response to Request for Continuance

I have received a request from Attorney Truebner for a thirty-day continuance of the hearing scheduled for January 30, 2004.

At a pre-hearing conference held on December 8, 2003, the parties requested a continuance to provide for settlement negotiations. This continuance was granted pursuant to Sec. 10-76-9(e), R.C.S.A. The hearing was scheduled for January 30, 2004, and the mailing date for the decision was February 1, 2004. The Due Process Unit scheduled a mediation session for November 25, 2003, and an advisory opinion proceeding for November 20, 2003. Neither of these sessions went forward.

The January 28, 2004, request for another continuance does not meet the requirements of Sec. 10-76h-9(a), R.C.S.A. While a "fluid" family situation is not an unusual reason for requesting a continuance, this request was not timely filed and no alternative dates were proposed.

The request for continuance is **DENIED**. The matter will be dismissed without prejudice. Either party may request a special education hearing again at any time, and the request may include a request for the same hearing officer, or for a different hearing officer.