

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on behalf of the Parents:

Attorney Howard Klebanoff
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Appearing on behalf of the Board:

Attorney Marsha Belman Moses
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75 Broad Street
Milford, Connecticut 06460

Appearing before:

Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

SUMMARY:

The issues in this matter were numerous and included procedural violations, independent evaluation, private placement, payment for related services and failure to raise the issue(s) at a PPT. The request was filed on June 25, 2001 and the date for the final decision, forty-five days henceforth, was August 9, 2001. The prehearing was held on June 29, 2001. The Hearing Officer, attorney for the Board and law clerk for the parents participated. The parties agreed to three hearing dates: August 9, August 16 and August 17. The parents' law clerk indicated that these were the first available dates for the attorney who would be appearing at hearing for the parents and that, in addition, he was on vacation for the last two weeks in August. On June 29, 2001 the law clerk representing the parents sent a letter to the Hearing Officer requesting a thirty day extension of the filing of the decision. On July 5, 2001 the Hearing Officer sent written notice of the three agreed upon dates to the parties and indicated in bold print that the granting of the extended dates was conditional upon the Hearing Officer receiving on or before July 9, 2001 an indication of whether the purpose of this continuance was for reason that the parties were engage in "good faith effort to complete negotiations." No response was received to this inquiry. The Parents' law clerk did, however, send the Hearing Officer a letter on July 12, 2001 indicating that her clients would be out of state from August 7 through August 18 and were therefore unavailable for all of the agreed upon hearing

dates. No reason was given for why the Parents' law clerk did not know this at the time of the prehearing. However, the Parents' law clerk did request that another prehearing be held to select new dates. The request for a new prehearing was denied and all hearing dates were cancelled.

Federal and State statute and regulation require that a final decision on a hearing request be rendered within forty-five days. "The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing--(1) A final decision is reached in the hearing;" C.F.R. Sec. 300.511, 20 U.S.C. 1415. At the state level, the Regulations of Connecticut State Agencies direct that "The due process unit will notify the hearing officer ...of the 45th day when the hearing decision must be mailed to the parties." Section 10-76h-7. The copy of the State Due Process Regulations that were provided to Parent and Board Attorneys and Advocates as well as Hearing Officers on August 14, 2000 further reads: "Do not file a request for a hearing if you are not prepared to move forward with your case. Do not agree to represent a client if you are unable to comply with our scheduling requirements. Hearing officers have been directed to comply with Federal law, which requires final decisions within 45 days of a hearing request and will not grant postponements for the convenience of counsel." Although state practice does allow for an extension of the forty five days if the Hearing Officer thinks change of date is necessary, in this case the hearing not only could not be completed within the 45 days, it could not even begin until some seventy days after the request.

In light of this and the other factors discussed above this matter is **dismissed** without prejudice.

FINAL DECISION AND ORDER:

The hearing is **dismissed**.