

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing for the Student: Piper A. Paul, Esq.
Law Office of Nora A. Belanger LLC
10 Wall Street
Norwalk, CT 06850

Appearing for the Board: Marsha Belman Moses, Esq.
Berchem, Moses & Devlin, PC
75 Broad Street
Milford, CT 06460

Appearing Before: Scott Myers, J.D., M.A. (Clinical Psychology),
Hearing Officer

FINAL DECISION AND ORDER

(July 15, 2008)

This matter was commenced by request for due process dated May 5, 2008, filed by the Student's grandparents (the "Grandparents") on behalf of the Student. The due process request identifies multiple "substantive" and "procedural" issues under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, *et. seq.* (the "IDEIA"), with respect to each of the 2005/2006, 2006/2007 and 2007/2008 school years, including the summer of 2006, 2007 and 2008. The due process request identifies the following as the relief being sought in this proceeding: (1) reimbursement for certain services and evaluations obtained by the Grandparents during the 2005/2006, 2006/2007, and 2007/2008 school years, (2) reimbursement for the costs of a unilateral private placement and transportation to and from that placement for the period April 1, 2008 through the end of the 2007/2008 school year, (3) an order defining the special education and related services the Student requires for the summer of 2008, (4) an order determining the Student's placement for the 2008/2009 school year, (5) an award of compensatory education for "unilateral decision to deny underlying disabilities and intensive services and loss of more than two years time" and (6) an award of "reasonable attorney's fees."

The undersigned was appointed as hearing officer on May 13, 2008. By agreement of the parties, a telephonic pre-hearing conference ("PHC") was convened on May 21, 2008. Ms. Paul participated on behalf of the Student and Ms. Moses participated on behalf of the Board. Should this matter proceed to hearing, each party reported that it intended to call 6 to 7 witnesses to present the direct testimony constituting its case-in-chief and each party estimated it would need 4 to 5 days of hearing to present its case.

Among other issues discussed at the PHC: (1) the parties reported that the requirement to convene a resolution meeting was being waived and the Board advised it was not challenging the sufficiency of the due process request; (2) the Board asked the Hearing Officer to strike sections of the due process request on the ground that the request contained more information than was required to be provided by the IDEIA and was a form of pre-hearing brief not provided for by the IDEIA or applicable Connecticut law, and was prejudicial to the Board;¹ (3) the Board asked the Hearing Officer to “strike” the claim for attorney’s fees; and (4) the Board asserted a statute of limitations defense to claims stated in the request that pertain to periods prior to the 2006/2007 school year.² The parties at the PHC also reported that they would participate in a CTDOE-sponsored mediation to determine if they could either resolve their dispute or narrow the issues to be addressed at hearing.

To permit the parties an opportunity to pursue that mediation while minimizing the burden on each of them of simultaneously preparing for hearing, and by agreement of the parties, a procedural schedule was established by order dated May 27, 2008 which provided, among other things: (1) for the filing by each party of its witness lists and records to support an initial hearing date of July 8, 2008, and provided for the filing by the Board of its answer to the due process request; (2) established a second hearing date for July 14, 2008 with subsequent hearing dates to be determined; (3) defined a schedule for resolution of any jurisdictional motions; (4) established July 21, 2008 as the date for the mailing of the Final Decision and Order; and (5) directed that the parties make certain reports regarding the status of the mediation.

On June 7, 2008, counsel for the Board, on behalf of the Board and the Student, advised that the parties had not yet received a date from the CTDOE for a mediation and requested a continuance of all dates stated in the May 27, 2008 initial scheduling order so that the parties could avoid the burden of preparing for hearing in light of the pre-hearing submission deadlines stated in that order while pursuing a mediation. That request was granted by a supplemental order issued on June 13, 2008. The June 13, 2008 order: (1) adjusted the dates for pre-hearing submissions previously established in the May 27, 2008 order to support an adjusted initial hearing date of August 11, 2008; (2) cancelled the July 8 and July 14, 2008 hearing dates; (3) established hearing dates for August 11, 2008 and August 25, 2008; and (4) established September 5, 2008 as the date for the mailing of a Final Decision and Order.

On June 25, 2008, the CTDOE advised the Hearing Officer that mediation would proceed on July 3, 2008. On July 8, 2008, the CTDOE advised the Hearing Officer that

¹ The Hearing Officer advised that he considered the discussion regarding the motion to strike portions of the due process request (item 2 above) to be an oral motion to strike, which was denied without prejudice to refiling in the form of a written motion. To preserve an appropriate record regarding that issue, a written ruling on the oral motion to strike was issued on May 27, 2008.

² The parties were advised that the Board’s issues regarding the statute of limitations and attorney’s fees would have to be briefed and a timetable for the filing of pleadings and issuance of a ruling regarding those claims was established in an initial scheduling order issued on May 27, 2008.

the parties had reached agreement at the mediation and that “[p]arent counsel will withdraw the request for hearing.” On July 11, 2008, Ms. Piper advised that the parties had settled the matter, that all necessary settlement documentation had been completed and that the Student was withdrawing his request for due process with prejudice as provided by the settlement.

Accordingly, this matter is hereby DISMISSED with prejudice.