

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on Behalf of the Parents: Jennifer D. Laviano, Esq.  
Law Offices of Jennifer D. Laviano, LLC  
76 Route 37 South  
Sherman, CT 06784

Appearing on Behalf of the Board: Marsha B. Moses, Esq.  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, Ct 06460

Appearing Before: Attorney Justino Rosado, Hearing Officer

**ISSUES:**

1. Was the program and related services offered by the Board for the 2006-2007 appropriate and did it provide the Student with FAPE according to 20 USC 1401 et seq?
2. Was the program and related services offered by the Board for the 2007-2008 appropriate and did it provide the Student with FAPE according to 20 USC 1401 et seq?
3. Is the program and related services offered by the Board for the 2008-2009 appropriate and did it provide the Student with FAPE according to 20 USC 1401 et seq?
4. Should the Board reimburse the Parents for the private speech and aqua-therapy services provided to the Student?
5. Should the Board reimburse the Parents for the evaluations obtained and the equipment purchased form the Student?
6. Did the Board commit procedural violations that caused a denial of FAPE to the Student?
7. Is the Student entitled to compensatory education for the denial of FAPE?

**SUMMARY and PROCEDURAL HISTORY:**

The Student is a 7 years and 4 month young girl who has been identified with multiple disabilities and is entitled to receive a free and appropriate public education (“FAPE”) as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At the May 28, 2008 PPT meeting, the Parents rejected the program offered by the Board for the 2008-2009 school year. The Parents

requested additional programming and intensive educational support. The Board refused the Parents request.

On or about August 4, 2008, the Board received notice of the Parents request for due process. The parties did not attend a resolution meeting and agreed to attend a PPT meeting and if the issues were not resolved, the parties would mediate the matter.

An impartial hearing officer was appointed on August 5, 2008 and a pre-hearing conference was held August 15, 2008. A hearing date of October 1, 2008 was chosen by the parties.

The Board on or about September 25, 2008 filed a Motion to Dismiss the matter based on the Parents failure to attend a resolution meeting or engage in mediation. The Parents attorney objected to the Motion and withdrew the request for due process without prejudice before the matter had proceeded to a hearing. The Board objected to the matter being withdrawn. The Board's objection was denied. "The plaintiff may withdraw any action so returned and entered in the docket of any court, before the commencement of a hearing on the merits thereof. ...". The Parents request for a withdrawal without prejudice and Board's objection to a withdrawal without prejudice was before a October 1, 2008 first hearing date.

At the request of the parties seven pages of e-mails were made Hearing Officer's Exhibit #3 in order to show the correspondence on the withdrawal without prejudice.

At the request of the parties, in order to accommodate the filing of a final decision and order after the hearing date, the date for the mailing of the Final Decision and Order was extended.

The date for the Final Decision and Order is November 3, 2008.

**FINAL DECISION AND ORDER:**

**THE MATTER IS WITHDRAWN WITHOUT PREJUDICE.**