

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing for the Student: Attorney Michael Perzin
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Appearing for the Board: Attorney Michelle Laubin
Attorney Marsha Moses
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Milford, CT 06460

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

FINAL DECISION AND ORDER

This matter was commenced by request for due process dated June 22, 2009 (the "Request"), sent by overnight delivery, addressed to the District (via its attorney, Ms. Moses) and copied to the Connecticut Department of Education ("CTDOE"), Bureau of Special Education Due Process Unit. The undersigned was appointed as Hearing Officer on July 9, 2009. By agreement, a telephonic pre-hearing conference ("PHC") was convened on August 3, 2009. Each party participated through counsel (Mr. Perzin for the Parents and Ms. Moses for the Board).

The Parents allege that the District denied the Student a free and appropriate public education ("FAPE") with respect to extended school year services ("ESY") in the summer of 2007, to ESY in the summer of 2008, to the 2008/2009 school year, to ESY in the summer of 2009, and to the 2009/2010 school year. The Parents unilaterally placed the Student out-of-district in the summer of 2007, in the 2008/2009 school year, and in the summer of 2009, and are placing her out-of-district for the 2009/2010 school year, and contend that the District is obligated to fund those placements. The Parents also seek reimbursement for an evaluation performed in 2007, and for a more recent evaluation. The 2007/2008 school year is not at issue in this hearing. The parties do not dispute the Student's eligibility classification based on an autism spectrum disorder ("ASD"), but disagree over the additional eligibility classification of Serious Emotional Disturbance ("SED") that was assigned to the Student during the period starting with the summer of 2008.

At the PHC the parties reported that they have agreed to pursue a CTDOE-facilitated mediation as a means of attempting to resolve their dispute and in lieu of a resolution session. No sufficiency challenge was filed, and the Board, at the Hearing Officer's direction, filed an answer to the Request on August 10, 2009.

By agreement of the parties, a scheduling order was issued dated August 3, 2009 which defined a schedule for pre-hearing and hearing procedures that would permit the parties an opportunity to pursue a

CTDOE-facilitated mediation to resolve their dispute. Assuming that the Request was received on June 23, 2009, absent modification by the Hearing Officer, the date for mailing of the Final Decision and Order in this matter would have been September 4, 2009. As discussed at the PHC, given the potential for a mediation, the potential number of hearing dates identified by the parties as necessary to present their respective cases, and scheduling issues, by agreement of the parties, the Hearing Officer in the August 3, 2009 scheduling order extended the date for mailing of the Final Decision and Order to and including October 30, 2009, subject to adjustment.

The Parents ultimately submitted 132 proposed exhibits and the Board submitted 71 proposed exhibits. Each party submitted witness lists and objections to various proposed exhibits submitted by the other party. The Parents by filing dated August 12, 2009, and as provided in the August 3, 2009 order, submitted comments on the proposed statement of issues as framed in the August 3, 2009 scheduling order. The August 3, 2009 order identified the following hearing dates: September 4 and 22, 2009 and October 8 and 9, 2009. The Parents reported on August 28, 2009 that a CTDOE-facilitated mediation on August 27, 2009 had not been successful in resolving the issues between the parties. In subsequent communications with the parties, the Hearing Officer established 4 other hearing dates in September 2009 for this matter so that the testimonial evidentiary hearing portion of this matter could be resolved in September 2009.

The parties appeared for hearing on September 4, 2009, at which time they reported that they had the prior evening reached an agreement in principle to resolve their dispute. The parties also reported that they were close to completing the documentation of their settlement. They requested and were allowed a continuance of the start of the hearing to complete that effort which ultimately proved successful. The settlement provides for withdrawal with prejudice.

ACCORDINGLY, this matter is DISMISSED with prejudice.