

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing for the Student: Attorney Nora A. Belanger
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Appearing for the Board: Attorney Marsha Moses
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Appearing Before: Attorney Scott P. Myers, J.D., M.A. (Clinical Psychology)
Hearing Officer

FINAL DECISION AND ORDER

This matter was commenced on behalf of the Student by his grandparents (referred to herein as the “Parents”) by request for due process dated July 25, 2009 (the “Request”), sent to the Connecticut Department of Education Bureau of Special Education Due Process Unit (“CTDOE”) and received by the District on July 27, 2009. The undersigned was appointed as Hearing Officer on July 30, 2009.

This is the second due process proceeding involving the Student that has been presented to this Hearing Officer. In the first due process proceeding (CTDOE 07-501), the Student, among other things, alleged that the District denied him a free and appropriate public education (“FAPE”) and sought: (1) funding for a unilateral placement at Hope Academy for the period April 1, 2008 through the end of the 2007/2008 school year, including transportation costs; (2) reimbursement for certain evaluations and services the Parents had obtained during the 2005/2006, 2006/2007 and 2007/2008 school years; (3) an order defining the special education and related services to be provided to the Student during 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 attorneys fees.” CTDOE 07-501 was dismissed on July 15, 2008 “with prejudice” in light of and in accordance with the report of the parties that they had executed an agreement settling CTDOE 07-501.

The Request in this case states that the Student has attended Hope Academy since April 2008 and identifies an IEP team meeting on June 12, 2009 as the pertinent IEP team meeting with respect to this due process proceeding.

By agreement, a telephonic pre-hearing conference (“PHC”) convened on August 13, 2009. Each party participated through counsel, Attorney Belanger for the Student and Attorney Moses for the Board. Among other things, the parties at the PHC reported that they have waived a resolution meeting in favor of pursuing a CTDOE-facilitated mediation as a means of resolving their dispute. The Board advised that it

was not filing a sufficiency challenge but would file a motion to revise the Request to: (a) eliminate/substantially reduce the presentation of evidence and narrative in the Request (which is 20 single spaced typewritten pages long); and (b) to eliminate claims for relief barred by the settlement agreement between the parties resolving CTDOE 07-0501. In response, the Parents advised that they were not seeking relief barred by that settlement agreement and that the relief they seek pertains to periods starting after the termination date of the period covered by the settlement agreement in CTDOE07-0501. The parties at the PHC agreed that there was no dispute as to the Student's IDEIA-eligibility, but that there was disagreement over his IDEIA classification.

Based on the discussion at the PHC and review of the Request, the Hearing Officer frames the following as the issues set for hearing subject to refinement.

1. For purposes of the 2009/2010 school year, what is(are) the Student's disabilities and what is(are) his IDEIA eligibility classification(s)? More specifically, to what extent is the Student properly classified under the IDEIA as having OHI (ADD/ADHD), having an Emotional Disturbance, and/or having one or more Specific Learning Disabilities?
2. With respect to developing a program and placement for the Student for the 2009/2010 school year, did the District fulfill its substantive and procedural obligations to the Student under the IDEIA?
3. If the District failed to satisfy its substantive obligations to the Student under the IDEIA with respect to the 2009/2010 school year, whether and to what extent the Parents are entitled to funding by the District of a placement at Hope Academy for the 2009/2010 school year and transportation costs related to that placement.
4. If the District failed to satisfy its procedural obligations to the Student under the IDEIA with respect to the 2009/2010 school year, whether and to what extent the Parents are entitled to funding by the District of a placement at Hope Academy for the 2009/2010 school year and transportation costs related to that placement.
5. To the extent not otherwise addressed in any of the issues framed above, whether and to what extent the Parents are entitled to the following relief:
 - a. Reimbursement for private speech and language services.
 - b. Reimbursement for private evaluations.

A scheduling order was issued on August 13, 2009 which was designed to permit the parties an adequate opportunity to complete the CTDOE-facilitated mediation and which, by agreement and among other things: (1) Established the following hearing dates: October 30, November 5, 6, 9, 12 and 13, 2009; (2) Defined a procedure and time table for the resolution of the Board's request to review the Request, and for the submission of witness lists and records;(3) Scheduled a second PHC for October 2, 2009 to report the results of the CTDOE-facilitated mediation and determine whether the schedule needed to be adjusted; and (4) Extended the October 13, 2009 date for mailing of the Final Decision and Order to and including November 30, 2009.

The parties on August 26, 2009 advised that the CTDOE-facilitated mediation was scheduled for October 16, 2009. The parties, consistent with the discussion at the PHC, requested that adjustments be made to the requirements of the August 13, 2009 scheduling order to minimize the burden of preparing for litigation while simultaneously attempting to resolve this matter by mediation. A second scheduling order was issued on August 27, 2009 which, among other things: (1) Cancelled the October 30 hearing date and set hearing dates for November 5, 6, 8, 12 and 13, as well as November 16, 17 and/or 18, 2009; (2) Adjusted the schedule for resolving the Board's request to revise and the submission of witness lists and records; (3) Rescheduled the post-mediation PHC from October 2, 2009 to October 19, 2009; and (4) Left the date for the mailing of the Final Decision and Order at November 30, 2009 subject to adjustment.

On October 19, 2009, counsel for the Parents reported that the CTDOE-facilitated mediation had occurred on October 16, 2009 and had resulted in an agreement resolving all issues raised in this proceeding, that the parties had executed the settlement documentation and that the Parents were withdrawing their Request in light of the settlement.

Accordingly, it is **HEREBY ORDER** that this matter is **DISMISSED** with prejudice.