

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student vs. Somers Board of Education

Appearing on behalf of the Parent:

Pro Se

Appearing on behalf of the Board:

Attorney Michael McKeon
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702

Appearing before:

Robert L. Skelley, Esq., Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Somers Board of Education (“Board”) fail to provide the Student with a free appropriate public education (“FAPE”) from 4/2/2013 forward through the 2014-2015 academic periods?
2. Did the Student require a diagnostic placement?
3. If the answer to Issue 2 is “YES”, did the Board fail to offer viable placements for the diagnostic evaluation to occur in a reasonable time?
4. Is White Oaks School an appropriate placement for a diagnostic evaluation of this Student?
5. If the answer to Issue 4 is “YES”, is the Parent entitled to reimbursement for their unilateral placement at White Oaks School and all related expenses and evaluations for that placement?

PROCEDURAL HISTORY:

The complaint was filed by the Parent on February 9, 2015; a prehearing conference was held on March 26, 2015. The initial due process hearing date was April 30, 2015; this was subsequently moved to May 14, 2015, with the final decision and order date extended to May 26, 2015. The Board filed a Motion to Dismiss on April 24, 2015; the Hearing Officer allowed the Parents to respond to the Motion by May 8, 2015; the Parent filed an Objection to the Motion to Dismiss on May 3, 2015.

Through its motion, the Board argued that the Parent was requesting a ruling (to reimburse the Parent for a diagnostic placement) on subject matter over which the Hearing Officer lacked jurisdiction and that was specifically barred by Connecticut statute; therefore, the Board argued that dismissal was mandated. The Board further argued that the Parent never claimed the purpose of the unilateral placement was for any purpose other than a diagnostic evaluation. The Parent argued that the Board failed to make the diagnostic placement within a reasonable period of time, thus forcing the Parent to place the Student unilaterally. The Parent provided no statutory or regulatory justification that would allow a Parent to unilaterally place a child for diagnostic purposes or that would override the Board’s right to choose its own evaluator. The Board informed the Parent that the placement had not been recommended by the Planning and Placement Team and that the Board objected to the Parent’s chosen placement. Through the objection to the Board’s motion, the Parent admitted that it was a diagnostic evaluation (placement is the word used by the Parent, indicating that a diagnostic evaluation was considered a placement by some states and courts; Connecticut is not one of those states). Without an argument other than one which essentially agreed with the Board’s position, the Hearing Officer had

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no basis on which to deny the Motion to Dismiss; the Motion to Dismiss was granted without prejudice. The Parent also filed a request to Amend the Complaint; this was not addressed as the granting of the Board's motion ended the case.

FINAL DECISION AND ORDER:

The complaint is DISMISSED, without prejudice, as the Board's Motion to Dismiss has been granted.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).


Hearing Officer Signature

Robert L. Skelley, Esq.

Hearing Officer Name in Print