

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parent: Courtney Spencer, Esq.
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Appearing on behalf of the Board: Marsha Belman Moses, Esq.
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Appearing before: Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide an appropriate Individualized Education Program (IEP) and placement for the Student for the 2009-2010 school year?
2. If the finding on Issue No.1 is negative, is the Student entitled to any form of compensatory education?
3. Is the Board responsible for funding the 2010 summer program for Student at the Ben Bronz Academy?
4. Did the Board provide an appropriate IEP and Placement for the Student for the 2010-2011 school year?
5. If not, is the Ben Bronz Academy an appropriate placement for the Student?
6. Is the Board responsible for reimbursing certain documented independent evaluations of the Student?
7. Did the Board commit procedural errors, including but not limited to: failure to identify the Student as eligible for special education in a timely fashion; failure to consider and use evaluative information provided by Parents; and failure to develop a safety plan for the Student?

8. Is the Board responsible for funding the Student's current placement at the Ben Bronz Academy, including reimbursing Parents for the initial placement?

PROCEDURAL HISTORY:

This hearing was requested by Parents on October 25, 2010. The Hearing Officer was appointed on October 29, 2010. The date for mailing the decision was January 8, 2011.

A pre-hearing conference was held on November 15, 2010. At that time, the Parties reported that they had agreed to waive the resolution meeting and request mediation from the State Department of Education. The Parties requested an extension of the mailing date for the decision to accommodate settlement negotiations. The Hearing Officer granted that request and pursuant to Section 10-76h-9, Regulations of Connecticut State Agencies (R.C.S.A.) extended the mailing date from January 8 to February 7, 2011. Mediation was scheduled for December 1, 2010.

The hearing was scheduled for January 10 and 13, 2011. On December 2, 2010, the Parties reported that mediation had been unsuccessful and requested that additional hearing dates be scheduled. On December 21, 2010, the Hearing Officer scheduled two additional hearing dates, February 9 and 10, 2011, and to accommodate these additional hearing dates extended the mailing date for the decision from February 7 to March 9, 2011.

On December 23, 2010, Parents filed a Motion Requesting Telephonic Testimony. The Board filed an objection to this motion on December 29, 2010 received by the Hearing Officer on December 30, 2010. The Hearing Officer responded to the Motion concerning telephonic testimony on January 4, 2011, allowing such testimony with five conditions.

On December 30, 2010, the Board filed a Motion to Observe the Student in his current placement. On January 5, 2011, Parents reported that they were "finalizing a settlement agreement" and requested that the first two hearing dates, January 10 and 13, 2011, be postponed and that an extension of the deadline of January 6, 2011, for their response to the Motion to Observe, be granted. The Hearing Officer granted this request on January 6, 2011 postponing the first two hearing sessions and extending the deadline for response to January 13, 2011. On January 10, 2011 Parents requested a second extension of the deadline for responding to the Board's Motion to Observe, from January 13, 2011 to January 27, 2011. On January 12, 2011, the Hearing Officer responded with a discussion of scheduling issues and extended the date to January 27, 2011. Having received no response from Parents to the Motion to Observe, the Hearing Officer granted that motion on January 30, 2011.

On January 29, 2011, the Hearing Officer emailed the Parties concerning the scheduled convening of the hearing on February 9, 2011. On February 6, 2011, the Hearing Officer sent another email to the Parties, confirming that the hearing would convene on February 9, 2011. She quoted both Section 10-76h-9 (a), R.C.S.A. and a statement in her memorandum summarizing the November 15, 2010 pre-hearing conference, reminding the Parties that a case could be dismissed for failure to communicate with the Hearing Officer.

The Parents responded on February 6, 2011, citing difficulties in finalizing the settlement agreement, "multiple snow days" [closing schools] and a death in the Parents' family for the delay. The Hearing Officer was asked if she "would accept" a withdrawal of the hearing request if the settlement agreement was finalized "this week". On February 7, 2011, Parents reported that although there was agreement on the basic terms of the settlement, "there are still outstanding issues". A further comment was: "At this point the withdrawal would be without prejudice". The Hearing Officer cancelled the hearing sessions scheduled for February 9 and 10, 2011 and awaited further communication.

All motions and objections not previously ruled upon, if any, are hereby overruled.

SUMMARY:

The Student enrolled in the Board's school on June 4, 2009, was evaluated for special education and in October 2009, was found eligible for special education as having a specific learning disability. Difficulties in school continued and Parents enrolled him in the summer program at the Ben Bronz Academy in 2010. After a difficult start at public school in the fall of 2010, Parents enrolled Student at the Ben Bronz Academy and requested a special education hearing.

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g and related regulations at 34 C.F.R. § 99, the following decision uses "Student", "School", "Parent", and titles of school staff members and other witnesses in place of names and other personally identifiable information.

FINAL DECISION AND ORDER:

Having received no further communication from the Parties concerning settlement or convening the hearing, this matter is DISMISSED without prejudice, pursuant to Section 10-76h-9 (e).