

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

February 3, 2011

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Final Decision and Order 11-0207

Student v. Westport Board of Education

Appearing on behalf of the Parents: *Pro se*

Appearing on behalf of the Board: Attorney Marsha Belman Moses, Berchem, Moses & Devlin, P.C., 75 Broad St., Milford, CT 06460

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board's proposed program for the Student for the 2010-11 school year was appropriate.
2. If not, whether the Parents' placement of the Student at Eagle Hill is appropriate.

**PROCEDURAL HISTORY/DISCUSSION:**

This hearing request was submitted to the Department of Education, but the Board attorney did not receive the request for hearing until the date of the prehearing conference on December 6, 2010.

The parties submitted this case for mediation, which was unsuccessful.

On the first hearing date, the Parents were not present. The hearing convened, and the Board was directed to contact the Parents to ascertain if they were going to appear at the hearing. After several attempts, the Board was able to reach the Father who reported that he thought the advocate had notified the Board and the hearing officer that he wanted to withdraw the hearing request without prejudice. No such notification was received.

The Father submitted a notice via email while the hearing officer and Board attorney and staff were still at the hearing. That notification indicated that he did "not want to pursue a hearing at this time, without prejudice."

The Board attorney urged the hearing officer to dismiss the case with prejudice, as the Board had expended substantial costs and time in preparation for the hearing, including meeting with staff, preparing the exhibits and appearing at the hearing.

Although the Board has no doubt expended money and time in preparation for the hearing, this was the first request for hearing filed by the pro se Parents and the Parents failed to appear on the first day of hearing. A dismissal with prejudice would be too severe of a penalty for Parents who may have merely received inappropriate advice from an advocate. The Parents are cautioned, however, that nonappearance at a hearing or other failure to prosecute a re-filed claim could potentially result in a dismissal with prejudice in the future. Regs. Conn. Agencies § 10-76h-18.

This matter is dismissed without prejudice.

**FINAL DECISION AND ORDER:**

The matter is **DISMISSED**, without prejudice.