

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parent:

Parent, *Pro se*

Appearing on behalf of the Board:

Marsha Belman Moses, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Parents' Issues:

1. Does the Student require a full day program of special education to address his disability?
2. Does the Student require a full day extended year program (ESY) during the summer of 2011?

Board's Issues:

1. Is the special education program offered by the Board appropriate to the Student's needs?
2. The Parents initially consented to an evaluation of the Student by a Clinical Psychologist; the appointment was cancelled by a family emergency and has not been rescheduled. Is this evaluation necessary at this time?

PROCEDURAL HISTORY:

This hearing was requested by Parents on March 10, 2011, although the request was not received by the Board until March 17, 2011. The Hearing Officer was appointed on March 14, 2011. The date for mailing the decision was May 31, 2011.

A pre-hearing conference was held on March 25, 2011. At that time, the Parties reported that they were requesting mediation. The hearing was scheduled for April 26, 2011. In

the March 25, 2011, memorandum accompanying the notice of hearing dates was notice concerning communications to the Parties from the Hearing Officer:

If the Parties fail to respond to communications from the Hearing Officer, this matter may be DISMISSED.

The hearing date was postponed to accommodate continuing settlement negotiations, and the decision date was extended to May 26, 2011, and again extended to June 25, 2011. The hearing convened on May 27, 2011. The hearing was adjourned to provide time for Parents to meet with the Psychologist who had evaluated the Student and, if necessary, attend another Planning and Placement Team (PPT) meeting.

On May 31, 2011, Parents requested an independent evaluation because they disagreed with the Board's evaluation. The Board refused to fund such an evaluation, and requested a hearing as required by 34 CFR § 300.502 (b) (2) (i). This Hearing Officer was assigned case 11-0514.

By email dated July 13, 2011, Parents wrote:

Please notice that In order to process with a formal legal action, we are going to drop this pending case. Thanks.

The Board's Attorney responded, asking for more details and reminding them that the Board had filed the second case and would not withdraw that unless Parents withdrew their request for an independent evaluation.

The Hearing Officer also responded to the Parent on July 13, 2011:

Dear [Parent]:

Am I correct that you are withdrawing your request for a special education hearing, which is Case number 11-0349?

Case #11-0514 was requested by the [] Board of Education. As Attorney Moses has explained in her email, this case will go forward unless the Board withdraws its request for a hearing.

The decision date was again extended, to July 30, 2011. On June 20, 2011, the Parents requested that the hearing scheduled for July 11 be postponed until "sometime in mid August". The Hearing Officer responded on July 21, 2011, that another extension of the decision date would be required and offered three dates in August. The Parents responded the same day, "That is fine with me." The Hearing Officer extended the decision date to August 29, 2011.

By email dated July 18, 2011, the Hearing Officer summarized the history of the case, concluding:

I have not received a response from you to my July 13 [2011] email. If I do not hear from you before July 22, 2011, I will be DISMISSING case #11-0349 without prejudice.

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

SUMMARY:

The Parents requested a full-day program for their three-year-old son, who had been diagnosed as having autism. The Board arranged for an evaluation by a psychologist who confirmed serious developmental delays. The Psychologist's report suggested a longer school day to accommodate intensive speech/language therapy. The Parents disagreed, continuing their request for a full day program and a full day extended year program.

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.

CONCLUSIONS OF LAW:

Section 10-76h, Connecticut General Statutes (C.G.S.), and related regulations at Section 10-76h, Regulations of Connecticut State Agencies, authorize an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Sections 4-181a of the C.G.S. Section 20 U.S.C. § 1415(f) and related regulations at 34 C.F.R. § 300.511 through § 300.520 also authorize special education hearings.

Because the second case involving the Board and this family, Case No. 11-514, was initiated by the Board, it will continue unless the Board withdraws their request for hearing.

FINAL DECISION AND ORDER:

The Parents having made an ambiguous request to withdraw their request for hearing and having failed to respond to inquiries requesting more information, Case No. 11-0349 is DISMISSED without prejudice.