

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 9

Appearing on behalf of the Parents: Attorney Andrew A. Feinstein  
Law Offices of David C. Shaw, LLC  
34 Jerome Avenue, Suite 210  
Bloomfield, CT 06002-2463

Appearing on behalf of the Board: Attorney Michael P. McKeon  
Sullivan, Schoen, Campane & Connon, LLC  
646 Prospect Avenue  
Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the Student a student with a disability who qualifies for special education services?
2. Did the District offer FAPE to the Student for the 2003-04 school year?
3. Did the District offer FAPE to the Student for the 2004-05 school year?
4. Did the District offer FAPE to the Student for the 2003-04 extended school year?
5. Can the District utilize a diagnostic placement for the purposes of determining eligibility, rather than for purposes of determining an appropriate program?

**PROCEDURAL HISTORY**

The Parents requested this hearing on June 14, 2004 via a faxed letter from the Parents' attorney. This hearing officer was assigned to the case on June 16. The Parents' attorney also mailed the original hard copy of his letter and a second hearing officer was assigned to the case. A prehearing conference was held on June 29 with the Parents' attorney only since the Board's attorney did not answer his telephone. Hearing dates were scheduled for July 22, 26, 27 and 28. Parties were ordered to file exhibits and witness lists by July 15. The Board's attorney wrote to the Hearing Officer on June 29 and reported that he thought the other hearing officer would schedule a prehearing conference and assumed

that this Hearing Officer would not proceed with the scheduled prehearing. He stated that the hearing dates selected were good for him. The Parents timely filed their witness list and exhibits by July 15, but the Board filed nothing.

On July 22, the hearing convened with both parties present. The parties requested and were granted time to discuss a possible settlement of the case. The Board's attorney was advised that no exhibits or witness list was received from the Board. The Parents' attorney stated that he had received these documents from the Board. After some discussion, the parties advised the Hearing Officer that an agreement had not been reached, but that they wished to utilize the remainder of the day for further discussions. The hearing convened on the record for preliminary matters. The Board's attorney reported that the Board had mailed its exhibits to the other hearing officer and would hand-deliver a set to this Hearing Officer on July 23 if the case was not settled. The Board filed a list of witnesses. The Parents' attorney requested a postponement of opening statements and the taking of testimony, which was granted. The parties were advised that the decision deadline was July 29 and that no extension had been requested. The Parents' attorney was directed to report to the Hearing Officer by 5:00 p.m. on July 22 as to the status of the case. The Parents' attorney sent a letter in the late afternoon of July 22 stating that the parties have "reached a framework of an agreement to resolve the case." He requested that the hearings for July 26, 27 and 28 be cancelled. He stated that as soon as the final agreement is executed "the parents will be withdrawing their request for hearing with prejudice." On July 23, the Hearing Officer wrote to the parties advising them that the hearings were cancelled for July 26, 27 and 28 and that the case would be dismissed without prejudice.

#### **FINAL DECISION AND ORDER**

It is ordered that the case be dismissed without prejudice.