

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Middletown Board of Education

Appearing on behalf of the Student: Attorney David C. Shaw  
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Appearing on behalf of the Board: Attorney Linda L. Yoder  
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Appearing before: Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

The Student's attorney submitted a Statement of Issues on July 13, 2005 [Exhibit H.O.-2] which identified the following issues for this hearing:

1. Whether the Board has proposed a free and appropriate public education for the Student for the 2005-2006 school year.
2. Whether the Student's program shall include the related services as requested by the Student as the Student alleges that her 2005-2006 IEP is not appropriate in that it does not provide for transportation to and from her job exploration and work experience provided for in the 2005-2006 IEP, and that it does not provide for payment for a driver's education program as recommended by the expert consultants.
3. Whether the IEP does not provide for an education that is *free* in that the amounts the Student is paid for the work experience called for in her IEP have been reported to the United States Department of Housing and Urban Development which in turn has reduced the family's Section 8 housing subsidy and increased the rent the family must pay to remain in their apartment.
4. Whether the Student/Family is entitled to payment of costs, expert fees and attorneys' fees associated with this action.

**PROCEDURAL HISTORY/DISCUSSION:**

This matter was filed on June 29, 2005, and assigned to this hearing officer on July 6. A prehearing conference was held on July 12, and a scheduling order issued, which provided that the parties shall submit a statement of issues on or before July 14. The Student's attorney submitted a statement of issues on July 13 [Exhibit H.O.-2], and the Board's attorney submitted a response to the Student's Statement of Issues on July 14. [Exhibit H.O. 3]

The hearing convened on July 21. At the hearing, the Student's attorney requested that issue number 3, which relates to a claim that the family's Section 8 rent subsidy was improperly reduced due to the Student's earnings in her special education program be withdrawn by agreement of both parties. That request was granted, and issue number 3 was severed from this case. The Student retains the right to litigate that issue in a separate action.

At the hearing the attorneys for both parties reported that the parties had entered into a settlement agreement on the remaining issues, and submitted the Settlement Agreement as an exhibit. [Exhibit P1] This agreement provided as follows:

Settlement agreement

*The parties agree to resolve the issues raised in [the Student's] hearing request of June 29, 2005 (Administrative Due Process Hearing 05-206) on the following terms and conditions:*

1. *The Middletown Board of Education will pay the reasonable costs related to [the Student's] attendance at driving school for actual driving instruction in a vehicle and any related classroom instruction. The Board will continue to retain Futures, Inc. to provide or arrange for support relating to the preparation for and taking of the written portion of the driving test.*
2. *The Board will provide or arrange transportation to/from the vocational experience called for in the Student's special education program. A written transportation plan to implement this will be developed by the PPT, including the consultant from Futures, Inc., at the earliest practicable date. Futures, Inc. will notify the Board within twenty-four hours if there is a problem with [the Student's] transportation.*
3. *The hearing issue alleging that the family's rent subsidy was improperly reduced because of earnings [the Student] received during her special education program will be withdrawn by agreement. By agreeing to settle this matter [the Student] is not waiving her claim that using the earnings from her special education program to reduce her family's federal rent subsidy violates the IDEA.*
4. *The services listed in paragraphs 1 and 2 above will be included in [the Student's] IEP.*

5. *The school will pay the reasonable costs and attorney's fees associated with this hearing incurred through the date of this settlement, currently \$3,262.50.00*
6. *This Settlement Agreement will be presented to the hearing officer with a request that she approve the Agreement, grant the parties' request to withdraw the rent subsidy issue described in paragraph 3 above, and order the implementation of the Agreement.*
7. *This Agreement resolves all issues, including related claims for costs and attorney's fees that were raised in [the Student's] request for hearing dated June 29, 2005, except the issue set forth in paragraph 3 above.*

[Exhibit P-1]

In accordance with the agreement of both parties, the Student's attorney presented this agreement to the hearing officer, with a request that the Agreement be approved, and a request that the hearing officer order the implementation of the Agreement.

The Student's attorney's request that the Agreement be approved and that the implementation of the Agreement be ordered was a reasonable request, which could not be granted under current Connecticut regulations. The Student's attorney was seeking the "administrative analog of a consent decree." *See, e.g. A.R. v. New York City Department of Education*, 105 LRP 24105 (U.S. Court of Appeals, 2<sup>nd</sup> Circuit, June 3, 2005) "Consent orders incorporating settlements are an essential part of adjudicative decision-making . . . [a] consent order is an agreement reached in an administrative proceeding between parties . . . [i]f [the agency accepts the agreement], it issues an order much as a court issues a consent decree. " *A.R. v. New York City Department of Education, Id., citing Alfred C. Aman, Jr. & William T. Mayton, Administrative Law Sec. 9.5. 2 at 279; Charles H. Koch, Jr., Administrative Law and Practice Sec. 5.43, at 155 (2d Ed. 1997).*

In Connecticut special education hearings, however, we are constrained by a regulation adopted July 1, 2000 which expressly prohibits hearing officers from issuing settlement agreements as a final decision and order. The regulatory provision provides that "[a] settlement agreement shall not constitute a final decision, prescription or order of the hearing officer. The settlement agreement may be read into the record as an agreement between the parties only." Regs. Conn. Agencies Sec. 10-76h-16(d) Therefore, the Student's request that the settlement agreement be approved, and that the hearing officer order the implementation of the Agreement must be denied.

As the parties have resolved this case through their Settlement Agreement, except for Issue 3 which has been withdrawn by the Student's attorney and severed from this case, this matter shall be dismissed.

**FINAL DECISION AND ORDER:**

The matter is **DISMISSED**.