

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student v. Darien Board of Education

Appearing on behalf of the Parent: Attorney Tracey Spencer Walsh  
Mayerson & Associates  
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New York, NY 10018

Appearing on behalf of the Board: Attorney Susan C. Freedman  
Shipman & Goodwin, LLP  
One Constitution Plaza  
Hartford, CT 06103-1919

Appearing before: Attorney Janis C. Jerman, Hearing Officer

**FINAL DECISION AND ORDER**

A special education hearing in the above-captioned matter was requested by the Student via letter dated October 5, 2009. It was received by the Board of Education on that same date. Therefore, the 30-day resolution period runs through November 4, 2009. The deadline for mailing the final decision and order is December 19, 2009.

A pre-hearing conference was held on October 27, 2009. Attorney Walsh appeared on behalf of the Student and Attorney Freedman appeared on behalf of the Board of Education. The following issues were identified:

1. Did the Board of Education properly constitute the July 5, 2009 and July 29, 2009 IEP meetings?
2. Did the Board of Education properly prepare Student's IEP for the 2009-10 school year?
3. Is Student's IEP for the 2009-10 school year reasonably calculated to provide Student a free appropriate public education?
4. Is the Student entitled to compensatory education if the answer to any of the above issues is no?

The Board of Education filed a Motion to Strike/Sufficiency Challenge dated October 20, 2009. The Student requested and was granted an extension until October 30, 2009 to submit a reply brief. Prior to the filing of a reply brief, the Board of Education notified the Hearing Officer that the parties had reached a

settlement and were finalizing the agreement. The Board of Education withdrew its Motion to Strike/Sufficiency Challenge without prejudice pending execution of a settlement agreement. The parties were given until November 18, 2009 to either withdraw the case or to proceed with a scheduling order.

On November 18, 2009, the Student notified the Hearing Officer in writing that the case was settled and that the parties were waiting final execution of the settlement agreement. The Student sought to withdraw the request for due process without prejudice and upon the condition that the withdrawal will be deemed to be with prejudice automatically upon receipt of the executed agreement. On November 19, 2009, the Hearing Officer notified the parties that a conditional order will not be granted. The parties were notified that, absent an unconditional request to withdraw (either with or without prejudice) or another appropriate filing, the matter would be dismissed with prejudice on November 30, 2009 based upon the represented settlement agreement and failure to prosecute.

A previous order of the Hearing Officer indicated that if the request for hearing is to be withdrawn, the party who requested the hearing must submit the request for withdrawal in writing. On November 20, 2009, the Board of Education sent the Hearing Officer a fully executed settlement agreement and indicated that the agreement states that the due process hearing request will be withdrawn with prejudice. The Board of Education was not the party that requested the due process hearing. The Hearing Officer did not receive an unconditional request for withdrawal from the Student (the party requesting the due process hearing).<sup>1</sup>

### **FINAL DECISION AND ORDER**

In light of the above facts, the above-captioned case is hereby dismissed with prejudice.

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<sup>1</sup> The settlement agreement contains a confidentiality clause with an exception as necessary to enforce the agreement. The Hearing Officer believes that disclosure of the terms of the settlement agreement was not necessary in this case. The proper avenue for enforcing the withdrawal clause is for the party who filed the request for due process to make a written request for withdrawal, as indicated in the Hearing Officer's October 27 memorandum to the parties.