

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student v. Darien Board of Education

Appearing on behalf of Student: Attorney Nora Belanger  
Law Office of Nora Belanger, LLC  
10 Wall Street  
Norwalk, CT 06850

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 Student's Attorney via Letter dated August 16, 2010.<sup>1</sup> It was received by the Board of Education ("BOE") on August 20. The thirty-day resolution period ran through September 19 and the original deadline for mailing the final decision and order was November 3.

A pre-hearing conference was scheduled for September 2. Attorney Belanger appeared on behalf of Student and Attorney Freedman appeared on behalf of BOE. The parties began to discuss the issues and BOE's Attorney indicated an intention to file a motion to dismiss based on the statute of limitations and a sufficiency challenge. Prior to completing the discussion, the parties and Hearing Officer were disconnected from the conference call service and unable to re-access the service. The Hearing Officer communicated with the parties via e-mail to reschedule the conference call for September 13.

On September 7, BOE's Attorney filed a pleading challenging the sufficiency of the due process request, moving to strike certain portions of the due process request, and seeking an order closing the hearing to the public. On September 7, the Hearing Officer issued a scheduling order indicating that 1) pursuant to 34 C.F.R. § 300.508(d)(2), a sufficiency determination would be made by September 12; and 2) pursuant to Connecticut State Agency Regulations Section 10-76h-8, Student had seven calendar days, until September 14, to file objections to the motion to strike and the motion to close the hearing to the public.

On September 7, Student's Attorney indicated that the parties agreed to mediation, that Parents are prepared to respond to the motions, and that they request that such procedural issues be delayed until after

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<sup>1</sup> All dates are 2010 unless otherwise indicated.

mediation. BOE's Attorney did not object. The request to suspend, until seven days after mediation, responses to the motions to strike and to close the hearing was granted.

On September 12, the Hearing Officer deemed the due process request sufficient. A pre-hearing conference was held on September 13. The following issues were identified:

1. Did the Board of Education fail to provide a free appropriate public education for Student from August 20, 2008 to the end of the 2008-09 school year?
2. Did the Board of Education fail to provide a free appropriate public education for Student for the 2009 extended school year?
3. Did the Board of Education fail to provide a free appropriate public education for Student for the 2009-10 school year?
4. Did the Board of Education fail to provide a free appropriate public education for Student for the 2010 extended school year?
5. Did the Board of Education fail to propose a free appropriate public education for Student for the 2010-11 school year?
6. Did the Board of Education violate Student's Parents' procedural rights by failing to allow them to be equal participans in the IEP process, by failing to address their concerns, by predetermining Student's placement prior to the PPT, or by failing to evaluate or observe Student to determine current level of performance in order to write IEP goals?
7. If the answer to any of the issues one through six above is answered in the affirmative, what shall be the remedy?
8. If the answer to any of the issues one through six above is answered in the affirmative, is Eagle Hill School an appropriate placement for Student?
9. If the answer to issue eight above is in the affirmative, should the Board of Education reimburse Student's Parents for costs associated with Student's placement at Eagle Hill School?
10. Is Student entitled to compensatory education?

On September 15, Student's Attorney filed a request for an extension of the mailing date, as discussed at the pre-hearing conference, to permit the parties time to participate in mediation. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to December 3. Hearings were scheduled for October 27, 28, and 29.

Mediation was scheduled for October 21. Student's Attorney requested that the three hearing dates be rescheduled so that the parties were not required to commit time and incur attorneys fees preparing exhibits prior to mediation. After fully considering the positions of the parties, the request was granted. The hearing was rescheduled for November 2.

On October 23, Student's Attorney informed the Hearing Officer that the parties reached an agreement in principle at mediation and that they will indicate when they have a fully executed settlement agreement. On October 24, BOE's Attorney indicated that the parties had not completed the written agreement, that they expect to complete it within the next few days, and that they agreed to postpone sending exhibits, with the Hearing Officer's consent, to allow time to complete the written agreement.

On October 26, Student's Attorney indicated that the parties were working to finalize the settlement agreement and that they expected to do so by October 27 since Parents' responses to BOE's motions were due on October 28. Student's Attorney filed Parents' witness list and exhibits on October 26.

On October 26, BOE's Attorney indicated that the agreement had been reduced to writing, that BOE understood that the parties agreed not to expend funds on sending exhibits in light of the agreement, and that BBOE waives Parents' need to respond to BOE's motions.

On October 28, Student's Attorney filed a withdrawal with prejudice based on the settlement.

### **FINAL DECISION AND ORDER**

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