

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Berlin Board of Education

On behalf of the Parents:

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On behalf of the Board:

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Before Hearing Officer:

Scott P. Myers, J.D., M.A. (Clinical Psychology)

**FINAL DECISION AND ORDER**

**ISSUES**

As set forth in the July 7, 2004 supplemental order, as of the date of this Final Decision and Order, the issues to be resolved at hearing were as follows:

1. Does the reading portion of the extended school year (“ESY”) program offered by the Board to the Student for the summer of 2004, as reflected in the IEPs developed at the January 29, 2004 and/or April 6, 2004 PPTs, provide the Student with FAPE in accordance with the requirements of the applicable legal standard and, if not, what relief should be provided?
2. With respect to those aspects of the January 29, 2004 and/or April 6, 2004 PPTs and IEPs concerning ESY programming for the Student for the summer of 2004, did the Board comply with its procedural obligations under the IDEA and, if not, what relief should be provided?
3. Is a reading assessment using the DIBELS required to provide FAPE to the Student in the area of reading?

**SUMMARY/PROCEDURAL HISTORY**

By letter dated May 26, 2004 from their attorney, the Parents requested a due process hearing to challenge the ESY programming offered by the Board to the Student for the summer of 2004. The Parents allege that the Board’s ESY program was focused on preventing regression. The

Parents allege that they had requested (and the Board had refused to provide) an ESY program that would “focus on developing new skills in reading [and] be implemented by properly trained staff.” The Parents also allege that the Board had refused to accept the recommendation of an independent consultant to administer a DIBELS test to determine how the Student’s current reading levels compared with those expected of other first graders.

A telephonic pre-hearing conference (“PHC”) was convened on June 16, 2004. Counsel for the Board and for the Parents participated. Based on the representations of counsel for the parties at the PHC, there is no dispute between the parties that the Student is eligible to receive special education and related services under the applicable Federal and Connecticut special education laws, and no dispute that the Student is entitled to ESY programming for the summer of 2004. To expedite completion of this case in light of the commencement of the Student’s ESY programming on June 28, 2004 as requested by the Parents, the Hearing Officer offered the parties the opportunity to conduct this hearing in the evening and a tentative evening hearing date for June 24, 2004 was discussed. The Board subsequently advised that that date would not be feasible, and that hearing date was thereafter cancelled. Hearing was rescheduled for July 14, 2004 and the date for the issuance of the Final Decision and Order was extended to and including July 20, 2004 from July 12, 2004.

In accordance with the June 17, 2004 scheduling order, the parties thereafter exchanged and submitted witness lists and exhibits, as described in the July 7, 2004 supplemental order. On July 13, 2004, counsel for each party contacted the Hearing Officer separately to advise that a settlement of this matter was being finalized. Each party requested that the scheduled July 14, 2004 hearing date be cancelled and that request was granted.

By letter dated July 15, 2004, counsel for the Parents submitted an executed “Agreement to Accept Offer of Judgment.” Among other things, that Agreement provided in Paragraph 5 that: “This Acceptance of the Board’s Offer of Judgment is submitted to the Hearing Officer for approval and entry of judgment in full resolution of the pending hearing.” Counsel for the Parents in his July 15, 2004 transmittal requested that the Hearing Officer enter an order approving the Agreement between the parties.

## **FINDINGS OF FACT**

Based on oral and written representations of counsel for the parties:

1. The Student is eligible to receive special education and related services, including ESY programming for the summer of 2004, under the applicable Federal and Connecticut special education laws.
2. The Parties have settled the disputes between them that led to the request for this hearing.

**CONCLUSIONS OF LAW**

Section 10-76h-16(d) of the Regulations of Connecticut State Agencies (the "Regulations") 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." Pursuant to this Regulation, the Hearing Officer cannot adopt the settlement agreement as a Final Decision and Order in this matter. To the extent that the request that the Hearing Officer "approve" the Agreement is a request to enter the Agreement as a Final Decision and Order, the Hearing Officer cannot do that either. Testimonial evidence was not taken in this matter and a hearing was not convened. In the circumstances, to effectuate the provision of Regulation 10-76h-16(d) that a Hearing Officer "may read [a settlement agreement] into the record" and to the extent doing so advances the request of the Parents in the July 15, 2004 transmittal and is not inconsistent with Regulation Section 10-76h-16(d), the Hearing Officer enters the following as the Final Decision and Order in this matter.

**FINAL DECISION AND ORDER**

1. The "record" is hereby opened for the limited purpose of marking: (a) as exhibit H.O. 1 the May 26, 2004 request of the Parents for a due process hearing; and (b) as exhibit H.O. 2 the July 15, 2004 transmittal from counsel for the Parents and the attached "Agreement to Accept Offer of Judgment." All other exhibits submitted by the parties are marked for identification only.
2. This matter is dismissed with prejudice.