

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Cheshire Board of Education

Appearing on behalf of the Parents: Attorney David C. Shaw
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Bloomfield, CT 06002

Appearing on behalf of the Board: Attorney Marsha Belman Moses
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75 Broad Street
Milford, CT 06460

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide the Student with an appropriate IEP for the 2004-2005 school year?
2. Should the Student, who is identified as in need of special education under the classification of intellectual disability, be placed in regular education with supplementary aids and supports and modifications to the curriculum?

PROCEDURAL HISTORY

On February 15, 2005 the Parents filed a due process request seeking a hearing to challenge the appropriateness of the IEP and the failure of the Board to comply with the IDEA. The case was assigned to this Hearing Officer on February 16, 2004. By way of relief they request the appointment of a mutually acceptable independent consultant to assist in the development and implementation of an appropriate IEP and regular classroom placement with appropriate supplementary aids and supports and modifications to the curriculum in accordance with the recommendations of the independent evaluator. They also request payment of the fee of the independent evaluator. The request was virtually identical to Case No. 04-393, which was dismissed by this Hearing Officer on February 9. On February 22 a lengthy prehearing conference was held. The Parents' attorney stated that the Parents claimed the right to a hearing even though the Board was willing to comply with all the relief requested. The Hearing Officer raised the question of jurisdiction and asked the parties to brief the issue. The

Parents' brief was due on March 1, the Board's brief on March 8 and Parents' reply brief on March 11. A hearing date was agreed on for March 16. On March 1, the Parents' attorney faxed a letter to the Hearing Officer stating that the matter was resolved through a written settlement agreement and that the Parents would not be submitting a brief. On March 8, the Board's attorney wrote a letter requesting that the case be dismissed with prejudice. The Hearing Officer wrote to the parties on March 9 advising the parties that the March 16 hearing was cancelled and that the case would be dismissed with prejudice unless the Parents' attorney filed an objection by March 15.

On March 14, the Parents' attorney filed an objection to the dismissal with prejudice on the basis that a dismissal with prejudice is not appropriate unless it is used as a sanction where a party has been defaulted or violated any rule or order of the hearing officer. He also claimed a denial with prejudice would violate Regs. Of Conn. State Agencies Section 10-76h-16, which deprives hearing officers of jurisdiction to base a final decision on a settlement agreement. The Board's attorney did not file any further argument on the request.

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Conn. State Regs. Section 10-76h-18(a) provides: "Any party may move for, or the hearing officer may order, sua sponte, an entry of default in or dismissal of a hearing for failure of any party: (1) to prosecute a hearing The hearing officer may grant the motion with or without prejudice." It is ordered that the case be dismissed with prejudice.