

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education and Norwalk Board of Education v. Student

Appearing on behalf of the Guardian (Grandparent): Attorney Anne I. Eason  
Law Offices of Anne I. Eason, LLC  
10 Wall Street  
Norwalk, CT 06850

Appearing on behalf of the Board of Education: Attorney Marsha Belman Moses  
Attorney Amy Corbett Dion  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, CT 06460

Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES**

1. Did the Board provide a free appropriate public education (“FAPE”) to the Student for the period of time from December 17, 2007 through the end of the 2007-2008 school year to meet his needs in the areas of reading, writing, math, speech and language, social and emotional issues and behavior, including an appropriate functional behavior assessment and behavior improvement plan?
2. Did the Board provide a FAPE to the Student for the 2008-2009 school year to meet his needs as set forth in paragraph 1?
3. Did the Board propose a FAPE to the Student for the 2009-2010 school year to meet his needs as set forth in paragraph 1?
4. Should the Board have provided an extended school year program for the Student for the summers of 2008 and 2009?
5. Did the Board commit procedural violations regarding the Grandparent’s participation as a member of the planning and placement team and his request for an independent educational evaluation?
6. Should the Board be required to reimburse the Grandparent for Dr. Rena Schine’s evaluation and any other evaluations he obtained to prepare for the hearing?
7. Is the Grandparent entitled to compensatory education in the form of a residential placement or additional services to compensate for the services not provided or offered to the Student since December 17, 2007?

8. Was the Board's academic assessment of the Student appropriate and is the Board obligated to conduct an independent academic assessment at public expense?

### **PROCEDURAL HISTORY**

The Guardian (Grandparent) faxed a letter to the State Department of Education ("SDE") on June 22, 2009 requesting a due process hearing. This Hearing Officer was assigned to the case on June 29, 2009. The Board received a copy of the request on July 16, 2009. A prehearing conference was held on July 21, 2009. The Board's attorney stated that she would file a sufficiency challenge to the complaint by July 30, 2009, which was filed on July 29, 2009. One hearing date was agreed on for September 9, 2009 in the event that the Hearing Officer found the complaint sufficient. On August 11, the Hearing Officer issued a ruling finding the complaint insufficient. The Grandparent was given 30 days to file a sufficient complaint. The September 9, 2009 hearing was canceled. On September 8, 2009, the Grandparent faxed a copy of an amended complaint to the Hearing Officer. On September 16, the Board filed a sufficiency challenge to the amended complaint. On September 22, 2009, the Hearing Officer issued a ruling finding the amended complaint insufficient. The Grandparent was given 10 days to file a sufficient complaint. On September 28, 2009, the Grandparent mailed a second amended complaint to the Hearing Officer. On October 14, 2009, the Board filed a motion to dismiss the second amended complaint. A prehearing conference was held on this complaint on October 16, 2009. A hearing on the motion to dismiss was scheduled on November 12, 2009. At the hearing convened on that date, the Grandparent was unable to articulate any legally sufficient issue for a full hearing. The Board requested a dismissal with prejudice, but also agreed to proceed with mediation, which was scheduled on December 17, 2009. The Grandparent requested time to get an attorney to represent him. The Hearing Officer, over the Board's objection, granted him until December 3, 2009 to have an attorney file an appearance and a proposed amended complaint that complies with the sufficiency requirements of IDEA. Otherwise, the case would be dismissed.

On December 3, 2009, Atty. Eason filed an appearance and requested that the case be withdrawn without prejudice. Alternatively, she requested a four-week extension to amend the complaint and prepare for mediation and due process. The Hearing Officer denied the request to withdraw without prejudice and granted a four-week extension to file an amended complaint that complies with the sufficiency requirements of IDEA. If the amended complaint was not filed by December 31, 2009 the case would be dismissed with prejudice as to the 2008-2009 school year. The December 15 mailing date for the final decision was extended to January 25, 2010. The Grandparent's attorney filed an amended complaint on December 30, 2009. A prehearing conference was held on January 12, 2010. The Board was allowed until January 19, 2010 to file a motion to dismiss this complaint. The Grandparent was allowed until January 26, 2010 to file an objection. The Grandparent was allowed until January 19, 2010 to file a motion for an order for the Board to fund an independent evaluation of the Student. The Board was allowed until January 26, 2010 to file an objection. Hearing dates were agreed on for February 22, 2010 and February 25, 2010. The mailing date for the final decision was extended to March 16, 2010.

On February 2, 2010, rulings were issued on these and a motion for an order requiring the Board to file exhibits and witness list five days prior to the Grandparent. The Board's motion was granted in part and denied in part. The hearing was limited to issues occurring on or after December 17, 2007, which was the date the Student registered for school in Norwalk. Several issues in the amended complaint were dismissed. The Grandparent's motion for an independent evaluation was denied without prejudice. His motion regarding witness list and exhibits was denied, however, the Board was ordered to provide an exhibit list to his attorney five days in advance of the filing deadline in order to avoid duplicate exhibits and unnecessary expense to the Grandparent. On February 3, 2010, the Board filed a

request for a due process hearing with the SDE on the issue of whether the Board's academic assessment of the Student was appropriate and whether the Board is obligated to conduct an independent academic assessment at public expense. The case was assigned to another hearing officer. Both parties filed motions to consolidate the cases. After conferring with the other hearing officer, the motions were granted on February 17, 2010.

The hearing on the consolidated cases convened on February 22, 2010 and continued on February 25, 2010. Additional hearing dates were scheduled for March 16, 2010 and March 22, 2010 and April 1, 6, 7, 8 and 19, 2010. The date for the mailing of the final decision and order was extended to May 13, 2010. The March 16, 2010 hearing date was canceled because of a weather-related closing. The hearing continued on March 22, 2010. The attorneys requested time to discuss a possible settlement, which was granted. After nearly two hours, the attorneys stated that there was no settlement agreement. The hearing continued on the record with witness' testimony. Following an extended recess for lunch, the attorneys reported that a settlement agreement had been reached and that they would like to take the remainder of the afternoon to draft a written agreement. The Hearing Officer granted the request, adjourned the hearing and directed the attorneys to file withdrawals by March 26, 2010.

On March 26, 2010. the Hearing Officer received letters from the attorneys. The Guardian's attorney's letter stated that the parties had reached a settlement and that the Guardian was withdrawing the due process request with prejudice. The Board's attorney's letter stated that the parties had reached a settlement and that the Board was withdrawing its due process request with prejudice.

#### **FINAL DECISION AND ORDER**

It is ordered that these consolidated cases shall be dismissed with prejudice.