

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Milford Board of Education

Appearing on behalf of the Student: Attorney Christine Barrington
94 Park Terrace Avenue
West Haven, CT 06516

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

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's Surrogate Parent via Request for Impartial Special Education Hearing dated June 4, 2010.¹ It appears to have been received by the Board of Education on June 8. The thirty-day resolution period ran through July 8 and the deadline for mailing the final decision and order is August 22, 2010.

A pre-hearing conference was held on June 30 at 1:00 p.m. Attorney Barrington appeared on behalf of Student. No one appeared on behalf of the Board of Education. The Hearing Officer e-mailed Attorney Moses at 1:05 asking her to join the conference call and then waited until 1:10 before proceeding without her. Subsequently, Attorney Moses indicated that she was not able to access the call-in number in time. The following issues were identified:

1. Did the Board of Education appropriately exit Student from special education?
2. Did the Board of Education provide Student with a free appropriate public education during the 2008-09 school year?
3. Did the Board of Education provide Student with a free appropriate public education during the 2009-10 school year?
4. Did the Board of Education offer Student a free appropriate public education for the 2010-11 school year?
5. If the answer to any of the above questions is in the negative, what shall be the remedy?

¹ All dates are 2010 unless otherwise indicated.

The parties participated in a resolution session on June 25. The Board of Education submitted a proposed resolution. Student's Foster Parents were on vacation through July 5. Student's Surrogate Parent indicated that Student's Foster Parents and Department of Children and Families Case Worker need to review the proposal and that she was hopeful that the matter will settle.

The parties were given until July 6 to indicate their availability for hearing on certain dates enumerated by the Hearing Officer. On July 6, Student's Surrogate Parent filed a Motion to Withdraw without Prejudice. She represents the following in support of the Motion:

1. Student is 10 years 4 months old and prior to December 8, 2008, was a student identified as eligible for special education services as a student with an orthopedic impairment entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals With Disabilities Education Improvement Act ("IDEA").
2. A Planning and Placement Team ("PPT") met and recommended Student be exited from special education and a 504 plan developed to accommodate her educational needs.
3. On April 20, 2010, a PPT convened for the purposes of determining eligibility and after discussion found Student not eligible for special education. Student disagreed and requested an impartial due process hearing.
4. As a result of the resolution meeting, the parties have reached a Resolution Agreement. As a result of the terms and conditions of the Agreement, some of the issues have been resolved to accord and satisfaction.
5. With regard to the other issues raised herein, as this Student's Surrogate Parent, there are opinions of others that she must consider and convey, in addition to her own, and in particular the opinions of the DCF caseworkers and case representatives and foster parents who are now pre-adoptive foster parents. Student's Surrogate Parent has been advised by these persons, after what she believes to be due consideration, that with 1) a change in placement for the 2010-2011 school year as a result of a district-wide re-ordering of the educational system, 2) the anticipation of reuniting with former well-liked Milford school staff at the new school placement, 3) the pending adoption with the current foster parents, 4) a four-week summer experience at camp, and 5) their own personal beliefs about Student's education and receipt of FAPE, they are of the opinion that they would like to try the Resolution Agreement as presented.
6. If in time, such is not appropriate/does not accommodate, then they have advised they will again consider/reconsider a request for special education eligibility.

7. The proposed Resolution Agreement is comprehensive and well intended. It is also well received. However, it does not address/satisfy every issue raised in this request for an impartial hearing.
8. The Board of Education is not prejudiced by granting this motion.

The Hearing Officer queried the Board of Education as to whether they object to the motion to withdraw without prejudice. Attorney Moses responded that the Board of Education is interposing no objection to the motion.

FINAL DECISION AND ORDER

In light of the above facts, the above-captioned case is hereby dismissed without prejudice.