

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Westport Board of Education v. Student  
Student v. Westport Board of Education

Appearing on behalf of the Parents: Attorney Howard Klebanoff  
Attorney Sally R. Zanger  
Klebanoff & Alfano, P.C.  
433 South Main Street, Suite 102  
West Hartford, CT 06110

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

Appearing before: Attorney Patricia M. Strong  
Hearing Officer

**FINAL DECISION AND ORDER**

**PROCEDURAL HISTORY**

The Board filed a hearing request on March 22, 2004. The Board requested that scheduling of a hearing be postponed pending the outcome of mediation, which was held on May 6, 2004. Following the unsuccessful mediation, the Parents presented to the Board their request for due process. On May 7 the Board sent to the State Department of Education the Parents' request for due process and its request to schedule a hearing on the Board's due process case. Hearing Officer Exhibit 1. Another hearing officer was assigned to both cases on May 7. She recused herself on June 6. This Hearing Officer was assigned to the cases on June 7. A prehearing conference was held on June 17. The parties requested an extension of the June 21 decision deadline so that they could schedule mutually convenient hearing dates. The request was granted and the decision deadline was extended to September 23. Hearing dates were agreed on for July 21 and August 30. The parties filed witness lists and exhibits (five for Parents and 57 for Board) on July 14.

The hearing convened on July 21 with Atty. Zanger and the Mother present for the Parents and Atty. Moses and Ms. Gilchrist for the Board. Atty. Zanger requested a postponement of the hearing because the Mother had been hospitalized the previous week and did not feel well enough to testify. She stated that she had notified the Board's attorney the previous afternoon that she would request a postponement. The Board

objected to a postponement because of the short notice and asked why the Father or the 16 year-old Student were not present to testify. The Mother represented that they were out of town and not available, nor were the Parents' other witnesses available. The Hearing Officer, after requiring the Mother to state on the record that she was not well enough to testify, heard the parties on objections to exhibits and opening statements. The Board filed an additional exhibit, B-58. The postponement of Parents' witness testimony was granted and a date was set for August 5. The Board's case was to be heard on August 30.

On August 2, Attorney Zanger wrote to the Hearing Officer: "For personal reasons, the family feels that they are not able to go forward with the hearing at this time and have asked us to withdraw the hearing request without prejudice." Atty. Zanger stated: "[P]lease be advised that as of this date we are no longer representing the family." On August 3, the Hearing Officer wrote to the parties that the Board's case would be heard on August 5 and that Atty. Zanger should advise the Parents to file a pro se appearance. On August 4 the Board's attorney wrote to the Hearing Officer that she was not prepared to proceed with the hearing on August 5 because her witnesses were not available, requested a postponement until August 30 and questioned whether Parents had withdrawn their request for an independent evaluation, which was the reason for the Board's filing due process. Atty. Klebanoff wrote a letter on August 4 that he had spoken with the Mother who stated that she did not want to pursue any claim at this time, including the independent evaluation and that he had spoken to the Board's attorney. He represented that both sides were willing to have the matter withdrawn without prejudice. On August 4 the Hearing Officer advised the parties that the August 5 and 30 hearings were cancelled and that the cases would be dismissed without prejudice.

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

It is ordered that the cases shall be dismissed without prejudice.