

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on behalf of the Parents: Attorney Andrew A. Feinstein
Law Offices of David C. Shaw, LLC
34 Jerome Avenue, Suite 210
Bloomfield, CT 06002

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

Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student's behavior which resulted in the pending expulsion proceeding was a manifestation of the Student's disability.
2. If so, whether the Student's IEP must be revised.

SUMMARY:

The matter was assigned on June 14, and a prehearing conference was held on June 17. At the prehearing, counsel for both parties agreed to limit their case presentation to two days each. The hearing was scheduled to be held on July 8, July 12, July 13 and July 14 for this expedited hearing. At the prehearing conference, the Parents' attorney indicated that the Parents' case would conclude on July 12, and the Board would proceed on July 13 and July 14.

On July 6, the Parents' attorney submitted a lengthy correspondence which was construed as a motion that the Board present its case first, on July 8. The Board filed a memorandum opposing this motion. This motion from the Parents' attorney contradicted what was set forth during the prehearing conference, and was submitted on the eve of the hearing.

At the commencement of the July 8 hearing, the Parents' motion that the Board present its case first was denied, as untimely and as it was contrary to Section 10-76h-14(a) of the Connecticut Regulations which provides, in pertinent part, that the party who filed for due process has the burden of going forward with the evidence.

The Parents' attorney indicated that he would not proceed with the evidence in the Parents' case. The attorneys for the parties were excused from the hearing room, with instructions to attempt to resolve their differences regarding witness scheduling and order of witnesses. The attorneys reported that they were unable to resolve their differences. The Parents' attorney reiterated that he was not prepared to proceed with the Parents' case.

FINAL DECISION AND ORDER:

The matter is **DISMISSED**, without prejudice.