

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Eastford Board of Education

Appearing on Behalf of the Parents: Andrew A. Feinstein, Esq.
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Appearing on Behalf of the Board: Susan L. Gundersen, Esq.
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646 Prospect Avenue
Hartford, CT 06105-4286

Appearing Before: Attorney Justino Rosado, Hearing Officer

FINAL ORDER AND DECISION

ISSUE:

Was the Student's behavior that resulted in disciplinary action by the Board, a manifestation of the Student's disability?

SUMMARY and PROCEDURAL HISTORY:

The student is a 14 year-old young man who has been identified as Other Health Impaired-ADD/ADHD and is entitled to receive a free appropriate public education as defined in 20 U.S.C. §§1401 et seq. The Student's behavior violated a school rule or code of conduct and resulted in a disciplinary hearing where the IEP team decided that the behavior was not a manifestation of the Student's disability. The Parents objected to the manifestation determination and requested an Expedited Due Process Hearing as defined in 20 U.S.C. §§1401 et seq, 34 C.F.R. § 300.523 and Regulations of Connecticut State Agencies §10-76h-10.

On December 23, 2004, a Hearing Officer was appointed. A pre-hearing conference was held on January 4, 2005 and hearing dates were of January 14 and 20, 2005 were chosen by the parties. The Parents originally were proceeding Pro Se but on January 13, 2005 the Hearing Officer received notice that the Parents were now represented by counsel.

On January 13, 2005, the Parents' attorney filed a motion for Judgment as a Matter of Law that was objected to by the Board's attorney. On the first day of hearing, the Motion was continued until the next hearing date, January 20, 2005, in order to allow the hearing officer time to review the motion and objection.

The Parents called as their first witness the Student's tutor. The Board objected to the witness based on the relevancy of his testimony. The witness had not been involved with the Student or the family before or during the period of the behavior which led to the manifestation determination and had only become involved with the Student after the incident which led to the request for due process. Regulations of Connecticut State Agencies §10-76h-10(d) states that, "...the hearing officer shall limit the introduction of exhibits and testimony as may be necessary to rule on the issue..." The Hearing Officer sustained the Board's objection and the witness was not allowed to testify.

On the second day of the hearing the Parents informed the Hearing Officer that the parties had reached an agreement and there was no need to continue the hearing. The Parents requested that the hearing be dismissed with prejudice and the Board agreed to the dismissal.

The date for the mailing of the Final Order and Decision is February 7, 2005.

FINAL ORDER AND DECISION:

THE MATTER IS DISMISSED WITH PREJUDICE.