

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartland Board of Education

Appearing on behalf of the Parents: Mother, pro se

Appearing on behalf of the Hartland Board of Education: Atty. William R. Connon, Sullivan, Schoen & Connon, LLC, 646 Prospect Avenue, Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

The Parent (Mother) filed a due process hearing request with the State Department of Education (SDE) on June 27, 2007. She did not send a copy to the Board. This Hearing Officer was assigned to the case on June 29. On July 6, Atty. Connon filed an appearance for the Board. A prehearing conference was held on July 13. At the prehearing conference the Parent agreed to send a copy of the complaint to the Board's attorney. The Board's attorney stated that he wanted to file a Motion to Dismiss. A hearing date was agreed on for August 21, 2007, if needed. The decision deadline was not set since the Parent had not sent the Board a copy of the complaint, as required by IDEA Section 1415(b)(7)(A). The Board's motion was due on July 20. The Parent's reply was due on July 27. The Board filed its Motion to Dismiss the due process complaint by mailing it to the Hearing Officer and Parent on July 20. This was a timely means of complying with the order to file the motion by July 20. The Parent's objection on July 23 captioned "Motion to Dismiss" the Board's motion as late is overruled. The Board's Motion to Dismiss is properly before me. The Parent objected because she did not receive it on the due date, but nevertheless, filed her response via fax on July 27.

DISCUSSION OF MOTION TO DISMISS

The issue raised by the Board is whether the Parent is precluded from filing a due process complaint because she has an appeal pending from a prior hearing regarding the 2005-06 and 2006-07 school years. The Board claims that the stay put provision of IDEA requires the Student to maintain his "current educational placement" while the appeal is pending. 20 U.S.C. Section 1415(j). In the case on appeal, Hearing Officer

Rosado found, after nine days of hearing, that the 2005-06 IEP was not appropriate, but that the 2006-07 IEP was appropriate. (Case No. 06-297). The Student has not attended school in the Hartland school system since the end of the 2005-06 school year. His Parent placed him in a private school in 2006-07. On May 2, 2007, the Parent filed a due process complaint raising alleged procedural violations in the 2005-06 and 2006-07 school years. Hearing Officer Spak dismissed this complaint on the grounds of res judicata and collateral estoppel. The Parent filed the appeal from Hearing Officer Rosado's decision on May 17, 2007 in the Connecticut Superior Court in New Britain. Hearing Officer Spak was made aware of this appeal prior to issuing her dismissal decision on June 27, 2007. (Case No. 07-122).

In this June 27 complaint, the Parent raises four issues, which are summarized as follows: 1) whether the Board denied the Parent information about where an independent evaluation could be obtained; 2) whether the Parent was denied the right to an independent evaluation despite her disagreement with the 2005 triennial evaluations; 3) whether the Board refused to consider the Student's needs for assistive technology devices and services from the 2003-04 through the 2006-07 school years; and 4) whether the Board has deprived the Student of meaningful educational benefits during the entirety of his education in Hartland. The last issue is culled from a long, rambling paragraph outlining the effects of the alleged failure to provide assistive technology services.

The Parent's response to the Board's motion argues that the complaint at issue disputes the Student's 2007-08 IEP. That claim, however, is not in the June 27 complaint, which instead raises the four issues recited in the previous paragraph. IDEA requires that issues be raised in the due process complaint. Section 1415(b)(7). As to the issues that are contained in the complaint, the Parent claims that Hearing Officer Rosado did not allow her to raise the first and second issues regarding the independent evaluation in case number 06-297 and that Hearing Officer Spak did not allow her to add the third and fourth issues regarding assistive technology in case number 07-122. The Parent has attached 37 pages of transcripts from the February 16, 2007 hearing testimony of Dr. Bernard Lapp, apparently in support of her claim that she was not permitted to raise evaluation issues in that hearing.

It is clear that the issues raised in the June 27 complaint are all relating to matters which could have been litigated in case number 06-297. The fact that the Parent did not present these issues in her previous complaint does not avoid the res judicata and collateral estoppel principles set forth by Hearing Officer Spak in her dismissal of case number 07-122. The primary reason requiring dismissal of this complaint, however, is the stay put provision of IDEA. Section 1415(j). The Board offered at the prehearing conference to provide the Student with a program based on the 2006-07 IEP in the public school, but the Parent was adamant that she would not accept this. In her prayers for relief in the appeal, she is asking the Court to order placement of the Student at the IEA (Intensive Education Academy), the unilateral placement made by the Parent in 2006.

FINAL DECISION AND ORDER

It is ordered that this case be dismissed.