

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newington Board of Education

Appearing on behalf of the Student: Anthony Sylvester, Surrogate Parent
P.O. Box 215
Marion, CT 06444

Appearing on behalf of the Board: Susan C. Freedman, Esq.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103

Appearing before: Ruben E. Acosta, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Should the Student remain enrolled in Sheehan High School?

BACKGROUND:

This matter was assigned to the undersigned Hearing Officer on March 18, 2008. On that date a pre-hearing conference was scheduled and the same was held on March 27, 2008. Anthony Sylvester and Attorney Susan Freedman participated in the conference. During the conference the Newington Board of Education indicated that they will file a Motion to Dismiss and they were instructed to file the same by Wednesday April 2nd, which they did. Although the substance of the motion was discussed at the conference, the Board's advocate provided a copy of the motion and its memorandum of law to the Parent Surrogate.

The Student lived in Newington until last spring. She attended Newington Public Schools since Kindergarten. In the summer of 2007 the Department of Children and Families took custody of the Student and placed her at a foster home in Wallingford. In the fall of 2007 the Student attended Sheehan High School and remained there until recently.

On or around March 18, 2008 DCF granted custody of the Student back to her mother. As an accommodation, Sheehan High School allowed the Student to attend there until March 28th. As of March 24th the Newington Public Schools had come up with a

program to serve the Student's needs. As of March 31st the Student began classes at Newington High School and is being provided the same services she was provided at Sheehan High School "in the least restrictive environment". The Student's disability is OHI (emotional disturbance).

The March 14, 2008 request for a due process hearing was filed by an Educational Surrogate. He claims that the Student has a "desire to complete the current school year at Sheehan". At the time of the request there had been no PPT held at Newington High School. The custodial parent has not challenged the program which the Newington Board of Education has proposed to meet the needs of the Student.¹

On April 2nd the Newington Board of Education moved to dismiss the request for a due process hearing pursuant to Section 10-76h-8 of the Connecticut Agency Regulations on the ground that Mr. Sylvester's complaint "does not allege any violations by the Board of the Individuals With Disabilities Education Act, 42 U.S.C. § 1400, et seq. (IDEA) or its implementing state statutes". They argue that the surrogate's complaint "contends that the Student should remain at her current high school because it is in her best interests". In the Board's view the latter does not articulate a claim "involving the denial of free appropriate public education under ...IDEA". (Board's Motion and Memorandum)

FINAL DECISION AND ORDER:

This matter is dismissed in its entirety and without prejudice. The allegations made herein are not matters which are within the jurisdiction of the Hearing Officer under I.D.E.A.. The allegations in support of the complaint clearly do not involve a denial of a free appropriate public education (FAPE) under I.D.E.A. or any of the state statutes implementing the latter.

¹ At the time of the pre-hearing conference the Educational Surrogate argued for a stay-put. The hearing officer informed him that such procedure was not available under the circumstances presented here.