

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Plainville Board of Education

Appearing on Behalf of the Parents: Pro Se

Appearing on Behalf of the Board: Attorney Mark J. Sommaruga
Sullivan, Schoen & Cannon. LLC.
636 Prospect Street
Hartford, CT 06105

Appearing Before: Attorney Justino Rosado, Hearing Officer

RULING ON BOARD'S MOTION TO DISMISS
FINAL DECISION AND ORDER

SUMMARY and PROCEDURAL HISTORY:

The Student is a young man who has not been identified as a student requiring special education and related services and is not entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. The Parent filed a request for due process requesting homebound services.

An impartial hearing officer was appointed on October 10, 2008 and a pre-hearing conference was scheduled for October 28, 2008. The hearing officer requested copies of the last 2 PPT's and the last evaluation of the Student prior to the pre hearing conference. These were not provided to the hearing officer since there had not been a PPT meeting held for the Student nor had the Board performed any evaluations of the Student.

An attempt was made by the hearing officer to conduct the pre hearing conference. The Parent informed the hearing officer that she had filed a complaint with the Office of Civil Rights of the United States Department of Education ("OCR") and that she could not have a due process hearing on the same issues while an OCR complaint was in process. The Parent at this time would not participate in the pre hearing conference. The Board on or about November 7, 2008 filed a Motion to Dismiss the due process complaint based on the Student not residing in the school district and therefore the hearing officer lacked subject matter jurisdiction.

The Parent did not file an objection to the Motion to Dismiss but on November 21, 2008 sent an electronic transmission to the hearing officer not objecting to the Motion but objecting to the hearing officer's request for the PPT's and the evaluation. *Supra*. The Board has moved for a dismissal stating that the Student is not a resident of the school district and therefore the hearing officer does not have jurisdiction to hear the matter. The Board has not presented evidence that the Student does not reside in the school district nor is there evidence that the Parent has or has not requested a residency hearing. There is a lack of information and evidence to rule on the Motion to dismiss the matter. The Board's Motion to Dismiss is denied.

Any party may move for, or the hearing officer may order, sua sponte, an entry of default in or dismissal of a hearing for failure of any party: (1) to prosecute a hearing ;(2) to participate in the prehearing conference. **Sec. 10-76h-18(a)**. Since the Parent has failed to prosecute the matter and did not participate in a pre-hearing conference, the matter is dismissed without prejudice.

The date for the mailing of the Final Decision and Order is December 15, 2008.

FINAL DECISION AND ORDER:

THE MATTER IS DISMISSED WITHOUT PREJUDICE.