The parents have moved for an Interim Order that would have this hearing officer mandate portions of the IEP for the 1999-2000 school year.

It is undisputed that this due process hearing deals with issues concerning the 1998-1999 school year.

It is further undisputed that at the same time of this motion there had been no IEP meeting concerning the 1999-2000 school year.

The Proposed Interim Order submitted by the parents mandates a placement decision for the student i.e. in the regular classroom with appropriate aids and services and that he is not to be pulled out for special education services or assigned to the resource room. The IEP in effect for the 1998-99 school year does not mandate placement in the resource room.

The Proposed Interim Order further mandates provisions in the 1999-2000 IEP that are, for all intents and purposes part of the relief asked in this due process hearing concerning the 1998-99 school year.

Neither parents nor the Board have fully presented their respective cases.

The parents submitted a Memorandum of Law in support of their motion, the Board entered its objection and Memorandum of Law in support thereof and the parents elected not to reply to the objection.

In response to this hearing officer's request for justification for making an order relating to the IEP for the 1999-2000 school year, when the issue before her dealt with the IEP for the 1998-1999 school year, the parents' attorney, in his letter of August 5, 1999 wrote "I believe the analysis of question #3 on pages 10 and 11 directly addresses it. As a technical matter, the hearing is about the 1998-99 school year program; the 1999-2000 program is not at issue (at least until there is disagreement at a PPT and a further request for due process is made.) He then added "Based on this, I will be submitting no further memorandum of law on this subject."

Question #3 of the parents' Memorandum of Law in support of the Proposed Interim Order is entitled "How far into the future can the order of a hearing officer impose binding relief?"

The parents argue that since it is undisputed that the hearing officer has the authority to order changes in the 1998-1999 IEP, that such changes would remain in effect until changed by mutual consent of the parties at a PPT or at a subsequent due process hearing. Therefore, the argument continues, there is no specific duration to such an Order, and it remains in effect until changes are made in the appropriate circumstances. This argument is based, in part, on the stay-put requirements of the IDEA.

In this proceeding there have been no changes ordered by this hearing officer to the 1998-1999 IEP.

The relief demanded in the Proposed Order is for her to mandate portions of the IEP for the 1999-2000 school year.

The hearing officer is without jurisdiction to issue such an order.

It should be noted that even if the relief was within the hearing officer's jurisdiction, which it is not, the parents would not prevail.

The parents are asking for a portion of the relief demanded in the original issues presented to the hearing officer, which is in effect to have her predetermine issues, before the parties have concluded their respective cases.

The parents argue that ". . .an interim order is appropriate where a serious threat exists that the student will not receive FAPE" and, that in determining whether such an interim order is justified the questions to be addressed are the same as when an injunction is sought in a court.

Let us, for the sake of argument, assume, without deciding that such a serious threat exists and that an interim order may be appropriate. The question remains is it justified in the instant proceeding i.e. are the criteria for awarding injunctive relief met?

In J.B. v. Killingly, 990 F. Supp. 57 (D. Conn 1997) (internal citations omitted) cited by the parents in another context, the Court stated the standard for a preliminary injunction:

"(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief", . . . "When the nature of the relief sought would disturb the status quo by ordering affirmative action, the standard for a preliminary injunction is higher. . . . . This type of injunction known as a mandatory injunction, requires the moving party to show a substantial likelihood of success on the merits."

The relief sought by the parents is for affirmative action and therefore the substantial likelihood standard applies.

J.B. v. Killingly, supra, was a proceeding under the IDEA, clearly showing that these criteria, including substantial likelihood and irreparable harm apply in actions and proceedings brought under the IDEA.

There has been no showing that the student will suffer irreparable harm. There is not justification, legal or factual, in the parents' contention that in this due process case the burden to demonstrate irreparable harm should to be relaxed.

Without showing irreparable harm the parents' claim must fail. It also should be pointed out that the parents have not made a showing that there is a substantial likelihood that the student will prevail on the merits nor have the parents met the balance of hardship criteria so as to justify the relief sought in the Proposed Interim Order.

The Motion for an Interim Order is **DENIED**.