

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Enfield Board of Education

Appearing on behalf of the Parents: Attorney Winona Zimmerlin
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Appearing on behalf of the Board: Attorney Craig Meuser
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Appearing before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Was the parent entitled to a PPT in March 2001 or earlier?
2. When the team met in March 2001 and recommended evaluations for the Student, was the team under an obligation to convene a PPT and comply with the procedural safeguards of IDEA?
3. Should the Board evaluate the Student in all areas of suspect disability prior to a change in placement?
4. Should the Board have scheduled a PPT prior to the expulsion hearing?

SUMMARY:

The student is a young man who will be seventeen years old in one week. The student has not been identified as a student requiring special education and related services as defined in 20 U.S.C. Section 1401 et seq and Connecticut General Statutes Section 10-76a (4) and (5). The parent alleges that the student has demonstrated a dramatic slide in grades and has experienced emotional distress. The Board agreed to evaluate the student but no evaluations were scheduled or conducted.

The Board filed a Motion to Dismiss the issues and the Parent's attorney filed an objection to the motion. The Parent's and Board's exhibits were not received as full

exhibits since the hearing was dismissed based on the Motion to Dismiss and accompanying Memorandum of Law filed by the Board and the Objection to the Motion to Dismiss filed by the Parent. The parties also were allowed to present oral arguments at the hearing. The parties were given the decision orally on the day of the hearing, May 14, 2001.

To the extent the summary of facts and finding of facts actually represent conclusions of law, they should be so considered and visa versa. *Bonnie Ann F. v Callallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

FINDINGS OF FACT:

1. The student has not been identified as a student requiring special education and related services as defined in 20 U.S.C. Section 1401 et seq. and Connecticut General Statutes Section 10-76a (4) and (5).
2. The Board has agreed to evaluate the student and has scheduled the student to be evaluated. (Board's Memorandum of Law on its Motion to Dismiss₁ pg. 8).
₁ Hereinafter "BML" will denote Board's Memorandum of Law on its Motion to Dismiss.
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3. The Board scheduled a PPT on May 2, 2001 and the parent attended it, another PPT is scheduled for May 31, 2001. "BML" p. 8, Parent's Objection to Board's Memorandum of Law on its Motion to Dismiss₂ pp. 5 & 7).
4. The parties on the record agreed to the stipulation that the Board committed a purely technical violation of the PPT by not convening a PPT on March 2001.
5. On March 30, 2001, the student was suspended for ten days for allegedly threatening to blow up the school and kill a student. The Board recommended the student for expulsion and scheduled a hearing date. ("PML" p. 2). The expulsion hearing was postponed pending the results of the evaluations. A PPT was scheduled to determine if the student is a student requiring special education and related services as defined in 20 USC Section 1401 et seq. ("BML" p.6).
6. The parent also filed a request to amend the hearing and add additional issues. ("PML" p. 4). The motion was denied as the issues that were raised by the motion does not state whether they were raised at a PPT. The amended hearing request is required to comply with C.G.S. Section 10-76h-3 and Section 10-76h-4. (C.G.S. Section 10-76h-8) The new issues raised by the amended complaint occurred well after this hearing was requested.

CONCLUSIONS OF LAW:

1. A motion to dismiss is the appropriate vehicle for challenging the jurisdiction of the court. Conn. Practice Book Sec. 10-31; *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687 (1985). Jurisdiction over the subject matter is the power of the

court to hear and determine cases of the general class to which the proceedings in question belong. *Castro v. Viera*, 207 Conn. 420, 427 (1988).

2. The standard for review of a motion to dismiss on grounds of lack jurisdiction is well established. The motion must be granted if, even when viewed in the light most favorable to the plaintiff, the allegations of the complaint fail to state a claim within the court's subject matter jurisdiction. *Lawrence Brunoli, Inc. v. Town of Branford*, 247 Conn. 407, 410-411 (1999); *Savage v. Aronson*, 214 Conn. 256, 264 (1990).
3. A party may request that a hearing officer rule on a Motion to Dismiss. The party opposing the motion to dismiss shall be allowed to file an amended hearing request provided it complies with C.G.S. Section 10-76h-3 and Section 10-76h-4. (C.G.S. Section 10-76h-8). The parent filed an amended hearing request, which only stated two new issues; this does not comply with C.G.S. Section 10-76h-3. It was not sent to the due process unit as required C.G.S. Section 10-76h-3(d). A hearing officer does not have jurisdiction to receive due process hearing requests. The Motion to Amend the Hearing Request was denied.
² Hereinafter "PML" will denote Parent's Objection to Board's Memorandum of Law on its Motion to Dismiss.
4. The parent alleges that the Board should have evaluated the student of all suspect disabilities before a change in placement. There was no evidence presented that the Board changed the student's placement.
5. 34 C.F.R. Section 300-527(a) [provides that], "A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§. 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred

b) Basis of knowledge

An LEA must be deemed to have knowledge that a child is a child with a disability if--

- (1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- (2) The behavior or performance of the child demonstrates the need for these services, in accordance with Section 300.7;
- (3) The parent of the child has requested an evaluation of the child pursuant to Sections 300.530-300.536; or
- (4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the

director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.”

The evidence presented by the parent (her affidavit) states that the student's grades were declining but does not allege any change in his behavior that could have given knowledge to the Board of a change in his conduct. The parent's affidavit in her brief states only the March 30, 2001 incident (Findings of Facts #3) as the only incident of a change in the student's conduct.

6. The Board, as they would have done with any other student, scheduled an expulsion hearing and once the issue of the student's eligibility under IDEA became an issue changed the date of the expulsion hearing until the student's eligibility was determined. The Board has scheduled 2 PPT's and there still has been no expulsion hearing. Issue # 4 is moot since the PPT has been scheduled and no expulsion hearing has taken place.
7. Issue # 2 is also moot since the student has not been determined eligible for special education and related services under IDEA and the Board had no notice that the student had any behavior problem and since then there have been 2 PPT's scheduled and the student was only suspended for 10 days. (Findings of Facts #5)

FINAL ORDER AND DECISION:

1. The parties have stipulated that the Board committed a purely technical violation of the PPT by not convening a PPT on March 2001.
2. Issue # 2 is Moot and therefore **dismissed**.
3. Issue # 3 is Moot and therefore **dismissed**.
4. Issue # 4 is Moot and therefore **dismissed**.