

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Avon Board of Education

Appearing on Behalf of the Student: Mother, *Pro Se*

Appearing on Behalf of the Board: Attorney Craig S. Meuser
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing Before: Stacy M. Owens, Esq.
Hearing Officer

**RULING ON BOARD'S MOTION TO DISMISS
(Final Decision and Order)**

ISSUE:

Whether, pursuant to the Board's Motion to Dismiss, the hearing officer in this matter has jurisdiction to hear the issues raised in the Parent's request for hearing dated September 3, 2004.

PROCEDURAL HISTORY:

By letter dated September 3, 2004, the Parent in the above-referenced matter requested a due process hearing. On September 7, 2004, the undersigned was appointed as hearing officer to preside over the hearing, rule on all motions, determine findings of fact and conclusions of law, and issue an order. (H.O. Exh. 1, 2)

On September 17, 2004, the prehearing conference was conducted to establish the issues and schedule the hearing. (H.O. Exh. 3) During such prehearing conference the Board's Attorney, Craig Meuser, expressed the intent to file a Motion to Dismiss based on lack of subject matter jurisdiction. As such, dates were scheduled also for the submission of the Board's Motion to Dismiss and the Parent's Objection. Based on the outcome of the undersigned's decision relative to the Board's Motion to Dismiss

(incorporated herein), the hearing was tentatively scheduled for October 15, 22 and 26, 2004.¹ (H.O. Exh.4)

SUMMARY:

The Board's Motion to Dismiss is based on several jurisdictional issues. The Board claims the Hearing Officer lacks jurisdiction in the matter because:

(1) the Hearing Officer lacks the authority to order the Board to provide transportation and educational services to a student who is not a resident of Avon; (2) the Hearing Officer lacks the authority to address alleged violations of federal statutes that are not expressly contained or referenced in the Individuals with Disabilities Education Act or Connecticut's special education statutes; (3) the Hearing Officer lacks the authority to award specific remedies requested by the parents; and (4) the Hearing Officer lacks the authority to review claims based on alleged violations that occurred more than two years before the date of the parent's due process request."

According to the Board, the Student was enrolled in the Avon Public Schools on June 6, 2002. The Student was eligible to receive special education services based on her deaf-blindness identification. The Student and her family resided in Avon until May 4, 2003, when they moved to Jupiter City, Florida. In November 2003, the Student was re-enrolled in the Avon Public Schools after she and her family moved back to Avon to live with a relative. By May 2004, the Student and her family moved to Winsted, Connecticut, but the Student was allowed to continue her education in the Avon Public School System until the end of the school year based on a Board policy. (Board Exh. 1-13)

The Board argues that since, May 2004, the Student has not been a resident of the district, and therefore, the Board is not responsible for providing the Student special education services. Based upon more recent communications, the Board has learned that the Student is now a resident of Barkhamstead, and thus, should be enrolled in the Barkhamstead school system to receive services to meet her special needs. (Board Exh.

¹ On September 21, 2004, a letter scheduling the dates for submission of the Motion to Dismiss, the Parent's Opposition to the Motion and the dates for hearing was sent to Attorney Meuser via facsimile and first class mail, and sent to the Parent via first class mail to the address in Avon provided in her request for hearing. The letter sent to the Parent was returned to the Hearing Officer indicating mail sent to the address

12)The Board's claim that it is not responsible for the Student's education was established at a local residency hearing and upheld on appeal by a hearing officer with the State of Connecticut Board of Education.

The Parent does not dispute that the Student is not a resident of Avon, but contends that because her daughter is homeless and is a child with a disability, then the Board is responsible for providing the Student an education and services to meet her special needs in accordance with the Individuals with Disabilities Education Act and the McKinney-Vento Act. (H.O. Exh. 1)

FINDINGS OF FACT:

1. On or about July 29, 2001, the Student was determined by a Board subcommittee to not be a resident of Avon. (Board Exh. 9)
2. On or about July 29, 2001, the Student was determined by a Board subcommittee to not qualify as "homeless," and eligible to receive educational services within the Board's district. (Board Exh. 9)
3. The Board is not responsible for providing the Student educational services. (Board Exh. 1-13)

CONCLUSIONS OF LAW:

The crux of this decision is hinged upon the determination of whether the Student is a resident of Avon or qualifies as eligible to receive educational services in Avon based on her "homeless" status. Absent the establishment of residency or "homeless" status, the Board, is not a properly named party for purpose of this due process, and all other issues are moot.

Section 10-76h(a)(1) of the Connecticut General Statutes ("Statutes") narrowly establishes the jurisdictional authority of the undersigned. In accordance with §10-76h(a)(1) of the Statutes, "A parent of guardian or a child requiring special education and related services . . . may request in writing, a hearing of the local or regional board of education . . . *responsible* for providing such services whenever such board or district

proposes or refuses to initiate or change the identification, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil. . .” (emphasis added). In this particular case, a preponderance of the evidence establishes that the Board is not the local board of education “responsible” for providing educational services to the Student.

Section 10-186(a) of the Statutes provides that local and regional boards of education must provide school accommodations to all school-aged children who reside in their districts. Section 10-186(b) of the Statutes establishes jurisdiction within the local boards to determine issues relating to a child’s residency. In this instance, on July 29, 2004, a duly appointed subcommittee of the Avon Board of Education determined the Student was not eligible to receive educational services within the district based on her non-resident status. The subcommittee also found that the Student did not qualify as “homeless” and that Avon was not the Student’s “school of origin” as required by the McKinney-Vento Act. The subcommittee’s decision was upheld by Hearing Officer, Steven R. Rolnick, of the State of Connecticut Department of Education.

In addition to the decisions rendered by the Avon Board of Education subcommittee and Hearing Officer Rolnick, the Parent does not dispute the Board’s position that the Student is no longer a resident of Avon. Furthermore, the Parent’s claim that the Student is entitled to educational services based on her “homeless” status has been fully adjudicated and found to be unsubstantiated. Thus, it would be beyond the scope of the undersigned’s authority to essentially override the subcommittee’s and Hearing Officer Rolnick’s findings and proceed with a hearing naming Avon Board of Education as a party in this matter.

FINAL DECISION AND ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned does not have jurisdiction to review this matter, and thus, this case is hereby

DISMISSED.