

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parents:

Parents, *Pro se*

Appearing on behalf of the Board:

Attorney Ann F. Bird  
Assistant Corporation Counsel  
City of Hartford  
550 Main Street, Room 210  
Hartford, CT 06103

Appearing before:

Mary H.B. Gelfman, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

Whether a special education hearing officer appointed pursuant to 34 C.F.R. § 300.511 and Section 10-76h-7, Regulations of Connecticut State Agencies (R.C.S.A.), has the authority to require a local board of education to execute a contract with a specific service provider, when the services are being provided by that consultant pursuant to a student's Individualized Education Program (IEP)?

**PROCEDURAL HISTORY:**

This hearing was requested on September 10, 2007, and therefore the date for mailing the final decision and order was set at November 24, 2007. A pre-hearing conference was held by conference telephone call on October 1, 2007. Prior to convening the hearing on October 18, 2007, the Board's attorney filed a Motion to Dismiss, arguing that the IEP services were being provided under a short term contract awaiting Board approval for a longer term contract. Parents expressed concern that a delay in providing services at the beginning of the school year and that the delay in formalizing the contract make it uncertain that IEP services will continue to be provided.

The parties used some time prior to the convening of the hearing to discuss settlement. The hearing convened and the facts of the current program and dispute were placed on the record. A date was set (November 29, 2007) to continue the hearing if the matter could not be resolved. The decision date was extended from November 24 to December 24, 2007, to provide for settlement negotiations. The hearing officer took the Motion to Dismiss under consideration.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp.816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

### **FINDINGS OF FACT:**

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student, a boy born on September 28, 2001, has autism and receives special education services from the Board. (September 21, 2007 IEP)
2. At the beginning of the 2007-2008 school year, Student's special education program was not completely implemented, but all components were in place when the hearing convened on October 18, 2007. Parents did not contest the IEP, and acknowledged that IEP services were currently being provided. (Testimony of Parents)
3. The IEP includes consulting and staff training services to be provided by Creative Interventions, a private service provider. Such services started soon after the opening of the 2007-2008 school year, and the Board has offered compensatory services for services omitted earlier in the school year. (Testimony, Special Education Coordinator)
4. However, the formal contract for services from Creative Interventions for Student and others in Board programs had not been signed by the Board at the time the hearing convened. Services were being provided under an interim contract, pending formal contract approval by the Board. (Testimony, Board Attorney)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. Section 10-76h(d), Connecticut General Statutes (C.G.S.), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Section 4-181a. Section 615(f)(1)(A) and 615(f)(3)(E), Individuals with Disabilities Education Improvement Act of 2004, also authorizes special education hearings.
2. The general jurisdiction of a special education hearing officer is described at 34 C.F.R. § 300.507(a):

- ... any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of [a free appropriate public education] to the child).  
and at Section 10-76h-3, R.C.S.A.:
- ... may request in writing a hearing regarding a public agency's proposal to or refusal to initiate or change the provision of a free appropriate public education to the child.
3. Section 10-76h-8, R.C.S.A., concerns motion practice in special education hearings. The motion submitted by the Board falls under subsection (f)(2), a motion for dismissal due to lack of jurisdiction.
  4. Section 10-220(a), C.G.S., gives local boards of education exclusive authority to staff the schools within the school district. A special education hearing officer lacks the authority to intervene in employment and contract arrangements as long as IEP services are being provided.

**FINAL DECISION AND ORDER:**

The only issue in dispute concerns contracting procedures of the Board of Education. Since a special education hearing officer lacks jurisdiction over such contracts, this matter is DISMISSED without prejudice.