

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Putnam Board of Education

Appearing on behalf of the Parents: Attorney Andrew Feinstein
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Appearing on behalf of the Board: Attorney Frederick L. Dorsey
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150 Trumbull Street
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Appearing before: Attorney Gail K. Mangs, Hearing Officer

ISSUES:

1. Does a hearing officer have jurisdiction to award monetary damages under 42 U.S.C. Sec. 1983?

SUMMARY AND FINDINGS OF FACT:

1. This hearing was requested on September 25, 2002. The request for hearing states in part, "This letter is to request, on behalf of L.'s family, a due process hearing solely for the purposes of seeking monetary damages pursuant to 42 U.S.C. section 1983 for the unconscionable violation of their civil rights by the Putnam Board of Education in June 2002. While we are aware that a Connecticut administrative hearing officer is without power to order a local education agency to pay monetary damages to an injured student, we are also aware of court decisions stating that we must exhaust our administrative remedies prior to bring an action in federal court for the recovery of monetary damages." The hearing request made reference to Polera v. Board of Education of Newburgh Enlarged City School District, 238 F. 3d 478 (2d Cir. 2002). The request for hearing then continued by outlining L.'s history of behavioral difficulties which resulted in hospitalization and diagnosis of bipolar disorder, the Board's eventual designation of L. as a student eligible for special education services, and a description of events leading to L.'s arrest. (Exhibit H.O. 1)
2. A prehearing conference was held on September 27, 2002. During the prehearing conference, the parties agreed that the hearing would be convened on October 15,

2002 at which time the parties would argue the Board's motion to dismiss for lack of jurisdiction by the hearing officer to award monetary damages; it was also agreed that evidence would not be presented on that day. No other issues were raised during the prehearing conference.

3. In a letter to the hearing officer dated September 30, 2002, the parents' attorney stated that they would have to oppose the motion to dismiss based upon the Second Circuit's decision in Polera which stresses two factors in requiring exhaustion of administrative remedies: the possible availability of any relief, and the need for a full administrative record. In the letter, the parents' attorney then went on to raise numerous issues that had not been raised or even alluded to in the request for hearing or during the prehearing conference. The letter concluded with the statement, "The family recognizes that this letter alters the landscape of this hearing." (Exhibit H.O. 2)
4. On October 15, 2002, the hearing was convened at which time the parties argued whether new issues had been raised by the parents. The hearing officer asked the parents' attorney what had changed between the time of the prehearing conference and September 30, 2002; the attorney responded that the September 30 letter was based upon his rereading of Polera. The parents asserted that the issues raised in the September 30 letter were not new. They claimed that available relief does not depend on what is requested nor does the relief requested determine the issues of a hearing. In addition, parents argued that a hearing officer has the authority to hear damage claims and grant whatever relief that can be granted, even if there is no jurisdiction to award such damages. The Board stated that the hearing officer did not have jurisdiction to hear damage claims since there was no jurisdiction to award monetary damages. The Board also argued that the issues raised in the parents' letter of September 30 were new issues; they opposed their inclusion in this hearing.

CONCLUSIONS OF LAW:

1. Connecticut General Statutes Sec. 10-76h(d)(1) clearly defines and circumscribes the jurisdiction of a hearing officer; nowhere is it stated that a hearing officer can award monetary damages. Both parties agreed that a hearing officer cannot award monetary damages; in addition, the Second Circuit in Polera stated that there was no cause of action for money damages under the IDEA. Therefore, a due process hearing officer does not have jurisdiction to award monetary damages no matter how heinous the actions in question may be.
2. The parents argue that even if a hearing officer can not award damages, the availability of other relief is sufficient for the case to be heard. This is true *if* issues were appropriately raised for which relief may be granted. Here, such issues were not raised at the appropriate time. Connecticut General Statutes Sec. 10-76h(a)(2) states that a hearing request shall contain a statement of the specific issues in dispute. During a prehearing conference, the issues that were raised are simplified or clarified (RCSA 10-76h-7). The hearing request in this hearing was quite clear as to the issue in dispute; this was further emphasized at the prehearing conference during which the

only issue discussed was the jurisdiction of the hearing officer to award monetary damages. No other issues were raised or discussed. It was only after the prehearing conference (that defined the issue) that new issues were raised. In effect, the parents acknowledged this in their September 30 letter when they stated that the letter had altered the “landscape” of the hearing. The Board is within its right to object to the inclusion of these new issues. The parents’ remedy is to file for a new hearing and to clearly specify their issues in the request.

FINAL DECISION AND ORDER:

1. A hearing officer does not have the jurisdiction to award monetary damages under 42 U.S.C. Sec. 1983.
2. This hearing is **dismissed** for lack of jurisdiction.