

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing on behalf of the Student: Biological Parent

Appearing on behalf of the Board: Attorney Julia Wilde  
Assistant Corporation Counsel  
Office of the Corporation Counsel  
City of Hartford  
550 Main Street  
Hartford, CT 06103

Appearing before: Attorney Brette H. Fitton  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

Is Student eligible for special education and related services and if not, should Student be removed from special education and no longer receive any related services?

**PROCEDURAL HISTORY:**

On March 22, 2017, the Board received a special education due process hearing request filed by the biological parent and the Connecticut State Department of Education appointed the undersigned Hearing Officer to preside over the case. On March 28, 2017, the Board filed a motion to dismiss with a supporting memorandum of law. A prehearing conference was held on April 18, 2017. During the prehearing conference, the deadline for mailing the final decision and order was established as June 5, 2017. After a discussion of the Board's motion to dismiss, the biological parent was given until April 25, 2017 to file a written objection. The Biological Parent filed an objection on April 19, 2017. After a review of the pleadings, the undersigned Hearing Officer determined that a hearing on the motion to dismiss was required and a hearing date of May 3, 2017 was set. The hearing was convened on May 3, 2017. The Board's witness was Ms. Karen Annis, LCSW, Program Social Worker with the UCONN Health Adoption Assistance Program. The Biological Parent testified on parent's own behalf. The request for a special education due process hearing was entered as Hearing Officer's Exhibit 1. The Biological Parent submitted exhibits P-1 through P-6, which were entered as full exhibits over relevancy objections made by the Board. The Board submitted Exhibits B-1 and B-2 which were entered as full exhibits, without objection by the Parent.

All motions and objections not previously ruled upon, if any, are hereby overruled.

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. 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).

### **SUMMARY:**

The Board moved to dismiss the hearing request on the grounds that the Biological Parent was not, in fact, the legal parent of the Student who is the subject of the complaint, and therefore lacked standing under the Individuals with Disabilities Education Act (“IDEA”) to file a due process complaint. Testimonial and documentary evidence presented during the hearing established that the Biological Parent was no longer the legal parent of the Student and as such the Biological Parent did not have standing to file the hearing request.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

### **FINDINGS OF FACT:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. The plaintiff who filed the instant due process hearing request, is the biological parent of Student. (Testimony of Biological Parent; B-2)
2. The parental rights of both Biological Parent and the other biological parent were terminated on April 30, 2014 in Connecticut Superior Court. (Testimony of Ms. Annis; B-2)
3. Upon the termination of parental rights, the State of Connecticut Department of Children of Families became the statutory parent of the Student. (Testimony of Ms. Annis; B-2)
4. On November 21, 2014, Student was adopted by a family residing in Windsor, Connecticut and Student’s last name was legally changed to that of his adoptive family. (Testimony of Ms. Annis; B-1)
5. None of Biological Parent’s exhibits supported a finding that legal custody of Student had changed since the adoption decree was entered in 2014. (P-1-P-6)
6. Biological Parent’s testimony regarding the status of legal custody of Student was not credited as the statements given were not coherent and were unsupported by any documentary evidence. (Testimony of Biological Parent).

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

In the present case, the Board has challenged jurisdiction on the grounds that the Plaintiff lacks standing to file for a due process hearing. A motion to dismiss for want of standing implicates

the court's subject matter jurisdiction. *Miller v. Hygrade Food Prods. Corp.*, 89 F. Supp.2d 643, 646 (E.D.Pa. 2000).

The Second Circuit has held that: "In order to justify the dismissal of the plaintiff's pro se complaint, it must be beyond doubt that the plaintiff can prove no set of facts in support of claim which would entitle him [or her] to relief." *Lerman v. Bd. of Elections*, 232 F.3d 135, 139-40 (2d Cir. 2000) (internal citations, quotation marks and footnote omitted), *cert. denied*, 533 U.S. 915 (2001). This holding requires that when considering the Board's motion to dismiss, significant deference should be given to Biological Parent, who is a pro se litigant. Even when such deference is applied to the present case, there is no basis on which one could find that the Biological Parent has retained the parental rights necessary to confer the standing to file for due process under the IDEA.

The IDEA identifies the following parties as those with standing to file a due process complaint: "A parent or a public agency may file a due process complaint on 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 FAPE to the child)." 34 C.F.R. § 300.507(a)(1)

Under the IDEA a "parent" is:

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); (B) a guardian (but not the State if the child is a ward of the State); (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent." 20 U.S.C. § 1401 (23)

The Code of Federal Regulations sets forth the following slightly expanded definition of a "parent":

(1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act. (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a

child, then such person or persons shall be determined to be the "parent" for purposes of this section. 34 C.F.R. § 300.30

It is undisputed that the plaintiff is the biological parent of Student. (B-2) Under most circumstances that factual finding would be sufficient to establish standing. In the present case, however, additional evidence establishes that Biological Parent's parental rights have been terminated and Student has been adopted by another family. (Testimony of Ms. Annis; B-1, B-2)

Given that the IDEA includes both biological parents and adoptive parents in its definition of parent, Biological Parent could argue that she and the adoptive parents have concurrent standing to file a hearing request. However this argument does not avail because the statutes, regulations and caselaw restrict standing to file due process hearing requests to those adults who have the authority to make legal decisions for the child.

The Federal regulations specifically provide that the authority to make educational decisions for a Student may be set forth in a decree or court order and may be held by someone other than a biological parent. 34 C.F.R. § 300.30 (b) (2). Pursuant to this regulation, the adoption decree submitted by the Board which conferred upon the adoptive parents the legal parental rights formerly held by the biological parents and then by the State of Connecticut, establishes the adoptive parents as the only parties who are to be considered parents with standing to file a complaint.

The Second Circuit has held that where a plaintiff does not have the authority to make educational decisions on behalf of [a child]," the parent "lacks standing to demand a hearing under the IDEA on the appropriateness of defendants' IEP evaluation." *Taylor v. Vermont Dep't of Educ.*, 313 F.3d 768, 782 (2d Cir. 2002). *See also Easton Bd. of Educ.*, 50 IDELR 148 (SEA CT 2008), in which Mother's due process complaint was dismissed because the parent's divorce decree specifically provided that Father had sole authority to provide consent for evaluations of Student and for the provision of special education for their child.

Given that the Biological Parent no longer holds any parental rights to Student and that such rights are now vested in Student's adoptive parents, Biological Parent lacks standing to bring a due process complaint. The motion to dismiss is granted and the case dismissed for lack of jurisdiction.

**FINAL DECISION AND ORDER:**

In light of the above facts, the case is dismissed.