

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Region 6 Board of Education

Appearing on behalf of the Parent:

Pro se

Appearing on behalf of the District:

Christine Chinni, Esq
Chinni & Associates LLC
14 Station Street
Simsbury, CT 06070

Appearing before:

Patrick L. Kennedy, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Does the District have jurisdiction over the Individualized Education Program (“IEP”) of the Student?

PROCEDURAL HISTORY:

Case 23-0222 was commenced by the Parent¹ by request received by the District on November 18, 2022. A prehearing conference was held on December 13, 2022. At the prehearing conference, the decision date was determined to be February 1, 2023.

Extensions of the decision date were later given to March 3, 2023 and March 31, 2023.

At the prehearing conference it was determined that there were no material factual issues in dispute and that a hearing would therefore not be necessary. The parties agreed to mediate the case and, if mediation was unsuccessful, to submit a stipulated statement of facts after which time a briefing schedule would be determined.

However, the Parent subsequently withdrew her consent to mediation. The parties were directed to file their stipulated statement of facts. The Parent represented that she was unsuccessful in attempting to consult with the District’s counsel on the matter and unilaterally submitted a proposed statement of facts. As the District did not object to the Parent’s statement of facts or propose additions, the undersigned Hearing Officer emailed the parties on February 28, 2023 that the Parent’s statement of facts was

¹ In this case, the “Parent” is actually a state-appointed educational surrogate for the Student.

being adopted by the hearing officer and that the parties should file briefs within two weeks. The Parent filed her brief by the deadline and the District failed to file any brief.

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

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

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:

As stated above, the following Parent's statement of facts is hereby adopted as the Hearing Officer's Findings of Fact in this case:²

1. [Student], DOB 07/01/2014, attended Regional School District No. 6 ("Region 6") from August 28, 2019 to August 27, 2022.
2. [Student's] biological mother...resides in Goshen, Connecticut, a town within Region 6.
3. On February 5, 2021, Department of Children and Families (herein referred to as "DCF") placed [Student] in a foster home in Bethlehem, Connecticut.
4. [Student] was identified as eligible for special education and an Individualized Education Program ("IEP") was developed for him on April 1, 2021 by Region 6.
5. [Student] was placed under the legal guardianship of the Commissioner of Connecticut Department of Children and Families on November 17, 2021.

² Some personally identifying information not necessary to the decision is deleted. Also, the Parent had one paragraph which was inadvertently split into two paragraphs with a third blank paragraph in her statement which has been corrected and the remaining paragraphs renumbered accordingly.

6. On March 29, 2022, [Parent] was appointed by the Connecticut State Department of Education to be the Surrogate Parent (“Surrogate”) for [Student].
7. On August 1, 2022, [Student] was placed in the foster home of [Foster Parent] at...Pownal, Vermont as of August 1, 2022. [Foster Parent] is the sister of...[Student’s] biological mother.
8. On August 5, 2022, DCF issued a Form 603 notice dated August 2, 2022, titled “DCF Notification to the Local Education Agency” (herein referred to as a “603”) to the Office of the Superintendent of Region 6 via email to notify Region 6 of [Student’s] placement at [Foster Parent’s] home in Vermont. Region 6 is listed as the nexus district and that the nexus has existed since February 1, 2021.
9. The 603 dated August 2, 2022 also states that [Mother] continues to have parental rights, and it confirms that she resides at...Goshen, Connecticut.
10. August 17, 2023, [Student] was enrolled in Southwest Vermont Union Elementary School District (“SVUESD”), the local educational agency (“LEA”) by Rebecca Bruey, DCF, following the issuance of the 603.
11. On August 27, 2022, the Surrogate emailed Lisa Johnson (“Johnson”), Supervisor for Southwest Vermont Supervisory Union, and Jessica Brousseau (“Brousseau”), Interim Director of Student Services for Region 6, and notified both districts that [Student’s] nexus district continues to be Region 6 because the parent rights have not been terminated. The Surrogate stated that Region 6 would therefore need to facilitate the Planning and Placement Team meeting (“PPT”) for [Student], attaching a copy of the 603 dated August 2, 2022.
12. The following Monday, August 29, 2022, Brousseau responded to the Surrogate’s email, “After speaking with our counsel, we’ve confirmed that because [Student] (the student placed in VT) has been placed by DCF out of state, we have no jurisdiction or authority to oversee his [Individual Education Program]³. His new school in Vermont should plan and facilitate the PPT, and invite a designee from Region 6 to assist with his program planning”.
13. On August 30, 2022, after being notified by the Surrogate of Region 6’s notice that they would not support [Student’s] IEP as his nexus district, Georgette Nemr, (“Nemr”), the Education Consultant, Connecticut State Department of Education, Surrogate Program, emailed Brousseau and notified Region 6 of the district’s responsibility as the Nexus district. She included links to American Public Human Services Association, along with inserting Connecticut General Statutes Title 179 Social And Human Services and Resources Article V “Retention of Jurisdiction” referring to the Interstate Compact on the Placement of Children within the email.

³ This bracketing is in the original.

14. SVUESD held a PPT on September 9, 2022 and invited staff from [Student's] previous elementary school in Region 6. Kristen Lutz, Goshen Elementary School's Psychologist participated in the meeting.
15. On November 16, 2022, the Surrogate sent an email to Brousseau, indicating that Region 6 staff did participate in [Student's] first PPT September 8, 2022, at SVUESD. This email also stated that unfortunately Region 6 was not included to the recent PPT held November 3, 2022. The November 3, 2022 IEP Meeting Minutes and Final IEP were attached to the email. The Surrogate also requested that another PPT be held so that Region 6 could participate as a decision regarding change of placement being made. The Surrogate carbon copied SVUESD staff along with including a list their names, roles and contact information in this email.
16. Later on November 16th, Brousseau, responded to the Surrogate. She indicated "We are in the same belief held previously that because [Student] has been placed in another state by DCF, we have no jurisdiction or authority to oversee his IEP."
17. On November 18, 2022, the surrogate filed a Request for Impartial Special Education Hearing with the Connecticut State Department of Education, Bureau of Special Education Due Process Unit.
18. On November 30, 2022, Kate Abbott, Director of Student Services of Southwest Vermont Supervisory Unit, sent an email to Brousseau stating she had left two voices messages for her to set up a PPT. She included the invite to the upcoming PPT and indicated to call if needed a different time. Brousseau responded, "As both Region 6's legal counsel and myself have previously made clear, Region 6 does not recognize any further role in this matter. No staff from Region 6 will be attending this meeting. Whatever the decisions reached in the meeting, Region 6 will not be providing any further financial support for any placement or other decisions made by this or any other meeting concerning [Student]".

CONCLUSIONS OF LAW AND DISCUSSION:

1. Does the District have jurisdiction over the IEP of the Student?

While the District has not submitted a brief, it is clear from the Findings of Fact that there is no basis for any contention that any Local Educational Agency ("LEA") within Connecticut has jurisdiction over the IEP of the Student. The specific statements of the District make clear that it is taking the position that the state having jurisdiction over the IEP of the Student is Vermont. Findings of Fact 12, 16 and 18.

As the Parent notes, this situation is discussed in guidance provided by the United States Department of Education Office of Special Education and Rehabilitative Services ("OSEP"):

Under Part B of the Individuals with Disabilities Education Act (IDEA), each State (through its State educational agency (SEA)) must ensure that a free appropriate public education (FAPE) is available to all eligible children with disabilities in mandated age ranges residing within the State. FAPE is made available through the LEAs and other public agencies in the state, through the general supervision of the SEA. 20 USC 1402(8) and 1412(a)(1)(A); 34 CFR §§300.101 and 300.149. This obligation to ensure that a FAPE is available encompasses children with disabilities who are placed by a non-educational public agency, such as a mental health, social services or juvenile justice agency.



For a child placed outside the state by a public educational or non-educational State or local agency, the State initiating the placement (i.e., “the placing State”) generally is responsible for ensuring that the child’s IEP is developed and implemented. 34 CFR §§34.101 and 34.149. This is because the obligation to make FAPE available covers all children with disabilities residing in the State. Residence is not the location of the school or the facility in the state where the child has been placed. As traditionally interpreted by the Department, a child is a resident of the State in which (1) the parent or guardian legally resides, or (2) the child is a ward of the State.

Determining the specific school district or LEA that is responsible for the cost of a residential placement is a matter of State law, policy or practice. Although the IDEA does not address which LEA in a State is responsible for the cost of a placement under Part B, the SEA must exercise general supervision over all educational programs for children with disabilities residing in the State, and has ultimate responsibility for ensuring the availability of FAPE to these children. 34 CFR §300.149. Therefore, if there is a question regarding which LEA is responsible for the cost of a placement, the SEA is responsible for ensuring that the issue is resolved.



Under the requirements of CFR §300.154, the SEA must also ensure that an interagency agreement or other mechanism for interagency coordination is in effect between the SEA and each non-educational public agency that is obligated under Federal or State law to provide or pay for any special education and related services necessary for ensuring FAPE to children with disabilities within the State. 34 CFR §300.154(a).

Letter to Covall, 12/22/06 (footnotes omitted and all emphasis in the original).

Connecticut and Vermont are both parties to the Interstate Compact on the Placement of Children. Connecticut has enacted the compact into law through the provisions of C.G.S. §17a-175 which provides, in Article V(a):

The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-sufficient or is discharged with the concurrence of the appropriate authority in the receiving state...The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement...

The Connecticut General Statutes further provide,

Notwithstanding any other provisions of the general statutes...whenever a public agency...places a child in a foster home...and such child requires special education, the local or regional board of education under whose jurisdiction the child would otherwise be attending school...shall provide the requisite special education and related services to the child in accordance with the provisions of this section. Within one business day of such a placement by the Department of Children and Families...said department...shall orally notify the local or regional board of education responsible for providing special education and related services to such child of such placement. The department...shall provide written notification to such board of such placement within two business days of the placement. Such local or regional board of education shall convene a planning and placement team meeting for such child within thirty days of the placement and shall invite a representative of the Department of Children and Families...to participate in such meeting. (A) The local or regional board of education under whose jurisdiction such child would otherwise be attending school shall be financially responsible for the reasonable costs of such special education and related services in an amount equal to the lesser of one hundred percent of the costs of such education or the average per pupil educational costs of such board of education for the prior fiscal year...

C.G.S. §10-76d(e)(2).

In this case, the Mother continues to have parental rights and resides in Goshen. (Finding of Fact 9.) Had it not been for the DCF placement the Student would be attending school in Regional District 6. (Findings of Fact 1 and 2.)

Despite the apparent claim of the District that the child's IEP is somehow the responsibility of the Pownal, Vermont, school district⁴, *Letter to Covall* issued by OSEP and C.G.S. §17a-175 make clear that jurisdiction over the Student resides in Connecticut. While there is no apparent claim on the part of the District that some other LEA within Connecticut is responsible for the education of the Student, it is clear in any case that, as the district in which the Student would be attending but for the DCF placement, Region 6 is responsible for overseeing the IEP of the Student.

⁴ Needless to say, the District, not having filed a brief in this matter, has provided no authority for that position.

Therefore, the District has jurisdiction over the IEP of the Student.

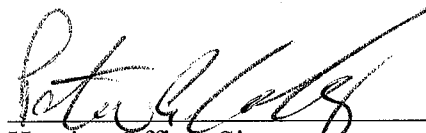
FINAL DECISION AND ORDER:

The District is ordered:

- (1) To take jurisdiction over the IEP of the Student;
- (2) To convene a PPT meeting within 30 days of this order and invite a representative of DCF in accordance with the provisions of C.G.S. §10-76d(e)(2);
- (3) To provide financially for the education of the Student to the extent required by the provisions of C.G.S. §10-76d(e)(2)(A); and
- (4) To otherwise oversee the provision of special education and related services in the same manner as it would for any other student requiring such services who resides within the District.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).


Hearing Officer Signature

Patrick L. Kennedy

Hearing Officer

Name in Print