

CONNECTICUT STATE DEPARTMENT OF EDUCATION

Student MR v. Greenwich Board of Education

MEMORANDUM OF DECISION RE: JURISDICTION AND MOTION TO DISMISS*Background*

The Parents initiated this special education due process case on behalf their minor daughter (Student) by submitting a Request for Due Process (Complaint) on January 13, 2023. This Impartial Hearing Officer was assigned to the case on January 24, 2023. A Prehearing Conference was convened on January 30, 2023. Attorney Gerry McMahon appeared on behalf of the Student and her Parents and Attorney Andrea Bellach and Attorney Abby Wadler appeared on behalf of the Greenwich Board of Education (Board).

The Complaint requests that the Hearing Officer review the filing for the purpose of issuing a ruling on the issue of jurisdiction and authority or lack thereof and to preside over the Parents filing in accordance with C.G.S. Section 10-76a-i for the sole and explicit purpose of exhausting administrative remedies of the Parents federal discrimination claim pursuant to Title II of the Americans with Disabilities Act, U.S.C. Section 12132; C.F.R. Section 35.130. The Parents filed a two-count civil action in the Federal District Court of Connecticut in June of 2021. The civil action (Case No. 3-21 CV-00873-JCH) appealed a Connecticut State Department of Education Hearing Officer's May 12, 2021 Decision and Order (Count 1). An original action was also filed alleging discrimination against the Student by the Board in violation of the ADA (Count II). The Parents are requesting that the Hearing Officer definitively state that the Parents effort to file their claim for purposes of exhaustion satisfies their obligation to exhaust and to issue a Decision and Order that the Parents have the right to file their ADA claims in the Federal District Court of Connecticut.

During the Prehearing Conference, the Board indicated it would be filing a Motion to Dismiss. A hearing date was not set and the Hearing Officer stated she would consider the Board's Motion to Dismiss when filed as well as the Parents' response, and also issue a ruling on the issue of jurisdiction over ADA claim. The Board filed a Motion to Dismiss on February 3, 2023 for preclusion by the doctrine of res judicata, and the Parents filed a Memorandum of Law in Opposition to the Board's Motion to Dismiss on February 13, 2023.

*Analysis**The Hearing Officer Lacks Subject Matter Jurisdiction to Consider the Parent's Request for Due Process*

Federal Courts are currently split on cases where a Parent must exhaust administrative remedies regarding ADA and Section 504 claims. Indeed, the United States Supreme Court recently heard oral arguments in *Miguel Luna Perez v. Sturgis Public School*, 21-887 and will decide late in its session specifics as to the issue of exhaustion of administrative remedies. In Connecticut, the law and regulations regarding a State Department of Education Hearing Officer's authority is clear. Connecticut state law and regulations, in accordance with Individuals with Disabilities Education Act (IDEA), state that the jurisdiction of hearing officers is limited to claims of violations of the IDEA. 20 U.S.C. Section 1415(b)(6)(A); Conn Regs

Section 10-76h-3(a). Due to the limited scope of the state's regulations in regards to special education due process hearings, this Hearing Officer does not have jurisdiction to hear a claim based upon violations of the ADA.

Likewise, the Hearing Officer has a limited scope by which she may dismiss an appropriately filed Due Process Complaint.. The Hearing Officer may make an entry of dismissal under Conn. Agencies Reg. Section 10-76h-18 for failure of a party:

- (1) to prosecute a hearing;*
- (2) to participate in a prehearing conference;*
- (3) to comply with sections 10-76h-1 to 10-76h-18 of the Regulations of Connecticut State Agencies;*
- (4) to comply with a ruling issued by the hearing officer before a final decision is rendered;*
- (5) to state a claim for which relief can be granted;*
- (6) to sustain its burden after presentation of the evidence; or*
- (7) appear at a properly noticed scheduled hearing.*

The Board is asking for the Parents' Complaint to be dismissed based on the doctrine of res judicata. This would create an expansion of the Hearing Officer's jurisdictional authority and is not appropriate subject matter to bring before this Hearing Officer.

The Board's Motion to Dismiss is **DENIED** and this case is **DISMISSED** for lack of subject matter jurisdiction.

By:

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This Memorandum of Decision And Orders was sent via email on this date to:

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CSDE - Due Process Unit

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



Hearing Officer Name in Print