

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Student:

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Appearing on behalf of the East Lyme
Board of Education:

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Appearing on behalf of the Salem
Board of Education:

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Appearing before: Attorney Deborah R. Kearns, Hearing Officer

FINAL DECISION AND ORDER

ISSUES

- I. Whether a Connecticut Department of Education, Individuals with Disabilities Education Act (IDEA) hearing officer has jurisdiction to decide a Section 504 of the Rehabilitation Act of 1973 matter if the Section 504 matter is the only issue in the claim for due process to be decided?

PROCEDURAL HISTORY

The claim for due process filed July 13, 2007 and received at the State Department of Education on July 18, 2007 raised four issues of dispute between the parties. (H.O.-1, Request for Due Process). The parties resolved three of the issues at a resolution session on August 2, 2007. The remaining issue, which requests a school produced "Morning Show" be made accessible to the hearing impaired child with closed or open captioning is the sole issue for hearing. The attorneys for both the East Lyme Board of Education and the Salem Board of Education moved to dismiss the remaining issue stating it is controlled by Section 504 of the Rehabilitation Act of 1973. The Boards claim State Department of Education IDEA hearing officers are

not authorized to decide issues solely related Section 504 requirements. Parent counsel argued the failure to provide the requested accommodation was a denial of a free and appropriate public education. An additional compliance issue was proposed and later claimed in a separate due process action. At the request of the child and parents the parties argued the preliminary matters on August 21, 2007. The parties were granted ten days to submit legal briefs and additional time to send response to briefs. The first day of hearing was scheduled for September 13, 2007. After inquiry it appeared the only issue for hearing was the previously stated accommodation for the child to more fully participate in the extra-curricular activity offered at the opening of the school day.

DISCUSSION

It is well settled that a Section 504 hearing is not an IDEA hearing. Local educational agencies (LEA) however are required to implement the provisions of both the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq* as amended (IDEA) and Conn. Agencies Regs. § 10-76a-1(d); and Section 504 of the Rehabilitation Act of 1973 when planning the needs of disabled students. The federal education law overlaps with the requirements of Section 504 of the Rehabilitation Act of 1973, however the requirements and procedural safeguards afford by the statutes are distinct and unique. (Circular Letter C-9, reissued by the Commissioner of Education on November 3, 2000). The letter specifically states IDEA hearing officers do not have jurisdictions to hear “Section 504 only cases”. In the present case the sole remaining issue for the IDEA due process case is, “Whether the LEA provides a disabled child with physical access to programs and services offered by the district?” The child in the case is hearing impaired and requests open or closed captioning for the morning announcements and other non-academic skits and entertainment offered in the morning show. The hearing officer does not have jurisdiction to make determinations about the reasonableness or appropriateness of the proposed accommodations. To their credit, the parties resolved all the issues related to the provision of specialized education and services pursuant to IDEA at a resolution session. There is no choice but to dismiss the IDEA action to allow the parties to pursue the matter in a more appropriate forum.

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1. The matter is dismissed.