

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

J., BY MR. AND MRS. S., HIS PARENTS :
 :
 :
 :
 v. : 3:99-CV-0775 (EBB)
 :
 :
 FAIRFIELD BOARD OF EDUCATION, ANDREA :
 LEONARD and STATE OF CONNECTICUT :
 DEPARTMENT OF EDUCATION :

RULING ON MOTIONS TO DISMISS

INTRODUCTION

On or about April 27, 1999, the Plaintiffs, Mr. and Mrs. S, the parents of J., a minor special education student, brought the present action against the three Defendants above listed pursuant to the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. Section 1415 and Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794. Plaintiffs claim that the Defendant Fairfield Board of Education failed to provide certain educational services to J. The State Department hearing officer, in the due process case commenced by Plaintiffs, entered an **interim** order requiring the provision of certain services to J. The entire due process case before the hearing officer is ongoing.

All three Defendants have moved pursuant to Federal Rule of Civil Procedure 12(b)(1), asserting that the Court lacks subject

matter jurisdiction over this case at this time.

LEGAL ANALYSIS

A motion to dismiss brought pursuant to Rule 12(b)(1) must be granted if the plaintiff fails to establish jurisdiction. The federal courts are empowered to hear only those cases (1) that are within the judicial power of the United States, as defined by the Constitution, and (2) that have been entrusted to them by a jurisdictional grant by Congress. See Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 371-72 (1978). If a court concludes that it does not have subject matter jurisdiction, it must dismiss the case. See, e.g. Golden Hill Paugussett Tribe of Indians v. Weicker, 839 F. Supp. 130, 136 (D.Conn. 1993).

In the present case, as in all administrative proceedings, it is beyond cavil that exhaustion of administrative remedies is a prerequisite to subject matter jurisdiction in a federal court. The IDEA recognizes this and requires such exhaustion through the ongoing due process hearing. See 20 U.S.C. §1415(f). Garro v. State of Connecticut, 23 F.3d 734, 737(2d Cir. 1994). See also Honig v. Doe 484 U.S. 305, 311-12 (1988)(setting forth the various procedural safeguards in a due process hearing under the IDEA).

The only exception to this exhaustion requirement is if the exhaustion would be futile or the state administrative system

would be inadequate. Garro, 23 F.3d at 737. In the present case, Plaintiffs acknowledge that the due process hearing is ongoing. They also state in their moving papers that they have acquired most of the relief sought through subsequent Planning and Placement Team meetings convened by the Board of Education. Accordingly, exhaustion is plainly required in this case, especially as it seems that all relief sought will be taken care of through the administrative proceedings.

CONCLUSION

Inasmuch as the Plaintiffs have failed to exhaust their administrative remedies, the Court is without jurisdiction to hear this case. Resultingly, the Motions to Dismiss [Docs. No. 6 and 11] are GRANTED. The Clerk is directed to close this case.

SO ORDERED

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ____ day of January, 2000.