



STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION



August 23, 2013

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Attorney James D. Hirschfield
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**Re: Student v. Kent Board of Education
(Case No. 12-09)**

Dear Attorneys Padykula and Hirschfield:

The Impartial Hearing Board of the State Board of Education filed its decision in the above case with the Division of Legal and Governmental Affairs on August 22, 2013. Enclosed is a copy of that decision.

Pursuant to Section 10-187 of the Connecticut General Statutes:

“Any parent or guardian or emancipated minor or a pupil eighteen years of age or older or local or regional board of education aggrieved by the finding of the hearing board established by the state board of education rendered under the provisions of section 10-186 may appeal therefrom in accordance with the provisions of section 4-183, except venue for such appeal shall be in the judicial district within which such board is situated.”

If you have any questions, please contact the Division of Legal and Governmental Affairs at 860-713-6520.

Sincerely,

Laura L. Anastasio
Division of Legal and Governmental Affairs

LLA:jd

cc: Ann F. Bird, Impartial Hearing Board

Enclosure

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

**Student v. Kent Board of Education
And Patricia Chamberlain**

August 22, 2013

Appearing for the Student

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Impartial Hearing Board

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FINAL DECISION AND ORDER

Issue:

Is the Student actually a resident of Kent, Connecticut?

Procedural History:

On May 10, 2013, the Superintendent of the Kent Public Schools notified the Student of the Superintendent's conclusion that the Student is not a resident of Kent, Connecticut and, accordingly, is not entitled to free public school accommodations there. (Student Exhibit 19; Hearing Officer Exhibit 3) The Student timely requested a hearing to challenge that conclusion, and a hearing panel appointed by the Kent Board of Education (hereafter "Kent Hearing Panel") conducted a hearing on June 25, 2013. (Hearing Officer Exhibit 2)

After hearing the evidence and arguments of the parties, the Kent Hearing Panel decided that the Student is not a resident of Kent and therefore is not entitled to free public school accommodations in Kent. (Hearing Officer Exhibit 2)

The Student filed a timely Notice of Appeal from the decision of the Kent Hearing Panel (hereafter "Appeal") with the State of Connecticut Board of Education on July 11, 2013. This Impartial Hearing Officer was then appointed to hear the Appeal.

A prehearing conference on the Appeal was conducted on August 9, 2013, immediately followed by an evidentiary hearing. The Student participated in the prehearing conference and subsequent evidentiary hearing through counsel, as did the Kent Board of Education. Both the Student and the Board of Education had a full opportunity to call witnesses, to cross-examine witnesses and to introduce exhibits and other evidence at the hearing.

At the outset of the hearing, the parties stipulated that the record of the June 25, 2013 hearing before the Kent Hearing Panel - except only audio and video recordings and transcripts of testimony - was available to them for use during the hearing. The parties also stipulated to make that record a series of full exhibits in the Appeal.

The parties further stipulated to dismiss the Region One Board of Education, and agreed that Patricia Chamberlain was named in the Appeal only in her official capacity as Superintendent of the Kent Public Schools. Finally, the parties stipulated that the Student's Appeal was timely filed.

The Student's proposed exhibits were identified and admitted in full as Student Exhibit 1 through Student Exhibit 30. The Board of Education's proposed exhibits were identified and admitted in full as Board Exhibit A through Board Exhibit F. Additionally, Hearing Officer Exhibit 1 through Hearing Officer Exhibit 8 were identified and marked as full exhibits.

The Student called the following witnesses to testify during the hearing:

Marcus Spinner
Monica Rodriguez
Student's Mother
Anthony Sterzl
Jennifer Dubray
Matthew Winter
Student's Father

The Board called the following witnesses to testify during the hearing:

Rima McGeehan
Julianne Paine

Findings of Fact:

1. At all relevant times, the Student's Mother and Father owned a house on a large lot in Wassaic, New York (hereafter "New York House"), just a few miles from Kent, Connecticut. (Testimony of Student's Mother)(hereafter "Mother")
2. The Student's Father owns a modular home erection business that he operates from the New York House. (Mother)

3. The Student's Father's work frequently takes him away from home, so that he often sleeps in motels. Moreover, even when he is working near his home, the Student's Father often comes home very late and leaves very early in the morning. (Mother; Father)
4. The Student's Mother and Father purchased twenty-five acres of unimproved land in Kent on July 31, 2009. Their intention was that the Student's Father would erect a modular house on the property and the family would move in right away and live there permanently (hereafter "Kent House"). (Mother)
5. Erection of the modular Kent House took much longer than the family expected. They did not receive a certificate of occupancy for the Kent House until late January 2011, although construction was largely completed months earlier. (Mother)
6. In the meantime, the Student's Mother registered and enrolled the Student in the Kent Public Schools as a Kindergartener at Kent Center School in late August 2009. In so doing, the Student's Mother falsely represented her residence as the then unimproved land where she and the Student's Father at that point only planned to erect the Kent House. (Mother; Board Exhibit A)
7. The Student has attended Kent Center School ever since that time. He is now eight years of age and recently completed the Third Grade. (Mother)
8. On September 1, 2009, before the Kent House was erected, the Student's Mother and Father rented a few rooms in a private single-family house in Kent (hereafter "Kent Rental") for a period of one year. The Student never spent much time at the Kent Rental and never actually slept there. (Board Exhibit D; Mother)
9. The Student's Mother falsely identified the Kent Rental as her residence when she obtained a Connecticut driver's license in 2009. (Student Exhibit 6; Mother) The Student's Mother also gave a copy of the lease for the Kent Rental to the Principal of Kent Center School in an effort to convince the Principal that she and the Student were residing in Kent when, in fact, they were not.
10. Within a few days of issuance of the certificate of occupancy for the Kent House in late January 2011, the Student and his Mother moved in to the Kent House.
11. The Student has a designated bedroom, including at least a bed and a closet, on the second floor of the Kent House as does his Mother. The Student and his Mother keep clothes and other personal belongings at the Kent House. (Student Exhibits 1, 2, and 3; Mother; Rodriguez; Winter)
12. The Kent House is furnished on at least the ground floor, where there is a garage, a kitchen and a living room. (Student Exhibits 4 and 5; Mother; Rodriguez)

13. The Student's Mother uses the Kent House address as her residence address for her voter registration, driver's license and library card. (Mother; Student Exhibits 6 and 7A)

14. The Student's Parents pay substantial amounts in property taxes to Kent for the Kent House and automobiles. (Mother; Student Exhibits 15A, 15B, 15C, 15D, 16A, 16B, 16C, 16D and 16E)

15. The Student's Parents have attempted unsuccessfully to sell the New York House. The Student's Father continues to sleep at the New York House when he is working nearby. A caretaker maintains the New York House and cares for the family's dogs when the Student's Father is away during the week. (Mother; Spinner)

16. The Student and his Mother usually spend weekends and school vacations at the New York House. (Mother; Spinner)

17. The Student and his Mother are involved in many afterschool activities in Kent and nearby Connecticut towns. The Student plays soccer and hockey with teams operated by the Kent Park and Recreation Department after school and on weekends. His Mother has also coached several organized sports for the Kent Park and Recreation Department. (Mother; Rodriguez)

18. The Student is also an active member of a cub scout den that is based in Kent and that is affiliated with a boy scout pack based in Kent. His Mother serves as den mother for the cub scout den and co-pack leader for the pack. (Mother; Rodriguez; Winter; Student Exhibit 10B)

19. The Student's Mother also volunteers for the Kent Center School Parent Teacher Organization, devoting significant time to plant sales and other school activities. (Mother; Student Exhibit 12)

20. During the season, the Student skis with a team comprised of students attending Kent Center School. The ski team skis during week day afternoons and early evenings near Kent when possible and also travels to ski resorts on weekends. The Student's Mother serves as the ski team's coordinator. (Mother; Rodriguez; Student Exhibit 11)

21. The Student and his Mother use a physician and a pharmacy located in Kent. (Mother; Student Exhibit 13). They also have library cards in Kent and participate in after school library activities. (Mother)

22. The Student typically takes the school bus from the Kent House to Kent Center School each school day morning except Monday, when his mother drives him to school directly from the New York House. (Mother; Sterzl; Student Exhibit 10)

23. The Student also typically takes the school bus from the Kent Center School to the Kent House each school day afternoon. A baby sitter meets the Student at the Kent

House each afternoon. The Student then stays with the baby sitter until his Mother arrives after her workday. On most weekday afternoons, the baby sitter or Mother take the Student to an after school activity in Kent or an adjacent Connecticut town. (Mother; Dubray; Paine; Sterzl; Student Exhibit 30)

24. The Student's friends are all in Kent. He has no friends in New York. Nor does he participate in organized after school activities in New York. (Mother)

25. The Student's Mother testified that she and the Student typically return to the Kent House in the late afternoon or early evening at the conclusion of the Student's after school activity, to spend the remainder of the evening and sleep Monday through Thursday. She testified that they usually spend this time at the rear of the house, so that their lights are not visible from the street after sunset. She also testified that she parks her car in the driveway where it can be seen from the road when she is present at the Kent House. (Mother)

26. A family living in a house across the road from the Kent House has a view of the front of the Kent House, including its garage and driveway - even in full foliage season - from their living room and deck. A member of that family (Neighbor) works and spends almost all of her time at home. The Neighbor has occasion to view the Kent house many times each day and can see whether there is a car in the Kent House driveway and whether there are lights on in the front of the Kent House. (Paine; Student Exhibit 25)

27. The Neighbor testified that several dogs in her care alert her whenever anyone is present on her family's driveway or on the driveway of the Kent House. This alert prompts her to look to see who is present, at which time she notices if the Kent House is occupied or if someone is using the Kent House driveway. (Paine)

28. The Neighbor corroborates that the Student typically takes the school bus from the Kent House on school day mornings and returns on the bus to the Kent House each afternoon. She also corroborates the Student's Mother's claim that a baby sitter supervises the Student each weekday afternoon at the Kent house until his Mother arrives after her work day, when she typically drives away with the Student. (Paine)

29. The Neighbor estimates that based on her observations, the Student and his Mother return to spend the rest of the evening and sleep at the Kent House on only *two nights* per week. (Paine)

30. The disparity between the testimony of the Student's Mother and the Neighbor on this key element, therefore, comes down to a dispute about *only two nights* per week: The Mother says the Student sleeps at the Kent House four nights per week, while the Neighbor claims he sleeps there only two nights per week.

31. Neither the Mother nor the Neighbor kept a diary or other contemporaneous record of the presence or absence of the Student at the Kent House on any particular day. The Student's Mother, however, bolstered her testimony with the claimed pattern of

sleeping in Kent every Monday through Thursday night. The family's New York caretaker also confirmed the Mother's claim that she and the Student typically do not sleep at the New York House when school is in session. The Neighbor, by contrast, offered no corroboration for her estimate of a specific number of nights spent in Kent per week. (Mother; Spinner; Paine)

32. As a result, I find that the preponderance of the evidence as to the question of how many nights per week the Student stays and sleeps in Kent tips in favor of the Mother's version of events. Accordingly, I find that the Student spends the school day, afternoon and evening¹, and sleeps in Kent approximately four nights per week while school is in session.

Discussion and Conclusions of Law:

1. This matter was heard pursuant to an Appeal by the Student from a Decision of a hearing panel acting on behalf of the Kent Board of Education pursuant to Connecticut General Statutes Section 10-186(b). The Kent Hearing Panel conducted an evidentiary hearing in accordance with the provisions of Connecticut General Statutes Section 10-186(b)(1), and upheld the conclusion of the Kent Superintendent of Schools that the Student is not a resident of Kent and is not entitled to free public school accommodations there.

2. A *de novo* evidentiary hearing was conducted on the Appeal on August 9, 2013 in accordance with the provisions of Connecticut General Statutes Sections 10-186(b)(2) and 4-176e et seq. The Student and the Kent Board of Education each appeared and had a full opportunity to be heard.

3. As the Appellant, it was the Student's burden to prove by a preponderance of the evidence that the Student is an actual resident of Kent and is therefore entitled to free public school accommodations in Kent. Connecticut General Statutes Section 10-186(b). Proof by a preponderance of the evidence means that considering all the evidence fairly and impartially, the evidence produces a reasonable belief that what is sought to be proven is more likely true than not true. State v. Aviles, 277 Conn. 281, 310-12, n. 16 (2006).

4. The preponderance of the evidence here established that the Student typically spends the five school days each week while school is in session attending school in Kent, riding the school bus between² the Kent Center School and the Kent House and participating in organized activities such as athletics and cub scouts in Kent and adjacent Connecticut Towns.

¹ Some afternoons and early evenings are spent in Connecticut towns near Kent engaging in organized sports and similar activities with Kent based groups.

² The one exception is that the Student's Mother often drives the Student to school on Monday mornings.

5. The preponderance of the evidence also demonstrated that the Student and his Mother typically spend the evenings and sleep at the Kent House each Monday through Thursday while school is in session.
6. The Student has never attended school in New York and does not have the ties in the New York community that are typical of residency, such as regular participation in cub scouts, organized sports, library or church activities. Indeed, with all of his activities in Connecticut, he has little time for similar engagements in New York.
7. The Board of Education appropriately argues that the Student's Mother's testimony should not be credited because she intentionally misled school officials to believe that she and the Student resided in Kent for several years before they actually did. The Board's point is well taken.
8. Yet, even if the Mother's testimony is discarded entirely, other credible witnesses established that the Student rides the school bus to and from the Kent House most school days and spends school day afternoons at the Kent House. Other testimony also established that the Student spends a substantial amount of time in Kent engaged in organized activities after school and into the evening during the school year and that he usually sleeps in Kent during the school week.
9. The Kent Board of Education is obligated to provide free public school services to school age children who actually reside in Kent. Connecticut General Statutes Sections 10-220(a) and 10-186; Mangiafico v. State Board of Education, 138 Conn.App. 677, 685 (Conn.App. 2012). In order for a child to actually reside in a town, he or she must be physically present and living as a householder during significant parts of each day and for important purposes consistent with residence. Mangiafico v. State Board of Education, 138 Conn.App. 677, 686 (Conn.App. 2012) *citing* West Hartford Board of Education v. State Board of Education, et al, Superior Court, Judicial District of Hartford-New Britain, Docket No. CV01-0510157-S (June 19, 2002, Cohn, J.) Actual residence requires more than an intention to reside in the district in the future. Physical presence in some amount must be proved. Id. at 696-87, *citing* Student v. Board of Education, Case No. 98-7 (April 16, 1999).
10. There is no bright-line rule establishing precisely how many hours or days must be spent in the district to warrant a finding of "actual residency". See West Haven Board of Education v. State Board of Education et al, Superior Court, Judicial District of New Haven, Docket No. 324011 (June 19, 2002, Steinberg, J.)(students spent most weekends and Thursdays in West Haven in their father's home, where they grew up, began school and where their friends and social contacts were).
11. The State Board of Education and Connecticut Superior Court have also held that students who shuttle between the homes of separated parents in different towns are entitled to attend school in a town where they spend substantial amounts of time sleeping, using and keeping personal belongings, engaging in community activities and maintaining social connections. West Haven Board of Education v. State Board of

Education et al, Superior Court, Judicial District of New Haven, Docket No. 324011 (June 19, 2002, Steinberg, J.); Student v. Newington Board of Education, Case No. 03-45 (August 20, 2004); Student v. Windsor Board of Education, Case No. 09-08 (February 19, 2010). The law does not impose a different rule for students, like the Student here, whose parents reside in separate towns but are not separated or divorced.

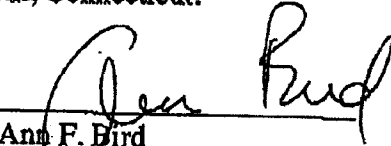
12. The Student and his Mother are physically present in Kent for substantial amounts of time for important purposes consistent with residence, including attending school, sleeping, maintaining clothes and personal belongings, engaging in organized sports and similar activities in the community, and sustaining friendships. Significantly, this case does not present the situation often found in these disputes, where a student's family does not engage in the important purpose - consistent with residence - of maintaining a "stake in supporting the local school district" and contributing "financially and fully" to the community. West Hartford Board of Education v. State Board of Education, et al, Superior Court, Judicial District of Hartford-New Britain, Docket No. CV01-0510157-S (June 19, 2002, Cohn, J.).

13. The Student's Parents pay substantial amounts for property taxes associated with their ownership of a large tract of land and automobiles to the Town of Kent each year. Those taxes financially support the Kent Public Schools. The Mother also contributes significantly to the community by volunteering her time to serve as a scout den mother, co-pack leader, ski team coordinator, parent teacher organization volunteer and sports team coach. The Student and his Parents have a stake in the Kent community that is deep and permanent.

14. The preponderance of the evidence demonstrates that the Student is an actual resident of Kent and is, therefore, entitled to free public school accommodations in Kent.

FINAL DECISION AND ORDER

The Student is an actual resident of Kent, Connecticut and is entitled to free public school accommodations in Kent, Connecticut.


Ann F. Bird
Impartial Hearing Board
August 22, 2013