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| | : | SUPERIOR COURT |
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| IN RE Jane Doe | : | JUVENILE MATTERS AT HARTFORD |
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MOTION TO DISMISS FAMILY WITH SERVICE NEEDS PETITION

Pursuant to Conn. Practice Book § 31a-3, Jane Doe, by and through undersigned counsel, respectfully requests this Court dismiss the Family with Service Needs Petition (hereinafter “the Petition”) filed in the above-referenced matter. The petition indicates that the filing party, SCHOOL DISTRICT did not take the steps required by Conn. Gen. Stat. § 10-198a prior to filing the Petition on the basis of alleged truancy. Moreover, the Petition clearly indicates that Jane is in the process of being evaluated for special education services due to psychiatric disabilities and that this process is not yet complete. Accordingly, the filing of the Petition on the basis of truancy is premature and should be dismissed. On behalf of this motion, the following is also asserted:

1. According to the Petition, Jane attended Middle School for 7th grade and part of 8th grade.
2. The Petition does not list any dates that the school met with Jane and her mother *this school year* to address truancy issues. The Petition identifies that the basis of the FWSN complaint is truancy during the current school year.
3. Conn. Gen. Stat. § 10-198a requires that the local school district take specific steps to resolve attendance issues prior to filing a FWSN Petition. For example, the school district is required to meet with the parent and discuss the attendance issues. The

ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED

district is also required to inform the parent upon enrollment as to the attendance policies of the school. Finally, the district is required to help “coordinate[e] services with and referrals of [the child] to community agencies.” Conn. Gen. Stat. § 10-198a(b). Here, the Petition indicates that the SCHOOL DISTRICT did not meet with Jane’ mother, Mrs. Doe, during the current school year to discuss truancy or how to resolve underlying emotional issues that were leading to truancy. The plain terms of Conn. Gen. Stat § 10-198a envision that no FWSN petition will be filed before these non-judicial steps are taken. The statute expresses the legislature’s preference that attendance related problems be resolved, if possible, without resorting to judicial intervention. Because the Petition does not document any interventions taken to prevent or cure the alleged truancy that constitutes the basis for the FWSN complaint, the Petition must be dismissed.

4. Finally, the Petition clearly states that Jane was attending programming at the Institute of Living and that she was referred by Middle School for a Special Education evaluation on xx, 2006. The Petition indicates that the results of the evaluations are “pending.”

5. It is the school’s obligation under state and federal law to identify disabled students in need of special education services and provide those students with an education suitable to their needs.¹ The Petition raises the inference that Jane’ “truancy” is a symptom of underlying psychiatric disabilities—disabilities that the school has only begun to evaluate and has not yet programmed for. SCHOOL DISTRICT has not formulated or implemented an individualized education plan or behavioral intervention plan to deal with

¹ C.G.S § 10-76d; 20 U.S.C. § 1412, et. seq.

the symptoms of Jane's psychiatric disability. Accordingly, SCHOOL DISTRICT should not seek court intervention to cure a problem that it has not yet attempted to deal with.

6. This status offense charge should be dismissed because SCHOOL DISTRICT failed to fashion and implement an appropriate educational and service program for Jane as required under existing federal and state statutes. See e.g., In Re Ruffel, 582 NYS. 2d. 631 (Fam. Ct. 1992) (holding that “[I]t is the opinion of this Court that it is appropriate for a school district to first attempt to fashion, from its many resources, a reasonable and appropriate environment for a child before commencing judicial proceedings.”) In Morgan v. Chris L., the Sixth Circuit dismissed a juvenile petition where the school had notice that the child had a disability and did not follow federally mandated procedures to create an appropriate educational program and interventions for that child. 106 F.3d 401 (6th Cir. 1997) (unpublished, copy attached hereto.) The Sixth Circuit reasoned that by “resorting to juvenile court, the school system is, at a minimum, proposing that the juvenile court develop its own program of rehabilitative services for [the youth]. ...[T]he juvenile court action ... was a proposal for, or the initiation of, a change of educational placement that, prior to filing, should have triggered the procedural safeguards of [federal law] including the convening of [IEP team meeting].” Id. at 407.²

7. SCHOOL DISTRICT complaint is ill-timed, premature and possibly wholly unnecessary. If SCHOOL DISTRICT had taken the appropriate steps mandated by federal and state statute, to identify Jane as a disabled student and provide her the appropriate programming that she needed, the Petition may not have been necessary.

² But not all courts have adopted this approach. See e.g. In Re Beau, II, 95 N.Y.S. 2d 234 (N.Y. 2000).

WHEREFORE, counsel for Jane respectfully requests this Court dismiss the Family with Service Needs Petition in this matter.

Respectfully submitted,

BY: _____

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ORDER

The foregoing Motion to Dismiss having come before this Court for consideration, it is hereby GRANTED/DENIED.

Judge, Superior Court

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed postage prepaid to
State's Attorney