

REASONS

The case herein appears to be on "all fours" with the board's exhaustively-considered holdings in Fair Hearings No. 8054, 7809 and 6540. (Copies of the pertinent sections of those decisions are attached hereto and are incorporated by reference herein.) As held in those cases, the petitioner's grievance herein--placement decisions regarding juveniles pursuant to a CHINS decree--concern "proceedings" which are in the "exclusive jurisdiction" of the Juvenile Court. 33 V.S.A. § 633(a). Thus, the board, as a matter of law, is without jurisdiction to consider the matter.¹

The hearing officer and the board can appreciate the frustration of the petitioner in this matter. However, like in Fair Hearing No. 8054 (see Id. pp 3-4), the petitioner herein has a forum (Juvenile Court) in which to raise all of her factual and legal arguments.² The petitioner having presented no compelling legal basis to distinguish this matter from the board's prior holdings,³ the department's Motion to Dismiss is granted.

FOOTNOTES

¹More recent decisions by the Vermont Supreme Court, In Re B.L., 149 Vt 375 (1987), and In Re L.T., 149 Vt 473 (1988), have further affirmed the right and responsibility of the district (juvenile) courts in CHINS cases to ensure that SRS exercises its discretion within the boundaries of the law. Although the Supreme Court has consistently held that the District Court may not substitute its discretion for that of SRS, this is not a valid argument that the Human Services

Board has (or should have) this authority. See 3 V.S.A. § 3091(d), and Fair Hearing No. 8054, pp 5-7.

²In addition, this petitioner may have available a remedy in the Superior Court that issued the decree of divorce between her and her husband. See 15 V.S.A. § 665.

³The petitioner's attorney was provided with copies of the board's prior decisions and given a reasonable time in which to respond to the department's Motion to Dismiss.

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