

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Torrington Board of Education

On behalf of the Parents:

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On behalf of the Board of Education:

**Attorney Michelle C. Laubin
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Hearing Officer:

Attorney Stacy M. Owens

AMENDED FINAL DECISION AND ORDER

ISSUES

1. Whether the Board failed to identify the Student as Other Health Impaired (“OHI”) qualifying the student for special education services for the 2006-2007 school year; if so,
2. Whether the Board failed to provide the Student with a free and appropriate public education (“FAPE”) for the 2006-2007 school year; if so,
3. Whether the Parent is entitled to reimbursement for unilateral placement of the Student at the Chase Collegiate School for the 2006-2007 school year.
4. Whether the Board failed to identify the Student as Other Health Impaired (“OHI”) qualifying the student for special education services for the 2007-2008 school year; if so,
5. Whether the Board failed to provide the Student with a free and appropriate public education (“FAPE”) for the 2007-2008 school year; if so,
6. Whether the Parent is entitled to reimbursement for unilateral placement of the Student at the Chase Collegiate School for the 2007-2008 school year.
7. Whether the Board failed to identify the Student as Other Health Impaired (“OHI”) qualifying the student for special education services for the 2008-2009 school year; if so,
8. Whether the Board failed to provide the Student with a free and appropriate public education (“FAPE”) for the 2008-2009 school year; if so,

9. Whether the Parent is entitled to reimbursement for unilateral placement of the Student at the Chase Collegiate School for the 2008-2009 school year.
10. Whether the Board failed to identify the Student as Other Health Impaired (“OHI”) qualifying the student for special education services for the 2009-2010 school year; if so,
11. Whether the Board failed to provide the Student with a free and appropriate public education (“FAPE”) for the 2009-2010 school year; if so,
12. Whether the Parent is entitled to reimbursement for unilateral placement of the Student at the Chase Collegiate School for the 2009-2010 school year.

SUMMARY/PROCEDURAL HISTORY

The Parents in the above-referenced matter filed a request for hearing on April 2, 2008.¹

On April 11, 2008, a prehearing conference was held during which Attorney Stevenson appeared on behalf of the Parents and Attorney Laubin appeared on behalf of the Board. The issues were discussed and the hearing was scheduled for May 29, June 3 and 4, 2008.

By letter dated May 1, 2008, Attorney Laubin submitted a Motion To Dismiss in the above-referenced matter. The Motion to Dismiss was granted.

On or about May 27, 2009, the undersigned issued a ruling granting the Board’s Motion to Dismiss in case number 07-467. On June 23, 2009, U.S. District Court Judge Mark R. Kravitz, remanded the decision of dismissal in case number 07-467, and in light of the Supreme Court’s decision in Forest Grove School District v. T.A. (June 22, 2009), ordered the undersigned to “reconsider her determination and decide all other issues as necessary.”²

During the prehearing conference on July 15, 2009, the parties expressed disagreement as to the instructions and intent of the remand from the District Court. As such, the undersigned ordered the parties to brief the

¹ Initial request for hearing was assigned case #07-467.

² On remand, case number 07-467 was reassigned to the undersigned and assigned case number 09-552, as an administrative matter

applicability of the *Forest Grove* decision as it was referenced in the District Court's order of remand, and whether the dismissal of case number 07-467 should be vacated or upheld.³

On August 31, 2009, the undersigned determined that the previous dismissal of case number 07-467 was inconsistent with the reasoning in *Forest Grove*, and that the case involved a matter of unilateral placement, rather than child find, and ruled that the matter would proceed as a FAPE issue concerning whether the Student should have been identified.

The hearing convened on September 10, 2009, October 8 and 27, 2009, December 11, 14 and 16, 2009, June 2, 17, 18, 22, 23 and 29, 2010 and July 14, 2010.

FINDINGS OF FACTS

1. The Student began attending the Torrington Public Schools in the 1997-1998 school year, during the Student's kindergarten year at Toringford Elementary School. In April 1997, the Student had allergies to animals, but no other general health concerns. The Student was absent seven days. (Bd. Exhs. 2, 3, 80).
2. During first grade in the 1998-1999 school year, the Student met all academic objectives, exceeded social development and work habit objectives, and made satisfactory progress in art, music and physical education. The Student was absent 15 days. (Bd. Exhs. 4, 80).
3. During second grade in the 1999-2000 school year, the Student was diagnosed with pneumonia on October 26, 1999. (Bd. Exh. 5). The Student met all academic objectives, exceeded social development and work habit and art class objectives, and made satisfactory progress in music and physical education. The Student was absent 12 days. (Bd. Exhs. 5, 6, 80).
4. On or about June 2, 2001, Lois Dmowski, Nurse, sent a letter to the Parent acknowledging the Student's recent asthma diagnosis and inquiring as to whether the Student could participate in the school's Fun Run on June 8, 2001. By letter dated, June 2, 2001, the Parent responded that the Student "can definitely run at the Fox Run without a problem – no meds required. In fact he is the best runner + fastest on his baseball team. He is not restricted in any way. . ." (Bd. Exh. 8)
5. During third grade in the 2000-2001 school year, the Student earned straight A's in all academic classes, and exceeded social development and work habit objectives. The Student was absent 10 days. (Bd. Exhs. 7, 80).

³ The Parent filed a Motion to Amend the Request for Hearing, now considered case number 09-0552, to incorporate identical causes of actions for different and more recent time periods. The Board did not object, and the undersigned granted the Motion to Amend.

6. During fourth grade in the 2001-2002 school year, the Student scored at goal in reading, writing, and math on the Connecticut Mastery Test (CMT); scored mostly A's in his academic classes, and exceeded objectives in his non-academic classes. The Student was absent five days. (Bd. Exhs. 9, 10, 80).
7. During fifth grade in the 2002-2003 school year, the Student earned all A's in his academic classes and was absent 12 days. (Bd. Exhs. 15, 80).
8. Throughout the Student's years at Torrington Elementary School, there is nothing in the Student's record to indicate difficulties with allergies. (Tr. Robin).
9. Prior to entering the Student's sixth grade year, the Parent inquired about potential Section 504 accommodations to be made available to the Student at the Torrington Middle School for the Student's acute asthma, sinusitis and allergy attacks. (Bd. Exh. 13).
10. The Student's acute asthma, sinusitis and allergy attacks are more prevalent during the spring and fall as a result of increased mold in the environment. (Bd. Exh. 13).
11. By letter dated, August 20, 2003, Dr. John Santilli, the Student's pediatric allergist, informed the district that the Student was extremely allergic to indoor molds, and that the Student would require an out-of-district placement if the indoor air quality at Torrington Middle School was not environmentally safe. Dr. Santilli recommended initiation of allergy desensitization against a variety of environmental allergens including mold spore and dust particles, and The Student started allergy shots in 2004. (Bd. Exhs. 17, 18, 19).
12. Following removal of carpeting at the Torrington Middle School, Hygenix, Inc. conducted a test of the air quality and determined that the mold spore count was low throughout sampling locations in the school and significantly lower than the outdoor sample. (Bd. Exh. 22).
13. On September 15, 2003, the Student was offered alternative placement at the Southwest School within the district, while the Board conducted further evaluations of the air quality at Torrington Middle School. The Parent declined the alternative placement on behalf of the Student and elected to enroll the Student at St. Margaret's-McTernan School for the Student's sixth grade year in 2003-2004. (Bd. Exhs. 23-25, 27, 28).
14. St. Margaret's-McTernan School (later renamed Chase Collegiate) is a private school that does not have a State of Connecticut Department of Education approved special education program. (Tr. Robin).
15. As recommended by Dr. Santilli, the environmental controls with desensitization therapy combined with an ongoing medical regimen helped the Student improve significantly. (Tr. Grodofsky)
16. In 2003, the Board conducted a psychological evaluation, achievement testing and speech and language evaluation of the Student to determine the Student's eligibility for special education and/or Section 504 accommodations. The evaluations and testing revealed that the Student was functioning within the superior range of intelligence and the Student's academic skills were within the high average range. The Student's receptive and expressive language skills were within the superior range. Progress reports

from St. Margaret's-McTernan School indicated that the Student was doing well in his classes and the teachers had no concerns about his progress. (Bd. Exhs. 30-34)

17. On December 9, 2003, the Board convened a Section 504 team meeting. After reviewing Dr. Santilli's report and the evaluations, the Section 504 team determined that the Student did not have a disability that substantially limited one or more of the Student's major life activities under Section 504. Despite the Section 504 team's findings, the Student was again offered placement at the Southwest School. (Bd. Exh. 39)
18. On December 9, 2003, the Board also convened a Planning and Placement Team (PPT) meeting. The PPT team determined that it lacked sufficient information concerning the Student's current functioning in school. The Parent, who prohibited the Board from contacting St. Margaret's-McTernan School directly, produced the Student's first trimester report card in which the Student earned an 89 in language arts; 96 in Latin; 86 in Social Studies; 92 in Math; and 91 in Science. (Bd. Exhs. 38, 40).
19. On February 3, 2004, Barbara Ruggiero, Director of Student Support Services at St. Margaret's-McTernan School, conducted an observation of the Student in the classroom and submitted a report to the Board. (Bd. Exh. 45).
20. On February 20, 2004, a PPT meeting convened to review Ms. Ruggiero's observation report and determine the Student's eligibility for special education. The PPT team determined that the Student was not eligible for special education, but agreed to conduct an independent neuropsychological evaluation at the Parent's request. (Bd. Exhs. 46, 47).
21. Dr. Gregory Javornisky conducted the Student's neuropsychological evaluation and reported no concerns for the Student's academic processing skills and abilities, and noted that the Student should be able to function in the regular classroom environment without difficulty. (Bd. Exh. 51).
22. During the 2004-2005 school year, the Parent unilaterally placed the Student at Chase Collegiate School for seventh grade. On September 17, 2004, the Board convened a Section 504 meeting and a PPT meeting. (Parent Exh. 20; Bd. Exhs. 52, 53, 55-58)
23. During the Section 504 meeting, the Section 504 team requested an independent medical evaluation and the Parent presented a supplemental medical questionnaire from Dr. Christopher Randolph dated July 8, 2003, indicating the Student could attend school once any water damage had been corrected. The Section 504 team determined the Student was ineligible for Section 504 accommodations because Dr. Randolph's report was over a year old, and it required more up-to-date information. (Parent Exhs. 7, 10; Bd. Exh. 57)
24. During the PPT meeting, the PPT team reviewed the independent neuropsychological evaluation and concluded that the Student was not eligible for special education services. (Bd. Exh. 58).
25. Dr. Randolph examined the Student again on September 20, 2004, and determined that the Student had mild intermittent asthma, perennial and seasonal allergic rhinitis, and was receiving immunotherapy⁴

⁴ Immunotherapy is utilized to stimulate the immune system to become tolerant of the environmental allergens by injecting the patient with the very thing that causes the allergies. (Tr. 6/17/10, Santilli testimony; Tr. 6/22/10, Grodofsky testimony).

- from Dr. Santilli. The Student was asymptomatic at the time of Dr. Randolph's examination. (Bd. Exh. 62).
26. The Student is allergic to tree pollen, grass pollen, cat and dog dander, dust mite, pollen, penicillin, ragweed, and mold. The Student is ultra-sensitive to picking up allergens and prone to recurrent infection. (Parent Exhs. 11, 13; Tr. 6/2/10, Tr. Santilli).
 27. In general, performance is impacted when allergies are bad. The Student was reported to to have focus concerns consistent with being on allergy medicine, sometimes needed to be brought to task, and lacked motivation. (Bd. Exhs. 40, 47, 50, Tr. 6/2/10, Testimony Santilli).
 28. On October 7, 2004, the Section 504 team convened a meeting to review Dr. Randolph's updated report and the September 4, 2003 Torrington Middle School environmental report, and determined it needed more information. (Bd. Exh. 65).
 29. On December 15, 2004, the Section 504 team convened a meeting, and after Dr. Randolph had no additional information to add to his September 20, 2004 report, the Section 504 team determined that the Student was ineligible for Section 504 accommodations because the Student did not have an impairment that substantially limited one or more major life functions. (Bd. Exhs. 71, 73).
 30. During the 2005-2006 school year, the Parent unilaterally placed the Student at Chase Collegiate School for eighth grade. On August 15, 2005, the Parent requested a Section 504 meeting. The Section 504 team convened a meeting on October 3, 2005. (Bd. Exhs. 74, 78).
 31. During the October 3, 2005 Section 504 team meeting, Dr. Santilli's medical questionnaire was reviewed, and the team determined that the Student did not have a disability that substantially limited one or more major life functions. (Bd. Exhs. 77, 78).
 32. The Section 504 team October 3, 2005 determination was later appealed by the Parent and upheld by a hearing officer, finding that the Student's asthma and allergies did not substantially limit the Student's major life activities and was therefore not considered disabled to qualify for Section 504 accommodations. (Bd. Exh. 81).
 33. While in ninth grade during the 2006-2007 school year, the Student received immunotherapy and the Student's allergies were controlled. The Student had an albuterol⁵ inhaler to use as needed, and was treated with Benadryl for seasonal allergies. The Student had no restrictions on physical activities. (Bd. Exh. 112).
 34. By letter dated March 26, 2007, the Parent requested a Section 504 and PPT meeting for the Student's 2006-2007 school year. The Parent requested eligibility under the IDEA under the "other health impaired" category, and accommodations under Section 504 for the Student. The Parent indicated that the Student was unilaterally placed at the Chase Collegiate School during the 2006-2007 school year. (Parent Exh. 54; Bd. Exh. B-82).

⁵ Albuterol assists in the breathing process by relaxing bronchial spasms . (Tr. 6/22/10, testimony Grodofsky)

35. By letter dated April 5, 2007, Judith Babcock, Director of Student Services for Torrington, interpreted the IDEA to require the town in which the private school is located to be responsible for the Student's IEP, and therefore, directed the Parent to request a PPT meeting from the Waterbury Public Schools. (Parent Exh. 56, 69; Bd. Exhs. 83).
36. The Waterbury Public Schools convened PPT meetings on May 25, 2007 and September 17, 2007, at the request of the Parent, and found that that the Student was functioning and progressing without special education and declined to place the Student at Chase Collegiate. (Parent Exhs. 58, 74-76, 83-85; Bd. Exhs. 109, 110).
37. While in 10th grade during the 2007-2008 school year, the Student had perennial allergies that were controlled with immunotherapy, and continued to take Benadryl and albuterol as needed. The Student participated in indoor and outdoor interscholastic sports in home and away games without difficulties or restrictions (Bd. Exh. 112).
38. By letter dated March 31, 2008, the Parent requested a Section 504 and PPT meeting for the Student's 2007-2008 school year. The Parent requested eligibility under the IDEA under the "other health impaired" category, and accommodations under Section 504 for the Student. The Parent indicated that the Student was unilaterally placed at the Chase Collegiate School during the 2007-2008 school year. (Parent Exhs. 78; Bd. Exh. 89).
39. By letter dated April 3, 2008, Judith Babcock, Director of Student Services for Torrington, interpreted the IDEA to require the town in which the private school is located to be responsible for the Student's IEP, and therefore, directed the Parent to request a PPT meeting from the Waterbury Public Schools. (Parent Exh. 80; Bd. Exhs. 90).
40. While in 11th grade during the 2008-2009 school year, the Student continued to use albuterol as needed, and participated in indoor and outdoor interscholastic sports in home and away games without difficulties or restrictions. (Bd. Exh. 112; Tr. Avoletta)
41. By letter dated September 22, 2008, the Parent requested a Section 504 and PPT meeting for the Student's 2008-2009 school year. The Parent requested eligibility under the IDEA under the "other health impaired" category, and accommodations under Section 504 for the Student. The Parent indicated that the Student was unilaterally placed at the Chase Collegiate School during the 2008-2009 school year. (Parent Exh. 91)
42. By letter dated September 24, 2008, Judith Babcock, Director of Student Services for Torrington, interpreted the IDEA to require the town in which the private school is located to be responsible for the Student's IEP, and therefore, directed the Parent to request a PPT meeting from the Waterbury Public Schools. (Parent Exh. 92)
43. While in 12th grade during the 2009-2010 school year, the Student's allergies improved significantly, the Student was no longer receiving immunotherapy and had no restrictions on activities. The Student took Benadryl for allergies on an as needed basis, and was no longer taking abuterol. The Student participated in indoor and outdoor interscholastic sports in home and away games without difficulties or restrictions. (Bd. Exh. 112; Tr. Grodofsky).

44. By letter dated July 8, 2009, the Parent requested a Section 504 and PPT meeting for the Student's 2009-2010 school year. The Parent requested eligibility under the IDEA under the "other health impaired" category, and accommodations under Section 504 for the Student. The Parent indicated that the Student was unilaterally placed at the Chase Collegiate School during the 2009-2010 school year. (Bd. Exh. 91).
45. By letter dated July 9, 2009, Judith Babcock, Director of Student Services for Torrington, interpreted the IDEA to require the town in which the private school is located to be responsible for the Student's IEP, and therefore, directed the Parent to request a PPT meeting from the Waterbury Public Schools.⁶ (Bd. Exhs. 92).
46. The first day of hearing on the remanded case, #09-0552, commenced on September 10, 2009. During the hearing on October 27, 2009, the parties were ordered to convene a PPT meeting to consider the Student's referral to special education and eligibility for special education services. (Tr. 10/27/10).
47. The PPT meeting convened on December 3, 2009. The PPT heard from Dr. John Santilli, the Student's asthma and allergy specialist, recommended an independent evaluation by a physician, reviewed a report from Gregory MacGilpin, representative from Chase Collegiate, and reviewed documentation from Waterbury's PPT meetings. (Parent Exh. 120; Bd. Exh. 105).
48. The Student's psychological evaluation produced scores on the WAIS-IV indicating that the Student had a full scale IQ of 117. In Verbal Comprehension, the Student earned a composite score of 118. In Perceptual Reasoning the Student scored 117. In Working Memory the Student scored 119. In Processing Speed the Student scored 94, which is within the average range. Throughout the evaluation, the Student's attention and concentration was appropriate, and there was no significant cognitive impact of the Student's allergies on his performance or further indication that the Student required special education services.⁷ (Tr. Riccio).
49. The Student was administered the Woodcock Johnson III Tests of Achievement in a room at Chase Collegiate. At the time the test was administered the Student was asymptomatic. The Student's scores indicated that the Student's academic skills were in the average range, application of academic skills was in the high range, fluency with academic tasks was in the average range, broad written language score was in the superior range, and broad reading and math scores were in the average range. (Tr. Porch).

⁶ As noted in the Procedural History, the undersigned's decision of dismissal in case # 07- 467 was remanded by the U.S. District Court for further consideration "in light of *Forest Grove*." On August 31, 2009, the undersigned ruled that case 07-467 (now case #09-0552) was to be reviewed as a matter of unilateral placement, not child find. Thus, the district responsible for identifying the Student was the Torrington Board of Education. In the interim, the Board justly denied the Parent's requests for PPT meetings in reliance upon the undersigned's preliminary determination prior to remand that this was a matter of child find. Following the undersigned's ruling, the Parent's Motion to Amend the original due process request was granted to include school years 2007-2008, 2008-2009, and 2009-2010.

⁷ The psychological evaluation was administered at Chase Collegiate, and the Student's allergies were asymptomatic at the time of the evaluation.

50. An independent evaluation was conducted by Dr. Marshal Grodofsky and a report was released on March 12, 2010. Dr. Grodofsky reviewed the charts and reports of Drs. Miller, Randolph and Santilli, as well as, the Student's history as provided by the Parent and the Student, and data from examinations and testing. (Parent Exh. 44, 88, 123; Bd. Exh. 108).
51. Dr. Grodofsky reported that at the time of his evaluation in March 2010, the Student's clinical symptoms were significantly controlled, his respiratory problems were stable, and there were no excessive restrictions. Dr. Grodofsky noted that there was "no real objective data to assess whether the Torrington School System was the major culprit of [the Student's] problems" and that there is "no evidence and no reports of the air quality of the Torrington Public School over the last eight years and we have no evidence that [the Student's] respiratory symptoms would actually have deteriorated if [the Student] were in that environment by provocative challenge testing." (Bd. Exh. 108).
52. The Torrington High School had roof leaks from April 2005 through April 2008 that were remediated in a reasonable manner and timeframe. There is insufficient evidence to establish the roof leaks were located in areas created of conditions that would pose a threat to the Student's conditions. (Parent Exhs. 32, 24, 51, 118, 119)
53. The only actual report made of the Student's sensitivity to the air quality in the Torrington Public Schools was made by the Parent to Dr. Santilli after the Parent and the Student walked through the Torrington Middle School in 2003, and the Student reportedly suffered a severe allergic reaction. There is no evidence the Student was not subjected to other triggering allergens prior to or after the Student's walk through the Torrington Middle School, nor did the Student ever walk through the Torrington High School. (Tr. Santilli; Tr. Grodofsky)
54. Throughout the Student's years in high school, the Student could elect to control any allergic reactions with the treatment of albuterol and/or an antihistamine such as Zyrtec, Claritin or Benadryl. The Student elected to take Benadryl, instead of Zyrtec or Claritin. Unlike Zyrtec or Claritin, Benadryl causes excessive drowsiness and affects focus. (Tr. Grodofsky).
55. Dust particles and mold spores that the Student is allergic to are present in every environment. There is insufficient evidence to establish that the Torrington High School had more irritants, dust particles, or mold spores than Chase Collegiate, or that conditions at Torrington High School could exacerbate the Student's allergies. (Tr. Grodofsky).
56. Though swiftly addressed, there has been water intrusion from recurring leaks at Chase Collegiate. No mold testing has been done in the upper school of Chase Collegiate, and no air quality tests have been done within the last six years. There is no evidence that Chase Collegiate has a measurably different environment than Torrington High School. (Tr. Carlton; Tr. Grodofsky).
57. The Student has received no special education while attending Chase Collegiate from 2006-2010. When the Student suffered an allergic reaction he was granted more time or extra help to complete his assignments, an accommodation granted to Students in the Torrington High School for regular education. (Tr. Robin; Tr. Porch)

DISCUSSION AND CONCLUSION OF LAW

I. Burden of Proof

In accordance with *Schaffer v. Weast*, 546 U.S. 49, No. 04-698 (U.S. 2005), the Supreme Court found that fair hearing procedures are to be created and implemented by the states. Like the state law in the *Schaffer* case, the plain text of IDEA is silent with respect to the burden of proof. To address such an issue, the Court held that the burden of proof falls upon the moving party, but remained silent on the issue of burden of proof when states have their own laws or regulations which place the burden on the school district.

In Connecticut, the regulations expressly state that the Board has the burden of proving by a preponderance of the evidence the appropriateness of the Student's program and placement. *Conn. Agencies Regs.*, Sec.10-76h-14. In this case, the Board has met its burden of proof by a preponderance of the evidence.

II. Special Education Eligibility

Section 10-76h(a)(1) of the Connecticut General Statutes provides in pertinent part:

A parent . . . may request, in writing, a hearing of the local or regional board of education or the unified school district responsible for providing such services whenever such board or district proposes or refuses to initiate or change the identification, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil . . .

On March 26, 2007, March 31, 2008, September 22, 2008, and July 8, 2009, the Parent requested PPT meetings seeking eligibility for special education services for the Student as other health impaired for the Student's 2006-2007, 2007-2008, 2008-2009 and 2009-2010 school years, respectively.

In accordance with *Conn. Regs.* §10-76d-6, each Board is responsible for the identification of children requiring special education and related services. A student is eligible for special education if, after an evaluation, the student is found to be a "child with a disability." A "child with a disability" is defined as:

A child having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, *other health impairments*, a specific learning disability, deafness-blindness, or multiple disabilities, and who by reason thereof, needs special education and related services. (emphasis added) 34 C.F.R. Sec. 300.8.

Other Health Impairment is defined as:

Having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that (i) Is due to chronic or acute health problems such as asthma. . . ; and (ii) Adversely affects a child's educational performance. 34 C.F.R. Sec. 300.8(9)

To determine if a Student is eligible for services under the Individuals with Disabilities Education Act (IDEA), the Board must conduct a full and individual initial evaluation in accordance with 34 C.F.R. Sec. 300.305 and 300.306 and *Conn. Regs.* §10-76d-9 before the initial provision of special education and related services are provided. “The evaluation study shall include reports concerning the child’s educational progress, structured observation, and such psychological, medical, developmental and social evaluations as may be appropriate in determining the nature and scope of the child’s exceptionality.” *Conn. Regs.* §10-76d-9.

In evaluating a student, the board must provide notice to the parent describing the evaluation procedures and must utilize “a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent.” No single measure of assessment may be used, and technically sound instruments must be used to “assess the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors.” 34 C.F.R. Sec. 300.304.

Where existing evaluation data exists, the board must “[r]eview existing evaluation data on the child, including: evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations, and observations by teachers and related services providers; and, identify what additional data . . . is needed” to determine eligibility for special education. 34 C.F.R. Sec. 300.305.

The Board evaluated the Student and considered whether the Student was eligible for special education and related services under the category of Other Health Impaired. The Parent, in this matter, does not take issue with the sufficiency of the evaluations, as opposed to the interpretation and application by the experts of the data. A preponderance of the evidence establishes that the Board engaged a variety of assessment tools and strategies. Specifically, the Board obtained a psychological evaluation, achievement testing, and secured an independent evaluation from an Allergist and Immunologist. In addition, the Board reviewed the reports of Drs. Santilli, Randolph, and Miller concerning the Student’s allergies and therapies, as well as class-room observations, the Student’s school records, and parental input. The conclusions of the Board drawn from such evaluations are deemed reasonable and appropriate.

In this case, the Student was evaluated on more than one occasion to determine eligibility for special education services. There is nothing in the record to indicate that the Board failed to comply with the requirements of 34 C.F.R. Secs. 300.300 through 300.311 and *Conn. Regs.* §10-76d-9 in the administration of evaluations of the Student. In fact, the evidence establishes that barriers to accessibility were often engaged by

the Parent rendering the Board's attempt for scheduling, release of records, communications with Chase Collegiate or doctors, and securing a location for test administration, as multiple feats to overcome in an effort to ensure compliance. Although, the evidence clearly establishes that the Student suffers from chronic asthma and other allergies, the evidence fails to establish that such conditions adversely affect the Student's educational performance.

Several factors and omission of evidence dictate the findings in this matter:

1. There is a lack of any evidence concerning the air quality at Torrington High School during the timeframe in which the Student would have attended. It is simply inappropriate to conclude that because there were roof leaks in the Torrington High School, the Student could not attend because of the Student's allergic conditions without any evidence;
2. There is a lack of any evidence that Chase Collegiate, which also had leaks and no air quality testing during the relevant timeframe, was an appropriate placement in light of the Student's ongoing allergic conditions;
3. The Student excelled athletically and academically with average processing issues during high school;
4. The Student often was required to travel to out-of-district schools to engage in interscholastic sporting events with no inquiry into the air quality of the schools, and did so successfully without any reported exacerbation of the Student's allergic conditions;
5. The Student's allergic conditions, while attending high school, improved significantly, and were controlled with a rescue inhaler or antihistamine. The Student elected to use Benadryl to alleviate allergic symptoms, which causes severe drowsiness, and likely is the cause of the Student's lack of focus and lethargy, even while attending Chase Collegiate; and,
6. The Student did not receive special education services while attending Chase Collegiate, but instead received additional tutoring or extra time for assignments, which is offered as part of regular education programming

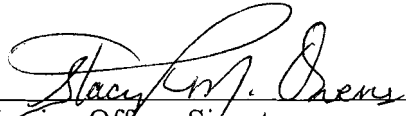
The guiding issue in this matter has been whether the Student should be identified in the category of Other Health Impaired for special education eligibility. A preponderance of the evidence establishes that the Student does not qualify under the category of Other Health Impaired. Thus, absent a finding that the Student should be identified as eligible for special education services, an analysis as to whether the Board provided the Student a free and appropriate public education or whether unilateral placement was appropriate, warranting reimbursement is not required.

FINAL DECISION AND ORDER

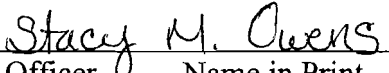
Based on the foregoing findings of fact and conclusions of law, this case is hereby **DISMISSED** with prejudice.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature



Hearing Officer Name in Print