

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

Appearing on behalf of the Parents:

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Appearing on behalf of the Board of Education:

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Appearing before:

Attorney Mary H.B. Gelfman  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is Student eligible for special education?
2. If so, did the Board provide procedural safeguards required prior to scheduling an expulsion hearing for Student?
3. What shall be Student's educational placement pending completion of this hearing?

**PROCEDURAL HISTORY:**

This hearing was requested by the Parents on August 1, 2002, while an expulsion hearing for Student was pending. The hearing officer was appointed on August 1, and a pre-hearing conference was held by conference telephone call on August 7. Both parties agreed in the pre-hearing conference that the hearing should be expedited, pursuant to Section 10-76h-10, Regulations of Connecticut State Agencies (R.C.S.A.) and 34 C.F.R. Section 300.528.

The Board stayed the expulsion hearing for Student, pending the completion of this special education hearing.

When the hearing opened on August 15, 2002, the initial issue was Student's placement for the beginning of the school year on August 27, 2002. Student attended this session of the hearing with Parents.

After consideration of testimony on August 15 and a memorandum submitted by the Board, the hearing officer issued an interim order providing that homebound instruction, which had started prior to the end of the 2001-2002 school year, would be the "stay-put" placement. This Interim Order is attached to this decision as Appendix A.

The hearing continued on September 4 and 6, 2002, and the hearing officer accepted briefs in lieu of closing argument on September 10, 2002.

### **SUMMARY:**

After receiving special education services for several years, Student was found ineligible in May, 2000, and dismissed from special education. The Board provided various supports for the 2000-2001 school year, which was Student's eighth grade year, and Student did well. Toward the end of the 2001-2002 school year, Student was involved in a disciplinary incident involving drugs, suspended, and an expulsion hearing was scheduled. His Parents requested a special education hearing, claiming that he had been improperly dismissed from special education in 2000, that he was eligible for special education, and that a manifestation determination should have been held. The Board contends that Student is no longer eligible for special education, that he has performed consistently with his intellectual potential although with minimal effort, and that the expulsion hearing should go forward.

To the extent that findings of fact may actually represent conclusions of law, they should be so considered, and vice versa, *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

All motions and objections not specifically addressed on the record of the hearing are denied.

### **FINDINGS OF FACT:**

1. Student entered school in the South Orangetown Central School District, New York, September, 1991. He had been evaluated in April, 1991, and found to be eligible for special education as speech impaired, with mild distractibility also noted. An Individualized Education Program (IEP) was written for him and he was provided with speech therapy three times a week in a five-day a week pre-school setting. Student's Mother attended the May 21, 1991, meeting of the Committee on Special Education. (Exhibits P-1, P-2, Testimony of Mother)
2. The record of a South Orangetown, NY Committee on Special Education meeting held May 22, 1992, to plan for Student's 1992-93 school year listed him as speech

impaired. This meeting was attended by his Mother. Student's progress was summarized:

- Student has made significant progress in his articulation. Language difficulties persist, however. He has difficulties with receptive and expressive language. He enjoys writing – using the chalkboard and stencils. He has difficulty with other readiness skills which may be related to language delays. Student tends to be quite impulsive and is frequently hurt during gross motor activities. (Exhibit P-4)
3. The Islip, NY, Committee on Special Education met on June 16, 1993, to review Student's progress and to plan for 1993-94. Student had entered this school district on April 30, 1993, and was listed as speech impaired. His Mother attended the meeting. Evaluation results reported included: 5/93 PPGVT 8<sup>th</sup> percentile; TOLD-2, sentence imitation, 25<sup>th</sup> percentile, and grammatic completion, 75<sup>th</sup> percentile. Social /Emotional Development, shows empathy toward others. Physical Development, health good, vision/hearing, normal, activity level, average, medication, none. Management Needs: assistance from support personnel, minimal; special supervision needed, none. (Exhibit P-6)
  4. At a Planning and Placement Team (PPT) held for Student by the Bridgeport, CT, public school system on June 7, 1994, he was found eligible for special education as specific learning disabled, with speech/language listed as another disability. A short attention span was noted, and he was described as "very active in class". Student was listed as being in first grade. Evaluation information included 1.1 on the KTEA reading test and 1.7 on the KTEA math test. Student's Father attended this meeting. (Exhibit P-7)
  5. Bridgeport held an annual review for Student on May 24, 1995, reporting his eligibility for special education as learning disabled. He was dismissed from speech/language therapy because "Receptive and expressive language skills fall within normal limits for age". Evaluation results at the end of his 2<sup>nd</sup> grade year included: Reading, Mann Suiter, 2.2; word recognition. 3.6; Math, Brigance 3.3. Neither of his parents were listed as attending this meeting. (Exhibit P-8)
  6. The record of Student's October 15, 1996, PPT meeting to plan for a triennial re-evaluation noted that he had attended two schools in Bridgeport and was returning to the first one at that time. Neither of his parents attended this meeting. Test results showed him to be on grade level (4<sup>th</sup> grade) in reading and math, but struggling with spelling and written expressing. He was described as easily distracted in the mainstream, with problems following directions and a short attention span. He was provided with modifications in the regular classroom for all his subjects: provide models, written work may be shortened in length and/or extra time given to complete, allow for possible test taking that requires written answers to be completed in the learning center. (Exhibits P-9, B-1)
  7. The record for this hearing does not include a report of the planned 1996 triennial evaluation.

8. Bridgeport held an annual review for Student on June 11, 1997, confirming his eligibility for special education as learning disabled. It was reported that Student made attempts to complete written assignments when in the Learning Center, but was often off-task and produced minimal work in regular education classes despite interventions. He was described as having difficulties staying on task and being easily distracted. Neither of his parents attended this meeting. Modifications for his regular education classes included preferential seating and extra time given to complete written assignments. (Exhibits P-10, B-2)
9. On August 25, 1997, Student registered in the Board's school district. A PPT meeting was held on September 30, 1997. Student was reported eligible for special education as having a specific learning disability. As Student entered fifth grade, his total Woodcock reading score was a grade equivalent of 4.3. The Board's evaluator noted:
- Student worked conscientiously throughout the testing session. His scores indicate that he would benefit from extra help in all skill areas, especially vocabulary.
- April, 1997, scores on a Stanford Achievement Test were given as: Reading vocabulary, 16<sup>th</sup> percentile; Reading Comprehension, 59<sup>th</sup> percentile; and Total Reading, 40<sup>th</sup> percentile. Student's special education goal for 1997-98 was:
- Will improve written expression skills.
- Student was assigned to receive four hours a week of special education instruction in a resource room, and one hour per week of special education in his regular classroom. Student's Mother attended this meeting. (Exhibits P-11, P-12, B-3, B-6)
10. Modifications for Student's fifth grade year were included with his IEP:
- Tests/quizzes/time: modified tests; extra time for tests; extra response time; short, sequenced tasks.
  - Grading: no spelling penalty; no handwriting penalty; modified grades.
  - Behavioral management: positive reinforcement.
  - Teaching strategies: check work in progress; student restates info[rmation]; extra drill/practice; modified content; provide models; repeat instructions; review directions; vocabulary word bank; concrete examples. (Exhibits P-12, B-6)
11. The Board's PPT met on April 2, 1998, to review Student's 5<sup>th</sup> grade year and to plan for 1998-99. His Parents were unable to attend this meeting. Math skills, language arts and written expression were listed as areas of concern, and Student was identified as learning disabled. (Exhibits P-13, P-14, B-9, B-10)
12. Student's special education goals for 1998-99 were:
- Write a story given prompts
  - Master math skills
- Modifications for regular education science and social studies classes were planned:  
Curriculum: shorter assignments given; additional time given to complete

assignments; grade level curriculum reduced; content material re-taught; study guide, outline used.

Instruction: material explained individually to student; essential material identified; additional study session provided.

Tests: test format adapted; additional time given on tests; tested only on key concepts. (Exhibits P-14, B-10, B-12)

13. Student's 5<sup>th</sup> grade, 1997-98 report card shows grades of C and B, with satisfactory effort except for above average effort in reading, science, art and music. "Improvement needed in sub-skill" was indicated in mathematics and language. He was graded as satisfactory in social skills and work skills. The comment for the last grading period of the year:
- Student's got more to give than he sometimes offers. He has made progress in Reading and in Writing and I am pleased. (Exhibit B-11)
14. A classroom teacher report dated May 19, 1999, concerning Student's performance in 6<sup>th</sup> grade social studies showed:
- About a 50 for the 4<sup>th</sup> marking period so far. Student's capabilities far exceed his level of performance.
- Ability to grasp concepts and materials presented: yes for orally, lecture format and visually (charts, maps, etc); between "yes" and "sometimes", written, in note form and in textbook.
- Ability to retain information: good for long term, short term, for quizzes, for tests, and for discussions.
- General classroom behaviors: Usually – follows oral directions, remains in seat/area, completes classwork; Sometimes – comes prepared, follows written directions, participates in discussions; Never – completes homework.
- Activity rate: Fair for oral work and written work.
- Attention span: inconsistent.
- Application of learning: can use information in similar situations.
- Psychomotor skills: handwriting – adequate.
- Personal care: adequate.
- Independence: self-motivated – mostly not.
- Initiative: Usually takes initiative to complete classwork; Sometimes takes initiative to complete homework, to ask questions, and to make up missed work.
- Social adaptation: relationship to adults:peers, good. School attitude, fair.
- Modifications made for Student in the classroom: study guide for test; modified tests; notes to parents in agenda; selective seating; no spelling or handwriting penalty; modified grades – if necessary; positive reinforcement, etc. on IEP modification.
- Student is selective with what work he does. Expecting less from him with the modifications will send a message that minimal effort is acceptable. (Exhibit B-15)
15. A classroom teacher report dated May 19, 1999, concerning Student's performance in 6<sup>th</sup> grade science:

Student has a lot of trouble focusing in science. He misses most lab directions. He is extremely disorganized and this effects (sic) his ability to carry out lab tasks. He doesn't do the required work. See agenda for list of work owed. Modifications are made yet Student does not put forth a significant amount of effort. He is capable of achieving so much more. Most grades in D/C/F range. (Exhibit B-16)

16. Classroom teachers' reports concerning Student's performance during the 4<sup>th</sup> marking period in 6<sup>th</sup> grade showed:

Subject	Academic Progress	Effort	Comments
Language Arts	average	excellent	Much better at getting work in on time. Quiz 100, essay A Overall A
Math	average	average	Quizzes 67, 64 Tests 75, 73 C- average
Reading	below average	unsatisfactory	64 av[erage] Student has been late with all assignments this m.p.
Science	below average	inconsistent	Student's quizzes have been in the D/F range. He often comes unprepared to class. He has trouble carry ...[illegible]
Social Studies	below average	inconsistent	Student's effort needs to be more consistent. He shines on Com(?) work indicating his capability.
Music	average	inconsistent	Needs to improve effort. Talkative in class.
Physical Education	above average	excellent	Doing well.
Health	average	satisfactory	Quiz grades 95-75 Good start
Practical Arts	average	satisfactory	Missing homeworks and Lab sheets. (Exhibit B-17)

17. The Board's PPT met on May 19, 1999, to review Student's progress and to plan for the 1999-2000 school year. Student was identified as learning disabled. Neither of his parents attended this meeting. Progress on 1998-99 goals:

- Master math skills: three objectives "in progress"; progress measured by passing grades on tests.
- Write a story given prompts: one objective "mastered", two "in progress"; measured by comparison of work samples every three months.

(Exhibits B-18, B-19)

18. The record of the May 19, 1999, PPT meeting showed Student's strengths as reading, can be a more capable student when he puts effort in; and concerns/needs: writing, math, application of skills, effort, often gives minimal effort, doesn't stay for extra help. (Exhibit B-18-11)

19. Special education goals for 1999-2000 were:

- Will improve written expression.
- Will improve [math] score by one grade level on WRAT.
- Will be successful in a self-contained social studies class.
- Will improve study skills and learning strategies to be successful on tests.

Student was scheduled for special education classes in math, language arts, social studies and resource support. He would receive 15.20 hours per week of special education and 16.80 hours per week of regular education with modifications.

Modifications for his regular education classrooms were listed:

Tests/quizzes/time: prior notice of tests; test study guide; shortened tasks.

Organization: provide study outlines; daily assignment list.

Environment: preferential seating.

Behavior management/support: positive reinforcement.

Instructional strategies: check work in progress; extra drill/practice; provide models; display key vocabulary. (Exhibits B-18, P-15)

20. Student's 6<sup>th</sup> grade report card showed his final grades for 1998-99:

Reading	Grade D	Effort Unsatisfactory
Social Studies	D	Questionable
Science	D+	Questionable
Intro For Lang	Outstanding	
Language Arts	C-	Satisfactory
Math	C+	Satisfactory
Technology	C	Satisfactory
Family and Consumer	C	Satisfactory
Health	A	Excellent
Physical Education	A	Excellent
Chorus	B+	Satisfactory
Info Processing	D	Questionable

Social Studies was marked "modifications in curriculum" and Family and Consumer was marked "major project not completed". (Exhibit B-20)

21. Student's triennial re-evaluation was performed on April 14, May 9 and 10, 2000.

Mr. Seaman, the Board's experienced school psychologist, summarized results of Student's performance on the WISC III:

Student demonstrates overall average intellectual ability with an average vocabulary level, average abstract reasoning ability, arithmetic reasoning and fund of information. He revealed difficulty expressing cause effect relationships in a social setting but on a non-verbal social judgment test he showed acceptable responses. He may have difficulty evaluating practical information. Visual motor

organization, integration, problem solving and coordination are all considered average.

On the Woodcock Johnson-R 3.0, Student was at grade equivalents of 6.5 in Broad Reading; 5.1 in Broad Math; 5.0 in Broad Written Language; 7.5 in Broad Knowledge; and 5.6 in Skills. (Exhibits B-23, B-24)

22. No signed parental consent form was provided on the record of the hearing for this evaluation.
23. The Board sent notice dated May 3, 2000, of a PPT meeting scheduled for May 26, 2000, to Parents. The form indicated that the meeting was to conduct an annual review and to review reevaluation (triennial review) results. When the Parents asked for another date, May 19 was scheduled. However, the Parents did not appear on that day. The PPT met, with both Parents present, on June 2, 2000. (Exhibits P-17, P-18, P-19, B-21, B-25, Testimony, Parents, Seaman)
24. Student's progress on his 1998-99 special education goals was shown as: Math goal, one objective mastered, two objectives, satisfactory progress; Written Expression goal, three objectives, limited progress; and success in special education social studies class, satisfactory progress. (Exhibit B-26, 6 through 9)
25. After a discussion of the results of Student's triennial reevaluation at the June 2, 2000, meeting, the PPT determined that he did not meet the criteria for learning disabilities. The record of the June 2, 2000 (incorrectly dated May 19, 2000) PPT meeting includes the form, Multidisciplinary Evaluation Report for Students Suspected of Having a Learning Disability. This form is recommended for use by the Connecticut State Department of Education, and was published in the 1999 *Guidelines for Identifying Children with Learning Disabilities*. (Exhibit B-26)
26. Student's final grades for 1999-2000, his 7<sup>th</sup> grade year, were:
- |                    |   |                     |
|--------------------|---|---------------------|
| Remedial Reading   | Grade S[atisfactory]  | Effort Satisfactory |
| Science            | C   | Satisfactory        |
| Language Arts      | C+  | Satisfactory        |
|                    | Comment: Does not work to potential. Attitude affects progress.     |                     |
| Social Studies     | C+  | Satisfactory        |
|                    | Comment: More care needed with homework.                            |                     |
| Math               | C   | Questionable        |
|                    | Comment: Use resource time wisely. Should proofread work.           |                     |
| Skills/Strategies  | C+  | Satisfactory        |
|                    | Comment: Attitude affects progress. Effort has not been consistent. |                     |
| Fam. Cons. Science | C+  | Satisfactory        |
| Art                | C   | Questionable        |
| Phys Ed/Health     | B   | Satisfactory        |
| Concert Band       | F   | Unsatisfactory      |
| Info Processing    | B-  | Satisfactory        |
- (Exhibit B-27)

27. Modifications in regular education math, science and social studies for Student's 8<sup>th</sup> grade year were:

Curriculum: substitute and/or supplementary materials used; shorter assignments given; additional time given to complete assignments; grade level curriculum reduced; study guide/outline used.

Instruction: material explained individually to student; additional study sessions provided; assignments done cooperatively; math tools for assignments (fact charts, number line, calculator); small setting when found appropriate.

Tests: alternate setting; tests read orally; test format adapted; additional time given on tests; tested only on key concepts; math tools for tests (fact chart, number line, calculator). (Exhibits B-28, P-20)

28. There was a meeting concerning Student's progress in 8<sup>th</sup> grade and to plan for 9<sup>th</sup> grade in the spring of 2001. No record of this meeting was entered on the record of this hearing, but testimony suggests that some supports and monitoring would continue at the high school. (Testimony, Mother, Father)

29. Student was suspended on April 12 and June 1, 2001, for disciplinary infractions. (Exhibits B-29, B-30)

30. Student's final grades for 2000-2001, his 8<sup>th</sup> grade year, were:

Language Arts	Grade D	Effort Unsatisfactory
Remedial Reading	Satisfactory	Satisfactory
Strategies	B-	Satisfactory
Social Studies	D+	Unsatisfactory
Math	D	Questionable
Science	C-	Questionable
Technology	C	Questionable
Am. Cons. Science	B-	Satisfactory
Phys Ed/Health	A-	Excellent
Chorus	C+	Questionable
Info Processing	B-	Satisfactory

(Exhibits B-31, P-21)

31. Student received four Mid-Quarter Progress Reports at the end of September and early October, 2001:

- Science: needs to study more; has failed to hand in one assignment; more active participation is needed.
- Introduction to Algebra: tests, 68; quizzes, 77; needs to make up work; needs extra help; has failed to hand in five assignments; more active participation is needed; positive attitude.
- Reading/Study Skills: near failing, current grade 68; needs to study more; needs to make up work from when absent; needs to work up to ability; needs to devote

- more time and effort [to homework]; has failed to hand in one assignment; more active participation is needed; does not bring required materials to class – pen/pencil; needs to improve behavior. Student is extremely capable but has no motivation.
- Graphic Communication: needs to make up work – had completed 0 of 7 projects so far; needs to improve in interest and attitude. (Exhibits B-32, P-22)
32. Student received five Mid-Quarter Progress Reports in mid-December, 2001:
- Science: 49 average.
  - Reading Study Skills: failing, average 46; needs to study more; needs to work up to ability; needs to devote more time and effort [to homework]; failure to complete homework; needs to improve in interest and attitude. Student is very capable but does not complete work. He lacks motivation.
  - Introduction to Algebra: improving, tests 94, quizzes, 87; consistently well prepared; makes excellent use of class time; positive attitude.
  - English: has failed to hand in one assignment. Singleness of effort (poor).
  - Graphic Communication: failing, no projects of 10 turned in. (Exhibits B-33, P-22)
33. Student received two Mid-Quarter Progress Reports in early March, 2002:
- English: has failed to hand in major assignments; failure to complete written [work]. Must complete written assignments or will receive an incomplete.
  - Science: 45 average, F. (Exhibits B-34, B-35, P-22)
34. Student received two Mid-Quarter Progress Reports in mid-May, 2002:
- Science: failing, 73.0 average; needs to work up to ability; may fail for the year.
  - PE/Health: satisfactory, tests 69, grade C; Needs to study more; needs to devote more time and effort [to homework]; needs to improve behavior. (Exhibits B-36, P-22)
35. In response to a June 11, 2002, request for Student's progress as of June 5, 2002:
- Science: marking period grades, 1<sup>st</sup> D-, 2<sup>nd</sup> F, Mid-term F, 3<sup>rd</sup> D-, 4<sup>th</sup> D; class participation, OK, most of the time he would just sit there; behavior, most of the time he will be quiet, some fooling around, not much.
  - PE/Health: 4<sup>th</sup> quarter, C; class participation fair; behavior fair.
  - Social Studies: Grades, C, B, O, O, D, A, D+; class participation fair; behavior OK but easily distracted.
  - English: marking period grades, 1<sup>st</sup> C effort satisfactory, 2<sup>nd</sup> C+ effort satisfactory, 3<sup>rd</sup> B+ effort excellent, 4<sup>th</sup> C+; class participation, he is inconsistent, sometimes he cares and other times he cares only about socializing w/ girls in the class; behavior, not bad, but could be much better; comments, he works well below his ability, needs to focus on the important things in life (his education!).
  - Introduction to Algebra: marking period grades, 1<sup>st</sup> C, 2<sup>nd</sup> C-, mid-term C, 3<sup>rd</sup> C-, 4<sup>th</sup> D; Student did less homework the 4<sup>th</sup> M.P.; Student is quiet in class, he seldomly participates, however he does do his classwork; behavior, Student has always been a very well-behaved respectful boy. (Exhibit B-37)

36. On June 5, 2002, Student was suspended from school because of a disciplinary incident involving drugs. By letter dated June 6, Parents were informed that an expulsion hearing had been scheduled. The expulsion hearing was postponed to allow for legal representation for Student, and then stayed by the Board pending completion of this special education hearing. (Exhibits B-38, B-39, B-40, B-41, B-42, B-45, B-49, B-50)
37. A special education teacher who taught Student's 7<sup>th</sup> grade math class and team-taught his 8<sup>th</sup> grade language arts class felt that he could handle regular education classes. While he rarely did his homework, she believed that he was capable of the work. He did not display ADHD symptoms that she had observed in some of her other students. (Testimony, Howden)
38. Student's 9<sup>th</sup> grade counselor described him as "respectful and soft spoken". She met with him about his grades several times, and he acknowledged that he should go for extra help in several of his classes. She found Student to be "on a par with many of his peers" and saw no need for further interventions. (Testimony, Emanuelson)
39. Student's Reading and Study Skills teacher also team-taught in his science class. She described him as "bright and insightful", but "didn't like to write". She sat with him to encourage him to complete his assignments. He didn't hand in homework. She observed him as "no less capable than [his science] classmates": in his science class, all students received some individual support. She had worked with students with ADHD, and saw no signs of ADHD in Student. Although she offered extra help during the school day as well as after school, Student never came for extra help from her. (Testimony, Holohan)
40. Student's Global Civilization teacher noted that Student's class was "200 level" which means that the reading covered the same material as more advanced classes, in an easier-to-read format. He described Student as "verbally above most of the students in his class", his class participation was very good, and he had no difficulty with the subject matter. He observed that Student was not easily distracted, and usually did his homework. (Testimony, Galer)
41. At some point after the beginning of Student's suspension, the Board began providing homebound instruction and opportunities for Student to complete his final exams. (Testimony, Mother)
42. Student's final grades for 2001-2002, his 9<sup>th</sup> grade year, were:
- |   |          |                     |
|---|----------|---------------------|
| English   | Grade C+ | Effort Satisfactory |
| Reading/Study Skills  | C-       |                     |
| Graphic Communication   | D        |                     |
| Intro to Algebra  | C-       | Questionable        |
| Comment: homework often not completed; has poor quiz/test scores. |          |                     |
| PE/Health   | B+       |                     |

Science	D-	Questionable
Comment: has poor quiz/test scores; needs to exert greater effort.		
Global Civilization (Exhibits B-44, P-23)	C	Excellent

43. A PPT meeting was held for Student, at his parents' request, on July 24, 2002. Student and both Parents attended this meeting, as well as many school staff members. After a discussion of parental concerns and Student's progress in 9<sup>th</sup> grade, the PPT decided to implement an Early Intervention Plan for 10<sup>th</sup> grade, with monitoring of Student's performance. The PPT decided that no further evaluations were necessary, and that Student was not eligible for special education. Parents objected, and reiterated their position that Student was eligible for special education. The record noted that Student's grades had improved from 8<sup>th</sup> to 9<sup>th</sup> grade, without the modifications from 8<sup>th</sup> grade. (Exhibits B-48, P-26, Testimony, Minotti)
44. Student was evaluated by Dr. Rosado, a clinical psychologist, at the request of Parents on August 7 and 12, 2002. In testimony, this psychologist acknowledged that he had not requested any of Student's school records from the Board or discussed Student with any of the Board's school staff. The report of this evaluation concluded with recommendations:
- [Details of disciplinary incident excluded from this decision.]
- It is recommended that Student receive a combination of psychological and academically based support services in school. First, it is recommended that Student be referred to the School Psychologist or School Social Worker for supportive counseling. As an insecure adolescent who is vulnerable to social pressures, Student could benefit from having a supportive, socially appropriate adult resource in the school. Supportive school based counseling could provide him with a therapeutic forum where he could discuss the complexities of adolescent politics, and eventually display (and sustain) appropriate and instrumental behavior.
- It is recommended that Student receive individualized tutoring or remedial educational support in school. Student is a sufficiently intelligent adolescent who has a capacity to learn from the world around him. Unfortunately, long-term difficulties (problems with attention and sustained concentration associated with a diagnosis of ADHD) interfere with his ability to function in school and demonstrate (evidenced in his grades) the extent of his capabilities. It is hypothesized that Student's poor grades (which are not consistent with his actual capabilities) contribute to more significant and pervasive psychological problems. If Student continues to display impaired social and psychological functioning in school, then it would be advisable to refer him for community based psychotherapy, or psychiatric treatment, as additional psychological resources.
- In testimony, Dr. Rosado commented that the social work or psychological support he recommended need not necessarily be provided only as special education related services. (Exhibit P-27, Testimony, Rosado)

45. The Board's PPT met on September 4, 2002, to review Dr. Rosado's report of his evaluation. Parents did not attend this meeting, because they were preparing for the hearing to be held later that day. The PPT recommended ADHD evaluations as a follow-up, since Dr. Rosado's report did not include a formal diagnosis. A school psychologist would perform the BASC, and the Board's consulting psychiatrist would review Student's records and interview him and his parents, if Parents consented. (Exhibit B-54)
46. Mother reported many telephone contacts with Student's teachers while he attended Board schools. She also followed up on PPT meetings she was unable to attend by telephone. (Testimony, Mother)

### **CONCLUSIONS OF LAW:**

1. Title 34 C.F.R. Section 300.527, Protections for children not yet eligible for special education and related services, does not address students who were formerly classified as in need of special education. This Hearing Officer has been unable to find legal authority for this specific situation, and therefore suggests a common sense approach. A student's history of classification as in need of special education services creates a rebuttable presumption that such services may be required again. The Board's July 24, 2002, PPT meeting considered whether Student was currently eligible for special education and whether additional evaluation was necessary to make that determination. The PPT decided that Student was not eligible for special education, and that no additional evaluation was necessary, consistent with the requirements of 34 C.F.R. Section 300.527(c).
2. Eligibility for special education is dependent upon two findings: the identification of a disability, and a determination that because of the disability, a student requires an individualized education program:

As used in this part, the term *child with a disability* means a child evaluated in accordance with §§ 300.530 – 300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness or multiple disabilities, **and who, by reason thereof, needs special education and related services** (emphasis added). (34 C.F.R. § 300.7(a)(1)).
3. In Student's case, there is a history of identification as having a specific learning disability, which is defined by regulation:

[Specific learning disability] means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (34 C.F.R. § 300.7(c)(10))

4. To aid school districts in determining eligibility for special education because of specific learning disabilities, the Connecticut State Department of Education has published *Guidelines for Identifying Children with Learning Disabilities* (2<sup>nd</sup> Edition, 1999). The PPT's analysis of Student's evaluation and observation results on June 2, 2000, was consistent with the *Guidelines*.
5. Student's Parents also assert that Student has been diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD). As is the case with all disabilities, ADHD may be mild or controlled by medication, and may not qualify a student for special education. ADHD may be moderate, requiring supportive modifications in school pursuant to Section 504 of the 1973 Rehabilitation Act. Or ADHD may be severe enough to require special education:

*Other health impairment* means 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, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; **and**
- (ii) **Adversely affects a child's educational performance** (emphasis added). (34 C.F.R. Section 300.7(c) (9))

This range of educational needs is discussed in more detail in a Joint Policy Memorandum from the U.S. Department of Education, dated September 16, 1991 (18 IDELR 116).

6. To assist school districts in identifying students with ADD and ADHD, and in devising appropriate educational programs for those who require special education or regular classroom modifications under § 504, the Connecticut State Department of Education has published a report of the Connecticut Task Force on Attention Deficit (Hyperactivity) Disorder (1993) with a 2<sup>nd</sup> edition in 1998. However, Student has no formal diagnosis of ADHD consistent with the factors included in the American Psychiatric Association's definition of ADHD in the *Diagnostic and Statistical Manual-IV*. Classroom modifications provided by the Board in Student's 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grade years, many of which appear in the Task Force Report, proved adequate to address his attentional problems in school.
7. The Hearing Officer takes note of the Connecticut Statute of Limitations for special education appeals, 10-76h(a)(3), Connecticut General Statutes. However, a review of Student's special education history is relevant to the issue of whether he may currently be eligible for special education. A significant portion of his education was

outside of the Board's district, and the Board cannot be held accountable for those years in any case.

8. When Student entered the Board's school, the Board appears to have used the previous school district's data and IEP as models, and continued services. Not until Student's triennial evaluation in 2000 was it discovered that he was not eligible for special education as learning disabled. While there were comments on the record about Student's short attention span, no one in the Board's schools appears to have suspected ADHD severe enough to require a referral. The teachers who testified confirmed that Student was well behaved in class and responded to prompts to focus on his work. In Best Practice, the Board could and should have secured more detailed records from the prior school districts and performed an evaluation sooner. However, it is a professional judgment call whether to rely on data from prior districts, and no evidence was presented to challenge a reasonable decision made by professionals assembled at a PPT meeting. Section 10-76d-7, R.C.S.A., provides in part:

Provision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance.

Whether Student's record in 9<sup>th</sup> grade rose to meeting these requirements for referral is a judgment to be made by professional educators in the context of their experience with comparable students. Several teachers testified that Student's general profile in 9<sup>th</sup> grade was not unusual, and while considered worrisome, not severe.

9. Testimony of various school staff members suggested that 1) Student's Parents should have done more to insure that all records from prior school districts were received by the Board; and 2) Student's Parents should have attended all PPT meetings and "participated actively". The usual practice in sending records for a student who is transferring from one school district to another is for the records to be sent directly, school to school. Once a school has been informed of prior enrollments in other districts and, if required by local procedures, a parental consent has been obtained, responsibility for obtaining and reviewing records rests with the school. While parental participation is a major component of the Individuals with Disabilities Education Act (IDEA), such participation is not mandatory. Working parents often have a difficult time attending PPT meetings scheduled during school – and working – hours. Parent participation is addressed at 34 C.F.R. § 300.345: especially relevant in this case is subsection (a)(2):

Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place.

While the PPT meeting of June 2, 2000, was attended by both Parents, none of the notices indicated that the meeting would "review evaluation results and determine eligibility". Parents testified that at the time they were delighted to hear that their son no longer required special education, and that the support plan proposed by the PPT pleased

them. They relied upon the Board to continue to provide support within the regular education program.

### **DISCUSSION:**

While the rigidity of the Individuals with Disabilities Education Act suggests a clear distinction between students who are eligible for special education and those who are not, in reality children fall all along a continuum, each one with unique strengths and weaknesses, and all growing and developing at different rates. Some children who require special education services at the beginning of their school careers can succeed in regular education later. Others do not demonstrate their disabilities until they begin trying to learn to read. Public schools are responsible for addressing the needs of all children, and most school districts provide a variety of supports and modifications for children who may not be eligible for special education but do require some help.

From the record, it is not clear why Student was ever classified as learning disabled. The minimal reports from prior school districts show that he was struggling with written expression. The speech/language issues that were the original reason for his special education were resolved, and attention issues appear to have been manageable.

The Board's plan for supports and monitoring in 8<sup>th</sup> grade, the first year after Student was exited from special education, appear to have been successful. Parents were assured that similar plans would be in place for 9<sup>th</sup> grade, Student's first year at the high school. There were progress reports showing deficiencies, primarily in homework, and Student's counselor met with him several times to discuss his grades and general progress. Ironically, several of the staff members who worked with Student in his 9<sup>th</sup> grade year confirmed that his problems were, from their perspective, relatively minor and typical of some 9<sup>th</sup> graders every year. If these staff members had been aware of Student's special education background and his relatively successful 8<sup>th</sup> grade year without special education, one can only speculate whether they would have viewed his problems in 9<sup>th</sup> grade differently.

Each year, Student did very well in one or two classes. This consistent performance suggests an element of choice on his part, concerning both participation and homework. He responded well to individual encouragement, a "support service" that is not limited to special education students.

The Board is responsible for several procedural errors and omissions concerning Student. However, since eligibility is a threshold jurisdictional issue, such errors and omissions do not override a finding that he is not eligible for special education.

### **FINAL DECISION AND ORDER:**

Student is not eligible for special education services.

**Appendix A**

August 19, 2002

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Interim Order 02-211

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

Appearing on behalf of the Parents:

Attorney Peter T. Donnelly  
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Shelton, CT 06484-4700

Appearing on behalf of the Board of Education:

Attorney Michelle C. Laubin  
Berchem, Moses & Devlin, P.C.  
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Appearing before: Mary H.B. Gelfman, Hearing Officer

**INTERIM ORDER**

**SUMMARY:**

Student's special education eligibility is in dispute at this hearing, and cannot be determined prior to the completion of the hearing. Also in dispute is the issue of whether the Board had knowledge that Student should have been identified as in need of special education during his ninth grade year, prior to an incident of misconduct which resulted in his suspension and a pending expulsion hearing.

Student's Parents contend that 34 C.F.R. Section 300.527(b)(2) applies: that the Board had knowledge of possible special education needs because of his special education history and his problems with behavior and performance in ninth grade. The Board contends that it did not have such knowledge, and that it held a PPT meeting, reviewed Student's record, and determined that no further evaluation was needed and that he was not eligible for special education. This course of action followed the Board's contention that 34 C.F.R. §300.527(c) applied to Student.

**ISSUE:**

What shall be the "stay-put" status of Student, pending completion of this hearing?

**FINDINGS OF FACT:**

1. Student received special education services in several school districts, including the Board's district, until he was found ineligible at a PPT meeting held on May 19, 2000, during his seventh grade year. (Exhibits P-1, P-2, P-4, P-6, P-7, P-8, P-12-5 and 6, P-14, P-15-3 through 9, B-1-2 through 4, B-2-2 through 4, B-6-6 and 7, B-10-5 through 8, B-18-3 through 11, B-19, B-26, Testimony of Mother)
2. Student's eighth grade program included no special education services, but he had modifications in several of his classes and the Board's staff monitored his progress. (Exhibit B-26-1, B-28, Testimony of Mother)
3. Student was suspended from school twice in eighth grade. (Exhibits B-29, B-30)
4. Student's final grades in eighth grade were: Language Arts 8, D; Remedial Reading 8, S; Strategies 8, B-; Social Studies 8, D+; Math 8, D; Science 8, C-; Technology 8, C; Fam. Cons. Science, B-; Phys Ed/Health, A-; Chorus 8, C+; and Info. Processing 8, B-. (Exhibits B-31, P-21)
5. Student's ninth grade year, his first at the Board's high school, was marred by progress reports of various deficiencies in most of his classes and two disciplinary referrals. (Exhibits B-32, B-33, B-34, B-35, B-36, B-37, B-52, P-22, Testimony of Mother)
6. An incident at school resulted in Student's suspension on June 5, 2002. On June 6, 2002, Student's Parents were notified that the Board was scheduling an expulsion hearing for June 13, 2002. Parents retained counsel, who requested that the hearing be re-scheduled: the hearing was re-scheduled to June 18, and then to August 5, 2002. (Exhibits B-38, B-39, B-40, B-41, B-42, B-45)
7. By letter dated June 27, 2002, Parents' Counsel requested a Planning and Placement Team (PPT) meeting to consider Student's eligibility for special education. The requested PPT meeting, held on July 24, 2002, reviewed Student's record including evaluations from May, 2000. This PPT determined that no additional evaluations were necessary and that Student was not eligible for special education. (Exhibits B-23, B-24, B-46, B-48, P-24, P-26)
8. By letter dated August 1, 2002, a special education hearing was requested for Student. In that this request is an appeal related to disciplinary proceedings, it is being treated as an expedited hearing pursuant to 34 C.F.R. §300.528 and Section 10-76h-10, Regulations of Connecticut State Agencies. (Exhibit HO-1)

9. The Board postponed the expulsion hearing, pending completion of the special education hearing. At a pre-hearing conference held on August 7, the hearing was scheduled for August 15, 2002. (Exhibits B-50)
10. During the suspension that began on June 5, 2002, Student received several sessions of homebound instruction and was given an opportunity to take his final exams. (Testimony of Mother)

### **CONCLUSIONS OF LAW:**

1. The provision for “stay put” placement described at 34 C.F.R. §300.527(d)(2)(ii) is specific to a pending evaluation in a special education eligibility dispute related to a disciplinary proceeding.
2. This hearing was requested pursuant to 20 U.S.C. §1415(f).
3. Title 20 U.S.C. §1415(j) provides that:  
... during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child ...  
At the time this hearing was requested, Student was on summer vacation and school was not in session. However, his last school placement was homebound instruction.

### **INTERIM ORDER:**

As ruled at the hearing on August 15, 2002, Student’s “stay put” placement shall be homebound instruction when the 2002-2003 school year begins.

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Mary H.B. Gelfman, Esq.  
Special Education Hearing Officer