

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Bloomfield Board of Education

Appearing on behalf of the Parent:

Pro se

Appearing on behalf of the District:

Peter J. Maher, Esq.  
Shipman & Goodwin, LLP  
1 Constitution Plaza  
Hartford, CT 06103-1919

Appearing before:

Patrick L. Kennedy, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Should the Student have been identified as eligible to receive special education services at some point between March of 2021 and the filing of the instant due process request?
2. If so, at what point should the Student have been identified as eligible for special education?
3. If the Student should have been identified as eligible to receive special education, in what category or categories should the Student have been so identified?
4. If the Student should have been identified as eligible for special education services and the District has violated the Individuals With Disabilities Education Act (“IDEA”) (20 USC §1400 *et seq*) in not so identifying her, what remedies should be ordered?

**SUMMARY AND PROCEDURAL HISTORY:**

Case 22-0163 was commenced by the Parents by request received by the District on November 5, 2021. A prehearing conference was held on November 12, 2021. At the prehearing conference, hearing dates were set for December 17, 2021 and January 7, 2022 and the decision date was determined to be January 19, 2022.

Hearings were held on December 17, 2021; January 26, 2022 and May 20, 2022. Following the hearing, the parties submitted briefs on June 17, 2022. The decision date

was extended to February 18, 2022; March 18, 2022; April 19, 2022; May 19, 2022; June 17, 2022 and July 18, 2022.

The following witnesses testified on behalf of the Parents:

Wendy Shepard-Bannish, Director of Support Services for District  
Mother  
Father  
Judy Rosenfield, speech pathologist  
Jennifer Hellen, speech and language pathologist for District  
Allison Glenney, school counselor at Carmen Arace School  
Cynthia Bombardier, school psychologist for District

The following witnesses testified on behalf of the District:

Jill Marocchini, Supervisor of Pupil Services for CREC  
Cynthia Bombardier, school psychologist for District  
Wendy Shepard-Bannish, Director of Support Services for District

Hearing Officer HO-1 was entered as a full exhibit.

Parent Exhibits P-1 through P-77 were entered as full exhibits.

Board Exhibits B-1 through B-14 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F.Supp. 816 (M.D.Tenn. 1985); *Bonnie Ann F. v. Calallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

**STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

**FINDINGS OF FACT:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student (DOB 11/3/11) is eligible for special education and related services under the category of Multiple Disabilities with diagnoses of Autism, Attention Deficit Hyperactivity Disorder (“ADHD”) and Learning Disability pursuant to the IDEA and related state and federal statutes and regulations. (B-11.)
2. During the 2020-21 school year, the Student attended fourth grade at the University of Hartford Multiple Intelligences Magnet School which is operated by the Capitol Region Education Council (“CREC”). (B-7.)
3. During the 2020-21 school year, the Student was provided accommodations for ADHD and Anxiety through a plan adopted pursuant to Section 504 of the Rehabilitation Act of 1973 (“504 plan”). (B-2.)
4. Although in-person learning was available to the Student during the 2020-21 school year, the Parents elected to keep her attendance remote. (B-2.)
5. On March 26, 2021, the District convened a Section 504 meeting at the request of the Parents. (B-2.)
6. Attendees at the meeting were Melissa Sutton, Admin/Designee; Parents; Kathleen Williams, Student’s regular education teacher; Melissa Faenza, 504 Coordinator; J. Kowalski, intern; Jill Marocchini, CREC Supervisor of Special Education and Pupil Services; Tim Barber, Principal and Margie Clark, Nurse. (B-2.)
7. The Parents presented their concerns at the meeting concerning the Student including missing assignments, struggles with online learning, social-emotional status and the feeling of being overwhelmed when the Student does not get lessons the first time. (B-2.)
8. After considering the presentations at the Meeting, the Section 504 team decided to provide extra tutoring and create a Google document to reflect missing assignments, engagement and an area for parent comments. (B-2.)
9. The Section 504 team also noted the availability of extra tutoring after school to remote students. (B-2.)
10. The Section 504 team further offered counseling and consultation with the Student’s outside therapist upon the signing of a release but the Mother declined those accommodations. (B-2.)
11. On March 31, 2021, the Section 504 team again met at the request of the Parents. (B-3.)

12. Attendees at the meeting were Melissa Sutton; Parents; Cynthia Bombardier, school psychologist; Jill Marocchini and Tim Barber. (B-3.)
13. At the meeting, the Parents expressed concerns that the Section 504 plan was not being properly implemented and the school-based members of the team explained how the plan was being implemented to the greatest extent possible in view of the fact that the Student was remote. (B-3.)
14. The team noted that the Google document discussed at the last meeting had been created and was available for use. (B-3.)
15. In-school counseling was again offered but the Parents refused unless they could be present for the counseling sessions and again refused to sign a release for the school to be able to speak to the Student's outside counselor. (B-3.)
16. The Parents requested 1:1 support for the Student but that request was denied by the Section 504 team on the grounds that the Student was currently meeting academic expectations. (B-3.)
17. The Parents further requested an Individualized Education Plan ("IEP") for the Student and were provided with a referral form and a parent guide to special education. (B-3.)
18. The Parents submitted a PPT referral form to the District on or about April 1, 2021. (P-34.)
19. On April 30, 2021, a PPT meeting was convened in response to the referral. (B-7.)
20. Attendees at the meeting were Cynthia Bombardier (now in the capacity of Admin/Designee); Parents; Kathleen Williams; Stephanie Balboni, special education teacher; Melissa Faenza (now in the capacity of school psychologist), Tim Barber, Jill Marocchini and Rebecca Burr, SLP. (B-7.)
21. At the meeting, the reports concerning the Student were reviewed and all members of the PPT, including the Parents, had the opportunity to provide input. (Testimony of Bombardier, 5/20/22; Testimony of Marocchini, 5/20/22.)
22. The Student was determined to be operating at grade level. (B-7.)
23. In particular, the Student was assessed to be reading at the fourth grade level at the beginning of fourth grade by the Fountas and Pinnell benchmark. (Testimony of Marocchini, 5/20/22.)

24. The PPT team determined that an initial evaluation for special education was not warranted at that time. (B-7; Testimony of Marocchini, 5/20/22; Testimony of Bombardier, 5/20/22.)
25. One of the documents reviewed was a report obtained by the Parents from Keith L. Ellis, APRN. (B-4.)
26. The report specifically stated that the APRN supported the request for special education “if [Student] is in fact having academic difficulties or not mastering grade level curriculum despite having a 504 plan in place.” (B-4.)
27. The report also “highly recommend[ed]” that the Student be returned to in-person learning at the earliest opportunity. (B-4.)
28. Even if the PPT had recommended an initial evaluation at the PPT meeting of April 30, 2021, the evaluation likely would not have been completed until the end of the school year and thus the provision of additional services to the Student would not have begun until the 2021-22 school year. (Testimony of Bombardier, 1/26/22; Testimony of Bombardier, 5/20/22; Testimony of Shepard-Bannish, 5/20/22.)
29. Subsequent to the PPT of April 30, 2021, the Parents obtained a private neuropsychological evaluation which was completed on September 7, 2021. (B-8.)
30. The evaluation stated that the Student met the criteria for Autism Spectrum Disorder (“ASD”), ADHD and Specific Learning Disorder (“SLD”) in Reading and Written Expression. (B-8.)
31. The Student returned to in-person learning for the 2021-22 school year. (Testimony of Shepard-Bannish, 5/20/22.)
32. On September 17, 2021, the Section 504 team reconvened to review the Student’s Section 504 plan in light of the neuropsychological evaluation that had been obtained. (P-48.)
33. The Section 504 plan added the diagnosis of ASK and was revised to add supports recommended by the neuropsychological evaluation, including counseling, access to audio books, breaks in the classroom, access to a counselor when necessary, access to an alternate setting when there was a substitute teacher, small group reading support with the Wilson structured literacy program, use of structure and routines to build routines and reduce anxiety and a social skills group to address social understanding and communications skills. (P-48; B-8; Testimony of Shepard-Bannish, 5/20/22.)
34. Immediately after the Section 504 meeting, a PPT meeting was convened. (P-50.)

35. The PPT team determined that, in light of the neuropsychological evaluation, further evaluation was warranted in the areas of receptive/expressive language, pragmatic language and reading and writing. (P-50.)
36. The PPT team further incorporated the supports called for in the revised Section 504 plan pending the determination of eligibility. (P-50; Testimony of Shepard-Bannish, 5/20/22.)
37. The PPT team determined that it would reconvene by November 19, 2022 to discuss the Student's evaluations. (P-50.)
38. After the meeting, the Parents obtained a private evaluation from Judy Rosenfield, a licensed speech language pathologist. (Testimony of Rosenfield, 1/26/22.)
39. It does not appear that any written report was provided to the team for the next PPT meeting, nor was Ms. Rosenfield in attendance. (B-11.)
40. While the District attempted to move forward with its own evaluation of the Student, the Parents wanted the Student tested in their presence and the District had difficulty obtaining consent. (B-11; Testimony of Shepard-Bannish, 5/20/22.)
41. As a result, the District's evaluation was not obtained until January of 2022. (Testimony of Hellen, 1/26/22.)
42. On November 5, 2021, the PPT reconvened for a determination of the Student's eligibility for special education. (B-11.)
43. At that PPT meeting, the team determined that the Student was eligible for special education as a student with Multiple Disabilities with diagnoses of Autism, ADHD inattentive type and Learning Disability and developed an IEP based on those findings. (B-11.)<sup>1</sup>

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. Should the Student have been identified as eligible to receive special education services at some point between March of 2021 and the filing of the instant due process request?

34 CFR §300.111(a)(1) provides, "The State must have in effect policies and procedures to ensure that (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or who are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education are identified, located and evaluated

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<sup>1</sup> It should be noted that the appropriateness of the Student's program is not at issue in this case.

and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.”

“[A] violation of the Child Find obligation [is] a procedural violation of the IDEA.” *Mr. P vs. West Hartford Board of Education*, 885 F.3d 735, 749 (2<sup>nd</sup> Cir. 2018), *cert denied* 139 S.Ct. 322 (2018)..

20 USC §1415(f)(3)(E)(ii) provides, “In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child’s right to a free appropriate public education; (ii) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or (iii) caused a deprivation of educational benefits.”

“To hold a school district liable for failing to identify a student who should be evaluated for purposes of receiving special education, a ‘claimant must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate’.” *Mr. P, supra*, at 748.

In this case, the Student was performing at grade level at the time of the April 30, 2021, PPT. (Findings of Fact #22-23.)

In this case, the Student was not attending school in person at the time of the April 2021 PPT. (Finding of Fact #4.) The remote attendance conflicted with a recommendation contained in a report obtained by the Parents’ own APRN. (Finding of Fact #25.) The Student was receiving support through her Section 504 plan which was designed to provide her with necessary accommodations. (Findings of Fact # 8-10.) The report provided by the Parents’ APRN at that PPT meeting only recommended an IEP if the Student was not mastering grade level work despite the provision of Section 504 accommodations. (Finding of Fact #26.)

Further, it should be noted that the District’s ability to assess and observe the Student was hampered by the actions of the Parents. Despite the fact that schools were open for in-person learning, the Parents elected to continue to have her learn remotely. (Finding of Fact #4.) The Student was kept remote even though the Parents’ own APRN recommended that she be returned to in-person learning. (Finding of Fact #27.) The Parents refused to sign releases to allow the District to consult with the Student’s therapist. (Findings of Fact #10, 15.)

Accordingly, the District did not commit a violation by determining that initial evaluation for special education was not warranted at the April 30, 2021 PPT.

Even if the District was remiss in making that determination, however, the Student was not deprived of educational benefit by the delay. A referral from the April 2021 PPT would not have resulted in evaluation reports until the end of the school year,

which would have thus not resulted in changes to the Student's program until the following school year. (Finding of Fact #28.) Early in the 2021-22 school year, on the basis of the neuropsychological evaluation provided by the Parents, the Student was provided the revised supports recommended in that report through her Section 504 plan. (Findings of Fact #33, 36.) Therefore, any delay in evaluating the Student for special education did not deprive the Student of educational benefit.

The Parents were also were not impeded in their participation in the decisionmaking process. The Parents were active participants in the educational process involving the Student. (Findings of Fact #7-8, 10-11, 13-18.) The decision at the April 30, 2021 that an initial special education evaluation was not warranted at that time was based in part on the language in the APRN report provided by the Parents themselves. (Finding of Fact #26.) Most importantly, when the Parents provided new information to the District, a new PPT was convened and a different result was obtained on the basis of the new information. (Findings of Fact #34-37.)

Therefore, the District did not violate the Student's right to a Free Appropriate Public Education by failing to identify her with a disability prior to November 5, 2021.

2. If so, at what point should the Student have been identified as eligible for special education?

In light of the resolution of Issue #1, this issue need not be addressed.

3. If the Student should have been identified as eligible to receive special education, in what category or categories should the Student have been so identified?

In light of the resolution of Issue # 1, this issue need not be addressed.

4. If the Student should have been identified as eligible for special education services and the District has violated the Individuals With Disabilities Education Act ("IDEA") (20 USC §1400 *et seq*) in not so identifying her, what remedies should be ordered?

In light of the resolution of Issue #1, this issue need not be addressed.<sup>2</sup>

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

The District did not violate the Student's right to a Free Appropriate Public Education by failing to identify her with a disability prior to November 5, 2021.

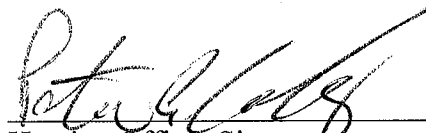
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<sup>2</sup> It should be noted that the Parents' brief does not contain much analysis of any actual educational remedies (such as compensatory education) for the alleged violations committed by the District but rather seeks a large monetary award for "lost wages" and "non-attorney attorney fees", which are not remedies available in administrative proceedings under the IDEA.



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

Patrick L. Kennedy

Hearing Officer

Name in Print