

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the District:

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Appearing before:

Patrick L. Kennedy, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Was the District obligated to consider the parental referral of the Student for special education?
2. If so, was the Student eligible for special education?
3. If the District was obligated to consider the parental referral of the Student and the Student was eligible for special education, did the District deprive the Student of a Free Appropriate Public Education (“FAPE”) for the 2022-23 school year?
4. If there has been a deprivation of FAPE, is the program at Winston Preparatory an appropriate one for the Student?
5. If there has been a deprivation of FAPE and the program at Winston Preparatory is appropriate, should the District be ordered to place the Student at that institution for the 2022-23 school year and reimburse any expenses incurred by the Parents for such placement?
6. If there has been a deprivation of FAPE, should any other remedies be ordered?
7. Did the District violate §504 of the Rehabilitation Act?

**PROCEDURAL HISTORY:**

Case 23-0308 was commenced by the Parents by request received by the District on January 24, 2023. A prehearing conference was held on January 31, 2023. At the prehearing conference, hearing dates were set for March 6, 2023; March 7, 2023 and March 18, 2023 and the decision date was determined to be April 6, 2023.

A hearing was held on March 6, 2023. As the submission of evidence was concluded on that date, the remaining hearing dates were cancelled. The decision date was extended to May 9, 2023.

Issue 7 was dismissed at the prehearing conference for lack of subject-matter jurisdiction.

The following witnesses testified on behalf of the Parents: Tara Levinson, PhD., Psychologist; Lorraine Adams, Dean of Students and Academics at Winston Preparatory School; Stacey Heiligenthaler, PhD, Chief Officer of Special Education and Student Supports for Greenwich Public Schools and Father.

No witnesses testified on behalf of the District.

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

Parent Exhibits P-1 through P-13 and P-15 through P-30 were entered as full exhibits.

Board Exhibits B-1 and B-2 as well as the first three pages of B-3 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. Student and Parents are residents of Greenwich. (Testimony of Parent.)
2. Student is a 12-year-old student currently enrolled in sixth grade at Winston Preparatory School (“Winston Prep”). (Testimony of Parent.)
3. Student attended the King School in Stamford for kindergarten and first grade. (Testimony of Parent.)
4. Student attended Greenwich Country Day School (“GCDS”) from second through fourth grade. (Testimony of Levinson, Testimony of Parent.)
5. Dr. Tara Levinson is a nationally certified school psychologist and clinical psychologist, who holds a Ph.D. in school and pediatric psychology, a master’s degree in special education, and a bachelor’s degree in psychology who has an extensive practice evaluating students and who previously worked as a special education teacher and a school psychologist. (Testimony of Levinson, P-28.)
6. In 2019, Dr Levinson performed an evaluation of Student. (Testimony of Levinson.)
7. The evaluation found that Student had significant difficulty sustaining focus and attending to lessons in the classroom, that he was distracted both internally and externally, and that he struggled with making connections to classroom material. (P-10.)
8. The evaluation also found that Student’s weaknesses in grapho-motor speed impaired his abilities in written expression and that, while he was kind and endearing, he did not have strong peer connections and generally preferred to work and play alone. (P-10.)
9. The evaluation diagnosed the Student with Social Communication Disorder; Attention Deficit Hyperactivity Disorder (“ADHD”), Inattentive Type and Developmental Coordination Disorder with Mild to Moderate problems with school and social functioning. (P-10.)
10. The evaluation recommended additional supports for Student in school and over breaks. (P-10.)

11. In third grade, GCDS provided supports including an additional teacher and Parents provided tutoring over the summer prior to third and fourth grades. (Testimony of Parent.)
12. In fourth grade, the second teacher was removed as a support for the Student and his school performance suffered. (Testimony of Parent.)
13. At the conclusion of fourth grade, GCDS suggested to Parent that it was unable to provide the level of support which Student required. (Testimony of Parent.)
14. In March of 2021, Student's fourth grade year, Dr. Levinson conducted an update of the Student's testing and Learner Profile. (P-11.)
15. Dr. Donna Geffner conducted an Auditory Processing Evaluation in April of 2021. (P-12.)
16. The evaluation diagnosed the Student with an Auditory Processing Disorder, Temporal Processing Disorder and Phonological Processing Disorder with variable results on testing for an Auditory Short-Term Memory Deficit. (P-12.)
17. The evaluation recommended that the Student "receive a classification as a student with a speech-language impairment and have [an] IEP with goals to address his deficits" or at least a 504 accommodation plan. (P-12.)
18. For the 2021-22 school year, which was the Student's fifth-grade year, the Student was enrolled in Winston Prep, which is located in Norwalk. (Testimony of Father.)
19. Winston Prep is an accredited day school for students with learning disabilities which has small class sizes and a one-to-one 45-minute class each day with the student's focus instructor. (Testimony of Adams.)
20. The school has 135 students and the population primarily consists of students with nonverbal learning disabilities, executive functioning disabilities and language-based disabilities. (Testimony of Adams.)
21. In fall of 2021 and 2022, Winston Prep prepared reports with detailed goals for the Student. (P-16, P-24.)
22. Prior to referring the Student for special education, the Parents reenrolled the Student at Winston Prep for the 2022-23 school year. (Testimony of Parent.)
23. On June 20, 2021, the Parents, through counsel, emailed Dr. Stacey Heiligenthaler with a referral for special education and request for evaluations. (P-15.)

24. The request provided the information that the Student was districted for Glenville Elementary School/Winston Middle School in Greenwich but was currently attending Winston Prep. (P-15).
25. The request attached a copy of Dr. Levinson's initial evaluation and a letter from the Federal Office of Special Education and Related Services (OSERS) concerning the issue of a student privately placed outside the town of residence. (P-15).
26. The time that the request was made was the very end of the school year. (Testimony of Heiligenthaler.)
27. Because of the timing of the request, it is unlikely that an Individualized Education Program ("IEP") would have been in place before the end of October or beginning of November had the District acted on the referral. (Testimony of Heiligenthaler.)
28. The District rejected the referral request and directed the Parents to Norwalk Public Schools. (B-1.)
29. When a request is referred to another district, the District still might perform an evaluation if there were "extenuating circumstances". (Testimony of Heiligenthaler.)
30. The Parents were not provided with a copy of procedural safeguards. (Testimony of Parent, Testimony of Heiligenthaler.)
31. The Parents did not provide ten days notice of their unilateral placement at Winston Prep. (P-30.)
32. The contract provided that Parents could opt out of the agreement in the event that they "accept a school placement offered by Student's school district of residency . . ." (P-30.)
33. The date by which parents must exercise their opt-out rights under the terms of the contract is September 15, but the school is willing to negotiate extensions of that deadline with Parents; however, no evidence was presented concerning under what circumstances the school would negotiate such extensions or how long they would go and there is no evidence that the Parents requested an extension in this case (P-30, Testimony of Adams, Testimony of Parent.)
34. If the termination clause is exercised, parents are only responsible for the tuition for the pro-rata portion of the year for which a student actually attends the school. (P-30.)

35. Parents have mostly dealt with the District through counsel. (Testimony of Parent.)
36. At one point, an administrator of Western Middle School sent an email to Parents to reach out to them but they responded that they were waiting for an offer of FAPE and there was no further email exchange. (Testimony of Parent.)
37. Neither Student nor any of his siblings have ever attended Greenwich Public Schools. (Testimony of Parent.)
38. In view of the District's refusal to conduct an evaluation, the Parents obtained a further evaluation from Dr. Levinson in September of 2022. (P-13.)
39. Dr. Levinson's 2022 evaluation diagnosed Student with Social (Pragmatic) Communication Disorder, Moderate; Specific Learning Disorder ("SLD"), NOS (NVLD), Processing Speed; [ADHD], Predominately Inattentive Type; [SLD], Written Expression, Mild (Dysgraphia) and Central Auditory Processing Disorder. (P-13.)
40. While Dr. Levinson found that the Student shows weakness in critical thinking, processing and executive functioning skills, she also noted that "[h]e is thriving in a small, structured learning environment where his teachers can individualize his learning goals." (P-13.)
41. Dr. Levinson concluded that Student requires a small, structured classroom, with high level pre-teaching of concepts and vocabulary, a teacher who can adjust the pacing of instruction to accommodate his processing speed, and direct instruction in social pragmatic skills, reading comprehension, and written expression as well as a high level of explicit support in executive functioning skills. (P-13, Testimony of Levinson.)
42. Winston Prep is providing supports consistent with the recommendations of Dr. Levinson's evaluation. (Testimony of Parent.)
43. The Student is showing significant improvement in his ability to master school material. (Testimony of Parent.)
44. Student has become far more socially engaged and the pacing of instruction and the small size of the class help overcome his executive functioning and auditory processing difficulties. (Testimony of Adams.)

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

1. **Was the District obligated to consider the parental referral of the Student for special education?**

Districts are required by the “Child Find” provisions of the IDEA to evaluate any “[c]hildren who are suspected of being a child with a disability”. 34 CFR §300.111(c)(1).

The sole authority that the District relies upon is nonbinding guidance issued by the State Department of Education titled, “Questions and Answers Regarding Parentally Placed Students in Private Schools.” The specific portion of the guidance that it relies upon is:

6. What are the responsibilities of a school district regarding students with disabilities placed by their parents in private elementary and secondary schools located within that school district?

A school district must do the following with regard to students with disabilities placed by their parents in private elementary and secondary schools located within their school district:



b. Child Find: The school shall conduct all child find activities for private school children with disabilities who are attending private schools located within that school district. This includes the location, identification and evaluation of all such private school children with disabilities.

Federal guidance, however, does recognize the obligation of the LEA of residence to evaluate for purposes of providing FAPE:

If a parent requests that the LEA responsible for providing FAPE to the child evaluate their child for the purpose of having a program of FAPE made available to the child, the LEA cannot refuse to conduct the evaluation and determine the child’s eligibility for FAPE because the child attends a private school in another LEA.

*Letter to Eig, 1/28/09.*

OSERS later provided similar guidance in February of 2022:

Question A-4: Is it possible for a parent to request evaluations from the LEA where the private school is located as well as the LEA where the child resides?

Answer: Yes. Both LEAs are required to conduct an evaluation if requested to do so by the parent and if the LEA suspects the child has a disability under IDEA, because these evaluations are conducted for different purposes. If the parent requests the LEA of the child’s residence to conduct an evaluation for purposes of making FAPE available to the child, that LEA must conduct the evaluation. If the parent

requests the LEA where the private school is located to conduct an evaluation for purposes of determining whether the child could be eligible for equitable services, that LEA must conduct the evaluation.

*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, OSEP QA 22-01, 2/22.

More importantly, however, federal caselaw holds that the district of residence has responsibility under child find to evaluate children privately placed at schools located in another district:

While recognizing that the district in which the private school resides has its own child find responsibilities, the “child find process does not prevent a parent from initiating a request for an evaluation from the LEA of residence or relieve the LEA where the child resides from the obligation to provide an evaluation.” *District of Columbia v. Abramson*, 493 F.Supp.2d 80, 85 (D.D.C.2007) [“Abramson ”]. “Indeed,” in the words of the *Abramson* court, 20 U.S.C. § 1414(a)(1)(B) “expressly provides that parents may initiate such a request[,]” and just because Waterbury may have child find responsibilities of its own, and just because the Student was enrolled outside of Torrington, the Board is not relieved “from having to fulfill its own responsibilities as the LEA of residence to evaluate the student and make FAPE available.” *Abramson*, 493 F.Supp.2d at 85–86 (citation omitted); *accord Regional Sch. Dist. No. 9 Bd. of Educ. v. Mr. & Mrs. M.*, No: 3:07 CV 1484(WWE), 2009 WL 2514064, at \*15 (D.Conn. Aug. 11, 2009) (Student's placement in Utah did not divest school district in Connecticut of its IDEA obligations to student-resident); see also *E.T. v. Bd. of Educ. of the Pine Bush Cent. Sch. Dist.*, No 11–CV–5510(ER), 2012 WL 5936537, at \*11 (S.D.N.Y. Nov. 26, 2012). The Board's “refusal to continue the evaluation process for [M.A.], a resident of [Torrington], constituted a denial of FAPE.” *Abramson*, 493 F.Supp.2d at 86.

*M.A. v. Torrington Bd. of Education*, 980 F. Supp. 2d 245, 270 (D. Conn. 2013).

Finally, it should be noted that, while a literal reading of one paragraph of the non-binding Connecticut guidance suggests that the district of residence has no child-find responsibilities to students placed in private schools elsewhere, the document acknowledges that “The town of residence remains responsible for the provision of FAPE...to students with disabilities.” On the other hand, “it is the responsibility of each school district in which a private school is located to make the final decision with respect to the services to be provided to eligible parentally placed private school children with disabilities.” Since the respective districts have differing substantive responsibilities to eligible students, it makes sense that they would have child find responsibilities which correspond to the actual services which each might need to provide.



In this case, the initial email stated that it was a "referral for special education and request for evaluations". (Finding of Fact #23). The email specifically provided the public school district serving the Student's residence as well as the private school which the Student was currently attending. (Finding of Fact #24). The email pointedly attached a copy of *Letter to Eig* cited above. (Finding of Fact #25). The import of the email was quite clearly that Parents were referring the Student to the District for purposes of the Student being offered FAPE within the public school system.

Accordingly, the undersigned finds that the District was obligated to consider the parental referral of the Student for special education.

**2. If so, was the Student eligible for special education?**

The evaluations provided over the years establish that the Student suffers from disabilities which require special education and related services. The initial evaluation from Dr. Levinson in 2019 found deficits in several areas and diagnosed Student with Social Communication Disorder, ADHD and Developmental Coordination Disorder. (Findings of Fact #6-9.) The 2021 auditory processing evaluation performed by Dr. Donna Geffner diagnosed the Student with Auditory, Temporary and Phonological Processing Disorders and specifically recommended that he receive a classification as a student with a speech-language impairment and receive an IEP. (Findings of Fact #15-17.)

Dr. Levinson's 2022 evaluation diagnosed Student with Social (Pragmatic) Communication Disorder, Moderate; SLD, NOS (NVLD), Processing Speed; [ADHD], Predominately Inattentive Type; [SLD], Written Expression, Mild (Dysgraphia) and Central Auditory Processing Disorder. (Finding of Fact #39.) The evaluation discussed the specific deficits that Student suffered and provided specific recommendations for structuring his learning. (Findings of Fact #40-41.)

Given the evidence provided by expert evaluators as to the Student's disabilities and the absence of countervailing evidence, the undersigned finds that the Student was eligible for special education.

**3. If the District was obligated to consider the parental referral of the Student and the Student was eligible for special education, did the District deprive the Student of a Free Appropriate Public Education ("FAPE") for the 2022-23 school year?**

"[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."

In this case, the failure to even convene a planning and placement team (PPT) meeting or evaluate the Student when there was a legal obligation to do so is clearly not harmless error. The Student suffers significant deficits which render the Student eligible for special education and the failure to evaluate him or conduct a PPT deprived him of educational benefit. The failure to convene a PPT at all significantly impeded the parents' opportunity to participate in the decisionmaking process. Further, the failure to evaluate the Student required the Parents to spend their own resources to obtain an evaluation. (Finding of Fact #38.)

Accordingly, the undersigned finds that the District deprived the Student of FAPE for the 2022-23 school year.

**4. If there has been a deprivation of FAPE, is the program at Winston Preparatory an appropriate one for the Student?**

The United States Supreme Court has held that an appropriate program is one which is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. vs. Douglas County School District*, 137 S.Ct. 988, 1001 (2017).

The program at Winston Prep features small class sizes and 45 minutes of one-to-one instruction each day. (Finding of Fact #19.) The school has only 135 students and is specifically geared toward nonverbal learning disabilities, executive functioning disabilities and language-based disabilities. (Finding of Fact #20.) It drafts reports with detailed goals for students at the beginning of the school year. (Finding of Fact #21.)

According to Dr. Levinson, the Student is "thriving" in the program provided for him with a small, structured environment and individualized learning goals. (Finding of Fact #40.) The supports that Winston Prep is providing are those called for by Dr. Levinson's evaluations. (Findings of Fact #41 and 42.) The Student has shown significant improvement in both his social and academic functioning. (Findings of Fact #43 and 44.)

Therefore, the undersigned finds that Winston Prep is providing a program to the Student which is reasonably calculated to enable him to make progress which is appropriate in light of his circumstances and, therefore, that the program is appropriate for the Student.

**5. If there has been a deprivation of FAPE and the program at Winston Preparatory is appropriate, should the District be ordered to place the Student at that institution for the 2022-23 school year and reimburse any expenses incurred by the Parents for such placement?**

Hearing officers may reduce or deny reimbursement altogether based upon equitable considerations. *County School District Four vs Carter*, 510 US 7 (1993); *Frank G vs Board of Education of Hyde Park*, 439 F. 3d 356 (2d Cir 2006).

In this case the Parents did not make their request until the very end of the school year. (Finding of Fact #26.) At the time that they made their request, the Parents had already reenrolled the Student at Winston Prep for the 2022-23 school year. (Finding of Fact #22.) By the terms of the contract that Parents signed, they had no right to rescind past September 15. (Findings of Fact #32 and 33.) Because of the timing of the Parents' request, the Student would not have been provided with an IEP before the beginning of November even had the District acted on the request. (Finding of Fact #27.) Although Winston Prep is willing to negotiate extensions of the September 15 deadline, the lack of evidence concerning the circumstances under which this is done and how far out the school is willing to go make it speculative to try to determine whether the Parents would have obtained an extension until early November in this case. (Finding of Fact #33.) Therefore, the undersigned finds that by the time the Parents referred the Student for an evaluation, they were already legally obligated for the entire year's tuition at Winston Prep and thus that the District's refusal to evaluate the Student did not cause them any financial harm with regard to the unilateral placement.

Further, the dealings between the Parents and the District make it clear that the Parents were not genuinely pursuing a public school education for the Student, but rather looking for reimbursement of private school costs that they were going to incur anyway. As noted above, the Parents had reenrolled the Student at Winston Prep before ever making the referral for evaluation (Finding of Fact #22) and made their request at the very end of the school year (Finding of Fact #26). The Parents have not sent any of their children to Greenwich Public Schools. (Finding of Fact #37.) The Parents have mostly dealt with the District through counsel. (Finding of Fact #35.) When a school administrator from the school that Student would be attending reached out to the Parents by email, they gave a perfunctory reply that they were waiting for an offer of FAPE from the District and did not engage further. (Finding of Fact #36.) Accordingly, the undersigned finds that the contention of the Parents that they really wanted to send the Student to Greenwich Public Schools is less than credible.

Therefore, the undersigned finds that the equities do not warrant reimbursement of the Parents of the costs of attendance at Winston Prep.

**6. If there has been a deprivation of FAPE, should any other remedies be ordered?**

Given the finding that the District should have evaluated the Student in response to the referral for special education, the Parents should not have had to incur the cost of obtaining the evaluation from Dr. Levinson, which they obtained after the District had rejected the request. (Finding of Fact #38.) Therefore, the District should reimburse the Parents for the cost of that evaluation.

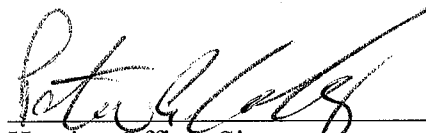
The Student is found to be eligible for special education under the categories of Specific Learning Disability as found by Dr. Levinson (Finding of Fact #39) and Speech and Language Impairment as found by Dr. Geffner (Findings of Fact #16 and 17). The District must convene a PPT to develop an IEP to meet the Student's needs.

**FINAL DECISION AND ORDER:**

1. The Student is found to be eligible for special education under the categories of Specific Learning Disability and Speech and Language Impairment.
2. The District is ordered to convene a PPT within 30 days of the date of this order to develop an IEP for the Student.
3. The District is ordered to reimburse the Parents for the cost of the evaluation provided by Dr. Tara Levinson in September of 2022.

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).



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Hearing Officer Signature

Patrick L. Kennedy

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Hearing Officer

Name in Print