

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student<sup>1</sup> v. Newington Board of Education

Appearing on behalf of Student:

Student's Parents, *Pro Se*

Appearing on behalf of the Board of Education:

Attorney Rebecca Santiago  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06013-1919

Appearing before:

Janis C. Jerman  
Hearing Officer

**FINAL DECISION AND ORDER**

Procedural Posture

Student's Parents filed a Request for Due Process Hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (IDEA) via Request for Impartial Special Education Hearing dated November 20, 2024. The undersigned Hearing Officer was appointed to preside over this case on November 26, 2024.

The Board of Education (BOE) received the Request for Hearing on November 26, 2024. The 30-day resolution period ended December 26, 2024 and the original 45-day deadline to mail the final decision and order was February 9, 2025.

On December 9, 2024, BOE's Attorney filed a timely Sufficiency Challenge. At the December 13, 2024 telephonic prehearing conference, Student's Parents appeared on behalf of Student and Attorney Santiago appeared on behalf of BOE. On December 13, 2024, the Request for Hearing was deemed insufficient regarding the requirement that it include a "description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem," under 20 U.S.C. §1415(b)(7)(A); 34 C.F.R. §300.508(b)(5); Conn.Reg. §10-76h-3(d)(4).

Student's Parents were given leave to amend the Request for Hearing on or before December 27, 2024. They filed a Revised Request for Hearing on December 27, 2024; BOE received the Revised Request for Hearing on that date. The 30-day resolution period ended January 26, 2025 and the 45-day deadline to mail the final decision and order was March 12, 2025.

On January 8, 2025, BOE's Attorney filed a Motion to Dismiss arguing that Student's Parents lack standing to file a Request for Hearing on behalf of Student who turned eighteen and that the Hearing Officer lacks jurisdiction because Student graduated from a public high school with a regular diploma in June 2024 and is not eligible for special education or related services and because Student's Parents withdrew him from BOE's schools prior to his graduation when

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<sup>1</sup> In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 C.F.R. § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally-identifiable information.

they moved out of town such that BOE was not the local educational agency responsible for providing Student with special education and related services.

At the January 8, 2025 telephonic prehearing conference, Student's Parents appeared on behalf of Student and Attorney Santiago appeared on behalf of BOE. Student's Parents were granted seven business days, until January 17, 2025, to file a written objection to the Motion to Dismiss and/or file an amended Request for Hearing.

On January 15, 2025, Student's Parents submitted a letter signed by Student indicating that he requests that his Parents continue to make educational decisions on his behalf. Student's Parents submitted a timely Response to the Motion to Dismiss on January 16, 2025. On January 20, 2025, the Motion to Dismiss was denied as to the claim that Student's Parents do not have standing to bring claims on behalf of Student after reaching age eighteen; denied as to the claim that the Hearing Officer lacks jurisdiction over alleged violations of the IDEA from November 26, 2022 to January 10, 2024; and granted as to any claims outside the designated subject matter or time period.

At the January 27, 2025 telephonic prehearing conference, Student's Parents appeared on behalf of Student and Attorney Santiago appeared on behalf of BOE. The following issues are identified:

1. Did the Board of Education violate its Child Find obligation with respect to Student from November 26, 2022 to January 10, 2024?
2. If the answer to Issue One above is in the affirmative, did the Board of Education fail to provide Student a free appropriate public education from November 26, 2022 to January 10, 2024?
3. If the answer to Issue One and/or Two above is in the affirmative, what shall be the remedy?

Hearing was scheduled for March 5, 2025. On January 27, 2025, Student's Parents requested that the hearing be open to the public and that it be held at a neutral location such as the State Department of Education. The request to move the hearing to another location was denied. At Student's Parents' request, as permitted by 34 C.F.R. § 300.512(c)(2), the hearing was open to the public.

The parties participated in mediation on February 26, 2025. A public hearing was held as scheduled on March 5, 2025. All witnesses were questioned and cross-examined under oath.

The parties timely submitted post-hearing briefs on March 28, 2025. On March 31, 2025, BOE's Attorney filed a motion to exclude Student's college transcript and other information that was not presented at hearing and was included in Student's Parents' post-hearing brief. Student's Parents filed a response to the Motion to Exclude on April 1, 2025 wherein they indicate that they provided the unofficial college transcript which was requested by BOE's Attorney on February 26, 2025 in preparation for the hearing. According to Student's Parents, they "recently acquired the requested documents and provided them as per [BOE's Attorney's] request as soon as we were able to." The transcript was not submitted as evidence for the hearing and is not relevant to the identified issues. The Motion to Exclude is granted as to the college transcript.

In the Motion to Exclude, BOE also argues that the "lengthy description of requested 'remedial supports' that [Student's Parents] now propose as a remedy" cannot be submitted after the close of evidence. The Hearing Officer has authority to fashion an appropriate remedy for violation of a Child Find obligation. Student's Parents are entitled to identify what they believe

to be an appropriate remedy, which will be judged against the evidence in the record as to what is appropriate if there is a violation. The Motion to Exclude is denied as to the requested remedy.

To the extent that procedural history, statement of jurisdiction, findings of fact, or discussion represent conclusions of law, they should be so considered, and vice versa.

### Statement of Jurisdiction

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

### Findings of Relevant Fact<sup>2</sup>

1. BOE's School Nurse Administrator and 504 Coordinator (504 Coordinator) has served as BOE's 504 Coordinator since 2013. In that capacity, she oversees Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (Section 504) compliance district-wide, provides staff training, attends district and magnet school Section 504 meetings, and assists students with disabilities who have a substantial limitation to a major life activity - and who do not need specialized instruction - to access their education. 504 Coordinator refers to special education students with a disability who need special services to access their education. 504 Coordinator holds an Associate of Science degree in nursing, Bachelor of Science in nursing, and a Master of Education with a concentration in school nurse education. (Exh. B-1, B-1A; Testimony of 504 Coordinator).
2. BOE's Assistant Director of Student Services – Secondary (Assistant Director) holds a Bachelor of Science degree in special education, a Master of Science degree in reading, and a Sixth Year Certificate in educational leadership. She holds Connecticut certifications in Educational Leadership (092), Comprehensive Special Education PK-12 (065), Remedial Reading and Remedial Language Arts 1-12 (102), and Reading and Language Arts Consultant 1-12 (097). She has worked for BOE since 1998 – 16 years as a special education teacher and 10 years as Assistant Director. She has experience with special education, including identification and referral of students to special education, eligibility issues, and attending PPT meetings. (Exh. B-2, B-2A; Testimony of Assistant Director).
3. Director of Student Services (Director) holds an Associate of Science degree in general business, a Bachelor of General Studies degree, a Master of Arts in special education, and a Sixth year Certificate in educational leadership. She holds a Connecticut 092 Administrator Certificate and an 065 Comprehensive Special Education PK-12 Certificate. She has worked in public education since 1997 as a special education teacher, inclusion facilitator, and supervisor. She has served as BOE's Director of Student Services for nine years and oversees all special education for BOE. (Exh. B-23; Testimony of Director).
4. Student is eighteen years old on the date of the hearing. (Exh. HO-3).
5. During the time period between November 26, 2022 and January 9, 2024, Student and his parents lived in Newington, Connecticut. (Exh. HO-3)
6. During the time period between November 26, 2022 and January 10, 2024, Student attended University High School of Science and Engineering ("UHSSE"), a magnet school operated by the Hartford Board of Education. (Exh. HO-3, S-206, S-268; Testimony of 504 Coordinator)

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<sup>2</sup> In the Discussion, Findings of Fact are cited as "FOF #."

7. Student was a “dedicated and active member” of the UHSSE robotics team for four years. (Exh. S-268)
8. Between November 26, 2022 and January 10, 2024, Student was eligible for accommodations under Section 504. (Exh. HO-3, S-233; Testimony of 504 Coordinator)
9. 504 Coordinator attended Student’s Section 504 meetings from eighth grade until he moved out of the district. (Testimony of 504 Coordinator)
10. Student’s courses during the 2022-23 school year included University of Hartford Computer Science, Honors Pre-Calculus, Honors Chemistry, Honors US History, UConn American Studies and Honors Spanish 3. Student used his Section 504 Plan accommodations appropriately and was doing well during the 2022-23 school year. (Exh. HO-3, B-3; Testimony of 504 Coordinator)
11. Between November 2022 and May 2023, UHSSE did not contact 504 Coordinator to report any educational, behavioral or emotional concerns about Student. Any concerns about a student in a magnet school would be reported to 504 Coordinator. (Testimony of 504 Coordinator)
12. Student scored 1210 on his SAT, which is above the state average of 990. (Exh. B-6, B-9; Testimony of Assistant Director, Director)
13. A Section 504 meeting was held on May 16, 2023. Student’s Parents and Student attended the meeting. The Section 504 Plan noted diagnoses of Autism Spectrum Disorder, ADHD, and unspecified anxiety disorder. (Exh. HO-3, B-6, S-214; Testimony of 504 Coordinator)
14. At the May 16, 2023 Section 504 meeting, school staff reported that Student was doing well in classes, was on target to graduate the following year, scored high on the SAT, uses his Section 504 Plan accommodations appropriately, pays attention, and has matured over several years. No one reported any behavioral concerns. Student questioned the need for the accommodations and said that he was doing fine. Student’s Mother expressed concern over Student turning in assignments late. BOE added supports to Student’s 504 Plan at Student’s Parent’s request to be collaborative with them. (Testimony of 504 Coordinator)
15. Notes of the May 16, 2023 meeting state “Parents submitted a Neuropsych evaluation... [Student’s Father] said he would email it to the team.” BOE did not receive the neuropsychological evaluation from Student’s Parents. (Exh. B-6; Testimony of 504 Coordinator, Director)
16. Student’s courses during the 2023-24 school year included University of Hartford Chemistry and Calculus; Honors Principles of Architecture and Physics; and college Marine Sciences and Academic Writing. His grades ranged from A to B-. (Exh. B-3)
17. On November 6, 2023, Student’s Parents made a referral to determine if Student was eligible for special education and related services due to their concerns about Student’s transition skills and executive functioning. (Exh. HO-3, B-7, S-227, S-228, S-229, S-232; Testimony of Assistant Director)
18. On November 21, 2023, a Planning and Placement Team (PPT) Meeting was held to review the referral. Student’s Parents received notice of the November 2023 PPT meeting and their procedural safeguards. (Exh. HO-3, B-8, B-9, S-230, S-231, S-234, S-235, S-236)
19. Student’s Parents attended the November 21, 2023 PPT meeting and participated in the discussion. Student’s Mother was concerned about how Student will do after high school. The PPT looked at how Student was doing academically, how he interacts with other students, and his participation in group work. The PPT noted that Student’s test results are indicative of college readiness and are an accurate representation of his performance, that he

was taking primarily honors and college level classes, that there were no concerns with his time management, and that there were not behavioral or social emotional concerns. The PPT determined that Student was not eligible for special education and instead agreed to convene a Section 504 meeting to review Student's accommodations. (Exh. HO-3, B-9, B-10, S-235, S-236; Testimony of 504 Coordinator, Assistant Director)

20. The Record of Meeting for the November 21, 2023 PPT meeting notes that Student was a 12<sup>th</sup> grade student "on track to graduate" with a 3.72 GPA who "works well in groups, pleasure to have in class, works hard, there are no concerns, works well in groups and is independent." Student was taking college classes for credit. UHSSE reported no concerns about Student. (Exh. HO-3, B-9, S-236; Testimony of Assistant Director, Director)
21. Student's Parents, BOE, and UHSSE communicated over email regarding the scheduling a Section 504 meeting. However, a mutually agreeable date was not selected before Student moved to the new town. (Exh. HO-3, B-11, S-206, S-208, S-209, S-210, S-213, S-238)
22. On January 10, 2024, Student's Parents moved to, and registered Student for school in, another Connecticut town. (Exh. HO-3, B-12, S-239)
23. In a June 2024 letter of recommendation, UHSSE Assistant Principal wrote that Student "consistently demonstrates a strong work ethic and a willingness to go the extra mile...possesses excellent communication abilities, allowing him to collaborate effectively with peers and mentors...is a natural leader, able to motivate and inspire others, as evidenced by his role as Captain." (Exh. S-268)
24. Student graduated from UHSSE with a regular education diploma on June 17, 2024. (Exh. HO-3, B-3; Testimony of Director)
25. Student earned 31.5 credits and had an unweighted GPA of 3.186 and a weighted GPA of 3.797. (Exh. HO-3, B-3; Testimony of Director)
26. BOE received the neuropsychological evaluation referred to at the May 16, 2023 Section 504 meeting from another school district in preparation for this hearing. They did not have or consider the evaluation in determining Student's eligibility for special education services in 2023. (Testimony of 504 Coordinator, Assistant Director, Director)

### Conclusions of Law<sup>3</sup>

1. A Hearing Officer appointed under 34 C.F.R. § 300.500 *et seq.* and Conn.Reg. § 10-76h-1 *et seq.* has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ("FAPE") to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the PPT, or (C) to prescribe alternate special educational programs for the child. C.G.S. § 10-76h(d)(1).
2. Child with a disability means a child evaluated in accordance with the IDEA as having an intellectual disability, a hearing impairment, a speech or language impairment, a visual impairment, a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, *and who, by reason thereof, needs special education and related services.* If it is determined, through an appropriate evaluation, that a child has one of the identified disabilities but only needs a related service and not special education, the child is not a child with a disability under the IDEA. 34 C.F.R. § 300.8(a) [emphasis added].

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<sup>3</sup> In the Discussion, Conclusions of Law are cited as "COL #."

3. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, *that adversely affects a child's educational performance*. 34 C.F.R. § 300.8(c)(1)(i) [emphasis added].
4. BOE must exercise its Child Find obligation to identify, locate, and evaluate children who are suspected of having a disability and who need special education and related services. The Child Find obligation extends to children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111; Conn.Reg. § 10-76d-6; Mr. P v. W. Hartford Bd. of Educ., 885 F.3d 735 (2d Cir.), cert. denied, 139 S.Ct 322 (2018).
5. A school district may violate their Child Find obligation if they overlook clear signs of disability, are negligent in failing to order testing, or if there is no rational justification for deciding not to evaluate the child. Mr. P v. W. Hartford Bd. of Educ., 885 F.3d 735 (2d Cir.), cert. denied, 139 S.Ct. 322 (2018).
6. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Conn.Reg. § 10-76h-14.

### Discussion

Each of the issues identified in this case is addressed in this Discussion section. All the parties' evidence and arguments have been thoroughly reviewed and considered by the Hearing Officer.

Student's Parents state that there is no question that Student's grades are good. They argue that people don't see what happens behind the scenes to make those grades; that his needs are not just academic, but also behavioral; that Student does everything he can at school to hold himself together and then shuts down at home; that they were asking for transition services and time management; that Student has learned to mask some of his symptoms and disabilities; that Student's functional limitations are masked by his high intelligence; and that BOE did not look at the appropriate variety of sources for determining eligibility.

BOE argues that the issue in this case is extremely narrow, being whether BOE failed to meet its Child Find obligation to Student between November 26, 2022 and January 10, 2024; that Student was identified as requiring accommodations under Section 504 and, with those accommodations, was extremely successful in school receiving good grades in honors level and college courses; that diagnosis does not equate to eligibility for special education; that Student does not require special education instruction in order to receive a meaningful education benefit; that Student's Parents meaningfully participated in PPTs and Section 504 meetings; that their input was considered; and that there has been no Child Find violation or denial of FAPE to Student.

1. Did the Board of Education violate its Child Find obligation with respect to Student from November 26, 2022 to January 10, 2024?

Student's Father testified that they do not dispute that Student completed his courses, managed his assignments, and had a successful academic outcome. He testified that Student has learned to mask his symptoms and disabilities, that Student's Parents need to support him to be successful, and that he needs support from someone in school to help him prioritize his work.

Student's Mother testified that Student has a hard time interacting with people and that he needs to be prompted to self-advocate. She also testified that he had problems with social

communications and inferences, which he figured out on his own. She also testified that Student attended an on-campus college course that required him to go from high school to the college campus and he was able to do that by preparing and asking students who had already done it how to get there, where to go, and what the teacher expects. When asked about the recommendation praising Student's communication skills and leadership on the robotics team, Student's Mother testified that he is only able to do that "for robotics, not for everything else."

School staff who reported on Student's academic, behavioral, and social emotional abilities and experiences indicate that he uses his Section 504 Plan accommodations appropriately (which includes support to prioritize his work), has shown maturity, and excelled in academics and robotics club. (FOF 10, 11, 14, 16, 19, 20, 23)

BOE submitted the neuropsychological evaluation report (B-18) into evidence while arguing that they did not have the report to consider when determining Student's eligibility for special education services and that it supports their position that Student is not eligible for special education services. Student's Mother testified that they provided BOE the report in May 2023 and that they did not bring it up at the November 2023 PPT meeting. BOE personnel testified that they did not follow up after the May 2023 Section 504 meeting to obtain the report and that they did not receive it until just prior to the hearing in 2025. The report does not specifically recommend special education services or indicate that they are needed for Student to access his education. Some of the recommendations are consistent with the Section 504 Plan and others are non-school related.

A diagnosis alone does not define a student as a child with a disability under the IDEA. To be found eligible for special education services under the IDEA's definition of autism, the disability must adversely affect the student's educational performance, and the child must need special education and related services to access his education. (COL 2, 3, 4)

Student's Parents referred Student for special education services and BOE timely convened a PPT meeting. (FOF 17, 18, 19, 20) There is ample credible evidence that BOE considered Student's academic progress in general education with honors and college courses, the accommodations provided in his Section 504 Plan, feedback from teachers, standardized test scores, diagnoses, and parent input in determining whether Student needs special education services to access his education and whether additional testing was necessary to determine eligibility. (FOF 7, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21) There is no evidence that Student's disability adversely affected his educational performance or that he needs special education to access his education.

Student did much more than receive passing marks and advance from grade to grade. The credible evidence supports a finding that Student excelled in academics while taking honors and college courses in high school, that he successfully accessed his education with Section 504 accommodations, and that there was no reason to suspect that special education services were needed. There is no credible evidence that BOE overlooked clear signs of disability or were negligent in failing to order testing. (COL 5)

BOE has met their burden of proving by a preponderance of the evidence that they did not violate the Child Find obligation with respect to Student from November 26, 2022 to January 10, 2024.

2. If the answer to Issue One above is affirmative, did the Board of Education fail to provide Student a free appropriate public education from November 26, 2022 to January 10, 2024?

The answer to Issue One is negative; therefore, this Issue Two is moot.

3. If the answer to Issue One and/or Two above is affirmative, what shall be the remedy?

The answer to Issue One is negative and Issue Two is moot; therefore, this Issue Three is moot.

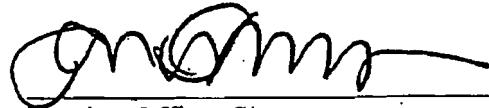
### **FINAL DECISION AND ORDERS**

The Board of Education did not violate its Child Find obligation with respect to Student from November 26, 2022 to January 10, 2024. Issues Two and Three are moot and need not be addressed.



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

JANIS C. JERMAN

Hearing Officer

Name in Print