

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student¹ v. West Hartford Board of Education

Appearing on behalf of Student:

Student's Father, *Pro Se*

Appearing on behalf of the Board of Education:

Attorney Peter Maher
Attorney Joe Miller
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 Father filed a Request for Due Process Hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (IDEA) dated May 9, 2025.² The undersigned Hearing Officer was appointed to this case on May 16. The Board of Education (BOE) received the Request for Hearing on May 19. BOE's Attorney filed a 10-day response letter on May 29.

The following issues are identified:

1. Did the Board of Education fail to provide Student with a free appropriate public education beginning May 23, 2025 when it eliminated specialty transportation as a related service?
2. If the answer to Issue One is affirmative, what shall be the remedy?

At the May 27 telephonic prehearing conference, no one appeared on behalf of Student and Attorneys Maher and Miller appeared on behalf of BOE. At the May 30 rescheduled prehearing conference, Student's Father appeared on behalf of Student and Attorneys Maher and Miller appeared on behalf of BOE.

The parties participated in a resolution meeting on June 12. The 30-day resolution period ended June 18. The original deadline to mail the final decision and order was August 2.

On June 3, BOE's Attorney requested a 30-day extension of the deadline to mail the final decision and order to accommodate hearing dates in August when BOE witnesses are available. After fully considering the parties' positions, the request was granted and the deadline to mail the final decision and order was extended 30 days to September 1.

¹ 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.

² All dates are 2025 unless otherwise indicated.

Via email dated August 5,³ Student's Father requested to postpone the August 7 hearing to allow him to retain an advocate to assist him with the case. BOE's Attorney objected to the request for postponement. After fully considering the parties' positions, the request for postponement was denied.

BOE's Attorney disclosed a witness list and eighteen exhibits (B-1 through B-18)⁴ at least five business days prior to the scheduled hearing. Student's Father did not file a witness list; he disclosed sixteen unnumbered exhibits⁵ on the day prior to the scheduled hearing.

The Request for Hearing was marked as Hearing Officer Exhibit 1 (HO-1).

Hearing was held on August 7 via Zoom videoconference. The following witnesses were questioned and cross-examined under oath: Magnet School Assistant Principal (Assistant Principal); Magnet School Nurse (Nurse); BOE Executive Director of Pupil Services (Director); and Student's Father. BOE's Attorney and Student's Father each made closing arguments.

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 Fact⁶

1. Student is a rising third grader at Magnet School through the School Choice Program (RSCO). Magnet School is located outside BOE's district. Student is resident within BOE's school district. She is eligible to receive special education services. (Testimony of Assistant Principal, Student's Father, Nurse, Director)
2. Student is a cheerful, active student who is kind and respectful and likes to socialize with her many friends. (Testimony of Assistant Principal, Nurse)
3. Director holds a Bachelor of Arts in Elementary Education, a Master of Science in Reading and Literacy, and a Sixth Year degree in Educational Leadership. She holds Connecticut certifications for Elementary Education (013), Special Education (165), and Intermediate Administration (092). She oversees pupil services including IDEA compliance, Section 504, magnet schools, and private schools within the district. (Exh. B-15; Testimony of Director)
4. Assistant Principal holds a Bachelor of Arts in English; a Master of Arts in Curriculum and Instruction; and a Sixth Year degree in Social, Emotional, and Academic Learning for Social Justice. She is pursuing a Doctor of Education in Educational Leadership. She has served as Magnet School Assistant Principal for two years. She has previous experience as a teacher and instructional coach. Assistant Principal holds Connecticut certifications as an English

³ Student's Father's request was made via email the evening of August 5 and was received during business hours on August 6, the day before the scheduled hearing.

⁴ Student's Father objected to admission of pages five through fourteen of exhibit B-1. The objection was sustained. Pages one through four and page 15 of exhibit B-1 were admitted. Exhibits B-2 through B-18 were admitted absent objection.

⁵ BOE's Attorney objected to the sixteen exhibits on the basis that they were not disclosed five days prior to the hearing and on substantive grounds. The sixteen exhibits were marked for identification only and not admitted as full exhibits. Student's Father was permitted to testify as to information that he received and had knowledge of from those exhibits.

⁶ In the Discussion, Findings of Fact are cited as "FOF #."

Teacher (015) and Intermediate Administration (092). As Assistant Principal, she is responsible for scheduling, staff coverage, student safety, and ensuring that the school building runs smoothly. (Exh. B-13; Testimony of Assistant Principal)

5. Nurse holds a Bachelor of Science in Nursing and a Connecticut nursing license. She has worked as a school nurse for more than 16 years. She has previous experience as a registered nurse in hospital settings. She is responsible for assessing student health and wellness, administering prescribed medications, and identifying potential health concerns. (Exh. B-16; Testimony of Nurse)
6. BOE is not responsible for transportation of resident children to magnet schools outside of the district unless transportation is a related service as part of a student's Individualized Education Program (IEP). RSCO has its own transportation office which coordinates centralized bus stops for students not resident in the town where Magnet School is located. Parents who choose a magnet school for their children are responsible for transporting the children to school or to a centralized bus stop. (Exh. B-10; Testimony of Assistant Principal, Director)
7. Student has medical needs that require her to have a treatment plan that includes use of an inhaler which is maintained in the Nurse's office. (Exh. B-11; Testimony of Nurse, Assistant Principal, Student's Father)
8. Student regularly and actively participates in the daily 20-minute recess and in gym class, which is 45 minutes and occurs every three school days. (Exh. B-17; Testimony of Assistant Principal)
9. Student periodically visits the nurse's office to use her inhaler before or after recess. On occasion, she might be coughing but never short of breath. Student never appeared to be in distress or have trouble breathing at school. During the 2024-25 school year, Student visited the nurse's office 15 times to use her inhaler. These visits occurred between December 12, 2024 and March 26, 2025. Student's health condition is well-controlled at school and she can participate in school activities with the help of her inhaler as needed. (Exh. B-11; Testimony of Nurse)
10. Student's most recent Health Assessment Record dated May 28, 2024 was completed by Student's Mother. It indicates that Student may participate fully in the school program, athletic activities and competitive sports. It also authorizes administration of an inhaler as needed. (Exh. B-11; Testimony of Nurse)
11. There is no documentation from a health care provider restricting Student from participating in recess or gym class. Her treatment plan calls for use of an inhaler as needed before and after exercise. (Exh. B-11; Testimony of Student's Father)
12. Student's IEP for the 2024-25 school year did not initially include specialized transportation as a related service. (Testimony of Director)
13. In July 2024, Student's Mother requested information about home schooling Student because of difficulties getting her to the centralized bus stop due to parental personal issues. (Exh. B-1; Testimony of Director).
14. Student's healthcare providers suggested that Student's Father inform BOE of his personal issues that impact getting Student to the centralized bus stop. In September 2024, Student's Father provided Director with information about his personal conditions that made it difficult for the family to consistently get Student to the centralized bus stop. (Exh. B-1; Testimony of Director, Student's Father).

15. The Planning and Placement Team (PPT) met on September 19, 2024 to discuss Student's Parents' request for specialized transportation as a related service. The PPT determined that Student does not qualify for specialized transportation based on barriers that the family is experiencing related to getting Student to the centralized bus stop. Student's Father disagreed with this decision. (Exh. B-2; Testimony of Director, Student's Father)
16. Student's Father contacted RSCO about his concerns about the distance to the centralized bus stop and they moved the bus stop closer to Student's home. (Testimony of Director, Student's Father)
17. The new centralized bus stop is 0.60 miles from Student's home. (Testimony of Director)
18. In October 2024, Student's Parents provided BOE with a doctor's note indicating that Student's Parents report that she has shortness of breath when walking to school and during any walk longer than five minutes and requesting that Student's bus stop be changed to require no more than a five-minute walk until December 1, 2024. At a November 4, 2024 PPT meeting, Student's IEP was changed to include door-to-door specialized transportation as a related service beginning November 11, 2024. (Exh. B-3, B-4, B-5; Testimony of Assistant Principal, Student's Father, Director)
19. Despite the December 1, 2024 expiration of that note, Student continued to receive door-to-door transportation through her IEP through May 2025. (Testimony of Director)
20. Student saw a pulmonologist in March 2025. Her treatment plan recommends use of her inhaler before and after physical activity. It does not restrict her from physical activity. (Testimony of Student's Father)
21. On May 19, 2025, BOE received Student's Father's Request for Hearing seeking to continue Student's door-to-door transportation beyond May 23, 2025. He anticipated that specialized transportation as a related service would be discontinued at the scheduled May 23, 2025 PPT meeting. Student's Father invoked Student's Saty-Put rights to continue specialized transportation. (Exh. HO-1; Testimony of Director)
22. BOE did not receive additional medical documentation regarding Student's condition or needs. Director made several requests for information via email and in conversations with Student's Parents in December 2024 and May 2025. (Exh. B-6, B-7; Testimony of Director)
23. The PPT met on May 23, 2025 to conduct Student's annual review. The meeting included a short discussion about specialized transportation as a related service. The school-based members of the PPT did not think that Student required specialized transportation as a related service to access her education. Student's Father disagreed. Pursuant to the May 23, 2025 IEP, Student's specialized transportation was scheduled to end August 27, 2025. (Exh. B-8; Testimony of Assistant Principal, Nurse, Student's Father)
24. Student's Father did not have additional medical documentation for Student prior to the May 23, 2025 PPT meeting. (Testimony of Student's Father)
25. Student can play but needs her inhaler before and after. (Testimony of Student's Father)

Conclusions of Law

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.⁷

2. The FAPE mandated by federal law must include "special education and related services" tailored to meet the unique needs of a particular child and be "reasonably calculated to enable the child to receive educational benefits."⁸
3. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.⁹
4. The related service of transportation includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment (such as special or adapted buses, lifts, and ramps) if required to provide special transportation for a child with a disability.¹⁰
5. Transportation must be provided to a student with a disability if it is necessary for the student to benefit from their special education. Such determination must be made on a case-by-case basis by the PPT. If the PPT determines that the student does not require transportation as a related service, it only needs to provide transportation in the same manner as provided for a student without disabilities.¹¹
6. The standard for determining whether FAPE has been provided is a two-pronged inquiry: first, whether the procedural requirements of the IDEA have been met, and second, whether the IEP is reasonably calculated to enable the child to receive educational benefits.¹²
7. Factors to be considered in determining whether an IEP is reasonably calculated to provide a meaningful educational benefit is whether the proposed program is individualized on the basis of the student's assessment and performance and whether it is administered in the least restrictive environment.¹³
8. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEP was developed.¹⁴
9. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence.¹⁵

⁷ C.G.S. § 10-76h(d)(1).

⁸ Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 207; Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119 (2d Cir. 1998).

⁹ 34 C.F.R. § 300.34(a).

¹⁰ 34 C.F.R. § 300.34(c)(16).

¹¹ Conn.Reg.s. § 10-76d-19; Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 894 (1984).

¹² Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).

¹³ 20 U.S.C. §1412(a)(5)(A); 34 C.F.R. § 300.114(a); A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002); M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D.Conn. 2000).

¹⁴ B. L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 537 (D. Conn. 2005).

¹⁵ Conn.Reg.s. § 10-76h-14.

10. A party to a due process hearing has the right to prohibit introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.¹⁶

Discussion

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

BOE argues that Student's Parents elected to enroll her in an out-of-district magnet school; BOE is not responsible for transportation to the magnet school unless the PPT determines that Student requires special transportation as a related service to access her special education; Student's Parents are responsible for getting Student to the centralized bus stop; the PPT determined that Student does not need specialized transportation to access her education; Student attended school regularly without specialized transportation; Student's Parents did not provide updated medical information despite being requested; Student has no restrictions for participating in recess or gym class; and that Student's Parent's request for transportation as a related service was for their convenience.

Student's Father argues that Student's doctor says that she needs specialized transportation; we should look only at this upcoming school year and not previous years; Student's restrictions are that she needs medication (inhaler) so that she doesn't have an attack; he has a medical letter recommending door-to-door transportation; he wants Student to have fair treatment; and he felt that communication between BOE and Student's Parents was poor, he didn't understand the process, and there were a lot of hoops to jump through.

BOE met its burden of proving that it did not fail to provide Student with FAPE beginning May 23, 2025 when it eliminated specialty transportation as a related service. The credible evidence supports a finding that Student regularly attended school and accessed her education in autumn 2024 when she did not have door-to-door transportation; she used her inhaler only 15 times at school after actively playing for 20 minutes at daily recess; she did not use her inhaler at school after March 6, 2025; Student, an active child, has no restrictions on recess or gym class activities; based on the information available at the time that the PPT met in May 2025, the PPT determined, based on Student's individual circumstances and needs, that she does not currently need transportation as a related service to access her education; and Student was treated equally to all students enrolled in an out-of-district magnet school.

Student's Father offered into evidence a doctor's note recommending that Student receive door-to-door transportation to avoid triggering her health condition. The exhibit was not admitted as a full exhibit over BOE's objection based on Student's Father's failure to disclose it at least five business days in advance of the hearing. Student's Father testified that Student's doctor recommended door-to-door transportation. Because the report was not available until after the May 23, 2025 PPT meeting, the PPT did not have an opportunity to consider or seek clarification of that information when it met.

Even taking into consideration the doctor's recommendation, the credible evidence in the record indicates that Student is able to access her education without door-to-door transportation as a related service; that, as Student's Father testified, she may need to use her inhaler before and/or after play activities; she had not used her inhaler at school for at least two months prior to

¹⁶ Conn.Reg. § 10-76h-11(a)(3).

the PPT meeting; and Nurse and Assistant Principal never saw student in distress or having difficulty breathing after recess or gym class. The evidence supports a finding that Student can safely walk 0.60 miles to the centralized bus stop to access her education and that she does not require specialized transportation as a related service.¹⁷ Student's inclusion in transportation services that are provided to all students is in the least restrictive environment.

FINAL DECISION AND ORDERS

The Board of Education did not fail to provide Student with a free appropriate public education beginning May 23, 2025 when it eliminated specialty transportation as a related service.

¹⁷ Student's October 2024 doctor note states that "walking is actually considered to be one of the best exercises" for student's medical condition. (Exh. B-3)

COMMENT ON THE CONDUCT OF THE PROCEEDINGS
Pursuant to Conn.Reg. § 10-76h-16(b)¹⁸

Student's Father made a late request to postpone the hearing for an indefinite time to allow him to apply for an advocate grant and find an advocate to assist him in presenting the case. After fully considering the parties' positions, the request was denied and the hearing proceeded as scheduled.

Student's Father was an active and able advocate for Student. He asked appropriate and relevant questions to the Hearing Officer about the process throughout the hearing. He also cross-examined witnesses in a succinct and relevant manner and presented his case.

¹⁸ "The final decision may include comments by the hearing officer on the conduct of the proceedings." Conn.Reg. § 10-76h-16(b).