

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Trumbull Board of Education v. Student-1

Trumbull Board of Education v. Student-2

Appearing on behalf of the Parents:

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Appearing on behalf of the Board of Education:

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Appearing before: Attorney Mary H.B. Gelfman, Hearing Officer

INTERIM ORDER

Note: Since the issues presented for this interim order affect both children similarly, this order applies to both cases.

ISSUES:

1. Shall the Board's current independent environmental consultant perform testing upon completion of remediation work at Students' neighborhood school, or should another independent consultant be appointed?
2. Should the Board be required to test an alternate building immediately, or may they wait for results from testing of the current remediation project?

PROCEDURAL HISTORY:

These hearings were requested by the Board on March 22, 2002. A pre-hearing conference was held by conference telephone call on April 5, 2002: Attorney Laubin represented the Board and Attorney Klebanoff represented the Parents. Issues identified concerned provision of homebound instruction to two siblings because of environmental

allergies; whether the Hearing Officer should override the Parents' reluctance to consent to psychiatric evaluations for the two children; and determination of "stay put" placements for the pendency of the hearing. The parties requested an extension of the deadline for mailing a final decision and order to provide for settlement negotiations. That deadline was extended from May 6 to June 5, 2002. On May 14, the Parents' attorney requested another extension to provide for completion of evaluations being performed with parental consent: the deadline was again extended, from June 5 to July 5, 2002.

Communications from both parties immediately prior to the hearing reported that most of the issues had been resolved, but that related issues had emerged. The Hearing Officer convened the hearing on June 19, 2002, and heard argument concerning placement for the 2002-2003 school year, which is dependent upon remediation work being undertaken by the Board, environmental testing to be performed upon completion of remediation, and Planning and Placement Team (PPT) meetings for each student, to convene in August 2002.

FINDINGS OF FACT:

1. Student-1 and Student-2, who are siblings, have been identified as suffering from environmental allergies. They have been provided with homebound instruction for most of the 2001-2002 school year, delivered in the library, because of adverse reactions observed at and after attending school at their neighborhood school. (Exhibit HO-1)
2. The report of an environmental inspection of the neighborhood school on November 30, 2001, showed the presence of several potential allergens and air quality problems associated with dampness of carpeting and other soft building materials, and inadequate circulation of outdoor air in several areas of the building, including Student-1's and Student-2's classrooms. To quote a portion of the environmental report:

The presence of allergen reservoirs can be used to indicate increased risk of exposure and possible adverse health effects. The mere presence of allergens, however, can not be used by itself to support it as the cause of symptoms or adverse health effects. The documented presence of allergens, mechanism for exposure, measurement of exposure, and diagnostic medical testing are needed to support that biologically derived contamination is proof of a causal relationship with a health effect.

The independent environmental consultant recommended remediation that involves removal of some carpeting and other materials, construction, and institution of specific cleaning and maintenance schedules. The Board immediately began implementing the recommendations, but some of the work could not be performed with students in the building. Remediation work is expected to be completed by July 31, 2002. (Exhibit B-1, report of Board's attorney)

3. School health records, which might, or might not, have documented Student-1's and Student-2's symptoms, were not entered on the record for this hearing.
4. Two allergists who have been treating both students wrote concerning their status on January 22, 2002. Using equipment provided by the allergists, the students' father had tested the air quality at various areas of their school, and found a count of 1,300 mold spores per cubic meter in Student-1's classroom and 1,000 mold spores per cubic meter in Student-2's classroom. The physicians wrote:

Before [Student-1 and Student-2] can be allowed to return to [neighborhood school], we would need to evaluate other areas in the school such as the gym, cafeteria, computer lab, nurse's office and library. It is important that [Student-1 and Student-2] be able to move freely throughout the school, interact with [his] peers, and participate in the full educational experience. [Student-1 and Student-2] cannot return to [neighborhood school] at the present time with the current conditions of the school. (Exhibits P-2, Student-1, P-2, Student-2)

5. After PPT meetings in late January and early February, 2002, both students returned to school for a partial day. Medical examination on March 4, 2002, showed that both students were showing symptoms consistent with earlier reactions to the school environment. Their allergist wrote to the Board on March 5:

It is my medical opinion that [neighborhood school] presents a harmful environment to [Student-1 and Student-2]. Recent testing revealed that both their classrooms had 2000 or greater mold spores per cubic meter of air. (See attached testing report) I cannot permit them to return to this environment. Even when these children were permitted to return to school in a very restrictive environment, they suffered adverse reactions. Additionally, separating children from their peers and isolating them in a single room or two is a poor substitute for education in a less restrictive environment with their peers where children are able to interact and learn social and other life skills. I believe both [Student-1 and Student-2] wished to return to an environment where they could be educated with their classmates and worked very hard to effect that return. This appears to have caused them some stress and anxiety. On the one hand, are their physical symptoms from which they suffer in their school environment; on the other is their strong desire to return to their classroom[s] with their friends and peers. Both children need an educational environment where they can be educated in a classroom with their age and grade level peers that is not harmful to their health and well-being. (Exhibits P-4, Student-1, P-4, Student-2)

6. The Students' allergists also reported air test results at the neighborhood school on March 5, 2002. At that time, the count in Student-1's classroom was 2,400 spores per cubic meter, and the count in Student-2's classroom was 2,100 spores per cubic meter. (Exhibit P-3, Student-1, P-3, Student-2)

7. Parents requested homebound instruction. At PPT meetings on March 13 and 15, 2002, the Board refused to provide homebound instruction and requested independent evaluations of both students. After this hearing was requested by the Board, the Parties agreed to homebound instruction and some evaluations. (Exhibit HO-1, statements of attorneys for the Parents and the Board)
8. At recent PPT meetings for both students, it was agreed that additional PPT meetings would be necessary in mid-August, to incorporate evaluation results and make final plans for the 2002-2003 school year. (Stipulation of the Parties)
9. Both students were evaluated in May 2002 by Thomas J. Danyliw, M.D., M.S., at the request of the Board. While there were variations in their individual medical histories and current allergy problems, Dr. Danyliw confirmed a possible link between each child's allergic symptoms and the relatively high mold spore counts in some areas of their school. Dr. Danyliw also set a goal for mold remediation at their neighborhood school:

I do not believe there is enough evidence to deem [neighborhood school] "unsafe" for the general population. However, I do believe it would be prudent with our current state of knowledge of environmental air quality to remediate to get the mold spore level to a reasonably low level, i.e., less than 1,000 spores per cubic meter. (Exhibits P-7, Student-1; P-7, Student-2)

10. The Board's plan is for another environmental inspection by their independent consultant after the remediation is completed and before the August PPT meetings. If the building tests show continuing contamination above the levels identified by Dr. Danyliw, they will then test an alternate school as a proposed placement for these two students. The first day of school is August 27, 2002. (Report of Board attorney)
11. Board and Parents agree that the appropriate placement for these children is their neighborhood school. If that school cannot be made safe for them, the Board hopes to be able to provide an alternate placement, and the Parents agree to that strategy, provided that the alternate location can pass environmental testing. (Stipulation of the Parties)

CONCLUSIONS OF LAW:

1. There is no dispute that Student-1 and Student-2 are eligible for special education. These actions was brought pursuant to Section 10-76h(b), Connecticut General Statutes (CGS), and 20 United States Code § 1415(f), concerning special education placements for Student-1 and Student-2. This hearing officer has the authority to determine appropriate special education programs and placements for the children, which includes in these cases the issue of environmental air quality safe for two hypersensitive children.

2. Considering the tight timeline and the need for a smooth start to the new school year, the Board's environmental consultant should test both the neighborhood school and the Board's designated alternate school prior to PPT meetings for both students. The PPTs should be scheduled for August 16 or 19, 2002.

INTERIM ORDER:

1. The neighborhood school shall be tested for environmental air quality immediately after remediation work is completed. On the same day or days, the alternate school selected by the Board shall be tested. If completion is delayed more than one week after the current expected date of July 31, 2002, the hearing officer shall be notified immediately.
2. PPT meetings for both children shall convene on August 16 and/or 19, 2002.
3. If there is any issue in dispute concerning school placement for the first day of school, August 27, 2002, this hearing shall reconvene on August 23, 2002.