

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parents: Attorney Howard Klebanoff
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Appearing on behalf of the Board: Attorney Michelle C. Laubin
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Appearing before: Attorney Mary H.B. Gelfman, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Does Student require homebound instruction because of environmental allergies?
2. Should the Hearing Officer override the Parents' reluctance to consent to a psychiatric evaluation of Student?
3. What is the "stay put" placement for Student pending completion of the hearing?

PROCEDURAL HISTORY:

This hearing was initiated by the Board on March 22, 2002. The Parents requested an opportunity to secure legal counsel prior to the pre-hearing conference. The parties requested a thirty-day extension of the deadline for mailing of the final decision to accommodate settlement negotiations, which continued throughout the course of the hearing. The delay for settlement negotiations extended the deadline for mailing the final decision from May 6 to June 5, 2002.

As of the pre-hearing conference (April 5, 2002), the Board had agreed to provide homebound instruction and the Parents had agreed to a medical evaluation, as well as

Occupational Therapy, Assistive Technology, and behavior rating scales and tests of phonological awareness and reading.

A second delay was requested to allow for completion of the agreed medical evaluation, moving the deadline to July 5, 2002. The hearing convened on June 19, 2002. The Hearing Officer issued an Interim Order on June 25, 2002, ordering the Board to use the same expert to test the school building upon completion of abatement work, and to test an alternate school at the same time. This Interim Order also provided for a Planning and Placement Team (PPT) meeting prior to the start of the school year in August, 2002, and reconvening the hearing on August 23, 2002, if any issues remained in dispute.

Because of the asserted need for additional hearing sessions (August 23 and September 19 and 27, 2002) the deadline for the decision was extended from July 5 to August 4, to September 3, and finally to October 3, 2002.

Between June 19 and August 23, construction related to abatement of mold was completed by the Board at Student's school and an environmental inspection was performed to measure air-borne mold spores and other possible irritants. Student's medical evaluation was completed as well. A PPT meeting was held to review the status of the school building and plans for Student for 2002-2003. When the hearing reconvened on September 19, 2002, school had started for the year and after a few days of attendance, Student had displayed symptoms of an allergic reaction and had again been removed from school on advice of her physician.

Settlement negotiations resumed, and an agreement was reached on September 26, 2002.

SUMMARY:

Initially, the Board requested this hearing because Parents had withheld consent for evaluations requested to establish whether or not Student's symptoms were caused by the air quality in her school. After agreement to limit evaluation to an independent medical assessment, Parents raised issues concerning Student's access to all areas of the school, desired levels of air quality for safety, and alternative educational placement in the event that the cleanup of Student's prior school did not meet the high standard suggested by Student's doctor and the independent medical evaluator. Although the hearing was moving forward, settlement negotiations continued, and the case was settled on September 26, 2002.

FINDINGS OF FACT:

1. Student was born on April 6, 1992 and is now ten years old. She has a history of asthma, and since 1998 has required emergency medication to be available in the school nurse's office. (Exhibit B-1)
2. In November, 2000, Student was identified as learning disabled with attention/executive function deficits, weak oral and written expression skills and

weak curriculum based assessment in the area of reading. Her Individualized Education Program (IEP) listed resource support for reading, writing, and math; speech/language support for oral expression; and classroom modifications. (Exhibit B-11)

3. By letter dated September 11, 2001, Student's physician advised the school that because of her "allergic sensitivities" she could no longer attend her elementary school. The Board initiated home bound instruction on or about October 5, 2001. (Exhibits B-20, B-29)
4. Parents filed a complaint with the Office for Civil Rights, U.S. Department of Education, asking that the Board be required to provide a professional inspection of the school building and remediation of indoor air quality problems. This complaint was resolved by agreement, and inspection and remediation began. (Exhibits B-23, B-24, B-38)
5. Believing that homebound instruction (actually delivered at the town library) was not necessary and that evaluations requested by the Board and refused by the Parents could help in determining Student's actual medical status, the Board initiated a due process hearing against Student's Parents on March 22, 2002. (Exhibit HO-1)
6. The agreed independent medical evaluation was performed on May 18, 2002. Although Student had not previously tested positive for mold, the independent evaluator suspected that her reactions to high mold spore counts in her school environment were toxic rather than allergic, and that her hypersensitivity might continue indefinitely. (Exhibit B-77)
7. After a few days at school at the opening of the 2002-2003 school year, Student again reported symptoms, and Parents withdrew her from school. (Exhibit P-9)
8. By telephone, Parents' attorney informed the Hearing Officer that the case had been settled on September 26, 2002: the Board's attorney confirmed the settlement.

FINAL DECISION AND ORDER:

Since the parties have agreed to a settlement and no issues remain in dispute, this matter is **DISMISSED** without prejudice.

COMMENT ON THE HEARING:

This was an unusual hearing for several reasons. The Board initiated the hearing, because it perceived lack of cooperation by the Parents. The Student's physicians played an active role because of their concern that the allergic reactions by Student when at school continued in spite of enormous efforts by the Board to improve indoor air quality.

Thanks to the diligence of both parties, an agreement to provide educational services in another environment resulted in settlement.