

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Madison Board of Education

Appearing on behalf of the Student: Parents, *Pro Se*

Appearing on behalf of the Board: Attorney Michelle Laubin
Berchem, Moses & Devlin PC
75 Broad Street
Milford, CT 06040

Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Does the Student require more extra time for assessments and/or assignments than currently provided in her individualized education program?
 - a. If so, what accommodation or modification for extra time should be provided?

PROCEDURAL HISTORY:

The Student initiated this special education due process case on December 11, 2017. This Impartial Hearing Officer was assigned to the case on December 14, 2017. A Prehearing Conference was convened on January 2, 2018. The Student's father appeared on behalf of the Student and Attorney Michelle Laubin appeared on behalf of the Board of Education. It was established that the deadline for filing the final decision in this case is February 23, 2018.

The evidentiary hearing was conducted on February 12, 2018. The Student's mother and father represented the Student *Pro Se* and Attorney Laubin represented the Board of Education.

The following witnesses testified:

Kevin Siedlecki, Teacher
Student's Mother
Donna Konarski, School Nurse
Kristy Simmons, Special Education Teacher
Erin Corbett, Social Worker
Elizabeth Battaglia Ed.D., Director of Special Education

Hearing Officer Exhibits HO 1 through HO 3 were entered as full exhibits. Student Exhibits P 2, P 3, P 5 and P 9 were entered as full exhibits. The Board's objections to Proposed Student Exhibits

P 1, P 4, P 6, P 7 and P 8 were sustained and Proposed Student Exhibit 10 was withdrawn. Board Exhibits B 1 through B 266 were entered as full exhibits.

At the conclusion of the evidentiary hearing on February 12, 2018, the parties jointly requested a short postponement and extension of the timeline to file the final decision in this case to March 2, 2018.

All motions and objections not previously ruled upon, if any, are hereby overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

SUMMARY:

The Student, a senior in high school who suffers from chronic migraines, nausea, dizziness, fainting and fatigue, argues that an accommodation for unlimited time to complete assignments and assessments is necessary in order for her to receive a Free Appropriate Public Education. The evidence demonstrated, however, that the Student's current accommodation for extra time to complete assignments and assessments is appropriate.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

FINDINGS OF FACT:

After considering all the evidence submitted by the parties, including documentary evidence and the testimony of witnesses, I find the following facts:

1. The Student was born on August 1, 2000 and is seventeen years of age. She is a senior attending the Board's Daniel Hand High School. She is currently on track to graduate at the conclusion of the 2017-2018 School Year. (Exhibit B 258 (B _); Testimony of Battaglia; (T _))
2. The Student is a bright, hard working and conscientious young woman who has always done very well in her school work while also participating in many extra curricular activities. (T Mother; T Battaglia; B 5; B 94)
3. The Student suffered from a severe viral infection in December 2015, during her sophomore year of high school. As a result, she experienced severe migraines, nausea, dizziness,

fainting and fatigue. She was unable to attend school for extended periods of time. (T Mother; B 50)

4. Although the Student's viral infection dissipated, she was left with significant medical disabilities. She has now been diagnosed with Postural Orthostatic Tachycardia Syndrome (POTS), an incurable disorder of the autoimmune system. (P 2) As a result of her condition, the Student continues to suffer from periodic episodes of chronic migraines, dizziness, nausea, fainting and fatigue. When an episode strikes, the Student is unable to attend school or perform schoolwork. Consequently, her attendance is sometimes very uneven. (T Mother; B 50; B 55; B 110; B 118; B 183)

5. The Student was identified as eligible for special education and related services at a Planning and Placement Team (PPT) meeting on June 7, 2016 under the category of Other Health Impaired. (B 55)

6. The Student's June 7, 2016 PPT identified her Present Levels of Performance in her IEP as "Age Appropriate" for all areas except Vocational/Transition and Health and Development. In the Vocational/Transition area, the impact of her disability was described as impairing the Student's ability to achieve academically in courses that will prepare her for college. In the Health and Development area, the PPT said the Student's health impairment impedes her ability to achieve academically without special education services. (B 55)

7. The June 7, 2016 IEP included goals and objectives for the Employment, Postsecondary Education/Training and Academic/Cognitive realms. The Academic/Cognitive goal was as follows: "[Student] will successfully complete the trimester 3 curriculum for Latin and Algebra during summer sessions with the teacher or tutor, as demonstrated by final passing grades in both courses." (B 55)

8. The June 7, 2016 IEP provided extended year services of forty hours of tutoring for the summer of 2016 and one hour per day of small group or individual specialized instruction with her case manager during her junior year. (B 55)

9. Finally, the June 7, 2016 provided the following Program Accommodations and Modifications:

Materials/Books/Equipment:	Access to Computer, Calculator
Tests/Quizzes/Assessments:	Breaks during testing, Extra time projects, Extra time projects, Extra time written work, Pace Long Term Projects
Grading:	None Required
Organization:	List Sequential Steps, Organization Checklist
Environment:	Frequent movement breaks, Reduction of auditory or visual stimulation
Behavioral Interventions and Support:	Break Between Tasks, Provide options for self-regulation, Provide options for sustaining effort and persistence, Structure Transitions

Instructional Strategies:
Other:

Have Student Restate Information
Teach organizational strategies for managing short and long term assignments, Study guides and test taking strategies, Prioritize assignments

(B 55)

10. The PPT met on July 28, 2016 to extend tutoring services through August 29, 2016. (B 76)

11. During the summer of 2016 after her sophomore year, with the help of her tutor, the Student completed assignments and assessments from the second trimester of her sophomore World Literature L 2 course that were missed due to her illness, earning a final grade of B for the course. (B 82) She also completed missed assignments from the second and third trimester of her sophomore Latin 2 course, earning a final grade of B for the course. (B 80) She also completed missed work and assessments for her sophomore Chemistry L 2 class earning a final grade of B. (B 78) Finally, she completed work and assessments from the first trimester of her Algebra II L2 course, earning partial credit for the course with a trimester grade of B-. Due to her absences, she was required to re-take the second half of that course in her junior year. (B 96; B 84)

12. The PPT met on September 15, 2016 at the start of the Student's junior year to review her status. At that time, the PPT implemented a shortened school day of four periods and reduced her special education instruction from one hour per day to .5 hours per day due to her continuing fatigue. (B 84)

13. The PPT met on November 3, 2016 to review the Student's progress. Her health continued to impede her ability to attend school and complete assignments. She was unable to attend school for more than about 50% of the time. The reduced school day was continued. (B 94; B 95)

14. The PPT also reviewed the results of standardized achievement and cognitive testing that was administered weeks earlier. On the Woodcock Johnson Test of Achievement IV Form B, the Student earned standardized achievement scores ranging from average to very superior in Reading, Written Language and Mathematics. (B 91)

15. On the Wechsler Adult Intelligence Scale – Fourth Edition, a standardized test of cognitive ability, the Student earned a Full Scale Intellectual Quotient of 114 in the High Average range, with superior verbal comprehension and processing speed and average perceptual reasoning and working memory. (B 94)

16. Behavior checklists indicated that the Student was experiencing “many features commonly associated with Anxiety Disorder.” (B 94)

17. The PPT met again on December 21, 2016 to review the Student's progress. At this point, the Student's health had improved, and the IEP was revised to return to a full school day schedule with .5 hour per day of specialized instruction. (B 106)

18. At the next PPT meeting, on February 15, 2017, the team discussed that the Student had suffered a health set back. She was again missing school and falling behind in completing her assignments. (B 116)
19. The related service of counseling with a social worker was added to the Student's program for .5 hours per week and two new goals were added in the Social/Behavioral area, to focus on strategies to cope with medical challenges affecting school. (B 116)
20. The PPT met again on March 17, 2017 at the end of the second trimester to review her progress. The PPT again reduced the Student's school day and course load in light of continuing medical symptoms that were resulting in absences of one to three days per week. The Student had not been able to complete assignments and assessments for her second trimester courses. (B 128)
21. The IEP was also revised to add tutoring of 1.5 hours per week. In addition, the PPT determined that the Student would have three weeks of extra time to complete assignments without penalty, for her second trimester courses that had been graded as incomplete. This calculation was based on a general school allowance of two weeks to complete assignments plus 50% as an individualized IEP accommodation. (T Battaglia; B 128) The IEP's Accommodations and Modifications page was not, however, changed to specify this 50% allowance for "Extra time projects", "Extra time tests", or "Extra time written work". (B 128)
22. At a PPT meeting on April 7, 2017, the team discussed that the Student was still experiencing significant medical symptoms and had not been able to complete assignments or assessments for all of her second trimester courses and was already behind in her third trimester courses. Tutoring was continued and counseling was reduced to 15 minutes bi-weekly. The reduced school day and course load were also continued. (B 136)
23. The Student was given a further extension until May 5, 2017 to complete assignments and assessments for her incomplete second semester courses (Anatomy, Algebra and Latin). In addition, the PPT decided that the Student would be required to complete only "essential" assignments for her courses. The Student's parents disagreed with adoption of a deadline for completion of assignments and assessments. The IEP Accommodations and Modifications page was revised to add "Reduced workload while protecting the integrity of the course. Access to nurse's office for rest" under the Other category. (B 136)
24. The PPT met again on May 19, 2017 to conduct the Annual Review. At that point, the Student's health had improved and she was able to attend school and complete her assignments more frequently. The Student had not, however, been able to complete all of her incomplete coursework for her junior school year, and she was given a further extension of time to do so. The Accommodations and Modifications page was modified to state: "Work for school year, 2016-17, will be completed by July 31, and grades will be given at that time [without penalty]". (T Battaglia; B 153)
25. At the last PPT for the 2016-2017 year on June 13, 2017, the Student's IEP was amended to provide tutoring from June 20, 2017 through June 30, 2017 as well as an extended year program

for the summer of 2017 to support completion of her junior year coursework¹. The timeline for completion of her 2016-2017 assignments and assessments was extended to August 10, 2017. The Accommodations and Modifications page of her IEP was modified accordingly. (B 163)

26. The PPT met at the beginning of the senior year on September 15, 2017 to review progress. (B 201) The Student had completed course assignments and assessments over the summer for her Algebra II L2 course from the second semester of her junior year, earning a B for the course. (B 193) She also completed the work for her American Literature Honors course from the third trimester of her junior year, earning an A- for the course. (B 194) She still had grades of Incomplete for Health, Latin Honors and U.S. History from the third trimester of her junior year. (B 210; B 211; B 212)

27. The September 15, 2017 PPT decided that, going forward, the Student would have time and one half extra for course assignments and two weeks extra to complete assessments. The Accommodations and Modifications page of the IEP was revised to read: “No penalty for late course work completed within the accommodated time. [Student] has time and a half to complete assignments and an extra two weeks to complete assessments. [Student] will have prior notice of tests.” (B 201)

28. The PPT met again on October 11, 2017. (B 213) By the time of this meeting, the Student had completed all assignments and assessments for her Health, Latin Honors and U.S. History courses from the third trimester of her junior year, earning grades of B, A and A respectively. (B 210; B 211; B 212) At the meeting, the Student’s parents expressed their disagreement with the new extra time accommodation. (T Mother; T Battaglia; B 213)

29. The PPT met again on November 6, 2017. At that point in time, the Student’s health was improving. She was not displaying stress about completing schoolwork. She had a system for keeping track of incomplete assignments and assessments that was working for her. (B 229)

30. The Student’s parents requested that the Student be allowed unlimited time to complete assignments and assessments at the November 6, 2017 PPT. The PPT rejected the parents’ request. (T Nye; T Battaglia; B 229) The Request for Due Process in this matter followed on December 11, 2017. (HO 1)

31. The PPT based its decision to allow only limited extra time for completion of assignments and assessments on the fact that the Student was keeping up with her assignments and assessments at that time due to improved health as well as educational pedagogy. As Dr. Battaglia explained, it is best that students are assessed reasonably promptly after instruction in each area so that educators can be sure that they have mastered the topic before moving on to other areas that build on earlier learning. (T Battaglia)

32. The Student’s IEP’s of September 15, 2017, October 11, 2017 and November 6, 2017 provide accommodations of time and one half extra for course assignments and two weeks extra to

¹ The Student was able complete missed work from her second trimester U.S. History course within the deadline, by April 5, 2017, and received an A for the course. (B 135)

complete assessments is designed to assess the Student's skills, abilities and mastery of the curriculum rather than the impact of her disability. The PPT's conclusion that this accommodation would allow her to progress in the curriculum and her annual goals was reasonable and appropriate under the circumstances presented at the time of the September 15, 2017, October 11, 2017 and November 6, 2017 PPT meetings. (B 210, B 213, B 229)

33. Throughout the Student's experience as a special education student with the Board, her PPT has more than adequately monitored her progress and responded to her changing needs. There is no reason to believe that the PPT will not respond appropriately should the Student have a medical setback that interrupts her current hope of graduating with her class. (B 76, B 84, B 95, B 106, B 116, B 125, B 136, B 153, B 163, B 210, B 213, B 229)

34. As of the date of this hearing, the Student has been able to complete her assignments and assessments within the time stipulated in her IEP and has earned good grades in the process. (T Battaglia; T Siedlecki) In addition, she has made at least Satisfactory progress in the Annual Goals and Objectives of her IEP. (T Simmons; B 247)

35. As of the date of the hearing in this case, the Student had earned 6.250 credits during her junior year with grades of A's and B's. She had also completed the first trimester of her senior year, earning another 1.250 credits, with all A's. In total, she has earned 21 of the 24 credits required for a high school diploma and is on track to graduate with her class in June 2018. (T Battaglia; B 255; B 258)

36. Everyone concerned, including the Student, her parents and her PPT, hope that she will be able to complete her course requirements so that she can graduate and celebrate with her class in June 2018. (T Battaglia)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education (FAPE). *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982) (*Rowley*).

2. In *Rowley*, the United States Supreme Court held that FAPE "consists of educational instruction specially designed to meet the unique needs of the . . . child, supported by such services as are necessary to permit the child 'to benefit' from instruction." *Rowley* at 188-89. *See also Endrew F. v. Douglas City School District*, 580 U.S. ___, 137 S. Ct. 988, 999 (2017); *Oberti v Board of Education*, 995 F.2d 1204 (3d Cir. 1993).

3. Boards of Education must provide an individualized educational program (IEP) for each disabled student. *Winkelman v. Parma City School District*, 550 U.S. 516, 524 (2007). Although the viewpoint of parents must be considered in the process of developing the IEP, final decisions regarding the selection of personnel, location of the school and the appropriate educational method rests with the school system. *Rowley* at 207; *Kevin G. v. Cranston School Committee*, 130 F.3d 481 (1st Cir. 1997); *Flour Bluff Independent School District v. Katherine M.*, 91 F.3d 689 (5th Cir.

1996); *Letter to Richards*, 55 I.D.E.L.R. 107 (January 7, 2010).

4. The propriety of a student's IEP is assessed in light of information available at the time the IEP is developed; it is not judged in hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). "An IEP is a snapshot, not a retrospective." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be viewed in terms of what was objectively reasonable when the IEP was developed. *Id.*
5. The Board here had the burden to prove by a preponderance of the evidence that the IEP it offered to the Student was substantively appropriate and in compliance with IDEA's procedural requirements. Regulations of Connecticut State Agencies (R.S.C.A.) Section 10-76h-14(a); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).
6. Each IEP must include: (a) a statement of the student's present level of performance in each area of disability as determined through periodic assessments; (b) a statement of measurable annual goals, including academic and functional goals, that are designed to meet each of the student's educational needs resulting from the disability; (c) a statement of the special education and related services to be provided in order to enable the student to attain his or her goals and to progress in the general education curriculum; and (d) a statement of the special education and related services and supplementary aids and services, to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; and to be involved in and make progress in the general education curriculum; and (e) an explanation of the extent, if any, to which the child will not participate with nondisabled children; and (f) *a statement of any individual appropriate accommodations necessary to measure academic achievement and functional performance of the student on state and district-wide assessments.* 20 U.S.C. Section 1414(d)(1)(A); 34 C.F.R. Section 300.320 (emphasis added).
7. Accommodations for assessment of a student's progress should be designed to ensure that the student's skills, abilities and mastery of the curriculum are assessed, rather than the impact of his or her disability. *Yorktown Cent. Sch. Dist.*, 16 IDELR 771 (SEA NY 1990).
8. An IEP must also satisfy IDEA's substantive requirement that it be reasonably calculated to allow the student to "make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas City School District*, 137 S. Ct. 988, 999; 580 U.S. ___ (2017).
9. FAPE under the IDEA does not mean a "potential-maximizing education." *Rowley* at p. 197, fn. 21. Instead, the IEP must be one that "confers some educational benefit upon the handicapped child." *Id.* at p. 200. A FAPE is a program that is "likely to produce progress, not regression, and . . . affords the student with an opportunity greater than mere trivial advancement." *T.P. v. Mamoroneck Union Free School District*, 554 F.3d 247, 254 (2d Cir. 2009).
10. The evidence presented here was overwhelming that the Student is making good progress in the general curriculum as well as in her annual goals and objectives with her current IEP. She earned all A's in her first trimester courses and is making satisfactory progress in her goals. She is on track to graduate from high school with her peers. Her current IEP is reasonably calculated to allow her to make progress that is appropriate in light of her circumstances.

11. Indeed, the Student's parents do not argue to the contrary. They submit instead that the Student does not need the "stick" of firm deadlines to complete her school work in order to make progress and that she would do better and have less stress with a more flexible approach.

12. The PPT, on the other hand, is appropriately concerned that while the Student is very conscientious and diligent, it is pedagogically important that she complete coursework relatively promptly after receiving instruction and before next topics are introduced. The PPT also points out that the Student will have to keep up with her work if she is to graduate with her class in a few months. If the Student's medical situation changes, the PPT can meet again to adjust her accommodations as appropriate, as it did during her junior year.

13. The evidence established that the Student's IEP provides accommodations for extra time for assessments and assignments that are designed to assess the Student's skills, abilities and mastery of the curriculum. Her accommodations are reasonably calculated to allow the Student to make progress in the curriculum and her annual goals. In regard to the Student's accommodations, therefore, her IEP is appropriate and provides FAPE.

FINAL DECISION AND ORDER:

1. The Student does not require more extra time for assessments and/or assignments than currently provided in her IEP.
 - a. The current accommodation for extra time should be maintained as written.