

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Monroe Board of Education

Appearing on behalf of the Student:

Parents, pro se

Appearing on behalf of the Board:

Attorney Christine Sullivan  
Berchem Moses PC  
75 Broad St.  
Milford, CT 06460

Appearing before:

Attorney Susan Dixon  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

The following issues were considered at the hearing:

1. Did the Board commit procedural violations during the school years 2018-19, 2019-20 and 2020-21 and if so, was the student denied Free and Appropriate Public Education (“FAPE”) thereby?
2. Did the Board offer Student a program that would provide him with a Free and Appropriate Public Education (“FAPE”) for the periods from December, 2018 to December 2020 including Extended School Years?
3. Did the failure to timely evaluate Student in all areas of disability cause substantive denials of FAPE to Student?
4. Did the Board conduct appropriate evaluations of the Student within a reasonable time frame in the areas of Speech/Language/Social, Auditory Processing and Academic Achievement?
5. Did the Board fail to timely provide Student with an appropriate accommodation, i.e. an auditory processing device?
6. Did the Board provide appropriate related services to Student during the school years 2018-19, 2019-20, and 2020-21?
7. Did the Board fail to provide Student with a FAPE in the school years 2018-19, 2019-2020, and 2020-2021 including Extended School Year ("ESY") programs by failing to implement one or more of the Student's Individualized Educational Programs ("IEPs") during any of those periods?

8. Did the Board change the student's placement and/or IEP without PPT discussion?

**PROCEDURAL BACKGROUND:**

The Parents filed this Request for Due Process Hearing on December 8, 2020. The undersigned Impartial Hearing Officer was assigned the case on December 10, 2020. A Prehearing Conference was held on December 15, 2020. The case was scheduled for the first day of hearing on January 28, 2021, but was continued to February 16, 2021. Subsequent hearings were held on March 31, 2021, April 23, 2021, May 20, 2021, June 9, 2021, June 29, 2021, July 30, 2021 and August 3, 2021. The parties requested the opportunity to file simultaneous briefs, and they were filed November 30, 2021.

The following witnesses were called by the Parents:

Darleen Fensore, Monroe Public Schools, Student's Case Manager  
Adriann Kasmire, Speech and Language service provider  
Amy Ginter, Speech and Language service provider  
Nancy Schwartz, Ph.D., Speech and Language Pathologist  
Ashley Fimian, Speech and Language Pathologist  
Sueellen Inwood, Director of Easton Country Day School (ECDS)  
Kate West, Instructor, ECDS  
Randy Ewart, Educational Consultant in Mathematics

and one of the Parents also testified.

The parties agreed that the Board could conduct its direct examination of the witnesses on the same day as called by the Parents so as to expedite the hearing and accommodate the witnesses' schedules.

HO-1 and HO-2 were admitted as Exhibits.

The Board Exhibits B-1 and B-3 to B-60 were admitted into evidence. Board Exhibit 2 was not admitted.

The Parents' Exhibits 15, 21, 25, 31, 32, 33, 36, 39, 43, 46, 47, 53, 54, 56, 61, 62, 63, 66, 67, 68, 73, 75, 77, , 81, 83, 89, 92, 94, 99, 102, 103, 104, 107, 108, 111, 132, 142, 148, 151, 154, 160, 162, 164, 168, 175, 180, 185, 188, 190-193, 208, 209, 212, 218, 225, 226, 227, 229, 230, 232, 233, 235, and 247, which were admitted. Parents' 236 and 252 were admitted for a limited purpose. All remaining Parents' Exhibits were not admitted.

Parent exhibits were at times duplicative of Board exhibits and the parties agreed to use the Board's copy for convenience at the hearing if identical to the Parents' version:

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

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein are not meant to exclude other supported evidence in the record. All evidence presented was duly considered in deciding this matter. To the extent the summary, procedural

history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *Bonnie Ann F. v. Calallen Independent School Board*, 835 F. Supp. 340 (S. D. Tex., 1993)

### **SUMMARY:**

The Parents brought this Due Process Request claiming denial of FAPE to the Student during the years 2018-2019, 2019-2020, and 2020-2021, and as a result of the Covid-19 crisis. The issues were revised at the Prehearing Conference and are set forth above. The Parents claim that the services recommended, and/or agreed on in IEPs for the Student, were not implemented, implemented late, or in an ineffective manner. The Board claims its programs, evaluations, and responses to the needs of the Student were timely, appropriate and reasonably calculated to produce educational progress. The Parents and the Board appeared and presented witnesses and evidence.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, and in accordance with the Connecticut Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

### **FINDINGS OF FACT:**

1. The Student is a fourteen-year-old boy currently enrolled in the Easton Country Day School ("ECDS") in the seventh grade for the 2020-21 school year. The placement at ECDS was made by the Student's PPT at a meeting held on August 20, 2020. (Fensore, B-40)
2. The Student has been found eligible for Special Education services under the category of specific learning disabilities and dyslexia at all relevant times hereto. (Fensore, Mother)
3. The Student's latest Individualized Educational Program ("IEP") prior to the date of the Due Process Request is dated October 8, 2020. (B-46)
4. Prior to being enrolled at ECDS, the Student was attending (by agreement at a prior PPT, at Southport School) for the 2018-19 and 2019-20 school years. Student completed the sixth grade at Southport School in June of 2020. (B-1, B-33)
5. Southport School primarily utilizes the Orton Gillingham method of academic instruction while ECDS uses the Wilson program. (Fensore, West)
6. In an IEP dated November 20, 2018 the PPT team agreed on ten Goals and Objectives for the Student at Southport. All of these Goals were characterized as Academic; some Academic Goals were combined with Social/Behavioral and Communication components (B-1)
7. The Student demonstrated satisfactory progress toward reaching the Academic Goals by meeting the

objectives for all of the standalone Academic Goals, as shown on the IEP for November 20, 2018.

8. In the November IEP, however, the teachers noted some social and behavioral difficulties continued. The Communication and Social/Behavioral Goals did not consistently document satisfactory progress in those areas. (B-1)

9. To continue to address the Communication and Social/Behavioral Goals and Objectives, the IEP included the following services:

- a. one hour per week of counseling with the school counselor;
- b. speech and language services once per week for 45 minutes;
- c. evaluation of student in the areas of speech and language;
- d. developing a plan for Student to attend a social skills group but only after continuing with the individual counseling he was receiving.

All of these services were agreed to by the PPT team and implemented during the 2018-19 school year. (Fensore, B-1)

10. Subsequently, a report by the Student's school psychologist/counselor, dated February 21, 2019, recommended adding a weekly social skills group. At a PPT meeting held on April 4, 2019, the team agreed to that, and to reimburse Parents for approximately 24 weeks of such sessions extending through the autumn of 2019. (B-4, B-6)

11. The April 4, 2019 IEP was the 2019 Annual Review meeting. According to Ms. Fensore, the Annual Review takes into account Student's present levels of performance. The team members discussed the Student's strengths and weaknesses, and planned Goals and Objectives to be included in the IEP. The PPT team reported the Student was making progress in the areas of social/emotional goals since the November, 2019 PPT. Math, Writing, Science, Social Studies and Standard scores had improved in all those areas. Student was responding to the Orton Gillingham reading and math program used at The Southport School ("Southport"). (B-6, Fensore)

12. At the April Annual Review, the PPT team recommended continued placement at Southport for the 2019-20 school year. (B-6)

13. In addition to the agreed-on placement, the PPT team recommended:

1. continuation of the 45 minutes of speech and language services to be done on Fridays;
2. Extended School Year ("ESY") at Southport for July plus two additional weeks of math and reading tutoring in August;
3. one counseling session per week with a counselor chosen by the Parents;
4. reimbursing Parents for previous Social Skills Group sessions and adding two ten-week sessions in summer and fall 2019.

(B-6)

14. Darleen Fensore was previously working with the Student in her capacity as the Assistant Director of Monroe Student Support Services. From April to October 2019, as the agreed-on IEP was

implemented, Ms. Fensore testified data was generated with reference to the Student's progress at Southport School to include in the next (October) PPT. Thereafter, Ms. Fensore became Student's Case Manager. She testified that the supports and services which were discussed at the April, 2019 PPT meeting were being provided and were continuing to be provided. (Fensore)

15. The October 4, 2019 IEP includes reporting by Student's counselor, Ms. Sullivan, who wrote that while the Student still struggled with rules and expectations, he continued to keep momentum, and "is starting to feel success academically", and is gaining self confidence. She reiterated the need for the Student to continue participating in a social skills group. The team recommended continuing Speech & Language services at the end of the school day.  
(B-17, B-18)

16. The Student was being taught in all academic areas with the Orton Gillingham method throughout the 2019-20 school year at Southport and according to the IEP of February 3, 2020, he was "making progress in all areas." (Fensore, B-24)

17. The PPT met on February 3, 2020 at the Parents' request due to an allegation of bullying of the Student, and to discuss recommendations for the Student's upcoming Triennial Reevaluation. Evaluations were proposed to be conducted for the Student's Reevaluation as follows: Central Auditory Processing Disorder, Neuropsychological (cognitive, academic achievement, executive functioning and social-emotional), Occupational with sensory profile, and Speech and Language Pathology (expressive, receptive and pragmatic). (B-24)

18. The Parents actively participated in the preparations for the Reevaluation, making suggestions as to the professionals who would be able to perform the necessary testing and evaluations, and signed consents for the evaluations. (B-24)

19. According to the February IEP, progress in Academic Goals and Objectives were reported as "Satisfactory" in reading, comprehension and math. Student was receiving 30 hours, 45 minutes of special education behavior and academic instruction (Goals 1-7), 45 minutes of Speech and Language services (Goal 8, one hour of counseling (Goal 11), and one hour, 45 minutes of social skills services Goals 9 and 10). (B-24)

20. The team at this time recommended continuing with 45 minutes of Speech & Language services every Friday, one hour of counseling with Ms. Sullivan, and two sessions with Mr. Kellogg (one individual and 45 minutes of group) for social skills. The team addressed the Parents' concerns about the bullying incident by adding a second weekly session social skills training. (B-24, Fensore)

21. A few weeks after the February 3, 2020 PPT, however, the schools were closed due to the COVID-19 emergency. This closure of schools statewide on or about March 1, 2020 due to COVID-19 resulted in reduced staffing and services, and directly affected the provision of services to the Student such as Ms. Kasmire's speech and language services which had just begun. The Case Manager admitted in her testimony that the Student was unable to receive services for a period of time from February to June, 2020, due to the unavailability of staff. (Fensore)

22. The Board offered to provide all previously scheduled speech and language, tutoring and

counseling sessions to the Student in an effort to compensate for COVID-19 related delays. (Fensore)

23. After in-person attendance was unavailable, Student attended his classes virtually and adjusted well to "distance learning". The Reevaluation PPT meeting was scheduled for March 24, 2020, but was postponed. For the Triennial Reevaluation, Dr. Nancy Schwartz was tasked to conduct a Speech/Language evaluation, Dr. Donna Geffner was proposed to evaluate Student in Auditory Processing and Dr. Stacey Aronson was chosen to perform the Comprehensive Neuropsychological Evaluation, all with the agreement of the Parents. (Parent, Fensore, B-24).

24. Nancy Schwartz holds a PhD. in Speech (language and communication), and is certified by the American Speech and Hearing Association. Dr. Schwartz has over thirty years of experience in the speech and language field, as well as the areas of child development and autism, creative language and cognitive function. (B-56)

25. Dr. Schwartz performed a detailed, comprehensive speech and language evaluation of the Student over several days in mid-February, 2020 and testified at the hearing. (Schwartz, B-25)

26. Dr. Schwartz administered the following tests:

Listening Comprehension Test Adolescent  
Comprehensive Assessment of Spoken Language (CASL)  
Test of Problem Solving 2 Adolescent  
Social Language Development Test–A:NU  
Test of Narrative Language

(Schwartz, B-25)

27. The Student tested at age level or "average" expectations except in the areas of grammatical judgment and grammatical morphemes (which are subtests of the CASL) which caused her to conclude: "Some areas on the IEP were not being addressed to the level I believed was needed." Dr. Schwarz noted concerns that Student's behavioral, social emotional goals and objectives were not complete due in part to his cognitive inflexibility and deficits in phonetic awareness. (Schwartz, B-25)

28. Dr. Schwartz noted Student has difficulty in organizing extended language output conversation, and his responses to Dr. Schwartz's testing showed numerous deficits in his ability to organize his thinking. Dr. Schwartz suggested his speech therapy should focus on developing his ability to organize and interpret meanings and expressions. She recommended intervention in Auditory Processing and social skills training. (Schwartz, B-25)

29. Based on her testing results, Dr. Schwartz recommended:

- a. speech and language services individually for 30 minutes weekly, and in a dyad (a 2-student group) twice a week for 30 minutes each;
- b. individual social skills intervention 5 times per week by means of 3 individual 20 minute sessions that should precede each of his other sessions;
- c. Two 30 minute dyad sessions and a 45 minute small group session of no more than 4 students.

- d. Auditory Processing intervention 2 times per week for 15 minutes;
- e. parental training 3 hours for first month 2 hours for second month and 1 hour each month thereafter to focus on Student's social needs;
- f. Student requires instruction in language and social skills for a minimum of 4 weeks during the summer.

(Schwartz, B-25)

30. Dr. Schwartz also recommended training parents, teachers and professionals to collaborate and use strategies to support the Student's ability to use the skills he is being taught in his daily interactions. She believes Student should be offered two accommodations: declarative language output by his teachers to facilitate Student's ability to assume responsibility across a wide range of content, and increase the use of visual referencing to convey information to Student. (Schwartz, B-25)

31. The PPT meeting which was originally scheduled for March 24, 2020 was cancelled, and not held until June 30, 2020 (virtually), at which time the recommendations of Dr. Schwartz's report dated February 2020 were discussed and parties agreed her report would supplement the IEP. (B-25, B-33, Fensore)

32. During the summer break, the PPT recommended Student attend Extended School Year ("ESY"), be provided with Speech/Language services weekly, once weekly counseling, and social skills services (both weekly and a second session for two weeks before school begins). (B-33)

33. From June to October, 2020, Dr. Schwartz reported Student was receiving individualized speech therapy once per week focusing on specificity, cueing, conversational speaking, social scene analysis, and also an once-weekly pre-dyad and dyad with targeted content such as following directions, casual conversation, perspective taking and compromise. She wrote a follow up report in October documenting her work which reflects improvement in these areas. Dr. Schwartz was continuing to work with Student when she testified at the hearing. (B-44)

34. Two other Student's special education related service providers testified as to the services Student was receiving before, during and after the COVID-19 shutdown. The speech and language pathologist had 5 sessions with Student during the winter of 2019-20; thereafter Ms. Kasmire was only able to have two sessions with him until the government shutdown. Ms. Ginter testified she did see some progress in some of the goals and objectives, but that Student still needed the services. Ms. Kasmire was understandably unable to document significant progress, having conducted only two sessions with the Student. (Kasmire)

35. Student underwent testing in June, 2020 and it was reported he made significant improvements in language arts and mathematics since previous testing in January. (B-33)

36. Dr. Stacey Aronson, a pediatric neuropsychologist, was tasked by the Board to perform a neuropsychological evaluation of the Student which was conducted in February and March, 2020, in the areas of reading, writing and math as well as psychological components. Dr. Aronson administered a battery of over seventeen tests<sup>1</sup>. (B-27)

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1 A partial list of the tests performed were: Pediatric Neurobehavioral Observational Rating Scale, M-PAC, Behavior

37. Dr. Aronson notes that Student's developmental history indicates he was provided speech and language therapy and special education services from age three and has been classified as Specific Learning Disabilities/Dyslexia since the second grade. She documents gradual but significant academic progress, however, and especially noted gains in the 2019-20 school year at Southport. Student has been in therapeutic treatment over the years, including individual and social skills work. (B-27)

38. Dr. Aronson's report narrative "is not based solely on one test given, but on performance across several quantifiable tests and qualitative and quantitative observations of performance in different settings." (B-27)

39. The results of Dr. Aronson's evaluation were as follows:

- 1) general cognitive ability and adaptive functioning: verbal and visual-spatial skills are in high average range but his working memory and processing speed tasks are below average;
- 2) executive functioning testing revealed low working memory, exceptionally low simple auditory attention, and problem solving was a struggle;
- 3) fine motor skills are generally average or below average;
- 4) social/emotional behavior tests showed weak social skills and dysregulation. (B-27)

40. Dr. Aronson stated in her report: "As regards academic achievement, reading and writing tests place the Student in the low average of scores measuring word reading, spelling and comprehension. Similarly, math scores were in the low average areas." But she writes: {Student} was noted to make good academic progress at Southport; by January 2019, his math skills were in the average range, and reading skills, though still below goal, were improved." (B-27)

41. According to Dr. Aronson, Student meets the diagnostic criteria for Autism Spectrum Disorder, Level 1, (F84.0) and Attention Deficit/Hyperactivity Disorder, Primarily Inattentive Type (ADHD-1; F90.0) and Specific Learning Disorder with impairment in written expression, with impairment in spelling, clarity and organization, and developmental dyslexia. (F81.81), or "double deficit dyslexia" (B-27)

42. However Dr. Aronson finds that Student's math skills at this time meet expectations insofar as calculation and reasoning. (B-27)

43. Dr. Aronson recommended a number of strategies to address Student's ongoing issues:

- 1) Development and support of reading mechanics and comprehension skills;
- 2) Writing interventions such as story planning and teaching the steps involved in creating a story;
- 3) Social skills services including group and individual sessions;
- 4) Extended time on testing;
- 5) Previewing and preteaching vocabulary;
- 6) Use of audiobooks;

7) Study aids such as planners and organizers and preferential seating. (B-27)

44. Dr. Aronson's observations show that Student is not regressing in his current educational setting, and, despite challenges, continues to make slow but steady progress. (B-27)

45. Dr. Donna Geffner reported to the team at the June 30, 2020 PPT that her Central Auditory Processing re-evaluation dated February 22, 2020 indicated Student has a significant Auditory Processing Disorder. This impacts his ability to interact socially. Dr. Geffner recommended many of the same accommodations as Dr. Aronson, and further recommended hearing aids or an FM system to address his poor discrimination in noise. Following up after the meeting, Dr. Geffner recommended the hearing aids as an alternative when the FM system was determined to be unavailable, and/or a number of other commercially available programs that address auditory processing issues. The team agreed to incorporate the recommended services and accommodations in the planning for the 2020-21 school year. (B-26)

46. The PPT of June 30, 2020 was also the Student's Annual Review. Based on the reports of the evaluations and their recommendations, the team agreed to provide: speech and language services, expanding to include more reading and language support, counseling and social skills training. The Parents requested additional scheduling of weekly support services and the team added that as well, amounting to 46 weeks out of a 52 week year. (B-33)

47. Planning discussions for the 2020-21 school year included a change in placement, proposed by the Parents, which the Board continued to be willing to provide. (B-33)

48. The Parents brought to the PPT suggestions of two schools they wanted to investigate, ECDS and Hope Academy. (B-33)

49. Although Southport accommodates students until the end of the eighth grade year, and were willing to retain the Student, at the June 30, 2020 PPT the team agreed on a change in placement going forward to ECDS. (b-33)

50. In addition to discussing future placement at the June 30, 2020 PPT, and the expanded accommodations, other programs which were discussed were adding an occupational therapy component and adjusting the social skills services from Mr. Kellogg. (B-33)

51. The Director of ECDS, Ms. Inwood, also attended the June 30, 2020 PPT, and testified as to the available programs, methods of instruction and means of progress monitoring offered at ECDS. (Inwood)

52. At a subsequent PPT meeting held on August 20, 2020 the team reviewed the Student's progress made in the ESY program he had just finished and the occupational therapy report. The team agreed to add 2 forty minute occupational therapy sessions per week. The team, which included the Parents, were aware the Wilson program was used at ECDS. The team heard a report from Dr. Lydia Conca regarding comparison of the Wilson and Orton Gillingham reading programs, She offered either of them methodologies would be beneficial for the Student. (Conca, Fensore, B-28, B-40)

53. The Parents called an educational consultant in mathematics, Mr. Randy Ewart as a witness, who testified that he tested Student at Parents' request in math. Mr. Ewart testified that the Student was making progress in math, except for geometry. He recommended monitoring and continuing to support Student's progress. After reviewing Mr. Ewart's evaluation in August of 2020, the team agreed to a one-time one hour consult regarding revision of the Student's math goals and objectives. (Ewart, Fensore, B-40)

54. The final PPT convened before the filing of the Due Process Request was held on October 8, 2020 to review reports of the Student's progress to that date for the 2021-21 school year at ECDS. (B-46)

55. Ms. Kate West, the ECDS reading instructor, testified that she saw progress in reading using the Wilson program with Student. He has built skills and is progressing through the levels quickly (B-46, West)

56. The Parents, having initially proposed and agreed with removing the Student from Southport and enrolling him at ECDS, shortly thereafter requested an Orton Gillingham trained instructor be provided in place of the Wilson teacher. (B-41, Fensore)

57. The Parents removed the Student from his reading class at ECDS and engaged Joan Cohen, an Orton Gillingham practitioner, to tutor Student. (Fensore)

58. The Student was returned to Ms. West's class and the matter was discussed at the October 8, 2020 PPT. (West)

59. The Director of ECDS and the Student's Case Manager testified about the additional accommodations put into place at the October PPT. The team added 6 more sessions of social services from Mr. Kellogg, and an assistive technologies consult of one hour per month. (Fensore, Inwood)

60. The hearing aids recommended by Dr. Geffner were authorized and implemented. The team heard a report from an audiologist, Dr. D'Souza, who had been hired by the Parents to evaluate CAPD technology. She stated at the PPT that Student's auditory processing disorder could be addressed through interventions such as CAPDOTS and FastForeword. (Fensore, Inwood)

61. All missed speech and language sessions were agreed to be scheduled by the team to make up for such services not provided. (B-46, Fensore, Inwood)

62. The Parents' request to have the Student provided with additional Orton Gillingham instruction by Joan Cohen was considered by the Board. Following the October PPT, Joan Cohen was hired to provide Orton Gillingham tutoring to Student. (Fensore)

### **CONCLUSIONS OF LAW:**

Under the Individuals with Disabilities Education Act ("IDEA"), 20 U. S. C. 1412(a); 34 C.F.R. Sec. 300.1(a), Conn. Gen. Stat. 10-76, a school district must provide a Free Appropriate Public Education

("FAPE) to students with disabilities within their purview, and parents have "independent, enforceable rights" regarding educational issues of their children.

In the present case, the Parents were within their rights to bring a Due Process Request to determine whether their child received FAPE, but that right is limited by statute to events occurring within two (2) years of the bringing of such request., 20 U. S. C. 1415(f)(3)(c), 34 C. F. R. Sec. 300.507(a)(2), Conn. Gen. Stat. 10-76h(4) In this case, background information is necessary to fully understand the case, but the claims must be limited by the statute. .

The IDEA was enacted "to assure that all children with disabilities have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, [297 F.3d 195](#), 197 (2d Cir. 2002) This means "an education 'likely to produce progress, not regression,' and one that 'afford[s] the student with an opportunity greater than mere trivial advancement.'" *T.K. v. N.Y.C. Dep't of Educ.*, [810 F.3d 869](#), 875 (2d Cir. 2016) The statute, however, does not require the best possible educational benefit or such benefit that the parents prefer. If a student is provided "meaningful educational benefits," i.e. "an individualized education program reasonably calculated to enable the child to make progress in light of his circumstances," the statutory burden is met. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, [137 S. Ct. 988](#), 1001, 197 L. Ed. 2D 335 (2017)

"The 'centerpiece' of the IDEA and its principal mechanism for achieving this goal is the IEP." *T.K.*, 810 F.3d at 875. "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994 (*quoting Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982)). "an educational agency must issue an IEP for a resident qualifying child, even if that child has been enrolled in a private school outside the boundaries of the school district." *Doe v. E. Lyme Bd. of Educ.*, [790 F.3d 440](#), 451 (2nd Cir. 2015), cert. denied, 136 S.Ct. 2022 (2016).

The standard for evaluating the substantive adequacy of an education program under the IDEA is also found in the Second Circuit's decision in *Mr. & Mrs. P. v. West Hartford*, 885 F. 3d 735 (2<sup>nd</sup> Cir. 2018)

To establish a violation of the IDEA's substantive requirements, a party must show that the revised "individualized education program developed through the Act's procedures" was not "reasonably calculated to enable the child to receive educational benefits." *See Rowley*, 458 U.S. at 206-207. In reviewing this claim, the Court must keep in mind that a district is not required to furnish "every special service necessary to maximize each handicapped child's potential." *Id.* at 207; *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 196 (2d Cir. 2005). "Instead, the IDEA is satisfied if the school district 'provides an IEP that is likely to produce progress, not regression,' and if the IEP affords the student with an opportunity greater than mere 'trivial advancement.'" *A.S. v. Trumbull Bd. of Educ.*; 414 F. Supp. 2d 152, 173 (D. Conn. 2006).

An award of compensatory education is within the purview of the Hearing Officer, and is warranted in such circumstances as the evidence may reflect. *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285 (11th Cir. 2008)

"Presented here is "a fact-specific inquiry set forth in an evidentiary record, regarding an appropriate compensatory education remedy that most reasonably and efficiently could place the student in the position that he would have been but for the denial of a FAPE ( *Doe*, at 457, quoting *Reid*

*v. Dist. of Columbia*, 401 F.3d 516, 524 [D.C. Cir. 2005] [noting that the "ultimate award [of compensatory education] must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"). *In Re: Student with a Disability*, 21-186, 121 L.R.P. 36581 (October 22, 2021)

All relevant and probative evidence introduced at the hearing was considered, including witness testimony and documentary evidence including test results. During the time at issue, the evidence also showed that the Board repeatedly took into account the Parents' expressed wishes to a significant degree and made many accommodations for the Student based on their suggestions. Notably, no conclusive or expert evidence was presented as to the superiority or appropriateness of the Orton Gillingham program at Southport School as opposed to the Wilson program taught at ECDS. Academically, the student has made reasonable progress in light of his circumstances.

A component of a Student's educational progress is socialization and mastering his social/emotional goals and objectives. In this Student's case, it is critical. There was, however, no credible evidence that the Student's social/emotional goals and objectives were not addressed, neglected or addressed inadequately, in any of his IEPs. The Board provided IEPs that were reasonably calculated to enable the child to receive educational benefits, including adequate resources to address the Student's social and behavioral issues in addition to providing sufficient academic support.

The COVID-19 emergency affected all students and the Board made reasonable efforts to provide the services to the Student that were affected by closures and unavailability of personnel. However, the fact remains that the Student did not receive all services he was entitled to in his IEPs covering the period from February to June, 2020. The Board has offered all previously scheduled speech and language, tutoring and counseling sessions to the Student in an effort to compensate for COVID-19 related delays. However, the Board failed to provide FAPE to the Student during this delay.

#### **FINAL DECISION AND ORDER:**

1. The Board did not commit procedural violations during the school years 2018-19, 2019-20 and 2020-21 which would have denied him a Free and Appropriate Public Education ("FAPE").
2. The Board did not offer Student a program that would provide him with FAPE for the periods from December, 2018 to December 2020 including Extended School Years because it failed to provide Student with all agreed-on sessions of Speech and Language services in 2020 due to the COVID-19 emergency. Accordingly, compensatory education is awarded in the form of 24 sessions of Speech & Language services.
3. There was no evidence presented to substantiate that FAPE was denied as a result of any claimed failure to timely evaluate Student.
4. The Board conducted evaluations in a reasonable timeframe after the Parents signed consent for the Student to be evaluated in the areas of speech and language, social, auditory processing and academic achievement.

5. The Board did not fail to timely provide Student with an appropriate accommodation, i.e. an auditory processing device.

6. The Board failed to provide appropriate related services in the form of Speech and Language services, social skills services and counseling services to Student from February to June, 2020, due to the COVID-19 statewide school closures.

7. The Board failed to implement one or more of the Student's Individualized Educational Programs ("IEPs") in the school years 2018-19, 2019-2020, and 2020-2021 including Extended School Year ("ESY") programs due to its not providing Speech and Language services to Student from February to June, 2020.

8. The Board did not change the Student's placement and/or IEP without PPT discussion.