

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Bolton Board of Education

Appearing on behalf of the Parents: *Pro se*

Appearing on behalf of the Board: Attorney Linda Yoder  
Shipman & Goodwin  
One Constitution Plaza  
Hartford, CT 01603

Appearing before: Kelly Moyher, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

1. Was the Student provided with FAPE from January 22, 2022 to present?
2. If not, what is the appropriate program for the Student?

**PROCEDURAL HISTORY:**

The Parents filed the Due Process Complaint/Hearing Request on August 30, 2022. The Hearing Officer was appointed on September 7, 2022. A Prehearing Conference took place on October 24, 2022 and initial hearing dates were scheduled for November and December. Due to several conflicts, the first day of hearing took place on January 12, 2023. The hearing continued on the following dates: January 19<sup>th</sup>, February 17<sup>th</sup>, March 3<sup>rd</sup>, March 16<sup>th</sup> and April 19<sup>th</sup>. Extensions were given to accommodate hearing dates and the mailing date was determined to be May 14, 2023.

The Parents entered Exhibits P-1-P-6. The Parents called the following witnesses: Susan Nolin, special education teacher at Bolton Public Schools (“BPS”); Rachel Brown, school psychologist at BPS; Lara Eaton, special education teacher at BPS; [REDACTED] family friend; Beth Goldsnider, Director of Student Support Services and Human Resources at BPS; [REDACTED], the Student’s grandmother and [REDACTED] [REDACTED], the Student’s father.

The Board entered Exhibits B-1-B-41. The Board cross examined each of the Parents witnesses and additionally called Darryl Giard, Bolton Center School Principal.

The Hearing Officer submitted the Request for Due Process Hearing filed by the Board on August 30, 2022 as exhibit HO-1.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Sec. 10-76h and related regulations, 20 United States Code Sec. 1415(f) 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, Sections 4-181a and 4-186.

### **FINDINGS OF FACT:**

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

1. The Student was born on April 1, 2009, and is a 7th grade student currently attending BPS. The Student was first evaluated for special education services in the 1st grade due to concerns regarding her academic, communication and social/emotional skills. As a result of a multidisciplinary special education evaluation, the Student was found to be eligible for special education services as a student with a specific learning disability. Notably, the multidisciplinary special education evaluation found the following: average cognitive ability with a weakness in working memory; clinically significant behaviors including hyperactivity, conduct problems, atypicality and adaptability; requirements met for ADHD and possibly ODD ; significantly weak expressive language skills and below average skills in reading, writing and math. (B-2.)
2. In the 4<sup>th</sup> grade, the Student's triennial evaluation revealed the following areas of concern: weakness in recall of digits and letters forward and verbal delayed recall; elevated scores on the Conners-3 and BASC-3 in the areas of inattention, hyperactivity/impulsivity, learning problems, executive functioning and defiance/aggression most prevalent during reading; significant deficits in phonological awareness, phonological memory, rapid symbolic naming, word reading, pseudoword decoding, oral reading fluency rate, accuracy and reading comprehension and below average spelling skills. (B-2).
3. In the 5<sup>th</sup> grade, the Student was diagnosed as having dyslexia after a Language and Literacy Evaluation was contracted for by BPS. The evaluation was conducted by Migdalia Fletcher of A.L.L Diagnostics and Consulting, LLC in the summer of 2021 and was shared at a PPT meeting in the fall of 2021.

4. Prior to the Language and Literacy Evaluation, the Student had been participating remotely from the start of the pandemic in March of 2020 until her return to in person learning in May of 2021. In the Language and Literacy Evaluation, several of the Student's teachers remarked about the Student's lack of participation during remote learning. One teacher commented that the Student hadn't participated in most of the reading units during the 2020-2021 school year and participated in some writing lessons but missed a lot. It was noted that the Student did very little 5<sup>th</sup> grade work in reading. Another teacher remarked that the Student's reading skills were well below grade level and that she missed 32 special education sessions and often refused to participate when she was present for remote learning. She was reported to be working on Step 4.2 in the Wilson Reading Program. (B-2)
5. The Language and Literacy evaluator specifically points to the severity of the Student's dyslexia, as well as the Student's minimal progress over the course of 5 years of specialized instruction. However, the evaluator does not comment on the Student's lack of attendance and/or participation and how such a large gap in specialized instruction would impact a student who requires 'explicit, individualized and specialized reading instruction delivered at the highest level of intensity'. (B-2, pg. 39 of 43)
6. The Language and Literacy evaluator does recommend that the PPT review the district's continuum of alternative placements for services to determine whether the Student's instructional needs can be met in-district or whether the Student would benefit from placement in a more restrictive environment. (B-2)
7. The evaluator notes that the Student has not responded well to the Wilson intervention program and that she requires a different approach that is individually tailored to address her specific deficits and one which is aggressively aimed at closing her 5-year reading gap. (B-2)
8. Also of note in the Student's file is a Psychiatric Evaluation conducted in February of 2020 by George Shapiro-Weiss, M.D. of Spring Street Psychiatric Group. (B-1)
9. The evaluator made several diagnoses of the Student including the following: Axis I Specific Learning Disorder, with Impairment in Reading, Adjustment Disorder with Mixed Disturbance of Emotions and Conduct; Axis IV Psychosocial and Environmental Problems; The patient has problems with primary support group including increasing defiance at home, problems related to the social environment including physical aggression toward peers; educational problems characterized by significant Reading Disability leading to subsequent disturbance in both emotions and conduct. (B-1, page 18)
10. The evaluator also made the following notations regarding the Student: 'In general, she appeared anxious about her school experiences, does not seem to know how to sooth herself and does not know how to feel better about her academic experiences in school nor does she drop her guard sufficiently to allow herself to make use of the services that are indeed offered to her'. In addition, the evaluator noted: 'The patient has developed both emotional and behavioral symptoms in response to an underlying Learning Disability, as well as to subsequent circumstances in which she feels embarrassed, insufficiently praised, unfairly criticized and often misunderstood. Left with angry feelings that she does not know how to

handle, she has evidenced increasingly problematic and counterproductive misbehavior within the school setting. (B-1, page 18)

11. The Psychiatric Evaluation took place just before the start of a global pandemic and does not reflect the impact of the event on the Student on a social-emotional or academic level.
12. In 2022 in her 6<sup>th</sup> grade year, the Student participated in the Connecticut Smarter Balanced Summative Assessment. The assessment provided the following results for the Student: “[The Student] has **not yet met the achievement standard** for English language arts and literacy expected for this grade. Students performing at the standard **require substantial improvement toward mastery** of English language arts and literacy knowledge and skills. Students performing at this standard will likely need substantial support to get on track for success in high school and college coursework or career training’. The Student’s performance was found to be below standard in reading, listening and writing and research/inquiry. The same findings were made in mathematics and the Student’s performance was for to be below standard in concepts and procedures, problem solving and modeling and data analysis and communicating reasoning. (P-1)
13. According to the April 28, 2022 IEP, the Student is receiving the following special education and related services: language arts instruction, 5 x weekly, 45 mins, inclusion/general education; reading instruction, 8 x weekly, 45 mins, small group/individual instruction; math instruction, 2 x weekly, 20 mins, small group/individual instruction; and counseling 1 x weekly for 30 mins with school psychologist. The IEP and includes extended school year services 3 x weekly for 3 hours which the Student did not attend. A change in math services was recommended by the PPT in November of 2022 so the Student could have the option of services being 2 x weekly for 20 mins or 1 x for 40 mins. (B-26)
14. Susan Nolin, special education teacher for BPS, was the Student’s special education teacher for the 2021-2022 school year, which was the Student’s 6<sup>th</sup> grade year. Ms. Nolin testified that the Student has significant dyslexia and the Wilson program was utilized to address the Student’s weaknesses in decoding, phonological skills and basic reading skills. Ms. Nolin testified she is trained to administer the Wilson Reading Program. She testified that the Student is funny, bright and artistic. (Testimony, S. Nolin)
15. Ms. Nolin testified that the Student has many strengths and has learned many strategies in reading but is inconsistent in her effort. She testified that success with Wilson occurs with consistent participation. While Ms. Nolin was not the Student’s teacher during her remote learning time which took place until May of 2021, she was aware that the Student had sporadic attendance and inconsistent work frequency. She testified that the Student has not had five straight years of reading intervention due to the missed specialized instruction between April of 2020 and May of 2021. She also testified that the Student did not participate in ESY 2021 and 2022, which were recommended to make up for lost skills and to have repetition so skills would not be lost. (Testimony, S. Nolin)
16. Ms. Nolin testified that between September of 2021 and May of 2022, the Student’s growth in reading increased by three grade levels so that the Student was reading on about a 4<sup>th</sup> grade

level. She testified that a BIP (behavioral intervention plan) was in place during the 2021-2022 school year to address the Student's work refusal and behavior concerns. Ms. Nolin testified that the Student did not like her math teacher and her work refusal increased as the year progressed. She testified to working with the Student in the resource room with success but stated that the Student did not show the same receptiveness in the general education classroom. Ms. Nolin went on to testify that the Student's attitude has had a negative impact on her learning. She testified that the Student likes to stir things up, instigates situations with peers and also testified that the Student wishes to drop out of school at age sixteen. (Testimony, S. Nolin)

17. Ms. Nolin also testified that the Student has put her hands on other students at school while in the hallways. She testified that she was with the Student a lot during the school day and did not witness any bullying of the Student by other students. While the Student was spoken to about touching other students, Ms. Nolin testified that the Student does not show any remorse. (Testimony, S. Nolin)
18. Ms. Nolin testified that the school and family are not on the same page. She testified to trying to communicate with the family regarding homework completion and home incentives to reinforce the Student's BIP. Ms. Nolin testified that the Parents did not always respond to her communications. (Testimony, S. Nolin)
19. Ms. Nolin went on to testify that she didn't believe that the Student would benefit from a special education school and that the program offered by BPS is appropriate. She testified that what was needed was student buy-in as well as more incentives from home, and she testified that a private special education school would not make anything better. (Testimony, S. Nolin)
20. Ms. Nolin also testified that the Student seems to work well with technology and does not require an Assistive Technology Evaluation. (Testimony, S. Nolin)
21. Rachel Brown, School Psychologist for BPS, has worked with the Student for both the 2021-2022 and 2022-2023 school years. Ms. Brown testified that the Student is bright and insightful but has limited engagement in school and doesn't always participate in her classes. She testified that the Student lacks coping skills and needs to develop adapting skills for the home and school environment. She also testified that she did not counsel the Student while she was remote learning. She went on to testify that the Student has been exhibiting behavioral problems since the 4<sup>th</sup> grade, including hitting others, as well as refusal to complete work. (Testimony, R. Brown)
22. Ms. Brown testified that the Student's counselling goals have changed over the years from dealing with school participation to dealing with school-based stress. She testified that she works with the Student on knowing what her triggers of stress are in the school environment and they address coping strategies. (Testimony, R. Brown)
23. Ms. Brown also testified that behavior interventions have had limited success and varied effectiveness. She testified that the Student is supported and can complete work, but chooses

not to. She also testified that a new FBA is needed and that the Parents have not given consent. (Testimony, R. Brown)

24. Ms. Brown testified that when the Student experiences anxiety and panic in the classroom she can place a card on her desk to notify teachers that she needs a break. She testified that the Student is able to go get a drink of water or use the restroom or can leave class to see the school nurse or Ms. Brown. She testified that although the Student is aware of being able to do these things, she has not yet done so. She also testified that she has not witnessed the Student having a panic attack and notes that she has not seen any reports of panic attacks from other school staff. (Testimony, R. Brown)
25. Ms. Brown also testified that the Student does know how to treat people but often does not apply what she knows. In regards to the Student bumping into others in the hallway, Ms. Brown testified that the Student is pretty honest and acknowledges what she does and says she just felt like doing it. (Testimony, R. Brown)
26. Ms. Brown went on to testify that she did not believe the Student would benefit from a private special education placement. She testified that a smaller, structured environment would not change the Student's behaviors. She testified that the Student likes to be in control and giving her choices is helpful and a lot of structure is not helpful. She also testified that the Student thrives on social engagement. (Testimony, R. Brown)
27. Lara Eaton worked as the Student's special education teacher during the 2022-2023 school year which is the Student's 7<sup>th</sup> grade year. She testified that the Student has good reasoning and comprehension skills, especially when she is engaged with a topic. She also testified that the Student is an inconsistent learner. (Testimony, L. Eaton)
28. At the beginning of the 2022-2023 school year, Ms. Eaton testified she readministered several assessments of the Student and reported that one assessment showed she had not lost any skills over the summer of 2022, one assessment showed mixed results and a third assessment showed regression in the areas of decoding and spelling. (Testimony, L. Eaton)
29. Ms. Eaton testified that she has reviewed the Student's IEP with her so she understands why there are certain goals, objectives and accommodations. She testified that the Student was refusing to do math work for some time and she began to do pre-teaching work of math concepts before math class. She testified that the Student had no difficulty understanding the math work in the pre-teaching sessions and said that the Student's reading difficulties and anxiety were not playing a part in her refusal to do math in her regular math class. (Testimony, L. Eaton)
30. Ms. Eaton testified that she has not seen the Student struggle with embarrassment or anxiety and does not think the Student is an accurate reporter. She reported that the Student speaks openly about her IEP with teachers and with other Students. She testified that the Student has good self-advocacy skills and will openly discuss her disability with others. (Testimony, L. Eaton)

31. Ms. Eaton also testified that the Student is aware of accommodations such as extended time and assistive technology, but that she typically chooses not to use them. She reported that the Student has occasionally used speech-to-text technology with success. (Testimony, L. Eaton)
32. Ms. Eaton testified to working with the Student using the Wilson program in the fall of 2022 with some progress, but that the Student began reporting that the Wilson program would not work for her and began refusing to engage in any Wilson reading instruction. She testified that the Student specifically had an issue with tapping and felt embarrassed using the technique. Ms. Eaton testified that the Student struggles with sound symbol difficulties with blends as part of her Dyslexia and tapping was a useful tool the Student could utilize. She also told the Student she could use the technique with movement and no sound, but the Student adamantly refused to use the technique at all.
33. Ms. Eaton testified that the Student had further gaps in her instruction in her refusal to participate in any part of the Wilson reading program. She said the Student was able to achieve progress and could make gains if she were to fully engage, but there were no results without participation. (Testimony, L. Eaton)
34. Ms. Eaton went on to testify that she began to utilize the Sonday System (“Sonday”) during the winter of 2022, which is a similar scientific research-based reading program to Wilson. She testified that she is qualified to use Sonday and that she replaced only the Wilson components of the Student’s reading program with Sonday and continued with other aspects of the Student’s reading program. Specifically, she testified that Sonday does not use tapping as a strategy for sounding out syllables. She testified that she wanted the Student to reset and give Sonday a chance and she reports that the Student has recently been showing good effort and engagement with Sonday. (Testimony, L. Eaton)
35. Beth Goldsnider is the Director of Student Support Services and Human Resources for BPS. She testified that the Student has had a behavior plan in the past and a new FBA is needed to help the Student with in-school misbehavior. She said despite reaching out to the Student’s parents for consent to conduct a new FBA, parental consent has not been given. Ms. Goldsnider testified that an FBA and revised BIP is the best step to address the Student’s maladaptive behaviors before determining whether any further evaluations, such as an updated psychiatric evaluation, were warranted. She also testified about an assistive technology evaluation and stated that she is not aware that such an evaluation has been requested or recommended. (Testimony, B. Goldsnider)
36. Ms. Goldsnider testified that the Student’s comprehension is on grade level and her deficits are in specific areas such as phonological processing. She testified that the Student’s program has been focused on balanced literacy and that the Student has had good success with Wilson. She testified that the Student made significant progress working with Ms. Nolin during her 6<sup>th</sup>-grade year. She also testified that Ms. Eaton is qualified to work with Sonday and that the Student is having success with the Sonday program during her 7<sup>th</sup>-grade year. (Testimony, B. Goldnider)

37. Ms. Goldsnider testified that consideration for an out of district placement is whether or not the school is able to meet the needs of the Student. She testified that it is unclear at this point if this is true for the Student and felt that new testing was needed to revise the Student's program. She testified that the Language and Literacy Evaluation conducted in 2021 was incomplete and did not address the losses the Student mostly likely experienced as a result of the pandemic. She also testified that the team continues to assess the Student's progress and doesn't wait for evaluations to be performed every three years. (Testimony, B. Snider)
38. Ms. Goldsnider testified that BPS has an excellent reading program with small classes and special education teachers who are trained to work with students with dyslexia and stated a benefit of the BPS program is working on reading skills across all curriculum areas. She agreed with other staff members who have worked with the Student and stated she thought an out-of-district placement might reinforce the Student's work refusal behaviors. (Testimony, B. Snider)
39. [REDACTED], the Student's father, testified that over the years there have been inconsistencies between what is discussed at PPT meetings and what actually happens in school. He testified that there have been many communication issues between him and school staff. He testified that the need for an assistive technology evaluation has been discussed but never achieved and he felt the information from such an evaluation might be helpful. He testified that the Student has difficulty reading from screens and experiences headaches and blurry vision. He testified that Ms. Nolin is aware of the Student's difficulty with reading off of screens, but no alternatives have been discussed. He also testified that the Student has always been supported at home and told to do her work and work as hard as she can. (Testimony, C. [REDACTED])
40. Ms. [REDACTED] testified that consent has not been given for a new FBA because they don't work and nothing comes from them in terms of helping his daughter. He testified that he believes the Student's behaviors are responses to inadequate instruction and are also responses to her underlying disability. He also testified that he has become accustomed to BPS blaming him, his wife and the Student for the Student's work resistance and behavior. He testified that over the years much of the communication for BPS staff has been negative, up to the point of filing for Due Process. He testified that he now hears positive feedback regarding his daughter, her efforts and her school work. (Testimony, C. [REDACTED])
41. Mr. [REDACTED] testified to the psychiatric issues that his daughter has developed since the Psychiatric Evaluation that was conducted in February of 2020, which include anxiety and depression. He testified that his daughter has developed panic attacks where she experiences an overwhelming sense of fight or flight, breathing issues, blurred vision, and jitters. He testified that the panic attacks do not occur outside of school and began sometime during the Student's 6<sup>th</sup> grade school year (Testimony, C. [REDACTED])
42. Testifying about ESY 2021, Mr. [REDACTED] stated that there were many concerns with the Student's program at that time and he did not believe having his daughter participate in ESY that summer would be beneficial to her. He testified that the Student instead went to an



educational camp at Mitchell College where the Student was a leader and produced good work, creating a table for her mother over the course of the program.

43. Mr. [REDACTED] testified to having concerns about the Language and Literacy Evaluation that was performed in 2021. Specifically, he stated he and the BPS staff were all concerned about the academic and social/emotional losses to the Student during the pandemic. He testified that nothing about this issue was addressed by the evaluator. (Testimony, C. [REDACTED])
44. Mr. [REDACTED] testified that the Student did make gains over the 2021-2022 school year and went from reading at a first grade level to reading at a third and fourth grade level. He testified that over the course of the year, the Student did continue to experience anxiety and panic attacks. He stated that the Student has been dealing with bullying and ridicule from other Students for many years. He testified that this daughter did not always use the term bullying when reporting incidents to her family. He stated that the Student has been called “fag”, “dummy”, “homo”, a student who “only reads baby books” and has been told by other students to “just kill herself”. Mr. [REDACTED] testified that the Student suffers from embarrassment in her classes and does not always avail herself of her IEP accommodations because she is ashamed in front of classmates. He testified that many of the incidents have been reported to BPS staff but there is only once documented report of an investigation taking place in October of 2022. Mr. [REDACTED] acknowledged that his daughter is sometimes a part of certain bullying and name calling incidents, as well as having been involved in putting her hands on other students. He testified that he has always spoken to his daughter about these incidents and has explained to her that they are unacceptable. (Testimony, C. [REDACTED])
45. Mr. [REDACTED] testified that the Student did not participate in ESY 2022 because it was not explained to him or the Student that she would be receiving any sort of individualized or specialized instruction. Mr. [REDACTED] testified that he requested 1 to 1 instruction during ESY 22 but was told this would not take place. (Testimony, C. [REDACTED])
46. Mr. [REDACTED] testified that his daughter’s school environment has become toxic and that BPS should have closed his daughter’s reading gap along time ago. He testified that it takes everything out of the Student to attend school each day. He stated that BPS has not followed all of the recommendations in the Psychiatric and Language and Literacy Evaluations and stated that what Ms. Nolin described as a “very mixed kind of reading program” is unacceptable for the Student. He testified that explicit, expert instruction was not provided to the Student and as she has made minimal progress and is still reading on a fourth grade level, no changes in programming have been made. He testified that the Student has suffered from loss of learning and opportunity, as well as negative impacts on her self-esteem and well-being. He acknowledged his daughter’s recent trip to Washington, D.C. and her good behavior but noted this was evidence of her being out of a toxic environment and where she was not dealing with anxiety and panic attacks. (Testimony, C. [REDACTED])

### **SUBSTANTIVE DUE PROCESS AND DENIAL OF FAPE**

1. There is no disagreement that Student is entitled to special education under the Individuals with Disabilities Education Act (“IDEA”), 20 United States Code (“U.S.C.”) §1400 et seq.,

which establishes a substantive right to a free and appropriate public education (“FAPE”) for children with disabilities who are covered under the statute.

2. An appropriate public education under IDEA is one that is "likely to produce progress, not regression." *Walczak v. Florida Union Free School District.*, 142 F. 3d 119, 130 (2d. Cir. 1998), *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 248 (5th Cir. 1997) (internal citation omitted), *cert. denied*, 552 U.S. 1047, 118 S. Ct. 690, 139 L.Ed.2d 636 (1998).
3. An IEP that does not appropriately address behaviors that impede a child's learning denies the child a FAPE. *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego v. California Special Educ. Hearing Office*, 9th Cir. 1996) 93 F.3d 1458, 1467-68.); *Town of Burlington v. Department of Educ. of Mass.*, 789 n.19 (1st Cir. 1994), *aff'd sub nom. School Comm. v. Department of Educ. of Mass.*, 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2D 385 (1985); *Florence Cty. Sch. Dist. Four v. Carter by and through Carter*, 510 U. S. 7, 114 S. Ct. 361 (1993).
4. In *Board of Ed. v. Rowley*, 458 U.S. 176, 206-07 (1982), the Supreme Court set forth a two-part inquiry as to whether the Board has provided an IEP that provides the Student with FAPE: 1) whether the Board has complied with the IDEA's procedural requirements, and 2) whether the Board's IEP was reasonably calculated to enable the student to receive meaningful educational benefit. Educational benefit, as contemplated by the IDEA, requires the Student's IEP to provide him with more than trivial educational benefit, that is, meaningful educational benefit, and not produce regression. *Mr. and Mrs. B. v. Milford Bd. of Ed.*, 103 F.2d 1114, 1120-21 (2nd Cir. 1997). There is no requirement that an IEP has to maximize the Student's educational potential, however, it must provide the Student with "meaningful opportunities" and provide more than trivial advancement. "It cannot guarantee totally successful results." *Walczak*, at 130, 133.
5. The Board has the burden of proof on both the *Rowley* issues, procedure and appropriateness. See *Walczak*, at 122; *M.S. v. Board of Educ.*, 231 F.3d 96, 102 (2d Cir. 2000). The burden of proof as to FAPE is by a preponderance of the evidence. R.C.S.A. 10-76h-14(a).
6. Every student is entitled to receive a Free and Appropriate Public Education (“FAPE”) pursuant to 20 U. S. C. §1412(a)(1)(A), that provides “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 580 U. S. \_\_\_\_, 137 S. Ct. 988, 1001, 197 L. Ed. 2d 335 (2017).
7. To meet the standard for substantive FAPE, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances....and is appropriately ambitious in light of his circumstances. *Andrew*, at 999, *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F. 3d 105, 45 IDELR 119 (2nd Cir. 2007), *P., by and through his parents/next friends, Mr. and Mrs. P. v. Newington Board of Education*, 546 F.3d 111, 51 IDELR 2 (2d Cir. 2008).

8. A focus on the particular child is at the core of the IDEA. The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an “[i]ndividualized education program.” 20 U.S.C. §1414 §1401(29), (14).
9. An IEP is not a form document, but it must conform to Federal requirements and standards. It is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth. 20 U.S.C. §1414(d)(1)(A)(i)(I)–(IV), 20 U. S. C. §1414(d)(3)(A)(i)–(iv).
10. When a child's behavior impedes his learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports, to address that behavior. 20 U.S.C. §1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) 20.
11. To determine whether an IEP is substantively adequate, the hearing officer must examine the record for any objective evidence indicating whether the child is likely to make progress or regress under the proposed plan, such as test scores and similar objective criteria. The IEP must state “measurable annual goals.” Furthermore, to be legally adequate, the IEP must identify a student's behavioral impediments and implement strategies to address that behavior. *A. M. v. N.Y.C. Dept. of Educ.* 845 F. 3d 523 (2nd Cir. 2017); R.C.S.A §10-76d-11, 34 C.F.R. §300.320.
12. The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency.
13. An IEP must include a statement of the child's present levels of educational performance; the annual goals for the child, including short-term instructional objectives; the specific educational services to be provided to the child; an explanation of the extent to which the child will not participate with nondisabled children in regular educational programs; any transition services the child needs as he or she begins to leave a school setting; and the projected initiation date and duration of proposed services. 20 U.S.C. § 1414(d)(1)(A).
14. Based on a preponderance of the evidence, there is insufficient evidence to conclude that the Student has been provided with FAPE from January of 2022 to the present. This conclusion is based upon the evaluations BPS has relied upon in developing the Student’s IEP.
15. The appropriateness of an IEP must be evaluated at the time it was developed, *R.E. v. N.Y. City Dep’t of Educ.*, 694 F.3d 167, 185-86 (2d Cir. 2012). Likewise, there is no requirement that an IEP has to maximize the Student’s educational potential, however, it must provide the Student with “meaningful opportunities” and provide more than trivial advancement, *Walczak*, at 130, 133. The Language and Literacy Evaluation conducted in 2021 fails to take into consideration at all the impact over a year of remote learning would have on a Student noted by the same evaluator to have severe dyslexia which severely impacts her decoding and spelling of grade-level words in isolation and in context, her oral reading fluency of grade-level text, and her reading comprehension in the classroom. Indeed, not only was this Student with severe dyslexia on remote learning for over a year, the Student missed a

significant amount of actual participation time during her remote learning from April of 2020 to May of 2021.

16. The Director of Student Support Services and Human Resources, Beth Goldsnider, herself noted that the Language and Literacy evaluation was incomplete. The Board also acknowledges this mistake in the evaluation in its Post Hearing Brief, calling the mistake ‘a significant oversight’.
17. While the lack of attention to this particular detail is a significant oversight by the evaluator, it is of even more significance that the professional educators developing the Student’s IEP did not take pause or refer back to the evaluator for clarification and direction regarding this issue.
18. While it may not be completely clear whether the Student suffered a loss of learning as a result of remote learning for such an extended period with limited participation, or whether she now suffers from any social/emotional issues that may have resulted from such an insufficient learning situation, these concerns must be revisited and clarified. What is clear is upon returning to in person instruction in May of 2021, the Student was reading on a first-grade level. And while she was able to make gains in her reading level, moving from a first-grade to a fourth grade level, she has also continued with issues of anxiety, work resistance and maladaptive behaviors while in school. These issues continued and intensified into the 2021-2022 and 2022-2023 school years. It is noted that the Student did make some progress with the Wilson Reading Program and also continues to work well with the Soudy program; however, based on the fact that the Student is still reading at a fourth grade level on the eve of entering her 8<sup>th</sup> grade year, and subsequently beginning her preparation for high school, it is found that the current IEP was not reasonably calculated to enable the Student to make progress appropriate to her circumstances. The possibility that the Student may have benefited from an intensive reading program in a more restrictive environment, as suggested by the language and literacy evaluator, should have been more thoroughly examined in light of all of the Student’s circumstances.
19. BPS relies on an incomplete Language and Literacy Evaluation, as well as a Psychiatric Evaluation that is not sufficiently current in light of the Student’s time with limited remote learning, *and* the development of school work avoidance and maladaptive behavior. Thus, the Board's IEP could not have been reasonably calculated to enable the student to receive meaningful educational benefit because it relied on incomplete and insufficient information to create the IEP. It is also impossible to make an analysis of “meaningful opportunities” for this Student based on incomplete and insufficient evaluative information.
20. Issues have also been raised by the Student as well as her father regarding assistive technology. The Student has reported headaches and blurred vision when using screens and does not always avail herself of the technological accommodations available to her. Whether this is because of physical discomfort, anxiety, embarrassment or a lack of understanding and knowledge of certain technologies is something that should have been explored through an assistive technology evaluation.

21. In addition, the anxiety, lack of motivation, oppositionality and work avoidance cited in the Psychiatric Evaluation of February 2020 have continued and in some cases have become more severe through the 2021-2022 and 2022-2023 school years. While the Student is currently participating in therapy outside of school and is well engaged as reported by her father, she may require more therapeutic intervention during the school day. As noted, all of the concerns about in-school stress, maladaptive behaviors and lack of coping strategies continue for the Student and should have been further explored and evaluated by BPS.

### **FINAL DECISION AND ORDER**

1. The Bolton Board of Education did not offer a Free and Appropriate Public Education to the Student from January of 2022 through the current school year.

2. In order to develop an appropriate program for the Student, the following evaluations are hereby ordered at Board expense:

-A complete and comprehensive language and literacy evaluation to be conducted by an independent evaluator.

-A complete and comprehensive psychiatric evaluation to be conducted by either Dr. George Shapiro-Weiss or by the Student's current treating psychiatrist if they are available.

-A complete and comprehensive psychoeducational evaluation to be conducted by Laura Seese, Educational Psychologist if available, or an independent evaluator.

-An assistive technology evaluation to be conducted by BPS assistive technology staff.

-An FBA to be conducted by BPS staff.

In addition to conducting the evaluations, the following questions will be directed to each evaluator in conducting each evaluation:

-Language and literacy evaluator:

1. What is the Student's current level of reading?
2. How has the Student's limited participation during her time with remote learning from April of 2020 until May of 2021 impact her learning and reading capabilities?
2. What is an appropriate reading program for the Student?

-Psychiatric evaluator

1. How does the Student's emotional state impact her engagement with her educational program?
2. How much counselling time would the Student benefit from during the school day?
3. How much counselling time would the Student benefit from outside of the school day?

-Neuropsychological evaluator:

1. What are the evaluators diagnostic impressions of the Student?
2. What are the evaluators educational recommendations for the Student?

-Assistive technology evaluator:

1. What are the Student's levels of knowledge, understanding and function with assistive technology that is available?
2. Is there any other assistive technology the Student may utilize as an accommodation in her IEP?
  
3. Upon completion of the evaluations, the PPT will reconvene to plan an appropriate program for the 2023-2024 school year.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



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Hearing Officer Signature



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Hearing Officer      Name in Print