

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v Ledyard LPS of Education

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Appearing on behalf of the LPS: Attorney Gwaina Wauldon
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Appearing before: Kelly Moyher, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Was the Student provided with FAPE for the 2021-2022 and 2022-2023 school years, including ESY for 2021 and 2022?
2. If not, is placement at Oxford Academy (including board) the appropriate placement for the Student for the 2022-2023 and 2023-2024 school years?
3. Are the Parents entitled to reimbursement for their unilateral placement of the Student at Oxford Academy for the second half of the 2022-2023 school including ESY for 2023?
4. Should the Ledyard Public School (“LPS”) be ordered to place the Student at Oxford Academy for the 2023-2024 school year including ESY for 2024?
5. Is the Student entitled to compensatory education and/or any other remedy deemed appropriate by the Hearing Officer?
6. Are the Parents entitled to attorney’s fees?

PROCEDURAL HISTORY:

The Parent filed the Due Process Complaint/Hearing Request on February 18, 2023. The Hearing Officer was appointed on February 22, 2023. A Prehearing Conference took place on March 2, 2023 and a hearing dates were scheduled for April, May and June. Due to personal and medical issues, several extensions were granted to the parties for the scheduling of hearing dates. The hearing took place on the following dates in 2023 and included several half days of testimony: April 25, 27, May 4, 9, 11, 17, June 13, 21, August 24, 29, September 15, 20, 22, and October 11.

The Parents initially submitted exhibits P1-P-23 and called the following witnesses: Ms. Advocate, educational advocate, Mr. and Mrs. Parent, Ms. Director, Director of Pupil Services for LPS, Dr. PsychEd, Educational Psychologist, Dr. Neuropsychologist, and Mr. Dean, Dean of Students at Oxford Academy. LPS initially submitted exhibits B-1- B-370 and called the following witnesses: Mr. Dr. psychologist with LPS, Ms. Counsellor, clinician with Effective School Solutions, Ms. Director, Ms. Teacher, teacher with LPS and Mr. Teacher, teacher with LPS.

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 InMrs. v. S & H Computer Systems, InMrs.*, 605 F. Supp. 816 (M.MR. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School LPS*, 835 F. Supp. 340 (S.MR. Tex. 1993).

SUMMARY:

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (MRS.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), MRS.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. The Student, born on April 1, 2008, is 15 years of age and is currently in the 10th grade at Oxford Academy. Previously, he was a student at Ledyard Public Schools (“LPS”) beginning as a kindergartener. The Student displayed early weakness in reading, writing, attention and executive function. He was initially eligible under the category of Specific Learning Disorder (With Impairments in Reading and Written Expression) and Attention-Deficit/Hyperactivity Disorder (ADHD), Combined Type. The Student has been diagnosed with Dyslexia, ADHD-C (with broad executive dysfunction) and Adjustment Disorder, with anxiety and depression. (Testimony, Mrs. Parent, P-1 and P-2).

2. Mrs. Parent, the Student’s mother, reported that concerns about the Student began as early as kindergarten with the Student’s acquisition of early reading and writing skills. She reported that the Student had his first year with special education services in the 3rd grade with identification as a student with a Specific-Learning Disorder. Mrs. Parent stated that in 4th grade, the Student became very frustrated with school reporting sadness and a hate for school. (Testimony, Mrs. Parent).

3. During the Student's 5th grade year, the 2018-2019 school year, the Parents sought a neuropsychological evaluation with Dr. Neuropsychologist, PhD..., of Concord Comprehensive Neuropsychological Services. The results of the evaluation were shared at the Student's PPT and Mrs. Parent reported that minor changes were made to the Student's IEP. The changes included changing the Student's designated disability to Learning Disability/Dyslexia and ADHD and added supports in language arts and math. (Testimony, Mrs. Parent)

4. In Dr. Neuropsychologist's report from September of 2018, the WISC-V revealed average verbal cognitive capacities, average fluid reasoning and high average visual special cognitive capacities. The Student provided concrete responses on verbal tasks but struggled with abstract concepts and showed significant strength in the non-verbal domain. Variability in the Student's testing was attributed in part to weaknesses in both attention and executive functioning. (P-1, pg. 8-9). Results from the report stated that the Student exhibited severe weaknesses across the reading domain. Specifically, on the Comprehensive Test of Phonological Processing-2nd Edition (CTOPP-2) he had considerable difficulty retrieving phonological information from long-term memory in order to quickly complete a task. The Rapid Digit Naming and Rapid Letter Naming were both scored in the 5th percentile. The Student's ability to isolate and manipulate sounds was also impaired and scored in the 1st percentile. It was reported that the Student's rapid naming skills were "an area of severe weakness for him and will impact his ability to efficiently retrieve phonological information for recall". (P-1, pg. 6-7).

5. The Student's single-word decoding skills were reported to be 'far below age and grade expectations': KTEA-3, Letter-Word Recognition = 3rd percentile and Nonsense Word Decoding = 7th percentile. He struggled to decode all unfamiliar words and unpredictable patterns and demonstrated severe weaknesses in letter automaticity. The Student's decoding on an oral reading task was impaired: Gort-5, Accuracy = 2nd percentile, Rate = 2nd percentile, Fluency = 2nd percentile and Comprehension = 5th percentile. (P-1, Pg. 6-7).

6. The Student was administered two subtests from the Delis Kaplan Executive Functioning System (D-KEFS) and the REY Osterrieth Complex Figure Test (ROCF), and the BRIEF-2 rating scale was also completed by the mother. Results indicated that the Student's initial approach novel was organized which added encoding and memory, but his memory deteriorated over time and he was overwhelmed by task demands. (P-1, pg. 5).

7. The Student's overall performance on a Written Expression subtest was reported to be in the Borderline range (KTEA-3: Written Expression = 7th percentile). The Student struggled with writing complete sentences and paragraphs, exhibited severe difficulties with capitalization and showed messy handwriting. (P-1, pg. 7)

8. Abilities in math were noted in the Low Average and Average range of functioning. The Student showed strong knowledge of math skills but showed great difficulty with work problems: KTEA-3, Math Concepts = 73rd percentile and Math Fluency = 3rd percentile).

9. Dr. Neuropsychologist made the following observations of the Student:

-His pattern of memory indicates that he requires a multi-modal presentation, context and additional structure to fully learn and encode information. His significant attention

fluctuations and trouble with organization of verbal output impact his learning when not provided with adequate structure and/or visual aids.

-His weaknesses in math fluency and computation will greatly impact his ability to efficiently complete math problems, specifically word problems and when required to explain an answer.

-His efforts to simultaneously manage the high language demands of the classroom, in conjunction with his reduced working memory and mental flexibility, reduced planning/organizational capacities, and slow cognitive processing speed result in a child who looks inconsistent, inattentive and/or unmotivated when he in fact is working overly hard.

-His graphomotor speed and ability to copy designs was significantly reduced for his age, indicating his fine motor weaknesses reduce his speed.

Of note, Dr. Neuropsychologist specifically points out that the Student is not currently exhibiting a clinical level of anxious or depressive symptoms, but his socioemotional functioning should be closely monitored, *especially as the learning and executive demands increase at school*. (P-1, pgs.9-11, emphasis added).

10. Dr. Neuropsychologist also made the following recommendations:

-The Student requires placement in a specialized school with a language-based methodology...as 1. The Student is not making adequate progress in his current setting and 2. The Student requires more intensive services to meet his educational needs.

-The Student's program should use a systemic full-day approach that is designed to meet the needs of children with severe learning and language-based or nonverbal learning disorders as their primary diagnosis: 1. small class sizes with like peers who have similar learning and academic deficits and do not have any primary behavioral issues, 2. direct, one-to-one instruction in reading and written expression using a structured, evidence-based program, 3. small group language-based instruction at his level for all academic subjects, 4. Small group instruction in higher-order language skills or thinking maps taught by a speech and language therapist, 5. weekly meeting with the school psychologist or school adjustment counselor to address anxiety about his learning challenges.

-The Student should have an education where there is substantial focus on teaching foundational 'pre-learning' skills to support his visual and auditory attention, his ability to remain seated for periods of time, to attend to tasks and follow directions.

-The Student requires a significant degree of academic intervention, including specialized instruction in reading, writing and math, the majority of which should occur in a one-to-one or small group setting,

-The Student should follow a systematic, multimodal, phonologically-based approach (such as Orton-Gillingham) as the Student: 1. lacks foundational reading skills necessary for learning to read and 2. His weak decoding skills and reading fluency impact his ability to comprehend material at grade-level.

-The Student will require direct instruction in writing with a special education teacher and would benefit from the use of a laptop/chromebook.

-The Student's academic instruction will need to include methodical data collection throughout the school year.

-The Student should be encouraged to participate in organized activities and/or sports to provide social skills, support his regulatory development and help him develop friendships with children his age. (P-1, pgs. 11-13).

11. Dr Neuropsychologist noted during her testimony that when she first met the Student in his fifth grade year, he was a grade level 1 to 2 non-reader. She stated that intense reading intervention is critical early on with a child like the Student and noted his risk for anxiety. She stated the Student's reading skills were very low and needed a much more comprehensive and intensive learning environment given his weaknesses and deficits. She stated the interventions she recommended in her evaluation were difficult to do in a public school setting. She noted that the Student was already in 5th grade and lacked foundational reading skills. She stated that at that point in the Student's schooling, he required a one-to-one program daily like Orton-Gillingham (OG) to address his deficits and weaknesses. (Testimony, Dr. Neuropsychologist).

12. Mrs. Parent noted that minor changes were made to the Student's IEP in 5th grade. She testified that she asked for an OG instructor for the Student several times but was told by Ms. Director, Director of Pupil Services for LPS, that they did not have an OG trained instructor but were looking into it. She testified that the Student became very frustrated and angry between doing the Wilson reading program and Corrective Reading Program and then switching back again to Wilson. She testified to the Student having very low esteem in 5th grade due to being stuck on a 1st-2nd grade level in school. She testified that she and her husband hired a private OG tutor for their son for after school work. (Testimony, Mrs. Parent).

13. Mrs. Parent testified that Ms. Director apologized for putting the Student in Corrective Reading, noting it was a mistake for the Student. The Student was put back into the Wilson program and Mrs. Parent stated she and her husband were very angry and frustrated with what they felt were the lack of interventions and accommodations made for the Student in his IEP. She felt finding something for him was trial and error on the part of LPS. (Testimony, Mrs. Parent).

14. As the Student entered the 6th grade, the Parents had many concerns as the Student was feeling embarrassed because of his learning disability and was experiencing anxiety. The Student was offered resource room hours but the Parents declined this for the Student as it would take him out of his gym class and part of lunch. The Parents reported that the Student was greatly struggling with school engagement at this time and his time with friends was a big motivator for him to attend school. Mrs. Parent reported that she and her husband did not want to take away any positive features from the Student's school day so he would stay engaged. (Testimony, Mrs. Parent).

15. Even though the Student has reported that his 6th grade year was his best, he continued to struggle with anxiety and Mrs. Parent and her husband said they began taking their son to the Westerly Anxiety Center to help him practice real life skills to help with his confidence and anxiety. She also testified that the Student was still reading on a 1st-2nd grade level and this caused him a lot of anxiety. She testified to asking for OG instruction for the Student at an Annual Review PPT in October of 2019 and suggested the Student could even stay after school if it was provided and offered the availability of the private OG tutor the Parents had hired. (Testimony, Mrs. Parent).

Parent testified that the assistant principal, Ms. Assistant Principal who was present for the PPT, denied the request and stated that if they provided one-to-one after school instruction for the Student they would have to do it for everyone. The Student's IEP lists the following under recommendations for the Student's 6th grade year: Reading – 2.5 hrs/wk, LA – 2.5 hrs/wk and Resource – 2.5 hrs/wk. The Parents also requested Ms. Assistant Principal speak with Ms. Director about after school tutoring for the Student or they would contact an attorney. Mrs. Parent testified that the response of Ms. Assistant Principal was 'to go ahead' and contact an attorney. (Testimony, Mrs. Parent, B-280, pgs. 1-2).

16. Mrs. Parent reported she and her husband were frustrated with the staff at the Student's school and sought a meeting with the Superintendent of Schools, Mr. Superintendent to share the Neuropsychological Evaluation results of 2018 and repeat their request OG tutoring. The document was not reviewed for the first meeting and in an email dated January 8, 2020, Mr. Harting assured the parents he would have reviewed the evaluation prior to their next meeting. Mrs. Parent reported she and her husband, along with Ms. Director, met with Mr. Superintendent to discuss the Student's learning struggles and OG tutoring. Mrs. Parent testified that while Mr. Superintendent shared her concerns, he also stated 'the average American reads on a third-grade level'. Mrs. Parent testified she and her husband were shocked at this statement. (Testimony, Mrs. Parent, B-331, Pg. 1).

17. A WADE assessment report showed that although the Student was reading high-frequency word correctly 73% of the time, he was only reading pseudo words correctly 15% of the time and could only spell them correctly 15% of the time, showing the Student's continued struggle with decoding and encoding after receiving targeted instruction in these areas for four years. (B-114).

18. Mrs. Parent testified that the Student was struggling so much with school anxiety in 6th grade that she and her husband continued to take the Student to the Westerly Anxiety Center where he attended until the start of the pandemic. She testified that her son was still able to enjoy sports and spending time with friends outside of school. She reported that she continued to raise concerns about her son's anxiety in the classroom and his feelings about not being able to keep up with the pace. (Testimony, Mrs. Parent).

19. During the spring of 2020, Connecticut school children engaged in remote learning as a result of the Covid-19 pandemic. Mrs. Parent reported the Student did not do well with remote learning and had limited engagement. (Testimony, Mrs. Parent).

20. In the fall of 2020, the beginning of the Student's 7th grade year, 4 days a week of in-person learning was offered to LPS Students with one day of remote learning. Mrs. Parent reported that she and her husband strongly wanted their son to attend school in person that fall. However, Mrs. Parent testified that the Student broke down in tears over going back to school in person. She reported that things like video games were taken away from him so he would go back to school but he refused. She reported the Student cried a lot during this time and the Parents allowed the Student to remain on a full-time remote learning schedule. (Testimony, Mrs. Parent).

21. Mrs. Parent testified that the Student was put in Spanish 2 during the second trimester of his 7th grade year. Mrs. Parent reported to school staff that the Student never had Spanish 1 and was told 'there was nowhere else to put him'. The Student received a B+ in Spanish 2. (Testimony, Mrs. Parent),

22. Mrs. Parent testified that at the end of the 2nd trimester in 7th grade, the Student had accumulated 22 absences. She also noted that he was having issues with his Language Arts teacher, Mrs. Teacher. She testified that Mrs. Teacher had reported to the Parents that the Student was not appearing on screen when he joined the in-person class remotely, was shaving less and was trying to avoid being called on. Mrs. Parent explained that they told Mrs. Teacher that the Student was experiencing a lot of sadness and anxiety, and that they were told by the teacher that the Student's behavior was unacceptable. The Student was given an F for the 2nd trimester. (Testimony, Mrs. Parent, B-183).

23. At the end of the Student's 7th grade year, the Student's father emailed his son's guidance counselor to share concern that Ms. Teacher was not giving the Student any credit for assignments he had submitted. He was told by the guidance counsellor to reach out to Ms. Teacher who would make any necessary adjustments in Powerschool and she also forwarded her email correspondence with the Student's father to Ms. Teacher. Ms. Teacher responded to the guidance counsellor via email that the submitted assignments were really old and stated "I have no idea what they want". The guidance counsellor then emailed back saying "Yeah me either honestly, so I'm not going to be putting too much energy into this. He [the Student's father] hasn't responded to my latest email so I'm going to leave it at that. Any other thoughts? I could email him telling him what you said in your email, but I don't even know if it's worth it". Ms. Teacher responded, "Don't bother. They couldn't make time for a meeting when they were emailed numerous times about teacher concerns about their kid. I find it hard to take them seriously." The guidance counsellor then responded, "Glad we're are on the same Counsellor!". Ms. Teacher responded that she "told Kelly [the assistant school principal] yesterday that I'll take him on my caseload next year. BRING. IT. ON". (B-363)

24. The Student participated in SBAC testing in the 7th grade. For reading, listening and writing and research/inquired he scored Below Standard. In mathematics, he scored Below Standard for Problem Solving and Modeling & Data Analysis and Communicating Reasoning, and Approaching Standard in Concepts and Procedures. (B-185, pg. 1).

25. For the Student's 8th grade year, the 2021-2022 school year, he returned to school in person. Mrs. Parent testified that from very early on in the year, the Student was struggling with his school work. She testified that she would work with the Student on his homework and try to help him, but it became clear that the reading and writing was at too high of a level for him and math and science were too high too. Mrs. Parent reported that the Student tried very hard and they worked a lot together at home, but the work was too difficult for him and was beyond his grade level. She reported that this was communicated to his teachers in many of his subjects. She testified that the Student always felt left behind and that his peers were all grade levels above him, and she believed he was reading at about a 2nd grade level at this time. (Testimony, Mrs. Parent).

26. Going into the fall and winter of 8th grade, Mrs. Parent testified that the Student began having a lot of headaches, aches and pains, and would call from school to come home. She reported the Student had many visits to the nurse and started missing days from school. She testified that the Parents tried giving him rewards to go to school, but it didn't always work and the Student continued with school absences. She testified that the Student's day was shortened and history was removed from his schedule. At a PPT in December of 2021, it is noted that the Student had been dealing with anxiety. (Testimony, Mrs. Parent, B-285).

27. Even with history removed from the Student's schedule, Mrs. Parent testified he continued to miss school and suffered from anxiety, headaches and aches and pains. She stated that during this time, no one from the school reached out. She reported that there were no emails or calls from the Student's case manager, Mrs. Teacher, and there were no meetings called to discuss the Student's numerous nurse visits and absences and no counselling for the Student was offered. She reported the Student was taking ibuprofen all of the time because he felt terrible. (Testimony, Mrs. Parent.)

28. In the beginning of 2022, during January and February, the Student continued to visit the nurse to leave school and missed school all together. Mrs. Parent reported that it was always a battle to get the Student to school. She testified that teachers would say things to him such as 'What am I going to do with you? You miss so much and then show up'. She testified that sometimes the Student was told by his teachers to 'just sit there' which made the Student feel awful. (Testimony, Mrs. Parent).

29. In March of 2022, the Student stopped attending school for the most part. Mrs. Parent reported that her relationship with the Student was awful during this time. She testified that as the Student continued to miss school, she would take the Student's video games and phone and the tv remote controls to work with her so the Student was not able to use them during the day while he was missing school. She reported that the Student did not care when she took these measures, that he completely stopped sports and did not have a lot of communication with his friends. She testified that the family was devastated at this time and both the Parents and the Student were doing a lot of crying and the situation was extremely stressful. The Student's father, David Parent, testified that the "darkest hours of our life were 8th and 9th grade. I kid you not. It was very depressing for us. It was life changing." Mrs. Parent reported having a friend, an aunt and a cousin who was a priest call the Student to check in with him and encourage him. She testified telling the Student he could have his electronics back if he went to school, but the Student only responded that 'the teachers could not teach him and they just kept repeating the same information to him'. (Testimony, Mrs. Parent, Mr. Parent).

30. Mrs. Parent testified that at this time she may have received an email or two from Mrs. Teacher about the Student, but that no PPT was called. She testified that in April the school made a non emergent referral of the Parents to the Department of Children and Families (DCF) for neglect. Mrs. Parent reported feeling very surprised at this but that the Parents cooperated with the inquiry. She testified DCF found that the Parents were doing all they could to help the Student and that there was no neglect, and the case was closed by DCF. (Testimony, Mrs. Parent, P-12).

31. Mrs. Parent reported that at this time the family started working with Charlie Health which gave the Student therapeutic assistance that the Student attended 3 hours a night, for four nights a week for 7 weeks. She testified that the family sought the counseling help for the Student as they watched him continually unravel. The Student was working with an APRN for medication guidance. Mrs. Parent reported that at the end of March of 2022, the Student had 35 school absences. (Testimony, Mrs. Parent).

32. After the Charlie Health program ended, the family sought the assistance of Shoreline Psychiatric and the Student began meeting with a therapist twice a week and engaged with a life coach who would take the Student for outings during the week to get him out of the house. Mrs. Parent reported that at this time, in April of 2022 the Parents were expending about \$3,000.00 a month for supports for their son. (Testimony, Mrs. Parent).

33. On April 27, 2022 LPS staff discussed Teacher expressed the need for a PPT to address concerns about the Student's mental health and poor attendance, however she also expressed that the situation was not an emergency and the PPT was planned for early June of 2022. (B-344, Testimony, Ms. Teacher).

34. In May of 2022, Mrs. Parent testified that the Parents requested a PPT to ask for a tutor for the Student. During the spring, the Parents and Student also learned that the he was accepted to the Grasso Vocational and Agricultural school for high school. A PPT was not scheduled until June 9th of 2022 and Mrs. Parent testified that the tutor was not discussed at the PPT, but rather the Student's transition to high school was discussed and no one but the Parents mentioned the Students absenteeism. She also testified that there were no recommendations for counseling for the Student and no programming was offered for over the summer. She testified that the Student felt at this point that the district did not care about him at all. Mrs. Parent reported that after 60 days missed of school in June of 2022 a psychologist was not present at the June 9, 2022 PPT. It is noted that Ms. Teacher testified that the Student's absences were not the focus of the June 9th PPT. This is in contradiction to Ms. Director' testimony that information about the Student's absences were shared with Grasso at the meeting. Ms. Teacher testified that she did not want to alert Grasso to the Student's absenteeism as she was surprised he had been accepted. She also testified that she did not believe that adjusting the Student's IEP would have helped with his school avoidance issues. No concerns were listed under present levels of performance for behavioral/social/emotional. Ms. Director testified that the Student's lack of attendance stemmed from his anxiety and was already being adequately addressed through the present accommodations and no further revisions to the IEP were necessary. She also testified that based on the information about the Student's school refusal there "wasn't a lot else we could do" while also conceding the IEP was not properly documented. The PPT list of recommendations included 42 minutes daily of Multisensory Reading, 42 minutes daily of Transition and Organization and 84 minutes of Language Arts every other day. There was no ESY recommendation made for the summer of 2022. (Testimony, Mrs. Parent, Ms. Director, Ms. Teacher).

35. Mrs. Parent testified that the Student worked a lot with his private therapist and life coach over the summer to get ready for high school. She reported that the Student was very nervous to start high school and had a lot of anxiety. She testified that over the summer it was decided the

Student would not attend Grasso because the Parents did not believe the Student could keep pace with the academics and would be overwhelmed. The decision was made to send the Student to Ledyard High School and Mrs. Parent testified she and her husband were hopeful as Ledyard High School was where the Parents and other family members had attended high school. (Testimony, Mrs. Parent).

36. In the spring and summer of 2022, at the end of the Student's 8th grade year, Dr. Neuropsychologist again met with the Student to conduct a neuropsychological reevaluation. She noted parental concerns regarding academics and social/emotional functioning. She noted upon meeting the Student again that he seemed like a different kid, had gained weight and had a high level of discouragement with anxiety and depression. (Testimony, Dr. Neuropsychologist).

37. Dr. Neuropsychologist noted continued deficits and weakness in the following areas upon her reevaluation of neurocognitive functioning:

-Processing Speed- The Student's performance continues to demonstrate a reduced processing speed. His speed of processing declined further on tasks that required multiple steps with a fine motor response.

-Working Memory- The Student's significant weakness in verbal working memory can impact a variety of classroom tasks including following classroom instruction and mental calculation.

-Memory- The Student's initial learning span for auditory-verbal information is lower than his peers and requires repetition and time for consolidation in order to learn and encode new verbal information.

-Executive Functioning- The Student exhibited ongoing attentional difficulties. His verbal fluency was in the low range and below age expectations. He continued to reflect a significant weakness in rapid naming skills. Results indicate significant ongoing difficulties with attention, impulsivity and executive functioning at both home and school. (P-2, pgs. 4-8).

38. In reading, the Student continued to demonstrate difficulties with foundational reading abilities and reading fluency, while scoring in the average range for comprehension. The following results were noted on a measure of reading comprehension:

-Nonsense word decoding = 14th percentile

-Letter word recognition = 23rd percentile

-Reading comprehension = 14th percentile

-Silent reading fluency = 8th percentile

Results on the GORT-5 noted a reading rate in the 9th percentile, reading fluency in the 9th percentile and reading comprehension in the 16th percentile which are all in the low average range. (P-2, pgs. 8-9).

39. In Writing, the Student's skills were found to be in the below average range, with more errors seen in structure, word form, capitalization and punctuation that was expected for his age and grade. (P-2, pg. 9).

40. The following was noted regarding the Student's Social Emotional Functioning: elevated levels of anxiety, depression, somatization, learning problems, withdrawal and trouble with

adaptive skills including leadership, social skills and general adaptability as noted by two teachers and the Parents. Dr. Neuropsychologist notes that the Student views himself as weak and ineffective, has begun to distance himself from others and stated that without substantial intervention for his severe learning disorder, the Student is at significant risk to experience deeper depression and more intense anxiety. ((P-2, pg. 10).

41. The reevaluation made the following diagnostic impressions (DSM-5): Specific Learning Disorder with Impairments in Reading and Writing, ADHD-C (with broad executive dysfunction) and Adjustment Disorder, with anxiety and depression. (P-2, Pg. 10).

42. Among many, Dr. Neuropsychologist noted some of the following recommendations for the student's program:

- Systemic full-day approach designed to meet the needs of children with severe learning disorder as their primary diagnosis as the Student is not making adequate progress on his current IEP and requires more intensive services to meet his educational needs.
- Daily, one-to-one instruction with a special education teacher using OG (5 x 45/5 days), direct instruction in writing with a special education teacher one-to-one or in small group (no more than 1:3).
- Individual tutoring sessions with a Learning Coach to help with increase demands on executive functioning.
- Assistance with higher-order executive functioning tasks.
- Accommodations such as extended time, preferential seating, access to a separate room for testing with breaks as needs and audiobooks.
- Repetition and extra time when encoding and retrieving information.
- Close monitoring of progress across all academic domains with reading and writing assessed and graphed using a structured evaluation tool every month with his team meeting every two months.
- Continued participation in individual psychotherapy and meetings with his life coach.

43. On the first day of 9th grade, Mrs. Parent testified that the Student reported not knowing any of the students in his classes. She stated that her son felt he did not fit in with the students in the classes as many of them were older, that there were multiple teachers in his classes and reported not seeing any of his friends during classes or lunch. The Student did not have any counseling recommendations in his IEP and could not report his anxieties to anyone. She testified that after the Student's first day at Ledyard high school he felt paralyzed about going back and never attended another day at the school. Mr. Parent testified that the Student was embarrassed when he began 9th grade as he knew he was reading at a 2nd grade level. (Testimony, Mrs. Parent, Mr. Parent).

44. The Parents hired Ms. Advocate, owner of Connecticut Educational Advisors, as their educational advocate on September 23, 2022. Ms. Advocate testified to the Parents making a FERPA request to obtain their son's educational records from LPS. She testified that she noticed progress monitoring documents were missing from the file and she had a hard time understanding the Student's progress and what happened at the end of each IEP year. She stated that she was missing final progress reports for 2017, 2018, 2020, and 2021. She also testified that when she did receive the 2022 final progress report it stated that the Student had not

attended school so his goals and objectives had not been assessed. She testified that the Parents made several requests for the missing information but did not receive it and were told by Ms. Director that the Student's absences affected record keeping. Testifying to this issue, Ms. Director stated that the district did not always have good record keeping practices several years ago. She stated that she continued to look for the missing progress reports but stopped looking when the Parents filed for due process. It is noted that the LPS entered into evidence documents that appeared to include the progress monitoring reports. Ms. Advocate also testified that she requested a copy of the school psychologist notes, meeting dates and records from the informal support of the Student, dating back to 2021, which were also missing from the file. She stated that Ms. Director responded that she could not find the materials and that the school psychologist had since left and had possibly taken the documentation with her. Mrs. Parent testified that she and her husband had never received any communication from the school psychologist. Ms. Advocate testified that she was uncertain if any documentation relating to the Student from the school psychologist ever existed. (Testimony, Ms. Advocate, Ms. Director, Mrs. Parent).

45. At a PPT that convened on September 20, 2022, Mrs. Parent reported that neither tutoring nor counselling was offered in the Student's IEP and the purpose of the PPT was to review the neuropsychological reevaluation of the Student. She testified that the Parents requested homebound instruction for the Student and reported that this request was denied by Ms. Director because the staff did not want to reinforce the fact that the Student was not coming to school and that homebound documentation needed to be completed by the Student's doctor. She testified that that the Student was given 10.5 hours of specialized instruction in his IEP which was a decrease in hours of 3.5 and could only utilize these hours of instruction if he came to school. She reported that no plan was discussed at the PPT for if the Student refused to return to school. Mrs. Parent testified that she learned at the PPT that her son's classes were to be all co-taught despite only being told at the previous June PPT that Language Arts would be his only co-taught class. Mrs. Parent testified that the Student's response to being in all co-taught classes was that the other students 'must be really stupid to be in with me'. (Testimony, Mrs. Parent, B-283).

46. Dr. Neuropsychologist was also present at the September 20, 2022 PPT and discussed the results of the Student's neuropsychological reevaluation. Among the findings and recommendations noted in her report, she reported that the Student had made very little progress since her initial evaluation in 2018 and reiterated the need for daily direct reading support for the Student and the fact that he now suffered from anxiety and depression, which she reported was a direct result of the lack of support and interventions the Student received over the previous years at Ledyard. Dr. Neuropsychologist testified that she recommended homebound instruction for the Student and stated that the Student needed critical academic intervention and instruction. She also testified to the District denying homebound instruction and saying it would only reinforce the Student's absenteeism. (Testimony, Mrs. Parent and Dr. Neuropsychologist, P-2).

47. Mrs. Parent reported that the Student had also been accepted at the Marine Magnet School. She testified that she did not feel bad about enrolling the Student at the school and withdrawing him from LPS at this time because she had lost so much trust and faith in the district. She reported the placement did not work for the Student and he was reenrolled in LPS. (Testimony, Mrs. Parent).

48. During a phone call between the Parents, their advocate and Ms. Director, plans were discussed to get the Student back to school. Mrs. Parent testified that she and her husband reported on the phone call that the Student would not reenter the high school building. She testified that at this point homebound instruction was offered and she was relieved. She also testified that Ms. Director suggested the Parents explore Ben Bronz Academy as a possible alternative placement for the Student. She testified that 60 mins a day of tutoring/readying instruction was offered, but had to take place at school during the school day. Mrs. Parent testified that the Student would not attend. (Testimony, Mrs. Parent).

49. Mrs. Parent reported that the Student did attend six of the tutoring sessions, but that what was taught was at too high of a level for the Student. She testified that a good chunk of the sessions were canceled by the Parents because the Student refused to attend. (Testimony, Mrs. Parent).

50. At a PPT in October of 2022, the Parents were introduced to Ms. Counsellor, a mental health clinician who worked as a contractor for Effective School Solutions (“ESS”). A treatment plan was devised in addition to the tutoring sessions as part of a wrap-around model of continuum of care. Ms. Counsellor testified that the treatment plan process can take a long time to implement and that students needed to ease into the discomfort of the plan along with their families and that gradual exposure to the plan is key. She testified that in home support was offered to the Parents in the form of home visits with the Student, but she reported that Mr. Parent said it would not be helpful and that they would be looking at options for an outplacement. Ms. Counsellor testified that parents are usually desperate for help at home and want a clinician to come to the house. (Testimony, Ms. Counsellor, B-290).

51. Mr. Parent testified at the October 26, 2022 PPT, the District finally agreed to homebound tutoring for the Student after almost two months of the Student not attending school. He also testified that the District agreed to begin looking at out of district placements for the Student and that Ms. Director commented at the PPT that there was a lack of choices in south eastern Connecticut. (Testimony, Mr. Parent).

52. Ms. Counsellor testified that she eventually did have a home visit with the Student but he was on the phone with his cousin who was a priest and the parents felt it was important for the conversation to continue. She testified that from the beginning of her work with the Student and the Parents there was limited engagement. She reported that the Parents were actively looking for an alternative placement for the Student and that there were competing demands keeping the Parents from fully engaging with the treatment plan for the Student. She reported that there was no response to treatment of the Student as she was not able to implement the course of treatment. She testified that the Student and his parents were guarded with her and saw her as part of the district that could not meet the Student’s needs. She testified that she was instructed by Ms. Director on November 20, 2022 to cancel a scheduled home visit with the Student due to the Parents notifying the district of their intent to unilaterally place the Student at Oxford Academy. (Testimony, Ms. Counsellor).

53. Mrs. Parent testified that before deciding on an out of district placement for the Student at Oxford Academy, Ben Bronz, the Rectory School, the Institute of Living, Eagle Hill, the Grove School and Franklin Academy were considered. She testified that the schools were ruled out by

either she and her husband or Ms. Director as being inappropriate to meet the Student's needs, either based on his profile or due to distance from Ledyard. She testified that she spoke with the Student's therapist to get a recommendation based on the Student's profile. Mrs. Parent reported that the therapist who had been meeting with the Student two times a week for 7 months, consulted with colleagues and recommended the Parents consider Oxford Academy. Mrs. Parent testified she was told by the therapist that the Oxford student population was made up of many students dealing with similar issues as the Student, such as ADHD and difficulty with reading and writing. (Testimony, Mrs. Parent).

54. In considering Oxford Academy, the Parents realized the Student would be a boarding Student 6 days a week. Mrs. Parent testified that she and her husband did not initially want their son to be 'away' at school. She reported that the Student toured the school and was very hesitant about attending. She testified that the family was told that at Oxford the staff would meet the Student at his level and he would have access to one-to-one instruction in every subject. Mrs. Parent testified that she and her husband felt the school would really focus on the Student as an individual and would be able to give the Student the attention and accommodations he needed. She testified that there was some buy-in from the Student but she and her husband were very concerned the Student wouldn't go and they also wanted the Student to reside at home. She also testified they were shocked that they were at the point of considering a private boarding school, especially after so many family members had graduated from LPS, but they felt like they had no other option and were desperate to help the Student. The Parents inquired with Oxford as to whether the Student could be a day student, but Oxford's program was a full time program to enhance student buy-in. She stated that everyone was cautious about the placement but were willing to give it a try. The Parents decided to place the Student at Oxford to begin in January of 2023 and notified the district of the placement on November 30, 2022. (Testimony, Mrs. Parent).

55. In January of 2023, the Student began attending Oxford Academy. Mrs. Parent testified that the placement was a huge leap for everyone and that the Student had a hard time at first, cried a lot and called his parents to come and get him. She reported that the Student acclimated to the new school after several weeks. The 6-day a week program gave the Student 20-30 minute blocks for academics and Mrs. Parent testified that this schedule was good for the Student as a student with ADHMR. She testified that the Student's day starts off with breakfast and a morning meeting, and the Student attends the short block classes in science, English, reading and math as well as academic prep which is a course that focuses on executive function skills. The Student receives one-to-one instruction in his classes and has guided study halls where he can ask questions on material that was just covered. The Student can also go back to the respective teacher during this time for extra help or clarification. Mrs. Parent testified that the Student also participates in gym and group dinners and the Student has a roommate as well. A counselor on staff works with the Student weekly and the Student still meets with his regular therapist as well. The Student also receives OG tutoring 3 times a week which is provided by the Parents. (Testimony, Mrs. Parent).

56. At the time of Mrs. Parent's testimony, the Student had been attending Oxford for 5 months. She testified that the Student has been doing very well at the school and has had almost perfect attendance except for one week when he was sick. She reported he is on time every morning to start his day. She testified that she has been blown away by the huge changes in her son and that

he feels good about himself and his self esteem has improved. She testified that the Student's independence has grown, that he really likes school and his teachers and has many friends. She testified he will play basketball with friends after dinner, goes on hikes and talks a lot about the kids and his school experiences when he is home. She said the Student returns home on Saturdays after assessments are done for core subjects. Mrs. Parent also testified that the Student has no problem returning to school on Sunday after being home on the weekend and over spring break she testified that the Student commented to her that he missed school. She also testified that the Student has been offered a spot on the baseball team. She reported that they receive weekly progress reports from the school. She testified that the Student has learned a lot of life lessons at Oxford being with students from different backgrounds who deal with similar challenges. She testified that the teachers at Oxford can and do take the time to make sure the Student understands his course work and will change the delivery based on the Student's needs. She reported that the Student can't get lost at Oxford because of the one-to-one instruction and the weekly assessments in all areas. She testified the Student was always lost while attending LPS. She also testified that the Student is being made whole at Oxford and is compensating the Student for all of the loss and neglect he has dealt with. She testified it would be devastating for the Student to go anywhere else at this time and that this is the first time in a long time she has hope for her son. She stated he is making meaningful progress and is healthy emotionally, physically and socially and that Oxford has been a huge gift for the Student. (Testimony, Mrs. Parent).

57. Mr. Parent testified that he believed a great injustice had been done to the Student while he attended LPS and it needs to be corrected. He testified that the family's experience with LPS has been traumatic for everyone and he felt like the Student's IEPs were copied and pasted going through the years and that no progress was made even though his son has an average to an above-average IQ. He reported that at a PPT in December of 2022, the Student's goal set by the District was to increase his reading level to 3rd-4th grade by the middle of his sophomore year, and that the same goal had been set for the Student the year prior. He testified that he believed Oxford is the best placement for the Student right now and that he has seen him mature and take responsibility for himself. He testified that he and his wife were willing to fund the residential portion of the Student's tuition at Oxford, but the placement as Oxford was denied. At the time Mr. Parent testified, in late spring of 2023, he reported he and his wife were struggling financially. He testified at that time that his wife and he had paid \$49,200.00 towards the tuition at Oxford. He also testified that the Student was so far behind that he would be doing ESY for the summer of 2023 at Oxford at a cost of \$12,000.00. Tuition for the Student to attend Oxford for the 2023-2024 school year is \$86,000.00 plus ESY for 2024 at a cost of \$12,000.00. He also testified he believed it would be devastating for his son mentally and academically to not continue at Oxford. (P-17, 18 & 19, Testimony, Mr. Parent).

58. At a PPT held on December 7, 2022, the team did not recommend any changes to the tutoring that was being offered to Student which was to occur at the high school. The team did recommend a clinical psychological evaluation of the Student after being aware for years of the Student's anxiety issues. The team also recommended training for the Parents on how to get the Student to participate in high school. (B-288, Testimony, Mrs. Parent).

59. Dr. PsychEd, Educational Psychologist with Educational Advancement Associates, evaluated the Student in April of 2023. Dr. PsychEd was retained by the Parents to address whether LPS staff have an accurate understanding of the Student's needs and can adequately address them within a local setting and for assistance with the correct educational placement for the Student. Dr. PsychEd has a Master's Degree in School Psychology, a Sixth Year Certificate in Educational Administration and a Doctorate in Educational Psychology. She has worked in Connecticut public schools for 11 years as a School Psychologist, Assistant Principal, Special Education Director and Director of Student Services in two Connecticut school districts. She has been in private practice for the past 16 years. She testified that she performs psycho-educational testing but also has traveled to about 500 programs across the country helping students and school districts who are struggling to find appropriate placements for students with complex needs. (Testimony, Dr. PsychEd, P-20).

60. In her evaluation of the Student, Dr. PsychEd testified that she did a complete review of the Student's file from LPS. Based upon her review of the file as well as conversations with both parents, the parent's advocate and staff at Oxford Academy, Dr. PsychEd testified and made the finding in her evaluation that the LPS did not have, and could not offer, a program to meet the Student's needs during the 2021-2022 school year and that the proposed IEP for the 2022-2023 school year was not appropriate for the Student. (Testimony, Dr. PsychEd, B-20, pg. 2).

61. Dr. PsychEd testified that the Student's educational needs have always been intertwined with his mental health needs. She testified that the Student has a Full Scale IQ of 117 and index scores for Visual Spatial (135) and Fluid Reasoning (126) in the superior range of ability. She reported that in 9 years in LPS he never met any of the minimum Connecticut State Standards for Reading or Science- despite having received reading instruction from the school district and special education support for the past 7 years. Dr. PsychEd also noted in her psycho-educational evaluation of the Student that "with each year spent in Ledyard, his academic skills (as measured on standardized tests like the NWEA/MAP and WJ-IV/WIAT) have steadily decreased while his anxiety steadily increased- to the point where he was unable to attend school and has received almost no education at all by the district for almost a year". (Testimony, Dr. PsychEd, B-20, pg. 2).

62. Dr. PsychEd testified to seeing the Student's numerous school nurse visits and missing data in the Student's file. She testified that an assistive technology evaluation was never conducted and that an Occupational Therapy Assessment was never conducted despite concerns about inability to sit still, maintain focus and shyness during class discussions. She also testified and stated in her report that despite behavioral concerns dating back to kindergarten as well as concerns about "fears" is it unclear "as to why district staff never assessed him in any of those critical areas. The district's evaluations included only the WISC, WJ-IV CTOPP, WADE and Academic Tests- but no one completed any assessments to examine behavior or anxiety, although these concerns had been reported several times in school records". She also notes that the Student was not evaluated in all areas of potential disability and reports in her evaluation that the Parents sought their own additional private evaluations such as an Auditory Processing Evaluation conducted in February of 2016. The evaluation was shared with the district and noted concerns about concentration, following directions, distractibility, academic difficulties, reading, writing, poor self-esteem and anxiety. (Testimony, Dr. PsychEd, P-20, pg. 4).

63. Dr. PsychEd testified that the Student is a “unicorn kid” and is not a therapeutic kid. She testified that there are not a lot of programs out there for kids like the Student who is an LD (learning disabled) kid who is now dealing with emotional issues. She testified that the size of Ledyard High School itself was not a good fit for the Student with 750 students attending. She testified and noted in her evaluation report that Oxford Academy has 48 students attending and specializes in boys with complex and inter-related needs who are underachieving academically and socially. She noted that as has been recommended by in-school and private evaluations, the Student will be working with educators who have expertise serving teens with combined academic, anxiety and attention weaknesses. (Testimony, Dr. PsychEd).

64. Dr. PsychEd testified to the individualized program the Student is receiving at Oxford, reporting that the individualized instruction is the most critical component since his skills are so different from those of same-grade peers (and even inconsistent within his own personal skill-set). In her evaluation report, she noted that “Oxford teachers incorporate differentiated instruction and all staff are trained to implement accommodations in IEP’s and to adapt and modify curriculum. Within this model, students work at their own individual pace (which helps reduce their anxiety and embarrassment), with teachers carefully monitoring progress to ensure they understand content sufficiently before moving forward.” She also pointed again to the Student’s intelligence and stated “Oxford courses follow a college-preparatory curriculum to provide him with the appropriate level of academic challenge to prepare for post-secondary goals (while also providing extra monitoring and support)”. She noted that placement for the Student in small classes is critical to address his attention deficits and inconsistent skills, but also allowing him the opportunity for peer interactions to practice social skills and build peer relationships. (Testimony, Dr. PsychEd).

65. Dr. PsychEd also testified to the residential component of Oxford Academy, noting the Student was completely homebound and doing tutoring alone, after school at the time he left LPS. In her evaluation she notes that over time, the Student “has become more and more isolated from peers, both by not participating at school and when he withdrew from all of his extracurricular activities (as he became more anxious and depressed)”. She testified to the Student’s long and well-documented history of school anxiety and stated the Student requires a residential setting in order to benefit from any educational program. She noted in her evaluation report that the residential component at Oxford “will provide multiple opportunities for the Student to learn critical academic skills that he had no opportunity to master while in Ledyard.” She went on to state that in Oxford’s residential setting “students learn how to collaborate with adult staff across a variety of situations, providing multiple opportunities to practice social interactions and form personal connections. The extended day that comes with a 24/7 residential school (and classes that meet over 6 days instead of 5) is essential for the Student, given that every Teacher and Evaluator has always reported that he needed more time, more repetition, more structure and more practice to learn the same skills that typical peers may pick up quickly in a mainstream setting”. (Testimony, Dr. PsychEd, P-20, pgs. 11-12).

66. Dr. PsychEd testified that Oxford is a unicorn school that fits the Student, as a unicorn kid, very well. She testified to referring to Oxford when she was working for Connecticut public schools as a school administrator. She testified that the program that is currently in place for the

Student, including continued weekly meetings with his therapist and one-to-one reading instruction with a certified reading teacher who is completing her training in OG, is exactly what he needs at this time. She also testified that she thought it would be a mistake for the Student to leave his current educational setting at this time due to his diagnosis with adjustment disorder. She noted his near perfect attendance and the Parent observations of so many positive changes in their son as evidence of the appropriateness of the placement. (Testimony, Dr. PsychEd).

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76h.
2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes “special education and related services designed to meet their unique needs” and “prepare them for further education, employment and independent living” and “to ensure that the rights of children with disabilities and parents of such children are protected...” 20 U.S.C. §1400(d)(1).
3. The Act defines FAPE as special education and related services which “(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.MRS. §1401 (8).
4. The LPS has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
5. LPS must offer an Individualized Education Program [IEP] that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, and “[t]he instruction offered must be ‘specially designed’ to meet a child's ‘unique needs’” (Emphasis in original.) *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 580 U.S. 386, 400, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017); 20 U.S.MRS. §1401(29), (14). The IDEA, 20 U.S.MRS. § 1400 et. seq., requires that a student's goals and objectives meet the needs resulting from the child's disability in order to enable the child to be involved in and make progress in the general education curriculum. 34 MRS.F.R. § 300.320(a)(2)(i)(A). Such progress must be markedly more than de minimus. *See Endrew F.*, supra, 580 U.S. at 402-03.
6. Both achievements in "educational and personal skills identified as special needs" must be considered. *Town of Burlington v. Dep't of Edu.. For Com. of Mass.*, 471 U.S. 359 (1985). Services to be provided under special education must target all areas of need whether they

be academic, physical, social or emotional. *Mr. I. ex rel. L.I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, 12 (1st Cir. 2007).

7. Programs should be individualized based on the student's assessment and performance. See *A.S. v. LPS of Edu. of West Hartford*, 245 F. Supp. 2d 417, 428 (D. Conn. 2001), *aff'd* 47 Mr. Appx. 615 (2d Cir. 2002). The IEP must enable a child to derive "meaningful" educational benefit. *LPS of Edu. v. Rowley*, 458 U.S. 176, 192, 102 S. Ct. 3034, 73 L. Mr. 2d 690 (1982).
8. The standard for determining whether a LPS has provided a free appropriate public education is set forth as a two-part inquiry in *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 580 U.S. 386, 400, 137 S. Ct. 988. The first question to be determined is whether the LPS complied with the procedural requirements of the Act. The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U.S. at 206-207.
9. The LRE requirement does not require a school district to place a student in the single least restrictive environment in which he is capable of *any* satisfactory learning. *T.M. v. Cornwall Cent. Sch. Dist.*, *supra*, 752 F.3d at 162. "Although the IDEA strongly prefers placing children in their least restrictive environment, the presumption in favor of mainstreaming must be weighed against the importance of providing an appropriate education to handicapped students. . . ." (Citations omitted; internal quotation marks omitted.) *Id.*, at 161.
10. When Parents believe that a FAPE is not being provided to their child, they may unilaterally enroll the child in a private school and seek tuition reimbursement from the school district by filing due process complaint. *M.O. v. New York City Dep't of Edu.*, 793 F.3d 236, 239 (2d Cir. 2015). Districts can be ordered to reimburse parents for the cost of a private placement when they provide an inappropriate education under IDEA. See *Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 9-10, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284 (1993).
11. Reimbursement for a unilateral private placement is not precluded just because the placement is not on a state approved list and "to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." would be illogical (Citation omitted.). *Florence Cnty. Sch. Dist. Four v. Carter*, *supra*, 510 U.S. at 14.
12. If the possibility arises that a residential placement may be required, the state is not relieved of its obligation to pay for the program under federal law so long as it is necessary to ensure that the child can be properly educated. *Mrs. B. v. Milford B. of Edu.*, 103 F.3d 1114, 1122 (2d Cir. 1997).

13. Parents are entitled to tuition reimbursement if the district failed to provide the student with an appropriate public education, the parents' private placement was appropriate to meet the student's needs, and equitable considerations support the parents' claim. *See Reyes ex rel. R.P. v. New York City Dep't of Edu.*, 760 F.3d 211, 215 (2d Cir. 2014). In evaluating the equities, hearing officers may consider whether the parents cooperated with the district by, e.g., providing private evaluations and participating in PPT meetings. *M.H. v. New York City Dept. of Edu.*, 685 F.3d 217, 254 (2d Cir. 2012).
14. A procedural violation may result in a deprivation of FAPE if it (1) impeded the child's right to a FAPE, (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (3) or caused a deprivation of educational benefits. 20 U.S.C., § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513 (a) (2); *see also Mr. P v. W. Hartford B. of Edu.*, 885 F.3d 735, 749 (2d Cir.) (multiple procedural violations may cumulatively result in denial of a FAPE even if violations considered individually do not), *cert. denied*, 139 S. Ct. 322, 202 L. Ed. 2d 219 (2018); *see also, e.g., E.H. v. New York City Dep't of Edu.*, 164 F. Supp. 3d 539, 554 (S.D.N.Y. 2016) (predetermination and deprivation of meaningful parental participation resulted in denial of FAPE). In other words, "parents must articulate how a procedural violation resulted in the IEP's substantive inadequacy or affected the decision-making process." *M.W. ex rel. S.W. v. New York City Dep't of Edu.*, 725 F.3d 131, 139 (2d Cir. 2013); *but see K.R. ex rel. Matthew R. v. New York City Dep't of Edu.*, 107 F. Supp. 3d 295, 309 n.120 (S.D.N.Y. 2015) ("Parents need not allege any substantive harm they suffered as a result of the procedural violation—the statute provides that the fact of the procedural violation, if it significantly impedes the parents' opportunity to participate in the decision-making process, is a harm unto itself that results in the denial of a FAPE. . ." [citation omitted]).
15. LPS's pattern of indifference to the procedural requirements of the IDEA and carelessness in formulating IEPs over the years, as well as its repeated violations of its obligations under the statute, deprived the Student of the important educational benefits to which he is entitled by law. *See L.O. v. New York City Dep't of Edu.*, 822 F.3d 95, 124 (2d Cir. 2016). Compliance with the IDEA's procedural requirement is the responsibility of LPS and not the parents. *Unified Sch. Dist. No. 1 v. Dep't of Edu.*, 64 Conn. App. 273, 285 (2001). Furthermore, it is well-settled that merely allowing the parents to be present at PPT meetings does not amount to meaningful participation. Rather, the IEP is to be a collaborative process developed by the parents of the student, educators, and other specialists. *Honig v. Doe*, 484 U.S. 305, 311 (1988).
16. LPS has committed several procedural violations. These violations did not allow the Student to have access to FAPE and did not allow the Parents meaningful participation in the IEP process.
17. Among the first of several violations is the LPS's failure to monitor and report progress on the Student's IEP goals and objectives. Closed-out IEP monitoring is necessary for the team not only to alert them as to whether the Student mastered a listed goal or objective, but to also allow the team to form the following year's goals and objectives. If a particular goal or objective is not mastered the team must reevaluate its approach. During the

Student's seventh and eighth grade year, it was required that the Student's progress be reported three times a year in line with LPS'S trimester and report card schedule. In the IEP period to be monitored, which was 1/14/2021-11/18/2021, the document states that the Student's reading goal would be measured by the end of the IEP period. However, the progress report does not include a final marking for November of that year, and it was unknown whether the Student had mastered his goals and objectives for that year. Informal support from the school psychologist continued to be included on the accommodation page, but with no explanation of the meaning or service hours allotted to it. None of the recommendations addressed the Student's anxiety. Likewise, the next progress report, for the time period of 11/17/2021-11/16/2022, continuing the Student's eighth grade year and into his ninth grade year, the previous years goals and objectives were not closed out, but rather LPS reported progress on the new goals and objectives. Hundreds of documents were also submitted into evidence during the hearing, which appeared to be the missing progress monitoring reports. However, the documents that were submitted were incomplete, missing relevant and required information and were out of compliance with what the law requires for maintaining progress reports for IEP goals and objectives. Such examples of failure to properly report progress on the Student's goal and objectives is a failure to track the Student's progress, or lack thereof, and also precludes parental participation.

18. Another violation occurred when LPS failed to record present levels of performance concerning the Student's reading and social and emotional behavior. 20 U.S.C. § 1414 (d) (1) (A) (i) (IEP must contain a statement of the child's present levels of academic achievement and functional performance). An IEP is legally deficient where it fails adequately to identify student's behavioral impediments and to implement strategies to address that behavior. *See A.M. v. New York City Dep't of Edu.*, 845 F.3d 523, 535-36 (2d Cir. 2017). Deficiencies in this regard rise to the level of a procedural violation because they may result in an IEP that fails to address impediments either accurately or at all. *See Id.*, at 536. Although the summary from his December 9, 2021 IEP recognized the Student's struggles with, not only reading and processing, but anxiety as well, 'age appropriate' continued to be marked for social/behavioral/emotional. Informal support from the school psychologist is noted in the Student's December 9, 2021 IEP and continued to be included on the accommodations page, but with no explanation of the meaning or service hours allotted to it. None of the listed services in the IEP addressed the Student's anxiety whatsoever. The Student's progress, or, again, lack thereof, in reading and writing, and academics in general, which began many years ago, is clearly linked to the Student's anxiety and severe school avoidance, as pointed out by Dr. Neuropsychologist's second neuropsychological report of the Student. This anxiety and risk for anxiety was 'red-flagged' early on by both staff of LPS and privately hired professionals. Indeed, the Student was diagnosed with anxiety and depression in 2022. However, it was not until the fall of 2022, after dealing with anxiety, depression and school avoidance, that staff finally recommended in-school, psychological support for the Student. Even at the end of the Student's tumultuous eighth grade year, after accumulating 66 absences and 45 tardies, a school psychologist was not present at the June 9th 2022 PPT, nor were any psychological supports recommended. In fact, after hardly being in school at all since March of 2022, the PPT was only focused on the Student's transition to high school at the June PPT. Of

particular note is again, the LPS staff awareness of the Student's struggle with anxiety for many years and the repeated marking of him as age appropriate for social/emotional/behavioral as late as the June 9, 2022 PPT. The district also failed to appropriately report Student's present levels of performance in reading and failed to use measures consistently or in a way that could be tracked from year to year, leading to confusion about what Student's projected goals should be and precluding appropriate planning. To this point, it is again noted that upon hiring Ms. Advocate as their education advocate in the fall of 2022, the Parents made a FERPA request for their son's educational records and Ms. Advocate noted most of the final progress monitoring reports were missing. Ms. Director testified to attempting to find the missing reports and noting that the district "did not have great maintenance of records". Ms. Director also testified that the Student's absences affected record keeping efforts, although the FERPA request went back to before the Student was struggling with school attendance. Again, without proper record keeping of a Student's present levels of achievement and functional performance, LPS was not able to know whether the Student mastered goals and objectives for the year, thereby disabling the PPT from knowing and evaluating the efficacy of the program. Thus, LPS has not complied with procedural requirements of the Act under *Rowley*. And as noted in *L.O. v. New York City Dep't of Educ*, LPS's pattern of indifference to the procedural requirements of the IDEA, carelessness in formulating IEPs over the years, and repeatedly violating its obligations under the statute, deprives a student of the important educational benefits to which he is entitled by law. Compliance with the IDEA's procedural requirement is the responsibility of the LPS and not the parents, *Unified Sch. Dist. No. 1 v. Dep't of Edu.*

19. The second prong of the *Rowley* inquiry looks at whether LPS created an educational program that was reasonably calculated to enable the Student to receive meaningful educational benefits in light of his circumstances. *See Rowley*, 458 U.S. at 202; *Andrew F.*, 137 S. Ct. at 999. The "basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 202. FAPE is provided when an IEP is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 999. The Supreme Court clarified that the standard is markedly more than de minimis. *Id.*, 1000. The adequacy of the IEP turns on the unique circumstances of the child for whom it was created. *Id.*, 1001. An IEP must provide significant learning and meaningful benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182, 184 (3d Cir. 1988). FAPE exists when an IEP provides personalized instruction with sufficient support given to permit the student to benefit from that instruction. *Walczak*, 142 F.3d at 130.
20. LPS had indicated that the Student was at a third-grade instructional level for reading and had a goal of fourth to fifth grade for ninth grade, and as it had been for seventh and eighth grade. His November 10, 2021 IEP did not include a writing goal and while the November 10, 2021 IEP set a goal for Student to progress from a Lexile level of 515-655 despite the fact that no evidence of new growth was documented, one month later, the December 9, 2021 IEP provided that Student would improve his independent reading comprehension from a 675 Lexile level to a 750 Lexile level by the middle of ninth grade and included an objective that he be able silently to read a text at a 675 Lexile level. The Student's December 9, 2021 IEP included a writing goal that, using speech-to-text, the

Student would be able to generate a single three to five-sentence paragraph, even though similar or more ambitious goals had been set for him years earlier. For example, the May 2019 IEP contained a goal to write a five-sentence paragraph by the middle of sixth grade, and the November 12, 2020 IEP provided that, when presented with text from his content-area subjects at the 405 to 555 Lexile level, the Student would state the theme of the text and provide an objective summary of the text by writing at least three paragraphs by the middle of eighth grade. It is quite curious that if the Student accomplished his goals and objectives in ninth grade as set in the December 9, 2021 IEP, he was only expected to be able to dictate and edit a single three to five-sentence paragraph using assistive technology 80% of the time. Also concerning is the fact that the Student's writing goal for the middle of ninth grade was less ambitious than his writing goals from years earlier. It is noted that, in his seven years of special education in LPS, the Student was only noted to have mastered one reading goal, which occurred in fifth grade, and no writing goals.

21. Although the summary from his December 9, 2021 IEP recognized the Student's struggles with not only reading, writing and processing, but anxiety as well, age appropriate continued to be marked for social/behavioral/emotional. The informal support from the school psychologist continued to be included on the accommodation Counsellor; however, no explanation of what that meant or service hours allotted to it was explained. Going back to the PPT of December 9, 2021, it was clear the Student was struggling not only after a return to in-school instruction after a mostly unproductive time on remote learning, but after many years of struggle with reading and writing, ADHD and increasing anxiety surrounding school and being years behind academically as his same age peers. Moving into the winter and spring of 2022, Student was drowning academically in eighth grade, and his self-esteem was destroyed. While his Parents tried many avenues to help their son, the Student and the Parents were not met with support from the Student's team at LPS. The Student's schedule was shortened following an informal meeting on March 7, 2022. However, it is striking that between the PPT's of December 9, 2021 and June 6, 2022, no other PPT was called to address the Student's extreme anxiety surrounding school and his severe school avoidance. Instead, on April 26, 2022, the district made a non-emergent report of the Student's Parents to DCF for educational neglect. The Student stopped attending school completely on May 17, 2022 and LPS did not share classwork or homework assignments with the Student or the family. Repeated requests for a tutor for the Student were made by the family throughout the spring of 2022, but LPS only suggested the Parents hire a high school student to help the Student.. On May 25, 2022, Ms. Director emailed the Student's father that a PPT meeting would be necessary for the Student to be provided with a tutor and the Student's father responded that a PPT meeting was needed "ASAP" to help the Student. When a PPT finally convened on June 6, 2022, neither the Student's absenteeism nor a tutor for the Student was discussed, and the meeting focused on the Student's transition to high school and his possible attendance at Grasso Tech. At this meeting, it is also noted that the district continued to mark Student as age appropriate for social/behavioral/emotional in his IEP. ESY was not a recommendation made by the team to either address the Student's anxiety or academics.
22. A PPT meeting took place on September 20, 2022, at which LPS finally offered the Student forty-five minutes per week of counseling through ESS and homebound instruction was denied as LPS suggested to provide homebound instruction would only reinforce the

Student's school avoidance. With limited Student engagement with ESS, a PPT was held on October 26, 2022. During this meeting, LPS finally offered the Student O.G. instruction which the Parents had been requesting for years. However, LPS would only provide such instruction to the Student at the high school during the school day. To offer a Student O.G. instruction only to be provided at school when the Student clearly suffered from extreme school avoidance seems counterproductive. It is noted that LPS was also offering the Student help to return to school through ESS, but by late October of 2022 it appears the offerings of LPS were too late to assist a child who had severe school avoidance and who was also years behind his same-age peers academically. Essentially, the program offered by LPS was not appropriate for the Student as it presented a program that he was unable to access.

23. LPS set a goal for the Student that by the middle of tenth grade he was to be reading at a third- to fourth grade reading level. The Student is a student of above-average intelligence; however, the years of specialized instruction provided by LPS did not close the gap for the Student and his IEPs were not reasonably calculated to enable him to make progress appropriate to his circumstances. Looking at the years in question in this case, in 2021-22 the LPS failed to provide Student with a FAPE as its IEP was inadequate to address either his reading deficits or his growing school-based anxiety and school avoidance. When in his ninth grade year, the 2022-2023 school year, LPS did offer the Student O.G. reading instruction which had been recommended for years, but the Student was not able to access the curriculum due to his anxiety and school avoidance. The Student was not offered FAPE during these two school years. Likewise, special education students are to be educated in the least restrictive environment that is appropriate and consonant with their needs so as to protect students with special needs from being inappropriately segregated. *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 161 (2d Cir. 2014). IDEA's LRE requirement was meant to prevent schools from segregating a student from the general student body, not necessarily to restrict parental options when the public schools fail to comply with the requirements of the IDEA. *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 837 (2d Cir. 2014). "When a public school district . . . denies a child with a disability a FAPE, a private placement is not inappropriate merely because the environment is more restrictive than the public-school alternative. When a child is denied a FAPE, his parents may turn to an appropriate specialized private school designed to meet special needs, even if the school is more restrictive." *Id.*, at 830. The environment the Student found himself in both in the spring and fall of 2022 was very restrictive for him as he had no access to academic support, no contact with peers and no social/emotional support from LPS. Essentially the Student was left dangling in the wind on his own, isolated at home with his Parents trying all they could to support their son while trying to get him back to school.
24. In looking at the unilateral placement that was made by the Parents after reviewing several out placement programs as suggested by Ms. Director, it is noted that "A private school placement is not held to the same FAPE standard as a public school", *See Florence County v. Carter*, supra, 510 U.S. at 14; see also *M.S. v. B.O.E., City of Yonkers*, 231 F.3d 96, 105 (2d Cir. 2000) (recognizing that private schools may not be held to the same mainstreaming requirements as a public school), abrogated on other grounds by *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). The lack of related services at the parents' proposed placement does not require a finding that

the parents' proposed school is inappropriate. *M.H. v. New York City Dept. of Edu.*, supra, 685 F.3d at

25. The determining factor is not whether the private placement is perfect but that it is appropriate. *Warren G. v. Cumberland County Sch. Dist.*, 190 F. 3d 80, 84 (3d Cir. 1999). The private placement need only confer some educational benefit to the student. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 989 (8th Cir. 2011); *Warren G.*, 190 F.3d at 85. Thus, the Parents "need only demonstrate that the placement provides 'educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.'" *Frank G. v. Board of Edu. of Hyde Park*, 459 F.3d 356, (2d Cir. 2006), citing *Rowley*, 458 U.S. at 188-89. A Hearing Officer is entitled to order a school district to reimburse parents for a private- school placement if it determines that the placement, rather than the proposed IEP, is appropriate under IDEA. *School Comm. of Burlington v. Dep't of Edu. of Mass.*, 471 U.S. 359, 369-70, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985).

LPS argues that 'a residential placement is warranted only when it is essential if the child is ever to make any academic progress.' *Walczak v. Florida Union Free School District.*, 142 F.3 D. 119, 131 (2nd Cir. 1998). However, given the myriad issues the Student now deals with as a result of a lack of support for reading, writing, and ADHD which extend back far beyond the years in question in the case, the placement at Oxford Academy where he attends six days and six nights a week is exactly what he requires to make academic progress. The Student has been very far behind academically for many years which has led to what can be described as almost a complete break down of his life in all areas. Both he and his parents seem to suffer from severe distrust with LPS which is evidenced by their attempts to have the Student attend other schools such as Grasso Tech and Marine Science. The Student suffered from such extreme school avoidance in his 8th and 9th grade years, a wraparound continuum of care with supports and services for academics and his social/emotional issues is precisely what the Student needs to become a functional and responsible 10th grader.

At Oxford Academy, the Student receives specially designed instruction to meet his unique needs, as well as the services necessary to enable him to benefit from that instruction and confers educational benefit that is appropriate for him. Oxford is a six-day a week program with classes in twenty-minute blocks as opposed to the 84-minute blocks the Student was offered at LPS. Following each class, the Student goes to study hall. The Student receives direct one-to-one instruction in his core classes each day, in addition to the numerous study halls where he can ask questions of staff and seek clarification. Based on its one-to-one instructional model, Oxford has met the Student where he is, and has eliminated the possibility where the Student would feel embarrassed or ashamed in class. Oxford has provided reading instruction with a certified English teacher who has taken the 30-hours O.G. classroom educator course. The Student also continues to work with the O.G. certified reading instructor provided by the Parents through Blueprint twice a week to work on lessons in reading and spelling. The O.G. associate level certified reading instructor also regularly collaborates with the Student's teachers at Oxford so they all can work with the same texts to support the Student's reading progress. Oxford also provides opportunities for social/emotional skill development and provides the Student with an academic preparation course to focuses on executive functioning skills. Oxford also

provides a licensed therapist on staff who works with the Student for twenty minutes, three times a week to address the Student's needs. The Student also continues to receive therapeutic support once every other week outside of Oxford which is provided by the Parents. Oxford uses state and national standards as the basis of its curriculum while customizing the curriculum for each individual student. The Parents receive a weekly progress report and the Student returns home on Saturdays after participating in weekly assessments. The Student has regular interaction with peers and is back to participating in extracurricular activities. It is notable that since the Student's placement at Oxford in January of 2023, he has experienced very little trouble with attendance or tardiness, save for a week for illness and a period of adjustment when beginning at Oxford. The Student spends time with his friends from LPS when he is home and has reported he misses school when home and views Oxford as his "second home". In short, the Student repaired and developed his confidence while at Oxford, enjoys academic success and does not struggle with school avoidance. The private placement is appropriate for the Student, it has been demonstrated that the placement provides 'educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction', and the placement confers educational benefit to the Student.

26. LPS also points to *Doe v. Cape Elizabeth School Department*, 382 F.Supp. 3d 83 (2019) saying "Reimbursement is contingent upon a showing that the parents diligently pursued the provision of appropriate services for the public school system, yet the school system failed to provide the services; and that the private placement is a suitable alternative." *Id.* The Parents in this case gave LPS many years to provide appropriate reading and writing supports for their child and waited hopefully as their son fell further behind academically and faced increasing challenges behaviorally. There is no evidence to support that the Parents in this case were anything but diligent in looking to LPS for FAPE for their son, while also seeking out supports and services on their own when the Student continued to struggle. Finally, the Parents were also diligent in looking at the suggestions made by LPS for out of district placements for their son. Too much time has gone by for this Student to receive FAPE through no fault of his own or his parents.
27. The Student also seeks a compensatory education award in this case. Impartial hearing Officers have broad discretion to fashion appropriate remedies in due process cases, including to award compensatory education as an equitable remedy for denial of FAPE. *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285 (11th Cir. 2008); *M. C. ex rel. J.C. v. Central Regional School District*, 81 F.3d 389, 397 (3rd Cir. 1996); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005).
28. Compensatory education should be designed as a "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he would have occupied absent the school board's failures." *Reid*, 401 F. 3d 516 at 518, 524-27. An award of compensatory services is not based on an established logarithm, but instead on equitable considerations. *Id.* at 524. Equitable factors are generally relevant to the calculation of remedies in special education cases. *C.L. v. Scarsdale Union Free School District*, 744 F.3d 826 (2nd Cir. 2014).
29. The Student is entitled to compensatory education remedy, because there was a denial of FAPE by LPS.

FINAL DECISION AND ORDER:

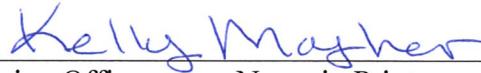
1. The Student was denied FAPE for the 2021-2022 and 2022-2023 school years, including ESY for 2021 and 2022.
2. Placement at Oxford Academy (including board) is the appropriate placement for the Student for the second half of the 2022-2023 school year and the 2023-2024 school year.
3. The Parents are entitled to reimbursement for their unilateral placement of the Student at Oxford Academy for the second half of the 2022-2023 school including ESY for 2023. LPS is hereby ordered to place the Student at Oxford Academy for the 2023-2024 school year including ESY for 2024.
4. The Parent's request to be reimbursed for the private therapy provided to the Student from May of 2022 through present is Granted. The Parents will be reimbursed for private therapy from May 1, 2022 through the date of this decision, November 14, 2023.
5. The Parents request for reimbursement of O.G. instruction from Blueprint Learning from November of 2021 until the date of this decision, November 14, 2023, is Granted.
6. The Parent's request that the LPS pay for two sessions per week with Blueprint Learning for O.G. reading instruction to help compensate for the Student's reading deficits resulting from the denial of FAPE while attending school in LPS is Granted as compensatory education. The costs of O.G. instruction from Blueprint Learning will continue to be paid by LPS through August 1, 2024.
7. The Parent's request to be reimbursed for the costs associated with Dr. Neuropsychologist's 2022 neuropsychological re-evaluation is Granted.
8. The Parents request for attorney's fees is Denied.

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).



Hearing Officer Signature



Hearing Officer Name in Print