

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Student:

Attorney Melissa Gagne  
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76 Route 37 South  
Sherman, CT 06784

Appearing on behalf of the Board:

Attorney Abby Wadler  
Assistant Town Counsel  
101 Field Point Circle  
Greenwich, CT 06830

Appearing before:

Attorney Jane Ford Shaw  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board of Education violate Child Find duty by failing to evaluate the Student in all suspected areas of disability?
2. Did the Board of Education deny the Student a Free and Appropriate Public Education for the 2022-23, 2023-24 and 2024-25 school years?
3. Was the IEP provided for the 2022-23 school year appropriate to meet the Student's needs?
4. Was the IEP provided for the 2023-24 school year appropriate to meet the Student's needs?
5. If not, was Winston Prep the appropriate program to meet the Student's needs for the 2023-24 school year, commencing February 2023?
6. If not, was Winston Prep the appropriate program to meet the Student's needs for the 2023-24 school year, from September through December 31, 2024?
7. If Winston Prep is the appropriate program for the Student from February 2024 through December 31, 2024, should the Board be ordered to reimburse the Parents for the cost of Winston Prep for the period of the Student's enrollment, including transportation costs?
8. Should the Board immediately convene a PPT to develop an appropriate program for the Student for the remainder of the 2024-25 school year?
9. Is compensatory education appropriate?

**PROCEDURAL HISTORY:**

The Student filed this request for special education due process hearing on March 28, 2024. The Impartial Hearing Officer was appointed to hear the case on April 1, 2024. A prehearing conference was held on May 20, 2024. Attorney Melissa Gagne appeared on behalf of the Student and Attorney Abby Wadler appeared on behalf of the Board.

The deadline for issuing the final decision was initially set as June 11, 2024. The mailing date for the final memorandum of decision was extended upon motion by the parties to July 11, 2024. Plaintiff's counsel requested a second extension of the mailing date due to a serious medical procedure scheduled for July. The Board indicated they had no objection and the request to extend the mailing date was granted. The mailing date for the final memorandum of decision was extended to August 15, 2024. Hearings commenced on August 15, 2024, and the mailing date of the final memorandum of decision was extended to allow for the hearings. At the conclusion of testimony, a briefing scheduled was agreed to with mutual briefs filed on December 13, 2024, and the final memorandum of decision to be filed by January 27, 2025. On January 20, 2025, Counsel for the Parent requested a prehearing conference to address a post-hearing issue involving the student current enrollment in Winston Preparatory school. A prehearing conference was held on January 22, 2025, where counsel for the Parents reported that the Student's enrollment at Winston Preparatory School had been terminated and requested permission to open the hearing to allow the Parent to amend the claims for relief. The Counsel for the Board appeared at the prehearing conference and reported no objection for the limited purpose of amending the claims for relief. Prior to the February 11, 2025, hearing, Counsel for the Board reported to the Hearing Officer and Counsel for the Parents that she was unable to represent the Board in this matter due to an unrelated legal matter involving the Greenwich Board of Education. She advised that the Board would be represented by Dr. Stacey Heiligenthaler at the February 11, 2025, hearing. On February 11, 2025, a hearing was held for the limited purpose of amended the issues before this Hearing to allow for the amendment of the claims for relief. The issues as amended are listed herein. The Mailing date for the final memorandum of decision was extended to March 28, 2025.

Evidentiary hearings were conducted on August 15, 2024, September 9, 2024, September 19, 2024, October 15, 2024, October 21, 2024, October 22, 2024, October 24, 2024, October 29, 2024, and February 11, 2025.

The following witnesses testified:

Student's Mother

Student's Father

[REDACTED], Case Worker

[REDACTED] Special Education Teacher

[REDACTED], School Social Worker

[REDACTED], Constellation Therapy

Assistant Principal Western Middle School  
Former Assistant Principal/Current Principal Western Middle School  
Winston Preparatory School  
, a Connecticut registered occupational therapist with a Board  
specialty in pediatrics

Hearing Officer Exhibits HO1 through HO 4 were entered as full exhibits. Student Exhibits P1 through P90 were entered as full exhibits. The Board's Exhibits B1 through 66. were entered as full exhibits. On February 18, 2025, Board's counsel represented to all parties that the non-related litigation had been resolved, and she was able to continue to represent the Board in this matter.

### **SUMMARY:**

Parent argues that the Board failed to provide the Student FAPE for the 2021-22, 2022-23 and 2023-24 school years by offering the Student an IEP that was neither procedurally complaint nor substantively appropriate. The Parent argues that the Board failed to provide FAPE to the Student by failing to conduct a Functional Behavioral Assessment despite multiple documented behavioral challenges which impeded the Student's ability to access to education during the 2022-22, 2022-23 and 2023-24 school years; by offering an IEP which failed to identify the Student's challenging behaviors or appropriate strategies for which to address those behaviors; by failing to provide appropriate support and services for areas in need identified by the Board's own evaluations; by failing to offer adequate goals and objectives to allow the Student to make progress; by failing to convene a PPT during the 2023-2034 school year; and by removing the behavioral and writing goals from his 5/25/2023 IEP. Parents also argue that the Board violated Child Find provision of the IDEA by failing to identify the Student as eligible for special education and related services until May 2020. Moreover, Parents argue that because of these violations, they unilaterally placed the Student at Winston Prep and now seek reimbursement for the cost of the unilateral placement for February 2024 through December 2024. The Board contends that it has provided an appropriate IEP for the 2021-22, 2022-23 and 2023-24 school years in the least restrictive environment for the Student; that Child Find was not violated because the Student was evaluated and determined ineligible for special education in the second grade having tested in the Average range in all areas except fine motor. As a result of the initial assessment, the Student received a 504 Plan. Moreover, Winston Preparatory School is not an appropriate program in the least restrictive environment for the Student.

### **STATEMENT OF JURISDICTION:**

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

**FINDINGS OF FACT:**

1. The Student is presently 14 years old and is in the ninth grade.
2. A March 31, 2016, initial occupational therapy (hereinafter "OT") assessment conducted by a private provider engaged by the Parents concluded that the Student demonstrated fine motorskills challenges, as well as body awareness and sensory processing challenges and recommended OT services. The Parents shared this evaluation with the Board. (B Ex-8). This evaluation did not assess the Student with dysgraphia.
3. On October 25, 2017, the Student was referred for an initial evaluation of special education services and a multidisciplinary evaluation was conducted by the Board. (B Ex. 40,41). The OT evaluation conducted concluded "...on the BOT-2 [the Student's] overall total scores for fine motor control, manual coordination and bilateral coordination were in the *below average* rating. Throughout the evaluation, [the Student] demonstrated immature grasping patterns (such as an immature grasp on a writing tool) difficulties coordinating movements (i.e. during wheel barrow, walking, catching/dribbling a ball)...Overall [the Student] falls within the *some problems range* for his total sensory processing score on SPM-Classroom Forum and...*some problems range* in the areas of Hearing, Body Awareness and Balance and Motion. The evaluation recommended OT Services (B. Ex-41).
4. On November 11, 2017 a PPT was held and the Student was referred for 504 services. The Student was found to be ineligible for special educational services due to scoring *Average-Normal* in most areas of the assessment. The multidisciplinary assessment did note the classroom teacher reporting that... "[the Student] doesn't pay attention to details, therefore makes careless mistakes. [The Student] gives up easily on difficult tasks, has trouble concentrating, and avoids things that require sustained concentrating and avoids things that require sustained effort." The teacher also reported that the Student is "often easily annoyed by others and blames others for his mistakes/misbehavior. Parent form (psychological evaluation) was not completed in time for submission of [the] report." (B Ex-40).
5. The 504 Plan offered by the Board included Tier II intervention support for OT twice per week for 30 minutes and counselling for 30 minutes per week in a group and 15 minutes per week as push-in to the classroom. (B Ex 35). The June 21, 2018 progress report for OT services indicated a focus on "increasing fine motor skills, graphomotor skills and hand/upper extremity strength. (B. Ex-35).
6. In November 2019, the Parents engaged [REDACTED], Ph.D for a clinical neuropsychological evaluation.(B Ex-33).
7. [REDACTED] diagnosed the Student with Dysgraphia noting that, "[the Student] does have a specific deficit in his motor and perceptual skills. To explain, [the Student]

- struggles with complex perceptual process, and this unrelated to his basic vision. [The Student] struggles with the perceptual process rotation in space, visual closure and more complex discrimination. This in turn, affects constructional skills and real-world tasks, such as copying shapes, designs accurately, but surprisingly not his hand-eye coordination....[The Student] does have Dysgraphia. His writing skills at the level of character formation, legibility of print and graphomotor are quite poor. He is already showing below grade-level spelling, sentence structure and elaboration and organization of his writing." (B. Ex-33).
8. [REDACTED] recommended that the Student be supported in the mainstream classroom. "Greater use of small group instruction is called for to supplement classroom lessons given his writing deficits. I would target small group instruction more so for writing three times weekly. Due to his significant fine and graphomotor deficits, OT twice a week targeting those skills exclusively is called for." (B.Ex-33).
  9. [REDACTED] also recommended a behavior intervention plan as follows: [The Student's] teacher should meet with the Student briefly in the morning and afternoon to monitor his progress and provide him with ongoing feedback concerning his classroom work. Build "catch up" time into the school day to allow the [Student] to finish any assignment he falls behind. (B. Ex-33).
  10. [REDACTED] evaluation and recommendations were reviewed by PPT in January, 2020. While the Student was not determined to be eligible for special education services at that time, the PPT agreed to conduct a multidisciplinary evaluation. The 504 accommodations remained in place. (B Ex-32).
  11. The initial multidisciplinary evaluation was conducted by the Board on February 3 and March 3, 2020. (B. Ex-30). The psychological assessment conducted by the Board included a Behavioral Assessment System for Children - Third Edition, (BASC-3) completed by both Parent and Teacher conflicted in the area of overall social, emotional and behavioral functioning. The parent reported behavior falling in the *normal* limits and teacher reporting *elevated* levels in the areas of: conducting problems, somatization, attention and learning problems, atypically, withdrawal, leadership and study skills. (B. Ex-31) The evaluation noted similar results in [REDACTED] evaluation. The classroom teacher noted "[the Student] has a short attention span, is easily distracted and makes careless mistakes. He "often" acts confused and is disorganized. [The Student] has trouble keeping up in class and performs poorly on school assignments. He has trouble making new friends and often complains about his health. He is not highly motivated and at times does not work well under pressure. [The Student] "often" uses other's things without permission, sneaks around, and "sometimes" lies and gets in trouble." (B. Ex-30). The Parent reported "executive functioning issues, specifically with organizing, losing his homework, failing to turn it in, etc. He also has dysgraphia and is being bullied/treated poorly by a few boys at school. The teacher described the Student "as respectful and good natured" however, she is concerned about his organization and overall executive functioning..." (B. Ex-30).

12. On May 27, 2020, a PPT meeting was convened to consider the results of the multidisciplinary assessments and the Student was determined to be eligible for special education services under Other Health Impairment/Attention Deficit Hyperactivity Disorder (OHI/ADHA) eligibility category. (B-Ex-29).
13. May 27, 2020 IEP noted concern/challenges to include that "[the Student] utilizes a fist grip when writing, and demonstrates decreased graphomotor control and decreased legibility of written work. [The Student] also presents with low tone and decreased endurance during graphomotor and keyboarding tasks, resulting in [the Student] becoming quickly fatigued." These challenges were deemed to "impact [the Student's] performance, participation and independence throughout the day at school." (B Ex-29). During the May 27, 2020 PPT meeting, the Parent "questioned whether LD would be a better classification due to [the Student's] Dysgraphia." (B-Ex-29).
14. The Student's May 27, 2020, initial IEP contained four (4) Academic goals, Two (2) Social/Behavioral Goals, Two (2) Occupational Goals and One (1) Study Skill goals.
15. The Social/Behavioral Goals and objectives were:  
Goal 5: With the use of a list of strategies, the Student will learn and apply ways to be actively engaged/attentive during assignments.  
Objective 1. During counselling sessions, [the Student] will state strategies to help attention and task completion (restate directions, gather appropriate materials, create and use a to do list, use a rubric to reflect on work production,  
Objective 2. During counselling sessions, with the use of a rubric, the Student will rate his attention to the task and reflect on his work production.  
Objective 3. In the classroom, given no more than 2 verbal prompts, the Student will demonstrate strategies to help attention and task completion (restate directions, gather the appropriate materials, create and use a to-do list, use a rubric to reflect on work production.)  
Objective 4. In the classroom, given no more than 2 verbal prompts, the Student will sustain attention to an assigned task up to 60% of the time across five minute observations; and  
  
Goal 6: [The Student] will increase his awareness of how his behavior comment impact others perspectives and feelings.  
Objective 1. With visuals and verbal prompts, [REDACTED] will identify non-verbal cues in others (facial expression, body language, tone of voice) to understand how they are feeling.  
Objective 2. With visuals and verbal prompts, the Student will identify expected and unexpected behaviors in himself and in social scenarios.  
Objective 3. With visuals and verbal prompts, [the Student] will identify how his behaviors and comments make others feel using a social behavior map.  
Objective 4. During counseling sessions, with visual and verbal prompts [the student] will demonstrate socially expected behaviors and comments.

- Objective 5. During unstructured play times, with verbal prompts, [the Student] will interact with peers in an appropriate manner through maintaining personal space and socially appropriate comments. (B. Ex-29).
16. The May 27, 2020, PPT agreed to the implementation of Assistive Technology by way of SPEECH to TEXT software. (B-Ex.24). This modality was suggested as a way to help the Student "to attain that attention to and successfully complete assessments or any - any work, just using the software as assistive technology." (Testimony Youngmans 9/29/2024).
  17. The Student attended the Western Middle School during the 2020-21 school year. The Student was in the sixth grade.
  18. [REDACTED] was the clinical social worker assigned to the Student's PPT during the Student's 6th, 7th and 8th grades, as such she was responsible for the Student's social and emotional goals. (Testimony [REDACTED] 10/23/2024). [REDACTED] "owned" the Student's social behavioral goals. (Testimony Powers 10/22/2024).
  19. [REDACTED] shared a good rapport with the Student during his 6th grade year at Western Middle School. (Testimony [REDACTED] 10/23/2024). She described the Student as "pretty distracting and fidgety." (Testimony [REDACTED], 10/23/2024). Ms. [REDACTED] worked with the Student on social-emotional goals which would address "what it is that we want him to do within the class to be able to access the curriculum better." (Testimony [REDACTED] 10/23/2024).
  20. Goals 5 and 6 of the Student's IEP were designed to address "what it is that we want him to do within the class to be able to access the curriculum better?" and to assist the Student "to recognize when he was off task in the classroom and to be able to implement a strategy to remain in class to complete work." (B. Ex-24, Testimony [REDACTED] 10/22/2024).
  21. [REDACTED] was the Special Education Teacher and case manager of the Student's IEP for the Student's sixth and seventh grades. The Student and Ms. [REDACTED] had a good relationship and the Student opened up to her initially. (Testimony [REDACTED] 9/19/2024, 10/21/2024).
  22. [REDACTED] is the special education supervisor in charge of the PPT process at Western Middle School over all of the PPT meetings while the Student attended Western Middle School. (Testimony [REDACTED] 8/15/2024).
  23. The Student was cooperative at the beginning of 6th Grade. The Student enjoyed a good rapport with [REDACTED] and the Student would come in to see her on his own. (Testimony [REDACTED] 10/23/2024) The Student used chrome book as an accommodations. (Testimony [REDACTED] 9/5/2024). (Testimony [REDACTED] 10/22/2024)
  24. The Student's IEP for the 2021-2022 school years contained 4 Academic goals, 2 Social/Behavioral goals and 2 Gross/Fine Motor Skills goals. B Ex-21). His Social

Behavior Goals and Objectives were:

Goal 5: [The Student] will improve his active engagement in the general education setting by utilizing organizational skills, task initiation and self-monitoring.

Objective 1: Given one verbal prompt and a visual checklist, [the Student] will create a system for organizing personal items in his binder.

Objective 2: Given one verbal prompt, [the Student] will initiate the expected task within one minute.

Objective 3: In the classroom, given a visual and 2 verbal prompts, [the Student] will demonstrate strategies to help attention and task completion (restate the directions, gather the appropriate materials, use a checklist to self-monitor work production).

Goal 6: [The Student] will improve his social skills by developing appropriate ways to make and maintain friends.

Objective 1: During counseling sessions, [the Student] will identify at least 4 behaviors that maintain friendships (i.e., active listening, encouraging/praising others, participating equally, sharing ideas, etc).

Objective 2: During counselling sessions, [the Student] will identify at least 4 conversation-starters and topics.

Objective 3: During counselling sessions, [the Student] will initiate and begin a back and forth conversation exchange (utilizing previously identified topics, for example; greeting and asking about a shared interest, such as a TV show, or asking if the peer enjoys crafts/art) with peers for 5 conversational turns. (B Ex-21).

25. By the middle of the 6th grade year - 2021-22, the Student was exhibiting work avoidance and by the end of the year, impulsivity, attention difficulty were getting "more challenging" (Testimony Youngmans 10/21/2024) Despite this, the Student's Social/Behavior Goals 5 and 6 were reported as mastered in the February 2022 progress report. (B Ex 20).
26. Ms. [REDACTED] noticed that "[the Student's] impulsivity, and like, attentional piece and difficulty, like were increasing...."(Testimony, [REDACTED] 9/19/2024). During his 6th Grade, the Student was receiving disciplinary consequences for behaviors directly related to his disability, i.e., lunch detentions and removal from the classroom (Testimony [REDACTED] 8/15/2024).
27. A "Point Sheet" was added to the Student's IEP at the March 2022 PPT. A Point Sheet allows the Student to earn points for behavior which results in a reward to the Student. An example of reward available to the Student would be a homework pass. If the Student completed his classroom work, he could earn a pass from homework assignments. The Student would carry the point sheet in his binder from class to class and bring the sheet to each teacher to sign off on the sheet. If he did not place the point sheet on the teacher's desk, the teacher would prompt or remind the Student. (Testimony, [REDACTED] 1/15/2024 Testimony [REDACTED] [REDACTED]. If work was not completed during the day, the Student would have the ability to stay after school with a staff member to do the work. (Testimony [REDACTED] 9/5/2024) "...[S]o what



- happened is instead of the homework just kind of not getting affected by the homework piece, we all decided, you know, we just wanted him to complete his class work. (Testimony [REDACTED] 10/21/2024). The Point Sheet would then be brought home to the family and is ultimately tied to a reward, i.e. a favorite food. It was designed to reduce negative behaviors and to improve positive class behaviors. (Testimony [REDACTED] 5/2024 [REDACTED] 10/21/2024).
28. The Board considered the Point Sheet a positive behavioral plan. The Student could earn things if he had a good day. (Testimony [REDACTED] 10/21/2024). At the annual review in 6th grade in May 2022 the Point Sheet were deemed effective in that the Student was "doing much better at his annual. His grades were up because he was completing more classwork and homework. He was utilizing the Point Sheet more consistently which means that he was making sure the teachers were signing it after each class and checking out and that his behavior improved. And I was able to look at the date regarding lunch detentions for distracting behaviors, which were ten in Quarter 1, down to 2 Quarter 3." (Testimony [REDACTED], 10/22/2024). The Student checked out with either Ms. [REDACTED] at the end of the day to see how the day went. (Testimony [REDACTED] 8/15/2024). While the Point Sheet was listed as modifying homework expectation as an accommodation, it was not incorporated in the Student's IEP as a goal/objective. (Testimony [REDACTED] 10/21/2024).
29. The Student was in the 7th grade during the 2022-23 school year. Ms. [REDACTED] remained the Student's case manager for the Student's 7th grade. (Testimony [REDACTED] 9/19/2024). Ms. [REDACTED] as the Assistant Principal continued to oversee the special education program, as well as ran many of the PPT meetings. (Testimony [REDACTED] 8/15/2024).
30. The Parents were engaged in their child's education at all relevant times. (Testimony Mother 10/29/2024) Both school officials and parents report regular contact between school and home. (Testimony [REDACTED] 10/21/2024 (P. Ex-1-75)).
31. Ms. [REDACTED] describes the Student's behavior in the 7th Grade as "a lot of distracting classroom behaviors, so it would be talking out of turn, talking to others, maybe getting out of his seat; so, kind of the distracting behaviors that go along with what his disability was, which is what we mostly saw." (Testimony [REDACTED] 8/15/2024).
32. Discipline in 7th Grade consisted of lunch detentions and being sent out of class. (Testimony [REDACTED] 15/2024).
33. Despite making satisfactory progress toward his writing goal in 6th grade, the Student's November 2022 and December 2022 progress reports indicated that the Student's progress declined in all of his writing objectives. (Testimony [REDACTED] 10/21/2024). The Student was exhibiting "complete work avoidance" while he was in the 7th Grade. (Testimony [REDACTED] 19/2024).
34. No functional behavioral assessment was performed in the 2022-2023 school year because the Board was familiar with behaviors displayed by students with attention

deficit disorder. (Testimony [REDACTED], 8/15/2024).

35. At the February 23, 2023 PPT, the Student continued to utilize the Point Sheet as the behavioral intervention. The February IEP reported that the Student was "utilizing the point sheet more consistently since the start of January 2023 to improve behavior in class." The PPT reported that the Student had decreased his lunch detentions for distracting behaviors from 10 detentions in Quarter One to 2 detentions in Quarter Two. (Ex. 19b).
36. The Student's February 2023 progress reports however, conflict with the Student's February 2023 IEP. (B Ex-19b) The February 2023 progress report indicated that the [Student] "mastered" his 2 social and behavioral goals 7 and 8.
37. The Student's February 23, 2023, IEP included two social and behavioral goals. (P Ex. 2).
  - Goal 7: [The Student] will participate in class appropriately."
  - Objective 1: In general education setting with no more than two verbal prompts. [The Student] was able to correct disruptive behavior across six opportunities.
  - Objective 2: In the general education setting with no more than one verbal prompt, [the Student] will correct disruptive behavior in class across six opportunities.
  - Goal 8: In the general education setting with no more than two verbal prompts.
  - Objective 1: In the general education setting with no more than two verbal prompts, [the Student] will correct his off-task behavior to complete the expected classwork.
  - Objective 2: [The Student] will independently remain on task to complete the expected classwork across six opportunities." (B Ex 2).
38. Despite the related progress reports indicating that the Student has *mastered* Goals 7 and 8, the February 23, 2023 IEP states that the Student "inattention and impulsivity hinders his involvement and progress in the general education curriculum and requires behavioral interventions and supports". The IEP further recorded that "based on teacher reports and observations, [the Student] is consistently not prepared for class with required materials. Teacher have reported [the Student] is inattentive to the lesson and is distracted by internal and external stimuli. [The Student] has a difficult time completing classwork and homework on time and to teacher expectations. (B-Ex 19b).
39. The February 23, 2023 IEP further states contrary to the progress notes, that "[the Student] impulsivity and distractibility impact his performance in the general education and needs accommodation such as separate setting, class notes, preferential seating near teacher for 14 prompting behavior cues to stay on task. (B-Ex 19b).
40. The February 23, 2023 reported the Student's present level of Academic Achievement as D's and F's . (B Ex.19b).
41. Despite the failing grades, the Student's case worker responsible for the Student's academic goals did not propose or suggest and further academic interventions or

- additional services for the Student's IEP. (Testimony [REDACTED] 10/21/2024).
42. Despite the failing goals and unsatisfactory progress reported on the IEP, the February 25, 2023 PPT, removed the Student's writing goals and objectives completely from his IEP. (Testimony, [REDACTED] 10/21/2024).
  43. The February 25, 2023 PPT, also removed the Student's *direct* OT goal services from his IEP and replaced it. (Testimony [REDACTED]s 10/21/2024) (Testimony [REDACTED] 08/15/2024).
  44. The February 23, 2023 IEP did contain accommodations including extended time, separate setting (1:1 testing), preferential seating near the source of instruction, a behavioral contract (point sheet), adapted paper for math, break down long assignments, frequent movement breaks, Digital Graphic Organizer for writing assignments, option to type notes and responses on assignments and assessments. (B Ex.-19b). Typing notes and responses was an accommodation for the Student's handwriting and allowed the school to get more information on what the Student actually knew. (Testimony [REDACTED] 9/24/2024 B. Ex-19C).
  45. In the area of Functional Performance, the PPT reported "concern/needs to include "based upon teachers' and self-reports, as well as point sheet data, [the Student] requires 3 or more verbal prompts to correct distracting behavior (i.e., burping, shouting at classmates, putting his hands on classmates and/or materials in class in an average of 5 classes out of 9 a day." The February 25, 2023 PPT also reduced the Student's counseling service time. (Testimony [REDACTED] 10/22/2024).
  46. From February 2023 through May 2023, the PPT were conducting the triennial reevaluations of the Student in the areas of academics, behavioral/social/emotional and fine motor planning/occupational therapy. (B Ex. 19-C).
  47. A PPT was held on May 25, 2023 to address the triennial evaluations and consider Dr. [REDACTED] report. (B Ex.-19).
  48. Between March and May 2023, there were multiple behavioral incidents involving the Student which were documented on exchanges between teachers and Student's Mother including two lunch detentions. (P. Ex-25, B Ex-37) Once lunch detention occurred on the same day of the May 25, 2023 PPT. (Testimony, Mother 10/29/2024)( P Ex-34-36).
  49. Ms. [REDACTED] testified that the PPT understood the function of the Student's behaviors. "we understood the function. At that time, we thought we did, the inattention, the behaviors we were seeing, we really related to his difficulty attending, so we didn't feel we needed at functional behavioral assessment for that." (Testimony [REDACTED] 8/15/2024) The PPT did however, conduct a neuropsychological re-assessment.
  50. [REDACTED] who holds a doctorate degree in psychology conducted the reassessment of the Student. (B. Ex-54, Testimony [REDACTED] ) Dr. [REDACTED] report

- indicated that "the PPT had questions regarding [the Student's] inattention and distractibility as well as his impulsivity wondering whether his task avoidant are manifestations of what he can't do or what he won't do. Furthermore, the PPT also wanted to discover causes or reasons for his heightened level of inappropriate social interactions and oppositional defiant responses to staff directives." (B-Ex 54). Dr. [REDACTED] evaluation included classroom observations, review of records, consultation with Staff, Clinical interviews, Conners Continuous Performance Test 3rd Edition (Conners CPT-3), Conners Comprehensive Behavioral Rating Scales-Self Reporting, Parent and teacher Report, Beck Youth Inventories-Second editions (BYI-2) (B- Ex-54).
51. The CPT-3 assessment revealed a strong indication of inattention with some indication of difficulties in sustained attention. This was supported further in classroom observation where the Student "was observed to be on task 40% of the time during a group lesson while transactions to independent work time..." The CBRS self-rating endorsed High Average scores in emotional distress separation fears and physical symptoms. Clinically significant ratings were endorsed in Defiance/Aggressive Behaviors; Academic Difficulties; Hyperactivity/Impulsivity; and Violence Potential Indicator. (B. Ex-54).
  52. Dr. [REDACTED] noted that "...overall, it is suggested that the Student's defiance and poor and social interactions may manifest itself due to low self-esteem and low self-efficacy..."and concluded that the Student's "difficulties with attention and social, emotional and behavioral functioning adversely impacts his functioning at school as well as his social interactions with peers and staff." (B. Ex-54).
  53. Among other recommendations, Dr. [REDACTED] recommended that a positive behavioral plan be designed that incorporates reinforcements that are motivating and interesting as well as to provide behavioral strategies such as using statements such as When you....then...." (B. Ex-54).
  54. As part of Dr. [REDACTED] neuropsychological assessment, as the Student's case manager, Ms. [REDACTED] submitted rating scales where she rated the Student *'Very Elevated'* in the areas of emotional distress, upsetting thoughts and physical symptoms, separations fears, defiant and aggressive behaviors, academic difficulties, hyperactivity, social problems and violence potential indicator. (Testimony [REDACTED] 10/21/2024).
  55. As part of Dr. [REDACTED] neuropsychological assessment, Ms. [REDACTED] scored the Student in the *"very elevated"* category for ADHD predominately inattentive, ADHD predominately hyperactive and impulsive, conduct disorder, oppositional defiance disorder, manic episode. Generalized anxiety disorder, separation anxiety disorder, obsessive compulsive disorder and autism spectrum disorder. (Testimony [REDACTED] 10/21/2024)(B. Ex-54).
  56. Ms. [REDACTED] testified that there was a positive behavior plan in place at this time for the student. She testified there was a behavioral plan "...but it wasn't like a

documented functional plan....it wasn't in writing," (Testimony [REDACTED] 10/21/2024).

57. As part of her educational reassessment, Ms. [REDACTED] did have the occasion to observe the Student in a classroom setting. She observed the class as it viewed a video, "the Student was facing out towards the class. The Teacher stopped the video and asked a question and the Student was using his graphic organizer to poke the Student who was sitting in front of him. [The Student] struggled not to touch the Student in front of him and not following teacher's directions..." (Testimony [REDACTED] 10/21/2024) (B. Ex-54).
58. The Student scored "*very low*" in the sentencing combining" portion of the educational assessment. (Testimony [REDACTED] 10/21/2024) (B. Ex-54) Due to the Student's failure to produce a minimum of 30 words required for the essay composition, word count and essay theme development and organization on the writing portion of the educational assessment, no score could be recorded. (Testimony [REDACTED] 10/21/2024)(B. Ex-54).
59. The Student "demonstrates overall weakness in numerical operations, reading comprehension, written expression, and math fluency in addition. (Testimony [REDACTED] 10/21/2024).
60. Ms. [REDACTED] recommended in her re-evaluation that the Student "should continue specialized instruction in reading writing and math." (Testimony [REDACTED] 10/21/2024)(B Ex-53) No writing goal was added to the Student's IEP as a result as a result of the recommendation by Ms. [REDACTED] (Testimony [REDACTED] 10/21/2024).
61. At the May 25, 2023, the Parent requested the Point Sheet be removed from the IEP. The Parent explained that the Student viewed the Point Sheet as punitive and that it was not effective anymore. (Testimony Mother 10/29/2024, [REDACTED] 10/21/2024) If the Student didn't complete the class work, then he would stay after school to complete it... (Testimony [REDACTED] 10/29/2024) Mother reported that it was upsetting the Student. (Younghans Testimony 10/21/2024) (Testimony Mother 10/29/ 2024) B-Ex 19b). Ms. [REDACTED] agreed to remove the Point Sheet from the IEP In May 2023. The Parent understood other teachers agreed with the frustration over the point sheet. "I believe it was a few of his teachers as well had noticed that it wasn't working. But I'm the one who kind of brought up the topic because it just—it just was becoming more hurtful than helpful. Because it was usually negative comments so he would see them consistently after every class. (Testimony Parent 10/29/2024).
62. The Social Emotional Goal 1 - "Given a point sheet to monitor behavior and work completion [the Student] will discontinue unexpected behaviors (i.e., burping, shouting, touching peers and/or misusing materials) with not more than 1 verbal prompt from the teacher..." was discontinued by the PPT at the May 25, 2023 PPT meeting. ( B. Ex-16A). It was replaced with two goals:

- Goal 6: Given a real academic and/or social problem, [the Student] will appropriately self-advocate in class and solve the problem with the teacher and/or identified support person (i.e. social worker/guidance counselor)
- Objective 1: Given a hypothetical or real academic and/or social problem [the Student] will identify self-advocacy strategies and role play them across 6 opportunities by 11/30/2023.
- Objective 2: Given a real academic situation/problem [the Student] will utilize an identified strategy to self-advocate with a teacher to solve the problem across 8 opportunities by 01/31/2024
- Objective 3: Given a real social situation/problem [the Student] will utilize an identified strategy to self-advocate with a teacher and/or support person (social worker/guidance counselor) to solve the problem across 8 opportunities by 02/22/2024; and
- Goal 7: Given group work in the classroom setting [the Student] will identify, communicate, and complete his role to complete the group work to the set expectations by mastering the following objectives.
- Objective 1: Given a hypothetical group work task in the classroom [the Student] will identify strategies to communicate with his peers and role-play them across 6 opportunities by 11/30/2023.
- Objective 2: Given a group work task in the classroom setting [the Student] will identify and communicate his role to his peers across 5 opportunities by 01/21/2024.
- Objective 3: Given a group work task in the classroom setting [the Student] will complete his role within the group task across 5 opportunities by 02/22/2024.
63. At the May 25, 2023 PPT, the Student's counselling time was also reduced from 45 minutes to 30 minute. (Testimony [REDACTED] 8/5/2024).
64. The PPT also made a transition in occupational therapy from direct services to consult model. "There is no need for a specific; but [the OT] didn't want to remove everything totally. So, to stay involved and be supportive in a different way through the direct consult and team consult. (Testimony [REDACTED] 9/15/2024).
65. Despite the Student's Dysgraphia diagnosis and his inability to complete the writing portion of the educational assessment, no writing goal was developed for the Student at the May 25, 2023 PPT. (Testimony [REDACTED] 9/5/2024).
66. The PPT decided to assign the Student to Mr. [REDACTED] as his case manager for the 8th grade year. Mr. [REDACTED] was thought to be a teacher who may be able to connect with the Student. (Testimony [REDACTED] 9/5/2024).
67. At all relevant times of the Student's 8th grade the May 25, 2023 IEP was in effect. As a result the Student received OT on a consult basis, and his social/behavioral goals were in a group setting with no individual goals.
68. In the fall of the Student's 8th grade year, there was an increase in documented

- significant behavioral incidents. (Testimony █████ 8/15/2024). The Student reportedly demonstrated positive behavior at the beginning of the 8th Grade; however, peer interactions became more "unkind" and "negative." (Testimony █████, 9/5/2024). The Student's behavior was more "mean-spirited and targeted towards specific Students than in the 7th Grade. (Testimony █████, 9/5/2024). Ms. █████ noticed that in the 8th Grade the Student was more guarded and it was more difficult for him to talk than when he finished 7th Grade. (Testimony █████ 10/22/2024).
69. In late September 2023, the Student was involved in a physical interaction with another Student for which the Student was suspended for September 27, 2023 and September 28, 2023. (Testimony █████ 8/15/2024 B Ex-49).
70. After the September 2023 incident with the other Student, the Student was observed continuing to exhibit behaviors directed at the same Student and was observed to involve other Students to trigger the Student. As a result, a bullying investigation was initiated. (Testimony █████ 8/15/2024, Testimony █████ 9/5/2024).
71. An investigation conducted by the Assistant Principal █████ resulted in a finding of bullying on part of the Student. (Testimony █████ 8/15/2024). The Parent's appealed the bullying finding. A review of the bullying finding was conducted by the Assistant Superintendent who denied the appeal (B-56). The Parents disagreed with the finding of bullying. (Testimony Father 10/ 23/ 2024)
72. After the bullying finding was made, a Safety Plan was put in place. The Safety Plan was not made part of the Student's IEP. The Safety Plan required that the Student have alternate outside recess times with the other Student so the two students would not have recess at the same time. While the Student remained indoors for recess, he would be allowed to have friends remain inside with him for recess. (Testimony █████ 8/15/2024).
73. In addition, as part of the Safety Plan, the Student was offered Effective School Solutions ("ESS") which is a program within Western Middle School where students and family work with a mental health provider. The mental health provider is a "social worker that we have at Western Middle School that works with a really small number of Students to really provide more intensive social-emotional support but also kind a wraparound service to help with working with the family and just any outside providers. " (Testimony, █████ 8/15/2024). There are 10 Students in the program (Testimony █████ 8/15/2024). ESS offers "another perspective when [the school] is trying to come up with behavioral interventions or academic interventions. They are also crucial with communication, communication not just with the school and the family, but if there are other outside services being sought after, they help communicate and kind of tie it off together." (Testimony, █████ 9/5/2024).
74. The Student's father attended the Safety Plan meeting. (Testimony Father 10/23/2024) Ms. █████ found the Parent to be not collaborative and was

- accusatory and engaged in name-calling of school staff during the safety meeting. (Testimony ██████ 9/5/2024). The Parent reported that he "felt like it was unfair and that [the Student] was being penalized because he wasn't showing contrition for something where you know, he felt that he was morally in the right and, you know, in a situation where. ---when somebody's putting their hands on you. And I happened to agree with him on that point, you know ...[a]nd then it spiraled into this effectively never-ending punishment that he was forced to endure..." (Testimony Father, 10/23/2024).
75. The Student's Mother also began to view the safety plan as punitive to the Student and requested in the lunch restriction could be removed. (Testimony, Mother 10/23/2024, 10/29/2024) The Mother testified that she felt the Student was not allowed to go outside for recess for months and that the Student felt that he was always in trouble.(Testimony Mother, 10/23/2024, 10/29/2024).
76. The intake to the ESS program was completed in late November/December 2023. (Testimony ██████ 8/15/2024) No PPT convened for the team to consider the ESS. Ms. ██████ sent an email to Ms. ██████ which stated "...sounds like [the mother] is requesting a PPT...but I do need to wrap up this investigation and the support plan shouldn't affect his IEP." (P. Ex.-54).
77. During the fall of 2023, often times the Student would also be removed from the classroom as a result of inappropriate and disruptive behavior. On October 26, 2023, the Student was removed from social studies class within the first five minutes for being disruptive despite three teacher-given prompts for redirection. He reportedly came to class without his backpack, writing utensil and would not stop shouting in class. (P. Ex-47).
78. The Student was also reportedly removed from the classroom on October 31, 2023, November 1, November 2, 2023, for making inappropriate comments about another Student. (P. Ex. 47,48).
79. The Student was removed from class and was reported to the parents as having "made the class difficult in the past few weeks." (P. Ex. 59).
80. On November 16, 2023, the Student was removed from class for behaviors (P. Ex 53).
81. The Student was again removed from class for being disruptive. ( P. Ex 74). On occasions when the Student was asked to leave class due to his behavior, the Student was sent to the restorative room in the main office where there is a teacher assigned to meet with the Students. (Testimony ██████ 9/19/2024).
82. On January 12, 2024, the Parent was told of inappropriate behaviors and comments made by the Student during class. (P. Ex 72). The Parent received multiple reports of behavioral incidents during January 2024. (P Ex. 72-74).



83. When the student expressed to Mr. [REDACTED] that he "might as well fail..." Mr. [REDACTED] viewed that as a red flag. Mr. [REDACTED] wanted to have another PPT to not only bolster the student's IEP but to request a FBA. (Testimony [REDACTED] 9/19/2024).
84. Despite serving as the Student's case manager and being copies on email exchanges regarding behavioral incidents, Mr. Liguori testified he was not aware of multiple behavioral incidents which occurred in the academic classroom settings. (Testimony, [REDACTED] 9/19/2024). In addition, the Social Worker assigned to the Student was on leave from November through January 2025. (Testimony [REDACTED] 10/22/2024) There was no evidence of Board staff that served as the Student's Social Worker during that time presented at hearing.
85. Despite all of the behavioral incidents which occurred during the fall of 2024, the Board failed to convene a PPT nor consider or conduct a FBA. (Testimony [REDACTED] 9/19/2024).
86. Mr. [REDACTED] conceded that the Student's negative behaviors had a detrimental impact on his academic performance. The Student began to exhibit work refusal behavior. Mr. [REDACTED] confirmed work refusal on part of a Student is a red flag that a closer look to the Student's program is warranted. (Testimony [REDACTED] 9/5/2024). When asked by Parent's counsel whether the IEP adequately addressed the Student's behavioral issues, Mr. [REDACTED] stated "I agree with you on that...we needed to do more." (Testimony [REDACTED] 9/19/2024).
87. Mr. [REDACTED] testified that there was no structured protocol for tracking behavioral issues or collaborating on needed behavioral support during the 2023-24 school year. (Testimony [REDACTED] 9/19/2024) By December 2023, the Student's relationship with his case worker began to falter. "I think he was getting into trouble a lot. He didn't like a lot of things I was saying." (Testimony [REDACTED] 9/19/2024).
88. In addition, Mr. [REDACTED] testified that he was not working on all of the Student's goals and objectives pursuant to the Student's May 25, 2023 IEP. (Testimony [REDACTED] 9/19/2024). Despite the February 2023 progress report indicating that the Student was making satisfactory progress in Quarter 4 of 2023 towards Objective 3 of the Goal 2, Goal 2 had not been worked on during the fall of 2023. (Testimony [REDACTED] 9/19/2024).
89. The Student's Academic Goal 4 of the May 25, 2023 IEP was "[g]iven no more than three verbal prompts, [the Student] will complete expected class work and check with staff prior to submitting to staff to determine if all necessary parts are completed in 2 of 4 academic classes across 4 weeks." (B Ex-16A) Mr. [REDACTED] acknowledged that he did not work with the [Student] and that the Student had no system in place to track this type of data." (Testimony [REDACTED] 9/19/2024).
90. Mr. [REDACTED] confirmed that he "wasn't effective" as the Student's case worker. Mr. [REDACTED] testified that he did not believe that "[the Student] struggled with the grip

his pencil, even though he recognized that the Student's grip was "unique" and "not typical." (Testimony ██████ 9/19/2024). The Student was proficient at keyboarding (Liguori 9/19/2024).

91. The Parents again engaged D█████ in November 2023 for a second private neuropsychological to assess "recent onset behavioral difficulties." (B-9). Dr. ██████ noted in the updated history section of the evaluation that the Student was "socio-emotionally, [the Student] is functioning less well. (B-9). Dr. ██████ stated in the report that "[The Student] persists without change in trajectory (no gains evident). His writing skills at the level of character formation, legibility/quality of print, and graphomotor control remain poor. He is also showing a persisting below grade level development in contextual spelling, sentence structure, and elaboration/organization of his writing." ██████ made the following recommendations:

"A. Due to the educational implications of findings, a meeting with [the Student's] school should be arranged to systematically share these findings and implement the recommendations in his IEP. I'd continue the basic accommodations are outline in the IEP.

B. [The Student] will need continued support in a mainstream classroom. A three times weekly small group instruction to address the writing/Dysgraphia issue. Continued goals targeting contextual spelling, sentence structure, and punctuation. We also need to continue keyboarding skills to bypass the graphomotor demand [to] address the overall adjustment and behavioral issues, [the Student] is having the following is critical I'd assure he is seeing a psychologist weekly in person using CBT modality and this should be coupled with parent-training to manage the problematic behaviors.... I'd switch from an individual counseling to a social skills group in school targeting conflict resolution skills and self-control training (particular focus on self-monitoring, self-evaluation, and self-reinforcement through contracting). (B-Ex.9)

92. During the Fall 2023, the Student's 8th grade, the Parent sent numerous emails expressing concerns about the Student's IEP to the Student's teachers. On November 2, 2023 requested a meeting to convene. (P Ex.51-54, 61,65 and 66). The Board understood the Parent's request for a meeting to constitute a request for a PPT. (P. Ex-54) A PPT was noticed for December 18, 2023. (B Ex-8). The Parent requested that the PPT rescheduled for after the holiday break and was re-noticed for January 11, 2024.
93. The Board re-scheduled a PPT for February 8, 2024. (B. Ex-6) The PPT was cancelled. (B-5).
94. The Student was absent 14 school days and late for school for 13 school days during December, January and February 2024. (B-49).

95. Parents sent the Board a ten-day unilateral placement letter on February 11, 2024 (B. Ex-6). The Board responded on January 12, 2024 and notified the Parents that a PPT would be scheduled which include a review of the private neuropsychological evaluation by Dr. [REDACTED] (B Ex-6).
96. The Parents withdrew the Student in February 2024 and unilaterally placed the Student at Winston Preparatory School Norwalk, Connecticut.
97. At the time the Student was withdrawn from Western Middle school he was failing all of his academic subjects. (Testimony [REDACTED] 9/19/2024).
98. Dr. [REDACTED] a registered occupational therapist in Connecticut with a Board specialty in pediatrics testified as an expert on behalf of the Student. (Testimony Dr. [REDACTED] 10/23/2024).
99. Dr. [REDACTED] did not treat the Student; nor did she ever meet the Student. Dr. [REDACTED] reviewed the Student's records and assessments. (Testimony [REDACTED] 10/23/2024) Dr. [REDACTED] has extensive experience working with Students with Dysgraphia and ADHD. (Testimony Dr. [REDACTED] 10/23/2024). Dr. [REDACTED] testified that "[t]he 'dys' means there's a challenge, a dysfunction, and 'graphia' means handwriting. So, it often looks like challenges in handwriting, but it's really complex and multifaceted that involves all components of handwriting, such as written expression, spelling, the actual motor aspects, visual perceptual skills. So, very complex, but ultimately it results in challenges with writing performances." (Testimony Dr. [REDACTED] 10/23/2024).
100. Dysgraphia impacts the Student in messy handwriting - "that inability to take your thought processes and put it on paper. " (Testimony Dr. [REDACTED] 10/23/2024). Dr. [REDACTED] explained "[a Student has] to be able to think about what you want to write about, pull it, connect it to the motor aspect. And the planning piece for the executive functioning challenges and attention issues, that always plays a huge factor. And those other pieces, therefore, it would end up impacting that final output or that motor component. So, you -- do need spelling. You need those orthographic memory --understanding what a -- the differences of those. So [a Student has] to retrieve those from memory, quickly transport it to [their] motor cortex, and out comes the written performance. So if there's a neurological glitch in any of those kind of aspects of the process, you're going you have deficits in the written outcome." (Testimony, Dr. [REDACTED] 10/23/2024).
101. Dr. [REDACTED] testified that Dysgraphia can affect a Student's overall academic perf [REDACTED] when "...a child is being asked to write something and they have the brilliant idea in their idea in their head but they can't pull it and execute it onto paper and everyone around them is carrying on their -their writing process and demonstrating their work, you often then develop what appears to be challenges with attention behavior. They're going to be distracted by everyone submitting, you know, and their work's not even yet completed. Their thoughts are not on the piece

of paper. And then all of a sudden they realize, I totally forgot what I'm saying or what I wanted to write because the process and that transportation of the thought to the paper takes a long time. So, then you have the emotional aspect of a learning disability, where it's all my peers are able to compete something and yet I'm not able to complete something. " (Testimony Dr. [REDACTED] 1/23/2024).

102. The Student's PPT never evaluated the Student specifically for Dysgraphia. (Testimony Dr. [REDACTED] 10/23/2024).
103. Dr. [REDACTED] testified that a classroom analysis of written performance was not conducted as part of the Student's initial assessment and should have been. (Testimony Dr. [REDACTED] 10/23/2024).
104. Dr. [REDACTED] testified that the 504 plan provided to the Student as a result of the November 2017 referral to special education was not appropriate for the Student in light of scores, standard scores and examples provided by the family and school team, and deficits in the underlying skills. (Testimony Dr. [REDACTED] 10/23/2024).
105. Dr. [REDACTED] testified that removing the direct OT services and the Student's writing goal was not appropriate. (Testimony Dr. [REDACTED] 10/23/2024).
106. Dr. [REDACTED] testified that the February 23, 2024 IEP was not sufficient to support the Student's Dysgraphia given the lack of writing goals therefore, did not provide the Student FAPE (Testimony 10/23/2024). Dr. [REDACTED] testified that "best practice would be for a student to receive special education for Dysgraphia in addition to occupational therapy. (Testimony Dr. [REDACTED] 10/23/2024).
107. Dr. [REDACTED] concluded that the appropriate learning environment for [the Student] is "...small classroom sizes, very explicit instruction that's evidence-based and evidence-driven, the ability to engage all the multifaceted aspects of the challenges. So, attention, taking frequent breaks, scaffolding tasks, making sure technology is available at all times, making sure that a support, that one-to-one support, there's support close by to engage with him and to encourage that continued learning." (Testimony, Dr. [REDACTED] 10/23/2024).
108. [REDACTED] [REDACTED] is the current Assistant head of School at Winston Preparatory School ("Winston Prep") in Norwalk, Connecticut. He has been employed with Winston Prep since 2007, as a teacher, director of summer programming, and Dean. (Testimony [REDACTED] 10/24/2024). Mr. [REDACTED] did not work directly with the Student until recently when began to teach fundamentals of Algebra to the Student. (Testimony Yanotti 10/24/2024).
109. Winston Prep supports Students with ADHD, Executive Functioning Deficits and Dysgraphia. Winston Prep is not an approved special education school. School districts do not place Students directly at Winston Prep. (Testimony [REDACTED] 10/24/2024).

110. Winston Prep offers 3:1 ratio of Students to faculty, class sizes that range from 9-12 Students and that allows the staff to provide a lot of individual attention. (Testimony [REDACTED] 10/24/2024). Every Student at Winston Prep meets with the same teacher, 1:1 for around 50 minutes each day to work on their greatest areas of need. (Testimony Yannotti 10/24/2024).
111. The Student received a targeted language skills class every day for 45 minutes, with a small group of Students who also have writing challenges to support Dysgraphia. The sole focus of the class is to break down and develop writing skills: developing his ability to transition from paragraph level to multi-paragraph level, breaking writing concepts down and to help initiate writing concepts. (Testimony [REDACTED] 10/24/2024).
112. Winston Prep uses Google ReadWrite with [the Student] as an accommodation for his writing. (Testimony [REDACTED] 10/24/2024) The Student worked with a Focus teacher 1:1 for 50 minutes each day which focuses on the Student's greatest area of need. (Testimony [REDACTED] 10/24/2024). The Student primarily uses keyboarding primarily, graphic organizer and is provided partial notes at Winston Prep. (Testimony [REDACTED] 10/24/2024).
113. The Student's grades were given on a Pass/Fail basis (P. Ex-79). Despite earning letter grades for the 2024-25 fall semester, no evidence of the Student's grades were offered at hearing. Parents did not know what the Student's grades were at the time of the hearing but reported that the Student is doing well at Winston Prep. (Testimony Mother 9/5/2024). The Mother felt like Winston Prep was able to incorporate things [in the classroom to address] the Student's Dysgraphia. (Testimony, Mother 9/5/2024).
114. Winston Prep does not have a psychologist who would work with the Student (Testimony [REDACTED] 10/24/2024).
115. Winston Prep uses an Engagement chart with Student which is reviewed by the Focus teacher "...and monitors [the Student's] -his, really his, you know, participation in class, his openness to when he's asked to take a break...and also celebrates those moments of - of success and progress. (Testimony [REDACTED] 10/24/2024). The Engagement Chart also allows the Student to earn privileges, such as going out to lunch with his peers, through his work on the Engagement Chart (Testimony [REDACTED] 10/24/2024).
116. The Student's Spring 2024 Progress Report noted that the Student needed to work on self-advocacy. (P-77) and peer group work. (P-77). "Throughout the Spring semester he found it difficult to engage in content classes and to complete his assignments (P-77) Due to self-regulation challenges and impulsivity, [the Student] has also had difficulty navigating classroom expectations and has benefited from both breaks and dean intervention."(P-77).

117. Winston Prep did not conduct an FBA. (Testimony ██████ 10/24/2024).
118. The Student is not receiving OT at Winston Prep. Winston Prep does not provide any handwriting supports nor require the Student to handwrite assignments. (Testimony ██████ 10/24/2024) Dr. ██████ testified that Winston Prep was an appropriate program for the Student. (Testimony ██████ 10/24/2024).
119. In October 2024, the Student was "asked to stay home" for a day and "lost the privilege to go out to lunch" as a result of a behavioral incident where he exited a first floor window during class and walked around the school and reentered the school year through the front door without the teacher being aware. (Testimony ██████ 10/24/2024).
120. The Student was asked to withdraw from Winston Prep in January 2024.

## CONCLUSIONS OF LAW AND DISCUSSION

### I. LEGAL STANDARD

"Free appropriate public education or 'FAPE means special education and related services that- (a) are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided with an individualized education program (IEP) that meet the requirements of §§300.320 through 300.324." (emphasis added) 34 CFR §300.17. See 20 USC. 1401(9).

The Board 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-4.

The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v Rowley*, 458 U S 176(1982). The first question to be determined is whether the Board 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 US at 206-207.

Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in *Rowley*, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans, reflects a "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a

substantive content in an IEP." 458 US at 206. " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child's unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5<sup>th</sup> Cir. 1989). Compliance with the IDEA's procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273. 285 (2001).

However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child's educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824,830 (8<sup>th</sup> Cir. 1988).

Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the "loss of educational opportunities or seriously infringed upon the parent's opportunity to participate in formulating the [IEP]..." Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J ex rel Annette J v. Clark County Sch. Dist.* 267 F.3d 877 (9<sup>th</sup> Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child's needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the Student, educators and other specialists. *Hoening v. Doe* 484 US 305,311 (1988).

In determining whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court in *Endrew F. v. Douglas County School District*, 580 US 386, 137 S.Ct. 988 (2017) rejected a "merely more than de minimis" standard of progress and stressed the importance of developing IEPs "reasonably calculated to enable the Student to make progress in light of the Student's particular circumstances." *Id.* 137 S.Ct. 988, 1001. "Endrew F. clarified the substantive standard for determining a child's IEP- the centerpiece of each child's entitlement to FAPE under the IDEA is sufficient to confer educational benefit on a Child with a Disability." See *Questions and Answers on U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1, United States Department of Education, Office of Special Education Programs* (2017).

"The 'reasonably calculated' standard recognizes that developing an appropriate IEP requires prospective judgment by the IEP Team. Generally, this means that school personnel will make decisions that are informed by their own expertise, the progress

of the child, the potential for growth and the views of the child's parents. IEP Team members should consider *how* special education and related services, if any, have been provided to the child in the past, including the effectiveness of specific instructional strategies and supports and services with the Student. In determining whether an IEP is reasonably calculated to enable a child to make progress, the IEP team should consider the child's previous rate or academic growth, whether the child is on track to achieve or exceed grade level proficiency, any behaviors interfering with the child's progress and any additional information and input provided by the child's parents. As stated by the Court, "any review of an IEP must consider whether the IEP is reasonably calculated to ensure such progress, not whether it would be considered ideal. The essential function of an IEP is to provide meaningful opportunities for appropriate academic and functional advancement, to enable the child to make progress" *Id.*

## II. DISCUSSION

### **Did the Board of Education violate Child Find duty by failing to evaluate the Student in all suspected areas of disability?**

Child Find is the affirmative obligation to identify, locate, and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services. 34 CFR 300.111(a)(1)(i). Child Find must include children who are suspected of being children with disabilities under 34 CFR 300.8.

In March 2016, the Parents brought the Student for an independent OT evaluation by a private provider. (Findings of Fact) The private provider engaged by the Parents concluded that the Student demonstrated fine motorskills challenges, as well as body awareness and sensory processing challenges and recommended OT services. (Findings of Fact) The private provider engaged by the Parent did not identify Dysgraphia as a deficit in the Student at this time.

On October 25, 2017, the Parents brought the private provider's evaluation to the Board and the Student was referred for an initial evaluation of special education services. (B Ex.41). An initial multidisciplinary evaluation was conducted by the Board which ultimately only recommended OT Services. (B. Ex-41). Dysgraphia was not identified as an area of disability in the Student by the Board. On November 11, 2017 a PPT was held and the Student was referred for 504 services. The Student was found to be ineligible for special education services due to scoring *Average-Normal* in most areas of the assessment. (B Ex-40).

The November 2019 neuropsychological evaluation conducted by Dr. [REDACTED] diagnosed the Student with Dysgraphia. (Findings of Fact) Dr. [REDACTED] report concluded that "[the Student] does have a specific deficit in his motor and perceptual skills. (B Ex-33). Dr. [REDACTED] identified a need for the Student to receive support in the mainstream classroom and recommended writing remediation by way of contextual spelling and sentence structure as well as OT 2x a week "due to his significant fine motor graphomotor deficits." (B Ex.33).



Dr. [REDACTED] evaluation set forth six areas of intervention and support to address the identified deficits in the Student - including those which result from a Dysgraphia diagnosis. He recommended support in the mainstream classroom, small group instruction for writing, twice a week to address the Student's significant fine and graphomotor deficits, as well as "writing remediation to improve character and word formation, targeting contextual spelling and developing appropriate sentence structure and punctuation" (B. Ex-33).

On January 17, 2020 the Board in response to Dr. Dorta's evaluations held a PPT and agreed upon test/evaluations in the areas of Executive Functioning, Attention Behavior, Academics and AHN/Behavior (B. Ex-31)(Findings of Fact).

On May 27, 2020 a PPT meeting was held where the Board reviewed the results of the multidisciplinary assessment of the Student and deemed the Student eligible for special education services. As a result, an IEP was developed with Goals/Objectives in the areas of Reading, Writing, Social/Behavioral, Gross/Fine Motor Skills and Study Skills/Organizational Skills. These Goals were as follows:

Goal 2. Writing: The student will improve his pragmatics in writing by utilizing proper grammar, spelling and punctuation.

Goal 5 Social/Behavioral: With the use of a list of strategies, the student will learn and apply ways to be actively engaged/attentive during assignments.

Goal 6 Social/Behavioral: The Student will increase his awareness of how his behaviors and comments impact other's perspectives and feelings.

Goal 7 Gross/Fine Motor: The Student will improve his endurance during keyboarding tasks, as evidenced by mastery of objectives

The Student will demonstrate improved graphomotor skills as evidenced by mastery of objectives,

Goal 8: The Student will show improvement in the area of study skills and organization while advocating for himself as needed.

Accommodations for the Student from the May 27, 2020 IEP included a "Check in/Check out with special education teacher, OT consult with academic and special education teachers 1x 15 monthly. Services included 2x weekly Occupational Therapy 30 minute sessions.

Parents assert that the IEP's failure to specifically identify and evaluate Dysgraphia as an area of suspected disability in either 2017 or 2020, violates the Board's obligations under Child Find. (34 CFR 300.111(a)(1)(i)). In 2017, neither the private provider nor the Board identified the Student's area of disability as Dysgraphia. Notably, at the time the Student was first evaluated in March of 2016 and later in October 2017, he was approximately 5 and 7 years of age. The Student's age and maturity at the time of these two assessments may have attributed to neither the Board nor the private provider identifying Dysgraphia as presenting in the student at that time. The Board did meet its obligation by locating, identifying and evaluating the Student in its multidisciplinary assessment. *After evaluating*

the Student, the Board concluded that the Student was not eligible for special education services but did provide 504 accommodations. Accordingly, the Board met its obligation under Child Find to identify and evaluate the Student. This initial referral for evaluation for special education services in 2017, therefore, did not violate the Board's affirmative obligations under Child Find because the Board identified, located and evaluated the Student.

Upon receipt of Dr. [REDACTED] evaluation - two years later when the Student is now approximately 9 years old, the Board again did a multidisciplinary evaluation and concluded that the Student was in fact eligible for special education services. The Parents argue that the Board did not identify Dysgraphia as an area of disability for the Student at that time and therefore, violated its obligation under Child Find. This argument fails, however. The Board's IEP goals 2,5,6,7 and 8 and related services developed as a result of the multidisciplinary evaluation of the Student appropriately addressed his deficiencies identified by Dr. Dorta's November 2019 assessment. Moreover, the IEP's noted concern expressed by the Parent regarding the Student's disability designation when she "questioned whether LD would be a better classification due to [the Student's] Dysgraphia" further supports the conclusion that the PPT was aware of Dysgraphia as an area of disability and considered it in developing the Goals and Objectives for the Student at the May 20, 2020 PPT meeting. (Finding of Facts) The IEP notes describing the Parent as having "questioned" the category of disability is some indication a resulting discourse was likely to have occurred between the team members and the Parent regarding Dysgraphia and the Student's Goals and Objectives. (Findings of Fact) Failure to specifically name Dysgraphia as the category of disability for the Student in the IEP is not fatal to the conclusion that the Board met its obligation under Child Find. The goals and objectives developed by the Board after evaluating the Student were consistent with the recommendations provided by Dr. [REDACTED] in his November 2019 evaluation where Dysgraphia was in fact, identified. Accordingly, the Board also met its affirmative obligations under Child Find by identifying, locating and evaluating the Student in his areas of disability in May 2020 IEP pursuant to 34 CFR 300.111(a)(1)(i).

**Did the Board of Education deny the Student a Free and Appropriate Public Education for the 2021-22, 2022-23 and 2023-24 school years by failing to conduct a Functional Behavioral Assessment?**

The Board has failed to demonstrate by a preponderance of the evidence that the Student's 2021-2022, 2022-23 and 2023-24 IEPs were reasonably calculated to enable the Student to make progress in light of the Student's particular circumstances. The Board failed to conduct a Functional Behavioral Assessment ("FBA") during the 2021-22/6th grade, 2022-23/7th grade and 2023-24/8th grade school years despite being aware that the Student's escalating behavioral challenges were impeding his ability to access his education, amounting to a procedural and substantive violation of FAPE.

Ms. [REDACTED] the Administrator who presided over all of the Student's PPTs during his 6th, 7th and 8th grade years, explained the PPTs failure to consider or conduct a FBA – or a

structured behavioral assessment, as essentially unnecessary given the fact that the PPT "...understood the function of [the student's] behaviors...so we didn't feel that we needed a functional behavioral assessment..." (Findings of Fact). Ms. [REDACTED] explained that "...over the couple of years...the behaviors that were displayed are what behaviors that kids that have attention deficit disorder display often. So, we've worked with kids with [the Student's] profile for years and that's how the team came to the decision." (Findings of Fact). So rather than conducting a FBA in an effort to create an IEP reasonably calculated to enable the Student to access his education in light of his particular circumstances, the Board chose to apply its general understanding of the function of a profile of students with attention deficit disorder.

The Board concedes that Student despite initially presenting as "essentially happy student...with organizational and executive functioning weaknesses," (Findings of Fact) began to exhibit behavioral challenges during the 6<sup>th</sup> Grade. By the middle of the year, the Student was exhibiting work avoidance and by the end of 6th grade, impulsivity, attention difficulty which was getting "more challenging" (Findings of Fact) In response to the increasing behavioral challenges, the May 27, 202 PPT implemented the Point Sheet as an appropriate positive behavioral reinforcement strategy to adequately address the Student's problem behaviors. (Statement of Facts) The Point Sheet incentivizing the Student with the ability to earn 'rewards' based on his classroom behavior. (Findings of Fact) Consistent with Dr. [REDACTED] November 2019 recommendations, it required the Student to "check in" with teachers (Findings of Fact) and allowed the Student to earn rewards in the form of a favorite activity, food or homework completion. (Findings of Fact)

Both parties agree that the Point Sheet was relatively effective when it was initially introduced in the spring of 2020. (Findings of Fact) However, both the Board and the Parents eventually concluded that the Point Sheet began to lose its effectiveness. (Finding of Facts) The Board cites the Parents lack of support and consistency at home and the Student's failure to "buy in".<sup>1</sup> (Finding of Facts) Often times when the Student "should stay after school for work completion" according to the Point Sheet, he would be picked up to go home by a Parent rather than remaining to complete homework with a Teacher. (Finding of Facts) According to the Board, this failure on part of the Parent's to support the positive behavioral intervention undermined its effectiveness. (Findings of Fact) Parents, on the other hand, testified that the Student began to see the Point Sheet as punitive and they saw it as ineffective - often finding it crumpled in the Student's pant pocket.(Findings of Fact) Dr. [REDACTED] testified that the Point Sheet required executive functioning and organization skills - two areas of deficit for the Student which would further undermine its effectiveness. (Findings of Fact) Had a PPT conducted a FBA in the 6th grade prior to implementing the Point Sheet, the PPT may have

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<sup>1</sup> The Board also cited that the Student failed to take medication for his disability on a consistent basis as further serving the undermine the effectiveness of their positive behavior reinforcement strategy. The Parent rightly points out that a Student's failure to take medication as prescribed does not elevate the Board's obligation to offer FAPE to the Student and therefore, it receives no weight.

obtained information as to the behaviors which were interfering with the student's ability to access his education and allow the PPT to implement strategies to designed to address those behaviors.

The Student's grades also continued to decline to D's and F's in his academic areas during this time despite the fact the Board's educational evaluation of May 2023 concluded the Student performed in the *Average* range of almost every area of Reading and Math. (Findings of Fact). This decline in grades a constituted of a lack of progress on part of the Student in violation of FAPE pursuant to *Endrew F. v. Douglas County School District* 580 US 386, 1375 S.Ct 988 (2017). As such, the Board's failure to conduct an FBA further constituted a violation of FAPE because it impeded the Student's ability to access his education as evidenced in the decline of his grades.

The Board did conduct a triennial multidisciplinary reevaluation in the Spring of 2023. Dr. [REDACTED] noted in the neuropsychological evaluation that "...overall, it is suggested that the Student's defiance and poor and social interactions may manifest itself due to low self-esteem and low self-efficacy...and concluded that the Student's difficulties with attention and social, emotional and behavioral functioning adversely impacts his functioning at school as well as his social interactions with peers and staff." (Findings of Fact) Also, as part of this evaluation, Ms. [REDACTED] submitted rating scales where she rated the Student *'Very Elevated'* in the areas of emotional distress, upsetting thoughts and physical symptoms, separations fears, defiant and aggressive behaviors, academic difficulties, hyperactivity, social problems and violence potential indicator. (Findings of Fact) Despite this conclusion, the Board again failed to consider and/or conduct an FBA.

The Student's challenging behaviors continued and intensified into the 2023-24 school year. (Findings of Fact). As a result frequent punitive consequences, such as lunch detention, removal from the classroom and time in the restoration room, were imposed. (Findings of Fact)

The Student was also involved in an altercation with another student in late September 2023 which resulted in the Student being suspended. (Findings of Fact) Later that fall, his subsequent behavior led to a finding of bullying on part of the Student. (Findings of Facts) Both of these incidents resulted in the Student receiving punitive consequences on a regular basis. These punitive consequences including suspension, lunch detentions and other measures which were imposed as part of a Safety Plan. (Findings of Fact). Indeed, Mr. [REDACTED] the student's 8th Grade case manager acknowledged that [Student's] IEP did not adequately identify his problem behaviors, stating "I agree with you on that...we needed to do more." (Findings of Fact) He further expressed that he has wanted to have a PPT to bolster the Student's IEP and request an FBA. (Findings of Fact) Unfortunately, this did not occur. Without understanding the individualized functions of the Student's behaviors through a FBA, the Student's IEP was not appropriate and the constant imposing of behavioral consequences served to impede the Student's ability to access his education, resulting in a violation of FAPE.

The Student was however, offered additional counselling services by way of the

Board's ESS program. The Board points to the services offered through the ESS program as additional positive behavioral support. (Findings of Fact) While the Student participating in the initial intake, the Student ultimately did not participate in the program. The Board also cites this failure to participate in the ESS as an example of the Parents failure to support the Board's efforts to provide support and strategies for the Student's behavior. (Findings of Fact) This program was not offered through the IEP process where the Parents would participate as members of the PPT in the decision making.(Findings of Fact) Nor was the ESS offered in connection with an FBA. Rather it was a service offered to a limited population of students who met a certain profile of needed support outside of an IEP. (Findings of Fact) Without an FBA having been conducted and the ESS program presented to the PPT through the IEP process, it is uncertain whether ESS program would have been an appropriate behavioral support tailored to the Student's individualized needs. As a result, Student's failure to participate in the ESS program cannot be seen as the Parents further effort to undermine the Board's efforts to implement a positive behavioral reinforcement strategy.

The Second Circuit has held that failure to conduct an FBA when a student's behavior seriously interferes with instruction is a fatal flaw to the appropriateness of an IEP. *A.M. v. New York City Dep't of Educ.*, 845 F. 3d 523, 535-36 (2d Cir. 2017). In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824,830 (8<sup>th</sup> Cir. 1988). Having failed to identify the individual functions of the Student's behaviors, it is not surprising that increased reports of inappropriate behavior, developing work avoidance and unsatisfactory reported progress in the Student's goals and objectives occurred and therefore, interfered with his instruction.

The 2nd Circuit has held that when "... 'a student's behavior impedes his learning, a BIP must be developed with strategies to deal with the problem behavior(s).'" *L.O. v. New York City Dep't of Educ.*, 822 F.3d 95 (2d Cir. 2016) at 111 (quoting *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167 (2d Cir. 2012) at 190). Where the DOE fails to conduct an FBA of its own, we "must take particular care to ensure that the IEP adequately addresses the child's problem behaviors," *R.E.*, 694 F.3d at 190, but the IEP will be rendered legally deficient only where it fails to "adequately identif[y] a student's behavioral impediments and [fails to] implement strategies to address that behavior," *M.W. ex rel. S.W. v. New York City Dep't of Educ.*, 725 F.3d 131 (2d Cir. 2013). Where the IEP is found to be deficient in this regard, we have held this to rise to the level of "a serious procedural violation because it may prevent the CSE from obtaining necessary information about the student's behaviors, leading to their being addressed in the IEP inadequately or not at all." *R.E.*, 694 F.3d at 190. "[S]uch a failure seriously impairs substantive review of the IEP because courts cannot determine exactly what information an FBA would have yielded and whether that information would be consistent with the student's IEP." *Id.*; *A.M. v. New York City Dep't of Educ.*, 845 F.3d 523, 535–36 (2d Cir. 2017).

By failing to conduct or even consider an FBA at any time during the 2021-22, 2022-23, 2023-24 school years, the Board did not address the individual challenges the Student presented but rather, applied a more generalized profile of a Student "... that has attention deficit disorder." (Findings of Fact). This was conceded by Ms. [REDACTED] and illustrating in the Board's referral to ESS, a program designed for a certain profile of Student and not through the Student's IEP process. This failure to consider the Student's individual needs violates the IDEA's guarantee that the education of each child with disabilities are tailored to meet the child's unique needs and abilities. 20 U.S.C. §1412 and 1415.

Despite the declining academic performance, increased behavioral incidents and challenges, the Board failed to call an IEP in the fall of 2023. (Findings of Fact). In addition, it was the Parent who requested an IEP in November 2023. In fact, the Board acknowledged that the Parents' request for "a meeting" constituted a request for a PPT when Ms. [REDACTED] sent an email to Ms. [REDACTED] indicating that the Parent's request for a PPT "should not affect the Student's support plan." (Findings of Fact). Despite this acknowledgement, the Board did not notice a PPT until more than a month later and as previously noted, the Board never conducted a structured behavioral assessment. (Statement of Facts) Connecticut law requires a "prompt" referral to PPT and structured behavioral assessment when a student's behaviors are deemed "unsatisfactory or at a marginal level of acceptance." (Conn. Agencies Regs. §10-76d-7(3)(c)). Accordingly, the Board also failed provide the Student FAPE when it failed to make a "prompt" referral to PPT and structured behavioral assessment in November 2023.

The Board's failure to conduct or even consider an FBA renders the Student's IEP inappropriate and a violation of FAPE because it fails to adequately identify the Student's behavioral impediments and fails to implement possible strategies tailored to address the behavioral challenges the Student faced. Accordingly, the failure to have the PPT conduct a FBA resulted in an inappropriate IEP for 2021-22, 2022-23, 2023-24 school years and a loss of an educational opportunity for the Student constituting both procedural and substantive violations of FAPE.

**Did the Board fail to offer the Student appropriate IEPs for  
the 2022-23 and 2023-24 school years?**

Under the IDEA, a Free and Appropriate Education requires that an individualized educational program be designed to meet the unique needs of the student and provide meaningful progress. (20 U.S.C. §1401(9); 34 C.F.R. §300.320). Despite the failing grades and unsatisfactory progress reported on the IEP, the February 25, 2023 PPT, removed the Student's writing goals and objectives completely from his IEP. (Findings of Fact) .

The Parents argue that the Board failed to provide an appropriate IEP when it removed the Student's behavioral goal, writing goal and OT goals at the May 25, 2023 PPT. (Findings of Fact) The Board argues that two social/behavior group goals replaced the direct behavioral goals, the Student's writing goals were replaced with

accommodations and assistive technology and the occupational assessment conducted in 2022 concluded a OT consult basis was appropriate for the Student.

The Parents also argue that the Board failed to provide FAPE to the Student when it failed to convene a PPT during the 2023-24 school year in violation of Connecticut State Law. (Conn. Agencies Regs. §10-76d-7(3)(c)). The Board argues that the Parents could have requested a PPT at any time, and once a PPT was scheduled the Parents requested that it be postponed until after the holiday break in January 2024. (Findings of Fact) A subsequent PPT was noticed for February 2024 but the Parents cancelled that PPT and eventually gave notice of the unilateral placement. The Board also argues that during this time, the Student was absent or tardy from school for a total of 27 days making it more difficult to conduct a PPT and ultimately, the Parents exercised bad faith in their interactions with the Board's efforts to conduct a PPT.

In light of the determination that the Board failed to provide FAPE for failing to conduct a behavioral assessment, the IEP provided for 2022-23 and 2023-24 school years could not have been designed to meet the unique needs of the student and result in meaningful progress. The resulting objections raised by the Parents with regard to the inappropriateness of the 2022-23, 2023-24 IEP goals and objectives directly result from the Board's failure to conduct a Functional Behavioral Assessment. Accordingly, the IEPs offered by the Board for 2022-23 and 2023-24 school years were not appropriate and therefore, a violation of FAPE.

### **Is the Winston Preparatory School an appropriate program for the Student?**

Having concluded that the Board failed to provide the Student FAPE for the 2021-22 2022-23 and 2023-24 school years, the question then turns to whether the unilateral placement obtained by the parents is reasonably calculated to enable the child to receive educational benefits in the least restrictive environment.

A district may be liable for tuition reimbursement if it denied FAPE to a student with a disability and if the private placement is appropriate. (34 CFR §300.148(c)). A reimbursement award may be reduced or denied based on equitable factors. (34 CFR §300.148(d)). Tuition reimbursement should be awarded if 1) the board of education fails to establish that the student's IEP provided FAPE; 2) the student establishes that the unilateral placement it selected is appropriate; and 3) the equities favor the student. 20 USC 1400(d)(1)(A); (34 CFR §300.148; *Burlington School Comm. v. Dep't of Educ.*, 471 U.S. 359, 374 (1985).

A Student has the burden of proving the appropriateness of the unilateral private placement by a preponderance of the evidence. *R.C.S.A. Sec. §10-76h-14(c)*. *Frank G. v. Bd of Educ. of Hyde Park*, 459 F. 3d 356, 364 (2d Cir. 2006). Whether a private placement is appropriate "turns on whether the placement...is 'reasonably calculated to enable the child to receive educational benefits.'" *Frank G. v. Bd of Educ. of Hyde Park*, 459 F. 3d at 364

*(2d Cir. 2006)(quoting Rowley, 458 U.S. at 207). "No one factor is necessarily dispositive" to this inquiry, and tribunals typically consider the totality of the circumstances in determining whether the unilateral placement "reasonably serve's a child's individual needs." Id.*

While the Student offered evidence of Winston Prep's small teacher to student ratios and enrollment of other students with similar learning profiles as the Student, the record does not demonstrate by a preponderance of the evidence that the program was appropriate for the Student. (Findings of Fact) A single witness from Winston Prep, Mr. [REDACTED] an Assistant Head of School testified in support of the appropriateness of the placement. (Findings of Facts) Mr. [REDACTED] did not work directly with the Student until shortly before testifying when the Student was moved from Algebra to Fundamentals of Algebra and Mr. [REDACTED] became his teacher. (Findings of Facts)

At Winston Prep, the Student primarily uses keyboarding, is provided partial notes and uses handwriting only for Math. (Findings of Facts). The Parents testified that they are very happy with the placement and that the Student is happy to go to school every day. (Findings of Facts).

Winston Prep does not require its professional staff to satisfy state requirements for professional certification. (Findings of Facts) While this is not disqualifying in itself, it weighs against propriety of the placement. In addition, Winston Prep does not offer school psychologist and/or counselling services, or occupational therapy. (Findings of Fact) While this too is not disqualifying in itself, in light of the Parents' challenges to the appropriateness of the Board's programming in those areas of support, it too, weighs against the conclusion that it is an appropriate program for the Student. Lastly, the fact that at the time of this decision the Student no longer attends Winston Prep - at the request of the school, further weighs against the conclusion that Winston Prep is the appropriate program for the Student.

The Student's performance at the conclusion of 2023-2024 was reported on a pass or fail basis and no formal grading data at all was offered for 2024-2025 school year. (Findings of Fact) Other than Pass/Fail and anecdotal information from Mr. [REDACTED] and the Parents, there was no objective formal grading data regarding the Student's performance while attending Winston Prep offered at Hearing at all. In fact, as far as grades go, neither Mother or Father testified that they were certain as to how the Student's grades were at the time of the hearing. (Findings of Facts).

The Student's behavioral challenges continued into the Fall 2024 while he attended Winston Prep. Winston Prep includes "Focus Sessions" where Students receive instruction in the area of greatest need throughout the school day.(Findings of Facts) The Focus teacher noted that throughout the spring semester (2024), the Student "found it difficult to engage in content classes and to complete his assignments...[d]ue to self regulation challenges and impulsivity, [the Student] has also had difficulty navigating classroom expectations and has benefited from both breaks and Dean intervention." (Findings of



Facts). In the fall of 2024, the Student also received punitive consequences when "asked to stay home" for one day after he left a classroom through a window without the Teacher seeing him. (Statement of Facts) Winston Prep, like the Board, addressed the Student's behavior challenges with behavioral consequences. (Findings of Fact) Winston Prep also did not conduct a Functional Behavioral Assessment. (Findings of Fact) This is the very same response to the Student's behavioral challenges that led to the Board's failure to provide the Student with an appropriate IEP and a violation of FAPE. In addition, no semester grading data was presented at hearing regarding the Student's performance at Winston Prep despite having attended the school from February 2024 through December 2024. (Findings of Fact) Winston Prep does not provide the Student Occupational Therapy for his Dysgraphia nor any social/behavioral supports from a psychologist, counselor or social worker. (Findings of Fact) Accordingly, the Parents have not met their burden of proving that Winston prep is an appropriate program for the Student in the least restrictive environment to have been unilaterally placed.

### **Is Compensatory Education Appropriate?**

The student also seeks 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 Fed 389. 397 (3d Cir. 1996); *Reid ex rel Reid v. District of Columbia*, 401 F. 3d 516, 523 (D.C. Cir. 2005). Compensatory education should be designed as a "replacement of educational services they 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 ex rel. Reid v. District of Columbia*, 401 F. 3d at 516, 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 (2d Cir. 2014).

Compensatory Education is not appropriate in this case.

### **Section 504 of the Rehabilitation Act**

This Hearing Officer was appointed under the authority of R.C.S.A. Section 10-76h-1 et seq. and 34 C.F.R. Sections 300.500 et seq. to hear and decide due process complaints relating to the identification, evaluation or educational placement of children with disabilities or the provision of a free and appropriate public education for children with disabilities under IDEA and Connecticut special education law. My jurisdiction does not include the determination of legal claims under Section 504.

### **FINDINGS/ORDERS**

1. The Board denied the Student a Free and Appropriate Public Education for the 2022-23,

2023-24 and 2024-25 school years by failing to conduct a Functional Behavioral Assessment.

2. The Board failed to offer the Student an appropriate IEP for the 2022-23 school years.

3. The Board failed to offer the Student an appropriate IEP for the 2023-24 school years.

3. As a result of denying the Student FAPE, the Parents were entitled to unilaterally place their child pursuant to (34 CFR §300.148(c)).

4. Winston Preparatory School was not an appropriate placement in the least restrictive environment for the Student. Therefore, the request for reimbursement for the cost of enrollment in Winston Preparatory School for the period of February 2023 through December 2024 is denied.

5. The Board is ordered to immediately convene a PPT and to conduct a Functional Behavioral Assessment by a licensed Applied Behavioral Analyst, along with a multidisciplinary reassessment of the Student in the all areas, including but not limited to, Academics, Social/Behavioral and Occupational Therapy and Dysgraphia and devise an appropriate IEP for the Student taking into consideration all of his individual strengths and weaknesses.

6. No compensatory education is ordered.