

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Region 18 Board of Education

Appearing on behalf of the Parent:

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Appearing before:

Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide a FAPE for the two years prior to the filing of the complaint?
2. If not, is Southport School appropriate?
3. If so, should parents be reimbursed for their payment of tuition and education related expenses at Southport School?
4. Do the circumstances warrant an award of compensatory education?
5. Did the Board offer the student a FAPE for the 2024-2025 school year and extended school year?
6. What is the student's stay put under the IDEA?
7. Did the Board violate the student's rights of procedural due process by failing to promptly convene a PPT as provided by the IDEA regulations?
8. If the answer to issue No. 7 is in the affirmative, what, if any, educational benefit was lost by the student due to the Board's procedural due process violation?
9. If the student suffered a loss of educational benefit as a result of the Board's violation of the student's procedural right of due process, what shall be the remedy?

PROCEDURAL HISTORY:

The Parents filed a Due Process Complaint on May 10, 2024. The Hearing Officer was appointed on May 15, 2024. A Prehearing Conference was held on May 22, 2024. The Parents filed an Amended Complaint on May 28, 2024, and a Second Amended Complaint on May 30, 2024. A Second Prehearing Conference was held on June 11, 2024, during which the issues for hearing were identified.

The Hearing was scheduled for July 16, 2024. On July 3, 2024, the Board filed a request to postpone the hearing. On July 4, 2024, the Parents filed an objection to the Board's request. On July 8, 2024, the Board filed a reply to the Parents' objection. On July 8, 2024, the Hearing Officer denied the Board's request for postponement.

On July 12, 2024, the Parents filed a motion to compel certain school records. On July 15, 2024, Parents notified the Hearing Officer that the motion was moot.

On July 13, 2024, the Board filed a motion to substitute Issue #1 above to preclude inquiry into the 2021-2022 school year. On July 14, 2024, the Board filed a motion to dismiss to preclude all claims in the 2021-2022 school year on the grounds that they were beyond the statute of limitations and a motion in limine to preclude evidence on certain portions of the operative Second Amended Complaint concerning the 2021-2022 school year. The Parents filed objections to the Board's motions to dismiss and in limine on July 15, 2024. The Hearing Officer heard oral arguments on the Board's motions and Parents' objections on July 16, 2024, and denied the Board's motions to substitute, dismiss and in limine to preclude evidence on the 2021-2022 school year.

The hearing convened on July 16, 2024. The Original, Amended and Second Amended Due Process Complaints were admitted into evidence as HO-1. The parties' corrected Joint Statement of Stipulation of Facts was read into the record and admitted as HO-2.

Board Exhibits B-1 through B-115 were admitted as full exhibits. Parent Exhibits P-1 through P-81 were admitted as full exhibits except exhibits P-22, P-25 and P-28 which were marked for identification. Exhibit P-82 was marked for identification and later withdrawn.

The Board presented six witnesses. They were the First Grade Occupational Therapist, the School Psychologist, the First Grade Special Education Teacher, the Speech and Language Pathologist, the Second Grade Special Education Teacher and the Director of Special Services. The Parents presented four witnesses. They were Student's Tutor, an Independent Literacy Expert, Mother and Father.

The mailing dates of the Final Decision were extended at the parties' request from August 13, 2024, to September 30, 2024, to add hearing dates. Additional hearing dates were held on August 29, September 5, 6, 10 and 11, 2024. At the conclusion of the presentation of evidence, the mailing date of the Final Decision was extended to November 27, 2024, at the parties' request so that the parties could submit post-hearing briefs. The parties submitted post hearing briefs on November 4, 2024.

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

SUMMARY:

A student with "double deficit" dyslexia did not make progress in the school district's program. Parents unilaterally placed Student at a state approved special education school for students with dyslexia and sought reimbursement.

STATEMENT OF JURISDICTION:

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

FINDINGS OF FACT:

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

1. At the time of the hearing, Student was nine (9) years of age in the fourth grade and attending at Southport School, which among other things, educates students with learning-based and attention deficit disabilities. Student resides with her parents in the Region 18 school district. (Joint Stipulation. HO-2)
2. Student has been described by teachers as sweet, empathetic, loving, kind, happy, creative, imaginative, engaging and very intelligent. (Testimony, Tutor, School Psychologist and Special Education teachers, B-1 and B-8)
3. Student is highly intelligent and has high potential but for her disability. Intelligence tests administered in kindergarten and second grade show Student to have high verbal comprehension, average fluid reasoning and a deficit in working memory. (B-1 and B-38).
4. In May 2021, when Student was in kindergarten (age 5 years and 9 months), Parents presented the school with a private evaluation. The Parents hired an evaluator after the school recommended that Student be retained in kindergarten. Among other assessments, evaluator administered standardized assessments of academic functioning -Woodcock Johnson Tests of achievement – Fourth Edition (“WJ-IV”) and Comprehensive Test of Phonological Processing - Second Edition (“CTOPP-2”). (B-1, Testimony, Mother)
5. On the WJ-IV, the evaluator noted that when compared to same aged peers, Student’s academic functioning scored in the low average range. She was able to identify all letters presented and read the words “car” and “sun”. Her understanding of read passages was solid. She demonstrated low average written language skills. Her math skills were very low. She was able to identify numbers and counted to 6. (B-1)
6. On the CTOPP-2, the evaluator found that Student had several weaknesses in phonological processing skills and awareness of individual sounds that make up spoken words. Her awareness was in the below average range. Phonological skills that were most challenging for Student were blending words and memory for digits. Additionally, Student had trouble with the rapid symbolic naming subtests which impacted her ability her to retrieve words quickly. Her scores in rapid naming (SS=55) and (SS=58) were very poor. (B-1)
7. The evaluation provided a DSM-5 Diagnosis of Specific Learning Disorder, with impairment in reading and math. The evaluator recommended Student receive daily instruction with a reading/literacy specialist in a one-on-one, intensive, multi-sensory, structured reading program, such as Wilson Reading Program or the Orton-Gillingham approach. (B-1).

8. A Planning and Placement Team (“PPT”) meeting was held on June 1, 2021, to review the evaluation. Student was identified as a Child with a Disability under the Individuals with Disabilities Education Act (“IDEA”), eligible for special education and related services under the primary disability category of Specific Learning Disability. The PPT developed an Individualized Education Plan (“IEP”) at that meeting. (Joint Stipulation).
9. On April 20, 2023, the Student was identified as eligible for special education and related services under the primary disability category of Specific Learning Disability/Dyslexia. Student’s disability is also known as “double deficit dyslexia” meaning a deficit in both the phonological component and rapid naming component. Student’s learning is also impaired by attention deficit hyperactivity disorder (“ADHD”). (Testimony, Independent Educational Evaluator, B-55)
10. Student attended the Board’s Mile Creek Elementary School from kindergarten to the end of the second grade in June of 2022. (Joint Stipulation).

*FAPE claims in the two years prior to the filing of the Due Process Complaint:
May to end of 2021-2022 school year and 2022-2023 IEP*

11. In first grade (2021-2022 school year), Student received special education and related services in an IEP developed in June 2021 and implemented shortly thereafter. The special education instruction consisted of an Orton-Gillingham based structured literacy system called the Sondag System. The teacher would introduce lessons in a fixed sequence as Student progressed through the Sondag system levels. After lessons with sight words and words with different sounds were introduced and practiced, the teacher then would monitor progress by administering the Sondag system form assessments containing the same words previously taught. The words in the program were sequenced by the Sondag system and bore no connection to what was being taught in the general education classroom. Student’s progress in this system was slow and sometimes inconsistent. (Testimony, First and Second Grade Special Education Teachers; Testimony, Independent Educational Evaluator.)
12. As of March 2022 first grade progress report, objectives of encoding (spelling based on sound) and decoding (sounding out an unfamiliar word) objectives in her 2021-2022 IEP had not yet been introduced. Even though Student was reported in the IEP progress reports as making satisfactory progress in the on a first-grade level text, according to progress monitoring assessments, student was working at a level far below a first grader and could not read at that level. (B-69, Testimony, Independent Educational Evaluator)
13. As of May 2022, Student’s program was not well coordinated with classroom instruction with the general education classroom. The words in Student’s Sondag system lessons did not include vocabulary words being introduced in the general education classroom. As a result, Student struggled with regular classroom material. (Testimony, Independent Educational Evaluator)
14. AIMS Web Plus is a widely accepted and reliable progress monitoring assessment that was used by the school district to monitor progress monthly. AIMS Web data from May 2022 showed the student was reading substantially below first grade level. Since Student was far behind same aged peers, the First Grade Special Education Teacher administered AIMS Web assessment at the kindergarten level for numeracy and literacy to satisfy herself that at least Student had made some progress at a kindergarten level. AIMS Web benchmarks testing subjects against a national sample of same grade level peers. Student was nearing the end of the first grade when

the Special Education teacher administered this assessment and the results showed that she fell well below kindergarten students. Student had a composite percentile score of 2 (out of a potential of 100), far below the 50% percentile. The report stated that Student (who was in the first grade) had less than 50% chance of achieving the Spring kindergarten performance goal and Student's risk level was high. With respect to early literacy, Student's score was 4 (out of a potential of 100). Similarly, the report stated that Student had less than a 50% chance of achieving the Spring kindergarten performance goals. (P-17, Testimony, Independent Educational Evaluator).

2022-2023 Second Grade IEP

15. It was in this context that the PPT on June 1, 2022, met for an Annual Review of the Student's first grade program and to develop the next annual IEP. In attendance at the PPT were the Director of Special Services, Mother, Father, First Grade Special Education Teacher, School Psychologist, Occupational Therapist, a Parent Advocate whom Parents had retained and Private Tutor. (B-16).
16. The IEP in the section describing current performances states with respect to Academic/Language Arts that Student had made "significant progress" but continues to be below grade level. This description of Student's academic functioning is an inaccurate depiction of Student's struggles in literacy. In fact, at this point, Student was functioning below kindergarten grade level expectations. Similarly, with respect to math, the IEP states that Student's number sense has improved. These statements contradict the AIMS Web data that Student showed had barely progressed in the previous year under the program that was administered to Student and was more than a year behind her peers. (B-16)
17. The PPT recommended goals and objectives that were essentially identical to the goals and objectives of the previous year and additional 15 minutes daily reading instruction from the previous year for a total of 45 minutes and 30 minutes of math instruction. Significantly, the PPT recommended that Student be exempted from AIMS Web data progress monitoring. (B-16)
18. AIMS Web is an objective and widely accepted and reliable progress monitoring tool providing diagnostic data on how students' progress compared to same aged peers and grade level expectations. AIMS Web progress monitoring include varied assessments testing the certain skills, such as phonemic awareness, to ensure that students were progressing in their skills acquisition. In contrast to the Sonday system's post lesson assessments which tests on knowledge of words that had been previously taught, AIMS Web monitors the underlying skill acquisition of a student's ability to sound out the word under timed conditions. This skill acquisition is especially important to assessing Student's skill acquisition as her disability involved a "double deficit". She struggled with phonemic awareness and rapid naming of sounds. (B-16, Testimony, Independent Literacy Expert)
19. By eliminating this progress monitoring tool, the PPT planned a program could not be objectively benchmarked nor progress monitored against peers in the same grade level. At the June 2021 PPT (nearing end of first grade), the First Grade Special Education Teacher recommended the exemption from the AIMS Web progress monitoring in the second grade. The teacher testified that she did this because Student would become anxious because the assessments were under timed conditions. (B-16, Testimony, First Grade Special Education Teacher, Testimony, Independent Educational Evaluator)

20. By eliminating this progress monitoring tool, the team would have no objective data benchmarked to determine whether Student was in fact benefiting from instruction to the degree necessary to access the curriculum. The only data received was whether Student was progressing through the Sonday system. As discussed below, the consequences of these decisions in June 2022 IEP negatively impacted Student's ability to progress academically in the Second Grade. (B-16)
21. The IEP was implemented beginning on June 15, 2022, to June 13, 2023. Over the next year, the school provided reports of satisfactory progress. By June 2023 at the end of second grade, Student was able read from a list of 20 real words in the Sonday system vocabulary list, write a sentence able to blend up to 3 phonemes to form words, wrote a sentence with known sight words and read between 19 to 52 sight words from a list when in the previous year, she could read 24, which was far below her grade level. (B-39, B-46)

2023-2024 Third Grade IEP

22. The PPT met on April 20, 2023, to re-determine eligibility for special education, review the evaluations and review progress in Student's program and develop a new IEP. The student was determined to be eligible for special education under the primary category of Specific Learning Disability/Dyslexia. (B-55)
23. The school team presented an Annual Review Report showing progress in the Sonday system. The progress in IEP goals and objectives could be seen as being interchangeable progress in the Sonday system. No other normative and reliable data, such as AIMS Web data, was used to determine whether Student was really progressing adequately. (B-46)
24. Parents requested a Literacy/Reading Program Review by an outside literacy specialist. This was denied by the PPT. Parents requested a Literacy/Reading Program Review by the Independent Literacy Expert who later testified at the hearing. This was denied by the PPT. The IEP again generally repeated the same goals and objectives with respect to reading, adding that Student, as a third grader, would be able to decode 20 words with accuracy in over the next year. The IEP also recommended that the school reading and literacy specialist would consult with the school team weekly for 20 minutes weekly and the school team and parents on a monthly basis. Assuming that Student met IEPs goals and objectives, the Student's success as a third grader would reach a goal of being able to read from the Sonday vocabulary list under the IEP. The IEP repeated reading goals of fluency, decoding, encoding, phoneme blending. The IEP did not contain any alignment with what was being taught in the regular third grade curriculum which undoubtedly required students to read sentences and books in class and at home. The Parents disagreed with the proposed IEP. (B-55)
25. As part of the program review, the special education teacher and school Literacy/Reading Specialist administered the Comprehensive Test of Phonological Processing. This assessment was previously administered in the private evaluation in kindergarten leading to Student's identification as a Child with a Disability under the IDEA. A side-by-side comparison of the results of shows the ineffectiveness of the school's program. Student was not only unable to keep up with same aged peers, the gap between Student and same aged peers had widened. Whereas Student's composite score for Phonological Awareness was below average in the 21st percentile in 2021, Student's score had declined to the 5th percentile in 2023. (B-1 and B-49).

26. Student's final second grade report card showed no growth from the beginning of the school year in the areas being remediated in the special education program. Most concerning, the regular classroom teacher reported that Student experienced difficulty meeting expectations and consistently required support in reading and spelling syllable patterns, spelling irregular high frequency words, reading fluently and with expression. Student also continued to struggle with spelling, writing and correct punctuation. (B-60)
27. In the Spring of 2023, the Parents hired a private literacy consultant to conduct a program review. The literacy expert testified at the hearing and during the hearing, the Board agreed that the literacy expert qualified as an expert in the area of literacy. The literacy consultant provided a report dated June 5, 2023. The literacy consultant noted that the instruction with the special education teacher did not align with the regular classroom. The literacy consultant made a number of recommendations that were from programs other than the Sondag system. For instance, the consultant listed a technique from the Lindamood-Bell program, *Seeing Stars*, as a way to enforce sound symbol memory. (Hearing transcript, September 10, 2024, Testimony, Independent Literacy Expert, B-69)
28. Significantly, the report stated the following: "Despite nearly 2 years of specialized instruction, profound weaknesses continue to be evident in phonological processing, decoding, word identification, encoding, reading, fluency and reading comprehension. [Student's] reading skills are emerging and although incremental growth can be seen, she is not progressing at a rate fast enough to effectively close gaps in her learning. Since she is not responding to instruction at an appropriate rate, adjustments must be made to interventions she's receiving including the level of intensity in order to accelerate her progress. (See attached intensification strategy checklist from the National Center for Intensive Intervention)". (B-69, Testimony, Independent Literacy Expert).
29. Further, the report addressed the Sondag System program as follows: "Although Sondag is a program based on Orton Gillingham principles, it must not be confused with implementation of an Orton Gillingham approach. Sondag materials may prove very useful for [Student's] programming but using this program should not be considered synonymous with implementation of an Orton Gillingham approach. [Student] requires a Structured Literacy program or approach designed to meet the needs of students with dyslexia that is implemented by a highly skilled instructor. (B-69).

Unilateral Placement at Southport School

30. On August 11, 2023, the Parents, in a letter through counsel to the district Director of Special Services, notified the district that effective August 31, 2024, they would be placing Student at Southport School and seeking reimbursement from the district for all out-of-pocket costs including transportation and tuition for the unilateral placement. The Parents submitted the report by Independent Literacy Expert detailing what they believed to be the district's failure to provide an appropriate program. (B-69 and B-70).
31. Student has been attending Southport School since Fall 2023. Southport School is a special education school specializing in educating students with learning disabilities, such as dyslexia, and ADHD. The faculty at Southport are specially trained with teaching methods for students with dyslexia and monitors progress of each regularly. The program at Southport has provided

intensive intervention specially designed to meet the Student's needs. The Independent Literacy Expert has reviewed Student's program and educational record at Southport and reports that Student has made progress since entering Southport. Student has mastered several higher levels of decoding and has mastered reading several books which required decoding simple words and is working on writing. (Testimony, Independent Literacy Expert, P-66, P-45-P-55)

2024-2025 Fourth Grade IEP

32. Although the Annual Review was conducted on April 20, 2023, for the 2023-2024 school year, the district did not conduct an Annual Review for the Student's IEP before April 20, 2024. (Joint Stipulation)
33. On May 28, 2024, the Parents, through counsel, sent a Notice of Unilateral Placement at Southport School and seeking reimbursement from the district of all out-of-pocket costs including transportation and tuition costs. (B-71)
34. A PPT meeting convened on June 11, 2025, to consider a proposed IEP. In attendance were Father, Mother, a general education teacher, Second Grade Special Education Teacher, School Psychologist, Director of Special Services, Mile Creek School principal, Occupational Therapist, Board attorney and Parents' attorney. Since the Student was attending Southport, the district did not conduct updated evaluations, but relied on information provide through Southport school records and the Independent Literacy Expert's program review from the previous year. The Parents requested district placement at Southport School. The PPT denied the request. The Parents requested reimbursement for the program review by Independent Literacy Expert. The PPT denied this request. (Testimony, Second Grade Special Education Teacher)
35. Very little testimony was presented at the hearing by the Board on the proposed 2024-2025 IEP, including rationale for services and objectives. Reading goals increase services from 60 to 90 minutes and progress monitoring was increased to daily and weekly monitoring. It is unclear whether the proposal was to continue the use of the Sunday system. (B-91, Testimony, Second Grade Special Education Teacher).

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student was eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.

Did the Board provide FAPE for the two years prior to the filing of the Due Process Complaint?

2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique needs" and "prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1).

3. “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 U.S.C. 1401(9)*.
4. 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-14.
5. 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 U S at 206-207.
6. 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 (5th 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).
7. 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 (4th Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8th 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]...”
8. 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 (9th 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).

9. As to the second inquiry of 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 U.S 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)*.
10. “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.*
11. Turning to the 2022-2023 IEP, the Hearing Officer finds that the procedural requirements in the first prong of *Rowley* were met. However, with respect to the second prong, it is abundantly clear that the school offered a woefully inadequate program. The IEP discarded the use of a widely accepted and effective progress monitoring tool that would have provided information on Student’s real progress toward grade level expectations. Instead, the school measured progress by the ability of Student to progress through its Sonday system program. The program was not aligned classroom instruction. That the Student nominal progressed through the program conferred de minimis benefit that was not enough to enable meaningful progress. The 2022-2023 IEP was inappropriate. Implementing the program not only failed to confer meaningful benefit, it contributed to a widening gap between Student and her peers. The Board did not provide FAPE in for the 2022-2023 school year. Findings of Fact No. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21.
12. Turning to the 2023-2024 IEP, again the Hearing Officer finds that procedural requirements were met. However, substantively, the IEP continued the same mistakes made in the development the previous IEP and did not offer FAPE. Student made very limited progress, as noted in the IEP and was falling behind her grade level peer group. Yet, the school team continued to offer the same program with additional instructional time. When the Parents asked for a program review, the team could have obtained an outside consultant to evaluate the

adequacy of the school's program but did not. Though the Parents participation was not impeded by the school team, the school team made the decision to continue an ineffectual program. The Board did not offer a FAPE for the 2023-2024 school year. Findings of Fact No. 22,23,24, 25, 26, 27, 28 and 29.

Did the Board offer Student a FAPE for the 2024-2025 school year and extended school year?

13. 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-14.
14. The Board provided insufficient evidence that the 2024-2025 school year and extended school year would provide student with an appropriate program. If the Board was offering a program that continued the ineffectual Sunday system without objective progress monitoring, the program would fail to offer FAPE. Since the Board provided no evidence, the Board has not met its burden of proof under R.C.S.A. Sec. 10-76h-14. Finding of Fact No. 35.

If the Board did not provide FAPE, is Southport School appropriate?

15. If a district fails to provide a FAPE, the child's parent may remove the child to a private school and seek tuition reimbursement from the state. Under the *Burlington-Carter* framework, a parent may recover tuition reimbursement if: (1) the proposed IEP was inadequate to offer the child a FAPE, and (2) the private education services obtained by the parents were reasonably calculated to enable the child to receive educational benefits. *Sch. Comm. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156, 163 (4th Cir. 1991). Under the IDEA, a parental placement, whether residential or not, is appropriate only if it is "reasonably calculated to enable the child to receive educational benefits." *Carter*, 50 F.2d at 163. In addition to the IEP context, evidence of actual progress is also a relevant factor to a determination of whether a parental placement was reasonably calculated to confer some educational benefit. *M.S. ex rel. Simchick*, 553 F.3d at 327.
16. The Parents have the burden of proving the appropriateness of the unilateral placement by a preponderance of the evidence. R.C.S.A. Sec 10-76h-14(c). The Parents have met this burden.
17. The Hearing Officer finds that Southport School is appropriate placement for Student for the 2023-2024 and Student made meaningful progress at Southport School under the tutelage of qualified teachers and adequate progress monitoring. See Findings of Fact No. 31.

Do the Circumstances Warrant an Award of Compensatory Education?

18. Compensatory education is "prospective equitable relief, requiring a school district to fund education beyond the expiration of a child's eligibility as a remedy for any earlier deprivations in the child's education." *E. Lyme Bd. of Educ.*, 790 F.3d at 456-5 (quoting *Somoza v. N.Y.C. Department of Education*, 538 F.3d 106, 109 n.2 (2d Cir. 2008)). Compensatory education is warranted for the deprivation of FAPE for the 2022-2023 school year. The 2022-2023 IEP was inappropriate and as a result, the gap between Student and her peers widened substantially. When Student enrolled at Southport School, Student required substantial remediation. Findings of Fact No. 14, 15, 16, 17, 18, 19, 20 and 21.

What is the Stay Put under IDEA?

19. Under 20 USC §1415(j) (otherwise known as the “stay-put” provision of the IDEA), “during the pendency of any proceedings pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.” Pursuant to IDEA regulations at 34 CFR §300.518 entitled “Child status during proceedings”, the child involved in the complaint must remain in his or her current educational placement during the pendency of a due process hearing under 34 CFR §300.507. See 34 CFR §300.518(a) and 20 USC §1415(j) (enabling statute referring to “current placement” as “then-current placement”). “The Second Circuit has interpreted the term ‘then-current education placement’ to mean (1) typically the placement described in the child’s most recently implemented IEP; (2) the operative placement actually functioning at the time...when the stay put provision of the IDEA was invoked; and (3) [the placement at the time of] the previously implemented IEP.” *Doe v. East Lyme Board of Education*, 112 LRP 47179 (D.C. onn 2012) citing *Mackey ex rel. Thomas M. v. Board of Educ. Fr Arlington Central School Dist.* 386 F.3d 158, 163 (2d Cir. 2004). “The purpose of this provision is ‘to maintain the [child’s] educational status quo while the parties’ dispute is being resolved.” *Abrams v. Porter*, No. 20-3899, 2021 WL 5829762 (2d Cir. Dec. 9, 2021) (quoting *T.M. ex rel. A.M. v Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 152 (2d Cir. 2014)). A school district is required ‘to continue funding whatever educational placement last agreed upon for the child until the relevant administrative and judicial proceedings are complete.’ *Doe v. East Lyme Bd. of Educ.*, 962 F.3d 649, 659 (2d Cir. 2020) (quoting *T.M.*, 752 F.3d at 171). (emphasis added). The Stay Put placement is Mile Creek Elementary School because it was the placement of the last implemented IEP. See Findings of Fact No. 22 and 23.

Did the Board violate the Student’s rights of Procedural Due Process by failing to promptly convene a PPT as provided by IDEA regulations, and if so, what, if any educational benefit was lost by the Student due to the Board’s Procedural Violation?

20. Under the IDEA, local educational agencies must conduct annual reviews of Student’s IEP. See 34 C.F.R. §300.116(b)(1). The fact that parties are in litigation or that the Student was in a unilateral placement does not relieve a district of the obligation to comply with the IDEA. See *Briere et al v. Fair Haven Grade School District et al*, 948 F.Supp. (Vt. 1996) and *Delaware County Intermediate Unit No. 25 v. Martin K.*, 831 F.Supp. 1206, 1223 (E.D. Pa. 1993). The Board violated Student’s rights of procedural due process by failing to convene a timely annual review. The Board failed to timely offer an IEP in compliance with 34 C.F.R. §300.116, effectively leaving the Student without a program for the 2024-2025 school year and the Board did offer a program later June of 2024, the Board did failed to sustain its burden of proving that the program offered a free and appropriate education for 2024-2025. See Findings of Fact No. 32.

If the Student suffered a loss of educational benefit as a result of the Board’s violation of the Student’s procedural rights of due process, what shall be the remedy?

21. 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 (4th Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8th 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]...”

By failing to offer a timely FAPE to Student for the 2024-2025 school year and extended school year and by failing in its burden of proving the June 2024 IEP provided Student with substantive FAPE, Student lost an educational opportunity to be educated in a public school. See Findings of Fact No. 32 and 35.

22. If a district fails to provide a FAPE, the child's parent may remove the child to a private school and seek tuition reimbursement from the state. Under the *Burlington-Carter* framework, a parent may recover tuition reimbursement if: (1) the proposed IEP was inadequate to offer the child a FAPE, and (2) the private education services obtained by the parents were reasonably calculated to enable the child to receive educational benefits. *Sch. Comm. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156, 16. As discussed above, Southport School is an appropriate placement for Student for the 2024-2025 school year. See Paragraph 15 *supra*.

FINAL DECISION:

1. The Board did not provide a FAPE for the two years prior to the filing of the complaint.
2. Southport School is an appropriate placement for Student.
3. The Parents are entitled to be reimbursed for their payment of tuition and education related expenses, including transportation to Southport School for the 2023-2024 school year.
4. The circumstances warrant an award of compensatory education for the denial of FAPE for the 2022-2023 school year.
5. The Board did not offer the student a FAPE for the 2024-2025 school year and extended school year.
6. The student’s Stay Put placement is Mile Creek Elementary School.
7. The Board violated the student’s rights of procedural due process by failing to promptly convene a PPT as provided by the IDEA regulations.
8. By failing to timely convene an annual review and by failing to propose an appropriate program for the 2024-2025 school year, the Board failed to provide Student with a substantive FAPE resulting in a loss of educational benefit.
9. The Parents are entitled to be reimbursed for their payment of tuition and education related expenses, including transportation to Southport School for the 2023-2024 school year.

Order

Remedy for Paragraphs #1, 2, 3, 5, 7, 8 and 9 above

1. Within 15 days of this Order, Parents shall submit for reimbursement to the Board copies of receipts paid tuition and transportation for 2023-2024 and 2024-2025 school year. If the parents did not pay a car service for transportation of Student from home to Southport School, the

Parents shall submit mileage at the IRS rate for transportation. If Parents have not paid tuition in full, for the 2024-2024 school year, Parents shall submit to the Board Southport's remaining invoice for the remainder of the 2024-2025 school year.

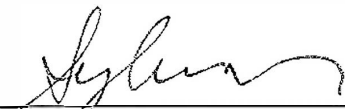
2. Within 15 days of this Order, Parents shall submit for reimbursement to the Board copies of receipt for payment to the Independent Literacy Expert for services and report.

Remedy for Paragraphs 1 and 4 above: Compensatory Education for 2022-2023 school year.

3. The Hearing Officer hereby directs the Board to pay the parents for an additional one year of tuition and transportation costs at Southport School for the 2025-2026 school year as compensatory education for its failure to provide a FAPE while Student was attending Mile Creek Elementary School in the school district. Within 30 days of this Order, the parties shall arrange for Parents shall submit for payment a copy of an invoice from Southport School for the cost of attendance for the upcoming school. The Board shall pay the invoice when due.

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

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



Hearing Officer Signature

Sylvia Ho

Hearing Officer Name in Print