

**STATE OF CONNECTICUT**  
**DEPARTMENT OF EDUCATION**

Student v. Southington Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the SPS:

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Appearing before:

Kelly Moyher, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

- Did the Board offer an appropriate program for the 2024-2025 school year?
- If not, is placement at the Southport School the appropriate placement for the Student for the 2024-2025 school and should the Board be ordered to place the Student at the Southport School for the 2024-2025 school year?

**PROCEDURAL HISTORY:**

The Parents filed the Due Process Complaint/Hearing Request on July 30, 2024. The Hearing Officer was appointed on August 7, 2024. A Prehearing Conference took place on August 15, 2024 and a hearing dates were set for October 11th, 15th and 20th, and November 1st and 7th. Due to personal matter, the hearing date on October 29<sup>th</sup> was cancelled. A hearing date was added for November 26, 2024 to make up for the lost day. The parties made two joint requests for extension of the mailing date to accommodate all hearing dates, and the mailing date was set for January 3, 2025.

The Parents initially submitted exhibits P1-P-31, submitting P32-P-34 after the start of the hearing as well as P-8A, P-10A, P-12A, P-14A, P-16A, P-18A and P-35-P-36. The Board submitted exhibits B-1-B-98. The Board called the following as witnesses: Mrs. Learning/Literacy Specialist, Southington Public Schools (hereinafter “SPS”); Mr. Psychologist, SPS; Mrs. Special Education Coordinator, SPS; and Mrs. Speech and Language Pathologist,

SPS. The Board also called Dr. Reading Consultant as a rebuttal witness. The Parents called the following as witnesses: Mrs. Special Education Teacher/Learning Specialist, Dr. Neuropsychologist and Mrs. Parent.

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

### **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:**

- The Student, born on March 20, 2013, is 11 years of age and is currently a 6<sup>th</sup>-grade student at the Southport School in Southport, CT.
- The Student began attending kindergarten with SPS and with academic difficulties occurring in both preschool and kindergarten. After testing with SPS, the Student was given an IEP at the end of her kindergarten year in 2019.
- A neuropsychological evaluation conducted in 2019 diagnosed the Student with the following: 1. Learning Disorder/Dyslexia (moderate severity, later changed to severe) in the areas of reading, writing and mathematics and 2. Attention Deficit/Hyperactivity Disorder-Predominately Inattentive. This neuropsychological evaluation also clarified that the Student had “Double Deficit Dyslexia”. She is identified under the primary disability category of a Specific Learning Disability- Dyslexia. (B-19).
- The Student attended elementary school at SPS for her kindergarten, 1<sup>st</sup> and 2<sup>nd</sup> grades years. For her 3<sup>rd</sup> grade year, she was placed at the Southport School and continued there for her 4<sup>th</sup> and 5<sup>th</sup> grade school years and is currently enrolled at Southport for the 2024-2025 school year, which is her 6<sup>th</sup> grade school year. (B-79, Testimony, Ms. Mother, Pgs. 594-626).
- As a kindergartener, the Student did not meet grade level standards in math, reading or writing by the end of the year. (Testimony, Ms. Mother, Pgs. 598-602).

- The Student scored in the extremely low range on the written language composite and in the low range on the reading and math composites when the KTEA-3 was administered as part of neuropsychological evaluation performed in October of 2019. On the CTOPP-2, the Student scored in the extremely low range on rapid symbolic naming and in the low range on phonological awareness and phonological memory. The Conners K-CPT-2 was also administered and the Student made a number of mistakes strongly indicating an attentional disorder. Intensive services and attentional accommodations were recommended, as were strategies in order for the Student to make meaningful progress. The Student was to receive instruction in a reading program for dyslexia students, taught by a teacher certified in the program, as well as extensive repetition of early skills and speech and language therapy focusing on word finding and phonemics awareness. (B-19).
- A speech and language evaluation was performed by SPS in December of 2019. On the TVCF, the Student had difficulty with letter naming. On the GORT-5, the Student scored in the poor range for rate, accuracy and fluency and scored in the below average range for comprehension. On the ITPA-3 there was a discrepancy between spoken and written language with spoken language being stronger, with phonology being a weakness. The Student demonstrated deficits in both sight symbol processing and sound symbol processing. On the WADE, the Student identified only fifty-four percent of consonant sounds and two percent of vowel sounds, and she showed difficulty in correctly identifying single consonants and vowels. The Student needed more intensive intervention at the fundamental level of sound symbol association before progress could be expected at the level of blending phonemes for word identification. The Student was diagnosed with severe dyslexia which impacted her reading accuracy, fluency, comprehension, spelling, written language and verbal memory. Intensive one-to-one reading intervention by a reading instructor certified in the Orton-Gillingham method, as well as writing support and speech and language therapy, were recommended. (B-21).
- In first grade, the Student struggled academically and emotionally, expressing a dislike for school and saying the day was too long and the work was too hard. She began to have melt downs everyday which included screaming and crying. The Student had trouble sleeping and communicated to her mother that her classmates were happy and smiling while she was not. The Student would visit the school nurse and school psychologist many days of the week and complained of stomach pains. (Testimony, Ms. Mother, Pgs. 602-612).
- Also during first grade, the Student began referring to herself as stupid and dumb. She drew a picture of herself one day during indoor recess showing herself crying and with an "X" over her face. She told her teacher she was feeling extremely sad that day and that everyone could read but her. She also told her teacher some kids were reading chapter books while she was reading baby books. At this time, the Student's visits to the nurse increased. The Student was receiving one-to-one instruction in reading but the Parent did not see improvement. Instead, the Parent noticed the Student becoming very sensitive and noted that the worst thing for her child was being different from other students. The Parent noted during first grade that the Student began to exhibit bloody nails and lips due to stress and anxiety. This stopped during the summer between first and second grade when school was not in session. (B-23, B-24, Testimony, Ms. Mother, Pgs. 602-612).

- At a PPT on February 3, 2020, the PPT changed the Student's special education category classification from OHI/ADHA to Specific Learning Disability (with dyslexia). Speech and language services were added to provide additional specially designed instruction in phonemic awareness along with multi-sensory/code-based instruction in reading. New goals and objectives in the area of phonemic awareness were added and the Parents reiterated concerns about the Student's self-perception. Counseling was offered as a related service and the Student would self-select when she would see the school psychologist or nurse. (B-25, Testimony, Ms. Mother).
- During June of 2020, a private neuropsychological evaluation was obtained by the Parents. Among the previous diagnoses of Dyslexia and ADHD, the Student was diagnosed with an Unspecified Anxiety Disorder. Among the recommendations, the evaluator advised that the Student required placement in a small, specialized, parameter specific and structured educational environment to address her complex needs. The evaluator recommended small class size with students of similar learning challenges and intellectual potential to level the playing field and allow the Student to appear and feel "the same" as her peers. The evaluator noted that pull-out services were likely to make the Student feel different. The evaluator noted the Student to be a sensitive child who was keenly aware of her difficulties. (B-39).

13. At a PPT in September of 2020, the start of the Student's second grade year, the Student's IEP consisted of the following:

- 2.5 hours weekly reading instruction in the resource room
- 1 hour weekly writing instruction in the resource room
- 1 hour weekly math instruction in the resource room
- 1.5 weekly writing support in the classroom
- 1.5 weekly math support in the classroom
- 29 session per year of speech and language services to address phonemic awareness deficits

Also listed in the PPT Recommendations were a continuation of code-based multisensory instruction and weekly communication regarding the Student's performance. (B-42).

- During her second grade year, the Student continued to struggle with anxiety and sadness, couldn't sleep, had nightmares and reported not wanting to live anymore. The Student continued to need breaks during school to visit the school psychologist, the nurse and a log was created for when she needed to take breaks and visit the restroom. In communications with SPS, the Student's mother noted school avoidance and refusal, inability to read and write, inability to say the alphabet correctly, improper letter formation, improper number formation, poor basic math knowledge, issues with mispronunciation and issues with fine motor skills. (Testimony, Mrs. Parent, B-41).
- At a PPT in January of 2021, the Parent's made a request for out of district placement at the Southport School, which was denied. (B-47).
- At a PPT in May of 2021, staff reported that the Student was making satisfactory progress academically and in the area of social/emotional. The Parent reported that the Student did

not meet grade level standards and that according to her report card the Student made minimal progress in all reading areas and in most math and writing areas assessed. The Parents renewed their request for placement of the Student at the Southport School, which was denied. (B-57).

- In June of 2021, the Parents emailed the Board that the Student would be attending the Southport School for extended school year services during the summer of 2021.
- The Student began her first full year at the Southport School for the 2021-2022 school year. She was a non-reader as she began her third-grade year and was behind academically. She started to make progress and her self-confidence quickly began to improve. The Student began to wear her hair back off her face in a ponytail after always wearing it forward in her face to keep her face hidden. The Student made friends easily after starting at Southport and did not need breaks for the bathroom or to visit the nurse. She did not miss school, did not suffer from stomach aches or nightmares and no longer dealt with bleeding nails and lips. She was able write the alphabet with confidence, her reading improved and she was able to sound out words. The Student did not want to miss any school from the very beginning of the school year. (Testimony, Ms. Parent, Pgs, 627-639).
- The Parents funded a neuropsychological evaluation by Dr. Neuropsych which was completed in March 2022. On the WISC-V, the Student scored in the low average range on the working memory composite. On the CVLT-C, she scored in the impaired range and on the ROCF, she was slightly below peers in immediate and delayed recalls. On the TOWRE-2, the Student scored in the first percentile on the total word reading efficiency index and on the WJ-IV, she scored in the third percentile for letter word identification, the first percentile for sentence reading fluency and the fourteenth percentile for sentence writing fluency. On the WIAT-III, the Student scored below average for written expression, and she continued to struggle with mechanics of writing, organization, spelling and language processing. On the GORT-5, she scored in the poor range for rate, accuracy, fluency and comprehension and was found to be reading at least two grade levels below her peers. On the CTOPP-2, the Student showed growth in all areas. Her phonological memory and rapid symbolic naming remained below her peers. On the GSRT, she scored in the seventh percentile. Dr. Neuropsych found that the Student was struggling hard with the basics of decoding and sound blending and had very little mental energy left over to interpret the meaning of the text. On the Test of Written Spelling, the Student scored in the seventh percentile. Dr. Neuropsych diagnosed the Student with a specific learning disorder in reading (severe) and writing (severe). She also diagnosed her with ADHD and ruled out impairment in math. Dr. Neuropsych found that the Student had made progress in her math abilities given the language based math curriculum at Southport School. She also made gains in her IQ and on the CTOPP-2. The Student continued to have significant weaknesses and was found to be reading below a first grade level. She required one-to-one daily support in reading and writing. Dr. Neuropsych found that the Student required continued placement at Southport School where she had begun to make some progress. Dr. Neuropsych found that it was unrealistic to expect the Student to achieve her academic potential in anything less than a highly integrated language based curriculum focusing on reading and writing skills throughout the day. (B-65, Testimony, Dr. Neuropsych.).

- During her fourth and fifth grade years at Southport, the Student made steady academic gains and continued to make gains on the social and emotional level. She continued to make improvements in reading and writing. Her fluency increased and she achieved higher reading levels. She has not had any issues with school refusal, has not had any psychosomatic symptoms due to anxiety, and has been very happy with her environment both academically and socially. (Testimony, Ms. Parent, Pgs. 629-637, Testimony, Dr. Neuropsych, Pgs. 513-537).
- During January of 2024, Dr. Neuropsych reassessed the Student for future educational plans. On the WISC-V, the Student scored in the low average range on the working memory composite. Dr. Neuropsych noted that there was significant variability present as the Student had very strong scores on the verbal comprehension and processing speed composites. On the CVLT-C, the Student had a low average learning curve. Dr. Neuropsych underscored this as evidence of the Student's continued need for a multisensory classroom with linguistic redundancy. On the GORT-5, the Student scored in the below average range on rate, accuracy and fluency. All of the scores were improvements from testing in 2022; however, Dr. Neuropsych found that the Student still was reading at least two grade levels below her peers. On the GSRT, the Student scored in the average range. It took her a long time to complete the test, but her score was much higher than it was during the 2022 evaluation. On the WJ-IV, the Student scored in the below average range on the basic reading skills and academic fluency composites. Her math calculation skills were in the low average range. Dr. Neuropsych reported that the Student was making progress academically but continued to require one-to-one intensive reading remediation as well as additional remediation in math.  
On the WIAT-III, the Student scored below peers in written expression and continued to struggle with the mechanics of writing, organization, spelling and language processing. On the TOWS-5, she scored in the below average range. On the CTOPP-2, she scored in the below average range for phonological memory and in the low average range for rapid symbolic naming. Notably, looking at Psychosocial Adjustment, Dr. Neuropsych noted areas of concern for the Student. On the BASC-3, the following areas of concern were noted by the Student, her parents and/or her teachers:  
-Attention Problems, Withdrawal, Locus of Control, Atypicality, Learning Problems and School Problems.  
On the Brown EF/ADD scales, home and school ratings continued to indicate that the Student met the criteria for ADHD. Dr. Neuropsych diagnosed the Student with dyslexia (severe), dysgraphia (severe), ADHD and rule out math impairment. Dr. Neuropsych found in her report that "given the fact that [the Student] will be going into sixth grade next fall but is functioning many grade levels below peers for reading connected text, it is unrealistic to expect her to achieve her academic potential in anything less than a highly integrated language based curriculum focusing on reading and writing skills throughout the day." She explained that "it [was] both appropriate and necessary for the Student to remain in her current placement at Southport School." (B-79, Testimony, Dr. Neuropsych).
- SPS also conducted evaluations early in 2024, including a speech and language evaluation of the Student. On the TILLS, the Student scored in the low range on the sound/word and

written language composites and in the average range on the sentence/discourse and oral language composites. The evaluator reported that the Student's performance was consistent with dyslexia. SPS also completed an educational evaluation of the Student. On the WIAT-4, she scored in the low average range on math problem solving, math fluency (subtraction) and sentence composition subtests. On the GE test of coding skills, the Student scored forty-one percent for total sounds, fifty-seven percent for total words (reading) and fifty-four percent for total words (spelling). On the CORE Phoneme Segmentation test, she scored at the strategic level and on the Burns and Roe informal reading inventory, the Student was independent at level three for words in isolation. On the PAST, the Student scored sixty-seven percent for total correct and fifty percent for total automatic. She was at the instructional level for passages at levels one through four. The evaluator also assessed an informal writing sample. The Student's paragraph lacked elaboration and contained many spelling errors. SPS also conducted a psychological evaluation of the Student, performed by Dr. Psychologist. On the KABC-II NU, she scored in the below average range for short term memory and in the low average range for long term storage. Dr. Psychologist did not have any social and emotional concerns for the Student and did not administer any tests to address anxiety or depression. (B-83, 84 and 86, Testimony, Dr. Psychologist).

- On April 4, 2024, the PPT met to review all of the recent evaluations and to plan for the 2024-2025 school year. The Board noted the Student's ongoing weaknesses in decoding and encoding. It recommended she return to SPS at the middle school for sixth grade, with 15.63 hours per week of her time with non-disabled peers, and 14.37 hours in the special education setting. The middle school has a population of between 700 and 750 students. Mrs. Learning/Literacy Specialist, who is an Orton-Gillingham associate, would work one-on-one with the Student in a class of four, with a paraprofessional reviewing with each Student. Mrs. Learning/Literacy Specialist is a special education teacher at the middle school and has 41 years of teaching experience, 21 years teaching literacy and reading instruction in elementary and middle school and has Wilson Dyslexia Practitioner certification, and Wilson Level I Certification. The Student would attend the "Reading Academy" program for dyslexic students. The literature class is taught by a teacher who is certified as a Literacy Specialist and the writing class is taught by a certified special education teacher with push-in support from a speech and language pathologist once per week. Even though the Student does not have reading comprehension difficulties, she would be required to take a reading comprehension class in the Reading Academy. Of note, the Student would be receiving about one hour of time per week one to one with Mrs. Learning/Literacy Specialist while the remainder of the time would be spent with a paraprofessional and a computer. The Student would be doing review with a computer program called Read Live. SPS proposed a co-taught daily math class in the general education setting, co-taught with a special education teacher and a paraprofessional. A general education classroom at the middle school typically consists of 16-22 students. No goals or objectives were specifically proposed for math. Mrs. Learning/Literacy Specialist stated the Student can ask for help in math if she needs it. SPS also recommended a paraprofessional-supported science class daily, and a Learning Strategies class every other day. It is noted that both math and science can be language-heavy in the 6<sup>th</sup> grade. A social studies/humanities class was not proposed for the Student. At the PPT, Dr. Psychologist did not recommend counseling services based on his evaluation and file review, and a social worker or school counselor was not present at the PPT. Mrs.

Learning/Literacy Specialist stated she was not aware of any emotional issues that the Student has. Dr. Psychologist was aware of the anxiety the Student had been feeling relative to peers and academic performance. He testified that he offered depression and anxiety testing, but no one on the team at the PPT recommended it. Dr. Psychologist also testified that social-emotional support could be provided down the road for the Student if she needed it. Dr. Psychologist did review Dr. Neuropsych's evaluation which stated the parents have reported the Student's self-esteem has improved at the Southport School, and this has been due to being in a language-based program with a cohort of peers throughout her school day, which corresponds to her cognitive profile. Specifically, Dr. Neuropsych found in her evaluation that "[The Student's] psychosocial functioning should continue to be monitored to be sure self-esteem stays strong". Dr. Psychologist did not observe the Student at the Southport School. Extended school-year services were also not offered. The Parents requested continued placement for the Student at the Southport School at the April 4, 2024 PPT and SPS denied the request. (Testimony, Mr. Psychologist, Testimony, Mrs. Learning/Literacy Specialist, B-79, B-85, B-89).

- During the summer of 2024, the Student worked with Mrs. Special Education Teacher/Learning Specialist, (hereinafter "Mrs. SE/LS"). The Parent was not able to afford the extended school-year program offered through the Southport School and had the Student do extended school year work with Mrs. SE/LS due to her history of regression over the summer. Mrs. SE/LS is an educational consultant, teacher and is a Certified in Training (CIT) in Orton Gillingham ("OG") and is supervised by an OG fellow from the Southport School. While it is noted her supervision comes from an OG fellow at the Southport School, she primarily works as a private practitioner and owner of her own consulting firm, as well as an instructor at CREC working with teachers getting cross-endorsed in special education. She currently works with dyslexic children in her private practice, and it is this capacity that she testified about the Student. The Student is a 'severe dyslexic', her progress at Southport has been slow going and the Student is currently a 3<sup>rd</sup> grade-level reader. The Student has made progress in phonological processing and while she has responded to interventions at Southport and made fairly significant growth, Mrs. SE/LS also noted that several goals in the proposed IEP from SPS had already been achieved and/or mastered. There is limited ambitiousness in the IEP's goals and objectives. There is limited support offered in the areas of math and science, where the Student would be in the general education classroom setting among her peers and the language heavy tendency of math and science in the 6<sup>th</sup> grade setting, as well as the difficulty the Student would have in accessing the curriculum. Extended School Year ("ESY") services were not offered to the Student for the summer of 2025, even though her records indicated a history of regression over the summer months. There is no consultation between general and special education staff and speech and language. While the Student has made significant progress with her years at Southport, the Student's self-esteem is fragile. There is concern about regression and teachers not being able to stop certain classes to slow down for the Student. Small class size is very important for the Student because she needs to be able to take in the content and instruction happening in each class, and with a large class size, given the Student's language learning disability and working memory, the work would be very challenging. (Testimony, Mrs. SE/LS, B-89, Pgs. 4-7).

- Mrs. SE/LS, working in her capacity as a private practitioner who worked with the Student during the summer of 2024, was able to observe the Student at Southport School and reviewed the educational program being provided. The program and goals address the Student's reading and writing, disabilities, as well as ADHD and executive functioning. The Student has six academic classes, which are forty-six minutes each and also has a study skills class four days a week. Each student is given a series of standardized tests which occur in September, January, and May. The tests are utilized for initial academic placement, to corroborate class changes and to measure relative strengths and weaknesses. The testing throughout the year is a continual diagnosis of each student's strengths and weaknesses using observation, diagnostic testing, and specific classroom assessments. There are Orton Gillingham fellows who provide ongoing training and instructional support to staff, and all staff members have completed visualizing, verbalizing, and writing resolution training. A certified speech and language clinician is on staff on a part-time daily basis and the Student receives push-in support from the speech and language pathologist to strengthen receptive language and comprehension skills. Two school counselors on staff provide weekly social and emotional learning classes, as well as individual and group counseling. For literacy and language, the class meets daily to work on decoding, fluency, comprehension, and spelling. There are three students in the class which meets for 3.75 hours per week. The classroom teacher has twenty-five years of teaching experience at Southport and has an elementary education K through 6 certification, as well as a classroom educator certification in the Orton Gillingham. The teacher has been providing small group Orton Gillingham instruction under the supervision of an Orton Gillingham fellow for the past ten years. She completed her certified practicum and will apply for the associate level certification with the Orton Gillingham Academy by January 21, 2025. For writing, the writing class provides the students with daily practice in the various forms of paragraph development and construction mechanics, and places emphasis on developing the writing process and applying it to a variety of narrative and writing tasks. The class consists of the same three students and has the same instructor as the literacy and language class who was also certified in the Hochman Method, Advanced Thinking Through Writing. The Student receives approximately 3.75 hours of specialized writing instruction weekly. Turning to humanities, the class is designed to support reading development while providing useful and practical background knowledge and various narratives, and expository texts are introduced before they develop vocabulary comprehension skills. There are currently five students in the class, and the Student's literacy and language and writing teacher is also the instructor for this class. One teacher teaching literacy and language, writing and humanities is crucial giving consistent instruction for the Student. In addition to the Orton Gillingham writing training, this teacher is also trained in Lindamood-Bell Visualizing and Verbalizing method, which supports oral and written language comprehension. Small classes are important for the Student given her learning profile. The Student also receives executive functioning services and social emotional learning. The math class also provides small group instruction, where the Student is currently in a class size of four. The class utilizes a structured computation-based mathematics program. Individual needs are assessed and remediation is provided to allow students to progress at their own rates. Practical applications and cooperative problem solving are also emphasized in the small class setting. The Student's self-esteem, while improved, is fragile. Being in a large math class where the Student is having trouble reading and the teacher or paraprofessional might not be able to get to her, would be damaging for

her self-esteem and again keep her from accessing the curriculum. (Testimony, Mrs. SE/LS, P-34.).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

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

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

- Programs should be individualized based on the student's assessment and performance. *See A.S. v. LPS of Edu. of West Hartford*, 245 F. Supp. 2d 417, 428 (D. Conn. 2001), *aff'd* 47 Mr. Appx. 615 (2d Cir. 2002). The IEP must enable a child to derive "meaningful" educational benefit. *LPS of Edu. v. Rowley*, 458 U.S. 176, 192, 102 S. Ct. 3034, 73 L. Mr. 2d 690 (1982).
- The standard for determining whether a SPS has provided a free appropriate public education is set forth as a two-part inquiry in *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 580 U.S. 386, 400, 137 S. Ct. 988. The first question to be determined is whether SPS 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" and whether the IEP enables the child to make progress in light of the child's circumstances, *Rowley*, 458 U.S. at 206-207. Due to a settlement agreement in place between the parties, procedural claims are waived through September 1, 2024.
- "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.*
- "The IEP "must be likely to produce progress, not regression, and must afford the student with an opportunity greater than mere trivial advancement." *M.H. v. N.Y.C. Dep't of Educ.*, 685 F.3d 217, 224 (2d Cir.2012) The Hearing Officer finds that the IEP proposed by SPS does not offer FAPE. The Reading Academy program offered for the Student lacks the time and intensity the Student requires to make progress as evidenced by recent testing and performance. The Student scored below peers in written expression and continues to struggle with the mechanics of writing, organization, spelling and language processing, among other concerns. The Student would receive, at most, one hour per week with Mrs. Learning/Literacy Specialist who is an associate level in Orton Gillingham. It is noted that the Board's witness, Dr. Reading Consultant stated this would not be appropriate for the Student. Likewise, Dr. Reading Consultant noted mainly the paraprofessional teaching on

the day she observed Mrs. Learning/Literacy Specialist's class. None of the teachers the Student would be working with, besides Mrs. Learning/Literacy Specialist are trained in Orton Gillingham. There would be three hours and forty-five minutes of instruction each week, with Mrs. Learning/Literacy Specialist providing only one hour of that instruction to the Student. There is no question that Mrs. Learning/Literacy Specialist is a well-trained and experienced professional member of SPS. However, Mrs. Learning/Literacy Specialist is the only staff member who would be working with the Student who has Orton Gillingham training. The Student needs extensive support in her structured literacy class and would again be receiving about one hour of Mrs. Learning/Literacy Specialist's time per week. Computer-based instruction should be a supplement, if used at all, and is not part of the code-based instruction. Computer-based programs do not match the scope and sequence of Orton Gillingham patterns so students as far behind as the Student have difficulty with the text and it can encourage guessing habits. The concern is that there would not be enough time and attention for the Student for reinforcement of previously taught skills in an integrated manner and that the Student would lose gains and regress as a reader and writer. (Findings of Fact, #'s 23-25).

- The Student would not be receiving any direct support for social emotional needs. Mrs. Learning/Literacy Specialist testified that she has worked with students with emotional needs in the past and is able to recognize a student in need, although she was not aware that the Student had any such needs. Dr. Neuropsych found in her evaluation in early 2024 that "[The Student's] psychosocial functioning should continue to be monitored to be sure self-esteem stays strong" and she testified to the same. Mr. School Psychologist was aware of the Student's profile having reviewed Dr. Neuropsych's 2024 evaluation, yet her history with anxiety was not discussed at the April 4, 2024 PPT. There is no transition plan in place for the Student to address what could reasonably be described as a big transition were she to leave Southport and return to the public school setting. Even without a history of anxiety and school-related stress, such a major transition should have been addressed by the PPT. Given that the Student does have a history of anxiety in the public school setting, even though Dr. Neuropsych has currently ruled out a clinical anxiety diagnosis, it would not be a reach to predict that the Student might encounter a period of stress and anxiety transitioning from a small, structured and highly supportive school environment to one that is much larger and to a program with less support and structure in many areas. It is likewise not a stretch to imagine a student struggling with school-related stress and anxiety would find it difficult to access the curriculum. The IEP offered to the Student as SPS for the 2024-2025 school year is not "reasonably calculated to enable the child to receive educational benefits" and the IEP will not enable the child to make progress in light of the child's circumstances. (Finding of Fact #'s 21 and 23-24).
- The IEP does not contain accommodations and modifications such as pre-teaching and review, despite the importance the school psychologist placed on both given the Student's working memory and attentional deficits, or using technology in content classes where she could not do the reading. A paraprofessional is listed as an implementor for all special education supports. And there are no consultations between staff listed including between special education and general education. (Finding of Fact #23).

- Lastly, there is no evidence to support that the Student could make meaningful progress in a math class taught in the general education setting by a general education teacher with support by a paraprofessional. The Student has benefitted significantly from a small sized class, made up of peers who are achieving on a similar level as the Student. As the Student is mostly reading and writing anywhere from one to three years behind her same-age peers, it is unreasonable to expect the Student to enter into a general education math class with anywhere from sixteen to twenty-two students, after being taught with a group of five, and be able to advocate for herself should she not understand a lesson. Despite a math impairment being ruled out, such expectations would likely put undue stress on the Student as she copes with a more language heavy 6<sup>th</sup> grade math class, which circles back to her previous struggles with anxiety and feeling dumb and incapable. The IEP called for math support but the goal that was to be addressed was a reading comprehension goal. As noted by Dr. Neuropsych, the Student's math calculation skills were in the low average range and she reported that while the Student was making progress academically, she continued to require one-to-one intensive reading remediation as well as additional remediation in math. Looking at science, the same reasoning applies. There are no goals and objectives to address science despite the possible language and reading-heavy composition in a 6<sup>th</sup>-grade science class. The class would again be taught in a large, mainstream class. The co-taught class would have one other adult to help all of the students who needed help and the Student would have to receive help in a group of children that had different disabilities to be able to get support. Again, it would be upon the Student to alert either the teacher or the paraprofessional if she was struggling. In both math and science, due to the Student's issues with working memory and difficulty with attention, instruction in these classes would need to be repeated multiple times which is again an unreasonable expectation in a large general education setting with only one teacher and a paraprofessional available to the Student. (Findings of Fact, # 23-25)
- 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 and (3) the equities favor them. *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. The proposed IEP was inadequate to offer the Student FAPE in regards to the time and intensity offered to the Student in the Reading Academy. The IEP also lacks a transition plan and support for the Student's social-emotional needs. The program offers limited support the Student's deficits which flow over into math and science. While the Southport School might be a restrictive program for one student, the private education services sought by the Parents at the Southport school are reasonably calculated to enable this Student to receive educational benefits. If a

Student denied FAPE, the parents may turn to an appropriate specialized private school designed to meet special needs, even if the school is more restrictive. The Southport School is an appropriate placement, and the equities weigh in the Parent's favor (Finding of Fact, #23-25).

- 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. (Finding of Fact #24 and 25).
- The Hearing Officer finds that Southport School is appropriate placement for Student for the 2024-2025 and Student has made meaningful progress at Southport School supported by qualified teachers and using adequate progress monitoring. (Finding of Fact #20-25).

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

1. The proposed IEP for the 2024-2025 school year does not provide the Student with FAPE.
2. Placement at the Southport School is the appropriate placement for the Student for the 2024-2025 school year.
3. The Parents will provide the Board with an invoice for the tuition of the Southport School for the 2024-2025 school on or before January 10, 2025. The Board will remit payment for tuition for the 2024-2025 school year to the Southport School on or before February 14, 2025.

## **APPENDIX**

Mrs. Language/Literacy Specialist

Mr. Psychologist

Mrs. Speech and Language Pathologist

Mrs. Special Education Coordinator

Mrs. K-5 Coordinator

Mrs. Special Education Teacher/Learning Specialist

Mrs. Neuropsychologist

Mrs. Parent

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

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



Hearing Officer Signature



Hearing Officer      Name in Print