

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student v. Greenwich Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of Greenwich:

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Appearing before:

Kelly Moyher, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board violate its Child Find obligations from November of 2022 (as of November 25, 2022) to present?
2. Is the Student eligible for special education with a primary disability of Emotional Disability or Other Health Impairment?
3. Was the Student denied FAPE for the 2022-2023 (as of November 25, 2022), 2023-2024 and 2024-2025 school years?
4. Is placement of the Student at Fusion Academy with wraparound therapeutic services from Shoreline Therapy Center the appropriate placement for the Student for the 2024-2025 school year?
5. Is the Student entitled to compensatory education and/or any other relief deemed to be appropriate by the Hearing Officer?

**PROCEDURAL HISTORY:**

A special education hearing was requested by the Student's Attorney via letter dated November 25, 2024. The Hearing Officer was appointed on December 2, 2024. At the December 5, 2024 prehearing conference call, hearing dates were selected. The mailing date is April 9, 2025, the parties having both requested and been granted on the record two 30-day extensions of the mailing date to accommodate hearing dates.

Hearing dates took place on the following days: January 15<sup>th</sup>, 22<sup>nd</sup> and 31<sup>st</sup>, February 20<sup>th</sup> and 25<sup>th</sup> and March 6<sup>th</sup> and 19<sup>th</sup>.

The Parent submitted exhibits P1-P-84 and the Greenwich Board of Education (hereinafter “GBE”) submitted exhibits B-1-B-45. The Board called the following as witnesses: Ms. Counselor, GBE; Mr. Science Teacher, GBE; Mr. English Teacher GBE; Mr. Assistant Dean, GBE; Mrs. English Teacher, GBE; Mr. Social Worker, GBE; Mrs. Social Studies Teacher, GBE; Mr. Dean, GBE, Mrs. ASL Teacher, GBE. The Parent called the following as witnesses: Parent, Mrs, Executive Functioning Tutor; Mrs. Head of School, Fusion Academy; Dr. Psychiatrist, Mrs. Teacher, Fusion Academy, Mrs. Social Worker, Mr. Campus Director, Fusion Academy, Mr. Founder, Shoreline Therapy Center, and Mr. Therapist, Shoreline Therapy Center.

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.

### **PARTIES’ STIPULATION OF UNCONTESTED FACTS**

1. The Student is not currently deemed by the Board to be eligible for special education pursuant to the Individuals with Disabilities Education Act. The Parent disagrees.
2. The Student was adopted at the age of 16 months from Kazakhstan and suffered several developmental delays. He received Birth to Three services.
3. The Student has a 504 plan.
4. The Board cannot locate any PPT or 504 records prior to November 2021.
5. During high school the Parent was in constant communication via email with the Student’s teachers regarding missing classwork and assignments.
6. Dr. Nelson Dorta re-evaluated the Student in October 2023, when the Student was in 10th grade and the evaluation was submitted by the Parent to the Board. At a November 27, 2023 PPT, the Board stated that it did not suspect a disability and therefore would not evaluate the Student or find the Student eligible for special education.
7. The Student was found unresponsive in class on January 24, 2024 and was transported to the Emergency Room. He had overdosed.
8. The Student was given a one-day in-house suspension.
9. The Board required a Safety Plan to be in place for the Student upon his return, which was signed by the Student, Parent, and staff.

10. The Student's mental health declined in the Spring and he enrolled in Newport Academy's Partial Hospitalization Program in May 2024, stepping down to the Intensive Outpatient Program in mid-June 2024. While attending the PHP, Newport Academy provided educational services, implementing the essential assignments forwarded by Greenwich High School.

11. As the Student was preparing to step down to the IOP, a PPT was convened on June 7, 2024. The Board again did not suspect a disability that required special education services and denied eligibility.

12. The Parent sent notice of unilateral placement at Fusion Academy to the Board on August 6, 2024, and followed it up with notice that he was also being unilaterally placed for short-term residential treatment at Turnbridge with academic services being provided virtually by Fusion.

13. After a suicide attempt in early Fall 2024, the Student was hospitalized at Silver Hill Hospital, followed by a second short-term placement for residential treatment at Turnbridge.

14. In October 2024, Dr. Mana Shafie performed a neuropsychological evaluation of the Student. Her evaluation and a discharge letter from Silver Hill Hospital were reviewed at a PPT on January 6, 2025. The Board refused to discuss criteria for other health impairment and/or emotional disability at this meeting and again decided that it did not suspect a disability. The Board denied evaluation and eligibility.

15. At the January 6, 2025 PPT, the Parent notified the Board that unilateral placement at Fusion would continue with wraparound therapeutic services from Shoreline Therapy.

### **FINDINGS OF FACT:**

1. The Student is 16 years of age and currently resides with his mother in Greenwich. He was unilaterally placed by his mother as a student at Fusion Academy and receives wraparound therapeutic services from Shoreline Therapy Center.
2. The Student was born in Kazakhstan and was primarily cared for by his great-grandmother until she suffered a stroke when the Student was 5.5 months old. He was then placed in an institutional care facility for the following 10 months. At the time of adoption, the Student weighed 16 pounds, was nonverbal and malnourished. Rickets, cleft palate, hearing loss, failure to thrive and global developmental delays were identified. The Student quickly gained weight after adoption by his mother, walked and underwent surgeries for cleft palate and ear tubes. The Student also received Birth to Three language services and private speech therapy. (P-3, Testimony, Parent,, p. 568-573).
3. During toddlerhood, the Student showed an even temperament, restrained feelings and would self-sooth when upset. He would often retreat from comfort offered by his mother which may have been a result of the pervasive deprivation he experienced while at an orphanage. Major developmental and motor milestones were delayed. At age 3, self-regulation concerns appeared which included limited focus, fidgeting, underdeveloped play and overstimulation in busy environments. The Student also received occupational therapy as a toddler. (P-2 and 3, Testimony, Parent, p. 568-573).

4. The Student had difficulties in kindergarten including frustration tolerance and behavior issues. After being evaluated by a pediatric neuropsychologist at age 6, the Student was diagnosed with ADHD and Disinhibited Social Engagement Disorder, with the evaluator explaining that "Children who have spent time in an orphanage early in life, are at increased risk for attachment related issues that often result in emotional dysregulation and certain types of regressed behaviors, often associated with feelings of inadequacy and loss. [The Student's] attention-seeking behaviors at school, his need for praise and support when challenged, and his quickly deteriorating regressed behaviors when frustrated, all point to a need for emotional support that is consistently seen among children who struggle with attachment related issues." The evaluation also showed the Student to have average cognitive and academic skills, and the evaluator emphasized the need for the Student to develop strategies for identifying and tolerating negative emotions to reduce dysregulated behavior. Recommendations included counseling, a functional behavior assessment, a particular approach to behavior intervention, and other accommodations. The Student was given a 504 plan at school to address his needs. (P-2-5, P-60 and 62, Testimony, Parent, 578).
5. The Student continued to struggle academically and behaviorally during elementary and middle school. In 2014, when the Student was in 6<sup>th</sup> grade, an additional neuropsychological evaluation of the Student diagnosed him with ADHD with associated executive function, low writing skills with respect to mechanics and organization and dyscalculia. Specialized instruction was recommended in writing, math and executive functioning. The Student also struggled with peer relationships, increasingly feeling excluded, isolated and anxious. In October of 2019, a neuropsychological report confirmed a diagnosis of ADHD as well as dyscalculia and subclinical distress and lower self-esteem around school related demands. GBE continued to provide an amended 504 plan and denied the Student special education eligibility. In Eighth Grade, the Student experienced serious social trauma, though he did not disclose it to anyone until he was in residential treatment. He was accused of nonconsensual sexual activity, which the Greenwich Police concluded was not true. However, classmates began accusing him. (P-2-6, Testimony, Parent, p. 738-792, 751, Testimony of Dr. Psychiatrist, p. 819)
6. The Student entered 9<sup>th</sup> grade at Greenwich High School for the 2022-2023 school year. Classmates continued to approach him with accusations from the previous year, elevating his social anxiety. During 9<sup>th</sup> grade, the Student also continued to struggle with executive functioning issues and peer relationships. As academic demands increased and peer relationships became more complex, the Student began to withdraw, avoid peers, his mental health deteriorated, and academic dysregulation intensified. The Student had issues turning in assignments on time and struggled with tardiness and absences. As of a December 2022 504 meeting, the Student was receiving the following accommodations under his 504 Plan in all classes: use of calculator, may take assessments in an alternate setting, 50% extended time on assessments, preferential seating, frequent teacher check ins, speech to text, access to counseling and breakdown of projects into smaller pieces. Other issues reported from GBE during the Student's freshman year were struggles with work completion, not being aware of assignments, varying grades, vaping and continuing executive functioning concerns. GBE implemented the STARS program toward the end of the Student's 9<sup>th</sup> grade year to help

address his executive functioning struggles. to (B-26, Testimony, Parent, p. 748, 752, and Mr. English Teacher, 258).

7. The Student's mother began actively involving herself in the Student's academics early on in 9<sup>th</sup> grade when she saw him struggling. She would scaffold his learning by teaching him what he missed in class, helping him to stay organized, prioritizing his assignments and staying in weekly if not daily contact with the Student's teachers. The Student began ADHD medication which helped with focus but not executive functioning and he began therapy to deal with anxiety. The Student also began to self medicate to deal with anxiety by vaping nicotine. Grades went from A's and B's to C's and D's. The Parent was at one point having weekly meetings with Ms. School Counselor. The Student's school work began to pile up and he also began showing physical symptoms of anxiety. The Parent also got the Student involved in horseback riding to provide a pro-social activity as the Student loves animals, and the connection with the horse was therapeutic for him. During 9<sup>th</sup> Grade, he rode twice a week outside of school hours. As the Student became overwhelmed with school work, he began meeting with his guidance counselor once every other cycle (once every 8 days) to work on executive functioning skills, although the guidance counselor did not have specialized executive functioning training. (P-31-35, P-45 Testimony, Parent, 780, 950-951 and Ms. School Counselor, 80-88).
8. A 504 meeting was convened on December 5, 2022. Accommodations on the plan that were aimed at executive functioning were teacher check-ins for understanding/on task, and breaking down of projects into smaller pieces, but neither of those accommodations was consistently implemented. (P-16, Testimony, Parent, p. 958) Only at the end of the year did the Student's guidance counselor ask teachers to sign the Student's planner after each class to ensure he knew what needed to be accomplished which happened inconsistently and did not remedy the situation. P-16, P-45, Testimony, Parent, pp. 756-757, 958).
9. The Student's anxiety continued to escalate although he was participating in outside counseling after the incidents that occurred in 8<sup>th</sup> Grade. When the Parent found a nicotine vape in the Student's backpack, she reached out to get school-based counseling for her son at the end of April 2023. The Student met with Mr. School Worker once, but no further sessions occurred. On May 3, 2023, the Parent wrote to the Student's teachers that when she looked in his backpack the "organizing situation was horrific." The Parent put a folder system in place for the Student and the guidance counselor offered the STARS program (a short-term Tier 2 intervention) to help with his executive functioning. Although the Student made the honor roll in the first quarter, he ended up with Bs and Cs in the fourth quarter and Cs and Ds on his finals. (P-35, 45 47, Testimony, Parent, p. 758-759).
10. The Student began 10<sup>th</sup> grade at Greenwich High School for the 2023-2024 school year. The Student continued with executive functioning issues including not turning work in on time, turning in incomplete work, missing class work and homework, and tardiness and absences. The Student was assigned a new guidance counselor, Ms. Counselor, who was starting in her first job as a school counselor. The Student's 504 Plan was the only documentation she received about the Student. The Parent continued with continuous emails with the Student's 10<sup>th</sup> grade teachers who reported the Student to have late and missing work. Mr. History

Teacher reported that the Student appeared to lose steam attending to classwork. Mr. Science Teacher observed that the Student had missing assignments and would take bathroom breaks that lasted over 15 minutes. Mr. Assistant Dean, who was also the Student's 10<sup>th</sup> grade social studies teacher, observed the Student to be missing assignments, had trouble following through on assignments, difficulty with motivation and attention, difficulty transitioning and issues with long bathroom breaks. Mr. Assistant Dean also noted that the Student had periods of melancholy, a depressed affect and being reserved which affected performance. Although some of the interventions in the Student's 504 Plan helped, his functioning did decline. The Student is a strong test taker and would sometimes be able to achieve a 'C' after struggling during a term. The Student's 10<sup>th</sup> grade year was described as a roller coaster. At mid-quarter the Student received two Fs and three Ds first quarter; one D and one F second quarter; one D and three Cs third quarter; and two Fs and one D fourth quarter. Though his final grades were better, due to being excused from missing assignments and final exams, the Student went from a 2.69 GPA first quarter to a 1.69 GPA fourth quarter. The STARS program was not included when the Student began 10<sup>th</sup> grade, but was reinstated by Ms. Counselor at the request of the Parent. Ms. Counselor added the STARS program back into the Student's schedule and began meeting with him once every eight school days to check in on his work completion. These measures were not included in the Student's 504 plan and Ms. Counselor. (B-4, B-16, P-36-40, Testimony, Ms. Counselor, 36, 38, 85 and 90-91, Testimony, Parent, 782-783, Mr. History Teacher, Mr. Science, 237-239, and Mr. Assistant Dean, p. 185-198).

11. On September 20, 2023 the Parent emailed GBE staff who worked with the Student throughout his days and weeks to report the Student was having trouble in school. Specifically, the Parent reported the Student was experiencing stress surrounding completing assignments, remembering tasks, remembering to write things down and turning in completed work. The Student found his classes to be moving very fast and was not able to complete in class assignments, would forget that they weren't completed, and would then move on and forget to write things down for later completion. The Parent was concerned about the Student's slow processing speed and also reported that the Student would be undergoing testing for a new neuropsychology evaluation. The Student also reported physical signs of social anxiety to his pediatrician and reported being nervous walking through school, needing to wear headphones, eating lunch quickly to then hide in the library and running away when he encountered peers. The Student's pediatrician prescribed medication for the Student's anxiety. (P-45, Testimony, Parent, p. 782-783).
12. The Student filled out an "Executive Function Skills Problem Checklist" when he started in STARS in October 2023 in which he reported extensive executive functioning impairments. (Ex. B22; P18 pp. 1-2) He reported problems with response inhibition; working memory; emotional control; task initiation; sustained attention; planning and prioritization; flexibility; organization; time management; and metacognition. (B-22, Ms. Counselor, p. 92, Mrs. ASL p. 537-39).
13. Ms. English Teacher reported inconsistent performance from the Student in his 10<sup>th</sup> grade class, late assignments and failure to submit assignments after they were finished. The Student continued to struggle despite 504 accommodations and Ms. English Teacher

exchanged many emails with the Parent. On October 8, 2023, the Parent sent an email to GBE staff regarding a cannabis vaping incident while at home over the weekend. The Parent reported that the Student felt overwhelmed with negative thoughts and anxiety and a preoccupation with what his peers thought of him. Issues with sleep were reported as well as struggles with school work and struggles with grief after the loss of a surrogate mother figure. Mr. Social Worker recommended the Student meet with a facility nearby to address drug use. The Student began meeting with Mr. Social Worker for brief check-ins. Mr. Social Worker reported that the Student was always polite and respectful but could have been masking to deal with insecurity, social issues and self-medicating with vaping. Mr. Social Worker checked in with the Student about six times prior to January of 2024, but the Student seemed guarded. The Student participated in horse back riding and would sometimes leave school during flex time instead of meeting with Mr. Social Worker. The Parent reported feeling the Student benefited greatly from continuing with riding for his mental health (B-30, Testimony, Mr. English Teacher, P. 280-293, Mr. Social Worker, 250-252, and Parent, p. 786-789).

14. Mrs. ASL Teacher had the Student in her sign language class during his 10<sup>th</sup> grade year and reported the Student was very nice and friendly, but struggled in her class with distraction, difficulty with in class assignments, getting started, not being able to finish work independently and late and missing assignments. Looking at the STARS Intervention Log for the Student for 10<sup>th</sup> grade, Mrs. ASL Teacher reported the Student exhibited concerns with the following executive functioning skills in her class; working memory, task initiation, sustained attention, planning/prioritization, flexibility and organization. She reported that the accommodations provided in the Student's 504 Plan were not helping him with executive functioning. (P-18, Testimony, Mrs. ASL, p. 534-536, 540).
15. During the early months of the Student's 10<sup>th</sup> grade year, the Parent privately hired Mrs. Executive Functioning Tutor (hereinafter "Mrs. EFT") to assist the Student with executive functioning skills. Mrs. EFT had worked with the Student privately in middle school. Mrs. EFT worked with the Student for one hour each week after school on organization, building routine, checking work and homework, but reported the Student probably needed at least two hours a week to work on executive functioning skills. She was concerned that the Student was not identified as a student in need of special education services for ADHD and that despite her work with the Student and the Parent's constant intervention with teachers on the Student's behalf, the Student needed a high level of support with executive functioning as the Student continued to miss assignments and turned in work late. (Testimony, Mrs. EFT, 631-648).
16. In October of 2023, a neuropsychological evaluation was completed by the same pediatric neuropsychologist who evaluated the Student in October of 2019. The results of the evaluation reconfirmed results from prior evaluations which included ADHD, dyscalculia and school related distress. ADHD symptoms were described as somewhat responsive to medication and dyscalculia was described as persistent but improved in the areas of math computations and quantitative reasoning abilities. Of note, the Student denied any depressive/mood or anxiety concerns or substance abuse although he did mention some stress related to school difficulty and parental expectations. No neurobehavioral testing was

performed. The evaluator reported the Student was persistent but had clear difficulty maintaining focus for sustained periods and problem solving remained less planned and organized for the Student's age and his processing speed remained quite low. The evaluation showed ADHD Inattentive Type showing persistent problems with vigilance and complex attentional control. Other executive functioning deficits were seen in verbal working memory, set-shifting, organizational/planning skills and slowed processing speed. With a lack of neurobehavioral testing, the evaluator reported the Student to be experiencing a mild level of distress related to school and learning challenges. The evaluation recommended an IEP addressing executive functioning skills like planning and organization, math skills, metacognitive reading skills, note taking, time management and study skills. A hands-on approach with the Student's guidance counselor was recommended with weekly support meetings to help manage the learning process and to help the Student feel more comfortable in school. It is noted that only weekly 'check-ins' occurred between Mr. Social Worker and the Student during the 2023-2024 school year, not support meetings. (B-21, Testimony, Mr. Social Worker, 279-288).

17. On November 15, 2023 GBE received a Referral to Determine Eligibility for Special Education and Related services from the Parent and the new neuropsychological evaluation was presented. At a PPT on November 27, 2023, the Parent described the Student's continued struggles with executive functioning, as well as the extensive support he was receiving from her at home in the form of the executive functioning coach and her weekly, if not daily, contact with the Student's teachers chasing down assignments. Both the Parent and the Student communicated that the Student needed more support in school. The Parent also raised concerns about the Student needing more support from counselling and a consistent time to meet instead of check-ins. The team decided that the Student's grades were good and GBE would not pursue its own testing to complement the outside testing as there was no significant adverse impact on academics and, therefore, the Student did not qualify for Special Education. (B-18, Testimony, Parent, 789-796).
18. On January 25, 2024, the Student stole Xanax from his mother and overdosed in school during his sign language class. The Student was hospitalized but returned to school soon after the incident. The Student was suspended from school for one day for drug use, although there is no record of the suspension. The Student reported later in the year that the overdose was a suicide attempt. The Student wrote a letter of apology to Mrs. ASL for what happened in her class. The Parent began emailing with GBE staff concerning the Student's safety. A safety plan was put into place to address attendance issues and for the Student to have a place to go and staff to check in with should he feel uncomfortable. A plan to meet and review the Student's safety plan after the February break is listed in the plan, but this never occurred. The only other action taken by GBE was a referral for an outside therapist made by Mr. Social Worker. There is a wellness center available for Students receiving special education, but the Student was not able to access this through his 504 Plan. (B-19, B-46, Testimony, Mrs. ASL, p. 586, Mr. Social Worker, p. 273-284, Parent, 797-804, Mr. Dean, 510-512).
19. The Student continued to struggle after the suicide attempt between January and early May of 2024. The STARS program was continued to try and address executive functioning skills in



the short term, but the Student continued to have issues with executive functioning and there was no progress monitoring. Mr. Social Worker continued to check in with the Student between January and May of 2024, but there were no formal counselling sessions. The Student continued to struggle with attendance, tardiness, leaving class and late and missing assignments. The Student began withdrawing from peers and previously occurring self-harming behaviors increased. The Student began skipping his STARS class and communication regarding the Student's class attendance did not occur between staff and/or the Parent, which was required by the safety plan. At the prompting of the Parent, an email from Ms. School Counselor was sent to GBE staff who were part of the Student's safety plan to remind them of the existence of the safety plan. An increase in ADHD medication resulted in an increase in the Student's anxiety and the Student began skipping classes and smoking marijuana. Mr. Science Teacher reported the Student's performance began to drop in the 3<sup>rd</sup> term of the year and he was missing assignments, was tardy and took long bathroom breaks. Mr. Social Studies Teacher observed the Student continuing to struggle with late work, missing assignments, completing tasks and forgetting to submit work. He also noticed a continued depressed affect in the Student and that the Student was reluctant to have conversations with his teacher and would not ask for help or self-advocate. Mrs. English teacher also noted issues with attendance and work completion, tardiness and task initiation and that frequent emails continued with the Parent to try and address the Student's behavior and academic performance. (P-21, 38-39, P-45-48, B-30, Testimony, Mr. Social Worker, p. 279-284, Parent, Mr. Science Teacher, 241-245, Mr. Dean, p. 180-195 Teacher and Mrs. English Teacher).

20. In late April of 2024, the Student began seeing a psychiatrist, Dr. Psychiatrist. The Student had been walking out of classes and not returning, and began struggling in math class. The Student was struggling to understand the work and the Parent met with the head of the math department to get additional instruction for the Student but was unsuccessful. In early May, due to the Student's increased struggles academically and emotionally, and his increased reliance on vaping with nicotine and cannabis, Dr. Psychiatrist recommended the Parent enroll her son in a higher level of care. (Testimony, Parent, p. 804-806).
21. The Parent enrolled the Student at Newport Academy's Partial Hospital Program (PHP) from May 6, 2024 until June 17, 2024. At the PHP, the Student participated in individual and group psychotherapy, appointments for medication management, and one-on-one schooling with scaffolding including goal-setting, expectation setting, and frequent check-ins. The Student worked on coping skills and worked on essential assignments for school. Mrs. Counselor coordinated with Newport for the Student to receive school work and GBE forgave all outstanding assignments. Final exams were waived, but even with modifications, his GPA for the fourth quarter was a 1.94. The Student thrived at Newport and was able to address core conflicts and the roots of his anxiety while also attending to school work. The Student's substance abuse reversed course almost immediately and he had academic success. On June 17, 2024 the Student stepped down to an Intensive Outpatient Program at Newport and was discharged on July 12, 2024. In a letter dated July 5, 2024 the diagnoses given to the Student while at Newport were Major Depressive Disorder, recurrent, moderate, Generalized Anxiety Disorder and Cannabis Use Disorder which presented as withdrawal, avoidance, substance abuse and inability to advocate and communicate his needs. The Student's mental

health challenges previously impacted his ability to be educated appropriately and with specialized instruction and increased support for executive function and mental health challenges he was academically successful at Newport. A second letter dated July 10, 2024 regarding classroom observations of the Student found that the Student had made “tremendous progress” with engagement and executive functioning skills while at Newport. The Student was an active participant in his learning and was focused and engaged in his school work. He was independently able to use an assignment tool to support task completion and was able to manage his time well, thriving academically and socially. (P-40, P-42, P-43, Testimony, Parent, Ms. Counselor, p. 84).

22. On May 16, 2024, after enrolling her son in the partial hospital program at Newport, the Parent submitted another Referral to Determine Eligibility for Special Education and Related Services. The Parent stated in the referral that the Student’s 504 Plan was not working and hadn’t been for years. The referral also stated that the Student was not able to access his education due to severe stress and anxiety, executive functioning issues and math disability and that the Student required an IEP and possible placement in a smaller and more structured environment. (P-13 and 14, Testimony, Parent, 805-809).
23. On June 7, 2024 a PPT was held and attended by the following; the Student and Parent, Dr. Psychiatrist, Mr. Social Worker, Mrs. School Counselor, Mrs. ASL, Mrs. Social Studies (the administrator for the meeting), a special education teacher and a teacher from Newport Academy. Dr. Psychiatrist emphasized the need for more support for the Student based on his anxiety and executive functioning issues and that the safety plan that was in place for the Student wasn’t working. The Student also described his need for more support during the meeting. He added that few of his 504 accommodations were implemented, such as access to class notes, breakdown of projects or access to graphic organizers. He also emphasized how stressed and anxious he is in school. The Child Find duties of GBE were not discussed at the meeting. Based upon the Student’s educational performance and the Team’s review of records, the PPT denied the request for an initial evaluation and/or special education. The decision was made that the Student was accessing grade-level curriculum and that most of his issues were due to substance abuse. Dr. Psychiatrist emphasized that the Student’s drug use was episodic and not a disorder, that it was a reaction to anxiety due to school stress. Dr. Psychiatrist felt that there was “willful disregard” for his recommendations stating, “I’ve never seen a more willful disregard for what a professional has to say. It was jarring, to say the least.” He was shocked by what happened in the PPT and felt that the Student was being left on his own. Mrs. Social Studies, the administrator for the meeting, stated that there were 3,000 students and that GBE staff could not be expected to “run around outside looking for every student who decides not to go to class” and that “the onus is on them to go to class and make the right choices”. The Parent emphasized that the Student had a safety plan that had not been followed and the Student would be failing if she did not constantly follow up with calls and emails to staff, if she was not constantly helping him at home and hiring a private executive functioning coach. After the Student’s overdose/suicide attempt in January of 2024, his emotional state coupled with ADHD began to impact the Student severely in the classroom. However, a PPT was only held in June of 2024 when the Student was referred for special education services by the Parent. The Parent and Dr. Psychiatrist were both hopeful that the Student would come away from the June PPT being a student who qualified for

special education and related services to that the Student could return to his high school. (P-16, Testimony, Parent, p. 809-810, 895-896, Dr. Psychiatrist, p. 823-825 and Mrs. Social Studies).

24. On August 6, 2024 the Parent notified GBE that she would be placing the Student at Fusion Academy for the 2024-2025 school year. While the Student was working at a summer camp, one of his friends died of an overdose and the Student struggled with the grief and trauma. The Student's mental health deteriorated and the Parent notified GBE on August 12, 2024, that she had to place the Student at Turnbridge for intensive inpatient mental health treatment. She further notified GBE that Fusion would be providing academic instruction to the Student while he was at Turnbridge. While at Turnbridge, the Student revealed that his overdose while in school at Greenwich in January of 2024 was a suicide attempt due to feelings of isolation and anxiety. The Student received 21 hours or more per week of group therapy, weekly individual and family counseling, and psychiatric services. He was able to go to school for an hour per day, facilitated by a special education teacher and received fitness instruction and engaged in structured recreational activities to foster positive peer engagement and life skills. (P-81, Testimony, Mrs. Social Worker, p. 978-990).
25. The Student was only discharged from Turnbridge's intensive outpatient program on September 22, 2024 when insurance discontinued payment. Academic services through Fusion continued. Soon after, the Student made another suicide attempt. He was hospitalized at Silver Hill on October 30, 2024 and then returned to the inpatient program at Turnbridge in early November. (P-44, P-51 and 52, Testimony, Parent, 1124-1127).
26. After the Student's first stay at Turnbridge, the Parent sought a new neuropsychological evaluation and the dates for the evaluation took place in July, September and October of 2024. Dr. Neuropsych diagnosed the Student with ADHD (Moderate), Combined Presentation, Specific Learning Disorder in Math: Fluent Calculation, Specific Learning Disorder in Written Expression: Clarity and Organization, Unspecified Trauma Disorder, and noted that the Student's profile primarily reflects the "pervasive neurodevelopmental impacts of adverse early life experiences". She found that such early life adversities (preverbal traumas) can have profound and long-term impacts on the developing brain. Institutional neglect and deprivation are associated with later onset psychological problems which has been seen in the Student as psychological deterioration since entering adolescence. Dr. Neuropsych noted that the Student's personality profile reveals a deep need for dependency that conflicts with his deep fear of rejection, and the Student aims to please and preserve relationships by concealing negative thoughts and feelings, which reinforces feelings of loneliness and isolation. Such restraint can further build internal tension, frustration and resentment which can leave him vulnerable to emotional dysregulation, impulsive outbursts and maladaptive coping methods such as substance use/self-medicating, self-harm and suicidality. Dr. Neuropsych noted that the Student's emotional restraint and overreliance on self-soothing were likely survival mechanisms when he was institutionalized where crying and other typical comfort-seeking behaviors were likely ignored or even possibly punished. The survival mechanisms which seemed to have persisted throughout his development are now counterproductive and dangerous within the context of adolescence. The Student's self-destructive behaviors which were previously self-protective are best understood as a trauma

response. Dr. Neuropsych's medical recommendations included intensive, long-term, trauma informed treatment provided by a multidisciplinary team of specialists, at the highest level of care given the Student's high degree of suicidality and self-destructive behaviors. Dr. Neuropsych's educational recommendations included an IEP with classification as Emotional Disability. Placement at a residential treatment center was recommended to address the Student's comprehensive educational needs. (P-6, Testimony, Dr. Neuropsych, p. 1171-1175).

27. The Student was also diagnosed with ADHD being moderately impaired in stamina and vigilance, with persistent areas of executive dysfunction in planning, organization, response inhibition, working memory and processing speed. Dr. Neuropsych explained that the Student's impaired executive functions undermine his concentration, and because he requires extra time for processing information, he might lose track of lessons and miss necessary content, which can undermine his academic progress and achievement over time, adding that such a pattern can create a disjointed, fatiguing and discouraging learning experience, prompting emotional distress with withdrawal in response to seemingly minor frustrations. (P-6, Testimony, Dr. Neuropsych, p. 1150-1158).
28. Learning disabilities were also identified and the Student's below grade-level arithmetic fluency and mental math ability stood out. For writing, the Test of Integrated Language and Literacy Skills revealed scaled score of 2 (3rd percentile ) for his writing ability at the discourse level; a 6 (9<sup>th</sup> percentile) for his writing ability at the sentence level; a 6 (7th percentile) for his writing ability at the word level; and a 6 (9th percentile) for reading fluency. On the Test of Written Language, he earned a below-average scaled score of 7 (16th percentile) for both Contextual Conventions and Story Composition, equivalent to approximately a fourth-grade level. The major difference in the Student's WISC General Ability Index (standard score of 116) and his Cognitive Proficiency Index (standard score of 76) combined with his academic skill deficits in writing and math, caused the Student to deal with "emotional distress and withdrawal in response." (P-6, Testimony, Dr. Neuropsych, p. 1170-1174).
29. Dr. Neuropsych testified that substance use did not cause the Student's social or executive functioning issues, saying "those [social and executive function issues] were established far before he started using substances. Dr. Neuropsych explained that ADHD can make a student more vulnerable to mental health issues and that, conversely, mental health problems can exacerbate ADHD, and that it is difficult to tease out which negatively affected which. She also testified that ADHD and mental health issues are part of the same continuum, especially when there are other complicating factors like early trauma, which puts adolescents at risk for mental health issues and risky behavior. The Student's trauma response can also affect his ability to form peer and teacher relationships. (Testimony, Dr. Neuropsych, p. 1179-1180, 1200-1202).
30. Dr. Neuropsych recommended explicit direct instruction for identified areas of disability and vulnerability (written expression, executive function, math fact fluency) including therapeutic techniques for managing emotional distress prompted by learning related frustrations. She recommended instruction to target written expression including mechanics,

grammar, sentence structure and content organization. In math, foundational calculation procedures should be reinforced to build mastery (long division, multidigit multiplication) with math fact repetition to help develop fluency and automaticity. The following accommodations were also recommended: extra time (2x) and an environment with limited distractions for exams, designated quiet space for completing classwork, access to a calculator for assignments and exams, explicit executive functioning strategies (managing assignments, prioritizing tasks, planning/organization, study skills, time management), audio books for improving speed and reducing fatigue while reading, strategies for prewriting, drafting, editing and revising written work, and assistive technology devices and/or software for note-taking and written assignments. (B-9, Testimony Dr. Neuropsych).

31. The Parent investigated several residential therapeutic boarding schools for the Student. Over time it became clear to the Parent and Dr. Psychiatrist that separating the Student from his mother, his home and his community could be damaging and traumatic for the Student. The Parent made the decision to place the Student locally with therapeutic services. (Testimony, Parent, p. 820-825 and Dr. Psychiatrist, 828-830).
32. The Student's second admission to Turnbridge in November 2024, proved to be fruitful as staff had the knowledge provided by the newest neuropsychological evaluation, learning about the Student's extremely low processing speed for his level of cognition, as well as how his attachment issues and preverbal trauma affected his functioning. Therapy was focused on "how hard it was for him to feel a part of the group, how hard it was for him to be in classes, how hard it was for him to basically feel like he was a part of his own life." The Student also revealed to staff at Turnbridge that the girl who had accused the Student of rape in 8<sup>th</sup> grade had gone on to leave Greenwich High School in grade 9, leaving the Student a note that she was planning to kill herself and it was the Student's fault. Until the Student revealed this information during his second stay at Turnbridge, he thought he had caused her death and only after revealing this information did the Student learn the girl was alive and well. Both Ms. Social Worker and Dr. Psychiatrist testified that the Student's treatment at Turnbridge was necessary for him to be educated and that the current program at Fusion with wraparound services from Shoreline Therapy would sufficiently resemble the built-in therapeutic educational environment the Student needed. The Student required this level of mental health intervention and would not be able to access any education. The Parent used her insurance to pay for psychiatric care but insurance did cover much of the services which were psychological, therapeutic recreation and counseling. (Testimony, Ms. Social Worker, p. 818-820, 992-997, 1005, Testimony, Dr. Psychiatrist. P. 848, Testimony, Dr. Neuropsych 1208-1209).
33. Dr. Neuropsych found that the Student's current placement – academics at Fusion and wraparound therapeutic services from Shoreline - makes sense because it replicates aspects of the residential setting while keeping him in his community and home and therefore not disrupting his attachments. She classified the Student's substance use as a form of self-harm, not sustained enough to merit a substance use disorder. She also found that the Student met the criteria for both IDEA classifications of other health impairment and emotional disability and said that he requires specialized instruction for coping skills, executive functioning, and his learning disabilities. (Testimony, Dr. Neuropsych, p. 1216-12320).

34. The Student has been attending Fusion Academy Greenwich at first remotely for one hour a day of academics during his stays at Turnbridge and attending in person with the start of 2025. Fusion is not a therapeutic program, and the Student is receiving wrap around therapeutic services from Shoreline Therapy. Fusion is a fully accredited and state approved non-public school and specializes in small classrooms and a personalized education program for each student. There are currently 52 full-time students and 8-10 part time students attending. There is a one-to-one student to teacher ratio for academic instruction and content is catered to the learning profile of students while they master state and common core standards. While not a special education school, many students have 504 Plans, IEPs and learning differences. A Special Education Lead Teacher (SEL) works with teachers to modify and make accommodations for each student. Fusion uses the MindPrint Learning Assessment to analyze student's cognitive strengths as well as the MAP (Measures of Academic Progress) to estimate a student's content knowledge in Reading Comprehension and Math Fluency. Student learning profiles at Fusion include ADD/ADHD, dyslexia, anxiety, depression and gifted students. Honors, college prep and essential courses are offered and each course has varying requirements and can be personalized and accommodated for each student. Fusion organizes team meetings to include a family's whole team including psychiatrists, psychologists, social workers and outside tutors or executive function coaches and joins PPT meetings to discuss social growth and academic progress. There is a heavy focus on social-emotional learning in and out of the classroom and teachers in the one-to-one model also act as mentors. Students also have access clubs, trips, community service and weekly meetings. Classes at Fusion can be frozen for up to a year if a student needs to take time away from school to attend a mental health facility. (P-65, Testimony, Mrs. Head of School, Fusion, p. 685-704).
35. Currently, the Student attends school at Fusion several days a week from 8:30 am to 1:30 pm and on other days attends 1:30 pm to 4:30 pm. The Student has taken the following courses while at Fusion: Algebra 2 with Trigonometry, honors Anatomy and Physiology, English, Veterinary Science and Psychology.
36. When the Student is not attending school at Fusion he is at the outpatient treatment center at Shoreline Therapy Center where the Student has 2 hours a week of therapy and 4-6 hours a week of coaching for social emotional functioning and executive functioning work. The Student is enrolled in the Connections Program, which mimics aspects of a residential therapeutic program, where the milieu is the Student's home community rather than the community at residential therapeutic school. There is rolling communication 7 days a week with the Parent and Shoreline will begin working within the Greenwich community to provide community engagement for the Student. Mr. Founder, who is the founder, executive director and clinician at Shoreline and is an associate director and clinician at the Grove School in Madison, CT, testified that Shoreline creates an outpatient milieu that mimics portion of a residential setting. He believes the Grove School would not be able to accept the Student, and that based on his suicidal history and attachment issues the Student would be very difficult to place in a residential center locally. (Testimony, Mr. Founder, p. 1054-1059, 1065-67, 1077-79).

37. At Shoreline, the Student spends four hours a week with his “coaches” who work on helping the Student build healthy habits at home, creating a social network and forming and maintain healthy relationships. The Student’s therapist at Shoreline is working with him on emotional regulation, attachment issues and social, family and interpersonal dynamics. With the degree of therapeutic support the Student is receiving, he is able to focus on school work at Fusion and can address his emotional and executive function needs daily. This allows the Student to receive educational benefits in a program designed to meet his unique needs and the Student can, therefore, benefit from instruction. (Testimony, Mr. Therapist, 1083-1086, Mr. Founder, 1055-1056).

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

1. There is a dispute as to whether the 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. School districts are charged with the duty of evaluating and identifying all students with disabilities in the school district who are in need of special education and related services. 20 U.S.C. § 1412(a)(3); Conn. Gen. Stat. § 10-76d-1(a). Federal regulations state that included in the “Child Find” duty are “children who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade.” 34 CFR § 300.111(c)(1). Connecticut regulations require that “[p]rovision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance, including truant behavior, or progress in school is considered unsatisfactory or at a marginal level of acceptance.” Conn. Agencies Regs. § 10-76d-7(c).
2. IDEA considers a student to be a “child with a disability” if they have certain conditions, including “other health impairment” or emotional disability, and, by reason of such condition, require special education and related services. 20 U.S.C. § 1401(3); Conn Gen. Stat. § 10-76qq. Such children are entitled to a FAPE provided via an Individualized Education Program (IEP). 20 U.S.C. § 1412. “Special education” is defined as “specially designed instruction . . . to meet the unique needs of a child with a disability . . . including instruction in the classroom, in the home, in hospitals and institutions, and in other settings” 20 U.S.C. §1401(29). “Specially designed instruction” is further defined in the regulations as “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction – (i) to address the unique needs of the child that result from the child’s disability; and (ii) to ensure access of the child to the general curriculum . . .” 34 CFR §300.39(b)(3). “Related services” include psychological services, therapeutic recreation, and counseling services. 20 U.S.C. § 1401(26). GBE violated its Child-Find duty by not evaluating and identifying the Student within a reasonable time of when it suspected or had reason to suspect that he was a student with a disability.
3. To establish a procedural violation of the Child Find duty, the Board “must have ‘overlooked clear signs of disability,’ be ‘negligent in failing to order testing,’ or have ‘no rational

justification for not deciding to evaluate.” Reg'l Sch. Dist. No. 9 Bd. of Educ. v. Mr. & Mrs. M., No. 3:07-CV-01484 (WWE), 2009 WL 2514064, at \*11 (D. Conn. Aug. 7, 2009) (citing Bd. of Ed. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007); A.P. v. Woodstock Board of Education, 572 F. Supp.2d 221, 225 (D. Conn. 2008)). Pursuant to federal law, “the standard for triggering the Child Find duty is suspicion of a disability rather than factual knowledge of a qualifying disability.” Mr. and Mrs. M., No. 3:07-CV-01484 (WWE), 2009 WL 2514064, at 12.

4. The Student has struggled with executive functioning for some time despite having a 504 Plan going back to elementary school. Mental health struggles began to appear early on in his high school career. While the Student was not failing and did have 504 accommodations, his limited success in high school from an academic standpoint has occurred through average cognitive abilities, the desire to do well, and the constant support and intervention of the Parent. Several evaluations over the years have pointed out a diagnosis of ADHD with impairments in executive function and a learning disability. The last of these three evaluations was presented in November of 2023, after the Student had been in high school for almost a year and a half and clearly presented with struggles surrounding ADHD and executive functioning such as missing assignments, failure to complete assignments, turning in work on time, tardiness and absences. Over the course of the Student's freshman and sophomore year, these struggles became marked, and the Parent and GBE staff noticed drug use and a changed demeanor in the Student. While the Student seemed able to manage academically and socially at the beginning of high school, his capabilities deteriorated. The STARS Program, which is a short-term program, did not help the Student to tackle his executive functioning issues, even though he was in this program for over a year. GBE focused too much of its attention on grades where the Student in this case is concerned. The Connecticut Department of Education states in *Guidelines for Identifying and Educating Students with Emotional Disability* (July 1, 2022), “educational performance cannot be limited to academics.” (P-57 p. 26). The Guidelines go on to provide that “An adverse effect can be manifested through behavioral difficulties at school, impaired work skills, such as being disorganized, tardy, having trouble getting to school on time, and difficulty with following the rules.” The Student struggled with many of these concerns and GBE was wrong to primarily focus on final grades. GBE staff testified that the Student is a good test taker and could rally at the end of a term. But it is quite notable that the Student struggled throughout his first two years of high school and that these struggles only worsened even with a 504 Plan, the STARS Program, a privately hired executive function coach and constant communication and help with work at home from his mother. Situations such as vaping cannabis and nicotine, which were always communicated by the Parent to GBE staff, should have raised additional red flags to GBE staff. The neuropsychological evaluation done in the fall of 2023 and presented to the PPT in November of 2023 recommended an IEP addressing executive functioning skills like planning and organization, math skills, metacognitive reading skills, note taking, time management and study skills. At the very least, considering the Student's struggles, which increased from 9<sup>th</sup> grade to 10<sup>th</sup> grade, additional evaluative data should have been sought at the November 27, 2023 PPT and GBE should have suspected a disability. (Finding of Fact, 4-17).



5. Several GBE witnesses have testified that the Student's executive functioning issues impacted his ability to complete class work as well as homework which adversely affected his educational performance. These struggles, unsupported through an IEP, also contributed to the Student's decline in mental health and socio-emotional functioning. Each private evaluation over the years has shown that the Student requires specialized instruction, and the STARS list of executive functioning problems documents the adverse effect on the Student's education. The Student qualifies for special education under the category of other health impairment. IDEA regulations define other health impairment as: "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (i) Is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder...and (ii) Adversely affects a child's educational performance." 34 C.F.R. § 300.8(c)(9). (Finding of Fact, 10-17, 19).
6. The Student went on to struggle academically and emotionally during the second half of 10<sup>th</sup> grade, kicked off by what would later be identified as a suicide attempt in January of 2024. Due to the extreme seriousness of this occurrence, and how out of character it was for the Student, GBE again should have attempted to gain additional information into the Student's struggles. Instead, only a safety plan was implemented which was not followed up on and wasn't always adhered to. The plan was aimed at controlling the Student's whereabouts, where GBE should have been investigating what led to what was a suspected overdose, especially given the Student's struggles in academics, executive functioning and drug use in the beginning of 10 grade. It is difficult to determine whether the Student's underlying mental health issues exacerbated his ADHD and executive functioning struggles, or whether his impairments due to ADHD and executive functioning and a learning disability brought forward and contributed to severe mental health struggles. As Dr. Neuropsych points out "ADHD can make a student more vulnerable to mental health issues and that, conversely, mental health problems can exacerbate ADHD, and that it is difficult to tease out which negatively affected which". It is the proverbial chicken or the egg scenario; however, what is clear is that the Student began a major decline in his mental health and academic performance during the 2<sup>nd</sup> half of his 10<sup>th</sup> grade year that should have been addressed prior to the Parent needing to make her own referral to special education in June of 2024. The Student experienced an inability to learn due to mental health struggles such as anxiety, both academic and social, depression, and trauma connected to early childhood events and more recently occurring events that happened 8<sup>th</sup> grade and in high school such as the loss of a mother figure and serious accusations of sexual assault. A referral to determine eligibility and/or further evaluation for a suspected disability should have occurred during the spring of 2024, and at the very least, further evaluation should have been sought at the June 2024 PPT. As the summer and fall of 2024 progressed and the Student was admitted to Turnbridge twice and Silver Hill Hospital after another suicide attempt, GBE again had the opportunity to review new information regarding the Student's academics and mental health. Even after a 4<sup>th</sup> neuropsychological evaluation was performed and submitted which delved into not only the Student's ADHD and learning disability but gave all of the parties valuable insight into the extreme struggles the Student has faced as a result of traumatic experiences both new and old. But again, at a PPT in January of 2025, which occurred as the hearing was underway,

GBE denied eligibility for special education and related services and did not initiate any additional testing of the Student for a suspected disability. (Finding of Fact, 2-14, 16-20, 32).

7. The Student also qualifies for special education under the exceptionality of emotional disability, as is defined in federal regulations as:

a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8. (Finding of Fact, 4-7, 9-11, 18-20, 23-25-26, 29, 32).

8. 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).
9. 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).
10. GBE 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. As GBE has failed to make referrals for special education and further evaluation for the Student, there is no program or placement to be considered which is a violation of the Student’s right to FAPE as the Student should have been identified as a student entitled to special education and related services under other health impairment and emotional disability. (10-11, 13-14, 17-23, 25-26).
11. 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.

12. Under the Second Circuit case, *Frank G. v. Bd. of Educ. of Hyde Park*, appropriateness of placement and reimbursement is addressed:

[P]arents are not barred from reimbursement where a private school they choose does not meet the IDEA definition of a free appropriate public education. See 20 U.S.C. § 1401(9). An appropriate private placement need not meet state education standards or requirements. *Carter*, 510 U.S. at 14, 114 S.Ct. 361. For example, a private placement need not provide certified special education teachers or an IEP for the disabled student. *Id.* In addition, parents “may not be subject to the same mainstreaming requirements as a school board.” *M.S.*, 231 F.3d at 105 (citing *Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 84 (3d Cir.1999) (holding that “the test for the parents' private placement is that it is appropriate, and not that it is perfect”)).

*Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2d Cir. 2006)

13. As there is no proposed IEP, focus is on the Student’s program at Fusion Academy with wrap around therapeutic support from Shoreline Therapy. While Dr. Psychiatrist had recommended a residential therapeutic placement for the Student, it became clear that separation of the Student from his mother, community and local supports could be detrimental to the Student's mental health and socio-emotional wellbeing. It was also difficult for the Parent to find a residential therapeutic placement for the Student that was local which would address the Student’s unique needs academically and therapeutically. Both Dr. Psychiatrist and Dr. Neuropsych agreed that the Student had made enough progress therapeutically during his second stay at Turnbridge and that placement at Fusion with wraparound services from Shoreline would be appropriate. Dr. Neuropsych noted that the Student’s mental health should be watched with a close eye in case a higher level of care was needed. Should this occur, Fusion is able to accommodate the Student’s academics through remote learning and pausing instruction and allowing the Student to continue with instruction to finish classes in up to a year’s time, as was previously done in the fall and winter of 2024. The Student is making progress academically while receiving a continuum of care therapeutically and addressing his executive functioning and emotional needs on a daily basis. The Student is progressing through his learning with A’s and is constantly working with executive functioning interventions. There is evidence of actual progress for the Student at both Fusion and Shoreline and the placements are reasonably calculated to confer educational benefit. (Finding of Fact, 26, 30-37).
14. The Parent has 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).

15. Finally, reimbursement may be reduced or denied on equitable grounds if notice is not given or “upon a judicial finding of unreasonableness with respect to actions taken by the parents,” 20 U.S.C. § 1412(a)(10)(C)(iii) “Important to the equitable consideration is whether the parents obstructed or were uncooperative in the school district’s efforts to meet its obligations under the IDEA...” *C.L.* at 840. There is no evidence that the Parent was uncooperative or obstructive of GBE’s efforts to meet its obligations under IDEA. The Parent has been ready and forthcoming regarding most, if not all, of the struggles she has seen with her son both in school and at home. It is also clear that while the Student was involved with drug use at times, there has been no consistency to the Student’s drug use and he was never diagnosed with a substance abuse problem. The Student was placed at Turnbridge to treat major depressive disorder, generalized anxiety disorder and trauma and while at Turnbridge did not show any desire for continued drug use or dependency. Likewise, the Student’s placement at Fusion and Shoreline are for academic and mental health support and there is no focus on substance abuse or use. Thus, there is no support for an equitable reduction for reimbursement. (Find of Fact, 7, 11, 17, 22-23, 26, 29, 33).
16. The Hearing Officer finds that Fusion Academy with wrap around therapeutic services provided by Shoreline Therapy is appropriate placement for Student for the 2024-2025 and Student has made meaningful progress with both programs supported by qualified teachers, therapists, coaches and other support stakeholders and with adequate progress monitoring being utilized. (Finding of Fact, 20-25).

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

1. GBE violated its Child Find obligations from November of 2023 to present.
2. The Student is eligible for special education as a student with a disability of Emotional Disability and Other Health Impairment.
3. The Student was denied FAPE for the 2023-2024 (as of November 2023) and 2024-2025 school years.
4. Placement of the Student at Fusion Academy with wraparound therapeutic services from Shoreline Therapy Center is the appropriate placement for the Student for the 2024-2025 school year. The Board is hereby ordered to place the Student at Fusion Academy for the remainder of the 2024-2025 school year. The Parent will be reimbursed for the costs of tuition for Fusion and Shoreline that has been paid to date as well as transportation costs which will be reimbursed at the current IRS reimbursement rate.
5. The Parent is entitled to reimbursement of out-of-pocket costs for Turnbridge that were not covered by insurance.
6. The Parent is entitled to reimbursement for cost of the neuropsychological evaluation provided by Dr. Neuropsych.

**APPENDIX**

██████████ Ms. Counselor

██████████ Mr. Science Teacher

██████████ Mr. English Teacher

██████████ Mr. Social Studies

██████████ Mrs. English Teacher

██████████ Mr. Social Worker

██████████ Mr. Assistant Dean

██████████ Mr. Dean

██████████ Mrs. Social Studies

██████████ Mrs. ASL

██████████ Executive Functioning Tutor

██████████ Parent

██████████ Mrs. Head of School, Fusion Academy

██████████ Dr. Psychiatrist

██████████ Mrs. Teacher, Fusion Academy

██████████ Mrs. Social Worker

██████████ Mr. Campus Director, Fusion Academy

██████████ Mr. Founder, founder, executive director and clinician, Shoreline Therapy Center

██████████ Mr. Therapist, Shoreline Therapy Center

██████████ Dr. Neuropsych