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CLARK, J., concurring in part and concurring in the judgment. I agree with the majority that the trial court improperly modified the child support award on the ground that it constituted a substantial deviation from the child support guidelines because the plaintiff, Adrian Marcus, did not raise that ground in his motion for modification. I therefore concur that reversal of the judgment is appropriate on that basis. I write separately, however, because I disagree with the court's additional conclusion that the trial court would have lacked the authority to modify the order even if the plaintiff had moved to modify the award pursuant to General Statutes § 46b-86 (a) on the basis that it constituted a substantial deviation from the child support guidelines absent a specific finding on the record that the application of the child support guidelines would be inequitable or inappropriate.

In my view, the child support guidelines must be considered in all determinations of child support award amounts and the amount resulting from the application of the child support guidelines is the presumptively correct amount a court is to order. To order something other than the presumptive support amounts, our law requires a court to make a specific finding on the record that the application of the guidelines would be inequitable or inappropriate and an explanation as to which deviation criteria, under the guidelines, the court relied on to justify the deviation from the presumptive amount. In the absence of such a finding, an award is continually subject to modification under § 46b-86 (a).

Although the child support award in this case was an amount greater than the presumptive amount calculated in accordance with the child support guidelines, the majority concludes that the trial court could have, but was not required, to follow the mandates of General Statues § 46b-215b (a) and § 46b-215a-5c (a) of the Regulations of Connecticut State Agencies by making a specific finding on the record that the application of the guidelines would be inequitable or inappropriate and an explanation as to which deviation criteria under the guidelines the court was relying on in deviating from the presumptive amount.[1] The majority concludes that the court's award of costs for extracurricular activities in this case was "a separate order, independent from the plaintiff's presumptive child support obligation," which allowed the court to disregard the requirements of § 46b-215b (a) and § 46b-215a-5c (a) of the regulations. As a result, it also concludes that the court lacked the authority to modify the child support award pursuant to § 46b-86 (a).

For the reasons that follow, I believe the majority's decision is inconsistent with our statutory and regula-

tory scheme, which requires that the child support and arrearage guidelines be considered in *all* determinations of child support award amounts.

I

It is helpful to begin with a brief overview of the relevant legal principles at play. "The legislature has enacted several statutes to assist courts in fashioning child support orders." *Maturo* v. *Maturo*, 296 Conn. 80, 89, 995 A.2d 1 (2010). The legislature, for example, has established a commission to issue child support and arrearage guidelines to ensure the appropriateness of child support awards. See General Statutes § 46b-215a (a). The law makes clear that "[t]he child support and arrearage guidelines . . . shall be considered in *all* determinations of child support award amounts, including any current support, health care coverage, child care contribution and past-due support amounts, and payment on arrearages and past-due support within the state." (Emphasis added.) General Statutes § 46b-215b (a). "In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. A specific finding on the record at a hearing, or in a written judgment, order or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under the deviation criteria established by the [commission] . . . shall be required in order to rebut the presumption in such case." General Statutes § 46b-215b (a).

Section 46b-215a-5c (a) of the regulations reiterates the mandates of § 45b-215b. It provides in relevant part: "The current support, health care coverage contribution, and child care contribution amounts calculated under section 46b-215a-2c of the Regulations of Connecticut State Agencies, and the amount of the arrearage payment calculated under section 46b-215a-3a of the Regulations of Connecticut State Agencies, are presumed to be the correct amounts to be ordered. The presumption regarding each such amount may be rebutted by a specific finding on the record that such amount would be inequitable or inappropriate in a particular case. . . . Any such finding shall state the amount that would have been required under such sections and include a factual finding to justify the variance. Only the deviation criteria stated in . . . subdivisions (1) to (6), inclusive, of subsection (b) of this section . . . shall establish sufficient bases for such findings."[2] Regs., Conn. State Agencies § 46b-215a-5c (a).

Thus, in order to deviate from the presumptive support amounts, our courts have interpreted the statutory and regulatory language as requiring three distinct findings: "(1) a finding of the presumptive child support amount pursuant to the guidelines; (2) a specific finding that application of such guidelines would be inequitable

[or] inappropriate; and (3) an explanation as to which deviation criteria the court is relying on to justify the deviation." *Righi* v. *Righi*, 172 Conn. App. 427, 436–37, 160 A.3d 1094 (2017); see also *Wallbeoff* v. *Wallbeoff*, 113 Conn. App. 107, 113, 965 A.2d 571 (2009).

A failure to make the appropriate finding can have real and meaningful consequences. See, e.g., *McHugh* v. *McHugh*, 27 Conn. App. 724, 729, 609 A.2d 250 (1992) ("[s]uch specific finding . . . has very real and meaningful consequences and must be made by the court anytime the court enters a child support award that deviates from the child support guidelines"). Indeed, in the absence of a specific finding, the child support order is continually subject to modification pursuant to § 46b-86 (a). See *Moore* v. *Moore*, 216 Conn. App. 179, 195, 283 A.3d 994 (2022); see also General Statutes § 46b-86 (a). "[A] court has the power to modify a child support order on the basis of a substantial deviation from the guidelines independent of whether there has been a substantial change in the circumstances of the party." (Internal quotation marks omitted.) *Weinstein* v. *Weinstein*, 104 Conn. App. 482, 495, 934 A.2d 306 (2007), cert. denied, 285 Conn. 911, 943 A.2d 472 (2008).

II

In the present case, the trial court, in concluding that Judge Gordon's 2009 child support award was subject to modification under the substantial deviation ground for modification under § 46b-86 (a), found that "[t]he [child support] guidelines used in 2009 were effective August 1, 2005. The guidelines used now have been effective since July 1, 2015. Both sets of guidelines require a court to articulate acceptable reasons for deviation from child support guidelines together with a finding that it would be inappropriate and inequitable NOT to deviate from the guidelines in the instant case. [Judge Gordon] in 2009 made no statements regarding deviation from the guidelines. Nor did [she] give any reason for supposing that deviation criteria might exist." The court therefore concluded that modification was appropriate on the basis of a substantial deviation from the child support guidelines.

Although the majority states that Judge Gordon's 2009 child support order requiring the plaintiff to pay a portion of the children's extracurricular expenses could have been ordered as a deviation under the guidelines if the court wished to consider the guidelines, it concludes that Judge Gordon's award of costs for extracurricular activities in this particular case, which resulted in an amount that exceeded the presumptive child support award amount under the child support guidelines, was instead issued as a "separate order" pursuant to the court's broad authority to enter support orders under General Statutes § 46b-56 and therefore did not constitute a deviation from the presumptive child support amounts. As a result, it further concludes that Judge

Gordon was not required to make a specific finding that the application of the child support guidelines would be inequitable or inappropriate or provide an explanation as to which deviation criteria the court relied on to justify the deviation from the presumptive amounts. Under the majority's interpretation, trial courts have broad discretion either to apply the child support guidelines when ordering amounts that exceed the presumptive amount under the guidelines or, instead, to achieve an identical result by issuing a "separate" order without applying or following the guidelines. I believe the majority's interpretation is inconsistent with our statutory and regulatory scheme.

Our legislature has made its intent clear that a child support award is to be made in accordance with the child support guidelines and is presumptively comprised of four components: current support payments, health care coverage, childcare contribution, and periodic payments on arrearages. See General Statutes § 46b-215b (a); see also Regs., Conn. State Agencies § 46b-215a-1 (6). Those four categories of payments are calculated through the application of the child support guidelines and together comprise the presumptive support award amounts. See General Statutes § 46b-215b (a) ("there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered"). In order to award an amount greater than the presumptive amount calculated by the application of the child support guidelines, a court must make a specific finding that the presumptive amount would be inequitable or inappropriate and point to specific deviation criteria under the guidelines that would justify a deviation from the presumptive award amounts. See General Statutes § 46b-215b (a); Regs., Conn. State Agencies § 46b-215a-5c (a); *Righi* v. *Righi*, supra, 172 Conn. App. 436–37.

Our child support statutes and our case law make clear that "[t]he child support . . . guidelines . . . in effect on the date of the support determination *shall be considered in all determinations of child support award amounts* . . . ." (Emphasis added.) General Statutes § 46b-215b (a); see also *Tuckman* v. *Tuckman*, 308 Conn. 194, 205, 61 A.3d 449 (2013) ("the legislature has thrown its full support behind the guidelines, expressly declaring that [t]he . . . guidelines established pursuant to [§] 46b-215a and in effect on the date of the support determination *shall be considered in all determinations of child support amounts*" (emphasis in original; internal quotation marks omitted)); A. Rutkin et al., 8 Connecticut Practice Series: Family Law and Practice with Forms (3d Ed. 2010) § 38:19, pp. 310–11 ("consideration of the guidelines is mandatory in all child-support determinations"). The regulations governing child support broadly define a "child support award" to mean "*the entire payment obligation of the noncustodial parent, as determined under the child*

support and arrearage guidelines, and includes current support payments, health care coverage, child care contribution and periodic payments on arrearages." (Emphasis added.) Regs., Conn. State Agencies § 46b-215a-1 (6).

In the present case, the record shows that, in 2009, pursuant to the child support guidelines, Judge Gordon calculated the plaintiff's current support payments to be $528 per week. It also ordered the parties to share childcare expenses and unreimbursed medical and dental costs, in accordance with the percentage allocations contained in the child support guidelines, with the plaintiff to pay 72 percent of those costs. In accordance with § 46b-215b (a), there was "a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered." It is undisputed that, instead of awarding the presumptive amount calculated under the guidelines, Judge Gordon went further by ordering the plaintiff to pay 72 percent of the children's extracurricular activities. She therefore deviated from the presumptive amount of child support. As a result, Judge Gordon was required to make a specific finding on the record that the presumptive amount would be inequitable or inappropriate and to provide an explanation as to which deviation criteria the court was relying on to justify the deviation. See General Statutes § 46b-215b (a); Regs., Conn. State Agencies § 46b-215a-5c (a); *Righi* v. *Righi*, supra, 172 Conn. App. 436–37.[3] To the extent Judge Gordon did not make such a finding, the order is subject to modification under § 46b-86 (a).

Despite the clear language of § 46b-215b (a), our regulations, and our case law requiring that the child support guidelines be considered in all determinations of child support award amounts, the majority concludes that the court's award of costs for extracurricular activities in this case was issued as "a separate order, independent from the plaintiff's presumptive child support obligation, in accordance with § 46b-56." As a result, it concludes that the court had the authority to enter the order, which resulted in a child support award in excess of the presumptive child support amount, without considering or applying the deviation criteria set forth in the child support guidelines.

In support of its contention that the court had the discretion to make an award greater than the presumptive amount without reference to the deviation criteria set forth in the child support guidelines, the majority first notes that the presumptive amount of child support under the guidelines is intended only to cover the "basic" needs of a child. It further reasons that courts therefore have broad discretion under § 46b-56, independent of the child support guidelines and the deviation criteria set forth therein, to issue separate orders covering costs that exceed a child's "basic" needs. I

respectfully disagree.

Section 46b-56 (a) provides in relevant part: "In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any *proper order* regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p." (Emphasis added.) It is therefore clear that the statute gives courts the authority to make any "proper" order regarding the support of a child. In my view, an order regarding child support is not "proper" for purposes of § 46b-56 unless it complies with the more specific statutes and regulations governing child support awards, including the requirement in § 46b-215b (a) that the child support guidelines be considered in "all determinations of child support award amounts . . . ." That interpretation of § 46b-56 is consistent with "the well established principle of statutory interpretation that requires courts to apply the more specific statute relating to a particular subject matter in favor of the more general statute that otherwise might apply in the absence of the specific statute." (Internal quotation marks omitted.) *Studer* v. *Studer*, 320 Conn. 483, 497, 131 A.3d 240 (2016).

The majority's interpretation of § 46b-56, on the other hand, renders the mandates of § 46b-215b optional. Although the majority agrees that the court had the discretion to enter the same award amount in this case by applying the guidelines and ordering the plaintiff to pay the extracurricular costs as a deviation from the presumptive amount, the majority nevertheless concludes that § 46b-56 gave the court the broad authority to do the same thing without reference to the guidelines. That interpretation is not only inconsistent with the plain language of § 46b-56, which requires courts to enter "proper" child support orders, and the requirement that we apply the more specific statute relating to a particular subject matter, but it is also at odds with the tenet of statutory construction requiring us to interpret statutes in such a way as to harmonize them in order to avoid an interpretation that would render a statutory requirement a nullity. See, e.g., *Dodd* v. *Middlesex Mutual Assurance Co.*, 242 Conn. 375, 388, 698 A.2d 859 (1997) ("[r]ather than adopt [a] reading of [the operative] statutory and regulatory provisions to create a genuine conflict that would result in a nullification of one by the other, as a reviewing court we should seek to harmonize the legislation so as to avoid conflict").

I also find unpersuasive the majority's reliance on this court's decision in *Powers* v. *Hiranandani*, 197 Conn. App. 384, 232 A.3d 116 (2020). In that case, this court merely cited to § 46b-56 in support of its conclusion that the trial court did not abuse its discretion when it ordered the father to pay a percentage of the

children's extracurricular activities. Id., 405–406. The parties in that appeal, however, did not raise, and the court therefore did not address, the issue of whether an order requiring a parent to pay expenses for extracurricular activities in an amount that exceeds the presumptive amount of child support constitutes a deviation under the child support guidelines that requires the court to make a specific finding that awarding the presumptive amount would be inequitable or inappropriate. Indeed, there was no discussion at all in that opinion about § 46b-215b (a) or the child support guidelines.

Although it appears that our appellate courts have not previously addressed how costs for extracurricular activities are to be treated under the child support guidelines, numerous judges in the Superior Court have correctly concluded that amounts ordered in excess of the presumptive child support amounts, including costs for extracurricular activities, must be tied to an appropriate deviation criteria under the child support guidelines with a specific finding that the presumptive amounts calculated under the guidelines would be inequitable or inappropriate. See, e.g., *Spizzirri* v. *Spizzirri*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FA-11-4021190-S (March 26, 2018); *Hernandez* v. *Rivera*, Superior Court, judicial district of Ansonia-Milford, Docket No. FA-17-6022444-S (July 18, 2017); *Rogers* v. *Rogers*, Superior Court, judicial district of Litchfield, Docket No. FA-10-4009253-S (May 18, 2017); *Soto* v. *Huth*, Superior Court, judicial district of Hartford, Docket No. FA-15-4077880-S (November 23, 2016); *Skiendziel* v. *Skiendziel*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FA-09-4017302-S (October 6, 2014); *Rice* v. *Rice*, Superior Court, judicial district of New Haven, Docket No. FA-02-0281393-S (January 24, 2013); *Allgrove* v. *Hodges*, Superior Court, judicial district of Hartford, Docket No. FA-03-0732608-S (September 16, 2005).[4]

Although the majority points to other Appellate Court decisions in which trial courts awarded costs for extracurricular activities in amounts that resulted in awards that exceeded the presumptive amount under the guidelines, the majority concedes that the propriety of the extracurricular orders in those cases was not at issue. See footnote 16 of the majority opinion. Indeed, it is not even possible to know from reading those decisions whether the courts in those cases did (or did not) apply the guidelines and make the requisite findings on the record when awarding costs for extracurricular activities. See *Righi* v. *Righi*, supra, 172 Conn. App. 441 ("in order to deviate properly from the child support guidelines in fashioning a child support order, the court must fulfill each of the statutory requirements for deviation from the guidelines and that obligation includes a specific finding *on the record* that application of the guidelines would be inequitable or inappropriate given

the circumstances of the case" (emphasis added)).

I am concerned that the majority's holding today will permit courts to do an end run around § 46b-215b (a) and the child support guidelines by issuing "separate orders" for amounts over and above the presumptive amounts without reference to the deviation criteria set forth in the guidelines. See *Maturo* v. *Maturo*, supra, 296 Conn. 100 ("[t]he deviation criteria are narrowly defined and require the court to make a finding on the record as to why the guidelines are inequitable or inappropriate"). Such a result runs counter to the clear purpose of § 46b-215b and the child support guidelines, which is "to ensure that [child support awards] promote 'equity,' 'uniformity,' and 'consistency,' " for all children. Id., 94–95.

To be clear, I do not conclude that trial courts cannot order a parent to pay the costs of extracurricular activities in an amount that exceeds the presumptive amount of child support under the guidelines. Rather, in order to do so, a court must simply comply with § 46b-215b (a), which requires a specific finding on the record that an award of the presumptive amount under the guidelines would be inequitable or inappropriate and an explanation as to which deviation criteria under the guidelines justify deviation from the presumptively correct amounts.[5] See Regs., Conn. State Agencies § 46b-215a-5c (a); *Righi* v. *Righi*, supra, 172 Conn. App. 436–37.

Because I conclude that the child support guidelines were applicable to the extracurricular order in this case, I also conclude that a trial court would be permitted to modify that order pursuant to the substantial deviation ground under § 46b-86 (a) if that ground was properly raised in a motion for modification and if there was a substantial deviation from the child support guidelines without the requisite findings.

Accordingly, I concur.

[1] General Statutes § 46b-215b (a) provides: "The child support and arrearage guidelines issued pursuant to section 46b-215a, adopted as regulations pursuant to section 46b-215c, and in effect on the date of the support determination shall be considered in all determinations of child support award amounts, including any current support, health care coverage, child care contribution and past-due support amounts, and payment on arrearages and past-due support within the state. In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. A specific finding on the record at a hearing, or in a written judgment, order or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under the deviation criteria established by the Commission for Child Support Guidelines under section 46b-215a, shall be required in order to rebut the presumption in such case."

[2] Although there was a different operative regulation at the time that the extracurricular order was issued; see Regs., Conn. State Agencies § 46b-215a-3 (a) (2005) (repealed July 1, 2015); that earlier regulation contained language substantially identical to the present language (two regulations referenced in 2005 regulation have been renumbered in current regulation). For ease of discussion, I cite to the current regulation in this concurrence.

[3] Indeed, as the majority acknowledges, the preamble to the current child

support and arrearage guidelines states that amounts ordered for extracurricular activities in excess of the presumptive child support amounts should be considered in accordance with the deviation criteria under the child support guidelines. See footnote 15 of the majority opinion; see also Child Support and Arrearage Guidelines (2015), preamble, § (j) (2), p. xxi; *Maturo* v. *Maturo*, supra, 296 Conn. 92–93 ("[t]he guidelines are accompanied by a preamble that is not part of the regulations but is intended to assist in their interpretation"). In particular, under the section titled "Deviation criteria," the Commission for Child Support Guidelines states: "This commission considered adding extracurricular expenses to the currently listed [deviation] criteria of education expenses, unreimbursable medical expenses, and expenses for special needs. The commission decided not to add extracurricular expenses as a separate section under the category 'extraordinary expenses for care and maintenance of the child' *reasoning that extracurricular expenses could be addressed under the* [*deviation*] *criteria of best interests of the child under the 'special circumstances' heading*." (Emphasis added.) Child Support and Arrearage Guidelines, supra, p. xxi.

Although the 2005 child support guidelines are the operative guidelines for purposes of the extracurricular order in this case, the pertinent language of the two sets of guidelines is not materially different. Indeed, the commission itself acknowledged that the 2015 guidelines made minimal changes to the deviation criteria in the 2005 guidelines. See id., § (j) (1), p. xx ("[t]he commission determined that the deviation criteria are generally working well, and that minimal changes to the regulation were needed").

[4] Other jurisdictions with similar child support laws and regulations also have concluded that an order requiring a noncustodial parent to pay amounts for extracurricular activities exceeding the amount of a presumptive child support award constitutes a deviation that must be justified by specific findings that the presumptive award would be inappropriate or inequitable. See, e.g., *Lehr* v. *Lehr*, 720 So. 2d 412, 415 (La. App. 1998) ("[b]ecause we find no evidence supporting a deviation from the child support guidelines or evidence indicating a particular educational need of [the children], we vacate that portion of the judgment ordering [the plaintiff] to pay [two thirds] of the costs of the children's participation in extracurricular activities"); *Elrom* v. *Elrom*, 439 N.J. Super. 424, 442, 110 A.3d 69 (App. Div. 2015) ("[T]he trial judge did not explain why she deviated from the [g]uidelines by adding . . . extracurricular activity costs as supplemental support. Reviewing the record we find [the] plaintiff's assertions of need were not evidentially supported; they merely reflect her opinion. Such testimony fails to establish the 'good cause' necessary for disregarding the [g]uidelines provisions."); *Sinnott* v. *Sinnott*, 194 App. Div. 3d 868, 877, 149 N.Y.S.3d 441 (2021) ("[T]he expenses of leisure, extracurricular and enrichment activities, such as after-school clubs, sporting activities, etc., are usually not awarded separately, but are encompassed within the basic child support award . . . . A court can order a parent to pay these expenses over and above basic child support . . . . However, if it does so, it is a deviation from the basic statutory formula and requires an analysis under the factors set forth [by law]." (Citations omitted; internal quotation marks omitted.)); *Fox* v. *Fox*, 515 P.3d 481, 489–90 (Utah App. 2022) ("[S]chool fees and extracurricular activities are presumed to be included in the regular child support payment . . . . [A] court [however] can deviate from the presumptive child support guidelines and order a higher amount designed to include [school fees or costs for extracurricular activities] but such an order must be supported by a specific finding on the record supporting the conclusion that use of the guidelines would be unjust, inappropriate, or not in the best interest of the children . . . ." (Internal quotation marks omitted.)), cert. denied, 525 P.3d 1263 (Utah 2022).

[5] For example, this court has explained that "an agreement of the parties may be sufficient to rebut the presumption that the support amount calculated under the guidelines is the correct amount; however, the court must still make such a finding, cite one or more deviation criteria to support the agreement, state the amount that would have been required under such sections and make a factual finding to justify the variance." *Deshpande* v. *Deshpande*, 142 Conn. App. 471, 478, 65 A.3d 12 (2013).