

Case Number: 2011-0313

Hearing Officer: [REDACTED]

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

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Impartial Due Process Hearing Decision Cover Page

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District Name [REDACTED] Phone: 773-553-1000
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by Parent represented herself

Date and Timelines

Date of Written Request: 04/07/2011

Date of Hearing: 06/23/2011

Date of Pre-hearing Conf: 05/24/2011

Date of Decision: 06/28/2011

Summary of Decision

Parent requested hearing on issue of placement in separate day school as the LRE for 11 year old Student with a learning disability, who has been receiving special education and related services in a public school with 400 minutes per week of resource services in math and language arts and 30 minutes per week of speech/language therapy. Student has also been receiving private tutoring in reading, including *Wilson Reading System* instruction, and in math. District presented evidence of 2 public school placement options to address Parent's desire to provide Student with multisensory instruction, including having Student's current special education teacher trained in the *Wilson Reading System* or change of placement to a classroom of 8 to 9 students with learning disabilities located in another public school in which multisensory instruction is provided for up to a full school day by a certified *Wilson* teacher, assisted by a certified *Wilson* paraprofessional.

HELD: for District, for the reason that the Student's IEP can be implemented, even with the multisensory instruction desired by Parent and offered by the District, in Student's current public school placement or in the public school multisensory classroom offered by the District, and a separate school, public or private, is therefore not the LRE for Student at this time. Parent requested only an order that Student be placed in a private therapeutic day school for students with learning disabilities, and, based on the evidence presented and law applicable thereto, that order was not appropriate.

ORDER: Parent's request for placement in a private therapeutic day school at public expense is denied.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

RECEIVED

JUN 30 2011

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2011-0313
)
) [REDACTED]
) Impartial Due Process
) Hearing Officer

SPECIAL EDUCATION
SERVICES

Procedural History

Parent submitted a Request for Due Process Hearing, dated April 7, 2011, which was received by District on April 7, 2011 seeking revision of Student's IEP, per an attached list of reasons including failure to provide assistive technology and to include extended school year services, and private placement at public cost. The April 7, 2011 hearing request does not reference Parent's desire for *Wilson* or any other multisensory instruction. District counsel submitted District's written Response on April 18, 2011, addressing Parent's allegations and denying Student's need for private placement.

The parties participated in state sponsored mediation in lieu of resolution session on April 29, 2011 and convened an IEP meeting on May 10, 2011. The Pre-Hearing Conference was held on May 24, 2011, continued from May 9, 2011 by joint request of the parties due to the scheduling of the aforesaid IEP meeting. At the time of the Pre-Hearing Conference, Parent requested hearing only on the issue of placement in the least restrictive environment and specified her desire only for an order requiring placement of Student in a separate school with multisensory instruction for students with learning disabilities. A copy of the Pre-Hearing Conference Report dated May 26, 2011 is incorporated into the record as *Hearing Officer Exhibit A*.

Hearing proceeded as scheduled at the District offices on June 23, 2011. It was originally scheduled for May 23, 2011 per the ISBE special education database system. However, it was delayed due to the aforesaid continuance of the Pre-Hearing Conference and also upon the request of the parties at the time of the Pre-Hearing Conference, for various reasons, as noted in the Pre-Hearing Conference Report, and it was scheduled upon their mutual agreement for June 23, 2011. Due to the aforementioned continuances of the Pre-Hearing Conference and the Hearing, this Decision is not being issued within 45 days of the initiation of the 45 day timeline. It is being issued within 10 days of the conclusion of the hearing.

Present for the hearing were Parent and [REDACTED] attorney for the District. Assisting District counsel was attorney [REDACTED] who is also attorney for the District. The Hearing was reported by [REDACTED] CSR of [REDACTED] Reporting (312 368-1228). Parent testified on her own behalf and was also called to testify by District. Parent also called [REDACTED], private tutor and owner of the [REDACTED] to testify in her case. The following witnesses were also called to testify on behalf of District: [REDACTED] Student's special education resource teacher, and [REDACTED], District Special Projects Manager.

The following documents were admitted into evidence:¹ Parent documents numbered 1-21 (IEP 2/4/11); 22-54 (IEP 5/10/11); 55 (test results 5/4-5/5/11); 56-59 (assessments 5/20/11); 60 (Progress Report); 61 (medical diagnoses 10/5/10); 62-64 (Parent's internet information); 66 [REDACTED] 6/15/11); 67 (UIC recommendations 5/31/11); and 68-69 (District's Response to Parent's Due Process Hearing Request 4/18/11).

District documents numbered 1-35 (IEP 5/10/11); 36 (Parent submission to IEP team undated); 38-49 (UIC report of psychological evaluation 7/15/10); 56 (2009-10 ISAT results); 57 (2010-11 ISAT preliminary results); 58-60 (SCANTRON reading and math assessment results 2010-11); 61-63 (Accuity reading and math assessment results 6/14/11); 65-66 (Student writing

¹ Hereinafter, Parent documents are preceded by a P and District documents by a D.

6/10/11); 70-72 (math trigger words exercises); 76-79 (language arts exercises); 82 (math key words exercise); 84-85 (web and ven diagram); 89-90 (Subject and Predicate exercise 5/20/11); 91 (math operations key word exercise); 94 (Prefix Quiz); 104 (Student writing); 105-121 (reading assessments); 128-129 (language arts note taking exercise); and 136-139 (math exercises).

Parent submitted a list of legal citations in her disclosure packet in support of her position. District submitted a copy of *James D. v. Board of Education of Aptakisic-Tripp Community Consolidated S.D. 102*, 642 F.Supp. 2d 804 (N.D. Ill. 2009) in support of its position.

Issue

Whether District has failed to place Student in the least restrictive environment in which she can receive a satisfactory education, which Parent contends is a separate school offering multisensory instruction for students with learning disabilities?

Findings of Fact

The material facts relevant to the above issue based upon the evidence presented at hearing in this matter are as follows: Student is an 11 year old female who has recently completed Grade 6 in a District public school. She is eligible for special education and related services in the category of specific learning disability. (D1) In addition to her learning disability, she was diagnosed with Attention Deficit Disorder-Combined Type in a private evaluation performed in May, 2010. (Parent; P26; D48)

Student's IEP of February 4, 2011, developed subsequent to a previous due process hearing decision and order, called for removal from the general education classroom for 26% of her school day to receive 400 minutes of special education instruction in language arts and math, 15 minutes of social work services, and 30 minutes of speech/language services per week. (P18) Parent advised staff at the time of the February 4, 2011 IEP meeting that she rejected all of the proposed changes on Student's IEP and that she intended to have Student placed in a private school at public expense. (P4) Student moved from her previous elementary school to her current elementary school, both within the District, on February 7, 2011. (Parent)

Student has been receiving *Wilson Reading System* tutoring from tutors at the [REDACTED] for two sessions each week since the beginning of February, 2011. She receives her tutoring in a small group of 1 to 2 students. [REDACTED] *Wilson* was selected by Student's private tutors to address her difficulty in decoding words. It is recommended for Student, who is dyslexic, because it is evidence based, highly structured, multisensory instruction. It involves progression through and mastery of 12 levels, and Student has completed 3 levels since February and is now at Level 4. She is on track currently to master the remaining levels in about 12 more months, with the current amount of instruction, at which time she will be able to read at her grade level. [REDACTED]

Math tutoring was added to Student's *Wilson* tutoring at the beginning of June, 2011. Student's dyslexia negatively impacts her math fluency. Student has difficulty with algebra and story problems. She has difficulty determining the order of operations. (D.G.)

Tutors at the [REDACTED] did not issue any reports regarding Student's tutoring or her progress to Parent or District prior to the Student's May, 2011 IEP meeting. They keep her progress records in a binder at the center. [REDACTED] Student's special education teacher has observed Student using *Wilson* strategies in her special education resource classroom. [REDACTED]

An IEP conference was convened on May 10, 2011 to revise Student's IEP to integrate recommendations of the mediation of April 29, 2011 and include recommendations pertaining to an assistive technology assessment performed on April 28, 2011. (D1-3, 10, 35) Extended School Year Services were included. (D32, 35) At that time, Parent did not provide any reports or recommendations relating to the private *Wilson* tutoring to the IEP team and did not ask for multisensory instruction from the District. She did advise the team that Student responds well to 1:1 instruction and expressed her desire for more 1:1 instruction. However, she rejected the idea of a self-contained classroom. She expressed her feeling that placement in a therapeutic day school may be necessary to bring Student up to grade level. (Parent; D7)

The May 10, 2011 IEP calls for removal of Student from the general education classroom for 25% of the school day to receive 400 minutes of special instruction in language arts and mathematics and 30 minutes of speech/language therapy per week. The IEP team considered a less restrictive and a more restrictive option and determined that Student's IEP could be implemented with the aforesaid resource and related services in combination with accommodations and modifications in the general education classroom. (C.B.; D29)

Student's special education teacher, [REDACTED], implemented the Student's IEPs from February 2011 through the end of the 2010-11 school year in her current placement. In addition to daily resource instruction, 40 minutes in language arts and 40 minutes in math, she also worked with Student in the general education classroom in small groups 4 to 5 times per week. Student's small group instruction includes 4 other students with learning disabilities. Her general education class size is about 19 students. Student does take notes and benefits from the use of the assistive technology provided for her. Student is motivated to cooperate and participate by her typical peers. (C.B.)

Student's progress has been assessed regularly and goals and benchmarks developed accordingly to address her needs by the special education teacher. She has made substantial progress in math since January 2011 and some progress in reading since that time. Her instructional reading level of 5th grade is 2 years behind her grade level. (C.B.; D5-7, 17-26)

After the May 10, 2011 IEP meeting and the May 24, 2011 Pre-Hearing Conference in this cause, Parent secured a brief letter from the Psychology Department at the University of Illinois at Chicago, dated May 31, 2011, stating that "...the Wilson Reading System would be an effective method for teaching (Student) to read." It included a recommendation that Wilson services should be continued. She received it the second week of June and did not share it with District. (Parent; P67)

District personnel reviewed Student's file and determined that Student could benefit from the District's multisensory program, a cluster program operated in various classrooms in schools within the District. Parent was offered a placement in such a classroom in another elementary school in the District. That classroom includes 8 students with learning disabilities taught by a *Wilson* certified teacher, assisted by a *Wilson* certified paraprofessional. Student would be able to receive individualized instruction and could complete all 12 levels of the Wilson System in the multisensory classroom with appropriate amounts of mainstreaming. [REDACTED] Parent visited that program prior to this hearing.² (Parent)

Wilson instruction can also be incorporated into Student's resource instruction, and her current teacher believes that the current public school placement is the best place for Student. [REDACTED] District has offered to train Student's current special education resource teacher in the *Wilson Reading System*. The District offers training through its own multisensory institute, and training is also offered by Wilson and funded by the District. [REDACTED]

Conclusions of Law

A separate school for students with learning disabilities is not the least restrictive environment in which Student can receive a satisfactory education, and the District has not failed to offer Student placement in the least restrictive environment.

At a due process hearing convened pursuant to the provisions of the Illinois School Code, it is incumbent upon the District to present evidence that it has provided or has offered to provide the student in question with a free appropriate public education in the least restrictive environment, in accordance with the stated issues in the case, here, whether the LRE is a separate school for students with learning disabilities, as Parent is requesting. *ILCS 5/14-8.02a(g-55)(2008)* The burden of persuasion falls upon the party seeking relief, in this case Parent.

² Parent did not testify about any details of her visit. She has maintained, even at the conclusion of the hearing, that she wants only an order to place Student in a private school at public expense. She does not want Student in a self-contained classroom in a public school, and she advised that she will not let Student go back to her current school in the Fall.

Schaffer v. Weast, 546 U.S. 49(2005) All of the witnesses who testified were credible, but Parent, who clearly seeks the best education she can obtain for her child, does not have the law on her side in her quest for private placement at public expense under the evidence that was presented at hearing, and she has failed to meet her burden.

The educational placement of a child is driven by the student's unique individual needs as designated by the goals to be addressed and the accommodations and related services required to assist her in reaching those goals in her IEP. The district must make a continuum of placement options available, ranging from a regular classroom in the student's neighborhood school to a residential facility, and must place each student, along that continuum, in the least restrictive environment in which her IEP goals can be implemented with the designated supports and services, including special education instruction, assistive technology, speech/language therapy and any other relevant services. To the maximum extent appropriate, a disabled child must be educated with her typical peers, and she is not to be removed from the regular environment unless the nature or severity of her disability require it. 105 ILCS 5/14-8.02(d)(2008); 23 ILAC 226.240(2007); 34 CFR 300.114-116(2006)

Both the procedural and substantive elements of determining placement in the LRE for a Student with a learning disability were addressed at length in this jurisdiction as one of multiple issues in *James D. v. Board of Education of Aptakisic-Tripp Community Consolidated S.D.* 102, 642 F.Supp. 2d 804 (N.D. Ill. 2009), cited by District counsel in support of District's position in this matter. As in the present matter, the parents in the [REDACTED] case argued that there had been a "predetermination" of placement in the public school because the school district did not offer the student a private placement. As evidence of the alleged predetermination in the case at hand, Parent has cited District's April 18, 2011 Response to Parent's hearing request, for the reason that it responds to Parent's request for private placement at public cost by asserting District's position that "...private placement is not appropriate." As noted above in the Statement of Facts, an IEP meeting was convened on May 10, 2011 following the parties' participation in state sponsored mediation. It is concluded that District's Response contesting Parent's assertion that a private placement was required does not evidence "predetermination" of Student's placement before the May 10, 2011 IEP meeting. The IEP document itself reflects the options considered for Student along the continuum. The District was not required by law to offer Student a more restrictive placement, including a private day school, if a less restrictive option was available to allow implementation of Student's IEP. See *James D.* at 821-22.³

In considering the parents' argument that the LRE for Student was a private therapeutic day school, the court examined the Seventh Circuit's directive in *Bd. Of Educ. v. Ross*, 486 F.3d 267 (7th Cir. 2007). The *Ross* court noted that this Circuit has declined to adopt a "multi-factor test" for determining whether a child may remain in a regular school with her typical peers, referencing its analysis in *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). Rather, in determining what placement constituted education with typical peers to "the maximum extent appropriate" it asked the following question: "Was the education in the conventional school satisfactory, and, if not, whether reasonable measures would have made it so?" *Ross* at 273. Employing this analysis, the court in *James D.* determined that the student could receive a satisfactory education in a public school placement, while spending 30% of her school day with typical peers, and that the private placement unilaterally selected by the parents was therefore not the least restrictive environment for the student. *James D.* at 833.

At the Pre-Hearing Conference in this matter on May 24, 2011, Parent stated that the only issue she wished to present for hearing was whether placement in a separate school was the LRE for Student. She specified that the only remedy she desired was an order of placement in a school with multisensory instruction for students with learning disabilities. According to the evidence presented, Parent did not ask the District for multisensory instruction for Student at the May 10, 2011 IEP meeting, nor did she provide the District with any information regarding Student's tutoring in *Wilson Reading* at that time. It was not until after the IEP meeting that Parent secured

³ The page numbers referenced may be incorrect as it was determined from the Westlaw version provided by District counsel rather than the federal reporter.

written information from the private tutor regarding Student's *Wilson* instruction and the recommendation for the continuation of *Wilson* instruction from the UIC psychologist, presumably for use at this hearing. When District was made aware of Parent's desire to continue the *Wilson* instruction, it offered to train Student's special education teacher in *Wilson* and also offered placement in an existing multisensory classroom located in another public school.

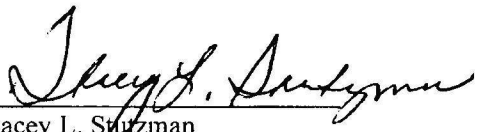
Parent wants Student to complete all twelve levels of the *Wilson* system, and [REDACTED] testified that completion of the remaining nine levels could be done within a year and would bring Student up to grade level in her language skills. District has made available two options on the continuum of possible placements in response to Parent's request, including Student's current placement with the addition of training her special education teacher in the *Wilson* Language System, and a multisensory classroom in another public elementary school for a partial or full day, depending on Student's needs, with mainstreaming available. No evidence was presented at this hearing of the necessity of a more restrictive placement for Student at this time.

Accordingly, the preponderance of evidence presented in this case does not support Parent's contention that Student should be placed in a separate day school, public or private, as Student can receive a satisfactory education, even with the addition of the parentally requested multi-sensory instruction, in the public school setting, allowing her to have contact with typical peers during the school day. Because Parent does not wish an order of any placement other than a private therapeutic day school, her request for relief in this cause must be denied.

IT IS THEREFORE ORDERED:

That Parent's request for placement of Student in a private therapeutic day school at public expense is denied.

DATED: June 28, 2011


Stacey L. Stutzman
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

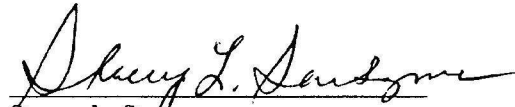
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of the decision of the impartial due process hearing officer is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent, District counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on June 28 , 2011 before 5:00 p.m.


Stacey L. Stutzman
Impartial Hearing Officer