

RECEIVED

FEB 16 2016

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

**SPECIAL EDUCATION
SERVICES**

[REDACTED]

Student,

v.

Case No. 2015-0388

[REDACTED]
[REDACTED]

School District.

Philip C. Milsk,
Impartial Hearing Officer

FINAL DECISION AND ORDER

Procedural History

MF's Parents, CF and JF, through their attorneys, the [REDACTED] filed a request for a due process hearing on April 9, 2015, and the undersigned was appointed as the hearing officer by the Illinois State Board of Education. A Preliminary Order was issued on April 26, 2015, including a statement of the rights of the parties. A joint Motion to Continue the pre-hearing conference was granted by Order dated May 22, 2015. The Order established June 30, 2015, as the new date for the pre-hearing conference by teleconference. However, the pre-hearing conference was continued to July 31, 2015, at the request of counsel for both parties so that a resolution meeting or mediation session could be scheduled prior to the pre-hearing conference.

A pre-hearing conference was held on July 31, 2015, by teleconference. Both parties submitted preliminary witness and document lists. Hearing dates were set in October, 2015, and then November, 2015, but were subsequently moved back to January 11, 12, 13 and 14, 2016, to accommodate schedules. The five-day disclosure date was set as January 4, 2016. Timely disclosures were submitted. A conference call was convened on January 6, 2016, to review witness lists and scheduling and to consider other hearing issues. One subpoena was issued at the request of the School District to [REDACTED], Executive Director of the [REDACTED] School.

The hearing took place on January 11, 12, 14 and 21, 2016. The District provided a court reporter each hearing day. The first two days of hearing were held at the District's [REDACTED] administrative offices. The last two hearing days were at the [REDACTED] School. By agreement of counsel and per an Order entered into the record and memorialized by written Order dated January 21, 2016, the deadline for written arguments was extended to January 26, 2016, and the record closed on that date. Both sides have submitted written arguments in support of their respective positions.

Jurisdiction

This hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400, et seq., and the Illinois School Code, 105 ILCS 5/14-8.02a, et seq.

Issues and Requested Relief

The issues presented in this case are:

- (1) Whether the Parents should be reimbursed by the School District, in whole or in part, for the cost of MF's parental placement at ██████████ School, a private therapeutic day school, from the 2014 summer session through the date of this decision.
- (2) Whether, going forward, MF requires a therapeutic day school to receive a free appropriate public education (FAPE).
- (3) Whether the School District denied FAPE to MF by (a) failing to give full consideration to private evaluations of MF obtained by Parents at their expense in developing the IEP of December 11, 2013, (b) failing to provide an appropriate evaluation of MF's assistive technology (AT) needs and (c) failing to appropriately address MF's educational needs in the areas of reading, writing, math and speech/language. ¹
- (4) Whether MF's rights were violated by the School District from April 9, 2013, through the date of this decision, and, if so, should MF be awarded compensatory services?

Parents seek a determination that they should be fully reimbursed for the cost of educating MF in the ██████████ School, and that MF's educational placement should continue to be the ██████████ School. They also seek compensatory services for MF. The School District requests a finding that it offered FAPE for MF in the least restrictive environment and that all requested relief be denied.

Burden of Proof and Standard of Proof

The party seeking relief has the burden of proof in a special education due process hearing. The Parents have the burden of proof in this case. *Schaffer v. Weast*, 546 U.S. 49 (2005). The standard of proof is a preponderance of the evidence. The School District has the burden of producing evidence that it has properly identified and evaluated the nature and severity of the Student's disability, and that it is providing or has offered to provide a FAPE to the Student in the least restrictive environment, consistent with procedural safeguards and in accordance with an IEP. 105 ILCS 5/14-8.02a(g-55).

¹ The FAPE issue will be addressed in the context of the reimbursement issue.

Findings of Fact

The Student

MF is a ten year-old² fifth grader who currently attends the [REDACTED] School (HPDS) at its [REDACTED] location. She has attended HPDS since the 2014 summer session. Her parents unilaterally placed her in HPDS. Prior to her enrollment in HPDS she attended the [REDACTED] School on the near [REDACTED] of [REDACTED] from pre-school through third grade. She lives with her mother CF, father, JF, and her older sister. Her sister is a student at [REDACTED]. Her parents testified that they are very involved with [REDACTED] and have relationships with staff and administrators.

Both parents testified, and other witnesses agreed, that MF is a bright, charming, sweet, fun-loving child. She is sociable and has strong leadership skills. [REDACTED], the Executive Director of the [REDACTED] School, testified that MF has a "big personality" and referred to her as the "mayor" of the school. Her mother testified that MF is very athletic, engages in competitive trampolining and competitive cheerleading, and participates in girl scouts at [REDACTED]. Her school attendance record is excellent.

It is indisputable that MF has a significant reading disability that substantially impacts her ability to learn across all domains. Her reading scores are far below age and grade expectations for a child with her intelligence. She has severe deficits in decoding, fluency and comprehension.³ CF, her mother, who is a school psychologist, testified that MF has severe learning disabilities that affect reading, written expression and spelling. She has also been diagnosed with Attention Deficit-Hyperactivity Disorder (ADHD) combined type, and has had medication prescribed for this condition. In addition, she has been diagnosed with a language disorder that is primarily displayed by an inability to retrieve words during conversation and difficulty getting to the point.⁴ There is disagreement as to whether MF also has an expressive/receptive language disorder.⁵

According to her parents and other witnesses, MF uses coping strategies to avoid tasks that are challenging because of her learning disabilities. For example, she will use her substantial social skills to have partners complete group assignments.

Multiple witnesses and exhibits establish that (1) MF is a kinesthetic learner, (2) she requires a multisensory instructional program across all areas, (3) the Wilson Reading System has been used for MF at HPDS with success and it is an appropriate methodology to remediate her dyslexia, (4) movement breaks are effective for MF⁶, and (5) regression during time off from school is a significant problem for MF.

There are aspects of MF's diagnostic profile that are not established as clearly as her deficits in reading and word retrieval in discourse. For example, she does not appear to have any significant behavioral problems at school, although one very brief observation at HPDS by

² Date of birth May 5, 2005.

³ Testimony and report of [REDACTED], PhD.

⁴ Testimony of Parents and [REDACTED] Private Speech and Language Pathologist.

⁵ Testimony of [REDACTED], CPS Speech and Language Pathologist

⁶ Testimony of [REDACTED].

District staff on July 29, 2015, indicated some lack of engagement in a small group session.⁷ It is also worth noting that in Dr. [REDACTED]'s re-evaluation of MF on October 26, 2015, MF scored in the clinically significant range on the Behavior Assessment System for Children-Second Edition (BASC-2) self-report in the areas of attitude to school and attitude to teachers.⁸ The BASC-2 scores were brought up during the cross-examination of Dr. [REDACTED] but there was no elaboration on their significance.

Further, the information about whether ADHD significantly impacts MF's educational progress was insubstantial. The observation for one class period by Ms. [REDACTED] and Ms. [REDACTED] (who was not called to testify) about distractibility was insufficient to draw any conclusions. Neither MF's teachers at HPDS nor her teachers from [REDACTED] were called as witnesses.

Other unclear areas regarding MF's disability are math and language. She clearly needs a multisensory approach to math instruction because of her reading disability, but it is unclear whether she actually has a learning disability affecting math computation skills. In the area of language, the main issues are word retrieval in discourse and written expression, but the CPS speech language evaluators disagree with Ms. [REDACTED]'s conclusion that MF has deficits in expressive and receptive language. There is also disagreement as to whether she requires direct speech and language therapy.⁹

MF's assistive technology needs have never been evaluated by HPDS¹⁰ or by the School District¹¹. Her parents purchased a laptop computer for her use at HPDS¹², and all students at HPDS use assistive technology in some manner.

Educational History

MF started at [REDACTED] for preschool. According to her father, JF, deficits were noted during kindergarten because MF was not retaining what she learned. During the first grade at Drummond, the parents did not receive a lot of information from Ms. [REDACTED] MF's classroom teacher. Ms. Bell did not communicate by email and was hard to reach by phone.¹³ The Parents enrolled MF in the Lindamood-Bell learning program during the summer of 2012 at their expense.¹⁴ She returned to [REDACTED] in the fall of 2012 as a second grade student. Even though she was receiving Bs and Cs, she was having great difficulty reading connected text (sentences and paragraphs).

On January 16, 2013, CF wrote to the special education case manager at [REDACTED] [REDACTED] requesting a case study evaluation for MF.¹⁵ CF's letter stated that she had concerns about reading ability and hearing/auditory processing, and communication skills. She also noted

⁷ Testimony of [REDACTED] and SD 312-313 (Report of Julie Sternstein, CPS Psychologist)

⁸ Parents' Exhibit 25, p. 302.

⁹ Testimony of [REDACTED] and [REDACTED]

¹⁰ Testimony of [REDACTED]

¹¹ Testimony of [REDACTED]

¹² Testimony of Parents

¹³ Testimony of Parents

¹⁴ Parents' Exhibit 3

¹⁵ Parents' Exhibit 4

regression following progress made in the Lindamood-Bell program.¹⁶ The letter noted issues with word retrieval and remembering names. It also mentioned that MF was receiving one-on-one reading instruction once a week using the Orton-Gillingham approach. CF signed a consent for an initial evaluation on February 11, 2013.¹⁷

The District conducted social work, school psychological and speech language evaluations and held an IEP meeting on April 29, 2013.¹⁸ The speech and language therapist, [REDACTED], who did not testify, conducted only the CASL core subtests. The CASL does not assess word retrieval in discourse.¹⁹ Both parents participated in the meeting. MF was found eligible for special education due to a learning disability. [REDACTED], the school psychologist, found difficulties in reading and writing. There was no assessment of assistive technology needs, although the IEP notes that assistive technology is available.²⁰ The speech and language pathologist recommended no eligibility for speech and language services and the team agreed.

The April 29, 2013 IEP mentions Wilson and refers to a multisensory approach. However, there are no specific present levels of performance (baseline) or measurable goals relative to the Wilson step process, no indication that either the special education teacher or the general education teacher were trained to use Wilson, and no description of how a multisensory approach would be implemented for MF at [REDACTED] in the third grade. The IEP provided for thirty minutes per month of consultation between the special education teacher and the general education teacher in the area of language arts. All mastery levels for benchmarks were at 80%, but there is no baseline information provided indicating how 80% was selected for MF.

The next IEP meeting for MF was convened by the District was on December 11, 2013.²¹ This was the last IEP convened prior to the Parents' removal of MF from the District and her enrollment in HPDS. It was also the last IEP held prior to the filing of the Parents' request for a due process hearing.

This IEP followed an independent speech and language evaluation by [REDACTED] of [REDACTED], reported on August 29, 2013²² and an informal speech language assessment by District speech and language pathologist [REDACTED], who reviewed prior speech and language evaluation reports including [REDACTED]s, interviewed teachers and MF, and observed MF in the classroom. North Shore had provided direct therapy to MF since July, 2013, to work on literacy skills, language processing and auditory processing. CF consented to the [REDACTED] assessment. Ms. [REDACTED] recommended 15 minutes per month of consultation with the general education teacher to monitor word retrieval issues, but despite the Parents' request for direct services, none were recommended. [REDACTED] had recommended direct individual therapy for 45 minutes per week to target reading fluency and support classroom processing skills. She also recommended classroom accommodations such as preferential seating.

¹⁶ Auditory processing and hearing were not issues in this case.

¹⁷ Parents' Exhibit 5, p. 9.

¹⁸ Parents' Exhibit 9

¹⁹ Testimony of [REDACTED] and [REDACTED]

²⁰ Parents' Exhibit 9, p. 36

²¹ Parents' Exhibit 17, p. 81.

²² Parents' Exhibit 10

Review of the IEP of December 11, 2013 shows, among other things, that assistive technology services were noted as being available, but no assessment of MF's assistive technology needs was conducted. A graphic organizer was mentioned in the IEP, but no specific information about how and when the graphic organizer would be used was included. Again, as in the previous IEP, language arts goals were not tied to the Wilson system step process and there is no measureable baseline information provided. Nothing is mentioned about Wilson or assigning a teacher to MF with Wilson training. There is also nothing in the IEP addressing how a multisensory approach to learning and responding will be implemented for MF. CF testified that at the December 11, 2013, IEP meeting she once again asked that weekly progress updates from MF's teacher be provided because they had not been sent on a regular basis during the first part of the 2013-2014 school year. (Parental concerns about having regular progress reports and knowing about homework assignments are mentioned in both IEPs.) She also stated that she asked Ms. [REDACTED], the case manager, about the availability of programs within the District for children with specific learning disabilities, but Ms. [REDACTED] never got back to her.

Parents enrolled MF in the HPDS program for the summer of 2014. It provided six weeks of instruction in reading for three hours per day. The placement began on June 16, 2014. The District had offered a summer program for MF in 2014 to the Parents, but, according to CF, Ms. [REDACTED] never responded to a request for information regarding the summer instruction. The District had also offered extended school year (ESY) services for MF in 2013, but the Parents declined due to the location of the program. MF has attended HPDS since June 16, 2014.

Since enrolling in HPDS, MF has had a neuropsychological evaluation at the [REDACTED] by [REDACTED], Ph.D. in December, 2014²³, and a re-evaluation by Dr. [REDACTED] on October 26, 2015.²⁴ These evaluations were arranged by the Parents at their expense. Dr. [REDACTED]'s evaluations were clinical rather than educational in that she did not talk with District staff or observe the District's program at [REDACTED]. She did not attend HPDS meetings for MF or observe her in HPDS classes, but she did talk with two of MF's teachers, Ms. [REDACTED] and Ms. [REDACTED]. Her clinical findings are consistent with other evidence showing that MF is far below age and grade levels in decoding, fluency and comprehension. She found that MF has ADHD combined type, but did not assess the do school-based assessment of the ADHD. She also determined that MF struggles with executive functioning. Again, as stated previously, the ADHD and executive functioning skills issues require further exploration as to their impact in the school environment. In regard to MF's social and emotional functioning, Dr. [REDACTED] recommended ongoing monitoring to ascertain changes in degree and interference with daily functioning. She also recommended that MF continue to receive adequate academic support for her learning challenges.

The Parents also engaged the services of [REDACTED], a private speech and language therapist, at their expense. Ms. [REDACTED] conducted an evaluation of MF in November, 2014²⁵, and a re-evaluation on October 12, 2015.²⁶ Ms. [REDACTED] testified about MF's impairment affecting word retrieval in discourse, and a disorder in written language. According to Ms. [REDACTED] MF understandably resists writing because she does not enjoy it. She has difficulty with spelling, grammar, punctuation and capitalization. Because of her social skills, she is able to fool people about her challenges. Ms. [REDACTED] recommended speech and language services of 60 minutes per

²³ Parents' Exhibit 19

²⁴ Parents' Exhibit 25

²⁵ Parents' Exhibit 18

²⁶ Parents' Exhibit 24

week in a school setting and, further, stated that an additional 60 minutes per week of individual direct services in a private setting would be beneficial for MF. Ms. [REDACTED] recommended movement breaks for MF.

Dr. [REDACTED] and Ms. [REDACTED] clinical findings are credible and appear to be consistent with other information in the record concerning MF's educational needs.

[REDACTED] School

Dr. [REDACTED] the Executive Director of HPDS, testified about the school. HPDS serves bright students identified with specific learning disabilities. Students can attend through the 8th grade. It has two campuses, one in the [REDACTED] of [REDACTED] and one in [REDACTED]. MF attends the [REDACTED] campus. It has a 5-1 student to teacher ratio, 3 teachers for 15 students in a class. There are currently 125 students in the HPDS, 57 at the [REDACTED] campus. HPDS uses a multisensory approach across its entire curriculum. According to Dr. [REDACTED] HPDS transitions students back to public schools every year and they even have a transition ceremony. A transition plan is developed for each student who is transferring out. Before a student is considered for transition they look at skill development and the schools available to receive the student.

HPDS uses the Wilson program. No one at HPDS has a Level I or Level II Wilson certificate. A Level II certified Wilson teacher who is now seeking a trainer certificate has trained HPDS teachers. MF's 4th and 5th grade teachers at HPDS are not Wilson certified.²⁷

HPDS does not use IEPs. It develops Individual Learning Plans (ILPs) in the Spring and Fall. The most recent ILP for MF is dated October 7, 2015.²⁸ HPDS does not give letter grades. It evaluates progress toward individual goals. As indicated by the ILPs and confirmed by Dr. [REDACTED]'s testimony, HPDS uses a template of goal statements for all of its students. However, included in the ILPs are individualized statements about a student's skill levels, progress and needs. For example, on Parents' Exhibit page 225, part of the October 7, 2015 ILP, there are individualized comments about MF's reading fluency, decoding and encoding skills with the Wilson program. It is noted that "repetition and review of previously learned steps in the program is important for achieving mastery." It is further noted that MF will be starting at Wilson 4. It also notes that she uses Read Live to increase reading comprehension, accuracy, rate and expression. There are similar statements in the document concerning other areas of individual need including reading comprehension and use of programs such as Kurzweil, Read-Write Google and Bookshare (Parents' page 228), and writing (Parents' page 230).

There was credible testimony from [REDACTED], in-District trainer in the Wilson program for the School District, that the Wilson program was not being implemented with fidelity for MF at HPDS. Mr. [REDACTED] noted that MF's WADE scores²⁹ show that MF was being advanced in Wilson before she mastered skills in lower steps, citing School District Exhibit pages 254 and 397.

Nevertheless, it is clear that HPDS uses Wilson, MF is making some progress at HPDS, in part due to the use of the Wilson system, and her identified educational and related service needs are being addressed at HPDS.

²⁷ Testimony of Dr. [REDACTED]

²⁸ Parents' Exhibit 23

²⁹ WADE is an evaluation tool for Wilson that assesses decoding progress.

FAPE for MF

A FAPE for MF requires, at a minimum, the following components: (1) A systemic, multisensory, sequential system designed to teach students with dyslexia for at least 60 minutes per day. The Wilson program should be used with fidelity to address MF's needs. (2) A teacher to implement Wilson who is trained in the Wilson program and preferably one who is at least Level I certified. (3) A multisensory approach across all courses and educational settings, and a collaborative teaching process that enables all of MF's teachers and paraprofessionals to understand and implement the multisensory approach that is appropriate to address her educational needs. (4) Special education services in small groups to ensure individualized attention and a good match of students. (5) The use of appropriate assistive technology programs, devices and services to address her individual needs, based upon a comprehensive assistive technology evaluation and information from HPDS and the Parents. (6) Speech and language services that address word retrieval and writing deficits. (7) Weekly communication with the Parents regarding her progress in achieving IEP goals and benchmarks, and regular communication with the Parents about homework assignments and the use of assistive technology software and devices at home to complete assignments. (8) School social work services to address social and emotional issues that may affect her emotional well-being or educational progress. (9) Individualized extended school year services to minimize or eliminate regression.

Equitable Considerations for Reimbursement Issue

The Parents have consistently and appropriately pursued educational and related services and evaluations for MF in an attempt to address her reading and learning deficits at an early age. They enrolled her in the Lindamood-Bell program in the summer of 2012 at their expense. They worked with the Drummond staff in an effort to obtain services for MF. In October, 2012, they pursued a meeting with Ms. Kuzniar, the case manager, to discuss MF and found out that MF had been on the school's radar screen for some time and had been receiving reading services, apparently under RTI. However, no RTI data was produced or shared with the Parents.

³⁰

In early 2013, at the Parents' request, an evaluation of MF was conducted by the District. Parents signed consents and participated in the IEP meeting on April 29, 2013. The Parents consistently requested information about MF's progress and asked that her homework assignments be sent directly to them.

In the summer of 2013, the Parents rejected the District's offer of ESY for MF because of the location of the program. However, the Parents took MF to North Shore Pediatric Therapy for services including a speech and language evaluation by [REDACTED] and direct speech and language therapy. The Parents also obtained private tutoring for MF in the summer of 2013.³¹

In September, 2013, the Parents contacted Ms. [REDACTED] again to request that MF receive direct speech and language services based on the [REDACTED] evaluation.³² CF mentioned in her email message that they were considering the Hyde Park Day School for MF. Her message was not a notification of removal and did not request public funding for HPDS. As a result of this parental request, the School District had a follow-up informal assessment conducted by [REDACTED]

³⁰ Testimony of CF

³¹ Testimony of JF

³² Parents' Exhibit I I

[REDACTED]. CF signed a consent for the assessment. The District convened the December 11, 2013 IEP meeting, which resulted in MF being made eligible for speech and language consultation services 15 minutes per month. The Parents continued to request regular progress reports and homework assignments.

The Parents explored HPDS for MF in the Spring of 2014, and enrolled her in the HPDS program on June 16, 2014. At that time they did not notify the District of their intent to remove MF or request public funding for HPDS. According to JF, several teachers and the [REDACTED] principal were aware of the Parents' intent to move MF to HPDS. The Parents rejected the District's offer of ESY for 2014 because, according to CF, Ms. [REDACTED] never responded to her inquiry about the ESY instruction.

The Parents, by counsel, issued a written notice of intent to place MF in HPDS on October 29, 2014, over 4 months after she was enrolled in the summer program.³³ The District responded on November 13, 2014, stating that it would not fund MF's placement at HPDS because the notice to place was not timely and did not afford the District an opportunity to address the Parents' concerns.³⁴

CF testified that she was unaware of the 10-day notice of intent to place requirement, but that she had received notice of procedural safeguards from the District. The record shows that the Parents had received the notice three times. The Notice of Procedural Safeguards, reflecting the language in IDEA³⁵, advised the Parents that in private school placement cases in which FAPE is an issue, tuition reimbursement "may be reduced or denied" by a hearing officer for, among other things, the failure to provide proper written 10-day notice of intent to place.³⁶

The next IEP meeting convened for MF by the District took place on July 30, 2015³⁷, following the request for a due process hearing. The Parents participated in the meeting.

Educational Placement Considerations

There is no question that MF requires intensive services in the areas of reading and writing and a multisensory instructional program across all areas. In addition, CF's concerns about MF's social and emotional well-being in a general school environment are clearly sincere and deeply felt and need to be seriously considered. That said, however, there is nothing in the record to indicate that MF cannot be educated in a public school and participate in some mainstream classes and other activities as long as the necessary specialized instruction and supports are provided to her. Her energy, personality, social skills and athleticism would seem to allow her great opportunities to succeed in mainstream settings.

The District presented the testimony of Mr. [REDACTED] and [REDACTED] School Principal [REDACTED] to show that Wilson-trained teachers are available within the District, and that Wilson and multisensory instruction is utilized at [REDACTED]. It was also pointed out that since [REDACTED] is a [REDACTED] School, multisensory learning is built into the program. However, [REDACTED] did not appropriately serve MF before, and, according to Mr. [REDACTED], [REDACTED] does not have a

³³ Parents' Exhibit I

³⁴ District Exhibits pp. 484-485

³⁵ 20 U.S.C. 1412(a)(10)(C)

³⁶ District Exhibits pp. 495-496

³⁷ District Exhibit p. 412, et seq.

Wilson certified teacher on staff. On the other hand, MF's sister attend [REDACTED] and the Parents have close ties to the school.

Dr. [REDACTED] testified that, in his opinion, MF, has not reached the skill level needed to successfully transition her out of HPDS to a public school, and that it would not be appropriate to transfer her from HPDS to a similar special education program in a public school. However, Dr. [REDACTED] has an inherent bias in supporting the school he directs. Moreover, because none of MF's teachers from HPDS were presented as witnesses, there is no testimony about what has actually occurred in her classes at HPDS that uniquely addresses her needs and cannot be provided in a public school setting.

Dr. [REDACTED] and Ms. [REDACTED] opined that HPDS is appropriate for MF, but their involvement with MF was to conduct clinical evaluations and re-evaluations and not to design an educational program for MF in a school setting. They had not observed MF in HPDS classes, knew nothing about the program at [REDACTED] and had no information about the [REDACTED] program. (The District formally offered the Parents placement at either [REDACTED] or [REDACTED] in December, 2015).

Conclusions of Law

A. Tuition Reimbursement

In determining whether Parents of a child with a disability are entitled to tuition reimbursement for the placement of their child in a private school when FAPE is in issue, there are three distinct issues to consider: (1) Has the School District failed to provide a FAPE to the child? (2) Is the private school placement appropriate? (3) Do the equities warrant reimbursement?³⁸

As to part one of the three-part inquiry, the School District failed to provide FAPE to MF prior to her removal from the School District and enrollment in HPDS in June, 2014. This conclusion is based mainly on substantive grounds, although there were several procedural issues raised by the Parents that will be addressed briefly.

The IEP of December 11, 2013, was not reasonably calculated to enable MF to receive educational benefit.³⁹ As stated earlier, MF requires Wilson, a highly structured multisensory program, a Wilson-trained teacher, assistive technology as determined by an evaluation of her needs, multisensory instruction in all educational domains and collaboration among teachers and other staff in the delivery of multisensory instruction, direct speech therapy and school social work services. The IEP is deficient in that it does not offer these services. The impact of this is shown in the lack of significant progress made by MF in reading as indicated by achievement scores in [REDACTED] and [REDACTED] and the [REDACTED] assessment. There never has been an assistive technology evaluation of MF by the District.

Further, as to procedural shortcomings alleged by the Parents, the IEP goals and benchmarks are not tied specifically to the Wilson program steps, and the present levels of educational performance lack the measurability necessary to write specific measureable goals and

³⁸ 34 C.F.R. §300.148(b)-(e)

³⁹ *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Alex R. v. Forrestville Valley Community Unit Sch. Dist. No. 221*, 375 F.3d 603(7th Cir. 2004).

benchmarks. Also lacking is a mechanism for providing the Parents with regular progress reports and homework assignments, which they have repeatedly requested.

Second, parental placement at HPDS was appropriate under the *Burlington/Carter* test⁴⁰. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by a local school district.⁴¹ [REDACTED] School does not use IEPs and its Individual Learning Plans lack present levels of educational performance and individualized goals. However, the ILPs contain individual progress reports and descriptions of what MF has achieved and what she will be working on in her areas of need. The school may not implement Wilson with full fidelity, as Mr. [REDACTED] testified, but it uses the Wilson program, assistive technology programs and devices, provides speech and language services, occupational therapy, small group instruction, social work services and a team teaching approach. Its services are specifically targeted to students like MF who are bright and have significant learning disabilities. MF's teachers are not Wilson certified yet, but they have had Wilson training. The Parents' decision to place MF in HPDS was reasonable in light of her lack of progress at [REDACTED] and HPDS' focus on students with disabilities similar to MF's.

Finally, the equities warrant a partial reimbursement of tuition for the private school placement. Parents have been consistently determined to obtain services to address MF's learning disabilities. As CF noted in her testimony, as a school psychologist she understands the critical importance of early intervention for a child who has severe reading deficits. The Parents were the force driving the evaluations and development of an IEP for MF at [REDACTED] during the 2012-2013 school year. They continuously sought progress reports and homework assignments from the [REDACTED] teachers with limited success. They actively pursued outside services such as speech and language evaluations and therapy and tutoring, and a neuropsychological evaluation. They attended all IEP meetings and signed consents for District evaluations upon request.

Weighing against the Parents is their failure to provide timely and adequate notice of their intent to enroll MF in the HPDS. MF was enrolled in HPDS on June 16, 2014, but formal written notice of intent to place was sent on October 29, 2014, by Parents' counsel.

The cost of reimbursement may be reduced or denied if, either at the most recent IEP team that the Parents attended or at least 10 business days prior to the removal of the child from the public school by written notice, the parents did not inform the IEP team that they were rejecting the placement proposed by the School District to provide FAPE to the child, including stating their concerns and their intent to enroll the child in a private school at public expense.⁴²

Balancing the lack of timely and adequate parental notice somewhat is that fact that, once it issued its letter in response to the Parents' written notice rejecting public payment for HPDS, the District did not convene another IEP meeting until July 30, 2015, and failed to offer any additional evaluations, assessments or observations of MF until the summer of 2015, after the due process hearing was requested. The School District has now offered MF multisensory

⁴⁰ *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359(1985); *Florence County School Dist. 4 v. Carter*, 510 U.S. 7 (1993), landmark decisions holding that parents can be awarded tuition reimbursement under certain conditions that were codified in the 1997 IDEA amendments and refined further in 2004.

⁴¹ 34 C.F.R. §300.148(c), which essentially incorporates the *Carter* standard.

⁴² 34 C.F.R. §300.148(d)

programs in either [REDACTED] or [REDACTED]. However, these services were not offered until December, 2015, and should not be considered on the issue of whether the Parents are entitled to tuition reimbursement.⁴³

Accordingly, weighing the equities, the Parents are entitled to a partial reimbursement of tuition for HPDS beginning with the second half of the 2014-2015 school year through the date of this decision.

B. Compensatory Services

Hearing officers are authorized to grant equitable relief in the form of compensatory services reasonably calculated to provide educational benefits to a child that likely would have accrued from special education services the School District should have provided in the first place.⁴⁴ Deficiencies in the District's 2013 IEPs for MF included the lack of a Wilson Reading program, no direct speech therapy, no clearly described multisensory program or collaborative teaching process, no specific assistive technology programs, devices or services based on an individualized assessment, and no social work services. HPDS is providing such services currently, and compensatory services in the form of tuition payment to enable MF to remain in the HPDS through the end of the 2015-2016 academic year are appropriate to meet her needs and to enable her to accrue some of the educational gains she was denied at [REDACTED]. Her Parents are correct that moving her out of HPDS back to a public school immediately would be detrimental to her educational and social/emotional well-being. An appropriate transition plan must first be in place to facilitate her successful transition back to a public school.

C. Educational Placement/Least Restrictive Environment

IDEA requires that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the child's disability is such that educating the child in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁴⁵ School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.⁴⁶

There are two questions to be answered in the instant case. First, can the education of MF be achieved satisfactorily in regular classes. Second, if she cannot be educated satisfactorily in regular classes, to what extent can MF be mainstreamed successfully?⁴⁷

MF clearly cannot be educated satisfactorily in all regular classes. As stated herein, she requires a highly structured multisensory program for language arts (reading, spelling, writing) that is provided by the Wilson Reading System. This program must be implemented by a Wilson-trained teacher in a small group of students with similar educational needs.

⁴³ *Jenna P. v. City of Chicago School Dist.* 299, 3 N.E. 3d 927(1st Appellate Dist. 2013)

⁴⁴ *Minor T.G. v. Midland Sch. Dist.* 7, 848 F.Supp. 2d 902, (C.D. Ill. 2012)

⁴⁵ 20 U.S.C. §1412(a)(5); 105 ILCS 5/14-8.02(d).

⁴⁶ 34 C.F.R. §300.115

⁴⁷ *Daniel R.R. v. State Board of Education*, 874 F.2d 1036(5th Cir. 1989).

However, she does not require a full-time therapeutic day school to provide a FAPE. Wilson can be implemented in a public school, and the District has Wilson-trained teachers. MF can also be mainstreamed to some extent. She has many strengths such as her intelligence, personality, social skills and athleticism that will allow her to succeed in some regular classes with supplementary aids and supports. She is not a disruptive student and has no apparent behavioral problems. Nothing in the hearing record indicates that she cannot participate successfully in regular physical education, music and art classes with some modifications and accommodations such as untimed tests, use of assistive technology where appropriate and preferential seating. The extent to which she can participate in regular academic classes other than the language arts (e.g., science, math, social studies) depends on the ability of her regular education teachers to collaborate with special education staff and provide the necessary modifications and accommodations, including multisensory instruction and the use of assistive technology. Whether MF has a learning disability affecting math and requires math instruction in a special education setting is unclear from the record and requires further assessment. Regular communication with the Parents and direct transmission of homework assignments to the Parents, and the use of appropriate assistive technology at school and at home, are critical to MF's success.

Decision and Order

1. A FAPE for MF can be provided in a public school with special education, related services, modifications and accommodations as described below. Therefore, the continuation of therapeutic day school services beyond the 2015-2016 academic year need not be provided at public expense.
2. The School District shall reimburse the Parents for the cost of tuition at the [REDACTED] School for one-half of the 2014-2015 school year, and for the 2015-2016 school year through the date of this decision.
3. The School District shall provide compensatory services for MF, namely, continuation of educational and related services at the [REDACTED] School at public expense from the date of this decision through the end of the 2015-2016 school year.
4. The School District shall provide Extended School Year (ESY) services for MF in the summer of 2016, to prevent or mitigate regression. The ESY shall focus on language arts (reading, writing, spelling), utilize the Wilson program. The ESY program shall include the provision of at least 30 minutes per week of direct speech and language therapy services to address word retrieval and written expression deficits. ESY goals shall be based upon her achievement levels during the 2015-2016 school year at the [REDACTED] School.
5. Prior to the beginning of the 2016-2017 school year, the School District shall convene the IEP team and prepare an IEP for MF that offers the following:
 - a. An intensive multisensory language arts program using the Wilson Reading System with fidelity and taught by a teacher with Wilson training and at least a Level I Wilson certification, for a minimum of 60 minutes per day.
 - b. Multisensory instruction in all classes.

- c. A description of the process, including the time allocation, by which special education and regular education teachers, related services personnel, and paraprofessionals will collaborate on a systemic basis to ensure that the multisensory approach and IEP accommodations and modifications are being used across all modalities in an appropriate and consistent manner to meet MF's needs.
 - d. Individualized objective measurable goals and benchmarks, including goals and benchmarks based upon her progress in the Wilson program, with participation by staff at the [REDACTED] School and, if available, the Parents' private evaluators.
 - e. A minimum of 60 minutes per week of curriculum-based speech and language services (consultation with teachers and direct services to MF), and an additional 30 minutes per week of direct individual speech and language therapy to address the areas of word retrieval and written expression.
 - f. The identification of assistive technology programs, devices and services she will be using based upon MF's experiences and progress using assistive technology at the [REDACTED] School, subject to modification based on the assessment of assistive technology needs ordered below.
 - g. Mainstreaming with necessary modifications and accommodations in PE, music, and art.
 - h. Mainstreaming in social studies, math, science and other academic classes as deemed appropriate by the team with individualized modifications and accommodations, including multisensory instruction, use of assistive technology, preferential seating, and untimed tests.
 - i. Coordination with the Parents, including weekly progress reports by e-mail, direct communication of homework assignments, and use of assistive technology for homework.
 - j. Direct school social work services of at least 30 minutes per week to facilitate transition into the public school and address self-esteem issues and other social-emotional needs, plus social work consultation with teachers and parents as determined by the IEP team.
6. The School District shall conduct and complete a comprehensive evaluation of MF's assistive technology needs no later than 30 school days following her return to public school if proper written parental consent is given, and convene an IEP meeting to consider the findings of the assistive technology evaluation and any changes that may be appropriate regarding her use of assistive technology.
7. The School District shall complete an evaluation of whether MF has a specific learning disability in math no later than 30 school days following her return to public school if proper written parental consent is given, and consider the findings and any changes in her IEP that may be appropriate as a result of the evaluation.
8. The School District shall complete an assessment of the extent to which ADHD and executive functioning deficits have an impact on MF's educational performance and progress no later than 30 school days of her return to public school if proper written parental consent is given, and shall consider the findings and any changes in her IEP that may be appropriate as a result of these assessments.

9. The location of MF's public school program for 2016-2017 is an IEP team decision, however, parental preferences and concerns and MF's ability to transition comfortably into the school shall be given serious consideration by the IEP team.

Appeal Rights

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i) any party aggrieved by this Hearing Officer's determination may bring a civil action in any State court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.


Compliance

Pursuant to 105 ILCS 5/14-8.02a(h), the School District shall (a) submit evidence of compliance with this Order to the Illinois State Board of Education no later than 45 days after the date of receipt of this Order, if applicable, except that evidence of compliance with other provisions of this Order shall be submitted to the Illinois State Board of Education upon the implementation or completion of those services in accordance with this Order.

Right to Request Clarification

Pursuant to 105 ILCS 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portion of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and to the Illinois State Board of Education Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. The right to request 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.

ENTERED this 5th day of February, 2016.


Philip C. Misk, Impartial Hearing Officer


FAX: 

CERTIFICATES OF SERVICE

I, Philip C. Milsk, Impartial Hearing Officer, hereby certify that the foregoing Order was served on the following counsel of record in this matter by e-mail on February 5 2016:

[REDACTED]

[REDACTED]

[REDACTED]

Philip C. Milsk

I, Philip C. Milsk, Impartial Hearing Officer, hereby certify that the foregoing Final Decision and Order was served on the following parties and counsel in this matter by certified mail, return receipt requested, on February 5, 2016:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Andy Eulass
Due Process Hearings Coordinator
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

[REDACTED]

Philip C. Milsk

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

[REDACTED]
Student,

v.

Case No. 2015-0388

[REDACTED]
[REDACTED]
School District.

Philip C. Milsk,
Impartial Hearing Officer

APPENDIX TO FINAL DECISION AND ORDER

I. Parties to the Hearing

[REDACTED], Parents

[REDACTED], Student

Counsel: [REDACTED]

[REDACTED]
Counsel: [REDACTED]

II. Witnesses at the Hearing

[REDACTED] Parent

[REDACTED] Executive Director, [REDACTED] School

[REDACTED] Private Speech/Language Pathologist

[REDACTED] Principal, [REDACTED] School

[REDACTED] Parent

[REDACTED] Psychologist

[REDACTED] Wilson Reading System Trainer

[REDACTED] School Psychologist

[REDACTED] Special Education Teacher

[REDACTED] Speech/Language Pathologist

[REDACTED] Assistive Technology Itinerant Teacher

[REDACTED] Speech/Language Pathologist

[REDACTED] School Social Worker

[REDACTED] School Social Work Network Coordinator

[REDACTED] Occupational Therapist