

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

M. F., a minor,]	
By and through his parent,]	
Petitioner,]	
]	CASE NO. 2023-DP-0043
v.]	
]	MARY SCHWARTZ
████████ School District ██████]	Impartial Hearing Officer
Local School District,]	
Respondent.]	

FINAL DETERMINATION AND ORDER

JURISDICTION

This matter is before the undersigned hearing officer on the parent’s request for a due process hearing. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. § 1400 *et. seq.*, 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.* The parties have been fully advised of their rights pursuant to these statutes and regulations.

PROCEDURAL BACKGROUND

The parent, through her attorneys at Latham & Watkins, LLP, filed a due process complaint on August 12, 2022. The district is represented by Mary Rocco, who is with Petrarca, Gleason, Izzo & Boyle LLC. The Illinois State Board of Education appointed the undersigned as hearing officer for this case on September 6, 2022. During the initial status conference on this case, the undersigned noted that the district had not responded to the parent’s complaint and ordered the district to file its response to the parent’s complaint by September 15, 2022. The district complied with the hearing officer’s Order. A prehearing conference was held with parties’ counsel on September 27th.

The due process hearing was held on November 14, 15, and 16, 2022 via zoom by agreement of the parties. The parties were in separate locations: the parent and her attorneys participated from the attorneys’ office in downtown Chicago. The district and its attorney participated from the district’s office. The hearing officer participated from her home office. During the November 16th hearing, it was discovered that the parent had not been provided all the student’s records. TR 11.16.22, p. 128. After lengthy discussion on how to proceed, the parties agreed to a date by which the outstanding

records would be provided and also set a status conference date to finalize hearing procedures, including setting a final hearing date. (11.16.22 email from parent attorneys). The final day of this due process hearing was December 9, 2022. The parties filed their post-hearing briefs on December 16, 2022.

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, in this matter the student has the burden of proof as he filed the due process complaint. Under Illinois law, the school district must provide evidence that it has appropriately identified the student's educational needs and that the special education and related services are adequate, appropriate, and available. 105 ILCS §14-8.02a(g). This statutory provision requires the district to produce evidence but does not shift the burden of proof to the district. *Kerry M. v. Manhattan Sch. Dist. #14*, 106 LRP 5847 (N.D. Ill. 2006).

In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' closing arguments and their proposed case law, as well as the hearing officer's independent research. This decision is issued within ten business days after the close of the record for this case on December 16, 2022. 105 ILCS 5/14-8.02b(k0).

ISSUES AND REQUESTED REMEDIES

The issues as stated below are the issues that were addressed in the prehearing conference for this case, held on September 27, 2022, and set out in the Final Prehearing Conference Report issued on October 8, 2022.

The parent's complaint raises the following issues for hearing:

1. Whether the district failed its child find obligation in December 2019 (student's kindergarten year) through March 14, 2022 (when the district found the student IDEA eligible) by refusing to re-evaluate the student despite his below grade level scores on the WRAT-4:
2. Whether the district failed to provide the student with appropriate reading and literacy instruction, including:
 - i. A structured, evidence-based literacy program;
 - ii. Specific instructions, accommodations and IEP goals to address the student's orthographic mapping deficits; and,
 - iii. IEP goals and short-term objectives to address the student's reading deficits.
3. Whether the district failed to provide the student with appropriate social, emotional,

and behavioral supports, including a Behavior Intervention Plan (BIP), to address his behavioral and medical (asthma, ADHD, epilepsy, anxiety, depression) needs:

4. Whether the district failed to provide the student with the specialized instruction and related services required in his March 25, 2022 IEP:
5. Whether the district is unable to provide adequate educational support services for the student:
6. Whether the student requires placement in a therapeutic day school and if so, whether the district failed to provide the student an appropriate placement; and,
7. Whether the above alleged violations have denied the student a free appropriate public education (FAPE).

As relief for the above-alleged violations of the student's right to receive a FAPE, the parent requests an Order directing the district to: 1) amend the student's IEP to include daily intensive specialized instruction using an evidence-based structured literacy program based on the Orton Gillingham approach and implemented with fidelity; 2) provide an appropriate amount of social work services, as well as additional social/emotional supports, including a Behavior Intervention Plan (BIP); 3) provide an appropriate amount of speech/language services; 4) place the student in a year-round therapeutic day school for children with complex learning disabilities, including door-to-door transportation; and, 5) additional compensatory education outside of school hours to remedy the district's failure to provide the student a FAPE, including: a) appropriate remedial academic instruction, including 50 hours of one-to-one multi-sensory reading instruction with a professional trained in an Orton-Gillingham based approach; b) appropriate social work services, including five hours of one-to-one services with a licensed psychologist; and, door-to-door transportation to/from the compensatory education services.

PARTIES' JOINT STIPULATIONS OF FACT

The parties provided the hearing officer with the below list of Joint Stipulations of Fact on November 9, 2022:

1. M. F. is a third grader in an elementary school within the district.
2. According to i-Ready scores from May 25, 2021, M. F. reads at a kindergarten level. (Jt. Exh. 17)

3. According to Redwood Literacy's November 2022 evaluation of M. F., he is below the 1st percentile for overall literacy skills when compared to peers of the same age. (Parent Exh. 11 at 5, 7, 10, 11.)
4. M. F. suffers from epilepsy, asthma, and attention deficit hyperactivity disorder (ADHD).
5. According to M. F.'s November 4, 2019 initial domain conference summary report, M. F. was initially evaluated for academic achievement, functional performance, cognitive functioning, health, hearing/vision, motor abilities, and social/emotional status by the District in November 2019.
6. On December 9, 2019, the district concluded that M. F. was not eligible for special education services. (Jt. Exh. 3)
7. On January 27, 2020, the district created a 504 Plan for M. F. to receive certain accommodations for his health issues, particularly his epilepsy and asthma. (Jt. Exh. 4)
8. On February 16, 2021 Ms. E., through her former counsel, sent a formal request for M. F.'s full educational record.
9. The District produced M. F.'s complete educational records on November 8, 2021.
10. On October 21, 2021, Ms. E., through her former counsel, made a formal request for M. F. to be re-evaluated and receive a full case study evaluation.
11. The district denied Ms. E.'s request for reevaluation on October 29, 2021, and informed Ms. E. that M. F. was "eligible for a re-evaluation every three years, which would be the Fall of 2022." The District further represented to Ms. E. that the District had "provided some additional services for M. F. in the areas of reading and literacy" and that M. F. "was receiving additional Tier 2 level support with his teacher in the classroom." The District told Ms. E. that M. F. was "being provided targeted small group instruction using the MTSS Framework" and "in addition to (those) supports in the classroom, M. F. was also being provided after school tutoring for reading with the I-Ready Program." Finally, the District informed Ms. E. that it "(would) continue to monitor the student's progress with reading and literacy."

12. On November 8, 2021, Ms. E. brought M. F. to Redwood for an independent evaluation. Redwood administered the Feifer Assessment of Reading (FAR) Screening Form, which is widely used as a dyslexia screening tool.
13. Redwood provided Ms. E. a report regarding M. F.'s FAR screening assessment on November 10, 2021. Jt. Exh. 5.
14. The District held an annual 504 Plan review meeting for M. F. on January 31, 2022, to establish what evaluations and assessments would be completed. During the 504 Plan meeting, the District agreed to reevaluate M. F. The District then proceeded to immediately hold a domain meeting on January 31, 2022 to establish what evaluations and assessments would be completed. *See*, Jt. Exh. 7.
15. On March 1, 2022, Ms. E. brought M. F. to Redwood for a complete literacy consultation evaluation, wherein Redwood administered multiple assessments, including PAST, WIST, GORT-5.
16. On March 11, 2022, Ms. E. provided the District with a copy of Redwood's literacy consultation evaluation report. The report concluded that M. F. "requires intensive, immediate, consistent, and frequent access to a structured literacy intervention program." *See* Jt. Exh. 10.
17. The District held an IEP meeting on March 14, 2022. At the IEP meeting, the District notified Ms. E. that M. F. was found eligible for special education services under the "other health impairment" category. *See* Jt. Exh. 15 at 15.
18. M. F.'s IEP went into effect on March 25, 2022.
19. M. F.'s IEP requires 45 minutes per day of Reading special education in his general education classroom. The IEP does not specify any particular reading program or instruction to be provided. Jt. Exh. 15 at 12.
20. M. F.'s second grade special education teacher, K. J., resigned from (the student's elementary school) in May 2022, prior to the end of the 2021 – 2022 school year. The District did not hire a new special education teacher to replace her for the remainder of that school year.
21. The District does not employ any special education teachers who are certified in an Orton-Gillingham-based structured literacy program.

22. Separate and apart from Ms. E.'s former counsel's February 16, 2021 request, Ms. E.'s current counsel requested M. F.'s full educational record on January 27, 2022. Ms. E., through counsel, reiterated her continuing request for (the student's) records on at least March 9, March 11, April 18, May 4, May 9, June 28, and October 14, 2022.
23. After repeated requests, the District produced records to M. E, on February 2, March 11, April 27, July 12, July 13, July 14, and October 19, 2022.
24. On October 28, 2022, counsel for the District and Ms. E. exchanged proposed exhibits in preparation for creating a joint evidence list. As part of that exhibit exchange, the District provided to Ms. E. a "Triennial Psychological Report," dated March 2, 2022. Jt. Exh. 9. The Triennial Psychological Report was written as part of the District's reevaluation of M. F. in 2022 and was relevant to M. F.'s eligibility and IEP. Prior to October 28, 2022, neither Ms. E. nor her counsel had been provided a copy of the Triennial Psychological Report.
25. The Triennial Psychological Report refers to an "Observation & Learning Environment Assessment Report," which the District produced to Ms. E.'s counsel on November 9, 2022. Parent Exh. 12.
26. All proposed exhibits are authentic duplicates of original documents.

BURDEN OF PROOF

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, in this matter the student has the burden of proof as he filed the due process complaint. Under Illinois law, the school district must provide evidence that it has appropriately identified the student's educational needs and that the special education and related services are adequate, appropriate, and available. 105 ILCS §14-8.02a(g). This statutory provision requires the district to produce evidence but does not shift the burden of proof to the district. *Kerry M. v. Manhattan Sch. Dist. #14*, 106 LRP 5847 (N.D. Ill. 2006).

FINDINGS OF FACT

This Hearing Officer has carefully considered the testimony of all witnesses presented at hearing and all documents introduced and entered into evidence, whether

specifically referred to or cited, when making her final determination on the issues. After considering all the evidence and the arguments presented by each party, this Hearing Officer's Findings of Fact are set out below:

1. Ms. E. is the student's aunt and "became his mom" on June 1, 2014 when she was appointed as his legal guardian. M. F. was 17 days old at that time. He had numerous drugs in his system at birth and had been left at the hospital by his biological mother. He was diagnosed with epilepsy when he was 3.5 years old. He has grand mal seizures and in kindergarten was hospitalized in intensive care for five days after having a severe seizure in school. Ms. E. testified that he had been left alone in the classroom. M. F. has a seizure action plan for school, which is completed by his physician each year and signed by Ms. E. The plan includes the medication to be administered if necessary and how it is to be given. His epilepsy impacts both his attendance at school and his educational performance. He has been hospitalized due to seizures two other times since kindergarten.
2. Ms. E. met with the school in November 2019 after M. F. began kindergarten. She requested an evaluation and an IEP because he "was very behind at that point." He could not read, and he wrote his letters backwards. He had been diagnosed with ADHD, which impacts his school work. The district agreed to evaluate M. F.'s academic achievement, cognitive functioning, functional performance, health, and educational performance. The school psychologist, Ms. J., observed M. F. in his classroom and also administered formal assessments: the Wechsler Preschool and Primary Scale of Intelligence 4th Ed. (WPPSI-IV); the Wechsler Individual Achievement Test 3rd Ed. (WIAT-III); the Wide Range Achievement Test, 4th Ed. (WRAT-IV); the Bracken Basic Concept Scale, 3rd Ed.; and the Behavior Assessment Scale for Children, 3rd Ed (BASC-3). The BASC-3 is a behavior rating scale, and it was given to the classroom teacher to complete.

The WIAT-III measures academic achievement in reading, math, writing, and oral language skills. M. F.'s scores in each area except reading were within the average range. His early reading skills were at the 5th %ile, below a pre-kindergarten level. He had difficulty "naming letters, matching letters to sounds, recognizing/producing rhyming words, recognizing beginning sounds, and matching words with pictures." Similarly, on the WRAT-4, his word reading skills were below average and below kindergarten level. He was unable to read any sight words. On the WPPSI-IV, M. F.'s scores ranged from the 12th %ile (working memory) to the 77th %ile (fluid reasoning). Ms. J.'s report notes that his Fluid Reasoning score was high average and "a personal strength" for his age. Ms. J. testified that his verbal comprehension score of 85 and working memory score of 82 are in the low average range. His composite score of 91 is in the average range. The report states that his low scores in Early Reading Skills

and Word Reading might benefit from interventions.

3. On December 9, 2019, the district held a meeting to determine if M.F. was eligible for special education services. The meeting report states that the student's overall achievement scores on the WIAT-III were within the average range, and his oral language skills and math skills were between a pre-kindergarten and kindergarten level. However, his early reading skills were below a pre-kindergarten level, and his word reading was below kindergarten level. He had difficulty in all areas of early reading including naming letters, matching letters to sounds, blending sounds, and matching words with pictures. He also had some delays in gross motor skills, compared to his same age peers. Ms. E. requested an IEP for her son. Although M. F.'s reading deficit was confirmed by two different assessments, the district determined that he "was not significantly below his peers or below average" and thus was not eligible for special education and related services.
4. The district then held a 504 Meeting on January 27, 2020 and determined that M. F. was eligible for 504 services, based on his diagnoses of epilepsy, asthma, and attention deficit hyperactivity disorder (ADHD). The 504 Plan includes a Medical Services Plan to address the student's foregoing health conditions. The 504 Plan also contains accommodations, e.g., extended time to complete work after a seizure. Ms. F.T. is a licensed practical nurse and works at the school as a health assistant. She began working with M. F. when he was in kindergarten. She attended the 504 meeting and confirmed the need for a plan to address the student's seizures. M. F. had numerous absences due to his health condition, including being hospitalized in intensive care for five days due to his seizures. Nothing in the 504 Plan address the student's reading deficit.
5. Ms. E. did not know the difference between an IEP and a 504 Plan when she attended the 504 meeting. She did not agree with the 504 Plan and the district's determination that M. F. did not need an IEP. Her daughter wrote a letter to the superintendent on behalf of Ms. E., and Ms. E. delivered the letter to the superintendent's office. She did not receive a response from the superintendent.
6. One month later, on February 24, 2020, the student's physician at the ██████████ ██████████ Children's Hospital, Section of Developmental and Behavioral Pediatrics, wrote a letter to the district requesting that the district conduct a full evaluation of M. F., "including (but not limited to) a full speech/language evaluation, an occupational therapy assessment, full cognitive testing and complete academic testing." He also requested a copy of each assessment that was included in the evaluation. *Id.* The district did not conduct the requested evaluation, and no evidence was produced showing that the district responded

to the physician's request.

7. The school moved to online instruction due to COVID closures in September 2020, when M. F. was in first grade. Ms. M. was M. F.'s first grade teacher. She has taught first grade for 21 years and is certified to teach a self-contained classroom for grades kindergarten through 9th grade. The class was conducted virtually via Class DoJo, and the school provided a Chromebook and learning materials for the student. M. F. missed about three weeks of class at the beginning of the school year because the mother could not log on to the computer. Ms. M. sent the mother many emails and also called her numerous times to facilitate on-line learning for the student. She also held a "problem solving meeting" with staff and the mother on February 19, 2021 to address the difficulty in getting M. F. to successfully use the computer. When M. F. did attend remotely, he was unable to sit for remote instruction for the whole day.
8. The school administers the i-Ready test three times/year to measure students' progress. During remote learning, the i-Ready was administered at home. Because the mother could not access the program on-line, M. F. took the first i-Ready test at school. On the next i-Ready test, which was given in January and administered virtually, his score "skyrocketed." Ms. M. found out that the mother had helped M. F. with the test. His scores "went down significantly" when he took the test on his own. Although M. F. turned in his schoolwork, Ms. M. testified that she "was not sure" that he was the one who had done the work. Ms. M. recommended the student for summer school 2021 and provided the required forms to the parents.
9. On August 27, 2021, Ms. M. wrote a "To Whom It May Concern" letter, memorializing her experiences with providing educational services to M. F. during the COVID shutdown. The principal had requested that she write the letter. The letter states that Ms. M. had emailed the parents when school started and explained how the on-line instruction would occur. M. F. did not start the school year with his classmates "due to technical issues." Both the mother and the student had difficulty accessing the on-line learning program throughout the school year. When M. F. did attend on-line learning, he received interventions in reading and math. Ms. M. reported that he had many unexcused absences and also "was out for several days due to a medical situation." *Id.*
10. Ms. E. retained Equip for Equality in early 2021, and her attorneys requested copies of the student's educational records on February 11, 2021. The attorneys did not receive the records until November 2021.
11. On October 21, 2021, Ms. E. requested that the district conduct a full case study

evaluation of M. F. The district denied her request on October 29, 2021, stating that it did not “see any evidence of a disability.” The district attributed the student’s decline to remote learning instituted during COVID closures.

12. On November 8, 2021 Ms. E. obtained a private assessment of M. F.’s literacy skills through Redwood. M. F. was in second grade at that time. Ms. F., Redwood’s CEO, is a dyslexia specialist and is trained in Wilson reading. She holds an Illinois Type 10 K to 12 certificate. Redwood administered the Feifer Assessment of Reading Screening Form (FAR SF), which is designed to screen for dyslexia. The FAR SF looks for dyslexia in three areas: phonemic awareness, rapid automatic naming, and semantic concepts. M. F. achieved standard scores of 50 in Phonemic Awareness and 56 in the Rapid Automatic Naming. Each of the foregoing scores is significantly below average and is equivalent to that of a three year old student in pre-kindergarten. He achieved a score of 79 on the final section, Semantic Concepts, which is equivalent to that of a five year old kindergarten student. His Screening Index standard score of 5 is below the first percentile compared to his same-age peers. According to the FAR SF manual, a student achieving a standard score of less than 85 in the foregoing areas may be at risk for dyslexia. Ms. F. “highly recommended” that M. F. be further assessed to determine if he has dyslexia. She also recommended that the district use a structured literacy program such as SLANT, Barton, or the Wilson Reading System for the student’s reading instruction.
13. Ms. E., through her attorneys, provided the Redwood report to the district, and in January 2022 asked the district to re-evaluate M. F. The district convened a meeting to review the Redwood report and agreed to conduct a re-evaluation. Ms. E. signed consent for the re-evaluation on January 31, 2022. The district’s consent form includes the following information: M. F.’s 504 Plan addresses epilepsy and ADHD; his teacher reported that he does well with assistance but “gets off task when working independently”; and, Ms. E. raised concerns about M. F.’s “reading, letter reversals, and dyslexia” and that he was not performing at a second grade level. According to district testing conducted in 2019, M. F.’s “overall abilities were within the Average Range.” He had difficulty staying on task, read at a low level, and wrote letters backwards. The district did not have a current health history or updated hearing/vision information on file, so it would also obtain that information. The team developed a Medical Services Plan to address M. F.’s asthma and seizure disorder.
14. Ms. D. was M. F.’s second grade general education teacher beginning in January 2022. She has a master’s degree in reading. She is not certified to teach Wilson or Orton-Gillingham. She described M. F. as a “bundle of joy” who did not take academics seriously. He had trouble focusing and was frequently off-task 75% of

the day. She worked with him 1:1 for 30 minutes/day on his two IEP reading goals and testified that he was “really struggling” with reading. She used Jolly Phonics for classroom reading instruction. She also worked with M. F. on his two math goals. Ms. D. did not keep any records on his progress on his IEP goals. She resigned in May 2022.

15. Ms. J. re-evaluated M.F. in February and March 2022 and issued her written report on March 2, 2022.¹ The re-evaluation consisted of a records review, classroom observation of the student, and formal standardized assessments: psychological assessment (WISC-V), educational assessment (WIAT-4), achievement assessment (WRAT-5), and school readiness (Bracken Basic Concepts, 3rd Ed.). Ms. J. also had the mother complete the Connors-3, which looks at the student’s behaviors at home. Based on her classroom observation, Ms. J. was concerned about M. F.’s off-task behaviors, which she attributed to his ADHD, and his “oppositional” behaviors. The evaluation found that his full-scale abilities (SS 89) are within the low average range. His basic reading skills were at the 2nd %ile, which is in the extremely low range, and his math skills were at the 6th %ile, in the very low range. His writing skills were at the 0.7 %ile, and his word reading and spelling were at an early kindergarten level. The WIAT-4 has a Dyslexia Composite, and M. F.’s score was at the 0.8th %ile, within the Extremely Low range. The dyslexia composite has exclusionary and inclusionary factors, including epilepsy. Ms. J. testified that the student’s class was struggling with reading skills because there had been four different classroom teachers that year. Because of that, Ms. J. wanted to compare M. F. to his local peers rather than the national norm. Ms. J. opined that it would be hard to say for certain that M. F. has dyslexia because he was near his same-age peers academically: 84% of his classmates who took the math assessment scored two or more grade levels below, and 63% scored two or more grade levels below in reading. On the MAP Winter 2022 assessment, his reading was above district grade level peers at the 25th percentile and math slightly below peers at the 4th percentile. Based on the foregoing, M. F. was “performing at an expected rate.” The report includes numerous recommendations for instruction in reading and other academic areas. It does not include a recommendation for specific phonics instruction. Ms. E. did not receive a copy of the report until a week before she testified at hearing.

16. Redwood conducted a comprehensive re-evaluation of M. F.’s literacy skills and self-concept in March 2022. On the Beck Self-Concept Inventory for Youths (BSCI-Y), M. F. was at the 40th %ile for positive self-concept. This score is in the average range. Redwood administered the WIST to assess the student’s

¹ The record states that the student’s mother was not provided with Ms. J.’s Triennial Psychological Report until October 28, 2022.

decoding accuracy. The WIST has three subtests: word identification, which measures accuracy in decoding; spelling; and sound-symbol knowledge. On the word identification portion, M. F. was unable to correctly read any of the words shown. The test also measures sight recognition of “irregular” words, and on this portion he was able to correctly read two of the seven words he was shown. This score is below the 1st %ile for same age students. On the spelling section, the student correctly spelled one out of six attempted regular words. This subtest also assessed his recall of letter order. He was unable to correctly spell any of the high frequency words (e.g., into, from, put, of, they). His combined score of regular and irregular word spelling was at the 1st %ile. He was below the 1st %ile on the sound symbol knowledge subtest, and this deficit impacts his ability to read accurately and spell words consistently. It also impacts his reading success and confidence.

17. Redwood also administered the Gray Oral Reading Test, Fifth Edition (GORT-5), which measures a student’s rate, accuracy, fluency, and comprehension in reading. M. F. was at the 1st %ile for reading rate and fluency when compared to his same age peers. His accuracy score was at the 2nd %ile, which is equivalent to students below age 6 and below 1st grade. He was unable to correctly answer any of the comprehension questions. Based on these results, M. F. is below the 1st %ile for overall oral reading skills when compared to his same aged peers. His scores on the Phonemic Awareness Screening Test (PAST) show that he needs phonemic training at the basic syllable level. Redwood reviewed the FAR-SF data from the November 2021 evaluation it had conducted on the student. The review emphasizes that M. F.’s score in phonemic awareness is equivalent to a 3 year pre-K student. He was significantly below average in the rapid automatic naming portion of the FAR-SF, with skills equivalent to a 3 year old pre-K child. His score on Semantic Concepts was equivalent to a 5 year old kindergarten student. Based on these scores, M. F. does not have basic literacy skills and thus is unable to read. These scores confirmed Redwood’s initial assessment, which found that M. F. does not have foundational reading skills and is at least two years behind in his literacy skills. Redwood reviewed the student’s scores on the FAR-SF, which had been administered to the student in Redwood’s initial consultation with the family. The FAR-SF measures a student’s skills in Phonemic Awareness, Rapid Automatic Naming, and Semantic Concepts. M. F. achieved a standard score of 50 in Phonemic Awareness, which is significantly below average when compared to his same age peers. On the Rapid Automatic Naming, he scored significantly below average with a standard score of 56. This score is equivalent to a three-year old pre-kindergarten student. On the Semantic Concepts portion of the test, M. F.’s standard score was 79, which is equivalent to a five year-old student in kindergarten. His overall FAR Screening Index standard score was 54, which is below the 1st %ile when compared to his same-

age peers. Based on these scores, M. F. does not have basic literacy skills and thus is unable to read. These scores confirmed Redwood's initial assessment, which found that M. F. does not have foundational reading skills and is at least two years behind in his literacy skills

18. Based on the above findings, Redwood determined that M. F. needs immediate literacy intervention. Because he does not have foundational reading skills, he is unable to access text at a first grade level. He is at least two years behind where he should be academically. His inability to accurately decode words impacts his ability to comprehend what he reads. Based on these evaluation results, M. F. "requires intensive, immediate, consistent, and frequent access to a structured literacy intervention program" such as Wilson or a program based on Orton-Gillingham. He should be IDEA eligible as a student with a specific learning disability. Redwood recommended that M. F. receive a minimum of three hours/week of a structured program provided in 60 minutes three days/week or 45 minutes four days/week until he meets grade-level expectations. He also needs a structured literacy curriculum over the summer so that he does not regress. Redwood's report includes detailed recommendations for M. F.'s IEP, including: goals for decoding, encoding, fluency, and comprehension; provision of assistive technology in all subject areas, including Text to Speech and Speech to Text, and grammar and spelling; and, accommodations and modifications in reading, writing, social studies, and sciences. Redwood noted that staff working with M. F. should be watchful for social-emotional concerns that frequently go with a student being behind grade level.
19. On March 14, 2022, the district held an IEP meeting via zoom to address Ms. E.'s concerns. Ms. E. did not receive reports or data from the district prior to the IEP meeting. Although M. F. was in second grade, he was performing at a kindergarten level. His basic reading skills, as measured on the WIAT-4, were at the 2nd %ile. His math skills were slightly higher, at the 6th %ile. M. F.'s scores on the WRAT-4 confirmed his below grade level in reading with a grade equivalent score at the early kindergarten level. The IEP notes that "out of the 19 2nd graders (classmates) who took the reading assessment, 63% scored 2 or more grade levels below.... " and on the math assessment "84% scored 2 or more grade levels below." The IEP team developed goals for reading, writing and math. The student's reading goal states that "By March 2023, (the student) will be able to demonstrate emerging use of letter-sound knowledge to read words with 70% accuracy." The math goal states that "(the student) will be able to fluently add and subtract within 100 using strategies based on place value, properties of operations, and/or relationship between addition and subtraction with 70% accuracy." The writing goal states that M. F. "will add more information to own drawing, dictation, or writing to strengthen the message with 70% accuracy."

The IEP requires 45 minutes/day of special education reading in the general education classroom, 120 minutes/month of social work services, 15 minutes/quarter of speech/language services, numerous accommodations and supports, and ESY for reading, 60 minutes/day. The district did not consider the Redwood report at the meeting.

20. Ms. K. J. has been a special services teacher since 2014. She worked with M. F. one-on-one on his IEP goals from March to May 2022. She was the only special education teacher working with him at that time. She provided 45 minutes/day of reading instruction using Heggerty Phonics and 30 minutes/day of study skills to the student. The student's IEP has two reading goals. The first one states that "By May 2021, (the student) will be able to demonstrate emerging use of letter-sound knowledge to read words with 70% accuracy." Jt. Ex. 11, p. 4. The second goal states "Given a list of ten sentences, each containing words with short vowel sounds, (the student) will read the sentences aloud with no more than three short vowel sound errors with 70% accuracy." *Id.* When Ms. K. J. started with M. F., he was unable to identify any words. By May, he was able to identify only three to four one syllable words. Ms. K. J. resigned from the school on May 13, 2022.
21. Ms. F., Redwood's founder and CEO, conducted an in-person observation of the student in his second grade classroom on May 17, 2022 and issued a detailed report after the observation. Ms. F. is a specialist in learning behavior and dyslexia. The report includes Ms. F.'s observations of the lessons provided by the teacher and M. F.'s involvement in the instruction provided. During a conversation with the Assistant Superintendent of Special Services, Ms. F. learned that the student's LBS1 teacher had recently resigned. Thus, the school did not have any LBS1 teachers to implement the services in M. F.'s IEP. In her Observation Report, Ms. F. recommends that M. F. be placed in a therapeutic day school for third grade. The school should have small class sizes, a low teacher-to-student ration, and a Certified Learning Behavior Specialist trained in evidence-based structured literacy and written expression remediation programs. Her report includes recommendations on the supports and services that should be provided in the therapeutic day school.
22. Ms. W. is M. F.'s third grade teacher. She has been teaching at the school for 24 years. She has a master's degree in school leadership. Her third grade class has 17 students, and M. F. is the only student in the class with an IEP. She provides accommodations for him, e.g., she reads materials to him, has him sit by the board, and modifies his classroom work. *Id.* He has guided reading once/day. Ms. W. stated that M. F. has grown in academics and social skills and is a totally different child than he was last year. At the beginning of the year, he could

identify only three words, and he now can identify 10 words. He can decode words at a kindergarten level. He is able to read a little more and verbally answer questions. He has progressed in his math skills and is now doing “double-digit numbers, adding single-digit numbers.” He needs 1:1 help to do his classwork. This year he is “excellent in class,” works to the best of his ability, is motivated and behaves, and is “excited about learning.” However, he is “well below grade level.” His peer relationships have grown this year.

23. Ms. K., the special education resource teacher, began with the district in August 2022. She provides support for M. F. in the general education classroom through “push in services” for reading for 45 minutes/day and “pull-out services” for study skills for 30 minutes/day, as required in his IEP. She works with M. F. on phonics and his reading and writing goals. Phonics instruction includes short letter sounds and how to decode. Ms. K. uses Level 1 Scholastic books, which have three words to a page. When she began working with M. F., he was unable to decode any words on a list of 20 pre-kindergarten words. When she tested him on that list two weeks prior to her testimony, he was able to correctly read six or seven pre-kindergarten words. She works with him on comprehension. He has a short recall, so if she asks him the same question the following day, “he will forget.” Although M. F.’s IEP has a math goal, there are no direct service minutes for that goal. Ms. K. gives a homework packet to the student’s parents weekly; however, M. F. has not turned in any homework this year. Because of that, Ms. K. changed her plan and works with him on the packet during study skills, which is for 30 minutes/day. Ms. K. modifies M. F.’s school work to meet his level, and it is her position that he should be included in the general education setting. Ms. K. is not trained in Orton-Gillingham or Wilson, which are dyslexia specific programs.
24. M. F.’s third grade progress report for first quarter notes that he “struggles with oral reading fluency and reading comprehension” and is “reading well below grade level.”
25. Ms. F., the school’s social worker, began working with M. F. in September 2022. Although she has not evaluated M. F., she works with him 30 to 45 minutes/week “if he is there.” She does an emotional check-in with him and has noticed that he has difficulty reading any simple forms she gives him. His social work goal is to work on his impulsive behaviors. She taught him some breathing techniques to use. She has not documented any of her work, except in her personal notes, so there is “no way to tell if he has improved.”
27. Redwood issued its official Literacy Consultation Report on November 3, 2022. The report includes information gathered from a literacy assessment, which

included administration of the WIST, the GORT-5, the PAST, and the FAR-SF. M. F. had been given these same assessments on March 1, 2022, so a comparison of the March and October scores is integral to the report. On the WIST, M. F. scored in or below the 1st %ile in reading, spelling, and sound-symbol knowledge. On the GORT-5, his oral reading fluency was equivalent to a first grade student. On the FAR-SF, he was below the 1st %ile. P. Ex. 11. Based on this assessment, Redwood found that M. F. is two to three years behind grade level expectations. He has not mastered decoding and has not made adequate progress in his current program. Ms. F. recommended further testing to determine if he has dyslexia. Based on its findings, Redwood determined that M. F. needs instruction using a research-based program such as Wilson Reading or Orton - Gillingham for a minimum of five hours/week. The program should be delivered for 60 minutes five days/week. He also should receive the recommended instruction over the summer so that he does not regress. The report also includes sample IEP goals.

28. At hearing, Ms. F. was asked to review the district's November 6, 2019 psychological evaluation report on M. F. She noted a significant difference between the student's WIAT-3 2019 scores and those he obtained in Redwood's evaluation. On the school's testing, his scores were in the "average range," except for reading. His foundational reading skills - phonological awareness, letter sound correspondence, reading comprehension - were at the 5th %ile. These scores require immediate intervention because they are so low.

STATUTORY FRAMEWORK

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services "designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C. §1400(d)(1)(A). A district must comply with the IDEA's procedural and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) ("Rowley"). To meet its substantive obligation, a district "must offer an IEP reasonably calculated to enable the student to make progress in light of the student's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001; 69 IDELR 174 (2017) ("Andrew F.").

A parent of a student may request that the district conduct an initial evaluation. 20 U.S.C. §1414(a)(1)(B). The district must conduct the evaluation within 60 days of receiving parental consent. 20 U.S.C. §1414(a)(C)(i)(I). The district's assessment must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the

parent.” 20 U.S.C. §1414(b)(2). The child must be assessed in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B).

In determining whether a student has a specific learning disability, the district “may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.” 20 U.S.C. §1414(b)(6)(B). A specific learning disability is “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as..... dyslexia.” 34 C.F.R. §300.8(c)(10). Illinois law defines dyslexia as a “specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities.” 23 IAC §226.125(a). Illinois regulations require that “each child suspected of having dyslexia or identified as dyslexic *shall* be referred for an evaluation” in accordance with” federal and state law. 23 IAC 226.125(c) (emphasis added).

Once a student is determined eligible for special education and related services, the school district must develop an individualized education program (IEP) for the student. 20 U.S.C. §1414(d). The IEP offered to the student must provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 69 IDELR 174 (2017). The IEP must include a statement of the child’s present level of academic achievement and functional performance (PLOP), measurable annual goals that will meet the child’s needs, a description of how the child’s progress toward meeting the annual goal will be measured, and a statement of the special education and related services that is to be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (III). Special education is specially designed instruction to meet a student’s unique needs. 34 C.F.R. 300.39(a)(1). Special education instruction must be based on peer-reviewed research, to extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by the parties’ witnesses, the parties’ closing arguments and their proposed case law, as well as independent research. This decision is issued within ten business days after the end of the hearing.² 105 ILCS 5/14-8.02b(k).

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the arguments presented by counsel for each party, and this Hearing Officer’s own legal research, the Conclusions of Law are as

² The parties filed their final briefs on the evidence presented in this case on December 16, 2022. Thus, that is the date on which the 10 day timeline begins.

set forth below:

Whether the district failed its child find obligation from December 2019 through March 2022 by refusing to re-evaluate the student despite his below grade level scores on the WRAT-4 and to find him IDEA eligible:

In the case before this hearing officer, the evidence shows that Ms. E. asked the district to evaluate M. F. in November 2019 because of her concerns that her son could not read and wrote his letters backwards. The district's psychologist, Ms. J., conducted an evaluation, which included several standardized assessments: the WPPSI-IV, the WIAT-III, the WRAT-IV, and the BASC-3. The evaluation found that the student's early reading skills on the WIAT-III were at the 5th %ile, which is below a pre-kindergarten level. On the WRAT-IV, his word reading skills were below average and below a kindergarten level. Although these low scores indicate a reading deficit, on December 19, 2019 the district found that M. F. was not IDEA eligible. The district's determination was based on its finding that the student's scores were "not significantly below his peers or below average."

The district's reasoning is not in line with state and federal law. A school district is required to identify, locate and evaluate students "who are in need of special education and related services." 20 U.S.C. § 1412(a)(3)(A); 23 Ill. Adm. Code 226.100(a). The standard for determining whether a district has met its child find obligation is whether the school district overlooked clear signs of a disability, was negligent in failing to have the student evaluated, or if there was no rational justification for deciding not to conduct an evaluation. *Z. J. v. Board of Education of the City of Chicago, District No. 299*, (344 R. Supp. 3d 988, Sept. 26, 2018); *Demarcus L. v. Board of Education of City of Chicago*, 63 IDELR 13 (N. D. Ill. 2014). Neither the IDEA nor the Illinois School Code requires – or even suggests – that eligibility should be determined by comparing a student's scores on standardized tests to those of his school peers, as the district did here. Rather, federal and state law emphasize looking at a student as an individual. The evidence supports a finding that the district overlooked, or did not fully consider, the testing results showing that M. F.'s early reading skills were below a pre-kindergarten level and thereby failed its child find obligation to M. F.

On October 21, 2021, the parent again requested that the district evaluate M. F. Jt. Stip. 10. The district denied her request on October 29, 2021, stating that M. F. would be eligible for an evaluation in Fall 2022. *Id.* 10, 11. The district's reasoning is not in line with federal and state law: "A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with § 300.303(a)(2) through 300.311 (2) if the child's parent or teacher requests a reevaluation."

When the district did re-evaluate M.F. in February 2022, it administered several

standardized educational and functional assessments. Jt. Ex. 9. On the WISC-V, the student's full scale score was 89, which is at the 23rd %ile and in the low average range. Jt. Ex.9., p. 7. His scores varied considerably on the WISC-V subtests: verbal comprehension 18th %ile; visual spatial 50th %ile; Fluid Reasoning 58th %ile; working memory 8th %ile; and, processing speed 13th %ile. *Id.* pp. 7, 8. On the WIAT-4, M. F.'s basic reading skills were at the 2nd %ile. The WIAT-4 has a dyslexia screener, and the student's score on this was in the extremely low range, at the 0.8%ile. *Id.*, p. 9. The evidence presented at hearing supports finding that the district failed its child find duty to this student.

Whether the district failed to provide the student with appropriate reading and literacy instruction, including: a structured, evidence-based literacy program; specific instruction, accommodations, and IEP goals to address the student's orthographic mapping deficits; and IEP goals and short-term objectives to address the student's reading deficits.

Once a student is determined eligible for special education and related services, the school district must develop an individualized education program (IEP) for the student. 20 U.S.C. §1414(d). The IEP offered to the student must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 69 IDELR 174 (2017). The IEP must include a statement of the child's present level of academic achievement and functional performance (PLOP), measurable annual goals that will meet the child's needs, a description of how the child's progress toward meeting the annual goals will be measured, and a statement of the special education and related services that is to be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (III). Special education is specially designed instruction to meet a student's unique needs. 34 C.F.R. 300.39(a)(1). Special education instruction must be based on peer-reviewed research, to extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

The parent's concern in this case involves the district's substantive obligations, which include the child's present levels of performance, the child's disability, and potential for growth. *Andrew F.*, 137 S. Ct. 988, 989. The student's initial IEP includes one reading goal: "By March 2023, (the student) will be able to demonstrate emerging use of letter-sound knowledge to read words with 70% accuracy." Jt. Exh. 11, p. 4. The goal has two objectives: 1) "Given a list of ten one syllable words containing short vowel sounds, (the student) will read the list aloud with no more than three short vowel errors with 70% accuracy; 2) Given a list of ten sentences, each containing words with short vowel sounds, (the student) will read the sentences aloud with no more than three short vowel sound errors with 70% accuracy." *Id.*, p. 4. Ms. J., the special education teacher, worked with M. F. on this goal from March to May 2022 by providing 45 minutes/day of reading and 30 minutes/day of study skills. He was frequently off-

task, which Ms. J. said was “work avoidance.” He struggled with reading and was at a kindergarten level. Ms. J. resigned on May 13, 2022.

Ms. F. observed the student in his classroom on May 17, 2022. She testified that the program the teacher used was “far above” M. F.’s level, and thus he was not engaged in the instruction. Although he received more of the teacher’s attention than his peers because of his behaviors, M. F. did not get instructional support. The district progress report dated October 19, 2022 states that the student “struggles with oral reading fluency and reading comprehension” and is well below grade level. Jt. Ex. 14. His MAP score for reading in fall 2021 was at the 5th %ile. Jt. Ex. 15, p. 2.

The district has the burden of showing that “the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available.” 105 ILCS 5/14-8.-2a(g-55). The evidence shows that the student has dyslexia, and his basic reading skills are at the 2nd %ile. Although the district had this information in 2022, at the latest, it did not alter M. F.’s reading program to address his educational needs due to dyslexia. Instead, the district compared M. F. to his classmates, who were struggling with reading skills because they had been through several teachers that year. The evidence shows that the district has not provided M. F. with appropriate reading and literacy instruction to address his educational needs. Although the student is now in third grade, his academic functioning is at a kindergarten level.

Whether the district failed to provide the student with appropriate social, emotional, and behavioral supports, including a Behavior Intervention Plan (BIP), to address his behavioral and medical (asthma, ADHD, epilepsy, anxiety, depression) needs:

There is no evidence showing that the district developed a Behavior Intervention Plan (BIP) or provided behavioral supports for the student. Ms. F., the school social worker, met with M. F. once a week for 25 to 30 minutes. His social work goal states that he “will control impulsive behavior with breathing, counting, and other mindfulness techniques 80% of the time as measured by educational teams observation logs.” Jt. Ex. 11. Although he was using mindful techniques, he did not meet this goal as of March 14, 2022. *Id.*

The evidence does show that the district addressed M. F.’s medical needs when it developed a Seizure Action Plan and Asthma Action Plan as part of his 504 Plan, and then updated that document on January 31, 2022. Jt. Ex. 4, p. 9; Jt. Ex. 7, p. 10. The updated 504 Plan includes a detailed Medical Services Plan. The student’s initial IEP, dated March 14, 2022, includes a Medical Services Plan that address his asthma and seizure disorder. Jt. Ex. 11, pp. 16, 17

Whether the district failed to provide the student with the specialized instruction and related services required in his March 25, 2022 IEP:

The student's March 25, 2022 IEP requires special education instruction in reading. The evidence shows that M. F. has not received this instruction since May 13, 2022 when the special education teacher resigned.

Whether the district is unable to provide adequate educational support services for the student:

The evidence supports a finding that the district is not able to provide the student with the educational supports he needs to make appropriate progress. The district does not have a teacher who is trained and qualified to teach a student who has dyslexia. Without specific instruction in reading, the student's educational progress will be severely curtailed.

Whether the student requires placement in a therapeutic day school and if so, whether the district failed to provide the student an appropriate placement; and,

The evidence clearly shows that the district has not met the student's educational needs. The student needs a therapeutic school that can address his dyslexia and its impact on all educational classes.

Whether the above-alleged violations have denied the student a free appropriate public education (FAPE):

The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense and in conformity with a student's IEP. 20 U.S.C. §1401(9). A district must meet both the procedural and substantive requirements of the IDEA to provide a FAPE. The evidence supports a finding that the student has been denied a FAPE.

ORDER

The district shall place the student in a therapeutic day school that serves students with dyslexia. The district shall also provide round trip transportation for the student to/from the therapeutic school. The therapeutic school must also be able to address the student's medical needs regarding his seizures.

COMPENSATORY EDUCATION REQUEST

The parent has requested the following compensatory education to be provided

outside of school hours: 1) appropriate remedial academic instruction, including 50 hours of one-to-one multi-sensory reading instruction with a professional trained in an Orton-Gillingham based approach; 2) appropriate social work services, including five hours of one-to-one services with a licensed psychologist; and, door-to-door transportation to/from the compensatory services.

Compensatory education is an equitable remedy that “should aim to place disabled children in the same position they would have occupied but for the school district’s violation of the IDEA.” *Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). A hearing officer has authority to award compensatory education. *Letter to Riffel*, 34 IDELR 292 (OSEP). The Seventh Circuit has not ruled on whether the qualitative or quantitative standard should be used to calculate such an award.

Based on the extensive FAPE denial in this case, the district shall provide 50 hours of 1:1 multisensory reading instruction with a professional trained in an Orton-Gillingham approach. The parent has not provided any evidence supporting the request for social work services; therefore, that request is denied.

Within forty-five (45) days of receipt of this Order, the School District shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 N. First Street
Springfield, Illinois 62777-0001

NOTICE OF 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 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(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such 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.

NOTICE OF RIGHT TO FILE CIVIL ACTION

This is the final administrative decision in this matter and is binding on the parties unless a civil action is timely commenced. Pursuant to 105 ILCS 5/14-8.02a(i),

any party aggrieved by this Hearing Officer 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 parties. This Decision and Order is being sent to the parties' attorneys by electronic mail and by U. S. mail, certified, on January 2, 2023.

DATE: January 2, 2023

Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Final Decision and Order was sent by electronic mail and also by first class mail, directed to the individuals listed below:

Ms. [REDACTED]

Mr. [REDACTED]

[REDACTED]
Ms. [REDACTED]

Ms. [REDACTED]
Petrarca, Gleason, Izzo & Boyle LLC
[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
AEULASS@isbe.net

On January 2, 2023.

[REDACTED]

Mary Schwartz
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

