This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

CLOSED HEARING

ODR No. 30973-24-25

Child's Name:
M.C.

Date of Birth:
[redacted]

Parents:
[redacted]

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Hearing Officer:
James Gerl, CHO

Date of Decision:
July 16, 2025

BACKGROUND

The parents filed a due process complaint seeking reimbursement for a unilateral placement of the student from January 25, 2025 through the end of the 2024 – 2025 school year and a prospective private placement for the student for the 2025 – 2026 school year. The parents' complaint also seeks compensatory education for an alleged denial of a free and appropriate public education from March 2023 through January 25, 2025. Also, the parents' complaint requests an award of compensatory education because the parents allege that the extended school year services provided by the school district for the summers of 2023 and 2024 were not appropriate. In addition, the parents' complaint seeks reimbursement for the evaluation of the student prepared by the parents' expert witness. The school district contends that it provided a free and appropriate public education to the student at all times and contends that no relief should be awarded to the parents. I find for the parents on the issue of whether the school district failed to implement the material assistive technology provisions of the student's IEP from the beginning of the 2024 – 2025 school year through the middle of October 2025. I find for the school district on all other issues raised by the due process complaint.

PROCEDURAL HISTORY

Counsel for the parties agreed to many stipulations of fact and a number of joint exhibits -making the due process hearing more efficient.

The hearing was conducted in two virtual sessions. Six witnesses testified at the first session and four witnesses testified at the second session. Joint exhibits J-1 to J-13 were admitted into evidence. Parent exhibits P-1 through P-35 were admitted into evidence. Exhibits P-36 and P-37 were

excluded because they were depositions taken outside of the hearing process. The school district exhibits S-1 through S-11 and S-14 through S-31 were admitted into evidence. School district exhibits S-12 and S-13 were withdrawn as duplicative.

Because of the unusual amount of prehearing activity in this case, a thorough discussion of the prehearing process is required. A large number of prehearing motions were filed in this proceeding. A prehearing request by the parent to convert the format of the hearing to a virtual hearing was granted. A request by the school district for a subpoena *duces tecum* was denied because IDEA due process hearings, which have timelines because they involve the education of a young person, do not permit complex, expensive and time-consuming civil trial court discovery procedures such as depositions, written interrogatories, and subpoenas *duces tecum*.

Counsel for the parents, in a series of emails, requested an earlier than usual prehearing conference to address whether certain time allocations for witnesses established by the Uniform Prehearing Directions and other hearing procedures might violate the Due Process Clause of the Constitution. An early PHC was convened in response thereto on April 11, 2025. Later counsel for the parents objected because the PHC was held earlier than usual. (NT 24-26). The objection was overruled because the parents were the party that had requested an early PHC.

Both parties took extreme positions at the PHC regarding admissibility of evidence at the hearing. The school district asserted that cross examination must be limited to the scope of direct examination. The parents took the position that any school district employee may be cross examined by a parent in an IDEA hearing about anything that he or she has ever said or done.

Counsel for each party was directed to brief their unreasonable positions on these issues.

Counsel for the school district filed a brief before the first hearing session that backed off from its extreme position. (NT 9-10) Counsel for the parents failed to file a brief on this evidentiary issue as directed. At the hearing, counsel for the parents stated that the parents' argument that any school district employee may be cross examined by parents in an IDEA hearing about anything that he or she has ever said or done was made in a "spirited discussion" and was not a serious argument. (NT 11)

At the prehearing conference, and in an Order entered shortly thereafter, the following legal principles applicable to the procedures to be applied in IDEA due process hearings were explained: IDEA envisions that each party will have a fair opportunity to present its evidence. The case law recognizes, however, that there are limits to what a party may present, and it has been established that the specific procedures to be applied at hearings are within the discretion of the hearing officer.

It is rudimentary that time is of the essence in IDEA administrative hearings. These cases concern the education of a young person. There is a strong public policy underlying the unusually tight timelines that are applicable to IDEA administrative proceedings. 34 C.F.R. §§300.515, 300.510; 22 Pa. Code § 14.162(q).

The United States Supreme Court has instructed that special education "hearings are deliberately informal and intended to give the… (hearing officers)… the flexibility that they need to ensure that each side can fairly present its evidence." Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 44 IDELR 150 (2005). See, Federal Register, Vol. 71, No. 156 at p. 46704 (OSEP

August 14, 2006) Letter to Anonymous, 23 IDELR 1073 (OSEP 1994). Many other courts have ruled that hearing officers have broad discretion to determine the procedures at an IDEA hearing. Citations to many of these opinions were provided to the parties in an Order dated May 2, 2025. A copy of said Order is included in the administrative record for this case.

The time allocations and other specific procedures that I use, as well as the uniform prehearing directions, that were challenged by the parents in this case have been upheld by the United States District Court for the Eastern District of Pennsylvania in Ryan S v. Downingtown ASD, 124 LRP 18574 (E.D. Penna. 2024).

Thus, the law permits parties a fair opportunity to present their evidence, but recognizes that limits and other procedures determined by the hearing officer are necessary to ensure that these hearings are completed without unnecessary delay in compliance with the strong public policy underlying the federal and state timelines appliable to these cases involving the education of a young person. The parents' general objection to limitations and other special education hearing procedures was rejected.

At the PHC, the parents' specific requests to expand the time allocations and other limits were reviewed in detail. As a result, a number of modifications to the time limits and other procedures were made in order to accommodate the issues and facts raised by this particular case. Because the parents demonstrated that a large number of issues were presented by this case, including reimbursement for a unilateral placement as well as compensatory education and reimbursement for an evaluation for an alleged denial of FAPE, and because it was determined that additional pages may be necessary for each party to fairly and fully present its arguments, I granted the parents' request to enlarge the number of pages for the page limit on written closing

arguments from 15 pages to a page limit of 20 pages in this case. For the same reasons, at the parents' request, the time allocations for witnesses specified in the uniform prehearing directions of one hour per side per witness were expanded to provide one hour and 15 minutes per side for one parent and for one witness called by the school district (designated at the PHC as the director of special education). The parent's request for additional time for the parents' evaluator was also granted, and although the written report of the witness would serve as the direct testimony of the witness, as specified by the uniform prehearing directions, the evaluator was given fifteen minutes, rather than ten minutes, to testify orally in response to direct or redirect questions, in addition to the written report which speaks for itself.

Over the Spring holiday and shortly before the beginning of the due process hearing, however, counsel for the parents expanded the issues presented beyond the issues in the due process complaint and beyond those previously listed by counsel for the parents. One of the new issues raised for the first time involved what the parents' newest statement of issues described as a "prospective private placement" for next school year, 2025-2026. A prospective private placement for 2025-2026 was not asserted as an issue by the parents prior to the prehearing conference and does not appear in the parents' due process complaint. Because this newly raised issue is extremely complex and requires that the parents meet a higher legal standard, I amended some of my previous rulings regarding the limits in this case on April 22, 2025. First, the extension of the page limit for written closings for each party was expanded from 20 pages to 25 pages. Second, the expansion of the time allocations specified by the uniform prehearing directions was expanded further from 1 hour and 15 minutes to 1 hour and 30 minutes for one parent and for one witness called by the school district (designated at the PHC as the special education director). Third, the expansion of time for the testimony of

parents' evaluator, who would be testifying from a report which speaks for itself and serves as the direct testimony of the witness pursuant to the uniform prehearing directions, was expanded from 15 minutes to 20 minutes to testify orally on direct or redirect.

It is significant to note that neither party used the full amount of the expanded time allotments at the hearing in taking the testimony of the parent, the special education director or the parent's evaluator. More than sufficient time was allocated, and none of these witnesses required the full amount of time allotted. These rulings preserved the important public policy underlying IDEA timelines applicable to cases involving the education of young persons while still permitting the parties the opportunity to fairly present their evidence concerning the disputed facts.

After the prehearing conference, the parties were also permitted, at the request of the parents, to introduce an unusually large number of pages of exhibits because of the large number of complex issues presented. Because page limits do not apply to joint exhibits, this expansion of the number of pages of exhibits turned out to be unnecessary. The parents also raised an objection to the number of pages in the school district exhibit folder which was based upon an inaccurate count of the pages offered. The request was denied. The parents also moved to require the school district to include additional documents to its exhibit folder. This motion was denied as being without legal basis.

After the hearing, counsel for the school district made an unopposed request for an extension of the filing date for the parties' written closings. The request was granted. Thereafter, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact. The parents' brief included an exhibit which was attached to the brief but that was

not offered into evidence at the due process hearing. Said exhibit was not considered because only record evidence can be considered by a hearing officer in deciding the due process complaint. A fundamental component of procedural due process is a party's right to have a decision after an administrative hearing based solely upon the evidence in the record of the administrative hearing. Goldberg v. Kelly, 397 U.S. 254 (1970). See, Ohio Bell Tel. Co. v. Pub. Util. Comn., 301 U.S. 292 (1937); United States v. Abilene & S. R. Co., 265 U.S. 274, 288-289 (1924).

Counsel for the parents also submitted an unsolicited reply brief. The parents had already reached the page limit of twenty-five pages in their first brief. More importantly, given the timelines applicable to IDEA cases that are based upon the important public policy of quickly resolving cases involving the education of young people, there is not sufficient time to consider a second round of briefs, such as a reply brief from one party and a surreply brief from the other party, in these cases and still issue a timely decision. The unsolicited reply brief was not considered.

All arguments submitted by the parties in their timely first round of briefs have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

To the extent possible, personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

Prior to the hearing, counsel were instructed to submit a statement of issues presented. The parents presented four different statements of issues, and the school district submitted a statement of issues. The issues were discussed in detail and clarified at the prehearing conference convened in this matter. The specific issues presented were communicated to counsel for the parties in emails dated April 15 and 22, 2025, and the issues were restated at the outset of the due process hearing (NT 15-26). The due process complaint in this case presents the following issues:

1. Whether the parents have proven that the school district should be ordered to reimburse them for a unilateral private placement from January 25, 2025 through the end of the 2024 – 2025 school year and be ordered to fund a prospective private school placement for the student for the 2025 – 2026 school year?

2. Whether the parents have proven that the school district IEPs denied a free and appropriate public education to the student from March 2023 through January 2025, the time period for which the parents seek compensatory education?

3. Whether the parents have proven that the extended school year services provided to the student by the school district for the summers of 2023 and 2024 were not appropriate?

4. Whether the parents have proven that they should be reimbursed for an evaluation conducted by their expert witness as an equitable remedy for a violation of IDEA?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact:

1. As of the date of the hearing, the student is a [redacted]-year-old, [redacted]grade student.

2. The school district is the student's school district of residence.

3. The student attended school district schools from kindergarten through December 20, 2024.

4. The student was initially evaluated by school district for special education services in May 2019 and was found eligible to receive special education services under the primary disability category of Other Health Impairment and the secondary disability category of Specific Learning Disability.

5. The district completed a Reevaluation of the student in December 2021 that resulted in a change in the student's disability category. That Reevaluation Report found that the student was eligible for special education services under the category of Specific Learning Disability, but not in the Other Health Impairment category.

6. At the beginning of the 2021-22 school year ([redacted]grade), the district began to instruct the student using the Wilson Reading Program for 60 minutes per day.

7. In January 2022, the school district increased the Wilson instruction to 90 minutes per day.

8. This change was reflected in the student's January 5, 2022 IEP, as revised on January 13, 2022.) The NOREP for this change was approved by the student's parent.

9. During the 2022-23 school year, the student was a [redacted]-grade student at an intermediate school in the district.

10. The school district issued an IEP for the student dated December 7, 2022, during [redacted] grade.

11. The district provided 30 hours of Wilson instruction to the student during the summer of 2023 as the student's extended school year (ESY) services.

12. During the 2023-24 school year, the student was a [redacted]-grade student at an intermediate school in the district.

13. The district issued an IEP for the student dated November 15, 2023, during [redacted] grade.

14. The school district continued to provide Wilson instruction to the student during the 2022-23 ([redacted]grade) and 2023-24 ([redacted]grade) school years at 90 minutes per day. The Wilson instruction was provided during the English Language Arts (ELA) block.

15. On January 26, 2004, the IEP team met and discussed scheduling for the 2024-25 year, because the student would be transitioning to [redacted] school.

16. On February 5, 2024, the district issued a NOREP reflecting that it did not recommend that the Wilson instruction occur in lieu of the ELA

curriculum. The parents did not agree, but did not request mediation or due process.

17. The district completed a Reevaluation of the student on May 2, 2024.

18. The district provided 30 hours of Wilson instruction to the student during the summer of 2024 as the student's ESY services.

19. The IEP team reconvened on June 6, 2024 to further discuss the student's program for the 2024 - 2025 school year.

20. On June 17, 2024, the district issued a NOREP recommending that the student participate in the [redacted] grade ELA class for 30 minutes a day and receive 60 minutes of Wilson instruction during the remainder of the ELA block.

21. The parent approved the recommendation, although she noted concerns in the NOREP.

22. From the start of the 2024-25 school year until January 5, 2025, the student was a [redacted]-grade student at a [redacted] school in the district. Because of the winter break, the student's last day of school at the [redacted] school was December 20, 2024.

23. During the fall semester, the student's parents reported that the student's text-to-speech software was not working properly. The parents submitted videos showing the software malfunctioning while the student's computer was being used at home.

24. An IEP meeting was held on October 3, 2024. At the end of that meeting, the parents, through their counsel, requested that the district place the student at the school the student now attends, hereafter sometimes referred to as "private school."

25. The district issued a NOREP dated October 3, 2024 refusing the parents' request for placement at the private school. It did not issue an updated IEP. The parents disapproved the NOREP on October 10, 2024 but did not file for due process or mediation.

26. The IEP team met on December 5, 2024. At the end of the meeting, the parents again requested that the district place the student at the private school.

27. After the meeting, parents' counsel sent to the school district's counsel a 10-day notice of the parents' intent to enroll the student at private school at the school district's expense beginning on January 6, 2025.

28. The district issued a NOREP dated December 20, 2024 refusing the parents' request for placement at private school. It did not issue an updated IEP.

29. On July 22, 2024, private school conducted an admissions assessment of the student.

30. The school district issued a written report considering private school's assessments of the student on September 23, 2024.

31. The student began attending private school in another state on January 6, 2025, as a residential student.

32. Private school issued an Advisor Report for Marking Period on February 11, 2025 that was shared with the district.

33. Private school issued an Academic Report for Marking Period on March 19, 2025 that was shared with the district.

34. As of the hearing date, the student continues to attend private school as a residential student.

35. The parents' expert witness completed a Psychoeducational Evaluation of the student and issued a report dated February 11, 2025.

36. On February 25, 2025, the IEP team convened to consider the results of evaluation by parents' expert witness.

37. During the meeting, the district raised a concern about whether the student's vision may be affecting the student's education.

38. On March 7, 2025, the parents provided the district with a letter and records from an optometrist stating that he had assessed the student's vision most recently on August 1, 2024, and had found that the student's "binocular functional status is good based on all of the testing we have done including near point of convergence testing and cover testing."

39. The district obtained permission from the parents to speak with parents' expert witness about his report.

40. On March 7, 2025, the district issued an updated IEP. It offered the student three days per week of Wilson instruction and two days per week of a "virtual evidence-based reading intervention."

41. The parents disapproved the NOREP on 03/10/2025 and filed a due process complaint on March 12, 2025.

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: [1]

[1] (Exhibits shall hereafter be referred to as "J-1", etc., for the joint exhibits; "P-1," etc., for the parents' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT___").

42. The student is a really fun kid, who likes [redacted] crocs. (NT 133 – 134)

43. The IEP for the student dated December 7, 2022 included goals for reading accuracy, reading fluency, reading level, writing dictation, written expression, Wilson encoding, Wilson decoding, and writing retells. Ninety minutes of Wilson reading instruction per day is provided. The IEP provided for explicit, sequential and systematic reading instruction which was implemented by using Wilson reading for 90 minutes per day. The IEP provided numerous modifications and specially designed instruction, including extended time to respond to each test item on the STAR assessment, which was requested by the student's mother. The IEP provided for assistive technology as a related service when written information is presented or needs to be accessed. The IEP provides that the student will be in the regular education classroom 76.92% of the school day. (J-4, S-3: NT 414)

44. The November 15, 2023 IEP included goals for reading accuracy, reading fluency, reading level, writing dictation, written expression, Wilson encoding, Wilson decoding, and writing retells. The IEP required explicit, sequential and systematic reading instruction which was implemented by using the Wilson reading program for 90 minutes per day. The IEP includes numerous modifications and specially designed instruction. The IEP provides for assistive technology devices. The IEP finds the student eligible for extended school year services. The IEP places the student in the regular education classroom for 76.92% of the school day. (J-5; NT 416, 586-587)

45. The June 6, 2024 IEP included goals for reading accuracy, reading fluency, reading level, writing dictation, written expression, Wilson encoding, Wilson decoding, and an assistive technology/ writing goal. The IEP calls for

explicit, sequential and systematic reading instruction which was implemented by using Wilson reading for 90 minutes per day. The IEP includes numerous modifications and specially designed instruction. The IEP provides for assistive technology devices. The IEP finds the student eligible for extended school year services. The IEP places the student in the regular education classroom for 73.08% of the school day. (J-8)

46. The June 17, 2024 Notice of Recommended Educational Placement issued by the school district placed the student in a regular education English Language Arts classroom for 30 minutes per day and in Wilson instructions for 30 minutes per day. The parents approved this NOPREP. (J-8, P-3; NT 74)

47. At an IEP team meeting on October 3, 2024, the district staff recommended placing the student in regular English Language Arts class for the full ELA block. This required changing the student's schedule to have the student miss 25 minutes of the 42 minute "Millionaire Block" (including band) and 43 minutes of unified arts (rotating art, music, physical education, health and technology classes) in order to receive Wilson reading instruction during those times. The parents rejected the NOREP issued for this change, but did not request due process or mediation. (S-21, J-10, S-10, S-11; NT 449-450, 541-545)

48. The student needs to receive English Language Arts in a general education classroom. Educational research reveals that students with severe dyslexia do better when placed in general education English Arts classes. (NT 311-314, 339; S-21)

49. The Wilson reading instruction methodology is supported by extensive peer-reviewed research supporting its efficacy. Wilson is a structured literacy methodology, and it is considered the gold standard for reading instruction for students with learning disabilities, including dyslexia. (NT 300, 550; S-22, S-20)

50. At the beginning of the student's [redacted] grade school year, 2024-2025, the school district contracted with an expert certified Wilson Level II instructor to work with the student. The expert reading instructor contracts with school districts to work with students with severe reading disabilities. (NT 297-301; S-19)

51. The student was a "non-responder" in the sense that that term is used in Response to Intervention in education. A student is a non-responder in this sense when they are not responding to interventions. When a student is not responding to an intervention, educators must develop other strategies or proceed at a slower pace with more intense instruction. The expert reading instructor referred to the student as a non-responder. The student is one of the most severe dyslexic students that the expert reading instructor has worked with. (NT 319 – 320, 302)

52. The student had been placed at Wilson Level 8 before working with the expert reading instructor. After working with the student for a few weeks, the expert reading instructor conducted a Wilson assessment and moved the student back to Wilson Level 4 to increase the student's automaticity in the skills being taught. While working with the expert reading instructor in [redacted] grade, the student progressed to Wilson Level 5. (S-10, J-10; NT 313-315, 332)

53. Student progress is measured by using trend lines over time. Multiple factors can influence specific students' scores on a particular day. (J-8; NT 485 – 486)

54. The student struggles with reading fluency and spelling. Students with dyslexia frequently show a weakness in these areas. (S-14, S-15; NT 153 – 154, 303, 306)

55. A focus on reading fluency for students with severe reading disabilities is misplaced. (P-23; S-21; NT 311 – 314)

56. While at the school district, the student made slow but steady progress on reading skills, including decoding skills, word identification, some rapid naming subtests and reading comprehension subtests. The student's reading comprehension and vocabulary are relative strengths. (NT 276-277, 303-304, 319-320; J-4, J-7, J-8, S-14)

57. The student achieved the student's IEP goal for writing dictation, made progress on the goal for written expression and became proficient at writing retells while enrolled in the school district. The student was performing in the average range in all areas of writing other than spelling as of June 2024. (J-8; S-14; NT 154, 303)

58. While enrolled in the school district, the student demonstrated the ability to meet or exceed grade-level standards in general education science and history classes. (P-11, P-28; NT 381, 391 – 393)

59. On December 20, 2024, the school district issued a Notice of Recommended Educational Placement (NOREP) refusing to place the student at the private school at public expense. The school district's reason for refusing the private placement was that private school is not the appropriate placement for the student and that the student had only been in the new schedule at the school district with general education English Language Arts for twelve days prior to the request for the unilateral placement. (J-10; NT 469 – 477, 546, 562 – 573)

60. On February 11, 2025, the parents' expert witness issued a report of a psychoeducational evaluation of the student. The evaluation included extensive assessments of the student. The report of the evaluator recommends that the student receive direct and individualized evidence-

based reading instruction. The evaluator concluded that the school district IEPs were appropriate in some ways but were not appropriate in other ways. The evaluator asserted that the school district IEPs did not address reading fluency, or encoding and decoding skills. The evaluator testified that most important to his recommendations was the fact that the reconstructive language methodology utilized by the private school contained "flexibility." The evaluator recommended that the student remain at the private school. The evaluator recommends a number of items to the student's IEP team, including that repetition is important for the student and that the student be given extended time on tests and state assessments. (P-11; NT 148 - 150, 157)

61. An IEP team meeting was convened on February 25, 2025 to consider the parents' expert's report. School district members of the team discussed the report with the parents' expert witness. (NT 272 – 276, 549 – 553)

62. While considering the recommendations by the parents' expert witness, the school district contacted the Pennsylvania Training and Technical Assistance Network to obtain their input concerning the additional evidence-based reading instruction programs recommended by the parents' expert. (NT 550 – 553)

63. The March 7, 2025 IEP includes goals for reading accuracy, reading fluency, reading level, writing dictation, written expression, Wilson encoding, Wilson decoding, and assistive technology (using speech-to-text technology). The IEP includes numerous accommodations and specially designed instruction. The specially designed instruction include that the student will participate in "explicit, sequential and systematic intensive reading instruction (Wilson reading system)…" The IEP team found the student

eligible for extended school year services. The IEP places the student in the regular education classroom 74.29 % of the school day. (J-12)

64. The school district agreed to adopt some of the recommendations of the parents' expert witness in a March 7, 2025 IEP. The recommendations that were adopted included: continuing Wilson reading instruction, but adding other evidence-based interventions after an assessment by a literacy interventionist. The March 2025 IEP included a trial of a reading intervention program like Read Naturally, given the expert witness' recommendation for a program that focuses on fluency and repeated reading of the same test. District staff confirmed with the parents' expert that Read Naturally is an appropriate intervention for the student. (J-12; S-23, S-24; NT 273 – 276, 550 – 561)

65. The March 2025 IEP also proposed a diagnostic assessment by an optometrist at school district expense. The proposal was made in response to teacher concerns related to the student's vision. The parents provided an optometrist report in response to the proposed diagnostic assessment stating that the student's "binocular functional status is good." (P-5; J-12; NT 560 – 562)

66. Counsel for the parents informed the school district that the IEP and NOREP should be sent directly to him rather than being reviewed at an IEP team meeting. The March 2025 IEP and NOREP were sent to the parents' counsel on March 7, 2025. The parents rejected the NOREP on March 10, 2025. (J-13; NT 561 – 562)

67. The student did not exhibit school avoidance while enrolled in the school district. The student did not miss school very often, and the student's IEPs recorded the student's excellent attendance. After the parent informed the school district that the student was trying to fake illness to stay home from school, the school district interviewed the student's teachers and staff.

The teachers did not report any school avoidance behaviors, and they reported that the student participated in class, had fun with peers, and exhibited a pleasant disposition. The school district also asked the guidance counselor to meet with the student, and the student did not communicate to the counselor that there were any current issues or school avoidant behaviors. (J-5, J-8; NT 341, 467 – 468, 510 – 512)

68. The student was not bullied while at school in the school district. At the December 5, 2025 meeting, the parents reported that the student had been called a "retard" at a [redacted] meeting that occurred outside of school. The student never reported being bullied at school, and the student's teachers did not express concerns about negative peer interactions. (NT 466 – 469, 510 - 511)

69. The student's IEPs required that the student be provided assistive technology when written information is presented or needs to be accessed. In early-September 2024, the student's speech-to-text software was not working properly and was not correctly installed on the student's computer. This problem persisted until mid-October 2024. The speech-to– text software was corrected before the parents unilaterally placed the student at private school. Later in the student's [redacted]grade school year 2024 – 2025, there were other technical issues, but the school district staff were able to resolve the issue within a day or two each time. (NT 135 – 136; 405 – 412, 434 – 447)

70. The student received 30 hours of 1:1 Wilson reading instruction for the extended school year services during the summer of 2023. The extended school year services were provided by a Level I Wilson instructor who was working on Level II certification. The services were determined based upon a review of prior extended school year services data for the student. The parents noted that the student made progress during the extended school year for 2023. (P-18; NT 524 – 526)

71. The school district provided 30 hours of one-on-one Wilson reading instruction for extended school year services during the summer of 2024 to the student with the same instructor. The services were based upon the recommendation of the instructor. (NT 525 – 526)

72. The private school at which the parents unilaterally placed the student is a private school in another state that accepts only students with disabilities. (P-34; NT 177)

73. The private school is not approved to provide instruction to children with disabilities by the State Department of Education in the state in which it is located. None of the student's teachers at the private school have valid teaching certificates. (NT 225)

74. The enrollment at the private school has declined from 155 students in 2022 to 90 students in 2025. (P-24; NT 205 – 208)

75. The only reading instruction offered by the private school is its own proprietary program, Reconstructive Language. Reconstructive Language methodology has not been shown through peer-reviewed research studies to be effective. There are no independent peer-reviewed research studies of the effectiveness of Reconstructive Language. Reconstructive Language is not an evidence-based reading methodology. (NT 220 – 256, 318 – 319)

76. Reconstructive Language is a regimented, systematic, predictable and very structured program. The private school does not provide individualized instruction; all Reconstructive Language instruction at the private school is provided in groups based upon reading level. (NT 189, 226, 243, 259)

77. After the parents requested that the school district fund the student's placement at the private school, the school district sent two

representatives to observe the student at the private school on approximately March 21, 2025 from about 8:00 am to 2:00 pm. During English class, the student's English teacher completed part of an assignment for the student. During the same class, the student played a video football game with the teacher's knowledge and with no redirection from the teacher. During math class, the student misbehaved with another student and performed no work. During the school day the student did not utilize the speech-to-text technology or any other assistive technology. The student received no significant instruction during the school day. (NT 469 – 477, 562 – 573)

78. The private school conducted an assessment of the student on March 22 or March 23, 2025 using the same assessments that were used during the student's admission process in June of 2024. (NT 223-224)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq*, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education (hereafter sometimes referred to as "FAPE"). IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. In order to receive reimbursement of tuition and related expenses resulting from the unilateral private school placement, a parent must prove three elements: 1) that the school district has denied FAPE to the student or

committed another substantive violation of IDEA; 2) that the parents' private school placement is appropriate; and 3) that the equitable factors in the particular case do not preclude the relief. School Committee Town of Burlington v. Department of Education, 471 U.S. 359, 103 LRP 37667 (1985); Florence County School District #4 v. Carter, 510 U.S. 7, 20 IDELR 532 (1993); Forest Grove School District v. TA, 557 U.S. 230, 52 IDELR 151 (2009).

3. Prospective private placements as relief for violations of IDEA are rarely made by hearing officers or courts; the clear preference is to educate students in public schools; placement in a private school is the exception. See, RH by Emily H & Matthew H v. Plano Independent Sch Dist, 607 F.3d 1003, 54 IDELR 211 (5th Cir 2010). Although hearing officers and courts clearly have broad equitable power to award appropriate relief where there has been a violation of IDEA, awards of prospective private placement have been made only in egregious cases where the school district cannot provide FAPE. See, Draper v. Atlanta Independent School System, 518 F.3d 1275, 49 IDELR 211 (11th Cir. 2008); Upper Darby Sch Dist, 120 LRP 27028 (SEA Penna. 2020).

4. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make progress in light of the child's unique circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and

Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

5. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, supra; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

6. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

7. IDEA does not require a school district to guarantee a particular result or to close the gap between children with disabilities and their non-disabled peers. JN and JN ex rel. JN v. Southwest School District, 56 IDELR 102 (N.D. Penna. 2015); see, Kline Independent School District v. Hovem, 690 F. 3d 390, 59 IDELR 121 (5th Cir. 2012); HC and JC ex rel. MC v. Katonah – Lewisboro Union Free School District, 59 IDELR 108 (S.D. NY 2012); District of Columbia Public Schools, 111 L.R.P 77405 (SEA D.C. 2011). Progress toward a FAPE is measured according to the unique individual circumstances of the individual student and not in comparison to other students. See, GD by Jeffrey and Melissa D v. Swampscott Public Schs, 122 LRP 6305 (1st Cir. 2022). The Third Circuit has specifically ruled that IDEA does not require that all (or even most) disabled children advance at a grade-level pace. KD by Dunn v. Downingtown Area School District, 904 F. 3d 248, 72 IDELR 261 (3d Cir. 2018).

8. A parent cannot compel a school district to use a specific educational methodology. A school district is afforded the discretion to select from among various methodologies in implementing a student's IEP. Ridley School District v. MR and JR ex rel. ER, 680 F. 3d 260, 58 IDELR 271 (3d Cir. 2012); see EL by Lorsson v. Chapel Hill – Carrboro Board of Education, 773 F. 3d 509, 64 IDELR 192 (4th Cir. 2014); Lessard v. Wilton – Lyndborough Coop School District, 592 F. 3d 267, 53 IDELR 279 (1st Cir. 2010); In re Student With A Disability, 51 IDELR 87 (SEA WVa. 2008).

9. Services are not categorical under IDEA; IDEA does not concern itself with labels; rather, once a child is eligible under one of the enumerated disability categories, the IEP of the child must be tailored to the unique needs of the particular child. 34 C.F.R. § 300.106(a)(3)(i); see Heather S. v. State of Wisconsin, 125 F. 3d 1045, 26 IDELR 870 (7th Cir. 1997); Osage R-1 School District v. Sims ex rel. BS, 841 F. 3d 996, 56 IDELR 282 (8th Cir. 2011). The child's identified needs and not the child's disability category determine the services that must be provided to the child. School District of Philadelphia v. Post, et al, 262 F. Supp. 3d 178, 70 IDELR 96 (E.D. Penna. 2017); See, Maine School Administrative District No. 56 v. Mrs. W. ex rel. KS, 47 IDELR 219 (D. ME 2007); see also, Analysis of comments to proposed federal regulations, 71 Fed. Reg. 156 at pp. 46586, 46588 (OSVP August 14, 2006); In re Student With A Disability, 52 IDELR 239 (SEA WVa 2009).

10. A school district must "...to the maximum extent appropriate (ensure that) children with disabilities... are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2); IDEA § 612(a)(5)(A); 22 Pa. Code

§ 14-195. The Third Circuit has stated that the least restrictive environment requirement sets forth a "strong congressional preference" for integrating children with disabilities in regular education classrooms and that the least restrictive environment requirement is a substantive requirement of IDEA. Oberti v. Board of Education, 995 F. 2d 1204, 19 IDELR 908 (3d Cir. 1993).

11. A student's IEP components should be based upon peer-reviewed research to the maximum extent possible. Ridley Sch Dist vs. MR and JR ex rel. ER 680 F. 3d 260, 58 IDELR 271 (3d Cir. 2012); 34 C.F.R. § 300.320(a)(4).

12. Bullying is defined as aggression within a relationship where the aggressor has more real or perceived power than the target and the aggression is repeated over time. Students with disabilities are disproportionately affected by bullying. Dear Colleague Letter, 61 IDELR 263 (OSERS 2013). The failure of a school district to stop or address the bullying of a student with a disability that adversely affects the education of the student may constitute a denial of FAPE. Shore Regional High School Board of Education v. PS, 381 F. 3d 194, 41 IDELR 234 (3d Cir. 2004). See, TK and SK ex rel. LK v. New York City Dept. of Educ., 779 F. Supp. 2d 289, 56 IDELR 228 (E.D. NY 2011), aff'd 810 F. 3d 869, 67 IDELR 1 (2d Cir. 2016).

13. To prevail on a claim of failure to implement an IEP, a parent must show that the school district failed to implement substantial or material provisions contained in the IEP. Abagail P by Sarah F v. Old Forge Sch Dist, 105 F.4th 57, 124 LRP 21769 (3d Cir 2024); MP by VC v. Parkland School District, 79 IDELR 126 (E.D. Penna. 2021); see, Van Duyn v. Baker School District, 481 F 3d 770, 47 IDELR 182 (9th Cir. 2007).

14. For a procedural violation to be actionable under IDEA, the parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation right or

causes a deprivation of educational benefit. Ridley Sch Dist, supra; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

15. A local education agency must provide extended school year services to a child with a disability when necessary to provide a free appropriate public education because the benefits that the disabled child gains during the regular school year will be significantly jeopardized if he or she is not provided with an extended school year program. 34 C.F.R. § 300.106; 22 Pa. Code § 14.132; LG and EG ex rel. EG v. Wissahickon School District, 55 IDELR 280 @ n.3 (E.D. Penna. 2011); see, MM v. School District of Greenville County, 37 IDELR 183 (4th Cir. 2002).

16. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir 2010); School District of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area School District, 71 IDELR 87 (N.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009). The conduct of the parties is always relevant when fashioning equitable relief. CH by Hayes v. Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir 2010). See, Branham v. District of Columbia, 427 F.3d 7; 44 IDELR 149 (D.C. Cir. 2005).

17. Compensatory education is one remedy that may be awarded to a parent when a school district violates the special education laws. In general, courts, including the Third Circuit, have expressed a preference for a

qualitative method of calculating compensatory educational awards that addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley School District Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); Gwendolynne S by Judy S and Geoff S v West Chester Area Sch Dist, 78 IDELR 125 (ED Penna 2021); see Reid ex rel. Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. 2005). In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by the denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or "cookie cutter" method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The "cookie cutter" or quantitative method has been approved by courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K v. Annville Sch. Dist., 39 F. Supp. 3d 584, 53 IDELR 278 (M.D. Penna. 2014)

18. The parents have not proven that they are entitled to reimbursement for unilateral placement or a prospective private placement of the student at the private school.

19. The parents have proven that the school district failed to implement the assistive technology provisions of the student's IEPs from the beginning of September 2024 through the middle of October 2024.

20. The parents have not otherwise proven a denial of a free and appropriate public education to the student.

21. The parents have not proven that the school district denied the student a free and appropriate public education because of the content of the extended school year services programs during the summers of 2023 and 2024.

22. The parents have not proven that they should be reimbursed by the school district for the psychoeducational evaluation completed by the parents' expert witness.

DISCUSSION

I. Merits

1. Whether the parents have proven that the school district should reimburse the parents for a unilateral private placement for the student for the 2024 – 2025 school year and for a prospective private placement for the student for the 2025 – 2026 school year?

The parents seek reimbursement for a unilateral placement of the student in the private school for the 2024 – 2025 school year and a prospective placement at the expense of the school district in the same private school for the 2025 – 2026 school year. The parents contend that the school district's IEPs dated June 6, 2024 and March 7, 2025 are not substantively appropriate. The school district contends that its IEPs were appropriate. An analysis of the three prongs of the Burlington - Carter – TA factors follows:

a. Whether the parents have proven that the school district's IEPs constituted a substantive denial of FAPE for the student?

The parents contend that the school district's March 7, 2025 and June 6, 2024 IEPs were substantively inadequate because: the IEPs provided the same program and did not result in actual progress for the student; the school

district failed to implement assistive technology provisions of the IEP; the IEPs failed to appropriately address the student's dyslexia; and the student's classmates have bullied [the student] and called [the student] "retard" outside of the school. The school district argues that its IEPs provided a free and appropriate public education to the student.

At the heart of this dispute is the parents' contention that the school district must employ a particular educational methodology – Reconstructive Language. The gravamen of the parents' complaint is that they contend that the school district committed a substantive denial of FAPE by using the Wilson Reading program as the reading methodology for the student.

The Third Circuit has specifically held that the choice of educational methodology is the province of school officials. Parents cannot compel a school district to adopt their preferred methodology. Moreover, the parents' argument that the IEPs are substantively inadequate because of the educational methodology used to instruct the student does not meet the legal standard pronounced by the Supreme Court. In addition, IDEA requires that components of an IEP must be based upon peer-reviewed research to the extent practicable. The Wilson reading instruction program is a research-based program. The parents' preferred methodology, Reconstructive Language, is not research-based. Parents clearly have not proven that the student's IEPs were not reasonably calculated to confer meaningful benefit in view of the student's circumstances simply because they prefer another methodology. The parents' argument is rejected.

It is abundantly clear that the parents in this case, as is true for almost all parents, want the best for their child. In this case, that includes the parents wanting the best possible education for the student. IDEA does not require, however, that a school district provide an ideal education. Rather, the

standard is that the school district must provide an appropriate education that is reasonably calculated to confer meaningful educational benefit based upon the student's unique circumstances.

The parents' goal of an ideal education is illustrated by their contention in this case that the student did not make sufficient progress during the time that the student was educated at the school district. The parents' expert witness, for example, testified that the school district program was inappropriate because the student did not make sufficient progress. The expert could not, however, define what an appropriate amount of progress would have been. This conclusion is entitled to little weight.

IDEA does not require a school district to guarantee any particular result; the school district is not required to prove that a student made actual progress under the student's IEPs. The IEPs need only be reasonably calculated to confer meaningful educational benefit in view of the student's individual circumstances. Although actual progress is not required, the record evidence in this case is clear that the student did make slow but steady progress in many areas of reading while at the school district. The student also made progress on a number of writing goals. Moreover, the student succeeded in some general education classes while in attendance at the school district; clearly the student does not need the severely restrictive placement- a special-education-only separate school- proposed by the parents. Moreover, the parents' brief points to a number of data points to assert that the student did not make progress. Student progress, however, must be measured over time, and the record evidence as a whole in this case supports that the student made slow but steady actual progress while in the school district. The student's IEPs in question were reasonably calculated to, and in fact did, confer meaningful educational benefit.

The parents were undoubtedly upset when the expert reading instructor, who was brought in to work with the student, lowered the student's reading level after an assessment. The expert reading instructor wanted to enable the student to increase automaticity in the skills being taught. In view of the student's unique individual circumstances, including the fact that [the student] is severely dyslexic, the change in level in order to properly instruct the student in [the student's] areas of need was highly appropriate. Moreover, the district contracting with the expert reading instructor and the change of the student's level clearly demonstrate that the school district was not offering the same program year after year as the parents have argued. The student's IEPs were designed and modified to meet the student's unique individual needs.

The parents also argue that the student's IEPs failed to appropriately address the student's dyslexia. The parents' focus on the student's category of disability, however, is misplaced. Once a student is determined to be eligible under IDEA in one or more of the eligibility categories, the services provided to the student should not be based upon the category of disability, but rather the student's unique individual needs. In this case the school district provided Wilson, a research-based reading program, to the student. As is required by IDEA, Wilson is based upon peer-reviewed research. The school district brought in an expert certified reading instructor to work with the student one on one. Working with the expert instructor, the student made slow but steady progress in reading while enrolled in the school district.

In addition, the record evidence reveals that the school district accepted the input of the parents at IEP team meetings, including the report from their expert witness. The school district made some changes to the student's IEP adopting some of the recommendations of the parents' expert witness. Thus,

the record is clear that the school district did not provide the same program to the student year after year, but rather tailored the student's IEPs to be reasonably calculated to provide meaningful progress in view of the student's unique circumstances, including the student's severe reading disability.

The parents contend that the other children bullied the student and called the student "retard" outside of school. The name-calling incidents cited by the parents occurred at a [redacted] meeting; not while the student was at school. The parents provided no explanation as to why the school district should be responsible for behaviors by other students outside of the school setting. The parents' argument is rejected.

The parents argue that the student was also "bullied" because a teacher put some of the student's work on the board and the student's classmates laughed at the student. The incident concerning the students laughing at the student in class was not reported by the student. When the parents brought up the alleged incident at an IEP team meeting, the school district investigated whether the student had been bullied. The student's teachers did not notice any peer interaction issues and the student told the counselor that he had no peer issues. The record evidence does not support the parents' contention that the incident occurred. Moreover, even assuming arguendo that this incident actually happened, the incident does not fit within the legal definition of bullying. The parents have not proven that the school district denied FAPE to the student because of bullying.

The parents also contend that the school district denied a free and appropriate public education because the school district did not implement the assistive technology provisions of the student's IEPs. The parents have proven that the school district did not enable the student's laptop to be able to use the speech-to-text program that was called for in the student's IEP from the

beginning of September 2024 through the middle of October 2024. The speech-to-text issue was fixed after the middle of October 2024, and it was not a problem when the parents made the decision to remove the student and unilaterally place the student in the private school. This failure to implement the IEP will be discussed further in the compensatory education discussion in this decision, but it is not a basis for reimbursement for unilateral placement. The parents have alleged a number of other incidents of assistive technology failures, but the record evidence reveals that for the other incidents, the school district was able to resolve the technical problem generally within 24 hours of it being reported to the IT department. The subsequent incidents clearly were not a material failure to implement the student's IEPs. The parents' argument concerning the subsequent incidents is rejected.

The parents also assert in their brief that there was a procedural denial of FAPE. This argument is rejected because the parents waived the argument by not raising it prior to the hearing. The issues were gone over in detail at the prehearing conference convened in this case and were restated at the beginning of the hearing. The parents filed four different statements of issues prior to the hearing. Counsel confirmed the issues presented at the beginning of the hearing. None of the parents' statements of issues listed the alleged procedural violation. The parents contend that all they are required to do is state a vague outline of issues, such as "denial of FAPE." Procedural due process under the state and federal constitutions, however, requires that a charging party notify the party being charged of the allegations against them prior to the hearing. The concept of notice and opportunity to be heard is at the heart of the due process clause of the constitution. The procedural FAPE issue raised by the parents in their post-hearing brief has been waived by the parents and is not properly before the hearing officer.

Even assuming, *arguendo*, that the procedural denial of FAPE issue raised by the parents was properly before the hearing officer, the parents have not shown that the alleged procedural violation was actionable. There is no evidence in the record that the alleged failure to repeat the changes to the program of the student in an IEP document adversely affected the student's education or significantly impaired the parents' opportunity to participate in the process. The record reveals that the parents were well aware of the proposed changes to the student's program and failure to provide an IEP document in addition to the NOREP that was provided to the parents was clearly harmless.

Because the parents have not proven that the school district denied a free and appropriate public education to the student, the parents' additional claim for what one of the parents' statements of issues filed prior to the hearing referred to as a "prospective" placement at the private school for the 2025 – 2026 school year is not supported by the evidence in the record. Because the parents have not proven that the school district's IEPs were substantively inadequate, clearly they have not met the higher burden for a prospective private placement. The request for a prospective private placement is denied.

Concerning the first prong of the Burlington analysis, the testimony of the school district witnesses was more credible and persuasive than the testimony of the student's parent and witnesses testifying on behalf of the parents. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the mother was evasive during questioning by the lawyer for the school district. The testimony of the student's mother is also impaired by the parents' inconsistent position on the school district's removal of the time limits on the STAR assessment for the student. At the

parents' request, the time limits on the STAR assessments were eliminated. The parents now contend, however, that the STAR assessments were inaccurate because of the removal of the time limits. The parents cannot have it both ways; they cannot request the removal of the time limits and then claim a denial of FAPE because the time limits were removed. The testimony of the parents' expert witness is impaired by a severe logical inconsistency in the testimony and report of the witness. The expert witness testified that the flexibility of the reconstructive language method was most important. The representatives of the private school, however, testified that the reconstructive language method was regimented, systematic, very structured, and predictable. Thus, the testimony of the parents' expert contradicts the description of the reconstructive language methodology that is provided by faculty and staff of the private school. Moreover, the expert witness' first recommendation in the report is that the student be placed in a program that provides direct and individualized evidence-based reading instruction. Yet, the expert witness concludes that the school district program, which utilized the Wilson Reading Method, which is a peer- reviewed research-based system, is inappropriate and the private school program of reconstructive language methodology is appropriate despite the fact that reconstructive language is not a peer-reviewed research-based program. These glaring inconsistencies render the testimony of the expert witness to be not persuasive and not credible. In addition, the expert witness testimony and report of the expert witness assert that the school district program was inappropriate because it does not contain certain goals that the IEPs of the student actually do contain. The analysis of the expert concerning insufficient progress by the student in the school district is inconsistent with IDEA caselaw which makes clear that FAPE under IDEA does not require any particular result. Also, the demeanor of the expert witness was very evasive on cross-examination, especially when

testifying about reconstructive language methodology and the lack of evidence-based research to support its efficacy.

It is concluded that the parents have not proven at the time that the student's parents unilaterally placed the student in a private school the school district had denied a free and appropriate public education to the student. Accordingly, reimbursement for unilateral placement, as well as the more extreme and unusual relief of a prospective private placement, must be denied.

b. Whether the parents have proven that the private school in which they have unilaterally placed the student is appropriate?

The second prong of the Burlington – Carter analysis involves whether the parents have proven that the private school is appropriate. It is not necessary to reach the second prong because the parents have not proven the first prong. Even assuming *arguendo* that the parents had proven the first prong, however, they have not established that their private school is appropriate.

The private school that the student now attends is not appropriate for the student. The private school only accepts students with disabilities. The student does not have interaction with non-disabled peers at the private school. In this case, the private placement selected by the parents is clearly not the least restrictive environment that is appropriate for the student. This conclusion is also supported by the evidence in the record that students with severe dyslexia do better when placed in general education English Arts classes. In addition, the student was succeeding in general education science and history classes while enrolled in the school district. Although least

restrictive environment factors may not, in themselves, render a unilateral private placement inappropriate, it is significant here that the student clearly does not need such a restrictive placement in order to benefit meaningfully from the student's education.

None of the teachers at the private school have valid teaching certificates. The private school is not approved to provide instruction to children with disabilities by the Department of Education in the state in which it is located. The reconstructive language reading method that is utilized by the private school, and which is proprietary to the private school, is not a peer-reviewed evidence-based methodology.

In addition, the testimony of one of the representatives of the private school revealed that the private school conducted assessments of the student on March 22 or March 23, 2025 utilizing the same methodology as the assessments that the school administered before the student was accepted. Despite the fact that these assessments were conducted well before the May 6 and May 23, 2025 hearing sessions for this matter, the parents did not offer the assessment data that the private school collected in these assessments into evidence. The failure to offer the data from these assessments, which was under the control of the school with which the parents contract, gives rise to an adverse inference. It is concluded, therefore, that if the data from the assessments conducted in March 2025 of the student's performance at the private school had been entered into evidence, the evidence would have been adverse to the parents' position that the private school is appropriate.

Concerning the issue of the appropriateness of the private school, the testimony of the school district witnesses was more credible and persuasive than the testimony of the student's parent, the parents' expert witness, and the representatives of the private school. This conclusion is made because of

the demeanor of witnesses, as well as the factors outlined above and in the preceding section.

Accordingly, it is concluded, even if it were necessary to reach the second prong of the Burlington – Carter analysis, the parents have not proven that the private school in which they unilaterally placed the student is appropriate.

c. Whether the parents have proven that the equities favor reimbursement?

The third prong of the Burlington – Carter analysis involves a determination as to whether the conduct of the parties and any other equitable factors might weigh in favor or against reimbursement. It is not necessary to reach the third prong because the parents have not proven either of the first two prongs. Even assuming *arguendo* that the parents had proven the first two prongs, however, they have not established that the equities favor reimbursement.

In this case, the parents have sought reimbursement for a boarding component at the private school. There is no evidence in the record, of any kind, to the effect that the student requires a residential placement in order to benefit from the student's education. The fact that the parents are seeking reimbursement for the boarding costs of their unilateral private placement is clearly unreasonable.

In addition, it is clear from the evidence in the record that the parents did not come to the IEP team meetings with an open mind concerning placements other than at their preferred private school. The testimony of the student's mother reveals that the parents prefer the Reconstructive Language

reading methodology, which is only available at the private school. It has clearly been the parents' position that, because of their preferred methodology, no other school would be acceptable.

Concerning the issue of the equitable factors, the testimony of the school district witnesses was more credible and persuasive than the testimony of the student's parent, the parents' expert witness, and the representatives of the private school. This conclusion is made because of the demeanor of witnesses, as well as the factors outlined above and in the preceding sections.

It is concluded that even if it were necessary to reach the third factor of the Burlington – Carter analysis, the equitable factors in this case do not favor reimbursement.

The parents have not proven any of the three prongs of the Burlington – Carter analysis. Accordingly, reimbursement for the unilateral private placement, as well as the more extreme and unusual relief of a prospective private placement, must be denied.

2. Whether the school district IEPs denied FAPE to the student from March 2023 through January 2025?

The parents also seek compensatory education from the school district for an alleged denial of FAPE for the period of time from March 2023 through January 2025, which is the point at which the parents unilaterally placed the student in the private school. The parents specifically allege that the school district denied a free and appropriate public education to the student because the student could not answer math questions without assistance and cannot read, write or spell to any significant degree; because the student's IEPs did not address the behavior of school avoidance; and because the school district

had not implemented the assistive technology provisions of the student's IEPs. The school district denies the allegations and argues that it provided a free and appropriate public education to the student.

The first sub-issue argued by the parents is not supported by the evidence in the record. The discussion in the previous section concerning the unilateral placement issue is incorporated by reference herein. IDEA does not require any specific level of progress, but it is clear from the evidence in the record that the student did make meaningful progress while enrolled at the school district in view of the student's unique individual circumstances. In this case, it is significant to remember that the student's unique circumstances include that [the student]is severely dyslexic. The parents have not proven that the school district denied a free and appropriate public education to the student because the student did not make sufficient progress while enrolled at the school district. The discussion in the previous sections showing that the district did make significant changes to the student's program while the student was enrolled in the district is incorporated by reference. The parents' contention that the district offered the same program year after year is rejected.

The parents contend further that the school district denied FAPE to the student because it failed to address the student's behavior of school avoidance. The record evidence does not support the parents' argument that the student was school avoidant. The student did not miss school very often. The student's IEPs documented that the student had an excellent attendance record. There was also no evidence that the student skipped classes. The student's teachers and the school counselor did not report any school avoidance behaviors on the part of the student. The evidence in the record

does not support the parents' claim that the student demonstrated school avoidance behaviors. The parents' argument is rejected.

Concerning the issue of implementation of the student's IEP, the parents have proven that the school district failed to implement the material provisions of the student's IEP that require assistive technology speech-to-text software. The software was not loaded on the student's computer from early September through the middle of October 2024. The parties have stipulated that the student's mother called the problem to the attention of the school district and showed staff videos of the nature of the problem. See discussion and analysis in the previous section on the unilateral placement issue. The speech-to-text software was clearly a material part of the student's IEPs given the unique individual circumstances of this student, including the fact that the student is severely dyslexic. The parents raise other examples of technology issues, but the record evidence reveals that any other issues were resolved by the school district within approximately 24 hours of the school district's IT staff being informed of the problems. Nonetheless, the failure to implement the speech-to-text software is a material failure to implement the student's IEP given the long period of time during which the software was not provided and the importance of AT because of the student's unique individual circumstances. To the extent that the school district failed to provide the speech-to-text software to the student from early September 2024 through mid-October 2024, there has been a denial of FAPE to that extent.

Concerning the issue of implementation of the assistive technology component of the student's IEPs, the testimony of the student's mother was more credible than the testimony of the school district's staff. This conclusion is made because of the demeanor of witnesses, as well as the stipulation and documentary evidence supporting the mother's report of the issue to the

district and the fact that the testimony of the supervisor of tech support was confusing and difficult to follow concerning the speech-to-text issue. Concerning all other alleged denials of FAPE for the period of time from March 2023 through January 2025, the testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother, the parents' expert witness, and the representatives of the private school. This conclusion is made because of the demeanor of witnesses, as well as the factors outlined above and in the preceding sections.

It is concluded that the parents have proven denial of FAPE pertaining to the failure of the school district to implement material portions of the student's IEPs concerning assistive technology from early September through the middle of October 2024. It is concluded further that the parents have not proven any other alleged denial of FAPE from March 2023 through January 2025.

3. Whether the parents have proven that the extended school year services provided by the school district to the student during the summers of 2023 and 2024 were not appropriate?

The parents contend that the ESY services provided to the student during the 2023 and 2024 summers were substantively inadequate. The school district contends that the ESY services provided were appropriate.

The student received 30 hours of 1:1 Wilson instruction for extended school year in the summer of 2023. The parents commented that the student made progress during the extended school year 2023. The school district

provided 30 hours of 1:1 Wilson instruction to the student for extended school year during the summer of 2024.

The mother's testimony indicates that the basis of the parents' complaint about the extended school year services instruction was that the student received Wilson methodology rather than the parents' preferred methodology. The parents make no argument that the extended school year services provided by the student's IEP were not reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances. The discussion above concerning IDEA not requiring an ideal education, IDEA not specifying a particular level of progress for students with a disabilities, and parents not being able to dictate their preferred methodology, are incorporated herein by reference. Given the above, the parents have not proven the school district denied a free and appropriate public education to the student because of the substantive programming provided to the student during extended school year services in the summers of 2023 and 2024.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the parents' witnesses concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the factors set forth in the preceding discussion.

4. Whether the parents have proven that they should be reimbursed for the evaluation of the student conducted by their expert witness as equitable relief for a violation of IDEA?

The parents contend that they should be reimbursed for the cost of the evaluation conducted by their expert witness as an equitable remedy for the

school district's violation of IDEA. The school district contends that reimbursement should be denied.

The school district contends that a parent may only be reimbursed for an educational evaluation if they first disagree with the school district's evaluation of the student. This is not correct. Although IDEA does provide a process whereby the parent can request an independent educational evaluation at public expense, and that provision does require that the parent disagree first with a school district evaluation, that provision does not apply to the relief requested by the parents here. Rather, the parents here are requesting an equitable remedy for a violation of IDEA. It is clearly within the power of an IDEA hearing officer to award reimbursement for an evaluation as one of the many remedies available to parents if a school district violates IDEA.

However, in the instant case, the parents have not proven that the school district has violated IDEA, with the exception of the failure to implement the assistive technology portions of the student's IEP from early September of 2024 through mid-October 2024. The parents' expert witness, however, did not provide helpful evidence with regard to the one denial of FAPE that the parents have proven. The expert's report and testimony were not helpful in determining whether or not the school district implemented the assistive technology portions of the student's IEP. Therefore, there is no correlation between the expert's report and the violation proven by the parents. Moreover, the inconsistencies in the report and testimony of the parents' expert witness, as documented in the previous sections of this decision, require that it be given only little weight. It would not be appropriate in these circumstances to award reimbursement for the evaluation where the evaluation was not helpful and did not establish any violation of IDEA. The

parents' request for reimbursement for the evaluation of the student conducted by their expert witness is denied.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the parents' witnesses concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the factors set forth in the preceding sections of this decision.

II. Relief

The parents have proven a denial of FAPE in that the school district failed to implement material portions of the student's IEP, specifically that the school district failed to implement the assistive technology provisions of the student's IEP requiring speech-to-text technology by failing to load the speech-to-text technology on the student's laptop from the beginning of school in early September of 2024 through the middle of October 2024. Thus, the period of the denial of FAPE in this case is from the first day of the 2024 – 2025 school year until the date that the school district uploaded the speech-to-text software on the student's computer on October 16, 2024.

The parents have sought 90 minutes per day of compensatory education for the period of denial of FAPE. Because the student frequently did not utilize speech-to-text software at school when it was available, the calculation of 90 minutes per day, times the number of school days of denial of FAPE, is an appropriate award of compensatory education given the unique facts of this case.

Because all relief under IDEA is equitable relief, it should be flexible, and because IDEA is meant to be a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to

alter or change the relief awarded herein so long as both parties and all attorneys representing them agree in writing.

ORDER

Based upon the foregoing, it is **HEREBY ORDERED** as follows:

1. The school district is ordered to provide 90 minutes of compensatory education to the student for each school day during the period of denial of FAPE, as described above. The award of compensatory education is subject to the following conditions and limitations:

a. The student's parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device for the student's educational and related services needs;

b. The compensatory education services may be used at any time from the present until the student turns age twenty-one (21); and

c. The compensatory services shall be provided by appropriately qualified professionals selected by the parents. The cost to the school district of providing the awarded days of compensatory education may be limited to the average market rate for private providers of those services in the county where the district is located; and

2. The parents' requests for reimbursement for unilateral placement, for a prospective private placement for the 2025 – 2026 school year, for reimbursement for the evaluation conducted by the parents' expert witness, and for compensatory education for allegations of denial of FAPE other than

with regard to the implementation of the assistive technology provision of the student's IEP, are denied, and

3. The parties may adjust or amend the terms of this order by mutual written agreement signed by all parties and counsel of record, and

4. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: July 16, 2025

James Gerl

James Gerl, CHO
Hearing Officer