

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re:** Student v.  
Medford Public Schools

**BSEA# 2002451**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

The BSEA received Parents’ Hearing Request in the instant matter on August 29, 2019. After requesting and having been granted an extension to file its Response to the Hearing Request (Response), Medford Public Schools’ Response was received on September 9, 2019. Thereafter, the Hearing was continued at Parents’ request due to unavailability of their expert witness. Parents also requested that the Hearing in this matter proceed as an open Hearing, which request was granted in a Ruling issued on November 6, 2019 addressing this and other matters.<sup>1</sup> At Medford Public Schools’ request a Pre-hearing conference took place on October 23, 2019.

The Open Hearing was held on November 19, 2019, at the offices of DALA/BSEA, 14 Summer St., fourth floor, Malden, Massachusetts, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Mother<sup>2</sup>

Father

Uncle

Uncle

Susan B. Kahn

Alisia St. Florian, Esq.

Joan Bowen

Shannon Handler

Student’s private tutor

Attorney for Medford Public Schools

Director of Pupil Services, Medford Public Schools

Reading Teacher, Medford Public Schools

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<sup>1</sup> On November 12, 2019, Medford Public Schools informed the BSEA that a “Bureau of Special Education Appeals (BSEA) Notice of a Due Process Hearing Open to the Public...” had been posted on Facebook. The Notice also included additional instructions to the public not issued by the Hearing Officer. Prior to Hearing, the BSEA Director communicated with Parents and requested that they post a disclaimer informing the public that the Facebook Notice had not been generated by the BSEA. At Hearing Parents conceded that the Facebook Notice had not been generated by the BSEA and asserted that they had posted the disclaimer.

<sup>2</sup> Parents appeared *Pro-se*.

Julie Reynolds	Special Education Teacher, Medford Public Schools
Nikki Fisher-Quitteneyo	Observer conducting special education research
Jen Maser	Observer
Keri Ciccia	Observer
Joan Costa	Observer
Paul Ruseau	Medford School Committee Member
Charlene B. Douglas	Teachers' Union President, Medford Public Schools
Courtney Orwig	Observer
Kerry Ni	Observer
Liz Faith	Observer
Lisa Nelsen	Observer
Kathleen Kay	School Principal, Christopher Columbus School, Medford Public Schools
Eric Handler	Observer
Kathleen Bradley	Observer
Sherry Kirby	Observer
Anne H. Bohan	Stenographer, Doris O. Wong Associates Inc. Court Reporters

The official record of the Hearing consists of documents submitted by Parents marked as exhibits PE-1 through PE-16, PE-18, PE-19, PE-20, PE-25, PE-27, PE-29, PE-30, PE-31, PE-32, PE-34<sup>3</sup>, and Medford Public Schools (Medford) documents marked as exhibits SE-2 through SE-31 and SE-33 through SE-39 and SE-41; recorded oral testimony, and oral closing arguments.

Additionally, a ruling on certain exhibits was stayed at the beginning of the Hearing, pending testimony of witnesses who could authenticate them. The exhibits subject to stay were: PE-21, PE-22, PE-26, SE-32 and SE-40. The Parties were instructed to re-submit the exhibit during the testimony of the witness who authenticated the exhibit. Neither Party did so, however, the exhibits were authenticated by witnesses that offered pertinent and reliable testimony authenticating the same, and the content of these exhibits is found to offer relevant evidence. As such, I am overruling the initial objections and hereby admitting PE-22, PE-26, SE-32 and SE-40 into the record.

At the close of the Hearing Parents requested a postponement so that they could submit written closing arguments. The request was assented to by Medford Public Schools and at Parents' request, December 20, 2019, was set as the deadline for submission of written closing arguments. The record closed on December 20, 2019 upon receipt of the closing arguments.

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<sup>3</sup> PE-17, PE-21, PE-28, PE-33, PE-35 were excluded; PE-23, PE-24 and SE-1 were withdrawn.

## **ISSUES FOR HEARING:**

1. Whether Medford failed to deliver to Student the four, 45 minutes, sessions per week of Wilson reading instruction, during the 2018-2019 school year, consistent with his IEP, thereby denying Student a FAPE; and if so;
2. Whether Student is entitled to 111 hours of compensatory services at an hourly rate which is higher than the rate offered by Medford Public Schools.<sup>4</sup>

## **POSITIONS OF THE PARTIES:**

### **Parents' Position:**

Parents state that during the 2018-2019 school year, Student's second grade, they filed a complaint with the Problem Resolution System (PRS) at the Department of Elementary and Secondary Education (DESE) because there was a discrepancy between Student's schedule and his IEP, regarding the amount of Wilson Reading programming he was supposed to receive. While the IEP called for 45 minutes, four times per week of Wilson Reading services, Student's schedule reflected 35 minute session creating a ten minute discrepancy per session. Parents argued that this reduction in services resulted in a denial of FAPE to Student and entitled Student to compensatory services.

In the summer of 2019, PRS issued a Letter of Finding agreeing with Parents and instructing Medford to draft a compensatory service plan. No agreement was reached between the Parties as none of the offers made by Medford were satisfactory to Parents. According to Parents, Medford's failure to implement the Wilson Reading program with fidelity and for the agreed upon session length resulted in a denial of FAPE that could only be remedied by restarting the program from the beginning. Parents argued that Student is entitled to 111 hours of reading services at \$100 per hour. Parents further seek to have their privately retained tutor, not a Medford employee, provide the reading services. Parents also seek reimbursement for transportation to the private tutorials.

### **Medford's Position:**

According to Medford, the Wilson Reading program was delivered to Student with fidelity and for the amount of time prescribed by Student's IEP. Medford explained that when receiving the Letter of Finding from PRS, it noted the alleged discrepancy between Student's schedule and his IEP. Upon further investigating and examining Student's teacher's and Wilson Reading instructor's schedules, it became apparent to Medford that the reading services per Student's IEP had been delivered with fidelity, for the correct length of time by a certified Wilson instructor. The misinformation in Student's schedule was in fact the result

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<sup>4</sup> At Hearing, Issue number 2 was read as "Whether Student is entitled to receive 111 hours of compensatory services at a rate higher than the Massachusetts approved rates". During the Hearing, it became evident that no Massachusetts approved rate exists for tutoring. For this reason, the issue has been modified in this Decision to more accurately reflect the lack of a Massachusetts prescribed rate, as explained in the Facts portion of this Decision.

of a typographical error. Medford asserted that this information was corroborated by both teachers.

Medford further conceded that it did not appeal the PRS finding and instead made Parents an offer to compensate Student for the alleged missing time. Medford stated that they offered either 24 hours of Wilson instruction in school, delivered by a certified Wilson Reading instructor, or \$33.00 per hour for 24 hours to a Wilson Reading instructor of Parents' choice. Medford states that in the context of a Resolution Session it increased the offer to \$50.00 per hour, however, Parents rejected both offers and instead filed the instant Hearing Request.

Lastly, Medford argues that Parents cannot meet their burden of proof that Student's growth was solely the result of any quasi Orton-Gillingham based approach offered by Parents' private tutor, since Student was receiving Wilson Reading with fidelity in Medford (and Parent was reading with Student at home) during the relevant periods.

### **FINDINGS OF FACT:**

1. Student is a nine-year-old resident of Medford who attends elementary school in district. He has been found eligible to receive special education services to address his multiple disabilities (Parent). He is an earnest, happy, sweet child who works hard and is eager to please (PE-15; Parent, Handler).
2. The incidents leading to the instant dispute involve allegations involving failure to provide reading services to Student consistent with his IEP, during the 2018-2019 school year when Student, then eight-years-old, was in second grade (PE-1).
3. Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and developmental dyspraxia (SE-15). He presents with a complex neurodevelopmental disorder, a social pragmatics communication disorder, a receptive-expressive language disorder and a phonological disorder (Dyslexia, Dysgraphia and executive functioning deficits) (PE-10; PE-13; PE-15; Parent). His deficits impact reading, writing and social pragmatics/communication (Parent).
4. Student's Team convened on March 29, 2018 to discuss Student's evaluation (PE-9; SE-37; SE-38). As a result of the discussions (including formal and informal assessments, as well as parent and teacher input) the Team determined that Student "no longer required placement in the Therapeutic Learning Program" and instead recommended full inclusion and provision of specialized instruction and related services for second grade (PE-9; SE-37; SE-38). Grid B of Service Delivery Grid in the proposed IEP offered Student four, forty-five minute sessions of English Language Arts (ELA) and two, thirty minute sessions of occupational therapy (OT), per five day cycle. It also offered the following direct services under Grid C: three, forty-five minute ELA sessions per five day cycle with a special education teacher; and, one thirty minute social skills session per five day cycle with the school counselor; and one thirty minute physical therapy (PT) session

would also be offered through June 22, 2018 (*Id.*). The IEP also offered Student extended school year services (ESY) consisting of three, forty-five minutes ELA from July 10, 2018 to August 2, 2018 (PE-9; SE-37; SE-38).

5. On April 27, 2018, Parents accepted the updated goals for OT, Reading, Social Skills and Written Output and invoked stay-put for Math, [illegible], Speech, PT, ESY social skills and speech services, in essence stay-put for “all previously accepted services/ related services (transportation as a result of his disability)” as well as the manner and frequency in which the services were delivered (PE-9; SE-38). Parents further invoked stay-put rights for Student’s nine, forty-five minute reading sessions per five day cycle and rejected the full inclusion placement in favor of partial inclusion in the Therapeutic Learning Program (TLP) (PE-9; SE-38).
6. During the summer of 2018 Student participated in Tufts University’s two week Literacy and Arts program which offered him one-to-one tutoring as part of full day childcare. Cynthia H. Krug, Ph.D. Reading/Learning Specialist, Applied Developmental Psychologist, noted Student’s reading difficulties and recommended that he receive four to five, 45 minutes, individualized reading instruction sessions per week utilizing the Orton-Gillingham or Wilson Reading programs (PE-12).
7. A Speech and Language evaluation conducted by Roseanne Clark, M.S., CCC-SLP, Boston Children’s Hospital Department of Otolaryngology and Communication Enhancement Speech-Language Pathology Program, on August 22, 2018, notes that Student had

demonstrated impressive progress with receptive and expressive language skills over the years while enrolled in special education services. He has clearly benefited greatly from academic and therapeutic supports provided at his school, as well as private services pursued by his family. (PE-13).

Student however, was found to continue to struggle with language formulation in conversation and with social pragmatics. He also presented deficits in phonological awareness and phonological memory, which deficits make it challenging for Student to develop literacy skills. Ms. Clark recommended continuation of speech and language therapy and ongoing support for phonological processing and development of literacy skills (PE-13).

8. Student’s Team convened on September 12, 2018, updated information and the evaluation was reviewed. The resulting IEP, covering the period from September 12, 2018 to March 28, 2019 offered Student participation in a full inclusion program with consultation, special education and related services (SE-33). This IEP included provision of three, forty-five minutes sessions of reading services during the school year and during extended school year (ESY) (SE-33).

9. At Parents' request Medford conducted evaluations of Student at the beginning of Student's second grade (SE-27). On September 20, 2018, Parents also requested funding for an independent neuropsychological evaluation, which request was granted as had a previous request for funding of an educational evaluation (SE-34; SE-35).
10. Medford's reading evaluation was performed by Shannon Handler, M.Ed., on October 10 and 17, 2018. She administered the Woodcock Reading Mastery Test, Third Edition (WRMT-III) on which Student demonstrated strengths and weaknesses. While Student presented above-average abilities understanding information presented orally, and his phonological skills scores fell in the average range, he evidenced weaknesses in decoding and recognizing and comprehending words that were presented out of order. Ms. Handler opined that Student would benefit from access to a methodology that focused on decoding skills (PE-14; SE-28).
11. Ms. Handler also administered the Test Of Written Language-3 (TOWL-3) on November 15, 2018, finding strengths and weaknesses in Student's writing skills. Student's scores on this test ranged from very poor to very superior. Weaknesses were noted in logical organization, and he evidenced difficulties getting his ideas on paper. Student found writing to be laborious and difficult. Ms. Handler noted that Student required significant support and encouragement during writing tasks and in applying spelling rules (SE-22; SE-24; SE-29).
12. Additional evaluations, including speech and language assessments addressing social pragmatics/ communication skills, and observations, were conducted. Student's teacher noted that in the classroom Student had "difficulties consistently exhibiting age-appropriate social/ pragmatic language skills". Accommodations and supports to facilitate Student's social communication success were recommended (SE-30). Updates on his performance were also received (e.g., social skill's group) (SE-22; SE-24; SE-29; SE-30; SE-31).
13. Student's Team re-convened on November 21, 2018 to review the evaluations performed by Medford and discuss Parents' concerns (SE-25; SE-26). The resulting Amended IEP (amended again later as SE-24) covered the period from November 21, 2018 to March 28, 2019, and offered Student participation in a full inclusion program in Medford with ESY services (SE-20; SE-24; SE-25; SE-26). This IEP included a diagnosis of Specific Learning Disability in Reading (Dyslexia) with goals and services to address said disability (SE-21; SE-22; SE-25). The Service Delivery Grid in the November 2018 IEP delineated the following services:

**A. Consultation:**

- Social Skills Consult (ESY) by the Speech Therapist, 1 x 15 minutes per five day cycle.
- Physical Therapy by the Physical Therapist, 1 x 10 minutes per month.
- Speech/Language by the Speech and Language [Therapist] (Teacher/school adjustment [counselor]), 1 x 15 minutes per month.

**B. Special Education and Related Service in General Education Classroom:**

- English Language Arts with the Special Education Teacher, 4 x 45 minutes per five day cycle.
- Occupational Therapy with the Occupational Therapist, 1 x 30 minutes per five day cycle.
- Speech/Language with the Speech and Language [therapist], 1 x 20 minutes per five day cycle [communication skills].
- Speech/Language with the Speech and Language [therapist], 1 x 30 minutes per five day cycle [communication skills].

**C. Special Education and Related Services in Other Locations:**

- Reading (Wilson Reading Program) with the Special Education Teacher 4 x 45 minutes per five day cycle.
- Reading (ESY) (Wilson Reading Program) with the Special Education Teacher 3 x 45 minutes per five day cycle.<sup>5</sup>
- Written Expression with the Special Education Teacher, 2 x 45 minutes per five day cycle.
- Social Pragmatics Group (ESY) with the Speech and Language [Therapist], 1 x 30 minutes per five day cycle.
- Social Skills Group with the School Counselor, 1 x 30 minutes per five day cycle.
- Physical Therapy with the Physical Therapist, 2 x 30 minutes per month.<sup>6</sup>
- Occupational Therapy with the Occupational Therapist, 1 x 30 minutes per five day cycle (SE-24; SE-25).

The proposed ESY program included reading, social skills and daily participation in the Summer Fun Program from July 9 to August 8, 2018 (SE-25).

14. Following the Team meeting, on November 30, 2018 Medford forwarded to Parents the proposed IEP covering the period from November 21, 2018 to August 30, 2019 (SE-25). The N-1 describing factors relevant to the school district's decision specifically noted Medford's stance that Student did not require the intensity of services delivered in the Therapeutic Learning Program and that Medford supported his participation in "a general education second grade classroom with specialized instruction and related services" (SE-25).
15. On December 5, 2018, Parents consented to the placement and partially rejected the proposed program. Parents requested that all goals/benchmarks be increased to 80% success; that Student receive special transportation on the van; that reading services be provided on a one-to-one basis; that the ESY program funded by Medford be provided at Landmark or a similar program that offered an intensive social pragmatic approach, and that if needed, additional supplemental reading and writing services be provided by

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<sup>5</sup> This ESY reading service was later amended to 4 x 45 minutes per five day cycle (SE-24).

<sup>6</sup> Physical Therapy was later amended to 2 x 40 minutes per month (SE-24).

Medford; and that misinformation in the IEP be corrected (PE-24). Parents also notified Medford that they were preserving their right to proceed to Hearing on claims of denial of FAPE by Medford (SE-24).

16. On December 10, 2018, Ms. Handler, who is a certified Wilson Reading instructor, began delivering Wilson Reading programming to Student. She was certified in Wilson Reading instruction in the summer of 2018 (SE-4). Ms. Handler is also a special education teacher and has taught in Medford for 20 years. She graduated first in her Masters of Education class at Vanderbilt<sup>7</sup>. Ms. Handler is not certified in Orton-Gillingham (SE-4; Handler).
17. Ms. Handler first met Student in 2017 when she delivered supplemental phonics pull-out services to him. She testified that prior to delivering Wilson Reading instruction to Student she had used Foundations reading instruction (SE-4; Handler).
18. Ms. Handler testified that Student had been her first Wilson's Reading pupil. She delivered one-to-one Wilson Reading instruction to Student between December 10, 2018 and mid-June 2019, the end of the 2018-2019 school year (PE-4; PE-6; SE-3; Handler).
19. Ms. Handler's schedule shows that she delivered the four, 45 minute session per five day cycle of Wilson Reading instruction to Student every Monday, Tuesday, Thursday and Friday between 10:20 a.m. and 11:05 a.m. (SE-3; PE-6; Handler). Ms. Handler testified that her schedule correctly reflected the times she worked with Student, noting that Student's schedule did not reflect the correct times (PE-4; SE-3; PE-6; PE-5; Handler). Ms. Handler's schedule correctly reflected that there was a five minute gap between the end of her previous commitment and the start time of her sessions with Student (PE-4; PE-6; SE-3; Handler). She testified that she met Student at his previous classroom a few minutes before the reading session was scheduled to begin and then returned him to his next scheduled event at the end of the reading session (recess). In 2018-2019, Ms. Reynolds (the general education teacher) and Ms. Handler's classrooms were located close to each other, one directly above the other (Reynolds). Ms. Handler testified that she offered Student the complete 45 minutes of instructional services per his IEP and noted that the services were delivered on a one-to-one basis (Handler).
20. Before initiating the Wilson Reading Program with Student, Ms. Handler administered the Wilson Assessment of Decoding and Encoding (WADE), the Grey Silent Reading Test (GSRT) and the Slosson Oral Reading Test (SORT) (SE-40).<sup>8</sup> She testified that when students are started on Wilson Reading they are administered the WADE. She explained that the Wilson Reading Program starts at Substep 1.1 or 1.3 depending on the student's foundational knowledge of consonant or vowel sounds. Based on the results of the WADE, Ms. Handler started Student at Substep 1.3. Ms. Handler noted that the Wilson Reading Program Substep levels do not correspond to grade levels (PE-22;

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<sup>7</sup> Vanderbilt is rated top in the USA for its master's program in special education (Handler).

<sup>8</sup> She also considered the results of the weekly spelling testing (SE-40).

Handler). When she administered the post testing in May of 2019, Student was at Substep 2.4. She opined that by June 2019 Student would have been at Substep 2.5 (SE-40; Handler).

21. Ms. Handler testified that she used the prescribed standard Wilson lesson plans (SE-5), noting that she based her lessons on the instruction manual. Ms. Handler testified that she delivered the Wilson Reading instruction with fidelity (PE-25; SE-5; Handler). SE-5/PE-25 reflects the standard documentation of her work with Student using the aforementioned forms prescribed by the Wilson Reading Program (Handler). Each week that Student was present for all four sessions they completed at least two full lessons of Wilson Reading (she noted that Student had several absences.) According to Ms. Handler, Student was happy to come with her for the sessions, was focused and enjoyed Wilson Reading (Handler).
22. Ms. Handler testified that they did not complete the entire Wilson Reading program during the six or so months that she worked with Student. She opined that based on DRA administered outside Medford, by June 2019 Student was reading close to grade level (Handler).
23. Comparison of the scores on the Wilson Reading System Baseline Assessment administered on December 17 and 18, 2018, and the Mastery Score/ End of Year 1 Assessment administered on May 23 and May 24, 2019, show that Student made significant progress in both reading and spelling (SE-40). Progress reports show that despite ongoing challenges, by June of 2019 Student had made noticeable progress in reading, writing and social/communication, and if the trend continued, he was expected to meet his annual goals by the end of the IEP period (March 20, 2020) (SE-41).
24. Julie M. Reynolds was Student's second grade general education teacher in Medford. She has taught in Medford for 18 years, sixteen of which have been as a second grade teacher (Reynolds). She testified that during the 2018-2019 school year Student was pulled out of her class for periods of approximately fifty minutes to receive one-to-one reading instruction. She was unaware of Parents' claim that Student had received less than 45 minutes of Wilson Reading instruction during Student's second grade, which services started in December 2018. She testified that SE-32 reflected the times in her schedule, which showed that Student was out of her room between 10:15 a.m. and 11:05 or 11:10 a.m. when he rejoined her class for recess and lunch (SE-32). She did not know who had written PE-5 which was supposed to be Student's schedule, noting that it incorrectly reflected the times/ amount of time that Student was out of her room for reading instruction; she stated that the return time was incorrect. She testified that she followed her schedule and noted that time slots in a general education schedule can differ from those of an IEP schedule (Reynolds).
25. On December 13, 2019, Medford responded to the rejected portions of Student's IEP by offering to hold another Team meeting to discuss them (SE-21).

26. Student's Team re-convened on January 10, 2019 to discuss Parental concerns and review the rejected portions of Student's IEP. The Team agreed to name the Wilson Program in the IEP, and amend the progress reports, goals, and provision of Wilson Program during ESY.<sup>9</sup> The Team rejected Parents' request to receive OG training, deliver Wilson Program on a one-to-one basis, ESY at Landmark and daily LIPs program by the speech and language pathologist (SE-16; SE-17; SE-18).
27. On February 4, 2019, Parents consented to the full inclusion placement and partially accepted the November 2018 IEP Amendment specifically noting in the response "[w]e accept that the Wilson's program will be named and taught by a Wilson certified teacher. We reject that the 1:1 is not written on his IEP. Small group instruction did not work" (PE-10). Parents also noted their request for compensatory services for Student and for implementation of the LIPs program in addition to Wilson Reading, that a speech and language therapist work with him on "phonological and phonemes", a copy of Student's WADE assessment, parent training in dyslexia, proof that the dyslexia intervention offered by Medford was sufficiently intensive, and clarification that provision of Wilson Reading "with fidelity" meant Wilson Reading parts 1-10. Parents' response also noted that they agreed that Student required ESY and would seek funding from Medford for Landmark School's ESY if accepted (PE-10).
28. In February of 2019, Student underwent a neuropsychological evaluation at Children's Hospital (PE-15). The Oral and Written Language evaluation was conducted by Kristine E. Strand, Ed.D. CCC-SLP, in consultation with Margaret Pierce, Ed.D. The evaluation results were consistent with a finding of a specific learning disorder in reading and writing meeting the criteria for diagnoses of dyslexia and dysgraphia. Additionally, Student's dyspraxia was found to impact his discourse. The evaluators found that Student's application of phonics strategies lacked precision and were not as automatic as expected for his age, with reading abilities falling within the early to mid-first grade level. He had difficulty with "planning, organizing and generating frames" (PE-15). The report noted that Student's complex learning disorder undermined his ability to demonstrate his average cognitive abilities and his language knowledge. Regarding reading instruction, the evaluators recommended daily intensive reading and writing instruction with a literacy specialist inclusive of a systematic science-based approach to phonics. The evaluators noted that "The Wilson approach is one such example and appears to be working well with [Student] and will need to be the focus of daily instruction" as well as "a multi-level system of fluency based activities based on Maryanne Wolf's intervention research" (PE-15). At the time of this evaluation Student had received approximately 6 weeks of Wilson Reading instruction.
29. In March 2019, Parents retained Susan Kahn as a reading tutor for Student. She testified that since March she had met with Student three to four times per month, for one hour sessions (Kahn).

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<sup>9</sup> Medford had attempted to convene the Team on January 3, 2019 (SE-19).

30. Ms. Kahn testified that she had been trained in Orton-Gillingham (OG) instruction at Massachusetts General Hospital in the mid-1970s (PE-20; Kahn). Thereafter, she had not received any additional training in OG. Ms. Kahn is not certified in Wilson Reading (Kahn). She is a former Arlington Public Schools teacher, has worked as a tutor with the Massachusetts Rehabilitation Commission, and last year worked on a pilot reading program with non-primary English speaking students at Somerville Public Schools (Kahn).
31. In her tutoring sessions, Ms. Kahn uses a combination of OG methodologies with her own program, which combines use of a workbook and animated videos she created and available for sale (SE-21; Kahn, Parent). Ms. Kahn has posted her videos on-line and has publications on how to teach dyslexic children. According to this witness, by combining these different approaches she is able to increase a student's ability to remember what he/she learned and noted that if her approach was implemented five hours per week she could improve a student's ability to decode by two grade levels in one year (Kahn). Ms. Kahn's self-made methodology has not been subject to peer review and is not standardized (Kahn).<sup>10</sup>
32. Ms. Kahn testified that she tutors students one hour per week and insists that parents sit for the hour so that parents can then work with their children on reading for one hour, at least four additional hours per week. She testified that she trained Parent and that Parent has been implementing Ms. Kahn's program at home as recommended (Kahn).
33. Ms. Kahn administered the Slosson Oral Reading assessment on Student's first session with her. She testified that he guessed some answers and noted that there were sounds he had not yet learned. He wrote the number "3" backwards. She testified that prior to Hearing she had tested Student again and found that between March and November of 2019 Student had made great progress (Kahn).
34. Ms. Kahn testified that she had never spoken to any of Student's teachers in Medford. She was concerned that Student was receiving Wilson Reading in school while receiving her own spin-off of OG out of school, noting that her program, based on OG principles, was better (Kahn). Though unable to voice an opinion on the impact that the Wilson Reading program had on Student (she is not certified in this methodology), on cross-examination Ms. Kahn conceded that the Wilson Reading program offered in Medford may have contributed to Student's progress (Kahn).
35. Ms. Kahn testified that PE-21 is the manual she created (with Student's answers), noting that she sells several copies of this per week (PE-21; Kahn).
36. Ms. Kahn charged Parents \$100.00 per hour for her tutorial services (PE-30; PE-31).

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<sup>10</sup> During her testimony Ms. Kahn spent a significant amount of time promoting her methodology.

37. On March 21, 2019, the Team met to discuss Parents' concerns, requests and programming including ESY. The meeting notes of this meeting reflect services to be delivered in a partial inclusion program. The Grid reflects direct reading services four, 45 minute sessions per week to be delivered in a small group setting as recommended by Ms. Handler (SE-9; SE-10; SE-15). Student's teachers' and service providers' reports noted Student's progress toward meeting his goals (SE-10; SE-11; SE-12; SE-13; SE-14). The Team rejected Parents requests that the reading services be delivered individually five days per week, that daily instruction of Lindamood-Bell LIPs program be provided, that on-line parent training in Orton-Gillingham be provided, and that Medford fund Student's ESY at Landmark School or FUSE (SE-15).
38. Student's Team convened again on April 26, 2019 to discuss the Children Hospital's evaluation findings and Parents' concerns regarding Student's placement (SE-6). On May 7, 2019, Medford forwarded to Parents an IEP covering the period from April 26, 2019 to March 20, 2020 (PE-11; SE-7). In addition to consultation and ESY services, this IEP offered to deliver all of Student's services in a substantially separate classroom including four, forty-five minute sessions of Reading services per five day cycle (PE-11; SE-7).
39. On May 21, 2019, Parent filed a complaint with the Problem Resolution System (PRS) Office at the Department of Elementary and Secondary Education (DESE). Parent's complaint alleged that Medford's Notice of Proposed Action (N1) did not meet regulatory requirements and that Medford was not providing Student's reading program consistent with his IEP; that is, four, forty-five minute sessions per five day cycle delivered by a special education teacher, which program had been identified as Wilson Reading Program (PE-3).
40. On June 13, 2019, Parents consented to the placement proposed by the IEP and partially rejected the IEP noting "Stay put [for] transportation and Wilson (Dyslexia) Reading Program (with fidelity) taught with a Wilson trained and certified teacher" (PE-11). Parents also attached an addendum, i.e., an email between Parents and Medford dated June 12, 2019 which made additional demands on Medford, including funding of Student's private tutor and addition of the LiPS program (*Id.*).
41. During the summer of 2019, Student participated in Medford's ESY program in which he received writing, reading and social pragmatics (SE-39). The summer program was cut short by three days when the teacher left unexpectedly before the end of the program (PE-27; Bowen; Parent).<sup>11</sup>

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<sup>11</sup> According to Parent, Student was not accepted to the Landmark School ESY Program (Parent). Student scored within the average range in most of Landmark School's admission screening tests, but his scores on the Kaufman Test of Educational Achievement- 3<sup>rd</sup> Edition and the Grey Oral Reading Test-5 fell below the average range (PE-18).

42. On July 18, 2019, Rhonda Mojkowski, PRS Specialist, and Dean Paolillo, PRS Supervisor, wrote to Medford's Superintendent of Schools advising the District of a finding of non-compliance (PE-3). PRS noted that upon reviewing the copies of the special education teacher's schedule and Student's schedule they noted a discrepancy. While the teacher's schedule showed that Student was provided Wilson Reading services from 10:15 to 11:05, four days per week for fifty (50) minutes, Student's schedule noted that he received Wilson Reading services from 10:15 a.m. to 10:50 a.m., four days per week, that is, thirty-five (35) minutes each of those days. Grid C in Student's IEP called for Student to receive four, forty-five (45) minutes reading sessions per five day cycle. Because of the discrepancy between Student's schedule and the reading services in his IEP, DESE found Medford out of compliance with 603 CMR 28.05(7)(b), and ordered Medford to develop and implement a compensatory plan for the missing services. Medford was ordered to "provide the Department with the required Corrective Action Report and the Signed Plan of Compensatory Services pursuant to these findings" by no later than August 30, 2019. PRS' Letter of Finding further noted that

If the District and the complainant are unable to agree on a Plan of Compensatory Services, the District and complainant must each provide their proposals to the Department (PE-3).

43. Joan Bowen has been Medford's Director of Pupil Services since July 1, 2019 (Bowen). She testified that when she received the PRS Letter of Findings she did not seek review of the Findings with DESE. Instead, seeking to resolve the complaint informally, Ms. Bowen issued a meeting invitation to Parents on August 2, 2019, scheduling a meeting for August 15, 2019, (PE-7; Bowen). She developed the Compensatory Plan (PE-7) offered to Parents on August 15, 2019, reflecting two options and also agreed to compensate Student for the three hours missed during the summer program, adding them to the 24 hours Medford calculated it owed Student pursuant to the PRS Letter of Findings (Bowen).

44. The Plan of Compensatory services presented by Medford considered the ten minute per session discrepancy between Student's schedule and the IEP, providing the following breakdown:

[Student] missed 10 minutes per day x 4 days a week = 40 minutes per week  
Number of weeks in the school year = 36 (180 days divided by 5 = 36)  
Number of weeks (36) multiplied by 40 minutes = 1440 minutes  
Total number of minutes 1440 divided by 60 minutes (to determine hours) = 24 hours  
The District will provide 24 one hour sessions to [Student] during the time period of September 3, 2018 until October 18, 2019.

The district will also provide 3 additional one hour sessions to compensate for 3 days of Extended School Year service for July 30, 31 and August 1 due to service provider being absent.

In the alternative, in the event that Parents preferred to retain their own tutor to deliver the Wilson Reading Program, Medford offered to reimburse Parents \$33.00 per hour (PE-7; SE-2; Bowen).

45. On August 16, 2019, Ms. Bowen drafted a letter memorializing what transpired during the previous day's meeting with Parents noting

...The District presented and explained each of the Compensatory Plans to the parents. The District was unable to secure the signed approval of the parents.

Parents requested that the District fund a private tutor for one 60 minute session per week until [Student] no longer requires the service. The District requested an opportunity to speak with the private tutor to gather information regarding the specific reading program and strategies that are being implemented during the tutoring session.

Based on the discussion with the tutor, it has been determined that the tutor does not provide the Wilson Reading services as outlined per [Student's] IEP. The tutor has developed her own program that incorporates the content of Orton-Gillingham but does not provide the program with fidelity.

Therefore, the District continues to feel that either of the Compensatory plans proposed will appropriately met the Department of Elementary and Secondary Education Corrective Action Plan and is therefore not able to agree with the parents' request to fund this private tutor (PE-7).

46. In an email communication dated August 19, 2019, Ms. Bowen wrote to Parent declining Parents' request to fund Student's weekly, one hour private tutorials and recommending either of the proposals submitted in its Plan of Compensatory Services (PE-32).

47. Ms. Bowen testified that she decided on the per hour reimbursement rate of \$33.00 because that was the hourly rate Medford paid its tutors. Later, at a Resolution Session convened pursuant to Parents' Hearing Request, she offered to meet Parents at the middle; they wanted \$100.00 per hour so Medford increased its offer to \$50.00 per hour in the hopes of resolving the dispute (PE-8). The Parties did not reach agreement as to the provider or the reimbursement amount, and the matter proceeded to Hearing (SE-2; PE-7; Bowen).

48. Ms. Handler (who attended all of Student's IEP meetings except one when she was excused due to illness) testified that she was unaware that there were any issues with Student's schedule or with the provision of Wilson Reading until the summer of 2019 when Ms. Bowen contacted her to discuss the PRS Letter of Finding and compensatory services to Student (Handler). Ms. Handler testified that had Parent accepted Ms. Bowen's offer to have Medford deliver the compensatory Wilson Reading services, she would have been the teacher (Handler).
49. Neither Ms. Handler nor Ms. Reynolds drafted Student's schedule and they were unaware that it did not reflect the correct amount of time he was in his reading session because both teachers followed their own schedules, which were correct (SE-3; PE-6; Handler, Reynolds). PE-5 was not Ms. Reynolds or Ms. Handler's schedule (Handler). Ms. Reynolds testified that PE-5 showed the time Student was pulled out of her class but not the time he was returned (Reynolds). Student was pulled out at 10:15 a.m. and his reading session started at 10:20 a.m. and ended at 11:05 a.m. (Reynolds, Handler).
50. Ms. Reynolds testified that the times appearing in SE-32 and SE-5 correlated with the times in her schedule. SE-5 reflected the times in Ms. Reynolds' schedule and someone had written Student's schedule in it; none of the handwriting in this exhibit was hers. SE-5 did not depict Student's schedule accurately because Student's return times (to her general education classroom) was not depicted accurately (Reynolds). She also explained that SE-32 was developed at a Team meeting in the fall of 2018 at a time when Student was not yet receiving Wilson Reading and the slots containing Student's initials reflected the times Student would be out of Ms. Reynolds' general education classroom (Reynolds). At the time SE-32 was developed Student was in the TLP program (Reynolds).
51. Parent asserted that Student's Wilson program was not being implemented with fidelity because he was still making many mistakes and was guessing. In her opinion, Student was not closing the gap with his same age peers and Parents' request to be trained by Medford to better help Student at home, was denied (PE-1; Parent).
52. Parent challenged Medford's offer to pay \$33.00 per hour for private Wilson Reading tutoring, arguing that no tutor would agree to this amount and noting that she paid her expert \$100.00 per hour. To her knowledge, Massachusetts did not have a prescribed rate for tutors. She believed that Medford's August 16, 2019 response constituted an admission of failure to implement Student's IEP. Moreover, Parent testified that on or about September 11, 2019, Medford agreed that Parent could use a private tutor to deliver the compensatory reading services. Parent argued that because the Wilson Reading program had not been delivered with fidelity, Student would have to start the program over at step one (Parent).

## CONCLUSIONS OF LAW:

There is no dispute between the Parties that Student has been found eligible and is entitled to receive special education services, inclusive of Wilson Reading, consistent with his IEP.

The issues in this matter are extremely narrow. They involve whether or not Medford failed to deliver Student's Wilson Reading Program consistent with his IEP, between December 2018 and June 2019, thereby denying Student a FAPE. If Parents successfully prove said transgression, then the determination turns to whether Student is entitled to compensatory services in the form of reimbursement of 111 hour of private tutoring at a rate of \$100 per hour as argued by Parents. Parents are the moving party in the instant matter and as such, they carry the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005) at this Hearing. To prevail Parents must prove their case by a preponderance of the evidence.

I note that in rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

There is no dispute, and both Parties concede, that pursuant to the IDEA and Massachusetts Special Education law and regulations, school districts are responsible to implement all accepted portions of a student's IEP, and deliver the services consistent with said IEP. 603 CMR 28.05(7)(b)<sup>12</sup>. Compensatory services come into play when the school district fails to deliver the accepted services pursuant to the student's IEP.

Massachusetts has long accepted an award of compensatory education as an equitable remedy which is available within the context of special education.

Compensatory education is a surrogate for the warranted education that a disabled child may have missed during periods when the IEP was so inappropriate that the student was effectively denied a FAPE. *C.G. ex rel. A.S. v. Five Town Community School Dist.*, 513 F.3d 279, 290 (1<sup>st</sup> Cir. 2008). Compensatory education is intended "to remedy past deprivations by a school district." *Pihl v. Mass. Dept. of Ed.*, 9 F.3d 184, 188 (1<sup>st</sup> Cir. 1993).

In *C.G. ex rel. A.S. v. Five Town Community School Dist.*, the Court explained that,

[C]ompensatory education is not an automatic entitlement, but rather, a discretionary remedy for nonfeasance or misfeasance in connection with a school system's obligations under the IDEA. *C.G. ex rel. A.S. v. Five Town Community School Dist.*, 513 F.3d 279, 290 (1<sup>st</sup> Cir. 2008)

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<sup>12</sup> "Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay." 603 CMR 28.05(7)(b).

The purpose of the compensatory education remedy is to indemnify a disabled child with education that a school district was required to deliver and improperly withheld under the IDEA, or a Section 504 plan. The same need not be a *quid pro quo*. That is,

... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld through that time period, unless the evidence shows that the child requires more or less education to be placed in the position he or she would have occupied absent the school district's deficiencies. *A.W. ex rel. H.W. and A.W. v. Middletown Area School District*, 68 IDELR 247 (M.D. Pa., October 25, 2016) (citing *Jana K. ex rel. Tim K. v. Annville-Cleona Sch. Dist.*, 39 F.Supp 3d 584, 608 (M.D. Pa. 2014).

Several Circuits, including the D.C. Circuit, have determined that compensatory education awards fit within the broad discretion of courts in fashioning and enforcing IDEA remedies. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). In *Reid ex rel. Reid*, the Court specifically rejected a “cookie-cutter approach” whereby a student’s remedy would equal an award of the number of hours of services he or she had been denied. Instead, the court found that the ultimate award of compensatory services must be reasonably calculated to provide the educational benefits that would have likely resulted from the special education services the school district was responsible to provide the student in the first place. *Id.* Additionally, the court found that “whereas ordinary IEPs need only provide ‘some benefit,’ compensatory awards must do more—they must compensate.” *Id.*

The aforementioned right to compensatory services is premised on a finding that the school district denied the student a service to which the student was entitled. Therefore, in order to prevail Parents here must show that Medford did not offer Student Wilson Reading programming, with fidelity by a Wilson certified instructor, four times per week, each session lasting forty-five minutes. With this guidance I turn to the facts in the instant matter.

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties, I find that Parents have not met their evidentiary burden of persuasion and thus, Student is only entitled to what was awarded by PRS, but is not entitled to compensatory services, an equitable relief, as explained below. My reasoning follows.

At the onset I note that the term “compensatory” has different legal connotations when used in the context of a DESE PRS finding/plan as opposed to compensatory education as used in the context of an IDEA hearing. This Decision addresses solely Student’s right to compensatory education as used in the latter, as interpreted by the Courts and explained in numerous previous BSEA decisions within the context of a BSEA Hearing.

## **I. Provision of Wilson Reading Services:**

The record shows that Student began the 2018-2019 school year under a partially accepted IEP which IEP was later amended on November 21, 2019.

Under the accepted portions of Student's IEP, he began second grade receiving Foundations reading instruction (Handler). Following re-convening of the Team on November 21, 2018 Student began to receive four, forty-five minute sessions per week of one-to-one Wilson Reading Programming with Ms. Handler, a special education teacher who is certified in Wilson Reading Programming (PE-10).

The Amendment changing the reading services to Wilson Reading was accepted by Parents on December 5, 2018, and delivery of the Wilson Reading Program was initiated by Ms. Handler on December 10, 2018. I note that the relevant portions of the IEP in effect at the time this Hearing was requested and the November 2018 Amendment accepted by Parents were never rescinded during the life of the IEP and IEP Amendment.

Provision of Wilson Reading or OG was later supported by Parents' private Children's Hospital's February 2019 evaluation.

The dispute leading to this Hearing was triggered in the summer of 2019, when DESE PRS, issued its findings in response to Parents' Complaint. Relying on a discrepancy between Student's IEP and schedule DESE PRS made a finding of non-compliance, ordering Medford to compensate Student for the apparent failure to deliver the accepted amount of Wilson Reading services.

Thorough review of the record and the credible testimony offered at Hearing, discussed below, shows that no such transgression ever occurred and that the discrepancy was the result of a typographical error in Student's schedule. Parents have been fully aware of this situation since the lengthy Pre-hearing Conference held on October 23, 2019. They insist that I must accept the PRS findings and ignore the irrefutable weight of the credible evidence and facts, and award Student equitable relief; relief to which he is not entitled.

At Hearing Ms. Handler and Ms. Reynolds' credibly and persuasively testified that the Wilson Reading Services were implemented with fidelity for the full forty-five minutes between December and June 2019 (Handler, Reynolds). Ms. Handler's and Ms. Reynolds' schedules/explanations support this testimony. Neither of the individuals actually providing services to Student had drafted, or knew who had drafted, Student's incorrect schedule, but both were adamant that Student's schedule was wrong and that Student had actually received the full 45 minutes, four times per week sessions of Wilson Reading, consistent with his IEP.

Ms. Handler testified (and her schedule so corroborates) that on the four days when she provided reading instruction to Student, she met him at Ms. Reynolds' classroom and they both walked together to her classroom. Her schedule has a few minutes built in to account

for the time it took her to bring Student from Ms. Reynolds' classroom to her own. The classrooms are a short distance from each other, located one above the other.

Ms. Handler credibly testified that she delivered the services with fidelity and that each session lasted forty-five minutes. Following Wilson Reading guidelines, she tested Student on the first day and began his instruction at level 1. Ms. Handler explained that Wilson Reading levels do not correspond with grade levels and noted that Student had progressed by the end of the school year (SE-40; Handler).

Ms. Handler is a certified Wilson Reading instructor, therefore, she carries the proper credentials to deliver Wilson Reading services (SE-4; Handler). She received her certification in the summer of 2018, and while Student may have been her first Wilson Reading pupil, she is no stranger to teaching or special education. Ms. Handler also had established a positive working relationship with Student as she had been his Foundations reading teacher since the beginning of the 2018-2019 school year (Handler).

Nothing in the record supports a finding that she is anything but an extremely competent, capable and experienced teacher. Furthermore, she holds the necessary qualifications to deliver Wilson Reading instruction. Moreover, her testimony was persuasive that she understands and implements the intricacies of the Wilson program.

I found Ms. Handler's testimony to be clear and candid. She came across as a capable and invested teacher who stays current in her educational development and continues to pursue avenues to help her students. She was knowledgeable about the subject matter and was able to answer and offer responsive explanations with ease and accuracy. As such, I found her to be a credible witness and thus rely on her testimony to reach my determinations.

Ms. Reynolds, Student's general education teacher, also offered convincing testimony that Student was retrieved from her classroom by Ms. Handler a few minutes before the reading session was scheduled to start and returned to her class after reading in time for recess. She also relied on her schedule to show the times Student would be outside her classroom receiving reading services (Reynolds). Ms. Handler's and Ms. Reynolds' schedule explanations were consistent. I found Ms. Reynolds' testimony to be truthful and reliable.

Consistent with federal and Massachusetts laws and regulations Medford is only responsible to offer Student a FAPE, and with respect to delivery of the Wilson Reading instruction, the record supports a finding that Medford met its legal obligations despite the typographical schedule inconsistency. The credible evidence is convincing that between December of 2018 and June of 2019, Student received four, forty-five minute sessions of Wilson Reading with fidelity by a properly certified Wilson Reading instructor.

I next turn to the PRS complaint and Letter of Finding as it impacts Parents' position in this Decision.

## II. PRS Letter of Finding:

Consistent with federal law, in Massachusetts the DESE is responsible to maintain a Problem Resolution System responsible for investigating complaints and the enforcement of compliance with 603 CMR 28.00 *et. seq.* and “other statutes and regulations involving the provision of publicly funded education. 603 CMR 28.08(2). Specifically, 603 CMR 28.08(2) provides that

...the Department [’s PRS] can make findings on procedural issues and issues related to implementation of requirements. Any party wishing to file a complaint may do so through the Department. Use of the Department Problem Resolution procedures shall not prevent a party from requesting alternative administrative remedies of mediation or hearing on any matter, at any time. Copies of the Problem Resolution System Guidelines and Procedures are available from the Department upon request. Findings and orders issued by the Department on complaints and the Department’s processing of a complaint are not reviewable by the Bureau of Special Education Appeals. Additionally, the pendency of a complaint before the Department does not make the Department a necessary party to actions on related issues pending before the Bureau of Special Education Appeals.

Consistent with 603 CMR 28.08(2), the PRS complaint process and BSEA Hearings are two separate and distinct processes available to parties seeking to resolve disputes. The conclusions of one are not reviewable by the other, and both have their own distinct appeal process.

Per the applicable Massachusetts Special Education Regulations, if a BSEA Hearing is requested prior to issuance of a PRS determination relating to the same issues, PRS must stay their findings pending issuance of the BSEA decision. Similarly, if PRS receives a complaint and issues a finding prior to filing, or in the absence of, a BSEA Hearing Request, PRS’ findings may not be reviewable by the BSEA. If a party disagrees with PRS’s findings it must seek review directly through the DESE.

Turning to the facts in the instant matter, Parents filed a complaint with DESE PRS on May 21, 2019, alleging that Medford’s Notice of Proposed Action (N1) did not meet regulatory requirements, and alleging that Medford was not providing Student Wilson Reading services consistent with his IEP: that is, Medford was not delivering four, forty-five minute sessions per five day cycle of reading programming by a special education teacher (PE-3).

On July 18, 2019 PRS issued a Letter of Finding of noncompliance based *solely* on the information submitted by Parents and Medford at that time. This information reflected a 10 minute per session discrepancy between Student’s daily schedule and his IEP resulting in a

violation of implementation of Student's Wilson Reading Program.<sup>13</sup> Based on this discrepancy, PRS ordered Medford to draft a corrective action plan making Student whole for the perceived 10 minute violation. Instead of appealing PRS' determination, Medford agreed to abide by PRS's findings and agreed to offer compensatory reading services to Student.

Thereafter, Student's 2019 ESY was cut short when the teacher left three days prior to the end of the summer, and Medford also offered to compensate Student for the three hours of Wilson Reading programming not delivered during ESY. Medford added the three ESY hours to the missing time per the PRS complaint (which Medford believed amounted to 24<sup>14</sup> hours) and therefore offered Student a total of 27 hours of compensatory reading services (PE-7).

Medford's initial offer per the August 15, 2019 letters was to either have a Medford Wilson Reading certified instructor deliver the 27 hours of Wilson Reading services, or reimburse Parents 27 hours at \$33.00 per hour (what Medford paid its tutors/reading instructors), for Parents to hire their own Wilson Reading private tutor.

Parents rejected this offer and demanded that Medford compensate them the actual cost of their private reading tutorials, \$100.00 per hour. Furthermore, they alleged that since Student had not received the necessary tutorials, Student should be allowed to start the Wilson Reading Program at step 1, as if he had never received any services at all, for a total of 111 hours of compensatory reading services. They further requested that reading services be delivered by their private tutor.

Medford initially objected to delivery of the 27 hours of reading instruction by Parents' private reading tutor, though it later lifted this objection in the hopes of avoiding Hearing. Later, following Parents' filing of the instant Hearing Request and during the Resolution Session, Medford increased its offer \$50.00 per hour to have a tutor of Parent's choice deliver the Wilson reading services.

I note that Ms. Kahn, Parents' private tutor, is not certified as a Wilson Reading instructor and she does not deliver Wilson Reading instruction. Moreover, while she was trained in OG in the mid-1970s, she does not deliver OG instruction with fidelity. Rather, she uses components based on OG mixed with her own approaches. Ms. Kahn does not meet the necessary criteria to deliver Wilson Reading instruction.

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<sup>13</sup> I note that "Wilson Reading services" are specifically referenced at the top of page 5 of DESE/ PRS's Letter of Finding. The Letter of Finding however, does not offer clarity as to the specific period of time involved in the alleged deprivation of FAPE, but at the bottom of page 4 references Grid C in the "partially-consented to IEP, dated November 21, 2018- March 28, 2019" (PE-3).

<sup>14</sup> It is unclear why Medford's August 15, 2019 offer proposed compensation that considered the entire school year (36 weeks) as opposed to the number of weeks during which Wilson was actually delivered between December 2018 and June 2019.

Ms. Kahn's credibility was compromised at Hearing by attempting to attribute Student's progress to her own combined approach while minimizing Medford's efforts and suggesting that Wilson Reading was confusing to Student. I do not reach a conclusion regarding the fruitfulness of Ms. Kahn's approach except to note that whatever progress Student made during the period from December 2018 through June 2019 was the result of the combination of efforts including Medford's delivery of Wilson Reading services and Parents' almost daily work with Student, and not solely the isolated product of the 3 or four sessions per month offered by Ms. Kahn starting in March of 2019. The evidence is persuasive that the totality of the reading services and interventions benefitted Student.

Parents' claim for compensatory education is based on their allegations that the Wilson Reading program was not implemented with fidelity and for the proper length of time as described in Student's IEP, something that Parents were not able to demonstrate at Hearing. The Hearing record is uncontroverted that Ms. Handler delivered the required Wilson Reading services per Student's IEP. Parents did not meet their burden of persuasion pursuant to *Shaffer*. Moreover, access to an equitable remedy requires that the petitioner comes to the forum with "clean hands". Given Parents' posture that I ignore the weight of the credible evidence and blindly abide by a PRS finding (which they know was based on incomplete/mistaken information) can hardly be considered to meet this standard. Parents are not entitled to the relief sought.

Parents' theory persuasively debunked by the weight of the credible evidence, leaves Parents no other recourse through this forum.

Lastly, I note that in the context of the PRS finding, no agreement has been reached and Medford continues to owe Student Wilson Reading services. The Parties are reminded that given the impasse between them and their inability to reach agreement regarding their Plan of Compensatory Services, consistent with PRS' July 18, 2019 Letter of Finding, Medford and Parents still need to submit their proposals to DESE PRS. A determination regarding an acceptable compensatory plan (in the context of DESE PRS) falls squarely within the purview of DESE.<sup>15</sup>

**ORDER:**

1. Medford is not responsible to offer Student compensatory Wilson Reading services.

By the Hearing Officer,

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Rosa I. Figueroa

Dated: January 27, 2020

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<sup>15</sup> A copy of this Decision is being forwarded to DESE.

**January 27, 2020**

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
BUREAU OF SPECIAL EDUCATION APPEALS**

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**MEDFORD PUBLIC SCHOOLS**

**BSEA # 2002451**

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**BEFORE**

**ROSA I. FIGUEROA  
HEARING OFFICER**

**PARENTS, PRO SE  
ALISIA ST. FLORIAN, ESQ., ATTORNEY FOR  
MEDFORD PUBLIC SCHOOLS**