State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
DENYING PARTIAL SUMMARY DECISION IN FAVOR OF PETITIONERS AND GRANTING SUMMARY DECISION IN FAVOR OF RESPONDENTS

R.A. and R.A. o/b/o G.A.,
Petitioners,
v.
JERSEY CITY BOARD OF EDUCATION,
Respondent.

OAL DKT. NO. EDS 02641-15
AGENCY DKT. NO. 2015-22253

Jennifer Y. Sang, Esq., for petitioners (Law Office of David Berney, attorneys)

Derlys Maria Gutierrez, Esq., for respondent (Adams, Stern, Gutierrez & Lattiboudere, LLC, attorneys)

BEFORE **EVELYN J. MAROSE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, R.A. and R.A., are parents of G.A., a four-year-old boy (D.O.B. 7/25/11) for whom they seek appropriate program and placement, reimbursement for independent educational evaluation, compensatory education, and the production of student's records. Among other things, the District states that it has and continues to provide G.A. with a Free, Appropriate Public Education (FAPE) in the least restrictive

environment, that petitioners' are not entitled to reimbursement for the expert report at issue or compensatory education and that the District provided all of GA's records.

Petitioners filed a due process petition on February 24, 2015, under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415 et seq., Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA). In lieu of a first day of hearing, the parties engaged in settlement discussions on April 14, 2015. A first day of hearing was held on April 15, 2015.

Also, on April 15, 2015, the District proposed an Individualized Education Plan (IEP) amendment, to which the petitioners agreed on April 17, 2015. The amended IEP was effective on April 17, 2015. By letter dated May 5, 2015, the District requested that petitioners withdraw their petition. The District asserted that, among other things, with consideration of the accepted IEP amendment, G.A. was being afforded more than what is required for him to receive FAPE. Petitioners declined to withdraw their petition. On May 12, 2015, a schedule was provided for the submission of Motions for Summary Decision by the parties.

On May 28, 2015, the District filed for Summary Decision. In support of its motion, the District included the Certification of Karen Gullace (Initial Gullace Certification), Supervisor of Special Education, with attached exhibits. On June 3, 2015, petitioners filed opposition to the Motion for Summary Decision and a Cross-Motion for Partial Summary Decision, with attached exhibits including the Declaration of Ronda Shaw, Ed.D. (Shaw Declaration) and the Declaration of R.A. (G.A.'s Mother's Declaration). On June 10, 2015, the District submitted a reply memorandum and opposition to petitioners' Cross-Motion, supported by the Supplemental Certification of Karen Gullace (Supplemental Gullace Certification) with additional exhibits. The motions were scheduled for Oral Argument on July 19, 2015. However, at petitioners' request, and with the consent of the District, Oral Argument was cancelled on July 18, 2015.

STANDARD FOR SUMMARY DECISION

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issues to the trier of fact. R. 4:46-2.

The burden of showing that no genuine issue of material fact exists rests initially on the moving part. However, this "burden . . . may be discharged by showing . . . that there is an absence of evidence to support the non-moving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265(1986). Moreover, in order to defeat a properly supported motion for summary judgment, a party may not rely upon self-serving conclusions, unsupported by specific facts in the record. Ibid. Instead, the non-moving party must point to concrete evidence in the record, which supports each essential element of his case. Ibid.

Moving parties in summary judgment motions are required to submit a Statement of Facts that contains a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. R. 4:46-2(a). A party that opposes a summary judgment motion must submit a responding statement "either admitting or disputing each of the facts in the movant's statement." R. 4:46-2(b). "All material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact." R. 4:46-2(b). Moreover, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5.

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America. 142 N.J. 520 (1995). In Brill, the Supreme

Court adopted a standard that requires the motion judge to engage in an analytical process essentially determining whether the competent evidence presented, when viewed in the light most favorable to the non-moving party presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Id. at 533 (quoting Anderson v. Liberty Lobby, 477 U.S. 477, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202). To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose." Brill, supra, 142 N.J. at 541.

FACTUAL DISCUSSION, FINDINGS AND CONCLUSIONS AS TO THE ASSERTION THAT G.A.'S MOTHER'S NATIVE LANGUAGE IS TAGALOG

G.A.'s mother appeared at the OAL on March 12, 2015, with her counsel who does not speak or read Tagalog and without an interpreter. There was no allegation that petitioner did not understand any communication nor in any manner could not participate because her native language was Tagalog. G.A.'s mother appeared at the OAL on April 14, 2015, again with her counsel who does not speak or read Tagalog and without an interpreter. Again, there was no allegation that petitioner did not understand any communication nor in any manner could not participate because her native language was Tagalog. For the first time on April 15, 2015, upon the questioning of a witness, the issue of whether petitioner was ever offered an interpreter or whether any action was taken to make sure that petitioner understood communications with the District was addressed.

During voir dire, G.A.'s mother stated that she has lived in the United States for the last twenty-seven years. However, she was born in the Philippines, where her native language was Tagalog. Her husband is also from the Philippines and at home they speak Tagalog. G.A.'s mother learned to read and write English in school in the Philippines. Since she has resided in the United States, she has been successfully employed several times. She worked in a pharmacy for four years where she put labels on medication. She also worked as an aide in a nursing home and as a data entry clerk. At none of her jobs did G.A.'s mother use Tagalog to communicate. At all of her jobs, G.A.'s mother, who reads and writes English, received work direction in English and communicated in English. During the two days that she was in the OAL for settlement or

hearing. G.A.'s mother stated that she understood the questions asked and for the most part the answers to those questions, with the exception of a few "deep" vocabulary words. Although in her Declaration, dated June 2, 2015, G.A.'s mother states that she has difficulty communicating in English, her numerous letters to the District are grammatically correct, expressive, and indicate no sign that she needs assistance communicating. (Petitioners' Opposition, Exhibits D through F.)

In addition, in every evaluation conducted of G.A., where a language in the home is identified, the language used at home is noted to be English. Further, all evaluations of G.A. were conducted in English, including the evaluations obtained by petitioners. For each evaluation, the parents provided input, in English, that was relied upon. While G.A.'s mother might not have understood the "Parental Notice of Eligibility," no credible evidence was presented that her lack of understanding was based upon her native language being Tagalog or based upon her ability to read, write, and speak in English.

Thus, I **FIND** that no evidence was presented that the District was put on notice that G.A.'s mother could not communicate in English and the Due Process Petition asserts no such claim. I **CONCLUDE** that the issue of G.A.'s native language does not rise to the level of a material issue relating to this petition.

FACTUAL DISCUSSION, FINDINGS AND CONCLUSIONS AS TO THE REQUEST FOR SUMMARY DECISION FOR THE INDEPENDENT EVALUATION CONDUCTED BY RONA SHAW, ED.D.

Both parties agree that there are no material facts in dispute regarding petitioners' entitlement to reimbursement for the independent evaluation conducted by Rona Shaw, Ed.D. (Shaw Evaluation), and that entitlement to reimbursement for fees is a matter of law. I concur and **CONCLUDE** that Summary Decision is appropriate on the issue.

G.A. has attended District School A. Harry Moore since November 3, 2014. He was referred to the District on March 28, 2014, after aging out of early intervention. He receives special education and related services under the classification of pre-school disabled. G.A. has been diagnosed with profound global developmental delays,

nystagmus, and exotropia. With the consent of his parents, given on March 10, 2014, an Educational Assessment of G.A. was conducted March 14, 2014, a Speech-Language Assessment and Social Assessment on April 10, 2014, a Physical Therapy Evaluation on April 24, 2014, and an Occupational Therapy Evaluation and Psychological Assessment on April 25, 2014. In addition, New Jersey's Commission for the Blind and Visually Impaired (CBVI), a State agency, conducted a Functional Vision Assessment on June 18, 2014, and June 24, 2014, which while arranged and scheduled by petitioners was paid for by the District, who relied upon the evaluation in contracting for services to be provided to G.A. by the CBVI. Petitioners did not challenge any of the District's evaluations including, but not limited to, the District Independent Educational Assessment or request any independent evaluations.

An IEP was implemented, with services provided as of November 3, 2014. On January 23, 2015, petitioners filed an application for due process, asserting, among other things, prospective relief in the form of an appropriate IEP and reimbursement for an independent educational evaluation. On March 12, 2015, the petitioners served the District, for the first time, with an independent evaluation conducted by Rona A. Shaw, Ed.D., that petitioners obtained in December 2014.

Federal Regulation addresses the parental right to evaluation at public expense if the parent disagrees with an evaluation obtained by a federal agency.

> If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either
>
> i.) file a due process complaint; or
> ii.) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
>
> If the public agency files a due process complaint and notice to request a hearing, and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

> If the parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
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> [34 C.F.R. § 300.502(b)(2) through (4).]

The New Jersey regulation is worded slightly different. The New Jersey regulation provides that a parent may request an independent evaluation if there is a disagreement with an assessment conducted as part of an initial evaluation or a reevaluation by the district board of education. N.J.A.C. 6A14-2.5(b). An independent evaluation shall be provided at no cost to the parent unless the school district initiates a due process hearing to show that its evaluation is appropriate. N.J.A.C. 6A14-2.5(c)2.

In this matter, I **FIND** that the petitioners never disagreed with any of the evaluations provided by the District. Further, petitioners never requested an independent evaluation from the District. Instead, petitioners unilaterally chose to obtain independent evaluations without providing the District with notice. I **CONCLUDE** that there is no legal basis to reimburse petitioners for the independent evaluations that they obtained without prior notice to the District.

FACTUAL DISCUSSION, FINDINGS AND CONCLUSIONS AS TO THE REQUEST FOR G.A.'s STUDENT RECORDS

Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing. Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time. N.J.A.C. 1:6A-10.1.

A party who wishes to object to a discovery request or to compel discovery shall, prior to the filing of any motion regarding discovery, place a telephone conference call to

the judge and to all other parties no later than ten days of receipt of the discovery request or the response to a discovery request. If a party fails, without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel discovery. N.J.A.C. 10:1:1-10.4(d).

During the first day of hearing of this matter, petitioners asserted that they had not yet received all of G.A.'s records. Counsel for petitioners stated that he did not need further records in order to proceed to hearing, but he was "just not sure" that the District had provided him with all student records. In response, counsel for the District stated that "everything that they had, including a monitoring report" was provided to petitioners. The Court noted that petitioners never filed a motion to compel discovery nor requested a telephone call with the court to address any failure by the District to fully comply with petitioners' discovery demands. However, the parties were given the opportunity to review documents during a lunchtime break on the first day of hearing, in order to ascertain if there were any documents that had not been provided to petitioners. The review did not indicate that any documents had not been provided.

In motion papers opposing summary decision on this issue, petitioners do not identity any documents that were not provided by the District. Instead, petitioners again speculate that the District might not have given them all documents, and that there might be more progress monitoring records, student work product or documentation that reflects visits from the CBVI. Petitioners then propose that this issue can be resolved by the District providing an affidavit to that effect.

I **FIND** that the District affirmed at the hearing that all records were provided and provided supporting certifications seeking summary decision on point. Petitioners presented no evidence that some of G.A.'s educational records were not provided. Petitioners merely speculate that there might be more documents. This speculation is not sufficient to counter the District's affirmations that all G.A.'s educational records were provided to petitioners prior to April 14, 2015. I **CONCLUDE** that there is no genuine issue regarding the production of educational records by the District to resolve at a hearing.

FACTUAL DISCUSSION, FINDINGS AND CONCLUSIONS AS TO THE REQUEST FOR COMPENSATORY EDUCATION

Again, both parties agree that there are no material facts in dispute regarding petitioners' entitlement to compensatory education for the period from September 4, 2014, to November 4, 2014, and that entitlement to compensatory education is a matter of law. I concur and **CONCLUDE** that Summary Decision is appropriate on the issue of compensatory education.

The purpose of compensatory education is to remedy past deprivations of FAPE. In order to qualify for compensatory education, there must be a finding that a child has received an inappropriate education. M.C. ex rel. J.C. v. Central Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996).

> When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if the parent refuses special education and related services on behalf of the student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of the child-find obligations solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP.
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> [N.J.A.C. 6A:14-2.3(c).]

The child at issue, G.A., was referred to the District on March 28, 2014, after aging out of early intervention. With the consent of the parents, given on April 10, 2014, the District conducted and paid for numerous evaluations. G.A. was determined to be eligible for special education and an eligibility meeting was scheduled and held on May 29, 2014. At that meeting, G.A.'s mother expressed concerns about G.A.'s vision and initially did not sign for services. She also stated that before she agreed to any placement, she wanted the option to "check-out" other schools, including Concordia Learning Center at

St. Joseph's School for the Blind. (Petitioner's Exhibit E, Letter from G.A.'s mother, received by the District on June 6, 2014.) Approximately, one week later, on June 6, 2014, G.A.'s parents acknowledged "participation in the eligibility process and receipt on the document, Parental Rights in Special Education (PRISE)." The family was expressly advised in the "Parental Notice of Eligibility for [G.A.]" that, should they need help in understanding their rights, they could contact numerous agencies including the Special Education Department at 201-547-2000, the Statement Parent Advocacy Network at 1-800-654-7726, New Jersey Protection and Advocacy Inc. at 1-800-922-7233 and the New Jersey Department of Education through the Hudson County Office, Superior of Child Study Team, at 201-319-3850. (Initial Gullace Certification, Exhibit 10.)

On June 12, 2014, the District proposed that an IEP meeting be conducted on June 20, 2014. Petitioners stated that the meeting should not occur until they had all visual assessments, and the meeting was re-scheduled to June 24, 2014.

On June 24, 2014, G.A.'s parents informed the District that they did not agree to the proposed placement at A. Harry Moore School and indicated their preference for the appearance of the Concordia Learning Center building, which they described as "newer, brighter and nicer." Based upon the parents' rejection of the school facility, program discussion never occurred. The District considered G.A.'s case "closed." (Initial Gullace Certification, Exhibit 13.)

On September 9, 2014, G.A.'s mother wrote the following letter to the District:

> As you know, I am the parent of GA. This past summer, I attended an IEP meeting for GA. At the meeting, the team recommended that GA be placed in the A. Harry Moore School. However, I did not agree to this placement as I do not feel it is appropriate for his needs. After expressing my disagreement with the placement, the IEP team told me that they were closing GA's case, and <u>that I would need to contact the Jersey City Board of Education in order to re-open GA's case</u> (emphasis added). In August, I called the Board of Education several times. They told me that I needed to discuss GA's case with you. I called you several times since then but have been unable to reach you. Currently, GA is not receiving any services. Please consider this a formal requeat

> for an IEP meeting and to open my son's case. He is in desperate need of services at this time. Thank you.
>
> [Petitioner's Opposition, Exhibit F.]

Petitioner's letter was received by the District on September 15, 2014. An IEP meeting was scheduled for September 29, 2014.[1] Petitioners without notice to the District, brought counsel to that meeting. Accordingly, the meeting was adjourned and rescheduled to October 15, 2015, so that both petitioners and the District could have legal representation at the meeting. An IEP was proposed at that second meeting. It was not signed or rejected. Petitioners stated that they wanted more time to review the IEP with other counsel, who did not attend the meeting. On October 28, 2014, the proposed IEP was signed by the parents. The next week, November 3, 2014, G.A. began receiving services in District.

I **FIND** that on September 4, 2014 the District was not even aware that petitioners wished to again consider in District educational services and I **CONCLUDE** that there is no legal basis for G.A. to be eligible for compensatory education from September 4, 2014. I **FIND** that, from September 15, 2014, through October 28, 2014, the parties were in the process of arranging for an IEP meeting and/or viewing the proposed IEP by the District. Petitioner had not yet consented to an IEP. Accordingly, I **CONCLUDE** that there is no legal basis for G.A. to be eligible for compensatory education for the period from September 15, 2014, through October 28, 2014. I further **CONCLUDE** that G.A. is not eligible for compensatory education based upon G.A. not receiving educational services until three school days after petitioners signed an IEP.

FACTUAL DISCUSSION, FINDINGS AND CONCLUSIONS AS TO THE REQUEST FOR AN APPROPRIATE PROGRAM AND PLACEMENT FOR G.A.

As a recipient of federal funds under the IDEA, 20 U.S.C.A. § 1400 et seq., the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. § 1412. The responsibility to provide FAPE, including special

[1] The District noted, by certification, that in July and August 2014, the District Administrative offices remained open, and that no calls or voicemails were received from petitioners.

education and related services, rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.; N.J.A.C. 6A:14-1.1(d).

The Board will have satisfied the requirements of law by providing G.A. with personalized instruction and sufficient support services "as are necessary to permit [him] 'to benefit' from the instruction." G.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, 5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690, 701 (1982). The IDEA does not require that the Board maximize G.A.'s potential or provide him the best education possible. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). While our courts have consistently held that the IDEA does not mandate the provision of an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, supra, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. In order to be appropriate, the educational benefit conferred must be more than trivial. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999).

In determining where to deliver instruction, the district must be guided by the strong statutory preference for educating children in the "least restrictive environment." 20 U.S.C.A. § 1412(a)(5) mandates that:

> [t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2009); N.J.A.C. 6A:14-4.3.

Federal regulations further require that placement must be "as close as possible to the child's home." 34 C.F.R. § 300.116(b)(3) (2009); see also N.J.A.C. 6A:14-4.2.

G.A. was diagnosed with global developmental delay, nystagmus, exotropia, and cortical visual impairment. He is stroller-bound as he is unable to sit, stand, crawl, or walk unassisted. He has significant developmental delays in all areas including motor, cognition, language/communication, feeding, toileting, and self-help skills. G.A. is nonverbal, though he can make some vocalizations and cries or moans to display discomfort. (Petitioners' Opposition, Exhibit B.)

G.A. was provided with services by the District as of November 3, 2014. He was placed in a preschool disabled class with a ratio of five students to one teacher and two aides. He received related services, including occupational therapy two times a week for thirty minutes each session, physical therapy three times a week for thirty minutes each session and speech therapy two times a week for twenty minutes each session. A School Contract, dated August 21, 2014, and effective September 1, 2014, to June 30, 2015, was entered between the District and the CBVI confirming that the Level I services recommended by the CBVI would be provided, based upon G.A.'s individual needs. The services include technical assistance, consultative and instructional services, as well as the loan of adaptive aids, materials and equipment. The District affirmed that the Child Study Team (CST) incorporated the recommendations made by the CBVI in the manner in which they educated G.A. (Initial Certification of Gullace, Paragraph 28, Exhibit 16.)

On January 23, 2015, petitioners filed an application for due process, asserting, among other things, that G.A. was not receiving FAPE. They petitioned for an IEP that provides appropriate, sufficient and measureable goals in all relevant subject matter that are tied to state standards and meet G.A.'s educational needs; adequate, specially designed instruction, modifications, accommodations, supplementary aids and services, and/or related services given G.A.'s visual disabilities and global developmental delays; adequate methods for assessing monitoring G.A.'s progress or lack thereof; and adequate placement.

On March 12, 2015, petitioners served the District, for the first time, with an independent evaluation that they had obtained in December 2014. In the report, petitioners' expert opined that G.A. is best served educationally in a small and structured classroom with properly trained and certified teachers who can address his developmental needs and who can provide intervention needed for CVI. The expert did not opine that the classroom in which petitioner was placed by the District, again with a ratio of five students to one teacher and two aides was not sufficient to provide him with an appropriate education. Petitioners' expert stated that with continued structured intervention by trained and certified teachers of the visually impaired, progress toward resolution of G.A.'s cortical vision impairment (CVI) can be expected. The expert did not state that G.A.'s then-current teacher, who was a Certified Teacher for the Handicapped (and who also receiving a contracted consultation by a Certified Teacher of the Visually Impaired), could not provide G.A. with an appropriate education. Petitioners' expert recommended vision tasks such as presenting materials at eye level and initially at near range, using brightly colored objects, using objects with movement, etc. The expert made no reference to the IEP already in place in the District, except to note that G.A. was receiving visual services on a consultant basis from CBVI. The expert did not note the recommendations that were being followed in accordance with the Functional Vision Assessment conducted by the CBVI. G.A.'s teacher was to present items of visual interest directly in front of G.A. or slightly to his left during instruction or therapy sessions. If G.A. did not respond right away, the teacher was to gently move the item or tap the item to elicit a visual response. The teacher was to present new items, first at eye level, and allow extra time for a visual response. Multi-sensory activities that integrate visual, auditory and tactile components were strongly recommended. (Initial Certification of Gullace, Exhibits 9, 16, 18, and 19.) I **FIND** that the petitioners' expert's recommendations did not detail recommendations that were not part of the program already in place in the District.

However, petitioners came to argue that in order for G.A. to progress, it was essential that G.A.'s full time teacher be a Certified Teacher of the Visually Impaired. In support of the petitioners' opposition to summary decision, petitioners' expert for the first time opined that, among other things, "As a result of G.A.'s visual disabilities, he requires

daily instruction from a trained and certified Teacher of the Visually Impaired." (Petitioner's Opposition, Exhibit A.) [2]

As a result of petitioners arguments' and prior to petitioners' expert's declaration - of June 1, 2015, on April 14, 2015, the District learned for the first time since the inception of this case, that an A. Harry Moore staff member holds the dual certifications of Teacher of the Visually Impaired and a Teacher of the Handicapped. Accordingly, on April 14, 2015, the District proposed an IEP amendment, that would include:

1.) Change G.A.'s pre-school disabled classroom placement at A. Harry Moore to the pre-school disabled class taught by D.B., a Certified Teacher of the Visually Impaired and Certified Teacher of the Handicapped at A. Harry Moore (Supplemental Gullace Certification, Exhibit 29.);
2.) Incorporate the existing vision services proved to G.A. as documented by the recommendations and vision tasks outlined in the Functional Vision Assessment completed by the CBVI on 6/24/14; and
3.) Incorporate the existing provision of services by the CBVI as outlined in the "Jersey City Public Schools and CBVI School Contract dated August 14, 2014, effective September 1, 2014." (Initial Gullace Certification, Exhibit 20-21.)

Petitioners agreed to the proposed IEP amendments on April 17, 2015, and the changes went into effect immediately.

I **FIND** that petitioner presented no competent evidence that the District failed to provide G.A. with FAPE. In arguing that G.A. did not receive FAPE, G.A.'s mother states, without providing any examples, "throughout the school year, she has not noticed any improvements in G.A.'s development." (Petitioner's Opposition, Exhibit C, Paragraph 24.) Such a statement is clearly self-serving and unsupported. In Shaw's Declaration dated June 1, 2015, again without providing any examples or specifics, petitioners' expert concludes that "G.A.'s IEP, developed in October 2014, does not include the supports he

[2] The expert did not opine that G.A. needed full-time instruction as argued by petitioners.

requires to make educational progress." (Petitioner's Opposition, Exhibit A, Paragraph 17.) Yet, as noted in detail above, Dr. Shaw never opined that G.A. did not receive FAPE in any of her expert reports that she provided to the district and upon petitioners relied in filing their due process petition. This new assertion is made without factual support, as part of opposition to summary decision. (Initial Gullace Certification, Exhibits 18 and 19.)

The parties disagree as to whether G.A.'s Battelle Developmental Inventory indicates progress or even regression. However, I **FIND** that G.A.'s inventory scores, in numerous areas below .1%, serve no useful purpose in determining whether G.A. received a meaningful benefit from the education he received from the District. As noted above, in addition to numerous vision impairments, G.A. has been diagnosed with several global developmental delays. He is non-verbal and non-ambulatory. He is dependent in all areas of self-care. His Battelle scores are based upon limited observations and parental input. For example, in G.A.'s last Inventory, only twenty-two of his ranked categories were based upon observations by the evaluator. Seventy-one were based upon parental input.

In contrast, I **FIND** that the periodic Pupil Progress Reports, though provided by the District, were indicative of the education provided by the District. The reports detail areas in which G.A. showed satisfactory progress including, but not limited to, increased attention, sensory processing, improved functional mobility, participation in structured activity for five minutes, an increased tolerance of oral motor input for five-minute intervals, and an increased tolerance for tactile sensory input. (Initial Gullace Certification, Exhibit 23.) In addition, specific learning activities were detailed. In initial evaluations it was noted that G.A. only drank from a bottle. In the Pupil Progress Report, it was noted that G.A. was drinking from a sippy cup and getting more proficient in taking in and swallowing his liquids. His teacher noted that, "G.A. seems to enjoy the Sensory Room and is an integral part of the class. He thoroughly enjoys all activities that involve music. Once a week, we do a cooking activity in the classroom in which G.A. will participate. With "hand over hand" assistance G.A. will press the button that starts the blender. He enjoys "rubbing his hands in the pudding and the after eating."

With consideration of all of the foregoing, I **FIND** that the District has provided concrete examples of meaningful access to education and its educational benefit for G.A.. I **FIND** that petitioners' have provided no evidence that G.A. has not received meaningful access to education and a basic floor of opportunity. I **FIND** that petitioners' claims with respect to a change in program, placement and services have been resolved, pursuant to the amended IEP, and are moot. I **CONCLUDE** that the District is entitled to summary decision.

ORDER

Based on the foregoing, it is **ORDERED** that petitioners' request for Summary Decision in their favor on the issues of compensatory education and reimbursement for the evaluation(s) of Rona Shaw, Ed.D. is **DENIED**.

It is further **ORDERED** that respondent's request for Summary Decision on all issues asserted in the Due Process Petition by petitioners against respondent is **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2014). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

Aug. 26, 2015
DATE

EVELYN J. MAROSE, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

kep