State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION GRANTING IN PART AND DENYING IN PART RESPONDENT'S MOTION FOR SUMMARY DECISION AND GRANTING IN PART AND DENYING IN PART PETITIONERS' CROSS-MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDS 11768-17
AGENCY DKT. NO. 2018-26685

Y.B. AND F.B. ON BEHALF OF S.B.,
Petitioners,
v.
HOWELL TOWNSHIP BOARD OF EDUCATION,
Respondent.

Michael I. Inzelbuch, Esq., for petitioners

Viola Lordi, Esq., for respondent (Wilentz, Goldman & Spitzer, PA, attorneys)

Record Closed: April 17, 2018 Decided: May 16, 2018

BEFORE **KATHLEEN M. CALEMMO,** ALJ:

STATEMENT OF THE CASE

Petitioners enrolled their son, S.B., in Howell Township School District (Howell) on November 30, 2016 after having moved to Howell from Lakewood. S.B. had an individualized education program (IEP) from Lakewood Township School District (Lakewood) dated November 21, 2016, that provided for out-of-district placement at the School for Children with Hidden Intelligence (SCHI). Howell determined that it could implement the Lakewood IEP in district at its CMI Class at Memorial Elementary School (Memorial). Petitioners and S.B. attended a meeting at Memorial on December 1, 2016 to review the facility and the classroom where S.B. would be placed. Arrangements were made by Howell for S.B. to begin school at Memorial on December 5, 2016. Petitioners decided not to send S.B. to Memorial. Instead, S.B. continued attending SCHI. After S.B. had missed thirty-seven days of school, the Howell Board of Education (Board) terminated his enrollment in Howell.

Petitioners maintain that S.B. is entitled to continue at SCHI under stay-put because they never agreed that S.B.'s current IEP could be appropriately implemented at Memorial. Petitioners further maintain that Howell failed to offer a Free Appropriate Public Education (FAPE) by failing to develop and implement a new IEP for S.B. in accordance with N.J.A.C. 6A:14-4.1(g)(1) and 20 U.S.C. 1414(d)(2)(C)(i)(I). Finally, petitioners submit that because they are domiciled in the Howell school district, they are entitled to request and receive independent evaluations for S.B.

Respondent maintains that Howell reviewed S.B.'s IEP from Lakewood and offered what it deemed to be a comparable program that could be implemented in district at Memorial. Respondent further submits that "stay-put" does not apply because petitioners unilaterally relocated S.B. from Lakewood to Howell mid-year with a current IEP. Consequently, respondent met the requirements of the Individuals with Disability Act (IDEA), 20 U.S.C. 1414(d)(2)(C)(i)(I) and N.J.A.C. 6A:14-4.1(g)(1). Respondent maintains that it offered a FAPE to petitioners that petitioners chose not to accept. Finally, respondent submits that because petitioners never disagreed with the IEP and S.B. is no longer enrolled in the District, Howell is not obligated to provide or pay for independent evaluations of S.B.

PROCEDURAL HISTORY

This matter arose with the July 17, 2017 filing of a parental request for a due process hearing with the Office of Special Education Programs (OSEP) under the IDEA, 20 U.S.C.A. §§1400 to 1482, by petitioners, Y.B. and F.B. on behalf of S.B. Respondent filed its Answer on July 26, 2017. The contested case was transmitted to the Office of Administrative Law (OAL) on August 16, 2017.

The Board, through its attorney, filed a motion for summary decision on January 9, 2018. Petitioners filed their opposition and cross-motion for summary decision on January 30, 2018. Respondent filed its reply and opposition to petitioners' cross-motion on February 5, 2018. Oral argument, originally scheduled for February 15, 2018, was adjourned by petitioners' attorney. Oral argument was rescheduled and heard on April 17, 2018. Respondent seeks summary decision dismissing the petition. Respondent claims that, as a matter of law, "stay-put" does not apply and petitioners are not entitled to independent evaluations or reimbursement for any costs or other relief associated with S.B.'s continued enrollment at SCHI. In support of its motion, respondent filed a brief and Certification of Patricia Callander, Assistant Superintendent/Pupil Services for the Howell Board. Petitioners seek summary decision because they claim that Howell failed to provide S.B. with a Free Appropriate Public Education (FAPE) through an IEP, an amendment, or any other assessment document, therefore, "stay-put" applies and petitioners are entitled to payment from Howell for the expenses incurred in sending S.B. to SCHI. Petitioners further request summary decision requiring Howell to pay for independent evaluations for S.B. Petitioners submitted a brief in opposition and support of their cross-motion for summary decision together with an Affidavit of Y.B. and F.B. Respondent filed a reply brief to petitioners' opposition and in opposition to petitioners' cross-motion.

STATEMENT OF FACTS

The following facts pertinent to the cross-motions for summary decision are uncontroverted, and I **FIND**:

S.B. was born on February 7, 2009. Since September 2014, S.B. has been attending SCHI, as an out-of-district school placement. S.B. is classified as eligible for

Special Education and Related Services pursuant to the federal eligibility category of "Intellectual Disability – Severe."

On November 21, 2016, petitioners attended an IEP-Annual Review meeting in Lakewood. At that meeting, the Lakewood IEP was developed and accepted by petitioner, F.B., who also agreed that the IEP be implemented prior to the expiration of the fifteen-day notice period. The Lakewood IEP provided for a program and placement out of district at SCHI and contained an implementation date of November 22, 2016.

On August 29, 2016, petitioners purchased a house in Howell. However, the family did not move to their new house until the end of November. The Student Transfer Card issued for S.B. by Lakewood listed the date of transfer as November 23, 2016. On November 30, 2016, petitioners registered their son at Howell. On December 1, 2016, petitioners brought their son to a meeting at Memorial with the Howell Supervisor of Special Education and professional staff members. Petitioners were shown the special class at Memorial where S.B. would be attending as of December 5, 2016.

The Certification of Patricia Callander submitted in support of Respondent's motion contained true copies of the following documents maintained by Howell regarding S.B.'s enrollment in the district:

> Exhibit A: Student Transfer Card dated November 23, 2016 and Certificate of Birth for S.B.
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> Exhibit B: S.B.'s Student Enrollment Form; registration form; and records showing proof of domicile.
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> Exhibit C: Lakewood's IEP, Annual Review, current IEP meeting date, and IEP implementation date.
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> Exhibit D: December 5, 2016 letter from Howell Township Board of Education Supervisor of Special Education to petitioners; December 1, 2016 memorandum to child study team; and December 1, 2016 e-mails to Howell staff members.
> Exhibit E: Howell Township school records for attendance and absences for S.B.; and

Exhibit F: Howell's fax to SCHI dated May 9, 2017 and Howell's student transfer card and transfer records from Howell to SCHI.

An e-mail dated December 1, 2016 from the Supervisor of Special Education at Howell to her colleagues informed them that S.B., a second-grade student with special needs, would be attending Memorial as of December 5, 2016 and the staff needed to set transportation and therapy schedules. Howell also generated a memorandum from the Child Study Team regarding S.B.'s placement and the related services he would be receiving. The Memorandum stated that S.B. would be placed in a CMI Class at Memorial and receive the following related services: Speech Therapy – three times per week, individual, and one time per week in a group; Occupational Therapy – two times per week, individual, and one time per week in a group; and Physical Therapy – one time per week in a group. These were the same related services and frequencies noted on the Statement of Special Education and Related Services contained in the Lakewood IEP annual review packet dated November 21, 2016.

When S.B. did not attend school on December 5, 2016, the Supervisor of Special Education sent a letter to petitioners welcoming S.B. as a Howell student and stating that the Lakewood IEP can be implemented in the CMI class at Memorial. The Supervisor reminded petitioners that December 5, 2016 was the expected start date and that each day that S.B. does not attend is considered an absence.

S.B. never attended one day at Memorial. On February 3, 2017, after S.B. had missed thirty-seven days of school, Memorial's principal sent a Student Transfer Card to the principal of SCHI where S.B. had continued to attend. Thereafter, Howell terminated S.B.'s enrollment.

On July 18, 2017, after filing the Due Process Petition, petitioners requested independent evaluations for their son from Howell. Howell did not respond to this request.

On August 16, 2017, petitioners sent a letter to Howell informing Howell of their intent to enroll S.B. at SCHI for the 2017-2018 school year and requesting full

reimbursement from Howell for all costs.

LEGAL DISCUSSION

Summary Decision may be rendered in an administrative proceeding if the pleadings, discovery, and affidavits "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). The standard to be applied in deciding a motion pursuant to N.J.A.C. 1:1-12.5(b) is essentially the same as that governing a motion under R. 4:46-2 for summary judgment in civil litigation. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121, (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995). The Supreme Court of New Jersey has adopted a standard that requires judges to "engage in an analytical process to decide whether the evidence 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.

A court should deny a motion for summary decision when the party opposing the motion has produced evidence that creates a genuine issue as to any material fact challenged. Brill, 142 N.J. at 528-29. When making a summary decision, the "judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 540.

In the instant matter there is no dispute as to material facts and the matter is ripe for summary decision.

1. "STAY- PUT"

The parties agree that this dispute is governed by 20 U.S.C. 1414(d)(2)(C)(i)(I) and N.J.A.C. 6A:14-4.1(g)(1). The Individuals with Disabilities Act, 20 U.S.C. 1414(d)(2)(C)(i)(I), provides as follows:

> (C) Program for children who transfer school districts.
>
> (i) In general.
>
> (I) Transfer within the same State. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

N.J.A.C. 6A:14-4.1(g)(1), provides as follows:

> When a student with a disability transfers from one New Jersey school district to another or from an out-of-State to a New Jersey school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:
>
> 1. for a student who transfers from one New Jersey school district to another New Jersey school district, if the parents and the district agree, the IEP shall be implemented as written. If the appropriate school district staff do not agree to implement the current IEP, the district shall conduct all necessary assessments and within 30 days of the date the student enrolls in

> the district, develop and implement a new IEP for the student.

Respondent's first legal issue is that the above regulations do not entitle petitioners to "stay-put" placement at SCHI. Petitioners voluntarily decided to move and thus transferred their son mid-school year. S.B.'s new IEP, prepared by Lakewood and accepted by petitioners, occurred within days of the family's move and the transfer of their son to a new school district. Under IDEA, as specified in the above code section, Howell was required to provide S.B. with a FAPE that included services comparable to those described in his Lakewood IEP. Under the New Jersey regulation, Howell was also required to act without delay and provide a program comparable to that set forth in the student's current IEP. Howell maintains that the parents had agreed to the IEP only seven days before enrolling their son at Howell. Because Howell agreed to implement the IEP, albeit within district, there was no need to conduct further assessments or develop a new IEP for S.B.

Respondent relies on J.F. v. Bryam Twp. Bd. of Educ., 629 Fed. Appx. 235, 237-238 (3d Cir. Oct. 29, 2015),[1] to support its position that when a student transfers under an existing IEP, the new district's obligation under the IDEA is to provide comparable services to what the student received from the prior district, but not necessarily the out-of-district placement. In Byram, the school district advised J.F.'s parents that it could implement the student's IEP in district and would not pay for J.F.'s continued placement at a private school. The parents in Byram filed for injunctive relief to enforce the private school placement for J.F. The petitioners in Byram advanced the same position, as the parents herein, namely that during the pendency of the due process petition, unless there is an agreement, the IDEA's stay-put provision, 20 U.S.C. 1415(j), requires that "the child shall remain in the then-current educational placement." Id. at 237. As noted by the Third Circuit in Byram, the purpose of the stay-put provision is to maintain the status quo in situations where the school district acts unilaterally. However, in situations where a parent chooses to move to a new school district, the same procedural safeguards are not required. Id. The United States District Court for the District of New Jersey in

[1] The Byram case is not considered binding precedent in the Third Circuit as it was not an opinion of the full court.

Cinnaminson Township Board of Education v. K.L. o/b/o R.L., 2016 WL 4212121 *5 (D.N.J. Aug. 9, 2016), determined as follows:

> While the 'stay-put' provision is an important procedural safeguard for special education students, it is not the only safeguard contained in IDEA, nor does it apply in every situation where a parent and school district have a dispute.

The District Court in Cinnaminson found the reasoning expressed by the Third Circuit in Byram to be pertinent to the analysis of whether the stay-put provision is operative when a student transfers school districts mid-year and the new school district becomes obligated under 20 U.S.C. 1414(d)(2)(C)(i)(I) to provide comparable services. The Byram and the Cinnaminson courts agreed that "stay-put" is not implicated because there is no unilateral act by a school district that is being imposed upon a student when it is the family who decides to transfer educational districts. The parents have foregone the status quo by their decision to move. In Cinnaminson, the court reasoned as follows:

> The use of 20 U.S.C. 1414 (d)(2)(C)(i)(I), instead of "stay-put" placements, balances the goal of maintaining educational consistency for special needs students with the recognition that families have accepted some amount of discontinuity in their child's education when they voluntarily change school districts.
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> [Id. at 5.]

The holding in Cinnaminson required the Cinnaminson School District to provide the transfer student with comparable services to the IEP issued in the student's prior district, Berlin. However, "comparable services" did not require the new school district to continue the private school placement specified in the prior school's IEP.

Petitioners argue that the facts herein are "radically different" from the facts in Cinnaminson and make note of the settlement agreements reached between the parties outlined in the Cinnaminson decision. The facts underlying the settlement agreements are not dispositive to any of the issues herein. It is the court's discussion of the "stay-put" placement as it applies to 20 U.S.C. 1414(d)(2)(C)(i) when a parent unilaterally moves a child to a new school district that is illustrative. The court understood that the transfer

student may not receive the exact continuity provided by a "stay-put" placement but the new school district is still required to provide a FAPE, with services comparable to those described in the previously held IEP until a new IEP is implemented.

Petitioners take exception to Howell's ability to implement the Lakewood IEP without the private placement at SCHI. In their Affidavit, petitioners submit that they expressed their concerns that the placement was not individualized for S.B. and the other children in the class were older and bigger and more advanced than S.B. They maintain that their visit to Memorial convinced them that it would not be an appropriate place for S.B. to attend. The court in Cinnaminson stated that even where parents are aggrieved under the above state regulation, there is no automatic default remedy to the creation of a "stay-put" placement for a transfer student.

> It is imperative to stress that in no way is the court suggesting that it is permissible for a school district to ignore mandates set forth in 6A:14-4.1(g)(1). What this court holds however, is that a breach of this regulation does not give the wronged party the leave to determine its own remedy without any basis in legislation or case law. What the breach does give the wronged party the right to do however, is to file a petition for emergent relief under New Jersey Administrative Code 6A:3-1.6, seeking the provision of appropriate services.
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> [Id. at 7.]

Therefore, for purposes of this motion, even accepting petitioners' statements that they did not agree to Howell's program, I still must **CONCLUDE** that the safeguard of the "stay-put" provision is not implicated when, as here, the parents made the unilateral decision to transfer their child mid-year to a new school district that offered "comparable services" to those described in the students very current IEP. 20 U.S.C. 1414(d)(2)(C)(i)(i). Accordingly, I **CONCLUDE** that there are no facts in dispute and respondent is entitled to judgment as a matter of law denying petitioners claim for "stay-put" placement at SCHI.

2. REIMBURSEMENT FOR SCHI

Under 20 U.S.C. 1414(d)(2)(C)(i)(1), Howell was required to provide a FAPE to S.B. by providing him with "comparable services" to those described in his existing IEP. Howell offered to implement S.B.'s existing IEP, in district, beginning on December 5, 2016. Petitioners submit that they were not part of the process and without their consent for Howell to act, Howell breached its duty under IDEA and New Jersey law. While petitioners had accepted the IEP on November 22, 2016 in Lakewood, they never agreed to Howell's program under the Lakewood IEP. Petitioners stress that without their agreement, Howell violated the IDEA and New Jersey law.

Petitioners are seeking an award of prospective payment of tuition because they allege as follows: 1. Howell failed to offer a FAPE via an IEP or amendment; 2. They had no other alternative but to continue their child's placement at SCHI; and 3. Equitable considerations support reimbursement.

In support of their position, petitioners rely on J.S. and B.S. on behalf of M.S. v. New Milford Board of Education, OAL Docket No. EDS 02594, Agency Docket No 2014 20735, wherein the Administrative Law Judge (ALJ) found that the district failed to provide a FAPE to a student who registered on June 20, 2013 from a private school when it failed to comply with the procedural requirements under N.J.A.C. 6A:14-3.4(e) by not conducting evaluations and assessments of M.S.'s educational needs within ninety calendar days. Because the school district expressed its need to evaluate M.S. but failed to take the appropriate action over the summer months, petitioners enrolled M.S. in his prior private school in September 2016. In J.S., New Milford Board of Education acknowledged that evaluations and assessments of M.S. were warranted. This case is clearly distinguishable. Under N.J.A.C. 6A:14-3(e), New Milford Board of Education determined that evaluations were warranted but still failed to take appropriate action. Here, Howell had the benefit of extensive current data and information supporting an IEP that was less than ten days old. Howell was tasked under 20 U.S.C. 1414(d)(2)(C)(i)(1) and N.J.A.C. 6A:14-4.1(g)(1) with using that information to provide a program that was comparable for S.B. The ALJ in J.S. noted that had the District engaged in an IEP process and offered a properly developed IEP to J.S. but the parents still wanted private-school funding, his outcome may have been different.

Petitioners also rely on A.P. and L.P. o/b/o H.P. v. Morris Board of Education, OAL Docket No. EDS 13892-12, Agency Docket No. 2012-18053, in which parents sought funding for their unilateral placement of their son at the Sinai School. In H.P., the parents were seeking to enroll their child in the public-school system after having been in a private religious school for the past five years. The parents informed the district that H.P. required special education, but the district made no effort from June through the middle of September for evaluation planning. The parents had no choice but to reenroll H.P. at Sinai that September. The ALJ in H.P. reached her decision in reliance upon N.J.A.C. 6A:14.2.7(k):

> (k) The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination of whether the child received a free, appropriate public education (FAPE). In matters alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:
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> 1. Impeded the child's right to a FAPE;
> 2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or
> 3. Caused a deprivation of educational benefits.

In H.P., the ALJ stated that where a "District responded to a referral for special education with no attention whatsoever to the procedural processes that guide delivery of services, I am left with the inescapable conclusion that H.P. was denied FAPE." That is not the situation here. S.B. was a mid-year transfer with an extant IEP. Petitioners had just recently while still in Lakewood been involved with the IEP review process and had agreed to implement the program, albeit, as an out-of-district placement. Petitioners toured the facility being offered at Memorial and met with staff. Howell offered to implement the Lakewood IEP in district with no interruption in services beginning on December 5, 2016.

The fact that S.B. presented as a transfer with an IEP that had been developed and accepted only seven days before his enrollment at Howell clearly distinguishes this

case from the above two cases relied on by petitioners. Because Howell offered petitioners a special education program with the same related services contained in the Lakewood IEP, there is nothing in the record to suggest that Howell failed to provide S.B. with a FAPE in compliance with 20 U.S.C. 1414(d)(2)(C)(i)(1). Under 20 U.S.C. 1412(a)(10)(C)(i)-(iii), the District is not required to pay for the cost of education, including special education and related services, of a child with a disability enrolled in a private school, if that district made FAPE available to the child and the parents elected to place the child in a private facility. In addition, by failing to send S.B. to Memorial, petitioners did not provide Howell with the opportunity to provide S.B. with a meaningful FAPE. Therefore, I **CONCLUDE** that summary decision is granted to respondent denying petitioner's claim for reimbursement for any costs or other relief associated with S.B.'s attendance at SCHI. I further **CONCLUDE** that petitioners' cross-motion for summary decision for reimbursement for the costs of sending their son to SCHI is therefore, **DENIED.**

3. INDEPENDENT EVALUATIONS

By letter dated July 18, 2017, F.B. requested independent evaluations of her son, S.B., "to fully understand the educational challenges and limitations" he faces. She requested that the following independent evaluations be conducted: "Educational; Psychological; Speech & Language; Social; and FBA[2]."

N.J.A.C. 6A:14-2.5(c) provides as follows:

> (c) Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

[2] Functional Behavior Assessment.

> 1. Such independent evaluation(s) 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 and a final determination to that effect is made following the hearing.
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> > i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or
> >
> > ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.

Petitioners cross-moved for summary decision granting their request for independent evaluations as a matter of law because of Howell's failure to challenge the request by filing a due process hearing within twenty days. Respondent moved for summary decision by claiming that N.J.A.C. 6A:14-2.5(c) did not apply because petitioners agreed with the Lakewood evaluations and because S.B. was disenrolled from Howell when the request was made.

Under N.J.A.C. 6A:14-2.5(c)(5), Howell could have questioned the parents about why they were requesting the independent evaluations, but it was still required to act in accordance with the regulation by either granting the request or filing a due process petition within twenty days.

There is no dispute that S.B. was domiciled in Howell when his mother made this request in July 2017. Delivery of services under IDEA is not conditioned on formal enrollment in the public schools. Moorestown Twp. Bd. Of Educ. v. S.D., 811 F.Supp.2d.

1057 (D.N.J. 2011). In Moorestown, the parents of a privately placed child questioned their public-school district about the kinds of services that could be offered to their child. The court held that the inquiry by a parent of a child receiving special education domiciled within the district placed the statutory obligation on the school district to develop and offer an IEP.

F.B., as the parent of a child domiciled within Howell, made a request for independent evaluations. I **FIND** that in accordance with N.J.A.C. 6A:14-2.5, Howell could either grant the independent evaluations request or file a due process petition within twenty days challenging the request. I **FIND** that there is no dispute about Howell's failure to file a timely due process petition to challenge S.B.'s request for independent evaluations. Therefore, I **CONCLUDE** that respondent's request for summary decision denying petitioners' claim for independent evaluations is **DENIED**. I further **CONCLUDE** that in accordance with N.J.A.C. 14A:2.5, petitioners are entitled to judgment as a matter of law granting their request for independent evaluations because Howell failed to file a request for due process within the 20-day time limit. Howell is to provide the independent evaluations requested by F.B., namely: "Educational; Psychological; Speech & Language; Social and FBA" at public expense in accordance with N.J.A.C. 6A:14-3.4.

ORDER

Based on the foregoing, it is **ORDERED** as follows:

1. Respondent's motion for summary decision denying petitioners' claim for "stay-put" placement at SCHI is **GRANTED**.

2. Respondent's motion for summary decision denying petitioners' claim for reimbursement for any costs or other relief associated with S.B.'s attendance at SCHI is **GRANTED**.

3. Respondent's motion for summary decision denying petitioners' claim for independent evaluations is **DENIED**.

4. Petitioners' cross-motion for summary decision seeking "stay-put" and reimbursement for expenses associated with S.B.'s enrollment at SCHI is **DENIED**.

5. Petitioners' cross-motion for summary decision seeking independent evaluations for S.B. is **GRANTED.** Howell shall provide the requested evaluations by giving S.B. a list of evaluators in each of the areas. Howell must pay the reasonable costs for each of the requested evaluations, which are to take place within two months of the date of this decision.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) 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. § 1415(i)(2); 34 C.F.R. § 300.516 (2017). 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 Programs.

May 16, 2018
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency

Date Mailed to Parties:

cmo