

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 15472-17

AGENCY DKT. NO. 2018 26960

**G.G. AND L.G. ON BEHALF OF M.G.,**

Petitioners,

v.

**MONTCLAIR BOARD OF EDUCATION,**

Respondent.

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**George Holland**, Esq., for petitioners

**Katherine Gilfillan**, Esq., for respondent (Schenck, Price, Smith and King,  
attorneys)

Record Closed: June 28, 2019

Decided: July 16, 2019

BEFORE **ELLEN S. BASS**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter arose with the September 19, 2017, filing of a due-process petition under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §1415 et seq., by G.G and L.G. on behalf of their daughter, M.G. Petitioners urge that the Montclair Board of Education (the Board) denied a Free and Appropriate Public Education (FAPE) to M.G. during the 2016-2017 school year and that accordingly, they are entitled to the expenses they incurred in unilaterally placing her in two programs during that year.

**PROCEDURAL HISTORY**

The contested case was transmitted to the Office of Administrative Law (OAL) on October 19, 2017. After unsuccessful settlement discussions at a hearing conducted on November 2, 2017, the case was scheduled for hearing in April 2018. These dates, together with dates scheduled in May and September 2018, and in January 2019, were all adjourned at the request of counsel for petitioners with the consent of his adversary and for a variety of reasons; to include personal scheduling conflicts and a request to proceed via Motion for Summary Decision.

Petitioners' motion was filed on August 15, 2018. The Board opposed the motion on September 28, 2018. Petitioners replied to the opposition on October 18, 2018. Via Order dated October 25, 2018, partial summary decision was granted in favor of petitioners on their claimed denial of FAPE. My Order directed that the parties proceed to hearing with petitioners' proofs relative to the appropriateness of the two placements at issue, Aspiro Adventure (Aspiro) and Ramapo for Children in New York, in its Young Adult Residential Transition Program (Ramapo); and as to any other compensatory education sought by them.

The hearing was conducted on April 1, 2 and 15, and 30, 2019. The record closed on June 28, 2019, with the adjournment of a final hearing date, and with the receipt of post-hearing submissions by the parties.

### **ISSUE PRESENTED**

Having determined via motion that the Board denied FAPE to M.G. during the 2016-2017 school year, what remains for adjudication is the scope of petitioners' entitlement to reimbursement for expenses incurred during the 2016-2017 year, to include tuition and other costs attached to placement at Aspiro and Ramapo. Petitioners also generally seek an award of compensatory education.

### **FINDINGS OF FACT**

### General Background Facts

The following background facts are uncontroverted, and I **FIND**:

M.G. is a 21-year-old woman. Until May 2017, she was a domiciliary of Montclair, and was classified by the Board's Child Study Team (CST) as eligible for Special Education Services under the category Multiply Disabled (MD). In September 2015, her parents and the Board reached a settlement of a prior due process petition; and agreed to share the cost of M.G.'s placement at the Purnell School, a private residential school, during the 2015-2016 school year. Under the terms of the agreement, M.G. would be disenrolled from the public schools. Thinking ahead to the 2016-2017 school year, the agreement specified that the parents could contact the school district if they wished to reenroll their daughter, and it was agreed that the parties would then meet and develop an Individualized Education Program (IEP). In or about March 2016, M.G.'s parents contacted Case Manager Monty Helfgott; expressed their desire to reenroll M.G.; and sought to begin the process of planning M.G.'s educational program in September 2016.

But on June 2, 2016, and before any real planning got off the ground, M.G. was expelled from Purnell. Her father advised Helfgott that her situation had become exigent, as M.G. was completely without an educational program for the coming school year. By June 14, 2016, her parents unilaterally placed her at Aspiro, a residential program in Utah. This was intended to be a short-term placement, and the family continued to ask that an IEP be developed for the 2016-2017 school year. The parents ultimately did meet with Helfgott on June 20, 2016, and they continued to communicate with him during the summer. Petitioners had additional evaluations completed, and these were shared with Helfgott, as were suggested school placements. But when September arrived, the school district still had not offered an IEP to the family. Helfgott advised that he was leaving the school district and that his replacement would contact the parents. But a new case manager never contacted the family; no IEP meeting ever

took place; and no IEP whatsoever was offered to M.G. for the 2016-2017 school year. M.G. was unilaterally placed by her parents at Ramapo in September 2016.<sup>1</sup>

Both M.G.'s father's testimony, and psychiatric and psychological testing, describe a young woman with complex needs. Concerned about M.G.s' ability to function independently, on February 2, 2016, her parents obtained an order from the Superior Court granting them guardianship of their daughter. She has been diagnosed with ADHD, a receptive language disorder, oppositional defiant disorder, and borderline personality features. Since age fourteen, abuse of marijuana has been a concern. Social issues, poor decision making, and poor executive functioning skills have impeded M.G.'s educational progress. She has engaged in risky behavior, to include running away from home, and inviting dangerous individuals into her parents' home. M.G. functions at the low average range of intelligence; recent psychological testing reveals a full-scale IQ of 82. Her parents reported to Dr. Joshua Cluff, a psychologist who tested her while at Aspiro, that historically social pressures have overwhelmed their daughter; contributed to her poor decision-making; and have led to a lack of success in a variety of school environments. While M.G. earned enough credits to complete her eleventh-grade year at Purnell, M.G. was still one academic year shy of her diploma when she was expelled.

#### The Decision to Unilaterally Place M.G.

G.G. explained the decision-making process that resulted in M.G.'s placements at Aspiro and Ramapo. He retained the services of educational consultant Jodi Listen, who recommended Aspiro. Upon M.G.'s discharge from Aspiro, Listen helped G.G. locate Ramapo. According to G.G., when he placed M.G. at Aspiro, he was in a "crisis mentality." M.G. had been expelled from Purnell, and he sought an interim placement that would stabilize his daughter. G.G.'s application expressed the hope that Aspiro would address the following concerns: "[p]oor executive functioning, limited social boundaries and increasing tendencies toward risky behavior." G.G.'s goals for M.G.'s placement there were to have her "[q]uit smoking tobacco and marijuana. Cut down

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<sup>1</sup> These uncontroverted facts were offered via certification in support of petitioners' Motion for Summary Decision.

significantly on her obsession with social media. Help her develop into a young, independent minded and more responsible young adult.” At the advice of professionals, upon her discharge from Aspiro, G.G. immediately placed M.G. at Ramapo, without having her return home. The application to Ramapo expressed the desire that M.G. learn to live independently, learn to follow rules and structure, and learn to nurture healthy relationships. Her father wrote that he sought a “structured and safe environment to learn and transition to adulthood” for M.G.

G.G. summed up his rationale for these placements best thusly:

I want to just keep reinforcing the way that I was trying to do my best with this and that's all I could do is my best in trying to take all of what I can learn, what I can garner with respect to advice, try to see where M. was and then to put her in these placements that would give her a chance to make further progress and I have, you know, modest expectations because of M.'s challenges...My daughter has a lot of disabilities and it's very hard to try and find the perfect place that would fulfill all of her needs, so I did the best I could to try to get her to a spot that would help her develop positively, keep her safe, keep her the positive person she is, she's an extraordinarily energetic and optimistic woman that needs a lot of help and what I did for her I'm hoping was successful in her mind and also in my mind as her adult parent.

G.G. was advised that his daughter required the support of a residential setting. An April 29, 2015, psychiatric report stated that “[r]esidential treatment would be recommended as an option for continuing [M.G.’s] education given her history of limited response despite significant in and out of school support.” And Dr. Joshua Cluff opined that “it is not recommended that [M.G.] go home after completing her stay at Aspiro, but that she continue in a residential based program that is able to offer the opportunity to transition into adulthood...”

I **FIND** that G.G. did not send a letter giving the district notice of his intention to make these unilateral placements.

Aspiro Adventure

M.G. attended Aspiro Adventure from June 14, 2016, through on or about September 14, 2016. The program was described by Caitlin Galt, a clinical therapist for Aspiro. She was admitted as an expert in wilderness programming. Galt generally described Aspiro as a young adult program which works with clients who have executive functioning, and social skills deficits. Her program attempts to develop those skills so that participants can transition into adulthood successfully. There is a lot of engagement with peers; therapy sessions throughout the week; and adventure activities during which participants implement the skills that they are learning. Quite interestingly, Galt fairly consistently referred to the Aspiro population as “clients” rather than “students.”

Aspiro works with clients who struggle in school and cannot translate the skills that they are learning in therapy into natural settings. In the winter clients go skiing and backpacking and canyoneering and, in the summer, they mountain bike, hike and climb. Each of these activities presents an executive functioning challenge, and it is powerful for clients to practice these skills in a variety of environmental settings. There is a high staff to student ratio. The program’s goals were explained as follows:

...I think especially with our kids these days is there is a lot of technology-based stimulation. There is a lot of checkout, so getting them back into a pattern of successes and feeling as though they can accomplish things and being able to do more through a daily process and regulate emotions and learn some new skill for communication and learning in this different environment where they don’t have all of the distractions on the outside world while providing successes...

Aspiro is licensed by the State of Utah and is accredited by the National Association of Therapeutic Schools and Programs. Galt testified quite unequivocally, and I **FIND**, that Aspiro is not a school and the focus of its work with M.G. was therapeutic. Aspiro offers no formal educational programming. Clients do not attend a school or classroom to obtain academic instruction. Staff who accompany clients on wilderness outings are not certificated teachers. Clients could earn credits in English and Physical Education by completing study packets; it is uncontroverted, and I **FIND** that M.G. earned no credits

toward her diploma while at Aspiro nor did she attempt to do so. Indeed, M.G.'s discharge summary offers no information at all about academic progress.

### Ramapo for Children

M.G. attended Ramapo for Children from September 14, 2016, until May 20, 2017. The program was described by Mike Pfisterer, the Co-Director of the Staff Assistant Program, who was admitted as an expert in transition programming for young adults. I **FIND** that Ramapo was developed in response to a demand for options for students who were aging out of traditional school settings but needed additional support to transition to post-secondary settings such as college or the workplace. Students are enrolled in a residential setting that taps into the student's skills, interests, and cognitive ability to explore the possibilities for life after school and in the community. The program addresses social skills, skills of independent living, and vocational skills. Pfisterer stressed that each student is unique; presents with highly individualized strengths and deficits; and the program is likewise individualized to meet that student's needs.

Programming takes place throughout the day, except when students are sleeping. A typical day starts with a "head to toe check" at 8:00 a.m. to ensure that students are properly groomed, and know their daily schedule, including where to pick up transportation to the day's activity. The students then attend breakfast, unless they are going to college or work activity. Breakfast is a time to focus on social interactions and healthy diets. At 9:00 a.m. there is typically a morning meeting, in which the students review what the day will entail. Afterwards, until noon, the students engage in an on-campus work activity with the assistance of job coaches. Lunch is at 1:00 p.m. After lunch another meeting helps set the stage for the afternoon's activities. Between 2:00 p.m. and 6:00 p.m. students continue with work activities, and meet with staff to discuss their goals. Dinner is once again a communal experience, and many of the students assist with meal preparation. From 6:30 p.m. until about 8:30 p.m. activities emphasize social skill development and community building. There is then a room

check, to ensure students are maintaining their personal space appropriately, and that they are being attentive to personal hygiene.

Weekends likewise are filled with assistance with activities of daily living such as laundry and grocery shopping. In the afternoon, students participate in a community outing, such as a hike or a movie; this assists the students in interacting with members of the greater community. At 9:30 p.m. there is a wrap up to the day, and students return to their rooms. They are assigned roommates; again this teaches the students to interact with and cooperate with others. Pfisterer emphasized that roommates are thoughtfully assigned with consideration given to each individual's needs, strengths, and limitations.

There are fourteen staff members in the Ramapo program, to include administrative staff, program coordinators, athletic personnel, drivers, and a vocational specialist. Job coaches oversee student work. Some students hold jobs at local nursing homes, restaurants, grocery stores, and animal shelters, by way of example. These job opportunities are coordinated by the vocational specialist; students are supported at the work site as needed based on their abilities. Students who are college-aged can pursue credits at local colleges and universities. Outside tutors are also retained to assist students with academic pursuits, to include earning a GED. The tutor recommended by Ramapo specializes in executive functioning challenges, as well as learning differences. Psychologists are available to monitor and address mental health issues. Staff members are present and assist with every facet of the student's day. They eat meals with the students. If a student wishes to pursue college level work, or a GED, staff are available to help keep the student on track and navigate organizational challenges. Staff likewise assist students with navigating the outside world, such as doctor's visits, coordinating insurance, and so forth.

The residential campus allows students the freedom they show they can manage. Students typically start their stay at Ramapo in a dormitory-like setting, but graduate to a shared apartment. Pfisterer described the population at Ramapo. They are students with learning differences, and organizational difficulties. A majority of the



students experience challenges with anxiety, attention deficit disorder, depression and autism spectrum disorders.

Pfisterer discussed M.G.'s experience at Ramapo. In addition to fully participating in the programming he generally described, M.G. was referred for tutoring so that she could obtain her GED. She received psychotherapy from an outside provider as well.<sup>2</sup> M.G. began her time at Ramapo in dormitory style housing and graduated to apartment-style living. The decision to move her was based on her demonstrated ability to cook and clean independently and safely manage this transition.

Pfisterer related that M.G. had difficulties with social boundaries, and difficulty advocating for her needs. As time progressed she was much more comfortable accessing supports, and with establishing firm boundaries with her peers. Ramapo offered social skills workshops and coaching during work and social experiences to assist in M.G.'s growth in these areas. M.G. presented with challenges in the area of executive functioning. She had a good deal of difficulty getting herself ready for the day and organizing herself in a way that would allow her to maintain employment, get to school on time, or allow her to complete academic assignments. M.G. needed a tremendous amount of coaching when she started at Ramapo in adhering to a routine and a schedule; in hygiene, as well as proper clothing choices. Through the use of routines and structures, the program helped M.G. grow in these areas. Ramapo staff worked with M.G. on using money correctly; she has dyscalculia, and this was a challenge for her.

While M.G. made gains at Ramapo, Pfisterer conceded that drug abuse remained a challenge for her. Nor did she earn her GED. Certain academic programs, such as one operated by the Board of Cooperative and Educational Services (BOCES) were not considered a good choice as these programs required too much independence, and exposure to a broader range of peers whose behavior might influence M.G. She did go to NA and AA meetings while at Ramapo. And at first, she was not permitted to go home. But eventually M.G. did visit at home, and Pfisterer was

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<sup>2</sup> Both providers billed G.G. for their services separate and apart from the fees he paid to Ramapo.

aware that on these visits she would return to drug usage. She had been found with illicit drugs while at Ramapo as well, to include Cannabis and Vicodin. So when she left Ramapo, Pfisterer recommended that M.G. be provided with a sober environment. He conceded that by May of 2017 he did not feel Ramapo could any longer meet her needs. Pfisterer presented the only first-hand account both of Ramapo's services and M.G.'s progress in its program, and I thus **FIND** that Ramapo offered the services described by Pfisterer, and M.G. progressed there as he described.

Kate Stanton Paule is the transition coordinator for the Montclair Public Schools. She does not know M.G., but was offered as a witness merely to explain that transition programs include services that are not delivered in a traditional classroom. Her program is community based and provides programming in five major domains, to include employment, community living, continuing education, daily living skills and social skills. The program is highly individualized. Paule described it as a program to bridge the gap for many students between high school and college.

Some students focus on employment and spend their days in a work setting. They would typically spend either the morning or afternoon doing so. It is not an academic program. Daily living skills are emphasized for students who require assistance in doing laundry, choosing appropriate clothing, grocery shopping, meal preparation, and transportation. Time management skills are addressed in the program. Social skills training is integrated into the work setting. Counseling is available if included in the IEP. Most students have completed their academic requirements and have earned a high school diploma prior to entering the program; a very few have a few credits left to earn.

Thomas Santagato is the Director of Special Services for the Montclair School District and was admitted as an expert in special education and transition programming. Although clearly an experienced special education professional, Santagato's testimony was of limited utility in analyzing the issues presented by the due process petition. He was not employed by the district during the time that M.G. was seeking services from the school district; has never met or observed M.G.; has not visited Ramapo or

observed the programming there; and based his testimony exclusively on a review of records and a conversation he had with a representative of Ramapo, Jennifer Buri da Cunha. He opined that Ramapo was not a school, and shared that da Cunha made it clear that M.G. could not earn a diploma at Ramapo. Santagato believed that M.G. was not ready for a transition program of the sort offered by Montclair precisely because she had not yet graduated. And Santagato opined that M.G. should have been able to timely graduate; the implication being that graduation should have been the focus of her educational placement, with a program like that offered by Ramapo coming later, if needed and appropriate.

### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. \_\_\_\_ (2017); 137 S. Ct. 988; 197 L. Ed. 2d 335. Where, as here, the Board offered no IEP whatsoever during the 2016-2017 school year, I must inescapably **CONCLUDE** that M.G. was denied FAPE.<sup>3</sup>

Having concluded that the Board denied FAPE to M.G., I am authorized to “grant such relief as [I determine] is appropriate.” 20 U.S.C. § 1415(e)(2). A parent who is compelled to unilaterally place a child in the face of a denial of FAPE, need not unilaterally place their child in a school that meets state standards. Florence County Sch. Dist. v. Carter, 510 U.S. 7, 15, 114 S. Ct. 361, 366, 126 L. Ed. 2d 284, 293 (1993); L.M. ex rel H.M. v. Evesham Twp. Bd. of Educ., 256 F.Supp. 2d 290 (D.N.J. 2003). The Third Circuit has held that “parents [are] entitled to reimbursement even [when a] school

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<sup>3</sup> The Board does not disagree and has from the outset conceded that it offered no IEP to M.G. for the 2016-2017 school year. And its personnel were aware as early as March 2016, that M.G. sought special education services.

lack[s] state approval because the [FAPE] state standards requirements . . . [apply] only to placements made by a public entity.” Id. at 297 (citing T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 581 (3rd Cir. 2000)); see also Warren G. v. Cumberland Cty. Schl. Dist., 190 F.3d 80, 83 (3d Cir. 1999). See also: 34 C.F.R. §300.148(c); N.J.A.C. 6A:14-2.10.

Our courts recognize that parents who are compelled to unilaterally place their child by necessity do so without the input of school professionals that is part of a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can. Accordingly, “when a public-school system has defaulted on its obligations under the IDEA, a private school placement is ‘proper under the Act’ (IDEA) if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence, 510 U.S. at 11, 114 S. Ct. at 365, 126 L. Ed. 2d at 293 (quoting Rowley, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. Since the Florence decision, the Supreme Court in Endrew F. has redefined FAPE. I thus **CONCLUDE** that the placements made by these petitioners are proper if, and only if, they were “reasonably calculated to enable [M.G.] to make progress appropriate in light of [her] circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 at 1001.

Petitioners argue that even if the placements at issue offered no educational services to M.G., they would nonetheless be entitled to reimbursement. This contention is meritless. A placement paid for by a public school must deliver educational services. Indeed, noneducational services are expressly excluded from the ambit of the IDEA. 20 U.S.C. §1401(26)(A). For example, school districts clearly are not responsible for medical or psychiatric placements. Irvington Independent Sch. Dist. v. Tatro, 468 U.S. 883 (1984). See also: Mary T. v School Dist. of Philadelphia, 575 F. 3d 235 (3d Cir 2009); Munir v. Pottsville Area Sch. Dist., 723 F. 3d 423 (3d Cir. 2013); Clovis Unified Sch. Dist. v California, 903 F. 2d 635 (9th Cir. 1990). For this reason, I **CONCLUDE** that petitioners are not entitled to reimbursement of their expenses at Aspiro.

By G.G.'s own admission, Aspiro was a short-term placement made in reaction to a crisis in M.G.'s functionality. Nothing in his application form addressed a desire to achieve academic progress for his daughter, rather, G.G. candidly advised Aspiro that he needed a program that would address his daughter's social and emotional dysfunction, a dysfunction evidenced in part, by her abuse of illicit drugs and other "risky behavior." Galt testified with candor that Aspiro is not a school, and that its program focuses on the therapeutic needs of its clients, not their educational ones. To the extent that some academic work packets are available to clients, it is clear that academics are an afterthought; or at best, a courtesy offered to clients at Aspiro. I thus cannot ask the taxpayers of Montclair to fund M.G.'s placement there.

But I also **CONCLUDE** that petitioner is entitled to reimbursement for his expenses at Ramapo. His choice of this program for his daughter was reasonably calculated to enable her to make progress in light of her circumstances. While a purely therapeutic program is not a school, a setting where students do not sit in rows in a traditional classroom can be one. Any differences between the Montclair transition program and Ramapo notwithstanding, the Montclair program does serve to emphasize that public schools have a role in transition, and that a program that explores career goals, activities of daily living, and executive functioning skills can absolutely constitute a "school" for purposes of reimbursement under the IDEA.

The record makes it plain that the Board believes that M.G. needed something different than a transition program. Santagato urged that M.G. could have and should have either intensively addressed her substance abuse issues, or alternatively, attended a day program where she could have earned her high school diploma. But the Board did not offer a day program to M.G., instead, it offered her absolutely nothing. The case law thus makes it clear that her father did what any loving parent would do, he consulted private educational professionals and made the best decision he knew how to under the circumstances. I **CONCLUDE** that the Ramapo placement offered sufficient educational programming to pass muster under the Florence standard. This is even more true when consideration is given to the fact that Ramapo enhanced its program by providing access to outside local tutoring and therapeutic support.

The Board points out that although M.G. had some successes at Ramapo, ultimately, she was asked to leave there. But a consideration of the family's decision to place her at Ramapo must be based on what they knew at the time of placement. Indeed, our case law instructs that that the appropriateness of an educational plan developed by an IEP team cannot be judged exclusively in hindsight. An IEP is a "snapshot, not a retrospective." Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1991), citing Roland M. v Concord School Committee, 910 F.2d 983,992 (1st Cir. 1991). Thus, "in striving for 'appropriateness', an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." Ibid. Our courts have confirmed that "neither the statute nor reason countenance 'Monday morning quarterbacking' in evaluating a child's placement." Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 762 (3rd Cir. 1995), citing Fuhrmann, 993 F.2d at 1040. These concepts have equal applicability when a parent is forced to unilaterally place his child due to a denial of FAPE. The placement chosen by G.G. had to be "reasonably calculated" to meet M.G.'s needs; the best anyone can do, school personnel and parents alike, is hope that they calculated correctly. Indeed, children are complex and dynamic. The path they take may often confound even the most well-informed, well-intentioned and thoughtful adults.

Precisely because a parent who is unilaterally placing a child essentially does the best that he can do, I must reject the Board's contention that reimbursement for Ramapo should be denied because M.G. did not need to be residentially placed. G.G. was guided by the advice of at least two professionals who urged that his daughter's needs for consistency and supervision were best met in a residential setting. A child who is eloping, engaging in risky behaviors, and constantly distracted by social issues is not available for learning. M.G. was placed at Ramapo because G.G. was advised that she needed a residential setting to progress. See: Kruelle v. New Castle County Sch. Dist., 642 F.2d 687 (3d. Cir. 1981). The exclusive witness to urge that a residential setting was unwarranted, Santagato, had neither met nor observed M.G. I thus can give his opinion little weight.

The Board also argues that reimbursement should be denied because G.G. failed to provide notice of his unilateral placements as required by N.J.A.C. 6A: 14-2.10(c). It points out that at the time G.G. placed his daughter at Ramapo, Helfgott was still employed in Montclair, and that accordingly, notice could have been provided to him. And regardless of Helfgott's status, a letter offering notice could have been sent to any number of other school district representatives, to include the Director of Special Services. The regulation provides that "the cost of reimbursement...may be reduced or denied" (emphasis supplied) if:

(c) The parents must provide notice to the district board of education of their concerns and their intent to enroll their child in a nonpublic school at public expense. The cost of reimbursement described in (b) above may be reduced or denied:

1. If at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district;
2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;
3. If prior to the parents' removal of the student from the public school, the district proposed a reevaluation of the student and provided notice according to N.J.A.C. 6A:14-2.3(g) and (h) but the parents did not make the student available for such evaluation; or
4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Petitioners reply that they were under no obligation to offer such notice, because the regulation goes on to provide for certain exceptions as follows at N.J.A.C. 6A:14-2.10(d):

The cost of the reimbursement for enrollment in a nonpublic school shall not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if the conditions in

(d)3 and 4 below are met, and, at the discretion of a court or an administrative law judge, may not be reduced if the conditions in (d)1 and 2 below are found to exist:

1. The parent is illiterate and cannot write in English;
2. Compliance with the notice requirement in (c)1 and 2 above would likely result in physical or serious emotional harm to the student;
3. The school prevented the parent from providing such notice; or
4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

Petitioners contend that per N.J.A.C. 6A: 14-2.10(d)(4), since no IEP was offered to M.G., she did not receive any sort of formal written notice; accordingly, her father had no obligation to notify the school district that he intended to unilaterally place his child. Petitioner misconstrues the intent of the regulatory language. N.J.A.C. 6A: 14-2.10(d)(4) provides for an exception to the notice requirement where a school district does not formally apprise the parents of their procedural obligations; the paragraph does not address lack of notice in more general terms. This is perhaps more clearly articulated in the federal regulation, which provides that reimbursement must not be reduced if the “parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) ...” 34 C.F.R. §300.148(e)(1)(ii). There was no proof offered that G.G. did not receive a copy of Parental Rights in Education (PRISE), or otherwise was not informed of his obligation to provide prior notice of unilateral placement.

Notwithstanding, I **CONCLUDE** that the regulation does not speak in the imperative, but rather directs that, as the Administrative Law Judge, I “may” reduce reimbursement under the circumstances specified in the regulation. While I am unable to direct reimbursement for Aspiro for the reasons previously expressed, I do not agree that the absence of formal written notice should bar reimbursement for Ramapo and the other expenses attached to M.G.’s placement there. There must be some remedy available to address this gross denial of FAPE. Our courts recognize compensatory



education as a remedy under the IDEA, which should be awarded “for the time period during which the school district knew or should have known of the inappropriateness of the IEP, allowing a reasonable time for the district to rectify the problem.” M.C. o/b/o J.C. v. Cent. Reg’l Sch. Dist., 81 F. 3d 389, 392 (3d Cir. 1996). Compensatory education requires school districts to “belatedly pay expenses that [they] should have paid all along.” Id. at 395.

Compensatory education is an equitable remedy, and one that requires a fact sensitive case-by-case analysis. Our courts have recognized that “[a]ppropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” Parents of Student W. v. Puyallup Sch. Dist. No 3, 31 F. 3d 1489, 1497 (9th Cir. 1994). See also: Neena S. v. Sch. Dist., 2008 U.S. Dist. LEXIS 102841 (E.D. Pa., 2008). My task is “to weigh the interests on both sides and determine the equitable outcome. This is not an easy task, [and I must] balance the interests of finality, efficiency, and use of the School District’s resources with the compelling needs [of the student].” Ferren C. v. Sch. Dist. of Phila., 595 F. Supp. 2d 566, 577 (E.D. Pa. 2009), aff’d 612 F. 3d 712 (3rd Cir. 2010).

With this analysis in mind, I **CONCLUDE** that fairness and equity dictate that G.G. be reimbursed for all the expenses he incurred at Ramapo, to include tuition and room and board, tutoring and counseling expenses, and consultative fees, notwithstanding the lack of notice. Somehow M.G., a classified student who was not yet twenty-one years old and had yet to earn a high school diploma, was forgotten about by the CST; even though her father repeatedly attempted to collaborate with school personnel. It is impossible to countenance the Board’s contention that despite its clear and admitted violation of the IDEA, there is no remedy available for this parent.

### **ORDER**

Based on the foregoing, together with the record as whole, it is **ORDERED** as follows:

1. The request for reimbursement for the expenses incurred at Aspiro Adventure is **DENIED**.
2. The request for reimbursement for the following expenses related to the placement at Ramapo for Children is **GRANTED**:
  - a. Tuition to include room and board
  - b. Tutoring expenses incurred with Susan Phillips
  - c. Therapy costs incurred with Gregory Baker
  - d. Consultation costs for Jodi Listen, but only as to the recommendation for placement after the completion of the program at Aspiro

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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 (2018). 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.

July 16, 2019

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**ELLEN S. BASS, ALJ**

Date Received at Agency

July 16, 2019

Date Mailed to Parties:

July 16, 2019

**APPENDIX**

**Witnesses**

**For Petitioners:**

G.G.  
Kate Stanton-Paule  
Mike Pfisterer  
Caitlin Galt

**For Respondent:**

Thomas Santagato

**Exhibits**

**For Petitioners:**

P-1 Guardianship order  
P-2 Settlement decision  
P-3 Email dated March 9, 2016  
P-4 through P-9 Not admitted  
P-10 Letter from Purnell School, dated June 2, 2016  
P-11 through P-16 Note admitted  
P-17 Cluff report  
P-18 Not admitted  
P-19 Gray report  
P-20 Letter from Ramapo, dated November 25, 2016  
P-21 Placement plan and goals  
P-22 Aspiro parent manual  
P-23 Newspaper clipping  
P-24 Aspiro costs  
P-25 Tutoring costs

- P-26 Ramapo costs
- P-27 Therapy costs
- P-28 Consultant costs
- P-29 Cancelled checks

For Respondent:

- R-1 Aspiro application
- R-2 Aspiro master treatment plan
- R-3 Medical documentation
- R-4 Ramapo acceptance letter
- R-5 Aspiro discharge summary
- R-6 Not admitted
- R-7 Ramapo parent questionnaire
- R-8 Ramapo student questionnaire
- R-9 Ramapo acceptance letter
- R-10 Not admitted
- R-11 Pfisterer letter, dated May 1, 2017
- R-12 through R-13 Not admitted
- R-14 Santagato notes
- R-15 Santagato resume