State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION
OAL DKT. NO. EDS 13038-14
AGENCY DKT. NO. 2015 21718

H.S. AND M.S. ON BEHALF OF A.S.,
Petitioners,
v.
HARRISON TOWNSHIP
BOARD OF EDUCATION,
Respondent.

Jamie Epstein, Esq., appearing for H.S. and M.S.

Brett Gorman, Esq., appearing for Harrison Township Board of Education (Parker McCay, attorneys)

Record Closed: December 10, 2014 Decided: January 7, 2015

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

H.S. and M.S. (parents or petitioners), on behalf of their son A.S., have filed for a due-process hearing against the respondent, Harrison Township Board of Education (District), seeking compensatory education, inclusive out-of-district placement comparable to the Cherrywood Academy, and other reimbursement relief.

PROCEDURAL HISTORY

On or about September 9, 2014, the parents filed their due-process petition. It was transmitted by the Office of Special Education Programs (OSEP) of the Department of Education (DOE) to the Office of Administrative Law (OAL), where it was filed on October 9, 2014. The hearing was held on October 22, and December 10, 2014, at which time the record closed.

BACKGROUND[1]

On November 1, 2012, the parents filed a due-process petition, seeking that the District find A.S. eligible for special education, reimburse them for unilateral placement at out-of-district Cherrywood Academy and Private Preschool (Cherrywood), continue A.S.'s placement at Cherrywood, and provide compensatory education to him. They also contended that placement at Cherrywood was the appropriate educational program and placement for A.S. The District contended that placement was not necessary, that A.S. could have received a free and appropriate education at the District's schools, and that because Cherrywood was unlicensed and unapproved, reimbursement for fees was not permitted. This petition was transmitted by OSEP to the OAL, where it was filed on December 4, 2012, under docket number EDS 15976-12.

On January 10, 2013, the District filed a petition seeking a pediatric neurological evaluation which was transmitted by OSEP to the OAL, where it was filed on January 10, 2013, under docket number EDS 580-13. These two petitions were consolidated for hearing, which was held on March 18, 19, and 27, May 20 and 21, June 19, July 9, and September 11, 2013.

[1] The present matter represents the fourth time the petitioners and the District have been in this forum within two years.

On October 13, 2013, I issued a Decision which included the following:

> I therefore **CONCLUDE** that A.S. was not offered [a free appropriate public education] within the District. This conclusion is based on the following: the inability of the child to communicate well consistently when not in a testing situation and the failure to address that issue; the disparity between the test results and his performance in school; the lack of reasonable accommodations to his hearing loss; the lack of a 504 plan to accommodate A.S.'s hearing loss and behavior issues; the medical diagnoses of autism/ASD and epilepsy which were not addressed in the evaluations; the need for further evaluations which were not performed; and the failure to address the behaviors that were observed but not considered in the evaluations. The education provided to A.S. at the District was not specifically designed to meet his unique needs and did not provide sufficient support to permit the child to benefit from the instruction.
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> . . . .
>
> It is **ORDERED** that the petition of parents H.S. and M.S. on behalf of A.S. is **GRANTED**. A.S. shall be classified and provided special education. The District shall compensate the parents and reimburse them the co-pays for tuition for the 2012–13 school year in the amount of $2,460.00 [at Cherrywood]. I also **ORDER** that the transportation expense of $1,321.84 for mileage reimbursement shall be paid to the parents by the District.
>
> I further **ORDER** that the petition of the District to conduct a pediatric neurological evaluation of A.S. in order to determine the present state of his disability is **GRANTED**.
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> Pending completion of that evaluation, A.S. shall be classified as Other Health Impaired and shall be provided with an [individualized education program] and special-education services designed to accommodate his particular needs. A 504 plan shall also be formulated to maximize his access to education in the least restrictive environment.[2]

The child continued at Cherrywood for school year 2012–2013. The parents had not indicated where the child would attend school for school year 2013–2014, but on October 15, 2013, the parents filed a petition with OSEP for due process for the 2013–

[2] This decision may remain on appeal before the United States District Court.

2014 school year seeking continued placement at Cherrywood. A petition for emergent relief was filed with the OAL on October 17, 2013, which was heard on October 21, 2013, before the Hon. Robert Bingham, ALJ. He concluded the following:

> . . . [T]he petitioner's request for emergent relief is **GRANTED**. It is hereby **ORDERED** that the "stay-put" placement of A.S. is the Cherrywood Academy. It is further **ORDERED** that respondent shall pay tuition and transportation costs, retroactive to October 11, 2013, and lasting for the duration of the proceedings arising from the October 15, 2013, due-process petition, "unless the State or local educational agency and the parents otherwise agree," 20 U.S.C.A. § 1415(j). Tuition costs shall be paid at a rate of $15.00 per day, and transportation costs shall be paid at a mileage rate of 31 cents per mile at 26 miles per day, pursuant to the order of ALJ Scarola. Respondent shall pay such tuition and transportation costs within ten days of receipt of an invoice for same.
>
> This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parent, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415(f)(1)(B)(i). If the parent feels that this decision is not being fully implemented with respect to the program or services, this concern should be communicated in writing to the Director, Office of Special Education.

It appears that the parties thereafter entered into a settlement agreement which permitted the child to remain at Cherrywood for the 2013–2014 school year, with the District providing reimbursement to the parents and services to the child.

Problems regarding placement for the 2014–2015 school year form the basis for the present due-process hearing. During the summer of 2014, a placement for school year 2014–2015 had been contemplated for the child at the Clark School in East Greenwich Township commencing in September. However, an issue arose as to the East Greenwich placement that necessitated an emergent hearing before the Hon. John Russo, Jr., ALJ. On September 18, 2014, he issued an Order which contained the following:

> Both parties agreed that the district would provide A.S. with an out of district placement in an inclusionary program at the Clark School in the school district of East Greenwich Township that would be consistent with the program and services that A.S. received at Cherrywood, which was the previous stay-put placement.
>
> . . . .
>
> For the reasons set forth above, I **CONCLUDE**, specifically, due to the fact that respondent did not oppose the petitioner's emergent application that the petitioners have met their burden of proof, and, as such, I **GRANT** the petitioners' application for emergent relief. I **CONCLUDE** that the District must immediately ensure that A.S. is enrolled at the Clark School in an inclusionary program that is consistent with the program set forth in C-1, which is A.S.'s "stay put" placement for the remainder of the present due process petition.[3]
>
> It is hereby **ORDERED** that the respondent district within twenty-four hours of receipt of this Order forward to the Clark School a copy of this Order and a copy of C-1 and C-2, in an effort to have the Clark School enroll A.S. in an inclusionary program consistent with program as set forth in C-1, until such time as A.S.'s educational placement is changed in accordance with the procedures of the IDEA or until the pending due process hearing is resolved.
>
> It is further **ORDERED** that the respondent district immediately comply with any of the requests of the Clark School to facilitate this placement.
>
> It is further **ORDERED** that the District immediately ensure that A.S.'s program at the Clark School is consistent with the program set forth in C-1.
>
> It is further **ORDERED** that A.S. shall immediately be accepted as a student at the Clark School in an inclusionary program that is consistent with the program set forth in C-1 and that this placement shall continue pending the outcome of the within due process hearing.

However, as will be seen, this Order was essentially meaningless as to placement because by the time the emergent matter was heard, the East Greenwich school district

[3] C-1 is an individualized education program (IEP) that has never been executed by the parents.

had indicated that it would not accept A.S. for placement because it could not implement the IEP (C-1) provided by the District, and, in any event, the IEP had never been agreed to by the parents. The remainder of this Order concerning program requirements remained in effect, as A.S.'s classification would remain "other health impaired," as determined in the first due-process hearing of October 13, 2013.

FACTUAL DISCUSSION

Many of the facts in this matter are undisputed:

1. A.S. did not attend school from September 4, to September 19, 2014.

2. A.S. attended Cherrywood from September 22, 2014, to October 31, 2014, at which time he was placed in an out-of-district inclusionary program.[4] The parents requested that respondent pay for A.S.'s attendance at Cherrywood for those days and the District refused.

3. Cherrywood is neither State approved nor accredited and only has levels of instruction through kindergarten. Cherrywood was the "stay-put" placement for school year 2013–2014 as the result of Judge Bingham's Decision and the settlement then reached between the parents and the District for that year ("the last agreed-upon placement").

4. Although A.S. is age appropriate for second grade, his placement is first grade as a result of repeating kindergarten. His birthday is in August.

5. No signed IEP was in effect on September 7, 2014.

[4] This program included discrete-trial teaching, Applied Behavior Analysis (ABA) methods, data collection, parent training, a behavior plan and a one-to-one aide.

The documentary evidence provides the following facts:

1. On March 21, 2014, Joan Pabisz-Ruberton, the District's supervisor of student services, sent a letter to the petitioners regarding evaluations. Her letter also noted, "As we enter the third trimester of the school year, we will need to meet to discuss extended school year and programming for September 2014 through the development of an IEP."

2. On June 25, 2014, Dr. Kandie Press, the District's school psychologist and A.S.'s case manager, sent a letter to petitioners confirming that the petitioners would not be available to attend an annual review/IEP meeting on Monday, June 30, 2014, because the petitioners wanted the meeting held after that date, as they anticipated receipt of independent evaluations that they had requested from the District. The letter noted that the petitioners had indicated that they would be in touch within the next week to a week and a half to discuss a mutually convenient time for the meeting.

3. It appears that in January 2014,[5] Ruberton sent a letter to the petitioners to schedule an annual review for A.S., and to determine his placement for the 2014–2015 school year. She stated that she understood that Cherrywood would not have an appropriate program for A.S. following the end of the school year. She indicated that the District was willing to place A.S. at an out-of-district placement, but wanted to discuss programs that were available within the District. She requested the petitioners' thoughts on A.S.'s placement for the next year, as well as possible dates for attendance at an annual review meeting.

4. An exchange of emails on August 5 and August 7, 2014, between the petitioners and Ruberton indicated that the petitioners and the Child Study Team were available for the annual review meeting on August 25, 2014. Ruberton asked for confirmation from the petitioners.[6]

[5] The date may be an error.
[6] Emails may be from one parent or the other. For ease of reference, emails are deemed as coming from both.

5. On August 11, 2014, the attorney for petitioners advised the attorney for the District, "[I]t would be acceptable to my clients to have [A.S.] placed in the East Greenwich school district in Mickleton in their inclusion program. . . . [T]he plan for [A.S.] there needs to be determined. Please have your client facilitate the placement as soon as possible."

6. On August 13, 2014, Ruberton asked Beth Godfrey, supervisor of special services at East Greenwich, to review A.S.'s IEP for possible placement in a first-grade classroom with resource-room support for English, language arts and math. A classroom aide was also part of the IEP supports needed.[7]

7. Another exchange of emails occurred between the petitioners and Ruberton. On August 15, 2014, the petitioners sent an email to her confirming their intent to keep the meeting on August 25, 2014. On August 22, 2014, Ruberton responded that the District's attorney would not be available on August 25 to attend an annual review meeting. She also informed the petitioners that East Greenwich had accepted A.S. as a (first-year inclusion) student in their district. She enclosed a copy of a draft IEP for the petitioners' review and asked for other dates when the petitioners and their counsel would be available. This was the same unsigned IEP that Ruberton had provided to East Greenwich in an effort to expedite the process.

8. The petitioners responded in an email of August 22, 2014, about things that needed to be worked out with the District, including transportation (between the school and the day-care facility), a one-to-one aide for the transition, and the name of the East Greenwich caseworker. Ruberton replied on August 25, 2014, that transportation was fine and that she was awaiting word from East Greenwich about the aide and the case manager.

[7] First-grade placement was required for A.S. because, although he was age seven and age appropriate for second grade, he had repeated kindergarten at Cherrywood and was eligible for first grade in his next placement.

9. On August 29, 2014, the petitioners sent an email to Ruberton about her speaking with Dr. Kathleen McCabe-Odri, director of Cherrywood. Ruberton responded by email that she had left a voice message and had sent an email to Dr. McCabe-Odri.

10. On September 2, 2014, the petitioners sent an email to Ruberton requesting that she contact the Holding Hands day-care facility with transportation details.

11. On September 2, 2014, Ruberton advised the petitioners about the bus times and the day-care facility. She also advised the petitioners, "[W]e cannot begin [A.S.'s] program without your consent through signature on the IEP."

12. On that same date, the petitioners sent an email to Ruberton indicating that the IEP draft provided on August 22, 2014, was the initial IEP of November 2013 that they would not sign because it was not appropriate. The petitioners raised these concerns about the draft IEP: no data from the independent evaluators from 2014; the only data is from 2012; the aide needs to be longer than ten weeks; the review date shows this document as his IEP and no fifteen- or thirty-day review. The petitioners indicated, "If and only if this IEP is changed to reflect what should be in the IEP based on all evaluators' suggestions, including his aide for the year, [we] will sign it."

13. On September 3, 2014, Ruberton responded that the IEP did contain information from the 2014 testing and data on the one-to-one aide. She also included a thirty-day review and asked if the petitioners would provide consent.

14. On that same date, the petitioners indicated, "This is all we can give you until the new IEP is held within thirty days otherwise we would be signing it under duress." The petitioners had placed their signatures in the margins on the IEP cover page but had not signed on the front-page signature line, which would indicate that they had participated at an IEP meeting (as no formal IEP meeting

had been held). Nor had they signed the consent page indicating that they had given their consent to this IEP.

15. On September 4, 2014, Ruberton sent the petitioners an email which indicated that without a signed initial IEP to provide to East Greenwich, "East Greenwich cannot provide a program with special education and related services, and no 30 day review IEP meeting can take place." She asked about the petitioners' specific concerns with the draft IEP, and any changes, so that the IEP could be revised and A.S. commence school as soon as possible. She further indicated that the special education regulations did not permit the implementation of an IEP without consent. And because the petitioners had not provided consent, the child was welcome to attend the District as a general education student. She suggested an immediate 504 meeting if the petitioners wanted A.S. to attend the District school as a general education student to ensure he received services.

16. In response, on September 7, 2014, the petitioners returned an IEP which they had revised and prepared. It maintained A.S. in his current placement, which was an inclusive out-of-district placement, at the Clark School in East Greenwich, "which [the District] and [the petitioners] agreed to and maintains his plan, which should be comparable to his plan at Cherrywood, pending further review at the 30 day IEP." This IEP was signed, and consented to, by the petitioners on September 7, 2014. The petitioners requested that the IEP be signed and emailed back to them by September 8, 2014, so A.S. could start school on September 9, 2014.

17. On September 8, 2014, Ruberton emailed the proposed IEP to Godfrey for review. She also advised the petitioners on that same date that she had sent the petitioners' prepared IEP to East Greenwich for its review and determination as to whether that district could implement it.

18. Later that day, September 8, 2014, Ruberton advised the petitioners by email that East Greenwich had reviewed the IEP and "determined that [it] cannot

implement that IEP due to the following components: level of skills, self-help skills, home program, discrete trial teaching format, data collection." East Greenwich suggested a self-contained program that would deliver these types of services. She asked if the petitioners would meet with staff from East Greenwich to develop an IEP. A letter (undated) followed from East Greenwich confirming that it was unable to take A.S. as a tuition student based upon the IEP prepared by the petitioners that it had received.

19. On September 10, 2014, Ruberton sent an email to the petitioners that indicated that she was still working with East Greenwich and that East Greenwich would require an IEP meeting with its staff to finalize the placement. She suggested a meeting with East Greenwich to develop A.S.'s program. She requested dates from the petitioners for such a meeting as soon as possible. She reiterated the District's support of A.S. at East Greenwich.

20. Ruberton further indicated that the District had a special education teacher who could provide ten hours of instruction in not less than three days per week for A.S. at his day-care facility. She also reconfirmed that A.S. was welcome at the District school, where he could be placed in a team-teaching classroom with an aide.

21. In the middle of October 2014 an email exchange occurred among Ruberton, Scott Bates, the director of social services at Pitman public schools, and the respondent's attorney regarding placement of A.S. at Pitman schools.[8]

22. No formal notice was ever sent by the District to schedule an IEP meeting with the petitioners. Essentially, A.S. was a special education student without an IEP and no plan for special education services for school year 2014–2015.

[8] The child later entered a program conducted by the Pitman school district.

Other facts are not in dispute:

1. On September 4, 2014, N.S. and A.S. were waiting at the day-care facility for the school bus to transport the child to East Greenwich. The bus never arrived because the placement had not been effectuated and the child had not been enrolled in that district.

2. From September 4, to September 22, 2014, a twelve-school-day period, the child did not attend school. Nor did the parents accept the District's offer to permit the child to attend general education classes with a 504 plan within the District, or to receive ten hours of instruction with a special education teacher each week. The parents then contacted Cherrywood, which agreed to modify its program to accommodate A.S. for first grade. The child was placed there for twenty-eight school days from September 22 to October 31, 2014.

3. The cost of Cherrywood was $15 per day if the cost were covered by the petitioners' medical-insurance carrier; it was $50 per hour for six hours per day ($300 per day) plus other costs if it were not covered by insurance for each of the twenty-eight days the child attended.[9] The total amount billed to the parents for the twenty-eight-day period of attendance was $8,234.50.

4. The additional transportation to Cherrywood takes about two hours per day for the parents. It was stipulated that the additional mileage is twenty-six miles per day. The petitioners are seeking reimbursement of twenty-six miles at the IRS business-mileage rate of $0.56/mile for the twenty-eight days the child attended Cherrywood, for a total of $407.68.

5. The petitioners are also seeking the New Jersey minimum wage for the time they spent driving the child to Cherrywood, namely, $8.25 per hour for the two extra hours per day, for a total of $462 ($16.50/day multiplied by twenty-eight days).

[9] The $15 represents the petitioners' co-pay, with their carrier paying the rest. The petitioners submitted the bills to their carrier but the bills were rejected; they have initiated an appeal of the determination.

6. The petitioners are also seeking compensatory education of six hours per day for the twelve days that the child did not attend school. They request $60 per hour for seventy-two hours to be provided by Partners in Learning, for a total of $2,592.

7. On November 3, 2014, the child received placement within the Pitman school district as an out-of-district inclusionary student with services including services from Partners in Learning, and supports paid for by the District.

Testimony

Joan Pabisz-Ruberton testified that although no formal notice for the annual IEP review meeting was mailed to the parents, a meeting had been scheduled for August 25, 2014. The emails provided a paper trail showing that the District had been trying to schedule the IEP meeting for months. Without an IEP, the child could not be placed. The draft IEP did not include information about A.S.'s last program at Cherrywood, as the District had not consulted with that school because Ruberton knew that Cherrywood did not have a first grade. Ruberton did not speak with Dr. McCabe-Odri about issues with East Greenwich, or the home program proposed by the District for the interim. She sent the IEP to East Greenwich trying to expedite the process for the parents even though the parents had not seen the IEP, nor had they consented to it.

In August 2014, Ruberton did not know if "stay put" would apply for A.S., as he had aged out of the program he had been attending at Cherrywood. When the parents returned the IEP with signatures in the margin and no consent, she was not sure what it meant. She did not remember following up about whether there was consent to the placement. As far as she was concerned, A.S. was a special education student without an IEP, and with no plan in place for delivery of special education services at the beginning of the school year.

A.S.'s program was an inclusion out-of-district placement with services. Home instruction of ten hours per week (even if provided at the day-care facility) is not

comparable to an inclusive placement and is most restrictive. She did not ask Cherrywood if it could continue its placement while the District sought a program for the child. Although East Greenwich had originally indicated it could accept A.S., the final plan for him was never determined. When East Greenwich received the IEP signed by the parents, it indicated that it could offer a self-contained environment which would be more restrictive than A.S.'s previous program or the one that had been contemplated for him, but this was rejected by the petitioners.

M.S. testified that he and his wife did not participate in the drafting of an IEP for A.S. When they received the draft prepared by Ruberton, they were not in agreement, but signed in the margin to show that they were consenting to placement at East Greenwich, but not to the form of the IEP, as A.S.'s program had not been determined and there were significant areas of concern. He and his wife never received a formal notice that an IEP meeting was to be convened, although there were emails about scheduling such a meeting after all evaluations had been received. When M.S. and his wife revised the IEP and sent it back, it was rejected by East Greenwich. In response the District offered general education within the District or ten hours per week of special education instruction, which they rejected as not being appropriate for the child given his previous placement program.

Dr. Kathleen McCabe-Odri testified that she is the executive director of Partners in Learning, which does protocols for students, the majority of whom are on the autism spectrum, and provides education and services to children at Cherrywood through the kindergarten grade. Cherrywood is a licensed preschool and includes children who are classified and children who are not classified. A.S. graduated from the kindergarten in June 2014.

M.S. contacted her in September after A.S. had no school program to attend; she offered a temporary placement for A.S. at Cherrywood, which included a return to kindergarten with modifications for first grade as he was able to handle them. The program included a one-to-one certified ABA instructor and included data collection and other services. She thought the one-to-one instruction was appropriate because of A.S.'s anticipated first-grade placement and because the program could be modified to

meet first-grade expectations. The program was individualized for A.S. and included language arts, mathematics, social studies, health, speech and occupational groups. The instructors made sure A.S. was being educated at the first-grade level for language arts and mathematics. They offered a system for documentary progress and provided a summary of performance.

Dr. McCabe-Odri agreed that A.S. was not instructed by a special education teacher for the twenty-eight days he attended Cherrywood, but his program was designed to permit him to successfully transition into the first grade when a placement was found for him. She felt that even if A.S. had received ten hours of special education instruction, it would not have met his needs. Comparing this type of instruction with the program A.S. had just left just three months earlier, she noted that ten hours of instruction per week did not provide him with the frequency of instruction he required: there was no social interaction with peers and no support for his transition. A.S. needed group learning based on his performance in his inclusive setting, and he required discrete instruction. It was a short-term interim solution to the problem, and continued academic instruction for A.S. with the behavioral supports he needed while attending school with typical peers.

The testimony of the three witnesses was credible as to the program offered to A.S. at Cherrywood and the efforts made to provide him with educational services in the interim. It is clear that A.S. had enjoyed an inclusive program in the least restrictive setting until June. When the plans for East Greenwich fell through, a short-term solution had to be found to provide A.S. with educational services that could prevent regression and, at the same time, prepare him for the transition into first grade. The District offered A.S. a general education program with 504 supports, or ten hours of special education instruction per week. Cherrywood offered an instructional program, modified to provide A.S. with first-grade instruction, in an inclusive setting with the opportunity to interact with peers, both typical and atypical.

LEGAL ANALYSIS AND CONCLUSIONS

Issues

Petitioners

The petitioners frame the issue as one of stay put, namely, did the District offer a program comparable to A.S.'s last agreed-upon placement, which was at Cherrywood (with its inclusionary program and support services), between September 4, and October 31, 2014? The District has the burden of proof without consideration of whether it acted in good faith. The petitioners argue that the decision of Judge Russo was that the District would have to provide a comparable program to what the child received at Cherrywood, and, indeed, that was what the parents and the District contemplated the child would receive at East Greenwich. When East Greenwich could not effectuate that placement, what was the impact of Judge Russo's Order placing the child in that school system? Clearly, stay-put at East Greenwich could not happen, but the programs the child was entitled to could be continued. The child was still entitled to his last agreed-upon placement, which was an inclusionary program and support services.

After the child had gone without any schooling from September 4, to September 19, 2014, the parents acted reasonably in contacting Cherrywood, as that was A.S.'s last agreed-upon placement. That school was able to modify its kindergarten program for A.S. to provide an inclusionary education with supports pending his placement in an appropriate first-grade program. The Cherrywood placement was an appropriate interim placement which provided the educational program the child was entitled to pursuant to previous orders. Essentially, A.S. had been locked out of school when the East Greenwich placement was not implemented (although it could not be without a signed IEP). Without an IEP in place for a new placement, the child was entitled to his last comparable placement which, in this case, was Cherrywood, with a program modified to provide him with first-grade instruction, which Dr. McCabe-Odri indicated was done.

Accordingly, the petitioners seek reimbursement for the expenses they incurred at Cherrywood from September 22, through October 31, 2014 (either their co-pays to them and reimbursement to the carrier if insurance does pay the balance, or the entire tuition paid by them if their insurance does not cover it); compensatory education; and time and transportation reimbursement.

District

The District frames the issue as what should have been provided to A.S. for the six-week period he was not attending school. It urges that ten hours of instruction by a special education teacher is what the regulations provide for and that the District was willing to provide it. This education was contemplated as the stop-gap placement for a period not to exceed sixty days before any other placement was made, as provided in the regulations. A.S. attended Cherrywood in September and October, and should have been in first grade, which he could not have been in at Cherrywood because the school had no first grade. Although Cherrywood stated that it modified its program to accommodate A.S., and that separate instruction was arranged for him, A.S. did not have contact with typically aged peers for first grade. The District further argues that Cherrywood offered no instruction to A.S. from special education teachers, and that classified students should be receiving education from specially trained educators. If there were no special education teachers at Cherrywood, how would he get the special education he was entitled to?

The District had not opposed the application for emergent relief heard before Judge Russo because it also had contemplated A.S.'s placement at East Greenwich with the services similar to those previously provided at Cherrywood. The District felt that Cherrywood was not an appropriate placement, nor could it be ordered as a stay-put placement.

The District argued that as there was no IEP signed by the parents, it could not provide an agreed-upon IEP to East Greenwich. An IEP was finalized on September 8, 2014, when the parents signed and consented to the form, but East Greenwich indicated that it could not be implemented. This was why the District had been trying

since March to schedule an IEP meeting with the petitioners. When the scheduled IEP meeting did not occur on August 25, 2014, Ruberton had no choice but to provide a copy of the draft (unsigned) IEP she had prepared to see if it would be acceptable to East Greenwich. She was trying to expedite the process and secure A.S.'s placement. She gave dates for a new IEP meeting, and also noted that within thirty days of placement, a new IEP would be crafted. But all the parents would give was a cover sheet signed in the margin, and no consent to the document. So the District had no signed IEP for East Greenwich. And the IEP the petitioners drafted and consented to was rejected by East Greenwich, as that district was unable to implement the program requested by the parents.

As a result of A.S. not having an IEP that could be implemented by East Greenwich, and with no other placement in the immediate offing, the District offered A.S. placement in Harrison as a general education student with a 504 plan, or ten hours of weekly instruction from a special education teacher. The District did not want the student to be considered as "shut out" from educational services.

Therefore, the District argues, there could be no stay-put at Cherrywood because it did not offer first grade. And, accordingly, the District acted appropriately when it was willing to provide interim special education instruction to A.S. for ten hours per week pending permanent placement.

Analysis

Judge Bingham wrote extensively in his Decision of October 17, 2013, concerning the emergent stay-put application for Cherrywood for school year 2013–2014:

> Petitioners contend that a "stay-put" preliminary injunction under 20 U.S.C.A. 1415(j) is determined by simply identifying the current educational placement rather than by the usual standards for injunctive relief under Crowe v. DeGioia, 90 N.J. 126 (1982), and N.J.A.C. 1:6A-12.1(e)(1–4). They argue that the current educational placement is "the operative placement actually functioning when the

dispute first arises." Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996). Thus, since Cherrywood is indisputably where A.S. received instruction on October 12, 2013, it is the current educational placement. Therefore, they claim entitlement to reimbursement for tuition and travel expenses.

Respondent contends that a preliminary injunction for "stay put" must be assessed under the four-prong Crowe criteria, specified in N.J.A.C. 6A:14-2.7(s), which petitioners do not satisfy.[10] Respondent also contends that Cherrywood is not an appropriate placement since it is unaccredited and that, as stated by ALJ Scarola, "because unaccredited schools do not meet the standards of the State educational agency, such facilities are unavailable as a placement option for school districts."

Although the present motion is captioned as seeking emergent relief, petitioners are more specifically seeking to invoke the "stay-put" provision under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400, et seq. Requests for emergent relief under the IDEA's stay-put provision are subject to a different standard than requests made pursuant to N.J.A.C. 6A:14-2.7(s). The stay-put provision provides in relevant part that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child." 20 U.S.C.A. § 1415(j).

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[10] Typically, a party seeking emergent relief during a due-process hearing must show: (1) that it will suffer irreparable harm if the requested relief is denied; (2) that the legal right underlying its claim is settled; (3) a likelihood of success on the merits; and (4) that granting emergency relief will not result in even greater harm to the nonmoving party. N.J.A.C. 6A:14-2.7(s). Respondent contends that A.S. will not suffer irreparable harm because "Judge Scarola ruled that Cherrywood is not appropriate for A.S. for the 2013–2014 school year." Further, the legal right underlying petitioners' claim is not well settled, petitioners do not have a strong likelihood of prevailing on the merits because the relief sought "would violate judge Scarola's order," and petitioners "failed to show that after weighing the equities . . . they will prevail on their claim." (Respondent's brief at 4.)

The relevant IDEA regulation, and its counterpart in the New Jersey Administrative Code, reinforce that a child shall remain in his or her current educational placement "during the pendency of any administrative or judicial proceeding regarding a due process complaint." 34 C.F.R. § 300.518(a) (2013); N.J.A.C. 6A:14-2.7(u). The stay-put provision functions as an automatic preliminary injunction which dispenses with the need for a court to weigh such factors as irreparable harm and likelihood of success on the merits and removes the court's discretion regarding whether an injunction should be ordered. Drinker, supra, 78 F.3d at 864. "The Supreme Court has described the language of [stay put] as 'unequivocal,' in that it states plainly that 'the child shall remain in the then current educational placement.'" Ibid. (quoting Honig v. Doe, 484 U.S. 305, 323, 108 S. Ct. 592, 604, 98 L. Ed. 2d 686, 706 (1988)). Its purpose is to maintain the status quo for the child while the dispute over the IEP remains unresolved. Ringwood Bd. of Educ. v. K.H.J., 469 F. Supp. 2d 267, 270–71 (D.N.J. 2006).

Current Educational Placement

In the Third Circuit it is clear that "[o]nce a court ascertains the student's current educational placement, the movants are entitled to an order without satisfaction of the usual prerequisites to injunctive relief." Drinker, supra, 78 F.3d at 864. As the term "current educational placement" is not defined within the IDEA, the Third Circuit standard is that "the dispositive factor in deciding a child's 'current educational placement' should be the [IEP] . . . actually functioning when the 'stay put' is invoked." Drinker, 78 F.3d at 867 (citing the unpublished Woods ex rel. T.W. v. N.J. Dep't of Educ., No. 93-5123, 20 IDELR 439, 440 (3d Cir. Sept. 17, 1993)); see also Susquenita Sch. Dist. v. Raelee S. by Heidi S. & Byron S., 96 F.3d 78, 83 (3d Cir. 1996) (restating the standard that the terms of the IEP are dispositive of the student's "current educational placement"). Further, where the dispute arises before implementation of any IEP, "the 'current educational placement' will be the operative placement under which the child is actually receiving instruction at the time the dispute arises." Drinker, supra, 78 F.3d at 867 (citing Thomas v. Cincinnati Bd. of Educ., 918 F.2d 618, 625–26 (6th Cir. 1990)).

In the present matter, **there was no IEP functioning between petitioners and respondent when due process**

was sought on October 15, 2013. There is no dispute that Cherrywood is the physical location where A.S. actually receives educational services and that it has been his school since fall 2012. It is also undisputed that A.S. was enrolled at Cherrywood by the unilateral action of his parents without the consent or approval of the District and that action has now been legitimized by ALJ Scarola's decision that the District did not provide FAPE. **In light of such a void preceding implementation of a functional IEP, Cherrywood constructively constitutes A.S.'s operative, hence current, placement.**

Respondent argues that, as a matter of law, the IDEA does not enable such action by the parents to establish a unilateral placement as the subject of "stay put" in subsequent litigation where there was no prior agreement between the school district and the parents. However, respondent's position is fundamentally flawed because it ignores the effect of a prior adjudication of the unilateral placement on a future stay-put application.

Instead, in circumstances where, as here, the parents have unilaterally placed the child and a subsequent administrative or judicial decision confirms that the parental placement is appropriate, the decision "constitute[s] an agreement by the State to the change of placement" and the placement becomes the "current educational placement" for the purposes of the stay-put provision. Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 372, 105 S. Ct. 1996, 2003, 85 L. Ed. 2d 385, 396 (1985); see also Susquenita, supra, 96 F.3d at 83 (holding that a new stay-put placement was created when a state education appeals panel ruled in favor of the parents' unilateral decision to enroll the student in private school because the administrative ruling effectively constitutes an agreement by the state and the parents to change the educational placement of the student); Montgomery Twp. Bd. of Educ. v. S.C. ex rel. D.C., Civ. No. 06-398, 2007 U.S. Dist. LEXIS 6071 (D.N.J. Jan. 29, 2007) (the ALJ's decision that the unilateral placement of D.C. at the Solebury School was appropriate created a new pendent placement for D.C., for which the district was financially responsible); 34 C.F.R. § 300.518(d) (2013) ("If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of [stay put].")

The New Jersey regulations similarly state that "[i]f the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the district board of education and the parents for the remainder of any court proceedings." N.J.A.C. 6A:14-2.7(u)(1). In summary, an administrative or judicial decision must first confirm that the parental placement is appropriate because the decision will effectively constitute an agreement by the local educational agency and become the pendent placement for stay put. Sch. Comm. of Burlington, supra, 471 U.S. at 372, 105 S. Ct. at 2003–04, 85 L. Ed. 2d at 396, see also Susquenita, supra, 96 F.3d at 84, 86. Thus, ALJ Scarola's agreement with the petitioners' decision to unilaterally place A.S. in Cherrywood has made Cherrywood A.S.'s "current educational placement" for purposes of the proceedings arising from the October 15, 2013, due-process petition. **That decision constitutes an "agreement between the State and the parents" unless and until it is reversed.** Therefore, under the stay-put provision, A.S. should remain in that placement at respondent's expense pending the outcome of the underlying due-process petition. To conclude otherwise would give respondent unilateral power to undo A.S.'s "current educational placement," which is proscribed by stay put. See Honig v. Doe, supra, 484 U.S. at 323, 108 S. Ct. at 604, 98 L. Ed. 2d at 706–07 ("Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school."). The stay-put provision preserves the status quo as established by ALJ Scarola's decision until petitioners' due-process petition is resolved.

As indicated above, the District also contends that Cherrywood is not an appropriate placement since it is unaccredited, and that, because "unaccredited schools do not meet the standards of the State educational agency, such facilities are unavailable as a placement option for school districts." Again, respondent's argument is fundamentally flawed, because it fails to acknowledge that parents who make a unilateral placement are not bound by the same regulations applicable to school districts. The Supreme Court has made clear that the standard a parental placement must meet in order to be "proper" is less strict than the standard used to evaluate whether a school district's IEP and placement is appropriate. See Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 12–13, 114 S. Ct. 361, 364, 126 L. Ed. 2d 284, 291. The Court in Florence County specifically rejected arguments similar to those that

> respondent presses here when the Court stated that IDEA requirements—"including the requirement that the [private] school meet the standards of the state educational agency—do not apply to private parental placements." Id., 510 U.S. at 14, 114 S. Ct. at 365, 126 L. Ed. 2d at 293 (citation omitted). As the Court noted from the underlying appeals court decision, "'it hardly seems consistent with the [IDEA's] goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place.'" Ibid. (citation omitted); see also Lauren W. v. DeFlaminis, 480 F.3d 259, 276 (3d Cir. 2007) (citation omitted) (even if the private school is not state approved, it may be appropriate for private placement as long as it "provides 'significant learning' and confers 'meaningful benefit.'").
>
> Simply put, H.S. and M.S. are not limited to placements at State-approved schools. This standard is illustrated in ALJ Scarola's decision by her recognition that Cherrywood was appropriate for A.S. as a unilateral parental placement, but because the school is unaccredited, the respondent may not place him there when it eventually makes an offer of FAPE. **ALJ Scarola has already concluded that the services provided to A.S. at Cherrywood were appropriate, thus the parents have satisfied the standards for a parental placement.** The fact that the respondent is precluded from placing A.S. at Cherrywood has no relevance in this stage of the litigation, where it has already been determined that Cherrywood is A.S.'s "current educational placement" and only stay put is being enforced. Respondent can remedy any concern it has as to the appropriateness of the placement by expeditiously either making an offer of FAPE in a public setting or placing A.S. in an appropriate private setting of the respondent's choice. However, until that occurs, stay put shall remain in effect for A.S. to attend Cherrywood at respondent's expense.
>
> [Emphasis supplied.]

Following the entry of Judge Bingham's Decision, the matter was settled between the District and the petitioners, with A.S. remaining at Cherrywood for the 2013–2014 school year with the District paying for the program and services. This was the last agreed-upon placement for A.S.

For the fourth time in less than two years, it is necessary to make a decision as to the program and services A.S. is entitled to receive under the IDEA. Neither party is without fault in this matter. It is accurate that no "formal written" request was made to the petitioners for a Child Study Team meeting and the development of an appropriate IEP for A.S. However, it was clear from the numerous emails and correspondences that the District had been seeking an IEP meeting with the petitioners. Unfortunately, no date could be agreed upon between the parties until August 25, 2014, which meeting then had to be cancelled because the District's attorney could not be present. The meeting was not rescheduled.

In the meantime, the petitioners were urging placement of A.S. at East Greenwich through their counsel. Ruberton sought to expedite the placement by preparing and sending a draft IEP to East Greenwich, and provided a copy to the petitioners, who then rejected it. But what was the meaning of the action of the petitioners in returning that draft IEP with their signatures in the margins of the cover sheet, and not on the consent page? Did this mean they approved the planned placement at East Greenwich, but not the IEP? They were advised that a signed IEP was necessary to secure the placement the petitioners sought in East Greenwich. The petitioners then modified and signed an IEP to include the services they wanted, which Ruberton forwarded to East Greenwich, which was then rejected as not being capable of implementation in its program.

The District asserts that the ten hours of special education it offered to the petitioners for A.S. should satisfy its requirements under N.J.A.C. 6A:14-4.8, and that no other compensation or reimbursement is required. This section provides:

> Program criteria: home instruction
>
> (a) A student with a disability shall have his or her IEP implemented through one to one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.

> 1. Prior written notification that a district intends to provide home instruction shall be provided to the Department of Education through its county office.
>
> 2. Notification shall be effective for a maximum of 60 calendar days at which time renewal of the notification may be made. Each renewal shall be for a maximum of 60 calendar days.
>
> 3. A written record of the student's home instruction, including dates and times during which home instruction is provided, shall be maintained, and the teacher providing instruction shall be appropriately certified as teacher of students with disabilities or for the subject or level in which the instruction is given.
>
> 4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher or teachers on at least three separate days.
>
> 5. Instruction shall be provided at a location conducive to providing educational services, taking into consideration the student's disability and any unique circumstances. The parent shall be consulted in determining the appropriate location for the provision of home instruction.

The District relies on New Jersey Department of Education Complaint Investigation, No. A-1000-11 (App. Div. October 11, 2012), <http://njlaw.rutgers.edu/collections/courts/>, and J.M., a minor child, by his parents P.M. and M.M. v. Woodcliff Lake Board of Education, OAL Dkt. No. EDS 728-92, Decision (September 28, 1992), to support its position. In the former case, the Office of Special Education approved ten hours of home instruction where there was no other placement option for this child, who had a thermal regulating defect in his brain. In J.M., the home instruction was approved temporarily as the recommendations of four treating therapists concerning mobility and postural stability, among others, were considered to enhance an interim public-school placement, pending permanent placement elsewhere. These recommendations clearly related to the physical risk to the child if he were immediately returned to the school setting. None of these particular physical disabilities affected A.S.

Moreover, there is no indication that the District considered the portion of the regulation that provides that such home instruction is appropriate "**when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.**" There appears to have been no other option considered by the District except for home instruction, which is most restrictive to a child.[10] Cherrywood had been the agreed-upon approved appropriate placement just three months prior to September. Had the District made inquiry, it would have found that Dr. McCabe-Odri was willing to, and did, modify the kindergarten program to provide first-grade instruction to A.S. as he could handle it. While the District also argued that this temporary Cherrywood placement would not provide the child with exposure to typical first-grade peers, on a daily basis the Cherrywood setting did provide him with contact with peers in an educational setting, and provided consistency in his educational progress, which would not have been available had he been on ten hours of weekly instruction.

Conclusions

Accordingly, I conclude that the placement at Cherrywood School for September 22, through October 31, 2014, was appropriate. This was the previously approved and agreed-upon placement for the child which provided the agreed-upon program to the child. This program was modified to provide A.S. with first-grade instruction; it provided him with meaningful educational opportunity and learning, and prevented A.S. from regressing during the interim period pending permanent placement.

I conclude that the petitioners are entitled to reimbursement for Cherrywood at $15 per day for the twenty-eight days the child attended if the cost is covered by the petitioners' medical insurance carrier, for a total of **$420**; if it is not covered by insurance for the twenty-eight days, the total is **$8,234.50**. As to reimbursement by the District to the carrier, I leave that issue to the insurance carrier.

[10] It is disconcerting that the child would be offered a general education class after three previous orders recognized him as a classified student who qualified for special education and related services.

The additional transportation to Cherrywood takes about two hours per day for the parents. It was stipulated that the additional mileage is twenty-six miles per day. The petitioners are seeking reimbursement of twenty-six miles at the IRS business-mileage rate of $0.56/mile for the twenty-eight days the child attended Cherrywood, for a total of $407.68.

The IRS Code provides for reimbursement of mileage for 2014 as follows:

- $0.56 per mile driven for business expenses;
- $0.235 per mile driven for medical or moving purposes;
- $0.14 per mile driven in service of charitable organizations.

No proof has been presented that the petitioners are in the business of transportation or that a parent driving a child to school qualifies as a business. Nor was any proof presented that driving a child to school is a charitable expense. On the other hand, there has been testimony that the cost of Cherrywood (excluding co-pays) had previously been covered by the petitioners' medical-insurance company as providing a medical service to the child. Accordingly, the petitioners shall be compensated for twenty-six miles for twenty-eight days at the medical-purpose rate of $0.235 per mile, for a total of **$171.08**.

The petitioners are also seeking the New Jersey minimum wage[11] for the time they spent driving the child to Cherrywood for twenty-eight days, namely $8.25 per hour for the two extra hours per day, for a total of $462. As petitioners correctly indicate, this application was previously denied on the grounds that it is impossible to quantify the value of the time you spend with your child. Is it minimum wage? Is it $100 per hour? Is it priceless? The petitioners rely on Bucks County Department of Mental Health/Mental Retardation v. Pennsylvania, 379 F.3d 61 (3d Cir. 2004); Malehorn v. Hill City School District, 987 F. Supp. 772 (D. S.D. 1997); Moubry v. Independent School District 696, 9 F. Supp. 2d 1086 (D. Minn. 1998); Hurry v. Jones, 734 F.2d 879 (1st Cir. 1984); and

[11] Minimum wage also considers mandatory deductions for federal, state, and Social Security/Medicare taxes, unemployment compensation insurance, Family Leave Act, etc., for which a W-2 is issued annually by the employer. None of these considerations is present here.

Straube v. Florida Union Free School District, 801 F. Supp. 1164 (S.D. N.Y. 1992), for the proposition that time parents spend taking their children to school is compensable.

In Bucks County Department of Mental Health/Mental Retardation v. Pennsylvania, 379 F.3d 61, 73 (3d Cir. 2004), reimbursement for the parent's time was approved based on equitable considerations where the parent had been trained to provide therapy directly to the child in the absence of any other trained therapist:

> In the present instance, time spent by [the parent] with [the child] is not in the same vein as a mother spending time with her child in the normal course of daily living activities. [The parent] functioned as the provider of discrete trial training for [the child].

In Malehorn v. Hill City School District, 987 F. Supp. 772 (D. S.D. 1997), reimbursement was denied where the parent did not establish that transportation was necessary as a related service for a child receiving special education services.

In Moubry v. Independent School District 696, 9 F. Supp. 2d 1086, 1107 (D. Minn. 1998), the child was entitled to door-to-door transportation, as a related service under his IEP, and was awarded twenty hours of compensatory education in order to remedy any deprivation of education owing to tardiness or absenteeism due to a lack of transportation during a two-and-a-half-month period:

> . . . [I]f [the parent] incurred expenses in transporting the Plaintiff to school, when a proper IEP would have provided free transportation directly to and from his home, the IDEA would authorize an award of transportation expenses. The [parent], however, failed to document her claimed transportation expenses before the [hearing officer], or the [hearing review officer]. It appears from the Record, although not conclusively so, that the Plaintiff lived approximately four blocks from school, and any expenses, which were attributable to the brief deprivation of transportation—over and above the 20 hours of compensatory education—would have been nominal, at best. Without any evidence of documented transportation expense having been presented in the administrative hearings below, we must uphold the [hearing review

> officer's] decision to deny the request for their reimbursement.

In Hurry v. Jones, 734 F.2d 879 (1st Cir. 1984), the parents were reimbursed for time and effort involved in transporting their son to school for ninety-two school weeks when district bus drivers refused to provide such service after the child became too heavy for them to carry up and down a steep deteriorating concrete staircase, and the district became concerned about liability. The child was entitled to door-to-door transportation, which he had not received, in violation of the Education for Handicapped Act (now IDEA). The court did express concern that if "effort" were reimbursed, the distinction between reimbursement and damages would be blurred. However, the court found that the damages sought by the parents were no greater than what would have been paid for transportation services during that period of deprivation because the driver's time is a normal component of transportation expenses, and were "well within any reasonable estimate of fair reimbursement." 734 F.2d at 883–84.

In the Hurry case, the parents requested and received ten dollars per day for the ninety-two five-day school weeks during which they were driving the child themselves "for several hours each day." Id. at 881. The court noted that it took the district "approximately three years to meet [its] indisputable lawful obligation to provide transportation for [the child] to and from school." Id. at 883.

In Straube v. Florida Union Free School District, 801 F. Supp. 1164 (S.D. N.Y. 1992), the parents were denied reimbursement for tuition paid to a private school and for the time they had spent trying to raise money to pay for tuition.

In this matter, no documented transportation expenses were provided. Compensation for the miles between the home and the school was awarded and was calculated based on the IRS reimbursement rate for a medically related expense, and not on the actual cost of the transportation itself. No documentation for the value of the parent's driving time was provided, except to argue that the parent deserved minimum wage for the two hours per day transportation was estimated to take. No time sheets were provided. No proof was presented that this cost was more or less than that which

the District would have paid for the same service. Accordingly, I cannot conclude that reimbursement should be awarded for the time the parents spent transporting A.S. to Cherrywood for twenty-eight days.

I also conclude that A.S. is entitled to compensatory education for the twelve days he was not attending school from September 4, 2014, to September 19, 2014. The petitioners had rejected the offer of home instruction for this time period, and seek sixty hours of compensatory education per week, presumably what the child would have received had he been at Cherrywood during that period. But the child was not attending that school or any other least-restrictive option. Accordingly, for this time period, when the child was not attending public school and was not enrolled at Cherrywood, I conclude that the District should provide what it would be obligated to do in an interim period pending permanent placement, that is, ten hours of instruction by a special education teacher per week. For the twelve days of school that were missed, this comes to a total of twenty-four hours of compensatory education at the rate of $60 per hour, for a total of **$1,440**. This instruction shall be provided through Partners in Learning, which continues to provide services to A.S. in his current educational placement.

Therefore, the total amount to be paid to the petitioners is **$2,031.08**, representing $420 reimbursement of Cherrywood co-pays, $171.08 for the cost of transportation, and $1,440 for compensatory education. If the medical insurance does not cover the cost, then the total to be reimbursed to the petitioners is **$9,845.58**, representing $8,234.50 for Cherrywood, $171.08 for the cost of transportation, and $1,440 for compensatory education.

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.

January 7, 2015
DATE

Susan Scarola
SUSAN M. SCAROLA, ALJ

Date Received at Agency: January 7, 2015

Date Mailed to Parties:

mel

WITNESSES

For Petitioners

M.S.

Dr. Kathleen McCabe-Odri

For Respondent

Joan Pabisz-Ruberton

EXHIBITS

For Petitioners

P-1 Google Maps Directions

P-2 Curriculum Vitae of Dr. Kathleen McCabe-Odri

P-3 Letter from Dr. Kathleen McCabe-Odri dated October 2, 2014

P-4 Partners in Learning Invoice dated November 26, 2014

P-5 IRS Standard Mileage Rates

For Respondent

R-1 Letter from Joan Pabisz-Ruberton to petitioners dated March 21, 2014

R-2 Letter from Dr. Kandie Press to petitioners dated June 25, 2014

R-3 Letter from Joan Pabisz-Ruberton to petitioners misdated January 8, 2014

R-4 Email from Joan Pabisz-Ruberton to petitioners dated August 7, 2014

R-5 Email from Jamie Epstein, Esq., to Brett E. J. Gorman, Esq., dated August 11, 2014

R-6 Letter from Joan Pabisz-Ruberton to petitioners dated August 13, 2014

R-7 Email from Joan Pabisz-Ruberton to petitioners dated August 25, 2014, with attached Individualized Educational Plan

R-8 Email from Joan Pabisz-Ruberton to petitioners dated August 29, 2014

R-9 Email from petitioners to Joan Pabisz-Ruberton dated September 2, 2014

R-10 Email from petitioners to Joan Pabisz-Ruberton dated September 2, 2014

R-11 Email from petitioners to Joan Pabisz-Ruberton dated September 3, 2014

R-12 Email from Joan Pabisz-Ruberton to petitioners dated September 4, 2014

R-13 Email from petitioners to Joan Pabisz-Ruberton dated September 7, 2014, with attached Individualized Educational Plan

R-14 Email from Joan Pabisz-Ruberton to petitioners dated September 8, 2014

R-15 Email from Joan Pabisz-Ruberton to petitioners dated September 8, 2014

R-16 Email from Joan Pabisz-Ruberton to petitioners dated September 8, 2014

R-17 Email from Joan Pabisz-Ruberton to Petitioners dated September 10, 2014

R-18 Letter from Beth Ann Godfrey, East Greenwich School District Child Study Team Supervisor, to Joan Pabisz-Ruberton

R-19 Email from Scott Bates, Pitman Public Schools Director of Special Services, to Joan Pabisz-Ruberton dated October 15, 2014