

April 28, 2020

██████████, Director
Office of Special Education Policy and Dispute Resolution
New Jersey Department of Education
100 Riverview Plaza, P.O. Box 500
Trenton, New Jersey 08625-0500

Re: *L.L. & A.L. o/b/o G.L. v. Ringwood Pub. Schs.*
Petition for Due Process

Dear ██████████:

I represent Petitioners ██████████ (L.L.) and ██████████ ██████████ (A.L.) and their son, ██████████ ██████████ (G.L.), in the above-mentioned matter. Please accept this letter as Petitioners' petition for due process against Respondent Ringwood Public Schools (Ringwood).

Ringwood violated G.L.'s rights under the Individuals with Disabilities Education Act (IDEA), 42 U.S.C.A. §§ 1400-1482, and its implementing New Jersey regulations, N.J.A.C. 6A:4-1.1 to - 10.2(b), for failing to provide the necessary amount of related services – namely occupational therapy, speech therapy, and specialized reading instruction – in accordance with his individualized educational program (IEP) since school closed on March 16, 2020, due to the COVID-19 pandemic. Therefore, Petitioners are seeking the following relief:

- a.) A Declaratory Ruling that Ringwood violated G.L.'s rights under the IDEA by failing to provide the necessary amount of occupational therapy, speech therapy, and specialized reading instruction since March 16, 2020;
- b.) An Order requiring Ringwood to provide G.L. with the requested related services immediately;
- c.) An Order requiring Ringwood to provide G.L. compensatory related services; and

d.) Any other relief that is necessary and proper.¹

Because I am a deaf attorney, I respectfully request that the Office of Administrative Law (OAL) and Office of Special Education Policy and Dispute Resolution contact me by e-mail at rrobinson@drnj.org as soon as possible to discuss reasonable accommodations for all necessary appearances at the OAL.

STATEMENT OF FACTS

- 1.) G.L. was born on [REDACTED], and is [REDACTED] years old. (A.L. Cert. 1.)
- 2.) In addition to his mother, L.L., and father, A.L., G.L. lives with two siblings and a cousin. *Id.*
- 3.) G.L. and his family reside at [REDACTED] Ringwood, NJ, [REDACTED]. *Id.* Their telephone number is [REDACTED]. *Id.*
- 4.) During the 2019-20 school year, G.L. has been in [REDACTED] at the [REDACTED] [REDACTED] an in-district placement. *Id.*
- 5.) G.L. was found eligible for special education services under the IDEA at the age of five and has remained eligible continuously ever since. (A.L. Cert. 2.) His current classification under the IDEA is Specific Learning Disability. *Id.*
- 6.) Under G.L.'s current IEP, he receives related services in the areas of speech therapy, occupational therapy, and assistance from a reading specialist. (A.L. Cert., Ex. A.) He meets with his reading specialist twice a week, his speech therapist once a week, and his occupational therapist once a month. (A.L. Cert. 2.)
- 7.) G.L. had been receiving regular education plus the special education and related services identified in his IEP from the inception of the current school year until Monday, March 16, 2020, when Ringwood closed its schools because of the COVID-19 pandemic. *Id.*

¹ Petitioners reserve the right to seek reimbursement for attorneys' fees and costs in a court of appropriate jurisdiction.

- 8.) As soon as the schools closed, G.L. started receiving instruction for the core subjects online. *Id.*
- 9.) G.L. did not immediately receive any related services – speech therapy, occupational therapy, and specialized reading instruction - with the exception of two meeting sessions with G.L.’s reading specialist, Mrs. [REDACTED] via Google Hangout Meets. *Id.* The first of these sessions took place on March 24, 2020, and the second one took place on March 31, 2020. *Id.*
- 10.) With respect to related services, on April 2, 2020, Ringwood’s Director of Special Services, [REDACTED] sent L.L. and A.L. an e-mail entitled “Action Required by 4/3: Consent for Remote Delivery of Related Services.” (A.L. Cert. 2.) The April 2, 2020 e-mail states, “Please visit the link below and complete a Google Form that would allow us to begin remote delivery of related services as per your child's IEP.” (A.L. Cert., Ex. B.) The Google Form was entitled, “Consent for Remote Delivery of Related Services (Please respond by 4/3/2020)” (hereinafter “the Waiver”). (A.L. Cert., Ex. C.)
- 11.) The fourth paragraph of the Waiver states:

The Parents of the Student agree to waive and relinquish; fully release and discharge; and indemnify and hold harmless the School District and the Board of Education, and its current and future board members, officers, agents, guests, licensees, invitees, assignees, contractors, and employees, from any and all claims, liabilities, causes of action, and obligations arising from or in connection with the stated Services being delivered electronically. This includes, but is not limited to, loss or damage to property, invasion of privacy, injury, disability, or death to persons, physically or mentally. This shall include indemnification for any action initiated by anyone on behalf of the Student or by Student upon reaching the age of majority.

Id.

- 12.) G.L.’s parents reviewed the Waiver. (A.L. Cert. 3.) They were concerned that if they signed the Waiver, they would be giving up G.L.’s rights to compensatory education if he needs it. *Id.* A.L. also was not concerned that the last sentence would prevent G.L. or anyone else from exercising rights on behalf of G.L. in the future. *Id.* As such, they did not immediately sign it. *Id.*

- 13.) Mr. [REDACTED] and Mrs. [REDACTED] made it clear to G.L.'s parents through e-mails they sent on April 7, 2020 and April 8, 2020, respectively, that they would not provide G.L. with related services unless the parents signed the Waiver. *Id.* Specifically, Mrs. [REDACTED] wrote, "I am scheduled to meet with [G.L.] at 10:30. I am not allowed to meet face to face now without the consent." (A.L. Cert., Ex. D.) Mr. [REDACTED] wrote, "I don't want [G.L.] to miss out on any sessions. What would be a good time / number to call to better explain the consent form?" (A.L. Cert., Ex. E.)
- 14.) On April 8, 2020, A.L. spoke with Mr. [REDACTED] over the phone. (A.L. Cert. 3.) During the telephone conversation, A.L. relayed his concern about waiving the right to compensatory education. *Id.*
- 15.) In response, Mr. [REDACTED] assured A.L. that Ringwood would provide students with any necessary compensatory education once school returns to session. *Id.* Mr. [REDACTED] also agreed to remove the last sentence from paragraph four in the Waiver that stated, "This shall include indemnification for any action initiated by anyone on behalf of the Student or by Student upon reaching the age of majority." *Id.* A.L. did not know at the time that the last sentence did not affect whether A.L. was waiving rights to compensatory education. *Id.* Mr. [REDACTED] also assured A.L. that Ringwood would provide students with any necessary compensatory education once school returns to session. *Id.* Based on A.L.'s conversation with Mr. [REDACTED] G.L.'s parents signed the Revised Waiver. (A.L. Cert. 3, Ex. E.)
- 16.) After G.L.'s parents signed the Revised Waiver on April 9, 2020, G.L. had a reading instruction meeting with Mrs. [REDACTED] via Google Hangout Meets. (A.L. Cert. 3.)
- 17.) On April 9, 2020, A.L. spoke to an attorney. *Id.* On the advice of the attorney, G.L.'s parents decided to revoke the Revised Waiver. *Id.*
- 18.) On April 9, 2020, L.L. e-mailed Mr. [REDACTED] stating that she and A.L. were rescinding the Revised Waiver, but that, "We expect Ringwood's Public School System to continue using remote services for our child's education needs during the COVID-19 pandemic unless otherwise advised by the Ringwood School System without the need to waive and relinquish any rights by law as parents." (A.L. Cert. 4, Ex. F.)

- 19.) On the same day, Mr. [REDACTED] acknowledged by way of e-mail G.L.'s parents' rescission of the Revised Waiver. *Id.* More specifically, he wrote, "No problem at all. I have cc'ed the related service providers so they are aware of this effective immediately. Would you like [G.L.] to remain on the roster for the Google Classroom for his related service providers so he can receive work in that way and continue to work towards his goals and objectives in the absence of Google Hangout Meets?" (A.L. Cert., Ex. F.)
- 20.) When Mr. [REDACTED] e-mailed the G.L.'s parents on April 9, 2020, G.L.'s parents did not know whether he was communicating that Ringwood would be withholding services in response to their rescission of the Revised Waiver. (A.L. Cert. 4.) G.L.'s parents did not understand the services that Mr. [REDACTED] discussed in his e-mail, such as Google Classroom and Google Hangout Meets. *Id.* Because they did not have this clarity, they could not fully make sense of Mr. [REDACTED]'s e-mail on April 9, 2020, and so the e-mail did not clarify for them whether Ringwood was withholding G.L.'s related service sessions in response to their rescission. *Id.*
- 21.) After Mr. [REDACTED]'s acknowledgement of G.L.'s parents' rescission, G.L. did not have any related service meeting sessions on Friday, April 10, 2020, and Monday, April 13, 2020. *Id.* The next day, April 14, 2020, Ringwood began spring break. *Id.*
- 22.) Over spring break, G.L.'s parents were not sure whether Ringwood would withhold related service meeting sessions once remote education resumed. *Id.* That he received no services on April 10, 2020, and April 13, 2020, did not necessarily mean that Ringwood was withholding G.L.'s services, given that G.L. never received related services on a daily basis. *Id.*
- 23.) Once spring break ended on April 20, 2020, Ringwood resumed remote education for its general student population. *Id.*
- 24.) By April 23, 2020, Ringwood still had not provided G.L. with any related service meetings, so G.L.'s parents e-mailed two of his related service providers to find out whether they would be meeting with G.L. *Id.* Specifically, L.L. sent an e-mail to Mrs. [REDACTED] stating, "I would like to know when you plan on meeting [G.L.]?" (A.L. Cert. 5, Ex. G.)
- 25.) At 3:45 p.m. that day, Mrs. [REDACTED] responded with an e-mail stating, "I was waiting to hear that you filled out the consent, so I can see him on meets." *Id.*

- 26.) L.L. also e-mailed Mrs. [REDACTED] G.L.'s instructor for speech therapy, at 3:45 p.m. the same day, stating, "I would like to know when you plan on meeting with [G.L.]?" (A.L. Cert. 5, Ex. H.)
- 27.) Five minutes later, Mr. [REDACTED] sent L.L. an e-mail stating, "We stand by ready to include [G.L.] in our blended learning through Google Hangout Meets with your consent." (A.L. Cert. 5, Ex. F.)
- 28.) On April 27, 2020, Mrs. [REDACTED] responded to L.L.'s April 23, 2020 e-mail stating, "I'm waiting for confirmation from Mr. [REDACTED] as to whether we have consent for [G.L.] to begin remote teletherapy with us to join our regular Meets." (A.L. Cert. 5, Ex. H.)
- 29.) The e-mails from Mrs. [REDACTED] Mrs. [REDACTED] and Mr. [REDACTED] on April 23, 2020 and April 27, 2020, confirmed for G.L.'s parents that Ringwood was withholding G.L.'s related services because of the rescission of their waiver on April 9, 2020. (A.L. Cert. 5.)
- 30.) Since schools closed on March 16, 2020, G.L. has only received three related service meetings. *Id.* The first two meetings with Mrs. [REDACTED] took place on March 24, 2020, and March 31, 2020 -- before Ringwood first sent G.L.'s parents the Waiver to sign -- and the third meeting with Mrs. [REDACTED] took place on April 9, 2020, after the parents signed the Revised Waiver but before they rescinded it. *Id.* During school closure, G.L. has not met with his occupational therapist and speech therapist at all. *Id.* During this period of time, the only thing that he has received from his related service instructions is worksheet assignments from his speech therapist and reading specialist. *Id.* He has not received anything from his occupational therapist. *Id.*
- 31.) G.L. has suffered and will continue to suffer irreparable harm as a result of Ringwood's failure to provide the related services G.L. needs in accordance with his IEP. (A.L. Cert. 6.)

LEGAL ARGUMENT

G.L. IS ENTITLED TO RELATED SERVICES CALLED FOR BY HIS IEP.

The IDEA and its implementing New Jersey regulations require that school districts provide classified students between the ages of three and twenty-one with a free, appropriate public education (FAPE). 20 U.S.C.A. §§ 1400-1482; N.J.A.C. 6A:14-1.1 to -10.2(b). In fulfilling its FAPE obligation, the school district must develop an IEP for the student, and the IEP must be reasonably calculated to confer some educational benefit. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). The Court of Appeals for the Third Circuit has clarified that this "educational benefit" means it must be "more than trivial, and must be significant" and "meaningful." *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180-85 (3d Cir. 1999); *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247-48 (3d Cir. 1999).

The IEP is to be developed by the IEP team that includes the parent and child study team. N.J.A.C. 6A:14-2.3(k). The IEP outlines, among other things, the specialized educational and related services the student needs to achieve FAPE. N.J.A.C. 6A:14-3.7. The school district of residence is responsible for making sure the IEP is implemented without delay. N.J.A.C. 6A:14-3.7. This responsibility does not change during the COVID-19 pandemic. Press Release, U.S. Dept. of Educ., Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA (Apr. 27, 2020) (4/27/20 Press Release, Secretary DeVos), <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements>; *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities*, 76 IDELR 104 (OSERS/OCR 2020).

In the present matter, Ringwood, as the school district of residence, is responsible for implementing G.L.'s IEP that calls for the following related services: speech therapy once a week, occupational therapy once a month, and specialized reading instruction twice a week. (A.L. Cert. 2.) Through no fault of Petitioners', the COVID-19 pandemic forced Ringwood to close its schools on March 16, 2020. *Id.* While Ringwood is providing online instruction for G.L.'s core subjects, it has only provided three online meetings with the reading specialist and no online occupational therapy and speech therapy services as of the date of the filing of this petition. (A.L. Cert. 5.) Ringwood is withholding further related services online because of its

inappropriate demand that G.L.'s parents consent to a waiver of all potential claims pertaining to the provision of related services online. (A.L. Cert. 5, Exs. F, H.) Therefore, Ringwood's failure to abide by his IEP violates G.L.'s rights under the IDEA.

G.L. IS ENTITLED TO MAINTAIN THE RIGHT TO COMPENSATORY EDUCATION SHOULD RINGWOOD FAIL TO PROVIDE FAPE DURING THE COVID-19 PANDEMIC.

If a classified student is deprived of FAPE for a period of time, compensatory education is a judicially-created right available to the student even during the COVID-19 pandemic. *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 717 (3d Cir. 2010) (quoting *Lester H. v. Gilhool*, 916 F.2d 865, 872 (3d Cir. 1990)); *Questions and Answers on Providing Servs. to Children With Disabilities During the Coronavirus Disease 2019 Outbreak*, 76 IDELR 77 (EDU 2020) (stating that compensatory education should be considered following school closure). The purpose of compensatory education is to replace the educational services the classified student should have received in the first place with the aim of placing the student in the same position he or she would have been had the district not violated the IDEA. *Ferren C.*, 612 F.3d at 717-18 (citing *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)).

In the present matter, Ringwood is holding G.L.'s parents hostage by conditioning the provision of related services online during this pandemic on the consent to a waiver of all possible claims that would include compensatory education pertaining to such services. (A.L. Cert. 5, Exs. F, H.) As a result, G.L. has not been receiving the necessary amount of occupational therapy, speech therapy, and specialized reading instruction required by his current IEP since school closed on March 16, 2020. (A.L. Cert. 5.). Therefore, Ringwood's apparent ulterior motive of depriving G.L.'s right to seek compensatory education violates the IDEA as well.

CONCLUSION

For the reasons stated above, Petitioners respectively requests the following emergent relief be granted:

- a.) A Declaratory Ruling that Ringwood violated G.L.'s rights under the IDEA by failing to provide the necessary amount of occupational therapy, speech therapy, and specialized reading instruction in accordance with his IEP since March 16, 2020;
- b.) An Order requiring Ringwood to provide G.L. with the requested related services immediately;
- c.) An Order requiring Ringwood to provide G.L. compensatory related services; and
- d.) Any other relief that is necessary and proper.

Sincerely,

DISABILITY RIGHTS
NEW JERSEY



Robert A. Robinson

Dated: April 28, 2020