

April 28, 2020

██████████
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.*
Application for Emergent Relief

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' application for emergent relief pending the outcome of their due process petition 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 emergent relief:

- a.) A Declaratory Ruling that Ringwood violated G.L.'s rights under the IDEA by failing to provide the necessary 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; and

c.) 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 the emergent relief hearing, given that the OAL is currently holding hearings remotely.

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 EMERGENT RELIEF IN THE FORM OF IMMEDIATE RECEIPT OF RELATED SERVICES UNDER THE IDEA.

A. This Court Has Jurisdiction To Entertain Petitioners' Emergent Relief Request Because It Involves A Break In The Delivery of Services.

G.L. is entitled to emergent relief under the IDEA and its implementing New Jersey regulations because he has not received any occupational therapy and speech therapy in accordance with his IEP since the COVID-19 pandemic forced Ringwood to close its schools on March 16, 2020. He has only received three specialized reading instruction sessions since that date. Ringwood would not provide those related services online during this pandemic unless the L.L. and A.L. first agree to waive all potential claims against Ringwood pertaining to those services.

In the special education context, the initial step in the determination as to whether a party is entitled to emergent relief is if the OAL has jurisdiction to entertain such a petition. The relevant regulation, N.J.A.C. 6A:14-2.7(r)(1), makes it clear that a party may only request emergent relief under these limited circumstances: “(i) issues involving a break in the delivery of services; (ii) issues involving disciplinary action, including manifestation determinations and determinations of interim alternate education settings; (iii) issues concerning placement pending outcome of due process proceedings; and (iv) issues involving graduation or participation in graduation ceremonies.” In the present matter, this Court has jurisdiction to hear Petitioners’ emergent relief petition under the first circumstance (break in service) because G.L. has not been receiving any related services to which he is entitled during this pandemic.

B. Petitioners Have Satisfied The Four Prongs Necessary For Emergent Relief.

The New Jersey Supreme Court has set forth a four-prong test for determining whether an applicant is entitled to emergent relief. *Crowe v. DeGioia*, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14-2.7(s)(1)). These four factors are:

- (1) the petitioner will suffer irreparable harm if the requested relief is not granted;
- (2) the legal right underlying petitioner’s claim is settled;
- (3) the petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- (4) when the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

N.J.A.C. 6A:14-2.7(s)(1). For the reasons articulated below, Petitioners have satisfied all four prongs.

1. *G.L. Will Suffer Irreparable Harm If the Requested Relief Is Not Granted.*

G.L. will suffer irreparable harm if the requested relief is not granted. An IEP is not just a “mere exercise in public relations” for a student classified for special education services under the IDEA. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d. Cir. 1988). Rather, it serves as a significant package of special educational and relational services designed to meet the unique needs of the classified student so that he or she could receive a free, appropriate public education (FAPE). *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 526 (3d Cir. 1995). U.S. Department of Education Secretary Betsy DeVos just announced on April 27, 2020, that FAPE must still be provided 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>.

“It is almost beyond dispute that wrongful discontinuation of a special education program to which a student is entitled subjects that student to actual irreparable harm.” *Cosgrove v. Niskayuna Cent. Sch. Dist.*, 175 F. Supp.2d 375, 392 (N.D.N.Y. 2001). A school district cannot defeat a showing of irreparable harm by substantially complying with an IEP. *Derrick F. v. Red Lion Area Sch. Dist.*, No. 1:06-CV-1463, 2006 WL 2547050, at **5-9 (M.D. Pa., Sept. 1, 2006) (granting preliminary injunction). Nor can a district use the availability of compensatory services to defeat such a showing. *Id.* at *9 (stating that compensatory education is “not an adequate substitute for hiring a qualified intervener trainer to provide the requisite training as set forth in the IEP”).

Needless to say, the longer the student is without the required IDEA services, the greater the irreparable harm. The OAL has already held that the lack of IDEA services for a classified

student for approximately a month constitutes irreparable harm. *J.L. & A.L. o/b/o Wanaque Bd. of Educ.*, OAL Dkt. No.: EDS 12152-14, 2014 WL 5834298 (N.J. Adm. Oct. 7, 2014) (ordering immediate homebound instruction of 15 hours per week as well as compensatory education for autistic student during the pendency of the due process petition).

In the present matter, G.L. has already been deprived of the necessary amount of speech therapy, occupational therapy, and specialized reading instruction, all of which are required by his IEP, for over a month since Ringwood shut down its schools. As already explained, the only reason why he is not receiving the required amount of services during this pandemic, which Petitioners obviously did not cause, is because of his parents' justified refusal to waive any claims which would include compensatory education, another critical right G.L. has under the IDEA. Therefore, G.L. has satisfied this prong.

2. *G.L.'s Legal Right Is Settled.*

The IDEA requires that school districts provide FAPE to classified students between the ages of three and twenty-one. N.J.A.C. 6A:14-1.1(b)(2). As stated previously, the IEP is a critical package of services designed to provide FAPE to a classified student. *Polk*, 853 F.2d at 172; *Carlisle*, 62 F.3d at 526. The school district of residence must make sure the student's IEP is implemented without delay even during this pandemic. N.J.A.C. 6A:14-3.7(a); 4/27/20 Press Release, Secretary DeVos; *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).

If a classified student is deprived of FAPE for a period of time, compensatory education is a judicially-created right available to the student, regardless of whether there is a 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, as the district of residence, is responsible for making sure G.L. receives all of the services called for by his IEP without delay. G.L. also has the right to pursue compensatory education should Ringwood fail to provide him with FAPE including the related services he is entitled for an extended period of time. Therefore, G.L.'s legal rights are settled.

3. *G.L. Has A Likelihood Of Prevailing On The Merits Of The Underlying Claim.*

G.L. is likely to prevail on the merits of his underlying claim. Clearly, he has the right to receive the amount of occupational therapy, speech therapy, and specialized reading instruction called for by his IEP during this pandemic. N.J.A.C. 6A:14-3.7(a). He also has the right to seek compensatory education should he not receive FAPE during this global emergency. *Ferren C.*, 612 F.3d at 717-18. Ringwood cannot hold A.L. and L.L. hostage by forcing them to choose one IDEA right at the expense of another. Therefore, G.L. has satisfied this prong.

4. *G.L. Will Be More Harmed Than Ringwood If The Requested Relief Is Not Granted.*

G.L. would suffer much greater harm than Ringwood would if he does not obtain the requested emergent relief. G.L. is entitled to the related services his IEP calls for during the pandemic and the longer he goes without them, the further he will lag behind academically. Whereas, Ringwood cannot possibly suffer any harm. Petitioners are simply requesting that Ringwood do what it has been obligated to do all along and that is to implement G.W.'s IEP. After all, Ringwood already admitted it is well positioned to provide the related services in question when Mr. ██████ sent his e-mail dated April 23, 2020, 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.) Hence, G.L. has satisfied this prong as well.

CONCLUSION

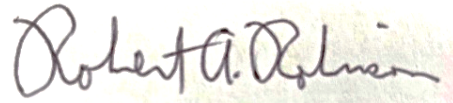
For the reasons stated above, Petitioners respectively requests the following emergent relief be granted:

- 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 since March 16, 2020;
- b.) An Order requiring Ringwood to provide G.L. with the requested related services immediately; and
- c.) Any other relief that is necessary and proper.

Sincerely,

DISABILITY RIGHTS
NEW JERSEY

Attorneys for Petitioners



Robert A. Robinson

Dated: April 28, 2020