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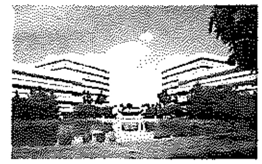

CAPEHART SCATCHARD: AN OVERVIEW

In 1876, the law firm today known as Capehart Scatchard was founded in Camden, New Jersey by Thomas French, a self-educated lawyer. More than a hundred forty years later, we at Capehart are proud of our rich heritage which is both a source of confidence and a continuing ethical guide. We have earned and maintained our superb reputation for more than a century by providing our clients with quality legal services and by keeping a step ahead in areas of developing law. We anticipate our clients' needs, keep apprised of legal developments and counsel preventative action to avoid trouble, now and later.

Our Approach

Our firm's commitment of providing clients with superior legal services in a prompt manner and at a reasonable cost is based on a three-tier approach: first, a sound technical knowledge of the law; second, a practical understanding of how to work efficiently with a "can do" attitude and not create obstacles; and third, the interpersonal skills needed to communicate well and frequently with clients. That commitment is still firmly in place today.

In an era when clients must justify every expense, we pursue cost-efficiency without sacrificing positive legal results. Capehart Scatchard has a long-standing commitment to staffing client matters according to the task at hand, utilizing shareholders and associates where appropriate to deliver the best work product and service in an effective and cost-efficient manner. We avoid needless paperwork and procedures, and concentrate instead on charting smart courses of action, either to avoid lawsuits or lay a solid case foundation.

Scope of Service

Capehart Scatchard is a diversified general practice law firm of 87 attorneys practicing in five offices in more than a dozen major areas of law. We serve large and small businesses, public entities, non-profit organizations and academic institutions, governments and individuals.

Our primary areas of practice are:

- Alternative Energy
- Appellate
- Banking and Financial Services
- Bankruptcy/Creditors' Rights
- Business and Tax
- Cannabis
- Casualty & Professional Liability Defense
- Commercial
- Construction
- Data Privacy & Security
- Dram Shop & Security
- Elder Law
- Franchising
- Healthcare
- Insurance
- Labor and Employment
- Litigation
- Real Estate and Land Use
- Regulatory and Governmental Affairs
- School Law *(including special education)*
- Wills, Estates & Trusts
- Workers' Compensation

Every matter is assigned and supervised by a skillful attorney. Legal teams including attorneys, paralegals, and support staff are formed in order to properly handle complex and unique legal challenges, as well as repetitive matters.

Our People

Capehart Scatchard recognizes one of its greatest assets: its people. We have created the right mix of professionals at every level to make this philosophy work. Our lawyers bring impressive credentials from other firms or positions in government or business to join with Capehart lawyers who have established outstanding track records during their long careers with us. Our attorneys are supported by trained paralegals, secretaries, and administrative personnel working in a modern facility with state-of-the-art technology.

Our professionals understand clients' needs for effective and efficient service, and we strive to exceed their expectations. The relationship between client and attorney must be based upon respect, trust, and mutual confidence. We value clear, open communication in order to help our clients understand their legal matters and the services we are providing. Capehart Scatchard endeavors to understand a client's needs, and to then tailor our level of service to achieve the client's objectives.

Our Resources

- **Location.** Capehart Scatchard's main office is located in Mt. Laurel, which offers quick access to Interstate 295, State Highways 38 and 73, and the New Jersey Turnpike, and enables the firm to efficiently serve its clients.

  In addition to the firm's main office in Mt. Laurel, New Jersey, the firm also maintains four other offices at the following locations.

Hamilton, NJ	Holmdel, NJ
New York, NY	Philadelphia, PA

  Among other things, our attorneys represent clients in administrative, regulatory, governmental affairs, and litigation matters which involve various departments, agencies, and independent commissions and/or authorities of state, county, and local government.

- **Technology.** Lead by our seasoned staff of information technology specialists, Capehart Scatchard delivers the best of breed technology to provide superior quality of service to our clients.

  We provide a highly-secure network using the latest in firewalls, security filters, and user authentication. With our internet-based application server, we give attorneys and staff the ability to access all firm software creating a virtual office. Using a sophisticated case management suite, we are able to organize all case-related information, allowing us to provide immediate feedback to our clients. In order to maintain the highest level of client satisfaction, we deploy a wide selection of communication tools including e-mail, desktop faxing, video conferencing, on-line collaboration, and electronic filing.

  We bring the power of information technology to bear on every aspect of what we do. Our primary goal is to respond to our clients' needs with the highest quality work product, created in the most efficient way possible, as quickly as possible.

- **Library Capabilities.** Through the use of electronic technology, our attorneys have access to thousands of legal and non-legal databases. Our full-time professional information specialist uses the many resources and formats available to provide our attorneys and clients with accurate, timely and cost-effective information. The services provided by our library enable us to effectively and efficiently respond to our clients' needs.

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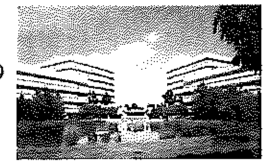

N.J. Supreme Court Decides Issue on Compensation for Unused Sick Time

By: Sanmathi Dev, Esq.

On April 20, 2020, the New Jersey Supreme Court issued an important decision regarding a teacher's right to compensation for unused sick leave at the time of retirement or separation from a board of education. In *Barila v. Board of Education of Cliffside Park*, the State's Supreme Court held that the unambiguous terms of the collective bargaining agreement between the teachers' union and the board of education dictated the right to sick leave compensation upon retirement and such agreement did not violate a vested right.

The Cliffside Park Education Association ("Association") is the exclusive collective bargaining representative for all teachers employed by the Cliffside Park Board of Education ("Board"). The Association and the Board entered into a collective negotiations agreement in 2012 ("2012 CNA"). The 2012 CNA stated that compensation for unused sick leave at the time of retirement or separation was capped at $25,000. In 2015, the Association and the Board entered into a new CNA ("2015 CNA"), which lowered the cap on unused sick leave to $15,000. The 2015 CNA did not contain a "grandfather" clause.

The Plaintiffs in this case were teachers who accrued more than $15,000 worth of unused sick time. They sued the Board claiming that they had a vested right to unused sick leave compensation up to the $25,000 cap under the 2012 CNA for various reasons, including because they believed they never consented to the new cap of $15,000.

The New Jersey Supreme Court reversed the Appellate Division on this issue and held that the teachers did not have a vested right. As the exclusive representative for the teachers, the Association validly entered into the 2015 CNA with the Board and limited the compensation for unused sick leave to $15,000. A teacher's right to compensation for unused sick leave only vested when that teacher served the length of time required by the collective bargaining agreement and was retiring or separating from the school district. The 2015 CNA replaced the 2012 CNA, and nothing in the 2012 CNA suggested an additional right to compensation for unused sick leave after the 2012 CNA expired. Therefore, the 2012 CNA did not apply to the teachers, and their right to compensation for sick leave was limited to $15,000 under the 2015 CNA.

For a copy of this decision, please contact Sanmathi (Sanu) Dev, Esq. at sdev@capehart.com.

About the Author:

Sanmathi (Sanu) Dev, Esq. concentrates her practice on the representation of boards of education and charter schools in all areas of school law including: labor and employment, special education, Section 504, student discipline, FERPA, Anti-Bullying Bill of Rights Act, student residency, civil rights, tenure, OPRA, and OPMA. In connection with these representations, she is experienced in handling matters before State and Federal courts, including the Office of Administrative Law. Ms. Dev is an experienced special education litigator and defends school districts in due process hearings from inception through trial. In addition, she has handled matters before governmental agencies, including the U.S. Office for Civil Rights and New Jersey Division on Civil Rights. Ms. Dev routinely conducts training and seminars, drafts policies and manuals, and provides strategic advice to school administrators regarding school law issues. Ms. Dev is licensed to practice law in New Jersey, the District Court for the District of New Jersey and Pennsylvania.

Ms. Dev is the Editor of Capehart Scatchard's *New Jersey School Law Blog*. The blog features contributions from attorneys in Capehart Scatchard's school law group and is devoted to current developments in New Jersey education law affecting school districts, charter schools, students, and employees. To view recent articles and/or subscribe to the blog, please visit https://njschoollawblog.com or contact Ms. Dev directly at 856.380.6709 or via email at sdev@capehart.com.

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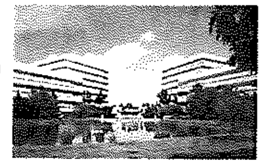

GRC Issues Guidance on COVID-19 Impacts on OPRA

By: Sanmathi Dev, Esq.

As previously addressed in our article entitled "Additional Guidance on Conducting Remote Board Meetings"[2] published a few weeks ago, Governor Murphy signed Assembly Bill No. 3849[3] into law which relaxes the deadline by which public agencies are required to respond to requests for government records under the Open Public Records Act ("OPRA") during a period of a declared emergency, such as the current COVID-19 health crisis. On March 26, 2020 the Government Records Council ("GRC") issued a special statement[4] regarding the modification.

Under normal circumstances, the custodian of records of a public agency must respond to an OPRA request within seven (7) business days by either granting access to the government record or denying access. However, during a State declared emergency, public health emergency, or state of local disaster emergency, the custodian must make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven (7) business days or as soon as possible thereafter.

In discussing "reasonable efforts," the GRC advised that the custodian of records is required to respond in writing within seven (7) business days that an extension to a date certain is needed. The custodian should articulate the reason(s) for the extension, which may include retrieval of records located in storage, archives, or off-site; conversion of the records to a different medium; building access restrictions; and/or delay in available personnel needed to provide responsive records.

The GRC also recommends that the public agency advise the public (i.e., via its website) whether the transmission of OPRA requests has changed.

About the Author:

Sanmathi (Sanu) Dev, Esq. concentrates her practice on the representation of boards of education and charter schools in all areas of school law including: labor and employment, special education, Section 504, student discipline, FERPA, Anti-Bullying Bill of Rights Act, student residency, civil rights, tenure, OPRA, and OPMA. In connection with these representations, she is experienced in handling matters before State and Federal courts, including the Office of Administrative Law. Ms. Dev is an experienced special education litigator and defends school districts in due process hearings from inception through trial. In addition, she has handled matters before governmental agencies, including the U.S. Office for Civil Rights and New Jersey Division on Civil Rights. Ms. Dev routinely conducts training and seminars, drafts policies and manuals, and provides strategic advice to school administrators regarding school law issues. Ms. Dev is licensed to practice law in New Jersey, the District Court for the District of New Jersey and Pennsylvania.

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[2] https://njschoollawblog.com/opra-deadlines-relaxed-amid-declared-emergencies/

[3] https://www.njleg.state.nj.us/2020/Bills/A4000/3849_I1.PDF

[4] https://www.state.nj.us/grc/news/alerts/GRC%20Special%20Statement%202020-01%20(Final).pdf

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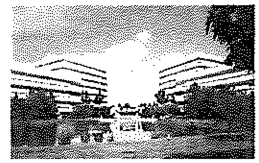

Additional Guidance on Conducting Remote Board Meetings

By: Sanmathi Dev, Esq.

In one of our subsequent articles, we addressed the issue of how boards of education could conduct their school board meetings electronically and still comply with the Open Public Meetings Act ("OPMA") when there is a severe restriction on public gatherings due to the coronavirus health crisis. Fortunately, the Division of Local Government Services ("DLGS") recently provided additional guidance on this issue.

DLGS emphasized that telephonic or virtual public meetings without a physical meeting place should be utilized for the foreseeable future in light of the Governor's Executive Order 107. Virtual meeting options include streaming and/or online meeting platforms, such as Google Hangouts or Cisco Webex.

While at least 48-hours notice is still required before a board meeting, such notice may be provided electronically during a declared emergency. The public must still be able to attend (view) the board meeting and provide public comment even if the meeting is conducted remotely.

While executive session should be avoided or limited if meetings are conducted virtually, some school boards may need executive session to address urgent issues. If executive session is conducted remotely, that part of the board meeting should occur on a separate and private virtual platform.

The complete DLGS guidance document may be found at https://nj.gov/dca/divisions/dlgs/pdf/GovConnectNotice-NewRemotePublicMeetingsGuidance.pdf.

About the Author:

Sanmathi (Sanu) Dev, Esq. concentrates her practice on the representation of boards of education and charter schools in all areas of school law including: labor and employment, special education, Section 504, student discipline, FERPA, Anti-Bullying Bill of Rights Act, student residency, civil rights, tenure, OPRA, and OPMA. In connection with these representations, she is experienced in handling matters before State and Federal courts, including the Office of Administrative Law. Ms. Dev is an experienced special education litigator and defends school districts in due process hearings from inception through trial. In addition, she has handled matters before governmental agencies, including the U.S. Office for Civil Rights and New Jersey Division on Civil Rights. Ms. Dev routinely conducts training and seminars, drafts policies and manuals, and provides strategic advice to school administrators regarding school law issues. Ms. Dev is licensed to practice law in New Jersey, the District Court for the District of New Jersey and Pennsylvania.

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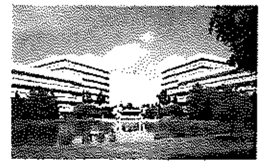

COVID-19 and the High Risk Employee

By Ralph R. Smith, 3rd, Esq.
Editor: Sanmathi Dev, Esq.

Below is an article written by my colleague, Ralph R. Smith, Esq., Co-Chair of our firm's Labor & Employment Group.[1]

With businesses reopening thanks to modifications of state stay at home orders, employers are beginning to contemplate what their new work environments will look like when employees return. Over the past several months, the Equal Employment Opportunity Commission ('EEOC") has provided guidance to employers regarding the ways that a company can safeguard its workplace in this new era of COVID-19. One hot question is whether employers, out of fear of legal liability from possible COVID-19 workplace exposure, can prevent high risk employees who suffer the greatest possible complications from COVID-19 from returning to work merely because of that possibility of greater harm. The EEOC says no, at least not automatically, just because of that high risk of possible complications.

According to the EEOC, employers cannot bar high risk employees from returning to work merely because of that high risk. Rather, before an employer can take such action, the employer must engage in the traditional interactive process required under the Americans with Disabilities Act ("ADA') any time an employee with a disability needs a workplace accommodation. Since high risk employees have one or more underlying medical conditions that cause them to be high risk, the EEOC directs that employers engage in the interactive process to determine whether there are ways of minimizing that employee's exposure to COVID-19 in the workplace. As part of that interactive process, the employer can assess whether the employee would pose a direct risk of harm to either themselves or others, but in making that assessment, there must be actual objective proof of possible harm.

Under this standard, a direct threat assessment cannot be based solely on an underlying condition being on the Center for Disease Control's list of high risk factors. Rather, the determination must be an individualized assessment based on a reasonable medical judgment about a particular employee's disability – not the disability in general – using the most current medical knowledge and/or on the best available objective evidence. The ADA regulations require an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. According to the EEOC, assessment of these factors should also include considerations based on the severity of the pandemic in a particular area and the employee's own health (for example, is the employee's disability well-controlled), and his/her particular job duties. A determination of direct threat also should include an analysis of the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all

[1] If you wish to view additional articles and/or be kept up-to-date with labor & employment issues, please visit our HR Resource blog: https://hresourcelegal.com/.

workers, such as mandatory social distancing or the wearing of face masks and gloves, also would be relevant in determining the possibility of a direct threat of harm. Thus, according to the EEOC, ultimately an employer may only bar an employee from the workplace only if, after going through all the foregoing steps, the facts support the conclusion that the employee poses a significant risk of substantial harm to himself/herself that cannot be reduced or eliminated by reasonable accommodation.

In light of this EEOC directive, employers should not rush to judgment in deciding to bar a high risk employee from returning to the workplace due to COVID-19. Adherence to the traditional interactive process required by the ADA will enable an employer to navigate through this complicated issue and reduce the chances of significant legal harm arising from the mishandling of such fears during this continuingly evolving pandemic.

About the Author:

Ralph R. Smith 3rd, Esq. is a shareholder and Co-Chair of the firm's Labor & Employment Group. He is also a member of the firm's Health Care Law Group. Mr. Smith focuses his practice in employment litigation and preventative employment practices, including counseling employers on the creation of employment policies, non-compete and trade secret agreements, and all forms of employer legal training to avoid employment-related litigation. He likewise represents both companies and individuals in related complex commercial litigation before federal courts, state courts and administrative agencies in the defense of race, gender, age, national origin, disability and workplace harassment and discrimination matters, wage-and-hour disputes, restrictive covenants, grievances, arbitrations, drug testing, and employment related contract claims. Additionally, Mr. Smith counsels health care clients by reviewing employment contracts, advising on relevant employment policies and HIPAA regulatory requirements, negotiating restrictive covenants and handling lawsuits related to the enforcement of restrictive covenants against physicians and other health care professionals. Ralph is admitted to practice law in New Jersey and Pennsylvania and the federal courts of New Jersey, the Eastern District of Pennsylvania, the Third Circuit Court of Appeals, and the United States Supreme Court. He may be reached at rsmith@capehart.com or 856.914.2079.

Mr. Smith is a contributors to Capehart Scatchard's HResources blog which features articles from colleagues in the firm's labor and employment group. The blog provides useful tips to employers and human resources professionals as to how to keep the workplace, and workplace policies, in compliance with state and federal employment laws. To subscribe to the blog, please visit www.hresourcelegal.com.

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Are You Ready: Summary of Federal COVID-19 Leave Laws

By Ralph R. Smith, 3rd, Esq. and Lara M. Ruggerio, Esq.
Editor: Sanmathi Dev, Esq.

Below is an article written by my colleagues, Ralph R. Smith, Esq., Co-Chair of our firm's Labor & Employment Group, and Lara M. Ruggerio, Esq., a member of the firm's Labor & Employment Group. The article summarizes two new federal leave laws dealing with employee work absences resulting from the COVID-19 crisis.

As of April 1, 2020, employers must now comply with the two new federal leave laws recently passed to deal with employee work absences resulting from the COVID 19 crisis. These laws, the Paid Emergency Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, impose new leave requirements upon employers that will remain in place until December 31, 2020. These laws are portions of the Families First Coronavirus Response Act ("FFCRA"). A summary of each of these provisions appears below to help you understand what these new compliance obligations for employers are so your workplace is prepared to deal with these upcoming expected leave requests. For starters, your first step should be to update your leave policies to include an explanation of these two new leave laws. Secondly, you need to post in your workplace the notice document recently issued by the United States Department of Labor. ("USDOL"). Finally, you need to familiarize yourself with the details of these new leave obligations as are now explained below.

PAID EMERGENCY SICK LEAVE ACT

The general purpose of this Act is to provide paid sick time to employees that are unable to work due to:

- Quarantine or isolation relating to COVID-19
- Self-quarantine ordered by a health care provider
- Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis
- Employee is caring for individual who is quarantined or is self-quarantined
- Employee is caring for a son or daughter due to school or child care closure due to COVID-19 precautions
- Employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor

The Paid Sick Leave Act applies to all public employers and private sector employees with less than 500 employees. Full time employees are entitled to eighty (80) hours of paid sick time. A part time employee should be paid the number of hours that the employee works on average over a two-week period.

There is a cap upon what employees are to be paid during this leave but, as a general rule, the employee is to receive required compensation of two-thirds of the amount of their usual pay. However, in no case shall paid sick time exceed:

- $511.00 per day (and $5,110.00 in the aggregate) if the employee is out due to:
    - Quarantine or isolation relating to COVID-19
    - Self-quarantine ordered by a health care provider
    - Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis
- $200.00 per day (and $2,000.00 in the aggregate) if the employee is out due to:
    - Employee is caring for individual who is quarantined or is in self-quarantine
    - Employee is caring for a son or daughter due to school or child care closure due to COVID-19 precautions
    - Employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor

Employers are to receive a tax credit for payments made to employees under this law. Moreover, employees may opt to use other forms of paid leave instead of this leave but the employer cannot require that use.

If you are a business with 50 or fewer employees, you may ask the DOL to exempt you from following this law if compliance will jeopardize the viability of the business as an on-going concern. The United States Department of Labor recently issued a guidance on what an employer must show to meet these requirements to obtain a potential exemption. The Department of Labor also has the discretion to exclude health care providers and emergency responders from eligibility.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

This new federal legislation expands eligibility for FMLA leave to accommodate employees who are unable to work or telework due to a need to care for a child under 18 years of age if school or daycare is closed due to a public health emergency. Private sector employers only need to comply with the Act if they have less than 500 employees. All public employers must comply with the Act. Employees who were eligible for FMLA as of April 1, 2020 are eligible for leave under the expansion. Employees are eligible to use this leave if they have worked for the employer for 30 calendar days.

The first ten days of this expanded family leave is unpaid. An employer may substitute paid time off or other sick time during this period, but an employer may not require an employee to do so. (If an employee qualifies for leave under the Emergency Paid Sick Leave Law he/she can substitute this leave for the first two unpaid weeks of emergency family leave.) After the first ten days, employees must be paid at a rate of no less than 2/3 of an employee's usual rate of pay. However, this payment is capped at $200.00/day, not to exceed $10,000.00. Employers are entitled to a tax credit for any payments made to employees in compliance with this Act.

Consistent with traditional FMLA, the paid emergency leave is job protected. There are exceptions, however. Employers with less than 25 employees may be exempt. If an employee's job no longer exists due to the coronavirus pandemic, an employer must make efforts to restore the employee to an equivalent position over a one year period.

Also, employees are subject to the usual rules on limitation of available FMLA time. Meaning that the expanded leave does not add any additional time for an employee who has already exhausted his/her available FMLA prior to the effective date of the emergency expansion law.

The USDOL has the discretion to exclude health care providers and emergency responders from eligibility. Moreover, if you are a business with 50 or fewer employees, you may ask the USDOL to exempt you from following this law if compliance will jeopardize the viability of the business as an on-going concern. The USDOL recently issued guidance on what an employer must show to meet these requirements to obtain a potential exemption.

DOL ENFORCEMENT

Consistent with a U.S. Department of Labor Field Assistance Bulletin dated March 24, 2020, in an effort to enable public and private employers to come into compliance with the FFCRA, the USDOL has placed a moratorium on enforcement of the Act until April 17, 2020. The USDOL will not bring enforcement actions against any public or private employer provided that the employer has made reasonable, good faith efforts to comply with the Act. This moratorium applies to the entirety of the FFCRA, including the Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

If you have any questions about these expanded leaves or need advice on how to comply with leave requests, feel free to contact a member of the firm's Labor and Employment department. We are still here assisting clients during these difficult times, and remain just an email or cell phone call away.

<u>About the Authors:</u>

Ralph R. Smith 3rd, Esq. is a shareholder and Co-Chair of the firm's Labor & Employment Group. He is also a member of the firm's Health Care Law Group. Mr. Smith focuses his practice in employment litigation and preventative employment practices, including counseling employers on the creation of employment policies, non-compete and trade secret agreements, and all forms of employer legal training to avoid employment-related litigation. He likewise represents both companies and individuals in related complex commercial litigation before federal courts, state courts and administrative agencies in the defense of race, gender, age, national origin, disability and workplace harassment and discrimination matters, wage-and-hour disputes, restrictive covenants, grievances, arbitrations, drug testing, and employment related contract claims. Additionally, Mr. Smith counsels health care clients by reviewing employment contracts, advising on relevant employment policies and HIPAA regulatory requirements, negotiating restrictive covenants and handling lawsuits related to the enforcement of restrictive covenants against physicians and other health care professionals. Ralph is admitted to practice law in New Jersey and Pennsylvania and the federal courts of New Jersey, the Eastern District of Pennsylvania, the Third Circuit Court of Appeals, and the United States Supreme Court. He may be reached at rsmith@capehart.com or 856.914.2079.

Lara M. Ruggerio, Esq. is member of the firm's Labor & Employment Group. Ms. Ruggerio focuses her practice on representing employers and public entities in labor and employment law policy, procedural, and litigation matters. She counsels clients on personnel policies and procedures including those associated with the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), Fair Labor Standards Act (FLSA), and the Conscientious Employee Protection Act (CEPA). She appears before the judiciary as well as State and Federal administrative agencies, including the EEOC and the New Jersey Division of Civil Rights. Ms. Ruggerio is admitted to practice law in New Jersey and Pennsylvania. She may be reached at lruggerio@capehart.com or 856.914.2044.

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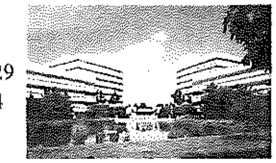

New Law Permitting Remote Instruction Also Requires Payment of Compensation and Benefits to School Employees and Other Entities

By: Robert A. Muccilli, Esq.
Editor: Sanmathi Dev, Esq.

On April 14, 2020, Governor Murphy signed **A3904/S2337** into law which permits use of virtual and remote instruction to meet the minimum 180 day school year requirement. The new law does not stop there.

The law requires payment of benefits, compensation and emoluments to school employees as if school remained open during the school closure (irrespective of whether employees are covered by a collective negotiations agreement) and to a contract service provider pursuant to the terms of the contract in effect prior to the school closure as if the services had been provided. Additionally, A3904 adds a requirement to make payments for benefits, compensation, emoluments and all payments required by N.J.S.A. 18A:6-51 et seq. to an educational services commission, county special services school district, and a jointure commission, and under any shared services agreement and cooperative contract entered into with any other public entity.

The law contains some conditions and exceptions so school districts should consult with legal counsel regarding the law's implications.

If you wish to have a copy of the bill, please contact Robert A. Muccilli, Esq. at rmuccilli@capehart.com.

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School Powers in Confronting an Epidemic

By: Robert A. Muccilli, Esq.
Editor: Sanmathi Dev, Esq.

School districts and boards of health have significant powers to address the spread of contagious disease. Now is the time to review these powers.

The board of health may direct closure of schools. N.J.S.A. 18A:40-12. Whenever the board of health of any municipality shall declare any epidemic or cause of ill health to be so injurious or hazardous as to make it necessary to close any or all of the public schools in the municipality, the board of health must immediately serve notice on the board of education of the school district situated in the municipality that it is desirable to close schools under its control. The notice may apply to all or some of the schools in the district. Schools closed shall not be reopened until the board of education is satisfied that all danger from the epidemic or cause of ill health has been removed.

Additionally, school districts may exclude teachers and students exposed to contagious or infectious disease. Subject to compliance with certain conditions, a principal may exclude from school any pupil who has been exposed to a communicable disease. Notice of the reason for the exclusion must be given to the parent/guardian or other person having control of the pupil. N.J.S.A. 18A:40-8. Further, no teacher or pupil who is a member of a household in which a person is ill with a contagious or infectious disease as may be designated by the Board of education, or of a household exposed to contagion, shall attend any public school during such illness. N.J.S.A. 18A:40-10. Return to school is conditioned upon the board being furnished with a certificate from the board of health, or from the physician attending the person, or from a medical inspector certifying that all danger of communication of the disease by the teacher or pupil has passed.

School districts that envision the need to exclude students or staff exposed to contagious or infectious disease should consult with legal counsel given the significance and impact of such a decision, and the importance of evaluating the facts in each situation.

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CDC Issues Interim Guidance for Opening of Schools Following COVID-19 Closures

By: Lauren E. Tedesco, Esq.
Editor: Sanmathi Dev, Esq.

Earlier this week the Center for Disease Control and Prevention ("CDC") released guidance for K-12 school administrators on the reopening of schools. The guidance is titled "Interim Guidance for Resuming Schools and Day Camps."[1]

The largest section of the guidance is the Social Distancing section which encouraging schools to promote social distancing to the fullest extent possible. Steps 1 and 2 of the promotion of social distancing include suggestions, such as student and staff groupings remaining static (same students with same staff members), cancelling of field trips, inter-group events and extracurricular activities, limitations on gatherings, and restrictions on non-essential visitors and volunteers. Additionally, this section includes space seating/desks at least six feet apart and the turning of desks to face in the same direction as opposed to facing one another. For cafeteria and playgrounds, it is recommended that attendance in these areas be staggered and areas be disinfected between use. For transportation to and from school, the CDC suggests staggering arrival and departure times and locations and to create social distancing on school buses where possible.

The guidance places strong emphasis on consultation with local and state health authorities in order to best tailor the procedures to keep communities safe during a gradual scale up of operations. The guidance is also organized into sections and the sections further incorporate the scope and nature of community mitigation with suggested decreases from Step 1 to Step 3 (Step 1 being the most aggressive mitigation measures). However, the CDC explicitly notes: "Some amount of community mitigation is necessary across all steps until a vaccine or therapeutic drug becomes widely available."

In all steps, schools should strive to protect staff members and students who are at a higher risk for severe illnesses, which can include continuing to telework and/or virtual learning.

It is also suggested that schools ramp up hygiene and cleaning practices, including but not limited to: teaching and reinforcing hand washing and covering coughs and sneezes between children and staff; face covering wearing; adequate hygiene supplies such as soap, hand sanitizer (with at least 60% alcohol), paper towels, tissues, and no-touch trash cans; frequent cleaning and disinfecting of touched surfaces (for example: playground equipment, door handles, sink handles, drinking fountains); and proper ventilation systems that increase outdoor air circulation.

[1] https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf#page=45

The guidance closes with a recommendation for a short term (1-2 days) school closure for cleaning and disinfection, in the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community.

The CDC makes it clear on their website that this issued guidance is "interim," which is interpreted to mean there could be need to amend in the near future should circumstances change. School administrators should look closely at the guidance in formulating their local plans to the New Jersey Department of Education.

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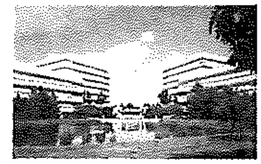

NJDOE Finally Releases Notice Stating Permissibility of Delivering Related Services to Special Education Students through Remote Technology

By: Cameron Morgan, Esq.
Editor: Sanmathi (Sanu) Dev, Esq.

With most schools in New Jersey closed for nearly two weeks, and all closed since Governor Murphy issued Executive Order 107 on March 21, 2020, school districts across the State have been awaiting further guidance from the New Jersey Department of Education ("NJDOE") on the important issue of whether NJDOE would permit the provision of related services to special education students through remote technology and distance learning during this period of school closure due to the COVID-19 virus. That much-awaited guidance came yesterday, as Commissioner of Education Dr. Lamont Repollet issued a letter titled "Notice of Rule: Waiver/Modification/Suspension." Effective April 1, 2020, the notice temporarily suspends earlier regulatory guidance from the Office of Special Education which had purported to prohibit the remote provision of related services to special education students through the use of electronic communications or remote technology. "Related services" are services such as speech/language therapy, occupational therapy, physical therapy, individual or group counseling, and other forms of services which are necessary to enable a special education student to benefit from special education and are spelled out in each child's individualized education program ("IEP").

Despite statements in the Commissioner's new notice letter that "[c]urrently, Department regulations do not permit school districts or other educational agencies to" deliver related services remotely, that earlier prohibition was actually done through the issuance of non-binding policy guidance in a Memorandum from the Assistant Commissioner on June 4, 2019, and had not been done through the normal regulatory rulemaking process. With this new notice letter, the Commissioner walked back that earlier guidance, stating: "[D]uring an extended public health-related school closure, related services to students with disabilities shall be provided through electronic communications, virtual, remote or other online platforms, as appropriate and as required by the student's IEP to the greatest extent possible." This updated guidance follows on the heels of federal guidance issued by the U.S. Department of Education on March 21, 2020, which had already stated that the provision of a free and appropriate public education ("FAPE") to special education students under the Individuals with Disabilities Education Act ("IDEA") "may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically."

With the federal and state guidance now in alignment, most school districts are now rolling out plans for remote provision of related services to special education students. Districts should keep the following best practices in mind, as they do so:

- Determinations about which related services can be effectively provided through remote means should be practical and student-driven, considering the capabilities and limitations of remote technologies to be used. Some related services, such as speech therapy or individual counseling, may be implemented through remote means more readily and effectively than others, such as physical therapy, for example.

- The educational needs of each student should be taken into account in order to make individualized determinations about whether remote related services can be appropriately implemented on a case-by-case basis. Some students may be able to obtain a meaningful educational benefit through the implementation of remote related services while others might not, depending on the nature or extent of their disability and the degree to which the services can be effectively modified. District IEP teams should consider the overarching legal standard for FAPE to special education students and ask: "Is the provision of remote related services reasonably calculated to enable this student to achieve a meaningful educational benefit, in light of the child's unique needs and circumstances, during a time when families are confined to their homes?"

- Districts are encouraged to seek the informed consent of parents prior to implementing remote related services. Many districts are sending information to families via e-mail, or physical letters for those families without internet access, providing them with information about the remote provision of related services and requesting their consent.

- To avoid confidentiality breaches and privacy issues under the Family Educational Rights and Privacy Act ("FERPA"), school districts should use caution in implementing group related services in an environment where it may be impossible to ensure parents are not able to view other students through video-conferencing during related services sessions. All families should be advised that audio or video recording of related services sessions is prohibited, in order to avoid inadvertently creating privacy or student records issues.

- Districts should do their utmost to ensure they implement remote related services in a manner that allows them to track and document in a services log the frequency and duration at which remote related services are provided. Good documentation will ensure the district has an accurate record of the extent to which services were or were not able to be provided remotely during the closure period.

School districts should still be aware of the possibility of owing compensatory related services, in some cases, at the conclusion of the school closure. School districts with questions regarding the implementation of remote related services during this time should contact their board attorneys.

Finally, while the permissibility of remote related services has now been endorsed by NJDOE, the early drafts of revisions to State regulations all purport to permit this "during an extended public health related school closure," but do not speak to the period once the emergency ends. It seems likely that NJDOE may try to limit the applicability of its rules to only the temporary span of the closures due to this crisis. Yet, observers are beginning to wonder what will happen once families, special education students, child study teams, related service providers, and special educators get used to effectively implementing related services through remote means as the unintended by-product of this public health emergency. The Commissioner's notice recognized that making these services available for remote learning to general education students, but not to special education students, presented an insurmountable equity issue. A question arising in the minds of many special educators around the State will be, "What will be the 'new normal' once things are back to normal?" In many cases, special education students with certain unique needs may well benefit from the implementation of their related services remotely, even if they were not confined to their homes by executive order. Was this is just a temporary flexibility being permitted during an extraordinary period of health-related school closings, or are we on the verge of *expanding what is possible* for the effective delivery of related services in a broader sense? Will child study teams and parents have the freedom to make these determinations for themselves at the IEP meeting table, subject to review by administrative law judges, through the due process procedures provided for under the IDEA? Or will the NJDOE try to control these issues from Trenton through carefully crafted limitations added to the regulatory language? In the coming months, these questions are sure to generate further discussion and debate.

For a copy of the Memorandum from the Assistant Commissioner dated June 4, 2019 or the updated guidance which followed on the heels of federal guidance issued by the U.S. Department of Education on March 21, 2020, please reach out to Mr. Morgan directly.

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Cameron Morgan, Esq. focuses his practice in the areas of school law, special education, and labor and employment. He has represented school districts with respect to a variety of education law issues involving students, teachers, and special education issues, including questions pertaining to inclusion, least restrictive environment, discipline, behavior management, transition, evaluation, discrete trial instruction, medically fragile students, dyslexia, Autism Spectrum Disorder, Downs Syndrome, Aspergers Syndrome, and equal access to activities and services for disabled individuals.

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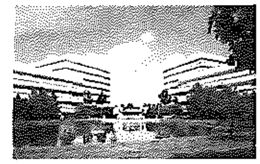

Statute Requires Schools to Provide Meal Distribution or Meal Vouchers during COVID-19 Closures to Students Eligible for Free & Reduced Price Lunches

By: Cameron Morgan, Esq.
Editor: Sanmathi (Sanu) Dev, Esq.

On Friday, March 20, 2020, Governor Phil Murphy signed into law a new bill, A-3840, to ensure the continuation of meal distribution to some of New Jersey's most at-risk students as the State provides support to help local communities work through the COVID-19 pandemic. The statute, now **P.L. 2020, c. 6**, requires local school districts to provide for meal distribution or a meal voucher program during the period of school closure due to the COVID-19 epidemic for those students who are eligible to receive free and reduced price lunches. The act takes effect immediately.

Under the new law, school districts that receive a written directive from either the New Jersey Department of Health or the heath officer of their jurisdiction directing them to implement a school closure during the COVID-19 epidemic, as all New Jersey school districts have, are required to implement a meal distribution program for students eligible for free and reduced price lunches. The statute directs school districts to identify one or more meal distribution sites that are within walking distance and easily accessible to the students. Districts should now be collaborating with county and municipal government officials to identify appropriate distribution sites, if they are not already doing so. Meal distribution sites may include faith-based locations, community centers such as YMCAs, and other locations where summer meals are available. For school districts with high density housing, the statute explicitly includes an obligation to "make every effort to identify a school meal distribution site in that housing area."

School districts also have an affirmative obligation to identify eligible students for whom meal distribution sites are not within walking distance. In the case of those students, the district must distribute school meals to either the student's residence or bus stop along established bus routes, provided that the student's parent or guardian is present at the stop for distribution. Up to three school days' worth of food per delivery may be provided through bus delivery in these cases. A district may use its own busses, or it may contract with outside vendors for transportation to provide meal distribution. The act explicitly excludes such contracts from the provisions of the Public School Contracts Law, to ensure schools are able to act swiftly and are not constrained by public bidding.

Right now, some districts that are able to provide for all meal distribution through sites that are within walking distance are planning for meal pick-up once or twice a week, sometimes providing up to five days' worth of meals at the distribution site to minimize person-to-person contact and continue social distancing. The statute's limitation on only allowing up to three days of meal distribution "per delivery" appears to apply only to districts that are implementing the program through delivery along bus routes, and does not appear to limit those districts that are capable of fully implementing through distribution sites within walking distance.

If a school district is unable to provide school meals pursuant to the above provisions of the statute, then the statute provides that the district must establish a food voucher system for students who are eligible for free and reduced price lunches. The voucher system must be developed in accordance with criteria that will be promulgated by the Commissioner of Education in consultation with the Commissioner of Human Services, in order to provide the families of eligible students with funds to enable such students "to access nutritious food at food retail stores."

Finally, the new statute provides that any costs incurred by local school districts as a result of their implementation of the act, which are not reimbursed by the federal government, shall be borne by the State. The State is directed to maximize waiver flexibilities being provided by the federal government to address the loss of meals for low-income children due to COVID-19 related school closures.

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Cameron Morgan, Esq. focuses his practice in the areas of school law, special education, and labor and employment. He has represented school districts with respect to a variety of education law issues involving students, teachers, and special education issues, including questions pertaining to inclusion, least restrictive environment, discipline, behavior management, transition, evaluation, discrete trial instruction, medically fragile students, dyslexia, Autism Spectrum Disorder, Downs Syndrome, Aspergers Syndrome, and equal access to activities and services for disabled individuals.

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OPRA Deadlines Relaxed Amid Declared Emergencies

By: Lauren E. Tedesco, Esq.
Editor: Sanmathi Dev, Esq.

As a result of the public health crisis of COVID-19, on March 20, 2020, Governor Murphy signed **Assembly Bill No. 3849** into law which modifies the deadline by which public agencies are required to respond to requests for government records during the period of a declared emergency. Normally, under the Open Public Records Act ("OPRA"), the custodian of records for public agencies has seven (7) business days to respond to a request made for government records by either granting access to the government record or by denying access. Failure to respond within the seven (7) business days is deemed a denial of the request. A custodian of records is also required to notify a requestor within the timeframe if a record is archived and/or in storage and explain when the records may be available. In addition, under the current law, access to certain records, such as budgets, bills, vouchers, contracts and public employee salary information must be granted immediate access.

The March 20, 2020 amendment permits a relaxation of the timelines for responding to an OPRA request. Specifically, during a State declared emergency, public health emergency, or state of local disaster emergency, the custodian of a government record must make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.

This amendment is particularly pertinent amongst the current State declared emergency and public health crisis of COVID-19.

Should you wish to have a copy of Assembly Bill No. 3849, please contact Ms. Tedesco directly.

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Holding Board Meetings Electronically During the Coronavirus Pandemic

By: Robert A. Muccilli, Esq.
Editor: Sanmathi Dev, Esq.

Despite severe restrictions placed on public gatherings, school boards must meet during the coronavirus pandemic to address critical business, including convening a public hearing on the budget. The solution, holding a public meeting electronically, is supported by recent guidance (attached) from the **Division of Local Government Services** ("DLGS").

The **Open Public Meetings Act** (N.J.S.A. 10:4-8(b)) permits public meetings to be held in person or by means of communication equipment. DLGS guidance provides that communications equipment includes streaming services and other online meeting platforms.

Notice of a meeting held by electronic equipment must be properly noticed. Similarly, the board must provide a means of public comment.

A number of logistical issues arise when holding a meeting remotely. One of these is finding an electronic platform that allows a board to preserve the integrity of the board's discussion in the public portion while at some point permitting public comment to occur. Platforms exist that can accommodate this need. There will be a cost attached and a need for careful implementation of the technology.

Another issue that arises is maintaining confidentiality presuming there is a need for an executive session. This issue can be addressed by announcing the executive session at the public portion of the meeting and using a separate, non-public, dial-in mechanism for the executive portion of the meeting.

Streamlining a board meeting held electronically is likely the most important consideration. Limit the agenda to the most critical issues and forego nonessential business. Include an executive session on the agenda for a remotely held meeting only when absolutely necessary.

The good news is that the law and technology allow a board meeting to be held remotely so that critical business can be conducted. Boards should examine their policies and consult with counsel when considering holding a meeting electronically.

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Division of Local Government Services (DLGS)

For more information: Email: DLGS@dca.nj.gov

Given the recent attention to the potential impacts of coronavirus, the Division issues this notice as a general precaution and to remind local units of options available to ensure the continued regular operation of government.

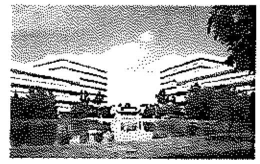
The Division of Local Government Services reminds local units that, in accordance with N.J.S.A. 10:4-6, et seq., (the "Open Public Meetings Act," or "Act"), public meetings may be held in person or by means of communication equipment, N.J.S.A. 10:4-8(b), to include streaming services and other online meeting platforms. All meetings, including those held using communications equipment, must be noticed in a manner consistent with the requirements of the Act, unless the meeting is for emergent circumstances and held in a manner consistent with the requirements set forth at N.J.S.A. 10:4-9(b). Local units should also provide guidance to the public for remotely accessing and providing comment at a meeting. Local units should still have an advertised meeting place, which, is connected to the meeting through communications equipment, unless otherwise directed by state or local emergency management or health officials, consistent with Executive Order 103 (Murphy 3/9/2020).

This mechanism has been used by local governments during weather events and other circumstances that render in-person meetings less than optimal.

Local units are reminded that they are required to provide a means of public comment even if a meeting is held remotely. Further, if a local unit currently records the audio or video of its meetings, we recommend that it continue to record a remote meeting.

Local units holding meetings remotely are advised to avoid entering executive or closed session unless the topic of concern is urgent, directly affects the health, safety, or welfare of residents, and is an allowed exception as listed in N.J.S.A 10:4-12, given the difficulty of ensuring only appropriate individuals are on the line during a separate session. If an executive or closed session is necessary, local units must use a mechanism that ensures the confidentiality of closed session. To this end, after announcing the executive or closed session at the public portion of the meeting consistent with the Act, a local unit may consider using a separate, non-public, dial-in mechanism for the executive or closed portion of the meeting.

In preparation for upcoming community events and meetings of public bodies, local units are encouraged to coordinate with legal counsel and local offices of emergency management to ensure continued compliance with N.J.S.A. 10:4-6 and other statutory obligations.



SPECIAL ALERT

New Obligation to Meet With Students Facing Multiple Suspensions or Expulsion

By: Robert A. Muccilli, Esq.
Editor: Sanmathi Dev, Esq.

On January 21, 2020, Governor Murphy signed legislation requiring that a meeting take place with a student who has experienced multiple suspensions or who may be subject to a proposed expulsion for the purpose of identifying any behavior or health difficulties experienced by the student and, where appropriate, to provide supportive interventions or referrals to school or community resources that may assist the student in addressing the identified difficulties. The principal is charged with setting up the meeting as soon as practicable between the student and a school psychologist, counselor, social worker, student assistance coordinator or a member of the school's intervention and referral services team.

In certain situations, the required meeting may take place as soon as practicable <u>following</u> the student's removal from the school. These include circumstances in which the student's immediate removal or suspension is necessitated under the Zero Tolerance for Guns Act (N.J.S.A. 18A:37-7 et seq.), the pupil committed an assault under N.J.S.A. 18A:37-2.1 or 2.2, or in any other instance in which the safety and security of other students or school staff required the student's immediate removal from school.

The Department of Education is charged with making available to school districts a list of current resources that may be of assistance as referral services for students. Resources may include the *New Jersey MentalHealthCares* information and referral service, and county or local programs that provide youth services for mental health or substance abuse.

The significance of this development is that it places a new obligation on school districts in connection with student suspensions/expulsions. The law takes effect immediately.

<u>About the Author:</u>

Robert A. Muccilli, Esq. is Co-Chair of Capehart Scatchard's School Law Group and a Shareholder in the Labor and Employment Group. For over 25 years, he has focused his practice in the areas of school law, and labor and employment. He has represented school districts with respect to a variety of education law issues involving students, teachers, school construction and special education issues including questions pertaining to inclusion, least restrictive environment, discipline, behavior management, transition, evaluation, discrete trial instruction, medically fragile students, dyslexia, Down Syndrome, Asperger's Syndrome, and equal access to activities and services for disabled individuals. He is admitted to practice law in New Jersey, the United States District Court for the District of New Jersey and Washington, DC.

Mr. Muccilli is a contributor to Capehart Scatchard's *New Jersey School Law Blog*. The blog features contributions from attorneys in Capehart Scatchard's school law group and is devoted to current developments in New Jersey education law affecting school districts, charter schools, students, and employees. To view recent articles and/or subscribe to the blog, please visit <u>www.capehart.com</u> or contact Mr. Muccilli directly at 856.914.2074 or via email at <u>rmuccilli@capehart.com</u>.

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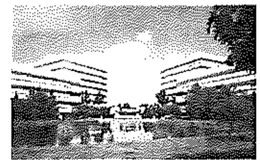

Subcontracting Restrictions and Changes in Health Insurance Plans and Employee Contributions Likely Coming Very Soon

By: Robert A. Muccilli, Esq.
Editor: Sanmathi Dev, Esq.

On March 19, 2020, the Senate approved two significant bills stemming from Senator Sweeney's deal with the New Jersey Education Association ("NJEA"). One bill requires alterations in health insurance plans and modifications to employee contributions to the cost of health coverage. The other bill places restrictions on the ability of certain employers, including a school district, to subcontract work of employees in a collective bargaining unit. While not enacted yet, both pieces of legislation appear to be on the fast track to approval. If enacted, they will take effect immediately.

Key components of the bill altering health insurance and employee contributions are:

1. Establishment of New Jersey Educators Health Plan ("NJEHP") by the School Employees' Health Benefit Program ("SEHBP") for the 2020-21 plan year and creation of an equivalent plan by non-SEHBP districts;
2. Placement of all employees commencing employment on or after July 1, 2020 in the NJEHP or its equivalent plan;
3. Requirement to hold a special enrollment period prior to July 1, 2020 for employees to select plans;
4. Implementation of new contribution levels for employees placed in or selecting the NJEHP or its equivalent plan, and said contributions to be a percentage of base salary in accordance with certain salary tiers;
5. Establishment of a less costly Garden State Health Plan ("GSHP") by the SEHBP for the plan year beginning July 1, 2021 and the requirement that non-SEHBP districts create an equivalent plan;
6. Implementation of a contribution level for employees selecting the GSHP which is one-half (½) the applicable base salary percentage for employees in the NJEHP but not less than 1½% of base salary; and
7. Use of any actual savings to reduce the tax levy in districts spending above adequacy.

Also passing the Senate on March 19, 2020 is a bill that places severe restrictions on subcontracting and imposes significant remedies for violation. Among the employers affected by the bill are a local or regional school district, educational service commission and county special service school district ("School District"). The bill does the following things:

1. Prohibits an employer from entering into a subcontracting agreement during the term of a collective bargaining agreement;

2. Prohibits an employer from entering into a subcontracting agreement after the expiration of the current collective bargaining agreement unless: (1) the employer provides written notice to the union at least 90 days before requesting bids or soliciting proposals; and (2) the employer has offered the union the opportunity to meet and consult to discuss the decision to subcontract and to engage in negotiations over the impact of subcontracting;

3. Each employee replaced or displaced by the subcontracting retains all previously acquired seniority and shall have recall rights whenever the subcontracting terminates;

4. Violation of the requirements is an unfair practice which may result in a charge filed by any employee or the union;

5. If the employee or union prevails on the charge, the employee's remedy includes, but is not limited to, reinstatement, back pay, back benefits, back emoluments, tenure and seniority credit, attorney's fees, and any other relief the Public Employment Relations Commission ("PERC") deems appropriate;

6. Except for actions of the employer expressly required by the bill, all aspects or actions relating to or resulting from a school district's decision to subcontract, including whether or not severance pay is provided, are mandatory subjects of negotiations. The employer retains the right to subcontract should no successor agreement exist; and

7. Subcontracting does not include a contract entered under the Uniform Shared Service and Consolidation Act or a contract to provide services to nonpublic schools through State or federal funds.

Both bills demand attention. If enacted, they will have an impact on negotiations, budgeting and insurance benefit planning.

If you wish to have a copy of either bill, please contact Robert A. Muccilli, Esq. at rmuccilli@capehart.com

About the Author:

Robert A. Muccilli, Esq. is Co-Chair of Capehart Scatchard's School Law Group and a Shareholder in the Labor and Employment Group. For over 25 years, he has focused his practice in the areas of school law, and labor and employment. He has represented school districts with respect to a variety of education law issues involving students, teachers, school construction and special education issues including questions pertaining to inclusion, least restrictive environment, discipline, behavior management, transition, evaluation, discrete trial instruction, medically fragile students, dyslexia, Down Syndrome, Asperger's Syndrome, and equal access to activities and services for disabled individuals. He is admitted to practice law in New Jersey, the United States District Court for the District of New Jersey and Washington, DC.

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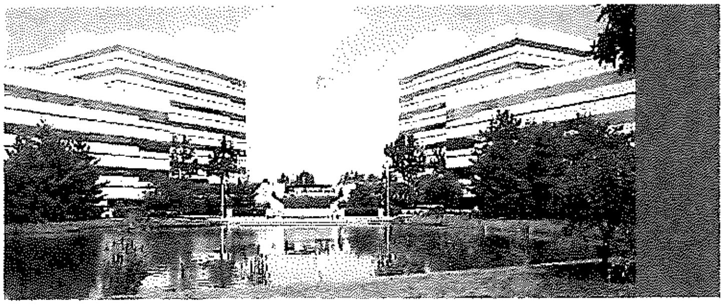

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Voting Requirements for Certain School Employment Actions

The following actions require recorded roll call vote and pass by an affirmative vote of the majority of the full board:

- The appointment, salary and term of the board secretary.
- The appointment and term of the superintendent of schools.
- The appointment or removal of the assistant superintendent of schools.
- The transfer of a teaching staff member.
- The appointment, transfer, removal or renewal of the employment contract of a certificated or non-certificated officer or employee.
- The withholdance, for inefficiency or other good cause, of a prescribed employment or adjusted increment.

The following actions require an affirmative vote of the majority of the full board, but do not require a roll call vote:

- To determine the sufficiency of charges to dismiss or reduce the salary of a tenured employee.
- The appointment, salary fixing and duty definition of a school business administrator.

Capehart Scatchard's School Law practice has over 50 years experience representing New Jersey educational institutions in the capacity of labor counsel, solicitor and special education counsel. We have hands-on experience with some of the most pressing issues facing school districts including those affecting student discipline, domicile/residency issues, tenure rights, civil rights litigation, public contracts, school construction, mold litigation, special education, family and medical leave, and public finance.

For additional information, please contact our School Law Group Co-Chairs, Joseph F. Betley, Esq. at jbetley@capehart.com or Robert A. Muccilli, Esq. at rmuccilli@capehart.com

CAPEHART SCATCHARD
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Special Education Timelines
(under IDEA & NJ Regulations)

Notice of Proposed Actions & Responding to Parental Requests

Implementing an action for which the parent has furnished written consent – **without delay**. N.J.A.C. 6A:14-2.3(d).

Providing notice of proposed action – **no later than 15 calendar days after making a determination.** N.J.A.C. 6A:14-2.3(h)(1).

Implementing a proposed action after proper notice – **15 calendar days after notice provided.** N.J.A.C. 6A:14-2.3(h)(2).

Providing written notice to a parent who has revoked in writing consent to special education and related services – **within 10 days of receipt of the written revocation of consent.** The school district shall cease providing special education and related services to the student after the expiration of the 15-calendar-day notice period unless the parent rescinds the revocation of consent, in writing, within that time period. N.J.A.C. 6A:14-2.3(e)(3).

Responding in writing to a written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of FAPE – **within 20 calendar days**, excluding school holidays but not summer vacation. N.J.A.C. 6A:14-2.3(h)(5). If a meeting is required, the meeting must be conducted and determination made **within 20 calendar days**. N.J.A.C. 6A:14-2.3(h)(5)i.

IEP Meetings and Amendments

IEP meeting must be held **within 30 calendar days of eligibility**. N.J.A.C. 6A:14-3.7(a).

Obtaining consent to amend an IEP without a meeting – **within 15 days of providing notice of the amendment.** N.J.A.C. 6A:14-3.7(d).

Evaluations and Reevaluations

Completion of the evaluation, determination of eligibility, development and implementation of an IEP (after obtaining parental consent for initial evaluation) – **90 calendar days.** N.J.A.C. 6A:14-3.4(e).

Furnishing a copy of evaluation reports, documentation, and information that will be used in an initial eligibility determination – **not less than 10 calendar days prior to the meeting.** N.J.A.C. 6A:14-3.5(a).

Completion of the reevaluation, redetermination of eligibility, development and implementation of an IEP (after obtaining parental consent for reevaluation) – **60 calendar days.** N.J.A.C. 6A:14-3.8(e).

Reevaluation of a student – **within at least every 3 years from prior reevaluation, unless conditions warrant holding a reevaluation sooner.** N.J.A.C. 6A:14-3.8(a).

Requests for Independent Evaluations

Filing for due process to defend a decision not to conduct an IEE after a written parental request for same – **within 20 calendar days of receipt of the parent's request.** N.J.A.C. 6A:14-2.5(c)1ii.

Home Instruction

Home instruction – set up **within 5 days of a student's suspension**. N.J.A.C. 6A:16-7.2(a)5.

Notice of Unilateral Placement

Parents must give notice of intention to unilaterally place a child in an out-of-district placement – **at least 10 business days prior to placing**. N.J.A.C. 6A:14-2.10(c)2.

Notice to CST of Preschool Disabled Student

To assure that preschoolers with disabilities have their initial IEPs implemented no later than age three, a written request for initial evaluation shall be forwarded to the district **at least 120 days prior to the preschooler attaining age three**. N.J.A.C. 6A:14-3.3(e)2.

Transfer Students

Completion of all necessary assessments, IEP meeting, development, and implementation of IEP for a student who transfers from another NJ district or from an out-of-state district – **within 30 calendar days from date of enrollment**. N.J.A.C. 6A:14-4.1(g).

Completion of all necessary assessments, IEP meeting, development, and implementation of IEP for a student who transfers from a non-public school with a services plan – **within 60 calendar days from date of enrollment**. N.J.A.C. 6A:14-4.1(g).

Receiving Schools

Notifying the County Office of placement of a special education student in a receiving school (i.e., out-of-district placement) – **within 10 calendar days of placement**. N.J.A.C. 6A:14-7.5(b).

Convening an emergency IEP meeting for a student placed out-of-district when the receiving school terminates the placement of the student – **within 10 school days of being notified of the termination decision**. N.J.A.C. 6A:14-7.7(a).

Providing written notice of changes to IEP of a student whose out-of-district placement is terminated or withdrawn – **within 10 days of the date of the IEP meeting**. N.J.A.C. 6A:14-7.7(b), (c).

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For additional information, please contact our Cameron R. Morgan, Esq. at cmorgan@capehart.com or 856.914.2096.

Attachment 5

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 00083-2017

AGENCY DKT. NO. 2017-25480

S.P. ON BEHALF OF G.M.,

Petitioners,

v.

RIVERSIDE TOWNSHIP BOARD OF EDUCATION,

Respondent.

Bradley Flynn, Esq., for petitioners (Montgomery Law, LLC, attorneys)

Sanmathi Dev, Esq., for respondent (Capehart Scratchard, attorneys)

Record Closed: March 14, 2018 Decided: March 27, 2018

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, S.P., on behalf of her son, G.M. filed a petition alleging that her son, a second-grade student at the Riverside Township School District (respondent) was not provided a free and appropriate public education (FAPE). Petitioner alleges in her petition that due to the failure of respondent to do a behavior assessment and have a behavioral plan for G.M., he was denied FAPE, and is entitled to compensatory education for the months of September, October, November, and December 2016. Petitioner moved out-of-district in January 2017, and thus, there is no continuing issue with respect to petitioner's IEP or placement.

G.M. was a second-grade special education student enrolled at the Riverside Township School District for the 2016-2017 school year. He was eligible for special education services under the classification of other health impaired. G.M. was in general education classes and received special services, therapy and an individual aid. Respondent maintains that it conferred G.M. a free and appropriate public education, a program that provided G.M. with significant learning and meaningful educational benefit in the least restrictive environment. When G.M. began exhibiting behavior issues in the late fall 2016, a functional behavior assessment was completed, the child study team convened and the IEP was modified to include a behavior plan. Petitioner argues that the assessment should have been ordered sooner and that G.M. was denied FAPE for the three or four months in question.

The petition was filed on or about December 12, 2016, with the New Jersey Department of Special Education. After the parties participated in mediation conducted by the Office of Special Education Programs (OSEP) on January 3, 2017, the matter was transmitted to the Office of Administrative Law on January 3, 2017. The case was heard before the undersigned Administrative Law Judge (ALJ) on December 4, 5, 6 and 8, 2017. Submissions were filed by the parties on January 31, 2018, and the record closed after a conference with the parties on March 14, 2018.

ISSUES

1. Did respondent offer petitioner a free and appropriate public education where he could make meaningful educational progress during the fall of the 2016-2017 school year?

2. Did respondent fail to do a behavior assessment within a reasonable period of time for petitioner, and if so, is petitioner entitled to compensatory education for the period in question?

SUMMARY OF TESTIMONY

For respondent:

Tiffany Ross

Tiffany Ross was G.M.'s second grade teacher during the 2016-2017 school year. She has been a teacher with the respondent for approximately twenty-one years. She has taught various grades throughout her tenure in the District and was experienced with working with students with disabilities. During the 2016-2017 school year, she had twenty-three students in her class, several of which had IEPs and 504 plans, including G.M. She discussed the discipline process in the classroom and the use of positive and negative consequences and a progressive discipline process. This process was explained to all the students and their parents at the beginning of the school year.

Ms. Ross testified that G.M. was on grade level with his academics and she did not have any problems with him initially. She noted some academic areas where he was a little behind grade level, but indicated that he had been making progress. G.M. had an aid due to his medical issues and there were times when he needed to be reminded of classroom rules and the consequences. She explained this was not unusual for second grade students. She had problems with G.M.'s mother from the beginning of the year. The first incident occurred during back to school night when G.M.'s mother was rude and disrespectful to her. G.M.'s mother verbally attacked her on October 20, 2016, which left her somewhat fearful. Thereafter, petitioner filed a DCF complaint against her, which was dismissed as unfounded.

In late October and early November, she noticed a change in G.M.'s attitude towards her and he became more disruptive and was acting out in the classroom. G.M. always had a one on one aid, Ms. Santino. Ms. Santino would work with him to cool down when he got angry or misbehaved in the classroom. She also called on the guidance counselor to step in and try to provide positive reinforcement for G.M. Academically, he continued to meet their goals. She identified the documentation to support the progress of G.M. academically and a few areas where he was struggling.

She met with the aid and the school counselor to come up with a plan to address this recent behavior change. She stressed that this behavior did not commence until November and after the behavior intervention methods they employed with G.M. in the classroom were not working, they scheduled an IEP meeting with the parents in November to discuss G.M.'s situation and petitioner's request for a behavior plan. The meeting was not scheduled until December 21 in order to accommodate the petitioner's schedule. However, the petitioner canceled this meeting and it was rescheduled for January 5, 2017. At the meeting, respondent proposed various evaluations and assessments including a functional behavior assessment and the IEP was modified to include a behavior intervention plan. The family moved out-of-district in January 2017, so the plan was never implemented.

Vanessa Connearney

Ms. Connearney is a guidance counselor at Riverside Elementary School and has been a guidance counselor for eighteen years. She works with general and special education students. She has known G.M. for several years. He was a very sweet boy and she always enjoyed seeing him and speaking to him. In late October or early November, his teacher, Ms. Ross reached out to her about some behavior issues she had begun to notice. She worked with Ms. Ross and G.M.'s aid, Ms. Santino to come up with strategies and interventions to help with his behavior in the classroom. They came up with several strategies that they were implementing. She testified that they were also talking with the child study team about these issues and she meet with G.M. to provide additional support. They took steps in the classroom as soon as the behavior was observed and attempted to put in the appropriate interventions and consequences. It was appropriate to attempt to put their own interventions in place prior to ordering a behavior assessment. Ms. Connearney stressed that this behavior was out of character for him, so it was reasonable to try some classroom interventions first.

She met with G.M. privately at the end of November through the end of December to provide additional support. She believed that the steps were appropriate and effective since he was able to stay in the classroom and had the appropriate supports in place. When the behavior escalated, the child study team met, to discuss doing assessments and they attempted to meet with the petitioner. Petitioner requested a meeting in late November or early December. Petitioner requested specific dates in December and then cancelled that meeting. It was rescheduled for January 5, 2017. They met on January 5, 2017, and the IEP was modified and a behavior assessment was ordered. The family moved out-of-district and withdrew G.M. from the District so the modified IEP was never implemented.

Patrice Swenson

Ms. Swenson is the Director of the Child Study Team for Riverside Township. Ms. Swenson was familiar with G.M. and his family. G.M. was classified as other health impaired. He was in a general education setting and received a one on one aid. She testified that Ms. Santino continued as his one on one aid while he was in the District. She was aware that the family had moved due to a bug infestation and their home in Riverside in early September 2016. They moved in with G.M.'s father in a neighboring district and respondent provided busing and kept G.M. and his brother in the District. She was aware that G.M.'s mother had an issue with Ms. Ross from the beginning of the year and continued to complain about her. She testified that G.M. did not exhibit any behavior issues until the end of October. They attempted different classroom interventions, which is the normal protocol.

G.M.'s mother emailed her on November 28, 2017, and requested an IEP meeting. Her secretary responded that day to see if she was available to come in immediately. Ms. Parks responded on December 2, 2017, that her CMO Miguel was not available until December 21 or 22, 2016. Her secretary then responded to Ms. Parks that they could schedule the meeting for the December 21 or 22, 2016, at 2:30 p.m. That meeting was rescheduled at the request of Ms. Parks, and the IEP meeting was held on January 5, 2017. At the meeting in January, respondent proposed various evaluations including a function behavior assessment, psychological evaluation and several others. Respondent revised the IEP to include a behavior intervention plan with some individual counseling services and to continue with the one on one aid. The petitioner never followed up with updated medical and moved the child out-of-district, so the modified IEP was never implemented.

For petitioner:

S.P.

S.P. is G.M.'s mother and legal guardian. She discussed G.M.'s medical issues at length. She had concerns about respondent complying with the medical requirements for her son. One issue had to do with the wheelchair use. She testified that G.M. was supposed to use the wheelchair but they did not use it for him regularly. Her primary concern was after he started taking the bus and had to walk from the bus to the school. She disputed Ms. Ross' testimony that the wheelchair was not sent in with petitioner. However, her primary concern was that he was acting out and the District should have ordered a behavior evaluation and had a behavior plan in place for him. She claimed that he was not making progress academically because of the behavior issues. She also claimed that he was being bullied and the teachers did not do anything. However, she did not file any HIB complaints. She also claimed that she did not receive any of the progress reports that were identified by Ms. Ross. She conceded that she did not care for Ms. Ross from the beginning of the school year and had some issues which culminated in a verbal argument with her on school property on October 20, 2016.

She testified that there was an issue with bedbugs in their housing, so they moved out-of-district sometime in September which is when G.M. and his brother started taking the bus. Respondent provided bussing for them, since the dislocation was temporary. Petitioner's attorney characterized the family as being "homeless." However, it was petitioner's testimony that they moved into G.M.'s father's home and the boys ultimately started attending school in that District. She believes that the District should have ordered a behavior assessment sooner and that their failure to do so resulted in a denial of FAPE for G.M. She believed that G.M.'s academic progress was hindered during this period of time.

Janice Willis-Kingsbury

Ms. Kingsbury was offered as an expert in special education and psychology. She provided a report dated November 2017. She concluded based upon her review of all the records from petitioner that G.M. had regressed academically in the fall of 2016. She discussed her experience and the different intelligence and psychological testing she conducted on petitioner. She conducted several tests and concluded that his behavior was impacting his ability to progress in school and that a behavior assessment should have been completed on him.

Ms. Willis-Kingsbury met with G.M. and his mother between January and August 2017. She did not observe him in the Riverside School District as he had left the district at the time she met with and interviewed G.M. and petitioner. She conducted a number of different tests and identified and discussed the various progress reports that had been prepared by the Riverside district when he was a student there. She concluded that the respondent had failed to address medical and behavioral issues which resulted in his regression and a denial of FAPE.

FINDINGS OF FACT

The resolution of the allegations in this matter requires that I make a credibility determination regarding critical facts. The choice of accepting or rejection the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but I also must be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of it rationality, internal consistency and the manner in which it "hangs together' with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (1963). A fact finder is free to weight the evidence and to reject the testimony of a witness, even though not directly contracted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions with alone, or in connection with other circumstances in evidence, except suspicion as to this truth. In re Perrone, 5 N.J. 514, 521-22 (1950); D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that the witnesses from the respondent school district were sincere and honest in their testimony. Moreover, the testimony was consistent with the documentary evidence and with each other. The petitioner is seeking compensatory education for the months of September through December. However, the testimonial and documentary evidence presented at the hearing demonstrate the G.M. was provided FAPE and had been progressing for the months in questions. Moreover, the behavior issues which did not commence until late fall, were appropriately and timely responded to.

Having had the opportunity carefully to observe petitioner, it is my view that although she was sincere in her concern for her son, it was clear that she disliked G.M.'s teacher and the District in general and provided no credible testimony that the District had failed to provide FAPE. Moreover, when she requested a meeting with respect to G.M.'s behavior, the District responded in an appropriate and timely manner and conducted and IEP meeting and ordered a functional behavior assessment. Thereafter, the District modified the IEP to address the behavior issues which did not commence until the late fall of 2016. Finally, it is my view that the expert opinion of Ms. Willis-Kingsbury was not credible as her testimony was inconsistent with the facts and the documentary evidence, which did not indicate that there were any behavior issues prior to the late fall. Moreover, the progress reports, and documentation and IEP from the Spring 2016 indicate the G.M. was meeting milestones and progressing on grade level. Thus, her opinion to the contrary was not based upon the evidence and was not credible.

Accordingly, I **FIND** the following:

1. Petitioner was a second-grade student in the Riverside Elementary School for the 2016-2017 school year. He was eligible for special education services under the classification of other health impaired.

2. G.M. was in a general education class and was academically on grade. He has a classroom aid and other related services.

3. G.M. was in Tiffany Ross' class for the second grade and performed adequately academically and was meeting milestones in the fall of 2016.

4. Progress reports were prepared for G.M. which indicated that he was performing adequately in the fall of the second-grade school year.

5. G.M. began to exhibit some behavior issues at the end of October and early November, which was not unusual for second graders. These behavior issues were dealt with through normal classroom intervention techniques. The guidance counselor at the school was consulted and meet with G.M. to provide support and assistance, and G.M. continued to have a one-on-one aide.

6. Appropriate interventions were implemented when the petitioner began to demonstrate behavior issues.

7. An IEP meeting and appropriate assessments were ordered after the in-classroom behavior interventions were unsuccessful.

8. An IEP meeting was scheduled with petitioner in December which was postponed by petitioner until January 5, 2018. An IEP meeting was conducted on January 5, 2018, and appropriate assessments and modifications made to the G.M.'s IEP.

9. G.M. made meaningful progress during the months of September 2016 to December of 2016, and was not denied FAPE.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

New Jersey as a recipient of Federal funds under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. must have a policy that assures all children with disabilities the right to a free appropriate public education (FAPE)., 20 U.S.C. § 1412. IDEA defines FAPE as special education and related services that are provided at public expense, under public supervision and direction, without charge; that meet the standards of the state educational agency that include an appropriate preschool, elementary school or secondary school education in the state involved; and that it is provided in conformity with an IEP. 34 C.F.R. § 300.17; 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.

The responsibility to provide a free appropriate public education (FAPE) rests with the local public school district. N.J.A.C. 6A:14-1.1(d). The local district satisfies the requirement that a child with disabilities receives a free appropriate public education by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. Of Education v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L.Ed. 2d 690, 710 (1982). It is only after the program offered by the District is found not to provide a FAPE can an appropriate alternative program selected by the parents be evaluated and reimbursement ordered. See Forest Grove Sch. Dist. V. T.A. 129 S. Ct 2484, 2496, 174 L.Ed. 2d 168, 183 (2009).

In order to provide a FAPE, a school district must develop and implement an IEP N.J.A.C. 6A:14-3.7. An IEP is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Sch. Comm. Of Burlington v. Dept. of Education of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). The educational opportunities provided by a public school system will differ from student to student, based upon the "myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom." Rowley, Supra., 458 U.S. at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry.

In this case because and as I **FOUND**, that G.M.'s IEP was appropriate and he made meaningful progress during the period in question. I have also **FOUND** that the District did implement appropriate behavioral intervention plan to assist in his general education plan, and ordered appropriate behavior assessments when other interventions were unsuccessful.

I therefore **CONCLUDE** that a preponderance of the evidence has shown that G.M. was properly classified as entitled to special education services under the classification of other health impaired. I further **CONCLUDE** that he was in the proper classroom and was making meaningful progress during the time in question. I further **CONCLUDE** that respondent implemented appropriate behavior interventions when G.M. started exhibiting some behavior issues in the fall 2016. I further **CONCLUDE** that when such interventions were unsuccessful, respondent convened the child study team and ordered appropriate assessment, including a functional behavior assessment. I **CONCLUDE** that there was a meaningful and consistent behavioral intervention plan, and thereafter appropriate assessments within a reasonable short period of time. I **CONCLUDE** that there was no denial of FAPE to G.M., and there is no basis for an award of Compensatory Education.

ORDER

It is hereby **ORDERED** that the petitioner's complaint seeking compensatory education for the period of September through December 2016, and other relief is hereby dismissed.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

Sarah G. Crowley

March 27, 2018	
DATE	**SARAH G. CROWLEY**, ALJ
Date Mailed to Agency	March 27, 2018 (emailed)
Date Mailed to Parties:	March 27, 2018 (emailed)

SGC/mel

APPENDIX

WITNESSES

For Petitioners:

S.P.

Janice Willis-Kingsbury

For Respondent:

Tiffany Ross

Patricia Swenson, Child Study Team Director

Vanessa Connearney, School Counselor

EXHIBITS

For Petitioners:

P-1 Parent's five-disclosure Letter
P-2 Parents Due Process Complaint
P-3 District's Response
P-4 Occupational Therapy Reports
P-5 Physical Therapy Reports
P-6 Letter from De. Carrie Larsen, Physical Therapist, October 8, 2012
P-7 Learning Evaluation Reports
P-8 Psychological Evaluation Reports
P-9 Social History, November 2011
P-10 Speech and Language Evaluations
P-11 IEP, November 2011
P-12 IEP, December 2011
P-13 IEP, January 2012

P-14 IEP, July 2012
P-15 IEP, September 2013
P-16 IEP, September 2014
P-17 IEP, September 2015
P-18 IEP, June 2016
P-19 IEP, January 6, 2017
P-20 IEP, January 23, 2017
P-21 IEP, June 2017
P-22 IEP, Documents, January 2017
P-23 Parent IEP Concerns, 2016
P-24 Family Questionnaire
P-25 Audiologist Report, Dr. Kelli Shivers-Beswick, November 2016
P-26 Medical Records
P-27 Behavioral Records
P-28 Behavioral Emails Between Parent and District
P-29 Work Samples and Assessments
P30 Parent Conference Rubric
P-31 Parent Email with District, May 16, 2017
P-32 Parent Correspondences with District and Intra-District Emails
P-33 Private Evaluations by Janice Kingsbury, Expert
P-34 Janice Kingsbury C.V.
P-35 Report by Geoffrey Mastro, MA LPC Ed.S., School Psychologist
P-36 Photographic Exhibits
P-37 Letter Revoking Consent for IEP, June 15, 2017
P-38 Attorney Correspondences
P-39 Functional Behavior Assessment, February 2017
P-40 Psychological Reevaluation, January 2017
P-41 Speech and Language Reevaluation, January 2017
P-42 Social History Reevaluation, January 2017
P-43 Physical Therapy Reevaluation, January 2017
P-44 Occupational Therapy Reevaluation January 2017
P-45 Learning Reevaluation February 2017

P-46 Weisman Occupational Evaluation Reports by Stephanie Hartman, April 2017

P-47 Auditory Evaluation Report, Drs. Elizabeth Patterson and Megan Mapes, February 2017.

P-48 School Nurse Reports

P-49 School Letter to Parent

P-50 IEP Progress Report, 2017

For Respondent:

R-1 Riverside Township Public Schools 2016-2017 Calendar (BOE 1838-1839)

R-2 Classroom Management System (BOE 1792-1793)

R-3 IEP dated June 16, 2016 (BOE 247-263)

R-4 Emergency Health Care Plan and Seizure Health Care Plan dated September 2016 (BOE 511-513, 1094) and dated September 2015 (BOE 317-319)

R-5 IEP dated September 15, 2016 (BOE 265-280)

R-6 October 20, 2016 Incident (BOE 514-516)

R-7 Institutional Abuse Investigation Unit Report dated December 14, 2016

R-8 Conference Invitation dated November 21, 2016 (BOE 523)

R-9 Attendance, September – December 2016 (BOE 1064-1066)

R-10 Student Grades, September – December 2016 (BOE 1729-1734; BOE 1737-1750)

R-11 Prehearing Order dated April 7, 2017

R-12 Release and Waiver of Claims by Herminio Maciel dated April 6, 2017

R-13 Emails dated November 28, 2017 to December 8, 2016 regarding scheduling of IEP meeting (BOE 725-759)

R-14 Evaluations dated 2011 (Social, Psychological, Education/Speech-Language, Occupational Therapy, and Physical Therapy) (BOE 2-33)

R-15 Evaluations dated 2011 (Occupational Therapy, Speech-Language, Physical therapy, and Learning) (BOE 34-58)

R-16 Evaluations dated 2017 (Psychological, Learning, Functional Behavior Assessment, Social, Physical Therapy, Occupational Therapy, Speech and Language, and Audiologic (BOE 986-1053)

R-17 Parental Consent for Evaluations dated January 5, 2017 (BOE 1253-1256)

R-18 Meeting Notices December 21, 2016 and January 5, 2017 (BOE 1285-1288)

R-19 IEPs dated January 23, 2017 and January 5, 2017 (BOE 1216-1236; BOE 1266-1284)

R-20 Emails (BOS 481, 483, 486)

R-21 Progress Documents (BOE 508, 509, 517, 518, 520, 522, 525, 526, 530-536, 537-540, 553-555, 589, 1798, 1257-1265, 1796-1797)