



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

**DECISION**

OAL DKT. NO. EDS 15887-13

AGENCY DKT. NO. 2014 20413

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

Petitioners,

v.

**WILLINGBORO TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

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**Amelia Carolla**, Esq., for petitioners (Freeman, Carolla, Reisman & Gran, LLP,  
attorneys)

**Rocky L. Peterson**, Esq., for respondent (Hill Wallack LLP, attorneys)

Record Closed: June 23, 2015

Decided: May 26, 2016

**BEFORE JOSEPH F. MARTONE**, ALJ/t/a:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

In this case, L.M. and M.M., the parents of G.M., residents within the Willingboro Township School District, are challenging the 2012-13, 2013-14 and 2014-15 Individual Education Programs (IEPs) offered by the respondent school district based on flawed

evaluations, incomplete and inadequate IEPs, failure to provide necessary related services for speech and language, occupational therapy and physical therapy, inappropriate generic goals and objectives far too advanced for G.M.'s academic level and unrelated to her disabilities, and as failing to comply with the requirement to provide a free, appropriate public education (FAPE). Petitioners are seeking a decision requiring the respondent: 1) To provide G.M. with FAPE for the 2012-13 and 2013-14 school years, to wit, a placement at the Y.A.L.E. School or other appropriate special education school with all appropriate related services; 2) Full tuition reimbursement for G.M.'s unilateral placement at First Light, including the cost of all related services, as well as compensatory education for all missed services; 3) Payment of petitioners' expert fees; 4) Payment for all independent evaluations; and 5) Counsel fees. On February 6, 2015, an Order Allowing Amendment of Complaint was entered permitting the petitioners to include a challenge to the 2014-15 IEP in this case. This case was transmitted to the Office of Administrative Law on November 1, 2013.

The hearing of this case commenced on April 13, 2014. On July 2, 2014, the undersigned was appointed as a temporary ALJ to preside over this case pursuant to N.J.S.A. 52:14F-5m. Hearings were held on approximately eighteen dates between April 15, 2014, and April 17, 2015. The record closed on June 23, 2015, after it was determined that no further hearings were required.

## **FACTUAL DISCUSSION**

### **Undisputed facts**

The following facts are undisputed. G.M. is currently age eight (date of birth, May 10, 2008), and was five years of age at the time the petition in this matter was filed. At four months of age, G.M.'s parents, L.M. and M.M., learned that G.M. was born with a genetic disorder, neurofibromatosis NF1, and a genetic deletion of approximately thirty-six genes. This genetic disorder predisposes her to a number of conditions which may include attention deficit disorder, learning difficulties, decreased muscle tone, benign and malignant tumors and other developmental delays. She was born with a cleft palate, which was corrected with surgery, but this has impacted her speech and

language skills.

These conditions have manifested themselves in G.M. by delays in expressive and receptive language skills and in her communication skills. The severity of these delays is the subject of dispute. She also has poor muscle tone as well as ongoing intestinal issues resulting in abdominal pain and blockages, thus requiring that she have a special diet.

G.M. received private early intervention services beginning at four months of age for her conditions. These services included regular physical therapy, occupational therapy, and speech and language therapy. G.M.'s parents also obtained private services from Weisman's Rehabilitation Center. All of these services were continued until age three.

At age three, G.M. was placed by her parents at First Light Learning Center, a private preschool, for two to three hours per day each week, for the 2011-12 school year. This was at the parents' expense. In March 2012, the parents contacted the school district seeking services for G.M. for the 2012-13 school year. An eligibility meeting was held with the school district on April 20, 2012. The parents stated that they had significant concerns for G.M.'s communication skills and motor delays, and provided medical documentation and reports from Weisman Rehabilitation Center showing that G.M. was receiving physical, occupational and speech therapy. The school district arranged to conduct evaluations for speech and language, an educational assessment and a social history.

On June 8, 2012, the Battelle Developmental Inventory was conducted by the school district. The Battelle is a screening instrument for preschool eligibility but does not provide information about a child's deficits and needs. G.M. scored very low or two years behind in the communication domain and low in the fine motor domain. She was definitely delayed in speech and language, occupational and physical skills and cognitive abilities. On July 10, 2012, the Woodcock-Johnson Achievement Test was administered to G.M., but the results were not provided until January 2013, apparently because of a funding dispute, and were not in time for the IEP for G.M. On July 17,

2012, a Social Evaluation was performed confirming G.M.'s medical condition and the services being provided to her for her deficits in speech and language, and physical and occupational therapy for her motor skills. On July 31, 2012, the parents requested a more formal speech and language evaluation of G.M., but were advised that this was not required for preschool.

On August 15, 2012, the school district held an eligibility meeting and determined that G.M. was eligible for special education because she had a delay in communication skills as shown in the Battelle. Although G.M. had deficits in motor skills, there was no physical therapist and no occupational therapist at the meeting. An IEP was offered placing G.M. in the preschool disabled class, a self-contained classroom where G.M. would receive the regular curriculum modified for students with disabilities. G.M. was to receive speech and language services two times per week in small groups or individually for twenty minutes; occupational therapy two times per week, small group or individually for twenty minutes; and physical therapy to be determined later because there was no physical therapist on staff at that time. Because the school district usually does not obtain a separate speech and language evaluation for preschool children and because the frequency of services for speech and occupational therapy would not be established until after therapists started working with G.M., the details of these services were not refined in the IEP. The academic goals in the IEP were not specific for G.M. because the school district had no information as to her present academic levels. The IEP did not provide for a one-to-one aide, and there were no specific accommodations or modifications for G.M. until the classroom teacher had an opportunity to assess her needs. Whether to provide an extended school year was to be determined at a later date.

On September 13, 2012, the parents rejected the 2012-13 IEP and expressed their concerns that the placement in the preschool disabled class with a modified regular curriculum would be too difficult for G.M. because of her significant delays, and because of the many uncertainties with the program being offered. In the written notice of rejection, the parents stated that the program did not appear to be appropriate for G.M., and that they instead would continue G.M.'s placement at First Light where she would receive private therapy consisting of occupational therapy, physical therapy and

speech and language therapy. The parents also provided the school district with recent evaluations from Fox Rehabilitation covering physical, occupational, and speech and language therapy and confirming G.M.'s deficits in these areas. The school district took no action to respond to the written notice or to revise G.M.'s IEP in response to the parents' concerns or the Fox Rehabilitation evaluations.

G.M. attended First Light for the 2012-13 school year at the parents' expense. The parents felt that G.M. received educational benefit from this placement with regular reports of progress from her teacher, and with G.M.'s social interaction with typical peers and making friends. The parents gave notice of this placement to the school district and their intent to seek reimbursement of \$2,500 for the cost of attendance, and \$1,500 for the cost of the Fox evaluations.

On February 8, 2013, the parents submitted an email request for an IEP meeting for G.M. for the 2013-14 school year. They apparently made subsequent requests in March and May 2013. On May 8, 2013, the school district notified the parents that it had scheduled an IEP meeting for May 13, 2013. The parents then requested alternate dates because their attorney was not available. Eventually, an IEP meeting was held on September 5, 2013, after the school year had started.

In May 2013, the parents obtained the services of Dr. Danielle Chase, a pediatric neuropsychologist, and a copy of her evaluation (P-14) was provided by the parents to the school district in May 2013. They also provided the school district with medical information from Dr. Kristina Cole, an attending physician at Children's Hospital of Philadelphia (CHOP), who was treating G.M. for her symptoms caused by her neurofibromatosis type 1 and the complete deletion of the NF 1 gene. According to Dr. Cole, G.M.'s condition has caused her to have decreased muscle tone, delays in toilet training, and the need for physical and occupational therapy and speech therapy (P-16).

On September 5, 2013, prior to the IEP meeting, the school district arranged to have the Woodcock-Johnson Achievement Test administered to G.M. At that meeting, the school district accepted the reports from Dr. Chase and Dr. Cole, and proposed to complete evaluations covering speech and language, occupational therapy and physical

therapy. The Woodcock-Johnson test results were provided at the meeting and G.M.'s scores were very low. She failed to achieve average scores in any category, and in a number of categories her performance was so poor that she could not be given a score. Although she was five years, four months of age, she was operating at a two- to three-year-old level (P-17).

The IEP of September 5, 2013 (P-28) proposed no related services because the school district had not completed any related services evaluations. The school district proposed to add related services later in the school year in accordance with the usual practice of the school. No present levels of performance were included in the IEP. G.M. was to be placed in the multiply disabled classroom for language arts, math, reading, social studies and science using the regular curriculum for kindergarten and first grade modified by the teacher, and using no special education programs. The parents stated that the academic goals and objectives were not acceptable to them, alleging that they were not specific, measurable or appropriate for G.M. G.M.'s teacher, Dorothea Hoffman, admitted that she would not have been able to measure progress for G.M. against these goals. There was no behavior plan for G.M.'s toileting. None of the recommendations made by Dr. Chase were to be implemented.

The school district subsequently conducted related service evaluations. On September 11, 2013, an occupational therapy evaluation covering fine motor skills (P-8) and a physical therapy evaluation (P-19) were completed. On September 19, 2013, a speech and language evaluation (P-20) was completed. G.M.'s scores in all of these evaluations were low, and the parents claimed that this indicated her need for services in each of these areas. Because the parents were dissatisfied with these evaluations and the level of services recommended, they requested independent evaluations, which the school district refused. The school district also did not offer a revised IEP to address these evaluations. On October 3, 2013, G.M.'s parents provided the school district with a written notice rejecting the IEP and stating they were continuing G.M.'s placement at First Light, for which they would be seeking reimbursement for the placement and all related services (P-33).

On October 14, 2013, the parents filed a due process complaint, referred to in the Procedural History section above. On November 18, 2013, at a settlement conference held at the OAL, the parties agreed that G.M. would try the school district's program; the parties would attend an IEP meeting on November 22, 2013; Dr. Chase would be permitted to visit G.M.'s placement and speak with the teaching staff; and the school district would provide independent evaluations for speech and language, and for occupational and physical therapy (P-2). Following a dispute over the independent evaluators, an Order was entered on February 4, 2014, requiring the school district to immediately fund the independent evaluators selected by the parents (P-6B).

On November 22, 2013, the parties met at an IEP meeting. The school district proposed placing G.M. in the same program as proposed in the September 5, 2013 IEP (P-29), but provided for related services consisting of occupational therapy, group or individual, one time per week; physical therapy, group or individual, one time per week for thirty minutes; and speech and language services, three times per week for thirty minutes each (P-29). It was not specified whether speech and language services would be group or individual. G.M. was also to receive counseling two times per month, thirty minutes per session, either small group or individual, but did not specify what the counseling would address. The IEP had new revised goals, but the parents had the same objections as with the previous goals. The school district also offered to prepare a behavior plan for G.M.'s toileting. However, a behavior plan was not provided with the IEP. A sample plan was provided several weeks later on December 4, 2013. The school district agreed to provide a one-to-one aide. The parents assert there was nothing included in the IEP to implement the recommendations in Dr. Chase's May 2013 evaluation.

G.M.'s attendance at the program was delayed from December 2, 2013 to January 7, 2014, because she was ill. The placement was in a self-contained classroom with one special education teacher, Ms. Hoffman, twelve kindergarten and first grade students and one classroom aide. G.M. was provided with a one-to-one aide, Ms. Jefferson, who was not certified as a special education teacher or as a teacher in New Jersey. No special education programs were used in the classroom. Rather, a regular education curriculum for reading and math was used with

modifications at the discretion of the teacher.

G.M. was sometimes late to school because of toileting delays. She was sometimes absent because of illness and doctors' appointments related to her disabilities.

The parents raised a number of concerns about this placement. G.M. required a special diet and needed assistance with her lunch, but would come home on occasions with her lunch untouched. She was also eating junk food not provided by her mother, and this created intestinal issues for her causing her to be late or miss school. There were also occasions when G.M.'s aide was absent and no substitute could be obtained and she would have to share an aide with another student. The one-to-one aide was required to follow the toileting plan and take G.M. to the bathroom on schedule, but when she was absent, G.M. would come home with soiled underwear or replacement clothing or with her clothing crooked indicating no one helped her with her toileting.

According to the parents, other problems with this placement included homework being based on general education materials at the kindergarten level, which was far above G.M.'s level. They contend that this caused G.M. to become frustrated and shut down. The classwork involved much time doing worksheets, which were not multi-sensory and caused her to feel fatigue. She would become tired, refused to work or to respond to her teachers or therapists and she would put her head down on her desk or sleep in class. She would have tantrums and feel overwhelmed because the work was too hard for her.

### **Testimony of Respondent's Witnesses**

#### **Linda Headley**

Linda Headley, the school district's Learning Disabilities Teacher/Consultant, testified on behalf of the respondent. She testified to her educational background and her teaching and other certificates. She was assigned to be case manager for students in early intervention, out of district and autistic students. She is the learning consultant



on the child study teams of two of the district schools.

Ms. Headley first became aware of G.M. as a result of a parent request on April 5, 2012, which stated that G.M. has medical disabilities and is being treated at Weisman. A conference for an initial evaluation determination plan was held on April 20, 2012. The evaluations to be done were an educational assessment, a speech/language assessment, and a social history (R-8).

A Battelle Developmental Inventory Assessment was conducted by Ms. Headley on June 8, 2012, and G.M.'s score of thirty percent was in the very low range. Educational Services Unit (ESU) performed an educational evaluation and speech evaluation by administering a Woodcock-Johnson III achievement test at a later date, completed on July 13, 2012, but the results were delayed by that Unit beyond the deadline of July 20, 2012, and were not actually provided until February 13, 2013. The foregoing was the subject of a Complaint Investigation #C2013-4611 conducted by the New Jersey Office of Special Education Programs. The final complaint investigation report is dated March 28, 2013 (R-10A). Despite the foregoing circumstances, eligibility and IEP meetings were held on August 15, 2012. The individual that had conducted the speech language evaluation was not present at the meeting and had not yet signed the report. At that meeting, G.M. was determined eligible for special education and related services (R-9), was placed in a preschool disability program and was to receive speech-language therapy, occupational therapy and physical therapy.

By letter dated September 13, 2012, the parents expressed concerns regarding the evaluation process. These concerns included a distracted testing environment that the school district's speech assessment was a brief informal exchange during the educational evaluation; that the formal speech assessment was canceled without notice to the parents; that the outside learning consultant, ESU, administered the Woodcock-Johnson III test because there was no report of the Battelle in the student's file; and that the IEP meeting was held 117 days after the parents consented to the evaluations (R-0A at 3, para. 13).

In response to the foregoing, Ms. Headley stated that the school district is not required to have a formal speech assessment for preschool, and that the assessment the State approves of is the Battelle Developmental Inventory, which includes a speech component, and this speech component can be done by one of the child study team members. She further stated that even though certain related services referred in the IEP were going to be reevaluated and reassessed, the school district was prepared to accept G.M. and proceed to provide the program and related services at the commencement of the school year. After G.M. started in the program, the related services providers would pull G.M. from her class, assess her, and then they intended to reconvene an eligibility meeting for those services and a discussion of their frequency and duration. Compensatory time would take place to make up for the sessions that had not taken place prior to the assessments.

### **Abdel Gutierrez**

Abdel Gutierrez, the school district Director of Special Services, testified that the school district was ready and willing to offer services to G.M. in September 2012 if she had attended. However, after the mother toured the program with Mr. Gutierrez, she notified him in a letter that G.M. would not be attending the school district program and that the parents would be seeking reimbursement for G.M.'s attendance at First Light. Mr. Gutierrez stated that G.M.'s enrollment at First Light was done without affording to the school district the opportunity to challenge the placement, and that First Light did not offer any special education services for G.M.

Mr. Gutierrez stated that on November 18, 2013, after the parents and filed their due process complaint, an agreement was reached between the parties that G.M. was to be registered in the school district and was to start in the school district program and placement on December 2, 2013.

In his testimony, Mr. Gutierrez addressed the parents' complaint allegations that the goals in both the 2012-13 IEP and in the 2013-14 IEP were inappropriate because they do not have appropriate, specific, measurable goals that relate to G.M.'s specific areas of need and do not offer FAPE consistent with the mandate of the IDEA. In

response to this, Mr. Gutierrez testified as to how the goals and objectives in the IEPs are chosen. He explained that once G.M. came into the school district, her skills were going to be assessed. As a result, the IEP just states in the beginning under the assessments where her levels were. The teachers would then perform a series of assessments in the classroom to see where her levels are.

Mr. Gutierrez explained that there is no special education curriculum in New Jersey. There are reading programs such as the Wilson Fundamentals program, and there are social skills programs, but everything is based on Common Core standards. For special education, the curriculum is then modified, as needed, based on the child's needs. He stated with confidence that the school district's placement of G.M. is appropriate given the evaluations the district had received for occupational therapy, physical therapy, speech and language and the class observation of Dr. Chase. He felt there was nothing proposed that the district could not provide.

### **Dorothea Hoffman**

Dorothea Hoffman, G.M.'s special education teacher, has been employed by Willingboro for twenty-one years in that position. She was assigned to the multiply disabled class, and school year 2013-14 was her first year. It was a self-contained class with twelve students, together with four aides, three of whom were one-on-one. The students were only mainstreamed for lunch and specials.

Ms. Hoffman's first involvement with G.M. was in September 2013. There was an IEP meeting, and an IEP was drafted for G.M. However, at the commencement of the school year, G.M. was not in attendance as a student in her class.

Ms. Hoffman participated in a later IEP meeting in November 2013, and a draft IEP for 2013-14 was created (R-16). G.M. did not enter the self-contained kindergarten class until January 2014. She was assigned a one-on-one aide, Ms. Jefferson. Ms. Hoffman's initial assessment of G.M. showed that she could use the bathroom almost independently; she knew some of her letters but was unable to write her name; she did not know numbers; and she had difficulty handling scissors. Her aide assisted her with

her assignments, lunch, and attendance at special classes. The aide accompanied her to the bathroom, but G.M. was doing so well that it was discontinued. However, G.M. had a couple of accidents and her mother asked for reinstatement of the bathroom accompaniment. The first report card was at the end of January and Ms. Hoffman only wrote a narrative reporting some progress after only fourteen days in class (R-36).

G.M. was becoming acclimated. However she had attendance problems and she was absent frequently and there were problems with lateness and early pickups (R-36). G.M. was given homework assignments as a reinforcement of class work, but Ms. Hoffman received notes from the parent that G.M. was unable to do the work. At that time, her classroom furniture was adjusted to meet her needs.

G.M. was started with beginning concepts in her academic areas because she was behind the other students. She was able to pass her assessments of the work as it was done and she was making progress. Her math assessment score was sixty-seven percent showing that she had some basic math skills. She was not yet able to write her name herself. She could correctly identify the letters of the alphabet. She had a positive attitude and wanted to learn. However, G.M. was still having difficulty with her homework, and there were many notes from the parent explaining her difficulties.

G.M. would become tired in class and wanted to rest, and so Ms. Hoffman would give G.M. breaks, rests or naps. As time went on she made more progress learning more of the alphabet, identifying upper and lowercase letters and completing her classroom assignments, and she was able to use regular scissors. Ms. Hoffman referred to reports showing mixed progress on the part of G.M. Ms. Hoffman testified that she also does a variety of assessments in order to determine a student's progress. In an assessment for phonemic awareness and listening comprehension, G.M. was correct on twenty-three out of thirty questions (R-49A). She also testified that G.M. benefited by being involved in an inclusion class, learning skills with other students (R-49D).

An extended school year was offered to G.M for the summer of 2014 to reinforce her progress and prevent regression, but she did not attend.

Ms. Hoffman was questioned about the classroom observation report of Dr. Danielle Chase, performed on January 31, 2014 (R-27). She voiced disagreement with a number of entries in the report. G.M. was being provided training in letter formation, and she used a pencil very well at that time (R-27 at 2, 3). The school district has provided G.M. with a supportive seat (R-27 at 7). G.M. has made progress with her use of the adaptive scissors and with her use of the pencil (R-27 at 9). Ms. Hoffman disagreed that no formal education was going on in the classroom (R-27 at 10).

During the second marking period, G.M. was absent eighteen days and was tardy twice (R-37). However, she was able to make progress. By the fourth marking period, G.M. knew more of her alphabet, was able to identify more upper and lowercase letters, could identify more numbers, was able to complete an assignment with someone, could cut paper more independently and had many more skills. She was making further progress putting her ideas into writing using pictures, copying letters of the alphabet, and recognizing her first name. She had begun to demonstrate phonemic awareness, had started to identify initial sounds and had begun to identify traditions and celebrations of cultures. She referred to the report card (R-36A) with respect to progress. She was the only teacher reporting G.M.'s progress.

Ms. Hoffman acknowledged that no special education materials were used for G.M. G.M. is still unable to read and communicates in short sentences, but is building on that skill. She also communicates with other students. She is easily distracted and occasionally gets out of her assigned seat.

Ms. Hoffman did not see G.M.'s formal evaluations so she was unaware of her present levels of academic achievement. She received no physical therapy or occupational therapy evaluations for the 2012-13 or 2013-14 school years. Any 2012-13 evaluations would have been for the preschool disabled program. Ms. Hoffman acknowledged she had never previously been assigned to a preschool disabled program. Ms. Hoffman acknowledged that she had never seen Willingboro's Educational/Developmental Assessment (P-8), its Social Assessment (P-9), the Fox Speech and Language Evaluation (P-10), Occupational Therapy Evaluation (P-11), Physical Therapy Evaluation (P-12), the January 31, 2013 Medical Report of Dr. Cole

(P-13), the August 14, 2013 Report of Dr. Cole (P-16), the Woodcock-Johnson Score Report (P-17), and the Willingboro Physical Therapy Evaluation (P-19). She may have seen the Willingboro Occupational Therapy Evaluation of September 11, 2013 (P-18), and the Willingboro Speech and Language Evaluation of September 19, 2013 (P-20).

Ms. Hoffman attended another IEP meeting for the IEP of November 22, 2013. There was no information in the IEP as to G.M.'s present level of academic achievement. She never filled out the progress levels in any of the IEP goals and objectives sections.

### **Lori Field**

Lori Field, a school psychologist and the case manager for G.M., testified on behalf of the school district. Ms. Field testified that when students come into the district and there is no academic history or prior history, the district obtains baseline objectives and goals by having the teacher assess the child with grade-appropriate benchmark assessments. Typically, a transfer student into the school district has a thirty-day IEP during which there is an opportunity to review, develop a rapport with the student and review and revise the goals and objectives, if needed. As a case manager, she would review the results afterwards.

Ms. Field also testified about a number of meetings she held with G.M.'s mother to deal with her concerns about homework difficulties, the need for toileting assistance, and G.M.'s diet and assistance with her lunch. As a case manager, she reviews the report cards of her assigned students and specifically looks to their progress, any teacher comments, and the student's attendance and compares them with her own observations. She indicated that G.M. has made progress with regard to toileting, interacting with students, compliance with directions from therapists, in-class engagement and cooperation, and eye contact. She stated her opinion that the Willingboro School District could provide the services necessary for G.M. to progress.

### **Sharon H. Coleman**

Sharon H. Coleman is a behavior specialist employed by the Willingboro School District. She is a certified School Counselor. She recalls attending an IEP meeting in 2013 to discuss a toileting plan for G.M. which she developed (R-19). She spoke to the CST which provided some information about G.M. The plan called for the one-on-one aide to be in charge of filling out the plan and to accompany G.M. to the toilet every fifteen minutes. The plan was designed to eliminate accidents, and the parents agreed with the plan. The plan was subsequently revised because the staff advised that G.M. was independent and this elaborate plan was no longer needed. To the child study team, the parent was made aware of this change. There were data sheets created to record data as to toileting (R-38). These are the only data sheets she is aware of. She was not aware of the parents' concerns about the lack of implementation of the toileting plan (P-33A at 2, 6). No other behavior plans for G.M. were requested of her.

### **Jeanne Havlick**

Jeanne Havlick, G.M.'s occupational therapist, testified for the school district. Ms. Havlick was asked to perform an evaluation by the child study team. She then performed the Peabody Developmental Motor Scales, Second Edition, which is a standardized test used to evaluate gross motor and fine motor functioning from birth to age six. G.M.'s grasping and visual-motor integration were significantly below average. Based on this evaluation, Ms. Havlick recommended that G.M. receive occupational therapy once per week for thirty minutes in individual or small group sessions. This was based on what G.M. needed to accomplish in the classroom in order to participate and benefit from classwork. She indicated that one time per week for thirty minutes has proven to be effective for children at G.M.'s level of disability, and she has already improved her grasping skills as expected. She no longer needs a pencil grip or a Daft of scissors. G.M. is given her therapy in a small group because it is a more relaxed and playful setting, and is effective for her because she learns more quickly from her peers.

Ms. Havlick testified to deficiencies in the report of Ms. Tanenbaum. She explained that there are differences between being a medically-based therapist and a

school-based therapist. Her focus as a school-based therapist is to work more on skills and functions in order to prepare a student for the classroom.

### **Roseann Romeo**

Roseann Romeo, a certified Occupational Therapy Assistant, testified on behalf of the school district. She has worked with G.M. on strengthening her fine motor skills, gross motor skills and her attention on table top activities, coordination and visual tracking, using a chalkboard and writing and cutting activities. G.M. has progressed to using regular scissors. She has worked with G.M. to teach her to open doors which is an important life skill. She has G.M. do stretching and yoga or bouncing or catching a ball to work on coordination and body movement. She has worked on G.M.'s writing skills. She disagreed with Ms. Tanenbaum's conclusion that G.M. has a sensory problem. In her experience with G.M. she never saw any type of sensory deficits.

### **Judith Worgess**

Judith Worgess, a speech pathologist employed by the Willingboro School District, also testified. She disagreed with several recommendations made by Ms. Rosenblum. She did not see G.M. exhibit any signs of sensory integration issues to make her believe that an oral feeding assessment, as recommended by Ms. Rosenblum, was necessary. As to Ms. Rosenblum's recommendation that G.M. see an audiologist, Ms. Worgess stated that most reputable audiologists would not see a child as young as G.M. She also disagreed with the recommendation for an assistive listening device since Ms. Hoffman's classroom was not a regular classroom where it may have been an issue. With respect to the recommendation for one-on-one therapy, Ms. Worgess felt that group lessons were better for G.M. and that she gets motivated and energized by the group. She watches them carefully and learns from them and benefits from being in a group setting.

Ms. Worgess disagreed with the daily speech therapy recommended by Dr. Chase. Dr. Chase recommended daily speech because G.M.'s verbal skills are so far behind her nonverbal skills that she will need a great deal of remediation. Ms. Worgess



explained that daily speech therapy would be a very unusual amount of speech therapy in a public school.

### **Dr. Ngozi Iloka**

Dr. Ngozi Iloka testified on behalf of the school district with respect to the physical therapy G.M. was receiving. She has a doctor's degree in physical therapy and is school certified and licensed by the Board of Physical Therapy. Dr. Iloka evaluated G.M. on September 12, 2013 (R-24). She recommended that G.M. receive physical therapy one time per week for thirty minutes in individual or small group sessions to improve skills needed for safe participation in the school environment. Dr. Iloka stated that after assessing G.M., coming up with a therapy profile for her after consulting current research on the motor proficiency of children with neurofibromatosis, and based on her observations of G.M.'s functioning, she came up with that recommendation. In order to establish physical therapy goals, she reviewed G.M.'s physical therapy evaluation in the areas of difficulty and challenges within the school environment that were discovered through the evaluation process. She combined that with the goals G.M. must perform within the school at her age and in her class and recommended the goals for therapy contained in the 2013-14 IEP. After observing G.M., Dr. Iloka recommended that she participate in Adaptive Physical Education (physical education program designed for student with a disability).

### **Shalet Jefferson**

Shalet Jefferson, G.M.'s one-on-one aide, testified for the school district. She is a licensed practical nurse and a licensed vocational nurse in Georgia. She is studying to be a special education teacher. She was hired by Willingboro in December 2013 and assigned as an aide to G.M. Her responsibilities are to keep G.M. safe, help her understand the lessons being taught to her, assist with her toileting, and assist with her lunch.

As to G.M.'s mother's complaints about her helping G.M. hand over hand, Ms. Jefferson confirm that she used it for certain curved letters, but did not continue it after

the first three or four months.

Ms. Jefferson met with Ms. Fields every morning to talk about the day's therapies for G.M. She also occasionally met with the therapists to get training on how to use or instruct G.M. in connection with the therapies.

## **Testimony of Petitioner's Witnesses**

### **Dr. Danielle Chase**

Dr. Danielle Chase, an independent neuropsychologist, was accepted without objection as an expert witness in the field of neuropsychology and educational planning for children with special needs. She evaluated G.M., which included testing and a classroom observation in May 2013. Her cognitive test results were borderline and she had very low scores in many areas including working memory and phonological discrimination. In her opinion, G.M. exhibited poor language skills, language acquisition, inattention, impulsivity and inappropriate visual motor integration. She lacked pre-reading skills and needed to work on those in order to move forward. Her attention levels and processing speeds were extremely low. Dr. Chase diagnosed G.M. as having a mixed receptive-expressive language disorder, R/O (rule out) ADHD.

Based on her testing of G.M. and her classroom observation, Dr. Chase recommended the following for G.M. in her May 2013 report (P-14), a language-based curriculum consisting of a research-based special education program rather than a general education curriculum with modifications. G.M.'s verbal skills and communication needs were so severe that she required consistent, daily services. She also required daily speech and language services at a minimum for the same reasons. G.M. also requires research-based programming for children with special needs with phonological training, and multi-sensory instruction in math, reading and writing. She recommended appropriate extended school year services and continued occupational therapy.

During the three-hour classroom observation, Dr. Chase saw no teaching instruction provided to G.M. other than her aide. The level of work on the worksheets was too difficult for G.M.'s developmental abilities. Dr. Chase expressed the opinion that the classroom, the program, and the instructional services being provided were not appropriate for G.M.'s needs. The level of academic engagement in the classroom was by far the poorest she had ever seen and there was no learning going on. The November 22, 2013 IEP was not appropriate because it provides none of the services needed to deal with G.M.'s needs. The goals and objectives in this IEP are not appropriate because they are far above her level and are not specific and measurable. For all of the same reasons, Dr. Chase opined that the 2014-15 IEP (P-30A) is not appropriate.

### **Testimony and Report of Meryl Rosenblum**

Meryl Rosenblum, an independent speech and language pathologist, was accepted without objection as an expert witness in speech and language pathology. She evaluated G.M. on January 10, 2014, then conducted an observation of G.M. in her program and in a speech and language session on January 30, 2014. Her testing of G.M. revealed immature verbal language, delayed vocabulary, delayed back and forth communication, delayed pragmatic language, weak muscle tone, oral-motor delays, delayed receptive and expressive language development and sentence structure, and significant auditory deficits. G.M. has significant impairment in her overall speech and language development. Her oral motor skills are so severely impaired that she suffers from Apraxia of Speech, a condition indicative of a child with serious motor planning delays.

With respect to the January 30, 2014 observation, Ms. Rosenblum did not observe any instruction of G.M. from her teacher, Ms. Hoffman. The classroom was very noisy and distracting, and the work presented to G.M. was too difficult for her to complete. The small group pullout speech and language session failed to meet G.M.'s needs.

In her speech and language evaluation of G.M. (R-26), Ms. Rosenblum recommended a minimum of three therapy sessions per week on an individual and pullout basis to provide intensive therapy in an ideal auditory environment. She recommended a comprehensive audiology and auditory processing assessment to rule out hearing loss or a central auditory processing disorder. She also recommended that G.M. be assessed for eligibility for use of an assisted listening device to keep out auditory distractions in the classroom, and that she be placed in a research-based, language curriculum and provided with the individualized classroom accommodations and modifications as warranted. She should also have an oral feeding assessment.

### **Testimony of Roberta Tanenbaum**

Roberta Tanenbaum, an independent occupational therapist, was accepted without objection as an expert witness in the field of occupational therapy. She is certified to provide occupational therapy to children in public schools and was so employed in the Cherry Hill public schools for ten years.

Ms. Tanenbaum testified that she conducted a comprehensive evaluation of G.M. using multiple research-based testing methods, and looking at her sensory profile, ability to integrate her senses, auditorily process information, her gross and fine motor competency, and visual motor integration (P-20G). All of these things affect G.M.'s ability to learn at school because any deficiencies affect her ability to pay attention, write, listen to directions, sit still, exhibit self-control and sustain effort performing academic tasks. She found that G.M.'s abilities are in the very deficient range and are well below her average peers and very significantly sensory impaired. She is lacking in foundational skills and this must be remediated before she is able to move on to more complex tasks.

Ms. Tanenbaum recommended that G.M. be provided with the following services. She recommended one-to-one, sensory-based occupational therapy two times per week for sixty minutes; DIR (floortime) sessions at least two hours per week; a scheduled sensory diet to help her stay regulated and on task; a modified, less distracting environment; additional time to process demands at school; increased affect,

tone and exaggerated facial expressions to help her understand nonverbal cues (P-20G).

Ms. Tanenbaum visited G.M. at school and found many problems with the placement. There was too much table work involving numerous worksheets for child with her deficiencies and motor issues. The work was way about her skill level. The IEP had no sensory-based goals. Her classroom did not have sufficient modifications and there was too much distracting activity. G.M. did not have an appropriately fitted chair or desk. It was no sensory-based equipment such as swings, balls, scooters. G.M. was continually slouching and her aide was repeatedly telling her to sit straight and pay attention. Her aide was not giving G.M. enough time to perform a task without intervening. There was no sensory diet or breaks. The classroom teacher provided no instruction to G.M. She observes no formal writing program being used despite G.M.'s lack of foundational skills. Ms. Tanenbaum expressed the opinion that the occupational therapy and program in place for G.M. within the school district was not at all appropriate. She further stated that the 2012-13 (P-28), 2013-14 (P-29) and 2014-15 (P-30A) IEPs were each not sufficient to meet G.M.'s severe occupational therapy needs because the service levels were not sufficient, the frequency was not enough, the goals were not appropriate, specific and measurable for her, the tasks were significantly above her level, and it had no provision for a sensory diet.

### **Independent Evaluation Report of Bonni Bogdanoff, Physical Therapist**

Bonni Bogdanoff, an independent physical therapist, evaluated G.M. at her home on March 8, 2014, and visited her classroom on March 10, 2014. Ms. Bogdanoff did not testify, but the parents relied on her report. In the report (P-20I), Ms. Bogdanoff observed that G.M. has significant gross motor delays, hypotonia throughout her body, overall muscle weakness, poor posture and decreased endurance with fatigue. She found that G.M.'s gross motor needs are not being adequately addressed with the level of physical therapy services she receives because thirty minutes per week is not sufficient to work on all areas of need. She recommended two sessions of physical therapy per week and recommended the physical therapist visit G.M. in her classroom to address her poor posture and seating issues. She also expressed serious concerns

about G.M.'s safety while participating in gym class.

### **2014-15 School Year**

On May 19, 2014, an IEP meeting was held for the 2014-15 school year and a proposed IEP was offered (P-30A). Petitioner's testimony was that it was virtually the same program that G.M. received in the 2013-14 school year. Although speech therapy was increased by one-half hour, the frequency and duration of other related services remained the same. All of the related service providers also remained the same, with the same teacher, Ms. Hoffman, and the same aide, Ms. Jefferson. There was nothing in the IEP as to G.M.'s present levels of performance in academic subjects. The goals were based on the Core Curriculum standards for first grade. No special education programs were to be used, and G.M. would be instructed using kindergarten and first grade materials with modifications in the discretion of the teacher. There was no handwriting program and no social skills goals in the IEP. Counseling services to provide social skills were removed without explanation. The only occupational therapy goals related to fine motor skills. The IEP contained adaptive physical education goals, although adaptive physical education was not listed as a related service.

G.M.'s parents expressed the same concerns as those they had with the prior school year's IEP. Academics would be first grade materials, even though G.M. had not mastered any of her previous years goals; she would be in art, music, computers, library and PE with general education students and not be able to keep up; and the level of related services were insufficient to deal with her disabilities. The parents did not believe that G.M. would be able to receive FAPE with the 2014-15 IEP.

### **Testimony concerning Durand Academy**

G.M.'s mother, L.M., testified of her contact with Durand Academy. It was her understanding that Durand uses a language-based curriculum and research-based special education programs for children. If G.M. attended she would have one-to-one daily speech and language services as recommended by Dr. Chase. She would have a verbal behavior program, research-based and all of the related services would increase.

Dr. Thomas J. Ryan, Durand's director and principal, testified as to Durand's program. Durand is approved by the New Jersey Department of Education for serving children with disabilities in grades kindergarten through twelfth grade. It serves children with autism, medical issues, developmental disabilities, genetic disorders and children with significant language delays. It has a verbal behavioral program led by a behavior analyst. To help such students acquire language, including receptive and expressive language, it employs quite a number of specialists for the providing of both special education and related services. After reviewing all of the materials provided for G.M., and based upon recent evaluations, talking with Dr. Chase, and based upon their experience helping students such as G.M., Dr. Ryan stated that Durand could meet all of G.M.'s needs. Durand uses only special education programs, and these programs include all academic subjects. The program is designed to be multi-sensory and geared toward each student's individual needs. Students are taught by special education teachers using research-based multi-sensory approaches. Academic instruction is individualized based upon a student's academic level rather than on grade or age.

Heidi Light testified that she is a board-certified behavior analyst employed by Durand. She explained that verbal behavior teaches communication. Her data is collected daily and monitored regularly so it can be analyzed. Programming decisions can be made based upon the student's progress. Durand monitors a student's progress by taking data at five-minute intervals and recording the information on a data collection sheet. IEP goals are chosen based on the child's needs.

Abdel Gutierrez, the school district director of special education, testified that the Durand program would not be beneficial for G.M. He felt that Durand's program would not work for her.

## **LEGAL DISCUSSION AND ANALYSIS**

### **Applicable legal provisions**

This case arises under the Individuals with Disability Education Act (IDEA), 20 U.S.C.A. § 1401 et seq., which makes available federal funds to assist states in

providing an education for handicapped children. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989).

New Jersey has enacted legislation, N.J.S.A. 18A:46-1 et seq., and has adopted regulations to assure all disabled children enjoy the right to a free, appropriate public education (FAPE) as required by 20 U.S.C.A. §1412(1). See also Hendrick Hudson Dist. of Educ. v. Rowley, 458 U.S. 176, 181 (1982). The IDEA requires a disabled child's FAPE be designed to meet the unique needs of that child through an IEP which is reviewed annually. Lascari, supra at 30, citation omitted. Each New Jersey district board of education, therefore, is required to provide a free, appropriate public education program and related services for educationally disabled students in the least restrictive environment. N.J.A.C. 6A:14-2.1(a).

## **Eligibility**

N.J.A.C. 6A:14-1.3 defines a "student with a disability" as a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6. N.J.A.C. 6A:14-3.5(c) provides:

(c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below; the disability adversely affects the student's educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.

The test for eligibility, therefore, is three-pronged, and each prong must be met in order for a student to qualify for special education services. These are (1) the student has one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c) 1 through 14; (2) the disability adversely affects the student's educational performance; and (3) the student is in need of special education and related services.



In New Jersey “[e]ach district board of education is required to have policies, procedures and programs . . . in effect to ensure . . . [a] free, appropriate public education . . . is available to all students with disabilities between the ages of three and 21 . . . .” N.J.A.C. 6A:14-1.2(b). Students with disabilities must be educated, to the maximum extent appropriate, in the least restrictive environment. N.J.A.C. 6A:14-1.2(b)(6). Special education is available for the following classifications: auditorily impaired; autistic; cognitively impaired; communication impaired; emotionally disturbed; multiply disabled; deaf/blindness; orthopedically impaired; other health impaired; preschool child with a disability; social maladjustment; specific learning disability; traumatic brain injury; or visually impaired. The classifications are defined in N.J.A.C. 6A:14-3.5(c).

The procedure for providing special education involves the following steps: (1) identification; (2) evaluation; (3) determination of eligibility; (4) development of an individualized education program; and (5) placement. Prior to each step, the student’s parents must be informed of and consent to the proposed action. 20 U.S.C.A. 1415(b)(3); 34 C.F.R. § 300.503.

A student who may require services beyond those which can be provided within the regular school program shall be referred to a child study team for an initial evaluation to determine eligibility for special education programs and services. N.J.A.C. 6A:14-3.3(a) to (d). The child study team consists of a school psychologist, a learning disabilities teacher-consultant, and a school social worker. N.J.A.C. 6A:14-3.1(b). If the child is preschool age, see N.J.A.C. 6A:14-3.3(e). A speech-language specialist shall participate as a member of the CST in such cases. N.J.A.C. 6A:14-3.3(e)(3).

N.J.A.C. 6A:14-3.3(e), referred to above, provides that when a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent and the regular education teacher of the student who is knowledgeable about the student’s educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the district’s programs, shall be convened within twenty calendar days (excluding school holidays, but not summer vacation) of receipt of the

written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. The parent shall be provided written notice of the determination(s), which includes a request for consent to evaluate, if an evaluation will be conducted, according to N.J.A.C. 6A:14-2.3.

N.J.A.C. 6A:14-3.3(e)(2) states that preschoolers with disabilities shall have their IEPs implemented no later than age three. N.J.A.C. 6A:14-3.3(e)(3) states that when a preschool age child is referred for an initial evaluation, a speech-language specialist shall participate as an additional member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation.

The parents of a student being considered for evaluation by a CST must receive written notification and give consent. 20 U.S.C.A. §§ 1414(a)(1)(D) and (b)(1); N.J.A.C. 6A:14-2.3(a) and (f). Notice must comply with the procedural safeguards described in N.J.A.C. 6A:14-2.3. These safeguards include a description of the proposed action and an explanation of the parents' due process rights. 20 U.S.C.A. § 1415(c), (d); N.J.A.C. 6A:14-2.3(g).

## **Evaluation**

Following receipt of parental consent or determination in a due process hearing that the evaluation should take place, the CST must complete a comprehensive evaluation in order to determine a student's eligibility for special education. No single procedure is the sole criterion for determining whether a student has a disability or determining an appropriate educational program. 20 U.S.C.A. § 1412(a)(6)(B); N.J.A.C. 6A:14-5(a)(2). In New Jersey after parental consent has been received for the initial evaluation of a preschool age or school age student, the evaluation and determination of eligibility for services, and the development and implementation of the IEP if the student is eligible, shall be completed within ninety calendar days. N.J.A.C. 6A:14-3.4(e).

The evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability including assessments by at least two members of the CST and other specialists in the area of the child's disability. N.J.A.C. 6A:14-3.4(f); see 20 U.S.C.A. §§ 1414(b)(2) and (b)(3). Each evaluation shall include a functional assessment of the student's academic performance and, where appropriate, behavior. N.J.A.C. 6A:14-3.4(f)(4). Standardized test(s) shall also be administered where appropriate, or required. N.J.A.C. 6A:14-3.4(f)(3). In addition, if the child is identified as possibly auditorily impaired, autistic, communication impaired, orthopedically impaired, other health impaired, or visually impaired, an evaluation by an appropriate specialist must be included. N.J.A.C. 6A:14-3.4(a); see N.J.A.C. 6A:14-3.5(c). The regulations specifically provide at N.J.A.C. 6A:14-3.4(d) that "[t]he screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. It is noted that there is no exception to the foregoing requirements that there be evaluations in all areas of suspected disability in the case of a student who is suspected to be preschool disabled.

### **Determination of Eligibility**

When the evaluation is completed, a meeting is convened to determine if the child is eligible for special education and to determine a classification category. N.J.A.C. 6A:14-3.5(a) and (c). The participants of the eligibility meeting shall include the parent; a teacher who is knowledgeable about the student's educational performance; or if there is no knowledgeable teacher, a teacher knowledgeable of the district's programs; the student, where appropriate; at least one CST member who participated in the evaluation; the case manager; and other individuals at the discretion of the parent or school district. N.J.A.C. 6A:14-2.3(k)(1). Certified school personnel referring the student as potentially disabled or the school principal may choose to participate in an initial eligibility meeting. *Ibid.*

## **Individualized Education Program**

When a student is determined to be eligible for special education, the next step is to develop an individualized education program (IEP) that establishes the rationale for the student's educational placement and serves as the basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. The IEP is a written plan individually tailored to the needs of the child that describes the special education components and instructional strategies that will be applied. The IEP must include: (1) a statement of the child's present levels of academic achievement and functional performance; (2) a statement of measurable annual goals, including academic and functional goals; (3) a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided; (4) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child; (5) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in other activities; (6) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments; and (7) the projected date for the beginning of the services and necessary modifications, and the anticipated frequency, location, and duration of those services and modifications. 20 U.S.C.A. § 1414(d)(1)(A).

A 2004 amendment to the IDEA requires short-term objectives in a child's IEP in order to measure progress incrementally toward yearly or long-term goals only for children who have the most severe cognitive disabilities and are assessed according to alternate standards. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)(cc).

The IEP, as described in N.J.A.C. 6A:14-3.7(e), includes a statement of the student's present levels of educational performance, a statement of measurable annual goals including specific short-term objectives or benchmarks, and a description of the educational program to be provided. If the student's education and participation with

nondisabled students in general education classes and nonacademic activities are to be limited, an explanation shall be provided. N.J.A.C. 6A:14-3.7(e)(6). The written plan should specifically detail the educational activities, related services, and supplementary aids and services that will achieve the stated goals. N.J.A.C. 6A:14-3.7(e)(4).

Annual goals represent what a student can reasonably be expected to achieve in one year. They are determined by considering the student's current educational status and anticipated performance. Goals reflect general estimates of growth, yet need to be specific enough to provide direction to the classroom teacher. The Supreme Court of New Jersey has noted that without a properly drafted IEP it would be nearly impossible to measure a child's progress, which is essential to the formulation of a new IEP for the next year. Lascari, supra, 116 N.J. at 48-49 (1989).

A meeting to develop a student's IEP shall be held within thirty calendar days of the determination that the student is eligible for special education. N.J.A.C. 6A:14-3.7(a). The IEP must be implemented as soon as possible following the IEP meeting. Ibid. Special education shall not be provided to the student before the IEP is in effect. Ibid. Every student receiving special education from a school district shall have an IEP in effect at the beginning of each school year. N.J.A.C. 6A:14-3.7(a)(1); 20 U.S.C.A. § 1414(d)(2)(A).

The IEP is developed at a meeting attended by the IEP team, which is responsible for the development, review and revision of a student's IEP. N.J.A.C. 6A:14-1.3. If the parent of a child with a disability and the local educational agency agree that the attendance of a member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting, then that member of the IEP team is not required to attend an IEP meeting. 20 U.S.C.A. § 1414(d)(1)(C)(i). In addition, a member of the IEP team may be excused from attending an IEP meeting that involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and the local educational agency consent to the excusal, and the member submits in writing to the parent and the IEP team input into the development of the IEP prior to the meeting. 20 U.S.C.A. § 1414(d)(1)(C)(ii).

The IEP team consists of 1) parents; 2) at least one regular education teacher (if the child is, or may be, participating in the regular education classroom) knowledgeable of the child's educational performance; 3) at least one special education teacher, or where appropriate, a special education provider also knowledgeable of the child's educational performance; 4) at least one CST member who can interpret the instructional implications of the student's evaluations; 5) the case manager; 6) a representative of the district board of education who is qualified to provide or supervise the provision of special education to students with disabilities and is knowledgeable about the general education curriculum; 7) at the discretion of the parent or school district, other individuals with knowledge or expertise regarding the student; and 8) the student where appropriate. N.J.A.C. 6A:14-2.3(k)(2); see 20 U.S.C.A. § 1414(d)(1)(B).

Parents and adult students must receive written notice of the IEP meeting "early enough to ensure that they will have an opportunity to attend." N.J.A.C. 6A:14-2.3(k)(3). If the parent cannot attend the meeting, parental participation may include the use of electronic conference equipment. N.J.A.C. 6A:14-2.3(k)(4), (6). The meeting may, however, be conducted without the parents if the district can document that it is unable to secure their participation. N.J.A.C. 6A:14-2.3(k)(7). While written notice to the parents of actions relating to their child is necessary, parental consent is only required for (1) the initial implementation of special education, (2) reevaluation, (3) release of the student's records, (4) seeking access to private insurance information, (5) excusing a member of the IEP team from participation in a meeting, (6) amending an IEP without a meeting, and (7) waiver of a reevaluation. N.J.A.C. 6A:14-2.3(a), (d); see 34 C.F.R. §§ 300.300, 300.622. An IEP must be reviewed at least annually. 20 U.S.C.A. § 1414(d)(4)(A)(i); N.J.A.C. 6A:14-3.7(i).

## **Placement**

The school district in which the student lives is responsible for providing a free and appropriate public education. That obligation may be met through instruction in a regular class with supplementary aids and services such as a teacher aide or related service like speech correction; resource programs; a special class program in the student's school district; a special education program in another setting, including

another school district, a vocational school, or an educational services commission; programs in hospitals or other medical facilities; other programs operated by the State of New Jersey; community rehabilitation programs; privately operated schools in the State of New Jersey and out-of-state, which are approved by the Department of Education; an accredited non-public school not specifically approved for the education of students with disabilities; or individual instruction at home or in other appropriate facilities. N.J.A.C. 6A:14-4.3(a), (b). A student shall also be educated in the least restrictive environment. N.J.A.C. 6A:14-4.2.

Special education procedures are designed to include parents in the development of their child's education program. The Supreme Court of New Jersey has suggested that a board of education might reduce the need for a due process hearing "by increased communication with the child's parents." Lascari, supra, 116 N.J. at 54. Also, the parents must be afforded adequate opportunity to participate — it may not be enough that the parents were present and spoke at the IEP meetings. According to the Sixth Circuit, the parents' participation must be "meaningful." Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 858 (6th Cir. 2004), reh'g denied by and rehearing, en banc, denied by Hamilton Cnty. Bd. Dep't of Educ. v. Deal, 2005 U.S. App. LEXIS 5631 (6th Cir. April 1, 2005), cert. denied, 546 U.S. 936 (2005). School officials must be willing to listen to the parents and must have open minds at the IEP meetings. Ms. C. ex rel. N.L. v. Knox County Schools, 315 F.3d 688, 694-95 (6th Cir. 2003).

## **FINDINGS AND CONCLUSIONS**

After considering the testimony and evidence supplied at the hearing of this matter, and after due consideration of the applicable provisions of the IDEA, its implementing regulations and the applicable case law referred to above, I **FIND** the following as **FACTS** in this case:

1. G.M. was born with a serious genetic disorder which predisposes her to a number of medical disorders and conditions which may cause her to have attention deficit disorder, learning difficulties, decreased muscle tone, benign and malignant tumors, speech and language difficulties, including delays in expressive and receptive

language skills and communication skills.

2. G.M. began receiving early intervention services at four months of age for her conditions and delays, including physical therapy, occupational therapy and speech and language therapy.

3. In March 2012, G.M.'s parents contacted the respondent school district seeking special education and related services for her.

4. An eligibility meeting was held on April 20, 2012, attended only by case manager Linda Headley and the parents of G.M.

5. The school district arranged to conduct evaluations for speech and language, an educational assessment and a social history.

6. On July 31, 2012, the parents requested a more formal speech and language evaluation, but were advised this was not required for preschool.

7. Witnesses for the school district testified that it does not obtain a separate speech and language evaluation for preschool children because they rely on therapists providing speech and language, occupational and other therapies to start working with the student and are able to evaluate their delays and disabilities.

8. The academic goals in the IEP were not specific for G.M. because the school district had no information as to her present academic levels.

9. There were no specific accommodations or modifications for G.M. until the classroom teacher had an opportunity to assess her needs.

10. The decision whether to provide an extended school year was to be determined at a later date.

11. In September 2012, the parents rejected the proposed IEP because the regular curriculum would be too difficult for G.M. because of her significant delays, and because of the many uncertainties with the program being offered.

12. The parents also provided the school district with recent evaluations from Fox Rehabilitation covering physical, occupational, and speech and language.

13. In May 2013, the parents retained Dr. Danielle Chase, a pediatric neuropsychologist, and provided a copy of her evaluation to the school district.

14. The parents also provided to the school district a copy of medical information from Dr. Cole who is treating G.M. for her symptoms.

15. An IEP meeting was held on September 5, 2013, to discuss a proposed IEP for the 2013-14 school year.



16. The IEP of September 5, 2013 (P-28) proposed no related services because the school district had not completed any evaluations.

17. The school district proposed to add related services later in the school year in accordance with the usual practice of the school district to have the teacher and related service providers evaluate the student's skill levels in the classroom during the school year.

18. No present levels of academic performance were provided in any of the three proposed IEPs (P-28); thus, there would have been no way to measure G.M.'s progress as to the goals and objectives in the proposed IEP.

19. A review of the goals and objectives in each of the three IEPs clearly reveals that they fail to meet the requirements that there be a statement of measurable annual goals including specific short-term objectives or benchmarks against which the student's progress can be determined.

20. In this case, the school district's CST failed to comply with the requirement to complete a comprehensive evaluation in order to determine G.M.'s eligibility for special education as required by N.J.A.C. 6A:14-2.5(a)(2).

21. The school district's CST failed to comply with the requirement to have the evaluations consist of a multi-disciplinary assessment in all areas of suspected disability as required by N.J.A.C. 6A:14-2.5(b)(2) and (b)(3).

22. The school district's CST failed to comply with the requirement to have each evaluation include a functional assessment of the student's academic performance and, where appropriate, behavior as required by N.J.A.C. 6A:14-3.4(f)(3).

23. The school district's CST failed to comply with the requirement to include an evaluation by an appropriate specialist if the child is identified as possibly communication impaired, as in this case. N.J.A.C. 6A:14-3.4(a); N.J.A.C. 6A:14-3.5(c).

24. Because of these failures to comply with the foregoing requirements, the IEPs proposed by the school district are deficient since they failed to establish the rationale for the student's educational placement and services and for program implementation. because of the serious failures on the part of the school district to comply with IDEA requirements for evaluation, identification, classification of G.M. as a student with disabilities and the serious deficiencies noted with respect to the IEP, it must necessarily follow that the program and placement offered by the school district to G.M. also fails to provide FAPE to G.M. because they failed to establish the rationale for

the student's educational placement and services and for program implementation.

After due consideration of the applicable provisions of the IDEA, its implementing regulations and the applicable case law referred to above, and based upon the foregoing **FINDINGS of FACT**, I **CONCLUDE** that the school district has failed to provide a free and appropriate public education to G.M. during the time that she attended the program and placement provided to her during school years 2012-13, commencing January 7, 2013, 2013-14 and 2014-15.

With respect to the remedies being requested by the petitioners, I have reached the following **CONCLUSIONS**:

**1. Compliance with IDEA and New Jersey Administrative Code**

I **CONCLUDE** that the petitioners are entitled to a decision and order requiring the school district to comply with the requirements of the IDEA and New Jersey Administrative Code identified in this decision with respect to the evaluation process and the preparation of an IEP in full compliance with the requirements of the New Jersey Administrative Code identified herein.

**2. Compensatory Education Claim**

Based upon the school district's failure to provide FAPE as stated above, I further **CONCLUDE** that petitioners are entitled to compensatory education from the school district equal to the time period during school years 2012-13, commencing January 7, 2013, 2013-14 and 2014-15, during which the district failed to provide FAPE.

**3. Reimbursement for Unilateral Placement at First Light Early Learning Center**

After the parents reviewed and refused to accept the 2012-13 IEP dated August 5, 2012, they decided to enroll G.M. in First Light Early Learning Center, Moorestown, New Jersey. It is undisputed that First Light is not a school for special needs children.

Dr. Chase, the pediatric neuropsychologist retained by the parents, acknowledged that First Light did not provide G.M. with services that she believed G.M. needed.

Likewise, the parents enrolled G.M. in First Light for the 2013-14 school year after reviewing the IEP of September 5, 2013 for that school year (P-29).

N.J.A.C. 6A:14-2.10(b) provides that an ALJ may require the school district to reimburse the parents for the cost of enrollment in a nonpublic school, an early childhood program or approved private school for students with disabilities without the consent of the district board of education if the ALJ finds that the school district had not made FAPE available to the student and if the ALJ finds the school to be appropriate even if it does not meet the standards that apply to the education provided by the district board of education.

In this case, because of the serious failures on the part of the school district to comply with IDEA requirements for evaluation, identification, classification of G.M. as a student with disabilities and the serious deficiencies noted with respect to the IEP, program and placement offered by the school district to G.M., I have **CONCLUDED** that the school district's IEPs fail to comply with the requirements for providing FAPE. However, I am unable to make a finding that the parents' placement at First Light is appropriate since there is no evidence in the record that the First Light program and placement addresses the disabilities identified by the petitioners' experts. Therefore, I **CONCLUDE** that the parents are not entitled to reimbursement for their unilateral placement of G.M. at First Light.

#### **4. Placement of G.M. at Durand Academy as a Remedy in this Matter**

Petitioners are seeking an order for the placement of G.M. at Durand Academy and requiring the respondent school district be responsible for the cost of such placement, for the transportation of G.M. to Durand and for other costs for services related to such placement.

While the remedy being sought by the petitioners appears to be extraordinary on its face, there is authority for such an action. In School Comm. of the Town of Burlington v. Department of Educ., 471 U.S. 359, 369-370 (1985), the Court stated:

The [IDEA] directs the court to "grant such relief as [it] determines is appropriate." The ordinary meaning of these words confers broad discretion on the court. The type of relief is not further specified, except that it must be "appropriate." Absent other reference, the only possible interpretation is that the relief is to be "appropriate" in light of the purpose of the Act. As already noted, this is principally to provide handicapped children with "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." The Act contemplates that such education will be provided where possible in regular public schools, with the child participating as much as possible in the same activities as nonhandicapped children, but the Act also provides for placement in private schools at public expense where this is not possible. See § 1412(5); 34 CFR §§ 300.132, 300.227, 300.307(b), 300.347 (1984). In a case where a court determines that a private placement desired by the parents was proper under the Act and that an IEP calling for placement in a public school was inappropriate, it seems clear beyond cavil that "appropriate" relief would include a prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school.

In Florence Cnty Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993), the Court stated:

[O]nce a court holds that the public placement violated IDEA, it is authorized to "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(e)(2). Under this provision, "equitable considerations are relevant in fashioning relief," Burlington, 471 U.S. at 374, and the court enjoys "broad discretion" in so doing, *id.*, at 369. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.

The parent's expert pediatric neuropsychologist, Dr. Danielle Chase, evaluated G.M. and based on G.M.'s disabilities recommended: a language-based curriculum; speech and language services daily, as a minimum for G.M. to succeed; appropriate extended school year services; research-based programming for children with special needs with phonological training; multi-sensory instruction in math, reading and writing; and continued occupational therapy. Meryl Rosenblum, the parents' speech-language pathologist, also evaluated G.M. and recommended: direct speech and language services at least three times per week; an FM system to keep out auditory distractions in G.M.'s classroom; and placement in a research-based language curriculum.

Dr. Thomas J. Ryan, Durand's director and principal, testified that Durand is approved by the New Jersey Department of Education for K-12 services for children with disabilities, including autism, medical issues, developmental disabilities, genetic disorders and children with significant language delays. It has a verbal behavioral program led by a behavior analyst, and employs quite a number of specialists for the providing of both special education and related services to help students acquire receptive and expressive language. Durand uses only special education programs which include all academic subjects. The program is designed to be multi-sensory and geared toward each student's individual needs. Students are taught by special education teachers using research-based multi-sensory approaches. Academic instruction is individualized based upon a student's academic level rather than on grade or age. Dr. Ryan stated that Durand could meet all of G.M.'s needs based upon recent evaluations, talking with Dr. Chase and Durand's experience helping students such as G.M.

Heidi Light testified that she is a board-certified behavior analyst employed by Durand. She explained that verbal behavior teaches communication. Student data is collected daily and monitored regularly so it can be analyzed. Programming decisions can then be made based upon the student's progress. Durand monitors a student's progress by taking data at five-minute intervals and recording on a data collection sheet. IEP goals are chosen based on the child's needs.

Abdel Gutierrez, the school district director of special education, testified that the Durand program would not be beneficial for G.M. He felt that Durand's program would not work for her.

Based upon the testimony and evidence presented by the petitioners, which I found to be entirely credible, I **CONCLUDE** that G.M.'s placement at Durand Academy is an appropriate remedy in this matter. Durand Academy's program clearly provides the programming and services recommended by the petitioners' experts.

#### **5. Request for Reimbursement for Petitioners' Evaluations**

Petitioners are seeking an order requiring that the school district reimburse petitioners for evaluations conducted by experts on their request. I **CONCLUDE** that I am without jurisdiction or authority to order the payment of such fees. It should be noted that with respect to those evaluations that were requested by petitioners as independent evaluations, an order was entered requiring that those evaluations be obtained and requiring the school district be responsible for payment.

#### **6. Request for Attorney's Fees**

With respect to petitioners' request for the payment of attorneys fees, I **CONCLUDE** that I have no jurisdiction or authority to award such fees. The award of such fees to the prevailing party is within the jurisdiction of the Federal District Court or the Superior Court of New Jersey, Law Division, and not that of the Office of Administrative Law.

### **DECISION AND ORDER**

For the reasons stated above, I **ORDER** that the respondent school district is hereby required to comply with the requirements of the IDEA and New Jersey Administrative Code identified in this decision with respect to the evaluation process and the preparation of an IEP for G.M. I further **ORDER** that petitioners are entitled to compensatory education from the school district equal to the time period during school

years 2012-13, commencing January 7, 2013, 2013-14 and 2014-15, during which the district failed to provide FAPE to G.M. I further **ORDER** that the petitioners are not entitled to reimbursement for their unilateral placement of G.M. at First Light and this request is **DENIED**. I further **ORDER** that G.M.'s placement at Durand Academy is an appropriate remedy in this matter, and require the respondent school district to be responsible for the cost of such placement, for the transportation of G.M. to Durand Academy and for other costs for services related to such placement. I further **ORDER** that the petitioners' requests for reimbursement for the cost of evaluations conducted by experts at their request, and for counsel fees are **DENIED** without prejudice.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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 (2015). 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.

May 26, 2016  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**JOSEPH F. MARTONE, ALJ t/a**

Date Received at Agency May 26, 2016

Date Mailed to Parties: May 26, 2016

cmo

**APPENDIX**

**LIST OF WITNESSES**

**For Petitioners:**

Roberta Tanenbaum  
Meryl Rosenblum  
Danielle Chase, Ph.D.  
Thomas Ryan  
Heidi Light  
L.M., mother of G.M.

**For Respondent:**

Abdel Gutierrez  
Dorothea Hoffman  
Lori Field  
Sharon Coleman  
Jeanne Havlick  
Roseann Romeo  
Judith Worgess  
Ngozi Iloka  
Linda Headley  
Shalet Jefferson

**LIST OF EXHIBITS**

**For Petitioners:**

P-1                      Petitioners' Complaint for Due Process  
P-2                      Order for Peremptory Hearing of November 18, 2013; Judge  
                                 Futey



P-3	Motion to compel Independent Evaluations
P-5	Brief in Further Support of Motion to Compel Independent Evaluations
P-6B	Order Granting Partial Summary Decision
P-6J, p.7-21	Petitioners' Amended Complaint for Due Process
P-7	Letter of April 12, 2012 from Dr. Scott Bartlett, MD of Children's Hospital of Philadelphia regarding G.M.
P-7A	Letter of August 1, 2008 from Kristi Koch-Fitzgerald and Dr. Paige Kaplan regarding G.M.
P-8	Willingboro Public Schools Learning Evaluation
P-9	Willingboro Public Schools Social Evaluation
P-10	Fox Rehabilitation Evaluation, Speech and Language Evaluation, dated August 27, 2012
P-11	Fox Rehabilitation Evaluation, Occupational Therapy Evaluation, dated August 30, 2012
P-12	Fox Rehabilitation Evaluation, Physical Therapy Evaluation, dated September 4, 2012
P-13	Letter from Dr. Kristina Cole of Children's Hospital of Philadelphia, regarding G.M., to Mr. Abdel Gutierrez, dated January 31, 2013
P-14	Dr. Chase Neuropsychological Assessment Report, May 13 and 20, 2013
P-15	Dr. Chase Curriculum Vitae
P-16	Letter from Dr. Kristina Cole of Children's Hospital of Philadelphia regarding G.M.
P-17	Woodcock Johnson score report from September 5, 2013
P-18	Willingboro School District Occupational Therapy Evaluation
P-19	Willingboro School District Physical Therapy Evaluation
P-20	Willingboro School District Speech and Language Evaluation
P-20A	Letter from Scott Bartlett, MD, Children's Hospital of Philadelphia, regarding G.M., dated January 9, 2014
P-20B	Speech and Language Evaluation, Meryl Rosenblum, January 10, 2014

P-20C	Meryl Rosenblum Curriculum Vitae
P-20D	Classroom Observation Report, Dr. Danielle Chase
P-20E	Danielle Chase Curriculum Vitae
P-20F	Letter from Dr. Michael Galloway regarding G.M.
P-20G	Occupational Therapy Evaluation, Roberta Tanenbaum, February 8, 2014
P-20H	Roberta Tanenbaum Curriculum Vitae
P-20I	Physical Therapy Evaluation, Bonnie Bogdanoff, PT
P-20J	Bonnie Bogdanoff Curriculum Vitae
P-21	Written Notice of Evaluation/Consent to Evaluate, dated April 20, 2012
P-22	Eligibility Determination, dated August 15, 2012
P-23	2012-13 IEP, dated August 15, 2012
P-24	Invitation to an IEP meeting, dated September 4, 2013
P-25	Invitation to an IEP meeting, dated September 4, 2013
P-26	Reevaluation Plan, September 5, 2013
P-27	Evaluation Determination, September 5, 2013, p. 1-7
P-28	IEP dated September 5, 2013
P-29	IEP dated November 22, 2013
P-30	IEP dated November 22, 2013
P-30A	IEP dated May 19, 2014
P-31	Finding of noncompliance by NJDEO, dated April 1, 2013
P-33,p.1-2	Letter of August 6, 2012 to Abdel Gutierrez
P-33,p.3-5	Letter of September 13, 2012 to Abdel Gutierrez
P-33,p.7	Email regarding request for IEP meeting, dated March 19, 2013
P-33,p.8	Email regarding request for IEP meeting, dated April 8, 2013
P-33,p.9	Email regarding request for IEP meeting, dated May 7, 2013
P-33,p.10-11	Email regarding request for IEP meeting, dated May 8, 2013
P-33,p.13-14	Email regarding request for IEP meeting, dated May 31, 2013
P-33,p.15	Letter regarding request for IEP meeting and enclosing report of Dr. Chase, dated July 25, 2013

P-33,p.16-26	Letter regarding request for IEP meeting and enclosures, dated August 7, 2013
P-33,p.27-29	Email regarding request for IEP meeting, dated August 19, 2013
P-33,p.30-39	Letter regarding request for IEP meeting and enclosures, dated August 20, 2013
P-33,p.40	Letter regarding request for IEP meeting to R. Peterson from A. Carolla, dated September 3, 2013
P-33,p.41-43	Email of September 10, 2013 to R. Peterson from A. Carolla
P-33,p.44-46	Email of September 11, 2013 to R. Peterson from A. Carolla
P-33,p.47	Email of October 3, 2013 to R. Peterson from A. Carolla
P-33,p.48-51	Email of September 27, 2013 to R. Peterson from A. Carolla
P-33,p.52-54	Email of October 12, 2013 to R. Peterson from A. Carolla
P-33,p.60-61	Email of November 20, 2013 to R. Peterson from A. Carolla
P-33, p.62-63	Email of December 3, 2013 to R. Peterson from A. Carolla
P-33, p.64-65	Email of December 4, 2013 from A. Gutierrez to Various
P-33, p.66-72	Sample Behavior Plan
P-33, p.75-76	Email of December 4, 2013 from A. Gutierrez to L.M.
P-33, p.77	Email of December 9, 2013 from A. Gutierrez to R. Peterson
P-33, p.78	Email of December 11, 2013 from L.M. to District (various)
P-33, p.79	Email of January 6, 2014 to L. Field from L.M.
P-33, p.80	Email of January 13, 2014 from L.M. to L. Field
P-33, p.82	Email of January 24, 2014 from L.M. to L. Field
P-33, p.83	Email of January 24, 2013 from L.M. to L. Field
P-33, p.84-85	Email of January 24, 2014 from L. Field to L.M.
P-33, p.87-88	Email of January 24, 2014 from L.M. to L. Field
P-33A, p.2	Email of January 27, 2014 from L.M. to L. Field
P-33A, p.3-4	Revised Toileting Plan for G.M.
P-33A, p.6-7	Email of January 28, 2014 from L. Field to L.M. regarding toilet plan
P-33B, p.13	Letter of February 3, 2014 from A. Carolla to R. Peterson
P-33B, p.27	Email of February 3, 2014 from L.M. to Various
P-33B, p.32	Email of February 5, 2014 from A. Carolla to R. Peterson

P-33B, p.33	Email of February 5, 2014 from A. Carolla to R. Peterson
P-33B, p.46-47	Email of February 12, 2014 from A. Carolla to R. Peterson
P-33B, p.48	Email of February 12, 2014 from L. Field to L.M.
P-33B, p.56-57	Email of February 17, 2014 from A. Carolla to R. Peterson
P-33B, p.64-67	Email of February 17, 2014 from A. Carolla to R. Peterson
P-33B, p.95-97	Email of March 10, 2014 from L.M. to L. Riley with enclosure
P-33B, p.98	Email of March 12, 2014 from A. Carolla to R. Peterson
P-33B, p.99	Email of March 12, 2014 from L.M. to L. Field
P-33B, p.100	Email of March 12, 2014 from L.M. to R. Romeo
P-33B, p.101-104	Email of March 17, 2014 from L.M. to L. Riley
P-33B, p.106-108	Email of March 17, 2014 from L.M. to A. Gutierrez
P-33B, p.109-112	Email of March 18, 2014 from L.M. to A. Gutierrez
P-33B, p.113-115	Email of March 19, 2014 from R. Tanenbaum to A. Gutierrez
P-33B, p.117	Email of March 25, 2014 from A. Carolla to R. Peterson
P-33B, p.123	Email of March 31, 2014 from L.M. to L. Field
P-33B, p.124-125	Email of March 31, 2014 from A. Carolla to R. Peterson
P-33C, p.5	Email of April 7, 2014 from A. Carolla to R. Peterson
P-33C, p.18-20	Email of April 9, 2014 from A. Carolla to R. Peterson
P-33C, p.25-28	Email of May 14, 2014 from A. Gutierrez to R. Peterson
P-33C, p.29-30	Letter of May 27, 2014 from A. Carolla to Office of Special Education
P-33C, p.31-34	Email of May 27, 2014 from A. Carolla to R. Peterson
P-33C, p.40	Email of June 4, 2014 from L.M. to L. Field regarding aide being absent
P-33C, p.41	Letter of June 6, 2014 from Department of Education to A. Carolla
P-33C, p.42	Email of June 6, 2014 from L.M. to L. Field regarding aide being absent
P-33C, p.43	Letter of June 10, 2014 from A. Carolla to Judge Futey
P-33C, p.45-46	Email of June 11, 2014 from A. Carolla to R. Peterson
P-33C, p.52	Email of June 19, 2014 from L.M. to L. Field
P-33C, p.54	Email of June 20, 2014 from L.M. to L. Field
P-33C, p.55-65	Email of June 21, 2014 from A. Carolla to R. Peterson with

	enclosures
P-33C, p.69	Email of June 25, 2014 from L.M. requesting information regarding ESY
P-33c, p.78	Email of July 15, 2014 from L.M. to L. Field and B. Haake regarding ESY
P-33C, p.70-72	Email of July 3, 2014 from L.M. to A. Gutierrez
P-33C, p.75-81	Email of July 14, 2014 from L.M. to A. Gutierrez
P-33C, p.82	Email of July 20, 2014 from L.M. to L. Field
P-34	Work samples, notes from teacher
P-34A, p.25	Note from school nurse
P-34A, p.46	Narrative, dated February 7, 2013
P-34A, p.130-133	Comments and Concerns re: G.M.
P-34A, p.136-140	Email of November 20, 2013 from A. Gutierrez to R. Peterson
P-34A, p.148-151	Email of December 11, 2013 from L.M. to Various
P-34A, p. 153-154	Email of January 13, 2014 from L. Field to Various
P-34A, p. 166-167	Email of January 29, 2014 from L. Field to L.M.
P-34C	Various Invoices
P-34D	Comments and Concerns, various notes regarding G.M.
P-34E	Classroom schedule for 2013-14 for G.M.'s classroom
P-34F	Comments and Concerns, various notes regarding G.M.
P-35	Parents' observation of G.M. at Twin Hills and daily journal
P-35A	Parents' daily journal
P-36	G.M.'s attendance summary
P-37	District report card and several progress notes

**For Respondent:**

R-1	Petitioner's Complaint for Due Process, dated October 14, 2013
R-2	Order for Peremptory Hearing and Agreement of the Parties as to certain issues, dated November 18, 2013
R-4	Respondent's Answer to Complaint, dated January 8, 2014

- R-6 Petitioners' Brief in Further Support of Motion to Compel Independent Evaluations
- R-7 Respondent's Petition for Due Process, dated January 9, 2014
- R-8 Willingboro Township Public Schools Initial Evaluation Determination Plan, dated April 20, 2012
- R-9 Willingboro Township Public Schools Eligibility Determination for G.M., dated August 15, 2012
- R-10 IEP for G.M., dated August 15, 2012
- R-10A New Jersey Department of Education Complaint Investigation Report, dated April 1, 2013
- R-10B Page 9 of 2012 IEP
- R-11 Correspondence from L.M., dated May 7, 2013, regarding request for IEP meeting; correspondence from Fay Whitaker to L.M. regarding May 13, 2013 IEP meeting; correspondence from L.M. to Faye Whitaker regarding rescheduled IEP meeting; correspondence from Abdel Gutierrez to L.M. regarding attorney contact information
- R-12 Willingboro Township Public School's invitation to L.M. to attend the September 5, 2013 IEP meeting, dated September 4, 2013
- R-14 Willingboro Township Public Schools Reevaluation Plan regarding G.M., dated September 5, 2013
- R-15 Willingboro Township Public Schools Identification and Nature and Scope of Evaluation regarding G.M., dated September 5, 2013
- R-16 IEP for G.M., dated September 5, 2013
- R-17 IEP for G.M., dated November 22, 2013 – not signed
- R-18 IEP for G.M., dated November 22, 2013 – signed
- R-19 Toileting Plan for G.M., dated November 27, 2014
- R-20 Correspondence from L.M. to Sonya Nock, Lori Field and Abdel Gutierrez, dated December 11, 2014 regarding registration of G.M. in the Willingboro School District and

- G.M.'s inability to return to school until January 6, 2014
- R-21 Certification of Abdel A. Gutierrez, dated January 7, 2014
- R-22 Educational Evaluation of G.M., Willingboro School District, Child Study Team, dated September 9, 2013, by Linda Headley, LDT/C
- R-23 Occupational Therapy Initial Evaluation of G.M., Willingboro School District, dated September 11, 2013, by Jeanne Havlick, OTR/L
- R-24 Physical Therapy Initial Evaluation of G.M., Willingboro School District, dated September 11, 2013 by Ngozi Iloka, PT, DPT
- R-25 Speech-Language Evaluation of G.M. of Willingboro Public School, dated September, 2013 by J.R. Melvin
- R-26 Speech-Language Evaluation by Meryl Rosenblum, NS, CCC on January 31, 2014
- R-27 Classroom Observation Report of Danielle Chase, PhD, LP on January 31, 2014
- R-28 Occupational Therapy Evaluation of Roberta Tanenbaum OTR/L on February 8, 2014
- R-31 Willingboro Daily PT Treatment Records/Notes
- R-33 Confidential Social Assessment of the Willingboro School District by Fay Whitaker, dated July 18, 2012
- R-34 In-Class school work
- R-36 Kindergarten Report Card 2013-14 (as supplemented on 7/16/14)
- R-37 Attendance Sheets
- R-37A Updated Attendance Sheets
- R-42 Email from L.M. to L. Field and B. Haake, dated July 15, 2014
- R-45 Emails with Dorothea Hoffman, January 14, 2014 to May 18, 2014
- R-46 School work – some with help, some independent
- R-47 Homework reading logs

R-48	Handwriting and writing progression
R-49A	Kindergarten, Unit 1 Benchmark Test
R-49B	Kindergarten, Unit 2 Unit Test
R-49C	Kindergarten, Unit 3 Benchmark Test
R-49D	Kindergarten, Unit 6 Unit Test
R-49E	Chapter 1 Test Assessment Guide
R-50A	Chapter 1 Review/Test
R-50B	Chapter 1 Review/Test
R-50C	Chapter 3 Test Assessment Guide
R-50D	Chapter 4 Test Assessment Guide
R-50E	Middle of Year Test Assessment Guide
R-50F	Chapter 12 Test Assessment Guide
R-50G	End-of-Year Test Assessment Guide
R-51	School work – letters and numbers
R-52	Journeys Practice Book
R-53	Go Math Practice Book
R-54	IEP of May 19, 2014
R-55	Communications between Hoffman and L.M.
R-56	Physical Therapy Reports by Ngozi Iloka, PT