

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

**DECISION**

OAL DKT. NO. EDS 10269-14  
AGENCY DKT. NO. 2014-21263

**K.M. AND T.M. ON BEHALF OF R.M.,**

Petitioners,

v.

**KEYPORT BOARD OF EDUCATION,**

Respondent.

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**Lisa M. Quartarolo**, Esq., for petitioners (Legal Services of New Jersey Pro Bono Program)

**Jodi Howlett**, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: November 16, 2015

Decided: December 9, 2015

BEFORE **LESLIE Z. CELENTANO**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On or about June 19, 2014, petitioners K.M. and T.M. requested due process and sought to have R.M. continue her education after graduation. Petitioners alleged that respondent Keyport Board of Education (“Board” or “District”) improperly awarded her a high-school diploma on June 13, 2014. Moreover, the petitioners sought a transition program.

The District urges that the transition services provided in the individualized education program (“IEP”) for R.M. were appropriate and that the Board is no longer obligated to provide R.M. with educational or related services at public expense, as she has successfully completed both State and local graduation requirements.

On June 5, 2014, petitioners filed a request for mediation seeking an extended school year (“ESY”) program for the summer of 2014 and rejecting R.M.’s graduation. On June 13, 2014, petitioners filed an addendum to that request, again rejecting the May 29, 2014, IEP. The mediation request and the addendum are the basis for the current proceedings.

On June 17, petitioners sought to “convert” the mediation request to a due-process request and enclosed with their correspondence to the Office of Special Education Programs (“OSEP”) a second petition for due process. Petitioners also filed for emergent relief seeking “stay put” in an ESY program such as the Job Experience Training (JET) program or the JFK vocational program in Edison, N.J. Thereafter, oral argument was held on July 3, 2014, on the emergent request, and in a written decision dated July 10, 2014, the Honorable Ronald W. Reba denied the request for immediate placement of R.M. in a transition program, having determined that petitioners had not met the standard for emergent relief as articulated in Crowe v. DeGioia, 90 N.J. 126 (1982). A subsequent motion for reconsideration was rejected by Judge Reba.

On August 13, 2014, a mediation conference was held with a State mediator, and thereafter a settlement conference was held on September 6, 2014, with the Honorable Jeffrey Gerson, ALJ. The matter did not resolve, and it subsequently was assigned to the undersigned.

On December 16, 2014, an amended complaint was filed on behalf of petitioners. Hearing dates were scheduled, and later adjourned due to inclement weather (State closings) and scheduling conflicts. The matter was heard on April 15, 2015, May 18, 2015, and May 29, 2015. The record consists of the three days of hearings, and several hundred pages of documents and summation briefs. Upon

review of the parties' complete submissions, including copies of all exhibits, the record closed.

## **TESTIMONY**

### **Cerelle White**

Cerelle White has been a social worker at the Keyport Board of Education for nine years. Prior to that she was a social worker in Long Branch for seven years and the team leader of an alternative program. Prior to that position, she was a Division of Youth and Family Services family specialist worker for five years.

Ms. White has been on the child study team ("CST") at the high school and works with students who are disabled, whether academically, medically or physically, and provides academic support and prepares them with life skills. She meets with students on a daily basis and has contact with agencies and parents, and puts together meetings and trains staff.

Ms. White testified that she met R.M. in or about 2010, although she was not her original case manager. This was at the end of ninth grade and R.M. was in the district at the time. She was quiet and shy and did not talk a great deal at meetings. R.M. had a learning disability and struggled with reading and spelling, but received one-on-one tutoring after school with a Wilson-trained teacher. She also received one-on-one speech therapy, as well as Sylvan Learning Center tutoring for math. R.M. liked art and liked to draw. She also enjoyed video gaming. Her biggest challenge was that she would not do her work at times. Ms. White testified that petitioners would often say that the teachers were not doing their job, but it was simply that R.M. did not want to do her work. The District suggested resource-room placement because of the smaller setting; however, that suggestion was rejected by petitioners, and, as such, R.M. received a great deal of extra support and modifications in class.

Petitioners filed for an out-of-district placement and a settlement was ultimately reached on September 7, 2012, at a settlement conference at the OAL. The agreement placed R.M. out of district at Collier High School in Wickatunk, N.J., and provided that this was to remain her placement until graduation in June 2014. While at Collier, R.M. did participate in an ESY, which was a work activity the student is paid for, known as "Collier JET." Paragraph five of the agreement requires that if Collier were to recommend any additional services, the District would implement them. Ms. White testified that she spoke to Collier regularly, and that Collier never reached out to her for anything.

R.M.'s progress reports were all excellent and glowing. She was progressing academically and socially and considered to be doing great at Collier. Ms. White spoke to the social worker at Collier on a regular basis, who always reported that R.M. was doing well in class, and staying on task with the work she was required to do. She was getting along very well with her peers and was active in various groups and very social. No one at Collier ever recommended any additional services for R.M.

On June 18, 2013, an IEP was drafted that included all the reports received from Collier, which indicated that R.M. was cooperative, participated actively, completed all her work, did well on tests, and was never late. All of the reports said the same basic things as did the verbal reports Ms. White received regularly from the social worker. The IEP did not call for an ESY program or any additional services post-graduation. Petitioners attended the IEP meeting and raised no concerns. The IEP did contain a statement of transition planning and provided for academic and functional components, based upon what had been communicated to Ms. White. There was no clear indication of what R.M. wanted to do after Collier, and R.M. and her parents participated in preparation of her transition plan, as did the case manager at Collier. The plan included references to the support of the Division of Vocational Rehabilitation Services ("DVRS"), as well as measurable goals and objectives concerning employment after graduation and daily life skills.

Ms. White spoke of the Naviance program, which does career profiling based upon the child's interests to help plan for a career path. The program will do college letters, and R.M. completed the career-interest profile herself. Ms. White stated that the DVRS offers student services after high school and that all special education students are given the information regarding the DVRS. Moreover, she spoke to the DVRS about R.M. and indicated that DVRS representatives will attend meetings if asked. Ms. White noted that the IEP (R-5, page 102), summarizes the post-graduate needs, and noted that the responsibility for implementing all items included the student, the parent, Collier staff and the DVRS. The statement of transition services was prepared based upon R.M.'s needs, her strengths, and her interests, as articulated by R.M. No dissatisfaction whatsoever was expressed by petitioners with the transition plan proposed. No changes were suggested, no due-process claim was filed and no objections were raised, and the IEP was implemented. R.M. went to the Collier JET program that summer and received vocational training and life-skills training. The JET program requires students to work in the morning and provides free time in the afternoon, and students are paid for their work and receive life-skills training. Collier never raised any concerns regarding R.M.'s participation in JET. R.M. also took a foods class and worked in the kitchen area, which she liked very much and which was part of the vocational training she received at Collier.

R.M.'s High School Proficiency Assessment (HSPA) report (R-7) indicates that she was proficient in math and language arts, as confirmed by her transcript dated December 12, 2014. (R-9.) The transcript reveals that her senior-year grades were mostly in the 90's and that her GPA was 89.375 out of a possible 100. She earned 150 credits, and 130 were required for graduation.

Ms. White testified that DVRS meetings were coordinated with R.M. and with her parents, and that R.M. did not speak much at those meetings unless it was about how she was doing at Collier. She reported that she liked it, was involved in clubs, was doing well, had made friends, and had nothing but positive things to say about Collier. She raised no concerns and no challenges. Ms. White testified that petitioners asked her about graduation a lot, including about yearbook pictures and graduation tickets,

which they indicated they needed more of, and they wanted all senior-year-activity details. They never once mentioned that R.M. would not graduate or that they would not let her graduate, and there were no reports from Collier that R.M. would not graduate. Ms. White testified she first learned on May 29 at the IEP meeting that petitioners did not want R.M. to graduate, saying, “[R.M.] is not ready to leave; she does not know what she wants to do.” Ms. White indicated that she advised petitioners that R.M. was not motivated but that she had met all the requirements for graduation, and that petitioners responded again that R.M. did not know what she wanted to do and where she wanted to work. Petitioner also indicated that R.M. had not obtained her driver’s license yet and “she needs to stay in school because she’s not mature enough for the work world.” Ms. White indicated that she reiterated that R.M. was merely lacking motivation, and was perfectly capable of working.

Ms. White prepared and presented T.M. with a notice of graduation and summary of performance (R-29), which notifies the student and the parent that all requirements for graduation had been met and the student would be graduated. R.M. participated in the Collier High School graduation and as such was graduated on June 13, 2014. She testified that R.M. was absolutely ready to move on and needed no post-graduation services. The DVRS can help prepare her for life after high school and the DVRS so informed petitioners at the last IEP meeting. Ms. White testified that R.M. can work, and that she saw her work at JET, and that she simply lacks motivation. Ms. White worked at a camp adjacent to the JET facility and saw R.M. working every day at JET. She testified that R.M. could succeed at post-secondary education as well, and that Brookdale Community College would have been a good start because she could succeed there.

Barbara Raffel

Barbara Raffel has been employed at Collier Youth Services as a licensed clinical social worker for twenty-one years. She conducts individual counseling and runs a group counseling session, as well, and provides support, conducts tours and does screenings for incoming students.

Raffel testified that at Collier she saw five to six students a day, and that students could ask if they wanted to see a social worker. The needs of the student body determine her schedule, and she attends CST meetings and conferences. She also has been the social worker for the middle school for four years, and she testified that all students there are classified, and the students come to Collier because the public-school environment has not worked for them. She testified that she met R.M. as a junior and found her to be sweet, cooperative and receptive, but R.M. did not really know how to use the counseling sessions. She met with her once a week for both of her years there and learned that R.M.'s number-one passion was video games. She also enjoyed cooking and the arts. She never complained of bullying and had a lot of friends, and her fellow students liked her. She was involved in groups and participated in those groups and had no behavior issues. R.M. attended her prom and the senior retreat, and was smart, kind and cooperative. Raffel also found that R.M. was not very curious and that motivation was a challenge for her. Meeting deadlines and handing assignments in on time were issues. Her grades were above average, but the teachers there are lenient with the time necessary to finish work that is due. Raffel testified that she would ask R.M. about her plans after graduation, and R.M. was not sure or committed, but spoke of doing something in the video-game industry. Raffel testified that it is not unusual for a Collier student to not know what he or she wants to do after school ends. Raffel helped R.M. do a job application for ShopRite. R.M. wanted to be self-sufficient and did not want to live at her parents' home until she was sixty. She testified that Collier has vocational classes, for example in cosmetology and in the building trades, and that the JET program provides job-experience training six hours a day where the students can earn \$100 a week if they follow the rules. In that program they are given difference jobs on the property, such as raking or assembling furniture, or other manual labor. The Collier program worked for R.M., and Raffel never received any teacher reports indicating otherwise.

R.M. indicated that she wanted to work in a video store but was not sure about working with the public. Raffel stated that R.M. never indicated that she would not graduate and never even raised the notion of not graduating. Raffel first learned that

the diploma would be refused at the May meeting, and was shocked, as this was the first time in twenty-one years that had happened. R.M. had fulfilled all the requirements of the program and passed her HSPA. She testified that R.M. had succeeded in all her classes and done very well, and that is typically a good indication of how well a student would do after graduating from school.

Raffel testified about email correspondence she received from petitioner (P-57), where she asks about graduation tickets, graduation announcements, the dress code, what shoes are to be worn and all of the details regarding graduation.

### Barbara Zmich

Ms. Zmich is a post-graduate counselor at Collier High School and helps seniors with their goals. She has a bachelor's degree and a master's degree in social work and is a licensed clinical social worker. She meets with students on request, and meets with groups to take them to schools, and organizes speakers. She assists juniors on request, in addition to seniors.

She testified that she met R.M. at the end of her junior year, which is when Zmich tries to put groups together to meet with her and explain her role in their senior year. She tells them about potential events and meets with each senior as needed. She met with R.M. approximately once a month to discuss her post-graduate goals, which included, at the time, Brookdale Community College, and an interest in video games and production. After initially articulating those goals, however, a month later, R.M.'s interests shifted to employment. Ms. Zmich recommended the DVRS, which comes in and talks to students, and Zmich spoke to the DVRS about R.M. and her career interests. The DVRS provides career scope and interest inventory and can provide employment help, for example, in developing a resume, as well as help with interviewing. It is typical for students to work with the DVRS after graduation.

Zmich reviewed the teacher reports, and R.M. always seemed to mention video production, so she felt she might succeed in a secondary-education setting. R.M. never

told her she would not graduate, nor did petitioners, and Zmich testified that many seniors are unsure of what they want to do after they graduate. She felt that the transition plan was appropriate.

Jennifer Johnson

Jennifer Johnson is a vocational rehabilitation counselor with the DVRS in Neptune, N.J. Prior to that she was an employment counselor and did career counseling.

She testified that currently there are two aspects to the program, the first for adults with disabilities, to assist with job placement and career skills, and the second a transition program for students to provide work skills. She testified that they work with Keyport High School, as well as with high school seniors in several districts around the state. Each district has counselors in its office, and they work with the child study teams and the students who come in during their junior year or the beginning of their senior year, if they are potentially eligible for services. They provide career counseling, training, vocational or college training, grants where available for trade schools or vocational schools, and tuition assistance for college. They will also help with résumé preparation, interviewing, job searches, and job coaching, all of which are available to anyone in the program. They also will work one-on-one with students, and role play for interviews. They also work with businesses in the community, and the job coach will go to a job to provide on-site training and make sure the student is doing well in the position.

Johnson testified that she met with R.M. at Collier High School in January 2013. She regularly attends IEP meetings, and believes that she met R.M. at an IEP meeting, because the child study team was there as well. She did not know R.M. before that, and after the meeting petitioners signed a record release so that they could determine R.M.'s eligibility, and thereafter she received the records. She spoke many times to petitioners and they met again the following spring. R.M. was very interested in art and excelled at school. She was unsure of her next steps, as many high schools students

are who do not know what they want to do when they graduate. She met R.M. again in October 2014 and told her that if she wanted to work, they could set her up with an employment specialist to help her. R.M. was anxious about the job search process and was told about job coaches and other assistance available to her. Ms. Johnson testified that she knows of the JFK program but does not know anyone who has gone there; it is far away, and she prefers to keep people local.

She testified that the DVRS does provide a vocational program for adults. There is a five-day initial assessment, and if they feel a more in-depth assessment is needed they will recommend it. If they feel a person is ready for a job, they will get the person a job coach. All of this is paid for by the DVRS, including the assessment and the job coach. If an individual requires training, that may be paid for as well. As of the last tax returns they saw, R.M. was eligible for all of this. She testified that Collier has a transition counselor, and that she would do career testing if someone does not know what he or she wants to do, but if the person wants to work they will help the person in that regard. She discussed all of these options with R.M. and with petitioners, and did not know if they were receptive to any of it.

Ms. Johnson testified that the DVRS does not provide outside vocational assessments, but that Collier could have done that, and that the DVRS offers multiple services. For example, if an individual is anxious about a job, the DVRS will offer therapy. The DVRS is employment focused, not life-skills oriented. When asked about transportation to the DVRS, Ms. Johnson indicated that there are multiple options available, including Access Link and EZ Ride, to get people to jobs, and that the job coach works on that as well, to see if a person is eligible. The DVRS also will “travel train” someone, for example, ride the bus with the person until the person gets the routine down.

If R.M. or another student were interested in college, the DVRS would see where the student’s skills are and where his or her grades are, and help the student apply for support services through the college. The DVRS would also review options for majors

and help with job searches after the student finishes. The DVRS can also pay for up to three remedial classes.

Johnson testified that she remembered that R.M.'s teachers all said good things about her. Ms. Johnson also testified that neither R.M. nor her parents ever asked for a career-scope assessment. A job coach meets with clients weekly and helps with job searches, applications, and role playing, and will go on interviews with the client if needed. Once placed, the coach would be off site, but would talk to the client as needed, to go over everything. In addition, the coach can go to an orientation and do paperwork, and even go on site if needed and provide long-term follow-up, offering continuing assistance in that regard. If an individual were to lose his or her job, the client could start all over with the DVRS.

Johnson testified that she does not recall any reference in any meeting she attended to R.M. not graduating. She did recall that it was "hard to say" if R.M. was sufficiently motivated to find a job from the few meetings they had. When they opened her case in October 2014, R.M. said that she might like to work with small animals, but that she did not like dogs and cats.<sup>1</sup>

### T.M.

T.M. testified that she has three children, two boys and a girl, and is not employed outside the home. R.M. is her youngest child and the only one diagnosed with a disability. She testified that R.M. is artistic and likes to fish, camp and play video games. When she was a toddler it was evident that she was behind in her speech at age three, and she was classified after she turned four and a preschool teacher had recommended an evaluation. When R.M. entered kindergarten she was declassified, but still received speech therapy. Ms. M. testified that R.M. struggled and that she was behind in reading and writing, and socially, as well.

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<sup>1</sup> Johnson testified that if a student is graduating they open a case, and if a student is not graduating there is no need to open a case. As there was no indication whatsoever that R.M. was not graduating, a case was opened in this matter.

T.M. testified that in fourth grade R.M.'s pediatrician felt she was not progressing auditorily and recommended an evaluation, which was done. R.M. was found to have an auditory processing disorder, and after a meeting with the child study team she was found eligible for special services under "specific learning disability." A 504 plan was put into place. Speech was discontinued after approximately half a year, because T.M. was concerned that R.M. was missing class due to pull out for speech therapy, and the speech therapist felt that R.M. could stop, and so they stopped it. R.M. was also being pulled out for reading. T.M. testified that in 2010 at age fourteen, R.M. was reading at approximately an age-ten level. She took her to a neurologist around that time, and believes the neurologist indicated that she had "inattentive type ADHD [attention deficit hyperactivity disorder]."

T.M. testified that a Naviance assessment was suggested, which is a computer-based program that the guidance counselor works on with students, and this was done at home in the summer of 2012.

T.M. described Collier as being close to home, and having small classes, proms and clubs, and she felt that R.M. received a full high-school experience there. She believed the individual attention would help with academics and that the counseling would help with R.M.'s anxiety. She believed that pursuant to the Settlement Agreement she had entered into, if Collier recommended additional services the District was required to provide them. The teacher reports still indicated problems with completing assignments and handing in homework, and she asked Collier to let her know if R.M. fell behind. Collier indicated they would not do this, that it was the student's responsibility to get his or her work done and in on time.

T.M. indicated that a pediatric evaluation was done (P-20), and R.M. was diagnosed with high-functioning autism (Asperger's syndrome). After this evaluation T.M. asked for an occupational-therapy evaluation because of R.M.'s difficulty with scissors, knives and her handwriting. She also asked for a speech evaluation and an assistive-technology evaluation. The District indicated at the time that it would discuss this at the next meeting, scheduled for January, which was the meeting that Ms.

Johnson from the DVRS appeared at. T.M. testified that she asked for a vocational assessment and was told that the DVRS would do that the following year.

T.M. signed a consent for evaluations after the District agreed to provide speech therapy, occupational therapy and assistive-technology help. She agreed that she did not sign the IEP, but agreed that it went into effect fifteen days later, and that R.M. was receiving these services.

T.M. agreed that there had not been any discussion regarding readiness to graduate and that she gave the school all the information for R.M.'s diploma. She agreed that R.M. should graduate with her peers, and that R.M. had participated in all the senior activities.

On May 29, 2014, a meeting was held with the IEP team, Ms. Johnson and Ms. White, wherein they discussed the teacher reports and Ms. Johnson provided the DVRS information and indicated that R.M. could attend Brookdale Community College. T.M. felt that R.M. had a lot of anxiety about college, and would not be able to keep up. She felt that R.M. should remain in high school. She indicated that the assessments from Children's Specialized Hospital that she had sent to the school on April 24, 2014, were not discussed, but she felt that based on those assessments R.M. was not ready to graduate. She testified that she was informed that R.M. would in fact graduate. She indicated that she received the IEP dated May 29 and filed for due process. T.M. testified that R.M. needs a program with job sampling to see what she can do; social skills, to relate on the job; and life skills to be independent. She testified that thereafter, she visited the JFK program, which she described as a 180-day program with multiple job sampling for students. Social-skills training is also part of the program, as is life-skills training, and transportation is provided. She indicated that R.M. had failed her driving test, and had retaken the written test four times and finally got her permit, but she had a lot of anxiety about it.

T.M. indicated that in October 2012 she had concerns with teacher reports about homework, and that no one had reported a problem to her. She conceded, however,

that she did not check R.M.'s homework every night because "she's a teenager," and that Collier felt it was R.M.'s responsibility to do her homework. She also agreed that the October 2012 IEP reflected that R.M. receives good grades when she does the work and has plenty of time to do it and hand it in. She has an A average. Among the grades reflected in her October 22, 2012, IEP are multiple grades in the 90's and high 80's.

T.M. confirmed that she had filed complaints with OSEP twice while R.M. was at Collier, and four times altogether, and that she has filed for due process twice. She also agreed that she filed for a "stay put" in this matter and that her emergency petition was denied and dismissed. She visited the JFK program in April after receiving the vocational assessment, but agreed that she did not provide anything from JFK to the District, and never emailed or wrote the District anything about the JFK program. When she wrote the District in April regarding the graduation and assessments she never mentioned JFK at all. The District sent a letter to petitioner with all the details regarding the prom and graduation (R-40) and asking for the evaluations from Children's Specialized Hospital. T.M. testified that R.M. went on the senior trip and attended the prom, and she agreed that she never asked for any additional life-skills training or social-skills training beyond what is reflected in the IEP. She indicated, however, that R.M. is not capable of going to community college because she is not ready, and she believes R.M. to be "a few years behind her chronological age." She said she believes that R.M. would have a hard time navigating a campus and would not be able to tell professors about the modifications she needs.<sup>2</sup>

Richard Hrynoveski

Richard Hrynoveski is president of Revolution New Jersey, a company he started eleven years ago. His company provides transition work for fourteen to twenty-one-year olds, and sometimes those as young as twelve. The company is community based, and they conduct vocational assessments and consult with school districts. They also run a day program for individuals aged twenty-one to thirty. Prior to starting

his company Mr. Hrynoveski worked at Partnerships for People, a nonprofit, and prior to that at the Center for Humanistic Change. He was trained at Rutgers and at the DVRS and is certified in supportive employment.

Mr. Hrynoveski testified that he has conducted sixty or seventy vocational assessments designed to identify barriers to employment that an individual may have. The assessments are not focused on the career path, but on what the individual needs to do now, in other words, “a snapshot of today.” Once the assessment is done he meets with the educational team, which is not necessarily an IEP meeting, and helps develop a plan for transition. It is almost always work-related, even if the plan is to continue with education. Mr. Hrynoveski testified that he is familiar with the Naviance tool, and indicates that his own process is more comprehensive. He indicated that petitioners contacted his company in order to obtain an assessment of R.M. in or about October or November 2013.

Mr. Hrynoveski entered into a contract with the District (P-44) and then appointments were set up for R.M.’s assessment. He had information regarding R.M. prior to the assessment and found her to be very outgoing and at ease on a social level. He felt that she had very low self-esteem and was unsure of herself and nervous. His evaluation (P-48) revealed that R.M. had no motivation. She had sufficient self-awareness to know that she did not want to work with people, and was apprehensive about everything. Mr. Hrynoveski gave R.M. a document to type and did not think she could do it, but found that in fact that she did it quite well. R.M. did not want to deal with the public, and was unsure of herself and concerned how people were perceiving her, and he testified that he would be shocked to learn that she was a cashier at Michael’s.

Mr. Hrynoveski testified that the kitchen area in the Collier environment was a good setup, but he did not feel it was appropriate for a person with disabilities. R.M. was putting grapes in a bowl and pulling off the stems, and he felt this would not be replicated in a work environment. Once or twice someone in the kitchen tried to get her to move it along, but she was content doing that, and he felt she did not learn anything

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<sup>2</sup> Ms. Johnson previously testified that the DVRS would work with the school to make sure R.M. received

there. It was R.M.'s third year in culinary arts, but it was not preparing her for working, and she would "need a lot more motivation or she would never last."

Mr. Hrynoveski testified that he had not seen the JFK program in years and that it would only be good for R.M. if goals were implemented. He felt that R.M. needed a community-based component (work environment), professionals to monitor her progress, and social-skills training to deal with people, and that she needs things the DVRS cannot provide. He indicated that no one at the District reached out to him to come to the meeting except for petitioners, and that he would have gone to explain why he recommended what he did. He also added that he would not have answered a question as to whether R.M. was ready to graduate, because he does not answer that question ever, but he did feel that she needed more preparation.

Mr. Hrynoveski testified that R.M. is too far away for his program, and that he would not offer it to her because people should work in their own communities. When he does an assessment he always goes to a follow-up meeting to discuss the results, because his findings are often complex and explanations are needed. He does not act as an advocate, but just relays the results, and feels that in this case R.M.'s lack of motivation is a barrier to employment. He added that low motivation at home can mean low motivation elsewhere also. If someone does not know what he or she wants to do it will effect motivation. Having a passion could increase motivation, yet once someone works in his or her desired field, the person's passion could change, and he or she could go in another direction. He testified that R.M. can gain from the kitchen environment at Collier if she is going into the culinary arts and her issues are addressed. R.M. kept saying, "I can't do it," yet low self-esteem can be addressed. He added that it is very rare that he finds a transition plan that sufficiently addresses a student's needs.

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the modifications she would need.

Christella Villasenor

Christella Villasenor is the educational coordinator at Collier High School, and she testified that she reviews transcripts of new students and reads through all IEPs. She also attends all progress and review meetings, including IEP meetings. She holds general and special education certifications, including a master's degree in special education.

Ms. Villasenor testified that R.M. identified her own goals at IEP meetings to reflect what she wanted to work on. The academic reports indicate that she was not doing her assignments or homework, and tutors were available to her. Her HSPA results indicated that she passed the math and language-arts portions with scores of "proficient."

Barbara Raffel (on recall)

Ms. Raffel testified that she reviewed the clinical reports in the file when R.M. arrived at Collier, including the March 23, 2012, psychiatric report, and indicated that the recommendations in that report are the types of things she would work on in therapy. She also considered the goals that R.M. set for herself (P-15, page 150); however, she allows students to come in and talk about what is pressing for them at the time. She testified that R.M. was offered tutoring help and was required to set her own goals, although they often find that students will list certain goals to pacify adults. She indicated that R.M. came in without an agenda and that she, Raffel, was the one who initiated the conversation almost every time. She found R.M. to be pleasant, cooperative and sweet, but rarely had anything she needed to talk about. She was offered tutoring help in English and was provided with software, but chose not to use it. Raffel testified that she prepares counseling progress reports (P-16, page 187), and felt that R.M. was making satisfactory or good progress in all areas. She also sets goals for students that they don't set for themselves, and felt that R.M. needed a plan after graduation. R.M. was not sad or depressed or lonely, and she never indicated that any of those were a problem. Raffel testified that she saw no evidence whatsoever of

anxiety, and that R.M. never raised anxiety as an issue; indeed, she had plenty of friends. R.M. did mention to her that she did not want to work with the public, and Raffel was not sure whether it was apathy or simply lack of interest in job applications. She felt as though each application was “more trouble than it was worth” for R.M. when they did job applications together in her office. It did not seem as though college was an interest of R.M.’s. She also testified that as to self-esteem, R.M. seemed okay with who she was and did not express any concerns in that regard. She “marched to her own drummer,” and seemed comfortable in her own skin; she did not seem to care what anyone else thought, and Raffel reiterated that she did not see any evidence of anxiety in her one-on-one.

She knew that R.M. was interested in the Papa Ganache Bakery program, which she was not that familiar with. She heard about it from Collier House (the transition program) and felt it might be a good program for R.M., but learned that there was a fee for it. She was not sure whether the District was willing to pay the fee and was not going to get in the middle of petitioners and the District, because her goal was simply to treat R.M.

Raffel testified that Collier has a social-skills group, but that it was voluntary, and that she does not recall R.M. being in or attending that group. She noticed that R.M. was not completing her English assignments and needed tutoring, which was offered. She also did not notice any speech difficulties in R.M., and had no role in recommending any evaluations or assessments. She believes that all evaluations were discussed at the June 18, 2013, meeting and that speech and occupational therapy were offered, which was very unusual at Collier. She did have issues with assistive technology and passwords, and her parents had wanted a vocational assessment, which may or may not have helped with planning. Raffel testified that she helped R.M. explore getting out of her “comfort zone,” and tried to get her away from video games and into more social activities on weekends. Ms. Raffel added that R.M. never said she would not accept a diploma, and petitioners never indicated that R.M. would not accept a diploma until the very last meeting.

She also received an email from petitioners regarding the Papa Ganache program, wherein petitioners asked her to see if the District would pay for it; however, Raffel declined to get involved. (P-78.)

### Sarah Logan

Sarah Logan has been employed at the Monmouth County Arc for over twenty years and has been the director for Individual and Family Supports since 2006. She oversees the independent-living program, and currently there are twenty-one individuals in that program in Monmouth County. The Arc offers in-home support, special education, advocacy services, and transition programs, currently serving sixty-three people. She testified that she has done transition planning for approximately fifty families.

Petitioner called her to ask about transition planning in late April 2014. Petitioner came in to see her and indicated that R.M. has Asperger's and ADHD. Ms. Logan reviewed the IEP and the vocational assessment and the learning assessments. She found that R.M.'s grade level was low, but that was "fairly standard" and not out of the norm for a student attending their transition program. She indicated that R.M. did well in the psychological exam (P-50), but did have some anxiety and needed skills to become an independent adult. She felt that the transition statement was incomplete in the IEP.

Logan reviewed the June 2013 IEP (P-34), which was already in place. She learned that R.M. was interested in art and animals and may want to go to community college, and so in looking for something to recommend for R.M., she looked at the IEP goals only to see if R.M. was appropriate for one of their programs. She felt that there were no goals in the IEP, but rather suggestions, and the model transition plans she had seen did not match what she saw in the IEP then in place.

Ms. Logan offered to attend the May 29, 2014, IEP meeting at Collier because petitioner informed her that the school was "thinking of graduating R.M." and that she

felt R.M. could “benefit from a transition program of some sort.” Petitioner also said she felt R.M. was not ready to graduate, and agreed with the vocational assessment that lack of motivation was an issue. Ms. Logan also recalls hearing about how well R.M. was doing and about an event R.M. was scheduled to attend that evening that she was very excited about.

Ms. Logan testified that she serves in a support role for parents at IEP meetings, but does not use the word “advocate.” She addresses parents’ “responsibilities” rather than “rights.” She testified that she met R.M. twice, once at the IEP meeting in May 2014, and another time for half an hour where they discussed her graduation plans and what she intended to do after graduation. Logan testified that she conducted no assessments or evaluations, and bases her testimony that R.M. is “not ready” only on what the parents had told her. She indicated that R.M. needs experience to get past her anxiety, but she only knew of R.M.’s anxiety through what her parents had said, and her opinions regarding anxiety and social skills are also based only on what petitioners said to her and the evaluations. She said that she did not meet with the counselors or the case manager, testifying, “we don’t go into depth.” She also did not discuss any of the volunteer activities R.M. participates in. Logan testified that she felt that the “Keep Achieving at Brookdale”<sup>3</sup> program would be appropriate for R.M. Ms. Logan testified that she never reached out to the District to discuss any appropriate programs for R.M. Petitioners reached out to her, but to get their services R.M. would need to be with the DVRS, and if she had gone there instead of litigating she could apply to their program.

Cerelle White (on recall)<sup>4</sup>

Ms. White testified that Collier never indicated that R.M. should go to JFK, but only learned that the parents had looked into it. She stated that she told petitioners that she would consider it for the rest of that year, but not for any additional time beyond the end of the school year. After that, the evaluation the parents had arranged for was cancelled.

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<sup>3</sup> The witness was referring to Brookdale Community College.

<sup>4</sup> Ms. White was permitted to testify on recall over the vigorous objection of the District in the interest of judicial economy.

Ms. White added that the May meeting ended once the petitioners said they did not want R.M. to graduate. She had mailed the summary of progress to petitioners before the meeting, and also the notice of graduation.

### **FACTUAL DISCUSSION**

R.M. is an eighteen-year-old female who attended Keyport High School during the ninth and tenth grades. R.M. presented herself as a quiet, shy individual, who kept to herself. She was described as easygoing and always very cooperative. R.M.'s interests included video-gaming, cooking, and art.

Over the years, petitioners have filed multiple due-process petitions, mediations, and complaint investigations, which resulted in at least one settlement agreement with the District. (R-47.) In particular, a prior due-process petition filed by petitioners against the District resulted in a settlement agreement dated September 7, 2012. As part of that agreement, R.M. was placed out of district at Collier High School in Wickatunk, New Jersey. R.M.'s placement and educational services were memorialized at a subsequent IEP meeting, during her junior year of high school. The Agreement also provided that R.M.'s placement was to remain at Collier until graduation in June 2014. (R-47.)

Cerelle White, learning disabilities teacher/consultant and case manager at Keyport High School, served as R.M.'s case manager during her sophomore year at Keyport High School and continued to serve in this capacity during the remainder of R.M.'s high-school career at Collier. As case manager, Ms. White participated in multiple meetings held at Collier regarding R.M., including, but not limited to, IEP meetings, annual review meetings, transition-planning meetings and graduation meetings. R.M.'s IEPs included a transition plan. (R-2; R-3; R-4; R-6.) The transition plan was updated every year with the guidance of the child study team and R.M.'s counselors at Collier High School, as well as R.M. and petitioners. In addition to the

other transitional services provided, R.M. attended Collier's JET program, a life- and job-skills ESY, for the summer following her junior year, the 2012–2013 school year.

The last agreed-upon IEP for R.M. was dated June 18, 2013 (hereinafter referred to as "the 6/18/13 IEP"). (R-5.) The 6/18/13 IEP did not call for an ESY program or additional services post-graduation. (R-5.) The 6/18/13 IEP contained a Statement of Transition Planning and provided for both academic and functional components, such as college-preparatory classes, access to career-readiness software, a list of local job and volunteer opportunities, the support of the Division of Vocational Rehabilitation Services, and measurable goals and objectives concerning post-graduation employment and daily-life skills.

One of the requirements of the Settlement Agreement was that if at any time Collier determined that R.M. was no longer appropriate for its program, or that additional services were warranted for R.M., Collier was to make a recommendation to the District, which was then required to implement same. (R-47.) At no time during R.M.'s junior and senior years did Collier recommend that additional services be provided to R.M. or otherwise indicate that the program provided in her IEP was insufficient to meet her needs. All reports received by the District from Collier confirmed that R.M. continued to make meaningful educational progress in her program at Collier; indeed, her progress reports were all excellent and glowing. In particular, Barbara Raffel, social worker at Collier High School, reported that R.M. felt comfortable and safe at Collier and that R.M. was well liked by other students, especially those who were interested in video-gaming and other interests similar to R.M.'s. R.M. adapted well socially to Collier, and participated in the senior prom and other activities. R.M. received consistently positive reports from Collier. (R-8; R-5.)

During R.M.'s junior year at Collier, and in accordance with her 2012–2013 IEP, she met with Ms. Raffel on a weekly basis. During these meetings, they often discussed various job opportunities for R.M., including a program at Papa Ganache Bakery and employment at Kmart, ShopRite, and GameStop. Ms. Raffel also discussed post-graduation plans in accordance with R.M.'s interests in art and video-

game development. Ms. Raffel reported that R.M.'s uncertainty about her future plans was not unusual for a graduating senior. Despite R.M.'s uncertainty, Ms. Raffel did not recommend any changes to R.M.'s transition plan or a need for additional post-graduation services. Ms. Raffel believes that R.M. successfully completed her graduation requirements and participated in the Collier High School graduation and other senior activities with her peers. Ms. Raffel was shocked to learn that petitioners were refusing to accept R.M.'s Keyport High School diploma. They had never previously mentioned that R.M. would not be accepting a diploma.

Ms. White was also surprised that petitioners would be refusing R.M.'s diploma. R.M. exceeded all of her State and District graduation requirements by earning 150 credits with a "B" grade-point average. (R-8; R-9.) In addition, R.M. passed the High School Proficiency Assessment in both language arts and mathematics. (R-7.) Based upon the reports from R.M.'s teachers, Ms. White did not believe that R.M. needed any additional services beyond her graduation in June 2014. In her numerous conversations and correspondence with petitioners regarding R.M.'s graduation in June 2014, petitioners never objected to R.M.'s readiness for graduation. Petitioners consistently requested information concerning graduation and senior activities. In their multiple correspondences with Ms. White, petitioners never requested a post-graduation vocational program or any other post-graduation services.

At an IEP meeting on May 29, 2014 (hereinafter referred to as "the 5/29/14 IEP Meeting"), Ms. White presented T.M. with a Notice of Graduation and a Summary of Performance in anticipation of R.M.'s graduation in June 2014. (R-29.) At the 5/29/14 IEP Meeting, for the first time, petitioners expressed that R.M. was not ready for graduation. Notwithstanding petitioners' indication that R.M. would not be accepting a diploma, R.M. participated in the Collier High School graduation on June 13, 2014.

## ANALYSIS

### I

Petitioners' initial Request for Mediation was filed on June 5, 2014. An Addendum to the Mediation Request was filed on or about June 13, 2014. A subsequent letter was filed by petitioners on June 17, 2014, requesting that the initial Request for Mediation be "converted" into a Due Process Petition. On that date, a second Due Process Petition was also filed. In the Due Process Petitions, petitioners expressly reject R.M.'s IEP, dated May 29, 2014, on grounds that the transition plan "did not prepare [R.M.] for life after high school" and that R.M. "is not prepared to enter the labor force without additional skills and training." Petitioners request that R.M. "continue her education entitlement." Specifically, petitioners request a transition program that includes a "four-week evaluation" and "job sampling in a real work environment." Additionally, petitioners seek to revise R.M.'s classification from "specific learning disabled" to "multiply disabled."

On December 16, 2014, in an effort to consolidate all petitioners' previously-filed claims against the District into a single action with one docket number, petitioners' counsel filed an Amended Due Process Complaint (hereinafter referred to as the "Amended Complaint"). The Amended Complaint sets forth allegations and legal conclusions regarding the alleged failure of the District to provide R.M. with a free appropriate public education ("FAPE") prior to June 2012.

The IDEA includes an express two-year statute of limitations for complaining parties to initiate due-process complaints. Specifically, 20 U.S.C.A. § 1415(f)(3)(C) provides:

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint.

[See also P.P. v. West Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009) (parent or agency shall request an impartial due-process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint); S.T. and S.T. ex rel. P.T. v. Matawan-Aberdeen Reg'l Bd. of Educ., OAL Dkt. No. EDS 16735-12 (Dec. 19, 2014) (only claims stemming from actions in the two years prior to the claimant's filing will be considered).]

Here, petitioners filed the Due-Process Petitions on June 5, 2014. In applying the two-year statute of limitations, I **CONCLUDE** that petitioners' claims are limited to only those claims arising after June 5, 2012. Any reference in the Amended Complaint to the District's alleged actions or inactions prior to June 5, 2012, are irrelevant and time-barred, and I **ORDER** that any and all alleged claims arising prior to June 5, 2012, are **DISMISSED**.

## II

Under the IDEA, a disabled student is entitled to a "FAPE until the student reaches age twenty-one. Ferren v. Sch. Dist. of Philadelphia, 612 F.3d 712, 717 (3d Cir. 2010). The relevant regulations clarify, however, that a state is under no obligation to "make FAPE available" to children with disabilities "who have graduated from high school with a regular high school diploma." 34 C.F.R. § 300.102(a)(3)(i) (2015); accord Moseley ex rel. Moseley v. Bd. of Educ. of Albuquerque Pub. Schs., 483 F.3d 689, 692 n. 6 (10th Cir. 2007). In other words, once a student graduates from high school, she is no longer entitled to a FAPE. See T.S. v. Indep. Sch. Dist. No. 54, Stroud Okla., 265 F.3d 1090, 1092 (10th Cir. 2001); Bd. of Educ. v. Nathan R., 199 F.3d 377, 381 (7th Cir. 2000).

Moreover, in Wexler v. Westfield Board of Education, 784 F.2d 176 (3d Cir. 1986), the Third Circuit specifically considered whether graduation terminates a school district's responsibility to educate a disabled student. . In Wexler, the parents attempted to convince the court that the school district had an "absolute duty" to continue to provide a free appropriate public education until the age of twenty-one. 784

F.2d at 183. The Wexler court, however, rejected the parents' argument, finding that the IDEA contains no such requirement. Ibid. The court held that “[20 U.S.C.A. § 1412] and its accompanying regulations make clear that the state is only required to provide post-graduate education for handicapped students to the extent and in the same proportion that it does for non-handicapped students.” Id. (citing Helms v. Indep. Sch. Dist. No. 3, 750 F.2d 820 (10th Cir. 1984), cert. denied, 471 U.S. 1018, 105 S. Ct. 2024, 85 L. Ed. 2d 305 (1985)). Where a student properly graduates, i.e., graduates in accord with his IEP, it is plain that requiring a school district to provide post-graduate education is inconsistent with State practice. Id. at 183–84.

Here, the District provided petitioners with Notices of Graduation on May 27, 2014, and May 30, 2014. These Notices advised petitioners that R.M. would be receiving a State-endorsed diploma and would no longer receive special education services at the conclusion of the 2013–2014 school year. This determination was based upon R.M.'s satisfactory completion of 150 earned credits in excess of the State and local graduation criteria, satisfaction of the goals and objectives of her IEP, and successful passing of the High School Proficiency Assessment.

Petitioners assert, however, that since they refused to physically accept a printed paper diploma from the District, R.M. effectively has not “graduated.” Petitioners' argument is flawed and substantially disingenuous. R.M. not only completed her graduation requirements, but she walked in the formal graduation ceremony and participated in senior activities with her peers. Throughout the 2013–2014 school year, petitioners sent dozens of pieces of correspondence and participated in numerous meetings and telephone conferences to discuss R.M.'s progress, impending graduation date, and post-graduation plans. It was only at the 5/29/14 IEP Meeting, to the surprise of both the District and Collier, that petitioners expressed their unwillingness to accept R.M.'s diploma.

R.M. successfully completed her senior year at Collier with a cumulative grade point average of a “B.” All reports from R.M.'s teachers at Collier provide glowing reviews of R.M.'s educational progress and are undisputed by petitioners. Additionally,

R.M. scored “proficient” in both the mathematics and language arts components of the High School Proficiency Assessment. In fact, R.M.’s grades for the 2013–2014 school year were not only satisfactory, but were exemplary.

Overall, petitioners’ evidence was unconvincing and unpersuasive. R.M.’s student records support respondent’s evidence that R.M. was not deprived of a FAPE and that she earned her high-school diploma; indeed, the credible evidence, including observations by teachers, CST members and other professionals, amply demonstrated R.M.’s progress since entering Collier. I find no merit to petitioners’ argument that their refusal to accept the paper diploma abrogates R.M.’s successful completion of high school. R.M. participated in all senior activities with her peers and even walked in the Collier High School graduation. Simply put, R.M. graduated from high school. It is well settled that graduation terminates a school district’s obligation to provide services to a special education student. 34 C.F.R. § 300.102(a)(3) (2015); Wexler, supra, 784 F.2d at 183; T.S., supra, 265 F.3d at 1092. I **CONCLUDE** that petitioners cannot rebut this legal premise by simply refusing to accept the paper the diploma is printed on.

### III

On June 18, 2013, the parties met for an annual review and reevaluation planning meeting (hereinafter referred to as the “the 6/18/13 IEP Meeting”). Petitioners T.M. and R.M. were both present at the meeting and were represented by their education advocate, Martha Brecker. Also present were R.M.’s teachers; Barbara Raffel, LCSW, the school psychologist; Cerelle White, R.M.’s case manager; and Denise Cleveland, director of pupil personnel. At the 6/18/13 IEP Meeting, an IEP was developed to continue R.M.’s placement at Collier High School for her senior year.

The 6/18/13 IEP included R.M.’s eligibility classification as “specific learning disabled,” as it had been for the duration of R.M.’s academic career. In addition, the 6/18/13 IEP contained a Statement of Transitional Planning, including sections regarding Appropriate Measurable Postsecondary Goals, Courses of Study, and

Related Strategies and/or Activities. A Statement of Consultation and Interagency Linkages and School District Responsibilities is also included in the 6/18/13 IEP.

At the meeting, petitioners were given the opportunity to express any concerns regarding the education and related services proposed by the District. Petitioners exercised this opportunity by adding goals and objectives for R.M.'s senior year, including "getting in homework," "becom[ing] more open at explor[ing] other things besides just video games," and "getting a job/exploring post-high school plans." No services beyond June 2014 were contemplated nor requested by petitioners at that time. Notably, neither at the 6/18/13 IEP Meeting nor in their subsequent correspondence to the District did petitioners object to R.M.'s eligibility classification or any of the provisions in the Statement of Transition Planning or Statement of Consultation. At the conclusion of the meeting, petitioners were provided with a copy of the 6/18/13 IEP to take home for review. Petitioners did not file for due process or otherwise challenge the implementation of the IEP. Accordingly, by operation of law, the proposed 6/18/13 IEP was implemented fifteen days later, on September 4, 2013.

Petitioners now argue that the 6/18/13 IEP failed to provide R.M. with an appropriate transition program. It is well-settled law that a parent's failure to object to a proposed IEP within fifteen days of written notice of same results in the implementation of the proposed IEP by the District. See T.P. and P.P. ex rel. J.P. v. Bernards Twp. Bd. of Educ., EDS 6476-03, Final Decision (March 12, 2004), <<http://njlaw.rutgers.edu/collections/oal/>> (if petitioners were unclear or dissatisfied with some detail in the proposed IEP, they were obliged to express that and demand modifications). Specifically, in Carlisle Area School v. Scott P. By and Through Bess P., 62 F.3d 520, 583, n.8 (3d Cir. 1995), the court held that:

At the threshold, we note that this argument may have been waived. The parents apparently did not contest the appropriateness of the 1991–92 IEP at the time it was offered. . . . Because appropriateness is judged prospectively, we have declined the parents' invitation to play "Monday morning quarterback" by judging the 1991–92 IEP in hindsight. Although we do not construe the parents' failure to press their objections to the IEP when it was

offered as a waiver, it casts significant doubt on their contention that the IEP was legally appropriate . . . .

[Citation omitted.]

Similarly, in Fuhrmann ex rel. Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031, 1040 (3d Cir. 1993), the Third Circuit explicitly held that “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.”

Here, petitioners were well aware of their legal right to reject the 6/18/13 IEP within fifteen days of the meeting. See N.J.A.C. 6A:14-2.3(h)(3)(ii) (proposed IEP will be implemented after fifteen days unless the parent requests mediation or a due-process hearing). Petitioners filed for mediation and due process on numerous occasions, and also filed complaints with the Office of Special Education Programs. Petitioners took no action, however, to reject either the transition plan or the eligibility determination of the District. It was only on the eve of graduation, and after R.M. had successfully completed all of her graduation requirements, that petitioners decided that the 6/18/13 IEP was somehow insufficient. This is analogous to the “Monday morning quarterbacking” articulated by the Carlisle court, in that petitioners did not attempt to object to the services provided until nearly a year after the 6/18/13 IEP had been implemented.

Petitioners are not now entitled to challenge an educational program that had already been agreed to and provided, in full, by the District. It is abundantly clear that the IEP afforded R.M. a meaningful educational benefit, and that the IEP had never been objected to by petitioners, despite their familiarity with the process for doing so. “Neither the [IDEA] nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.” Fuhrmann, supra, 993 F.2d at 1040. Thus, I **CONCLUDE** that petitioners may not now dispute the educational program, including the transition plan and eligibility classification, set forth for R.M. in the 6/18/13 IEP.

#### IV

Prior to the instant matter, on or about March 30, 2012, petitioners filed a Petition for Due Process against the District (hereinafter referred to as “the 3/30/12 Petition”). On September 7, 2012, prior to commencement of the hearing on the 3/30/12 Petition, the parties reached a settlement. The terms of that settlement agreement (hereinafter referred to as “Settlement Agreement”), agreed to by both the District and petitioners with the advice of counsel, are as follows:

- 1) R.M.’s IEP will be amended at a [sic] already scheduled IEP meeting on September 10, 2012 to indicate placement is Collier High School;
- 2) For the ESY 2013, R.M. will attend ESY at Collier High School. This will be reflected in the IEP;
- 3) The District agrees to continue placement at Collier High School through June 2014. If Collier agrees that R.M. is still appropriate for their program, the parties will meet in Winter/Spring 2014 to determine if R.M. has met her graduation requirements.

In the event that Collier determines that R.M. is no longer appropriate, the parties agree to meet to determine a mutually agreed upon alternative program.

- 4) The parent may provide the District with a private evaluation and the District will consider the recommendations therein;
- 5) In the event Collier High School’s professionals recommend additional services for R.M. during her attendance at Collier, the District agrees to implement same.
- 6) In consideration of the above, the petitioners agree to waive and release the District from all claims that could have or should have been instituted in this due process petition including but not limited to all claims for attorneys’ fees, expert fees, evaluations fees, claims for compensatory education, all claims under the IDEA and § 504 of the Rehabilitation Act.

Clearly, there was no contemplation of educational services for R.M. beyond June 2014, and equally clearly, if Collier had determined that additional services were warranted, the District was obligated to provide R.M. with the recommended services. The terms of the Settlement Agreement were memorialized in an IEP dated October 9, 2012, and a subsequent IEP date June 9, 2013. Neither IEP was rejected or challenged by petitioners.

Thereafter, in accordance with the Settlement Agreement, mid-year meetings were held on January 29, 2013, during R.M.'s junior year at Collier, and again on December 20, 2014, during R.M.'s senior year. At the latter meeting, in which petitioners attended and meaningfully participated, R.M.'s current level of progress and readiness for graduation were discussed. Specifically, Collier reported that "[R.M.] feels school is going pretty well. [R.M.] feels she is doing well socially and academically."

With the exception of her senior English class, R.M.'s teachers all reported exceptional grades. At no time at the aforementioned meetings did petitioners express any disagreement with the educational services being provided to R.M. or her "unreadiness" to graduate, nor were there any such suggestions in multiple correspondence thereafter between petitioners and the District.

Most importantly, the Settlement Agreement unambiguously obligates the District to provide additional services upon recommendation of Collier's professionals. In this case, it is undisputed that Collier neither recommended nor requested any additional services for R.M. from the District; indeed, Collier staff praised R.M.'s social and educational progress. All reports indicate that R.M. was not only succeeding academically, but was blossoming socially as well. In particular, Collier reported that R.M. had participated in student activities and had a group of friends with similar interests. Should Collier have determined that additional services were necessary, such as a post-graduation vocational program or ESY beyond R.M.'s senior year, it was free to recommend, and indeed obligated to notify the District of the need for, any such services for R.M., and the District would have been obligated to provide whatever was recommended. No such recommendation was ever made to the District by Collier.

Based upon the unrefuted reports of Collier staff, including Ms. Raffel, with whom R.M. met with on a weekly basis during her junior and senior years, no post-graduation services were deemed necessary or otherwise recommended. By all accounts, R.M. was just an ordinary senior who loved video games and animals and was unsure of her future plans. On the eve of graduation, however, petitioners sought additional services to R.M.'s educational program, relying on nothing more than their unsupported assertions, and cannot now make blanket assertions that post-graduation services are necessary.

## V

Under the IDEA, "transition services" are:

a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[20 U.S.C.A. § 1401(34); see also N.J.A.C. 6A:14-3.7(e)(12)(i) (repeating the federal standard).]

In New Jersey, IEPs prepared during and after a student's fourteenth birthday must contain updated "course[s] of study and related strategies and/or activities that . . . [a]re intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living." N.J.A.C. 6A:14-3.7(e)(11)(ii). Those IEPs must also contain, as appropriate "a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development," and "a statement of any needed interagency linkages and responsibilities." N.J.A.C. 6A:14-3.7(e)(11)(iii), (iv). Corresponding to a student's sixteenth birthday, IEPs must also contain "appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and the transition services including a course of study needed to assist the child in reaching those goals." N.J.A.C. 6A: 14-3.7(e)(12).

The Third Circuit has not defined what amount of transition planning is required in an IEP to ensure a FAPE, but has suggested that an inadequate description of transition services would be a procedural IDEA violation, not a substantive one. See Rodrigues v. Fort Lee Bd. of Educ., 458 F. App'x 124, 128 (3d Cir. 2011) (per curiam) (citing Bd. of Educ. v. Ross, 486 F.3d 267, 276 (7th Cir. 2007)). Courts have further held that "[t]he floor set by the IDEA for adequate transition services appears to be low, focusing on whether opportunities are created for a disabled student to pursue independent living and a career, not just a promise of a particular result." Coleman v. Pottstown School Dist., 983 F. Supp. 2d 543, 566 (E.D.Pa. Nov. 22, 2013). In other words, a school district "need not ensure that the student is successful in fulfilling transition goals," rather, "transition services must provide some, or more than a de minimis, benefit." Dudley v. Lower Merion Sch. Dist., 2011 U.S. Dist. LEXIS 136931 (E.D.Pa. Nov. 29, 2011). It is well-settled law that a parent may not dictate specific services, provided the IEP is reasonably calculated to confer meaningful benefit. Lachman v. Ill. State Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988).

In the present case, it is clear that the District has met the requirements for appropriate transition services pursuant to the IDEA, the New Jersey Administrative Code, and Third Circuit case law. The 6/18/13 IEP, and its progenitor, provided a transition plan in compliance with both the IDEA and State laws. The 6/18/13 IEP provided, inter alia:

- 1) Statement of Transition Planning, including a career interest profile, weekly meetings with the social worker and post-graduation counselor, and the Division of Vocational Rehabilitation Services (“DVRS”);
- 2) Appropriate Measurable Postsecondary Goals, such as a list of career paths, volunteer work, and independent living goals;
- 3) Courses of Study, including college preparatory and vocational classes;
- 4) Related Strategies and/or Activities, including arts electives, information on local art programs, and suggested career fields based upon an analysis of R.M.’s interests and aptitudes;
- 5) Statement of Consultation, which provided contacts at both DVRS and Collier [whom] R.M. could consult with; and
- 6) Statement of Needed Interagency Linkages and School District Responsibilities, which required the District to assist with job applications and/or enrollment procedures, and required Petitioners to follow-up on submitted applications and provide appropriate documentation.

Additionally, the transition plan provides for a set of Coordinated Activities/Strategies in order for R.M. to meet the designated Measurable Postsecondary Goals. For example, R.M. was given information on community college, was provided assistance in completing job applications and seeking out employment and volunteer opportunities, and was provided access to vocational-inventory websites. Moreover, R.M. was placed in Collier’s JET Program, in which she performed job duties in and around Collier’s campus, for pay, in advancement of her vocational instruction.

There is simply no evidence that the transition plan provided to R.M. was somehow inadequate and/or inconsistent with the IDEA and N.J.A.C. 6A:14-3.7. A school district is not required to guarantee a specific, final result of employment—it is merely required to provide more than a “de minimis benefit.” See Dudley, supra, 2011 U.S. Dist. LEXIS 136931.

### **CONCLUSION**

Based upon the whole of the record, I **CONCLUDE** that a preponderance of credible evidence exists that respondent provided R.M. with a FAPE and that the transition services provided on the IEP for R.M. were appropriate, and **FURTHER CONCLUDE** that the Board is no longer obligated to provide R.M. with educational or related services, as she has successfully completed all State and local requirements for graduation and has earned and received her high-school diploma.

### **ORDER**

Based upon all of the foregoing, it is hereby **ORDERED** that the petitions for due process in this case be and hereby are **DISMISSED**.

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.

December 9, 2015  
DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency

December 9, 2015

Date Mailed to Parties:

\_\_\_\_\_

dr

**APPENDIX**

**Witnesses**

For Petitioners:

T.M.  
Sarah Logan  
Richard Hrynoveski

For Respondent:

Cerelle White  
Barbara Raffel  
Barbara Zmich  
Jennifer Johnson  
Christella Villasenor

**Exhibits**

For Petitioners:

P-1 IEP dated February 17, 2010  
P-2 – P-9 Identified; not in evidence  
P-10 Psychiatrist Assessment  
P-11 – P-12 Identified; not in evidence  
P-13 RM transition Planning Worksheet  
P-14 Identified; not in evidence  
P-15 IEP Dated October 9, 2012  
P-16 Admission Conference Meeting Notes  
P-17 – P-18 Identified; not in evidence  
P-19 TM Letter Requesting Evaluations  
P-20 Pediatric Development Evaluation  
P-21 Conference Summary  
P-22 Mid Year/IEP Planning Notes

- P-23 Identification and Nature and Scope of Evaluation Form signed 2-8-13
- P-24 Identified; not in evidence
- P-25 Letter from C. White to TM re: providers for independent evaluations
- P-26 – P-31 Identified; not in evidence
- P-32 End of Year IEP Meeting Notes
- P-33 HSPA Scores
- P-34 IEP Dated June 18, 2013 – including teacher reports P278 (1/12) & P280 (1/12)
- P-35 Report Card 2012-2013
- P-36 – P-39 Identified; not in evidence
- P-40 Complaint Investigation Report C2012-4753
- P-41 – P-43 Identified; not in evidence
- P-44 C. White Fax to Revolution NJ with contract for Vocational Evaluation
- P-45- P-47 Identified; not in evidence
- P-48 Revolution New Jersey, Inc. Vocational Assessment Summary
- P-49 Learning Evaluation – CSH
- P-50 Psychological Evaluation – CSH
- P-51 Letter from TM to C. White re: Request meeting to Review IEEs
- P-52 Identified; not in evidence
- P-53 Email correspondence between B. Raffel and T.M. re: Vocational Program
- P-54 Identified; not evidence
- P-55 Letter from TM to C. White re: Meeting to Review IEEs
- P-56 Identified; not in evidence
- P-57 Email correspondence between B. Raffel and TM re: RM resume
- P-58 ID only
- P-59 Identified; not in evidence
- P-60 Children Evaluation Center – Pediatric Development Update
- P-61 Identified; not in evidence
- P-62 Letter from TM to C. White re: meeting on 5-29-14
- P-63 – P-64 Identified; not in evidence
- P-65 Letter from C. White with IEP dated May 29, 2014 (includes IEP Progress Reports)

- P-66 JET Progress Report
- P-67 – P-76 Identified; not in evidence
- P-77 Email dated January 28-29, 2013 between Ms. Raffel to Ms. C.White
- P-78 Papa Ganache Project description (<https://papaganache.com/papa-ganache-project>)
- P-79 Emails dated January 25-28, 2013 between Ms. Raffel and T.M.
- P-80 Email dated January 23, 2014 from Ms. Raffel and Ms. Zimich to Ms. C. White

For Respondent:

- R-1 – R-4 Identified; not in evidence
- R-5 IEP – Annual Review, Reevaluation
- R-6 IEP – Annual Review, Reevaluation
- R-7 New Jersey High School Proficiency Assessment Individual Student Report
- R-8 Identified; not in evidence
- R-9 Keyport Schools Transcript
- R-10 – R-28 Identified; not in evidence
- R-29 Notice of Graduation or Age 21 – Proposed Action
- R-30 Notice of Graduation or Age 21 – Proposed Action
- R-31 – R-39 Identified; not in evidence
- R-40 Letter from C. White to Petitioners re: senior activities
- R-41 – R46 Identified; not in evidence
- R-47 Settlement Agreement, OAL Dkt. No. 08126-2012
- R-48 Identified; not in evidence