

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 1865-16

AGENCY DKT. NO. 2016 23956

**FLORENCE TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

L.C. AND K.C. ON BEHALF OF A.C.,

Respondents.

Sanmathi Dev, Esq., for petitioner (Capehart Scatchard, attorneys)

No appearance by or on behalf of respondents

Record Closed: February 18, 2016

Decided: March 2, 2016

BEFORE **LISA JAMES-BEAVERS**, ALJ:

STATEMENT OF THE CASE

Petitioner, Florence Township Board of Education (hereinafter "petitioner"), seeks completion of an initial child study team evaluation regarding respondents L.C. and K.C.'s child, identified as A.C. Petitioner also seeks reimbursement of funds paid for respondents' missed appointments.

PROCEDURAL HISTORY

This Special Education case arises under the Individual with Disabilities Education Act (hereinafter "IDEA"), 20 U.S.C.A. §1401 to 1484a. On January 26, 2016, petitioner filed the case with the Office of Special Education Programs (hereinafter "OSEP") as a Request for Emergent Relief.

The OSEP transmitted the matter to the Office of Administrative Law (hereinafter "OAL") as a regular due process petition where it was filed on February 4, 2016, for final determination in accordance with 20 U.S.C.A. §1415 and 34 CFR 300.500 to 300.587. The Office of Special Education Programs requested that an Administrative Law Judge be assigned to conduct the hearing. The Acting Director of the OAL assigned Judge John Futey (T/A) to hear the case. N.J.S.A. 52:14F-5(o).

The hearing was scheduled to be held on February 18, 2016, which was converted to an early settlement conference. On the scheduled hearing date, only petitioner appeared at the OAL, Trenton, New Jersey for the due process hearing. No one appeared on behalf of respondents. Petitioner asked Judge Futey for permission to conduct a proof hearing, which he granted. The case was transferred to the undersigned to conduct the hearing. After waiting approximately one hour from the scheduled hearing time, I confirmed that respondents had received notice and proceeded to conduct the proof hearing. Petitioner appeared and presented proofs relative to the issue whether it is entitled to conduct evaluations and be reimbursed for the cost of missed appointments.

UNDISPUTED FACTS

Based upon the totality of the evidence presented, both testimonial as well as documentary, the following constitute the undisputed facts in this matter as adduced from the one witness who testified.

Caitlin Cavagnaro testified that she is the Director of Special Services in the District. She reviewed her credentials and the timeline as set forth in her Certification. (Exhibit A to petitioner's brief.)

The student, A.C., is a thirteen-year-old student who is in seventh grade. Respondents L.C. and K.C. are her biological parents. A.C. was involved in several disciplinary incidents during the 2014-2015 school year culminating in a physical assault on another student. A disciplinary hearing was held on February 23, 2015. At the conclusion of the hearing, the Board concluded that, due to the severe nature of the behavior and the impact of A.C.'s presence on the well-being of other students, A.C.'s expulsion from the District's general education program was warranted. The Board referred A.C. to the Child Study Team (CST) for evaluations and to determine the appropriate placement. (Exhibit B.) Respondents disagreed with the Board and withdrew A.C. from the District on February 25, 2015. However, they re-enrolled her on September 3, 2015, so the CST was still required to proceed with the evaluations. (Exhibit C.)

On September 16, 2015, the School Psychologist and Case Manager Rachel Taylor sent respondents an Invitation for Initial Identification and Evaluation Planning meeting for September 21, 2015. (Exhibit D.) On September 21, 2015, the parent called and canceled so the meeting was rescheduled to September 24, 2015. (Exhibit E.) The CST, of which the mother was a part, decided that evaluations were warranted and proposed the following assessments: educational; psychological; social; and psychiatric. A.C.'s mother signed that she consented to the proposed evaluation assessments at the meeting on September 24, 2015. (Exhibit F.)

The social history (Exhibit G) and psychological assessment (Exhibit H) were performed in the school. The Learning Assessment of A.C. was completed on November 11, 2015. (Exhibit K.) A.C. was on homebound instruction at the time of the assessments in fall 2015. According the IEP contact log, A.C.'s mother requested a morning appointment with the psychiatrist, specifically 9:30 a.m. any weekday. (Exhibit L.) On November 18, 2015, Ms. Taylor called her to advise her that the appointment with the psychiatrist, Dr. Salman, was scheduled for December 3, 2015 at 10:00 a.m. However, she could not leave a voicemail message on her phone. According to the contact log, Ms. Taylor called again on November 19 and November 20, 2015, but she

did not reach anyone and was not able to leave a voicemail message. (Exhibit I.) Apparently, an appointment had also been scheduled for October 29, 2015 that A.C. did not make. (Exhibit J.) On November 19, 2015, Ms. Cavagnaro sent respondents a letter confirming that A.C.'s psychiatric evaluation had been scheduled for December 3, 2015 and that if she missed the appointment, she would be subject to a charge by the District of \$500. (Exhibit L at 2.) On December 3, 2015, Dr. Salman sent Ms. Cavagnaro an email stating that "A.C. did not show for the evaluation again." (Exhibit M.) The District was charged \$500 for each appointment, October 29, 2015 and December 3, 2015, for a total of \$1,000. (Exhibit N.) On January 4, 2016, Ms. Cavagnaro sent respondents another letter outlining the missed appointments and impressing upon them the need to reschedule the psychiatrist evaluation in order to complete the full CST evaluation, the plan for which was attached. (Exhibit O.) She has not heard from the parents of A.C. since that time.

Last, Ms. Cavagnaro presented the student conduct list setting forth seventeen disciplinary infractions with attached incident reports from September 10, 2014 to January 2015, which resulted in the request for the CST evaluation. The District cannot proceed with the determination for special education without the psychiatric evaluation.

There is no material dispute concerning the foregoing, which I **FIND** as **FACT**. Based on the undisputed testimony and documentary evidence, I **FIND** that the District has ample evidence of A.C.'s escalating behavioral problems. I **FIND** that the District has taken numerous measures to complete the CST evaluation for the benefit of A.C., but the parents are not cooperating with the psychiatric evaluation.

LEGAL ANALYSIS

As indicated hereinabove, the respondents have failed to appear at a due process hearing in order to provide input regarding the on-going problems relative to their daughter.

Therefore, based on the foregoing facts, I **CONCLUDE** that completing A.C.'s evaluation for eligibility for services is absolutely necessary under the provisions of N.J.A.C. 6A:14-3.3. In light of my findings that the respondents have received ample notice, but failed to comply with the District's reasonable requests, despite the escalating problems manifested regarding their child, I **CONCLUDE** that the only resolution is to have the child study team evaluation completed immediately. For all of the foregoing reasons, I **CONCLUDE** that completion of the psychiatric evaluation is warranted and necessary at this time.

Petitioner requested that the case be handled as an emergent relief request and set forth in its brief the reasons that it meets the standards for emergent relief. Specifically, it argues that the irreparable harm is that the District cannot provide FAPE to the student while the evaluation plan is pending. However, the motion to treat this case as an emergent relief request is **DENIED**. The OSEP transmitted the case as a regular due process petition and I see no reason to change the designation, especially since I am deciding the case in an expedited fashion. The request for an Order to complete the evaluations as set forth in the evaluation plan is **GRANTED** due to the proofs submitted and the respondents' failure to appear to refute any of the testimony pursuant to N.J.A.C. 1:1-5.4.

The District has also asked to be reimbursed for the cost of respondents' missed appointments, specifically \$1,000 for the missed appointments on October 29 and December 3, 2015.

The request for reimbursement for the December 3, 2015 appointment is a reasonable request in light of the letter specifically advising A.C.'s parents that the District would charge her \$500 for a missed appointment. I do not see a similar letter regarding the October 29, 2015 appointment. I also do not see the reference to calls made and letters sent to remind the parents of the appointment as I saw with the December 3, 2015 letter. Therefore, the request for an Order for respondents to reimburse the District is **GRANTED** for the December 3, 2015 appointment, but not for

the October 29, 2015 appointment. However, if respondents keep the next scheduled appointment for A.C. with Dr. Salman and A.C. has the evaluation done within forty-five days from the date of this decision, the \$500 will be waived.

ORDER

I therefore **ORDER** that A.C.'s parents, L.C. and K.C., are hereby compelled to cooperate with the District in the CST evaluation process regarding A.C. through the scheduling and completion of the psychiatric evaluation, ensuring that A.C. appears for scheduled sessions and accompanying A.C. to outside appointments. And, based upon the results of that evaluation, I **ORDER** and **DIRECT** A.C.'s parents to then meet and review the results of that evaluation and plan for A.C.'s future attendance at school. It is further **ORDERED** that respondents reimburse the Florence Township Board of Education in the amount of \$500 for the missed psychiatric appointment on December 3, 2015; however, I **ORDER** the Board to waive the reimbursement of \$500 if respondents make and keep the appointment and A.C. completes the psychiatric evaluation within forty-five days of the date of this decision.

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.

March 2, 2016

DATE

LISA JAMES-BEAVERS, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

cmo

APPENDIX
WITNESSES

For Petitioner:

Caitlin Cavagnaro

For Respondents:

None

EXHIBITS

For Petitioner:

P-1 Brief with Exhibits A through O

For Respondents:

None