

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05518-17

AGENCY DKT. NO. 2017-25880

EDISON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

v.

Z.H. ON BEHALF OF L.G.,

Respondent.

Douglas M. Silvestro, Esq., for petitioner (Busch Law Group, LLC, attorneys)

No appearance by Z.H.

Record Closed: May 31, 2017

Decided: May 31, 2017

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

In a letter dated February 22, 2017, respondent, a parent, requested independent evaluations to be completed by a school psychologist, a school social worker, a learning disabilities teacher consultant, a psychiatrist, and a neurologist, but respondent failed to specify the reason why. Is respondent entitled to those evaluations? No. Under N.J.A.C. 6A:14-2.5(c), a parent may request an independent evaluation if there is a disagreement with an initial evaluation, but the parent must specify the reason why.

PROCEDURAL HISTORY

On May 13, 2016, at an initial evaluation planning meeting, the parties agreed that petitioner would conduct an educational evaluation, a psychological evaluation, and a social history of L.G., respondent's daughter. By June 9, 2016, petitioner completed the evaluations. On February 22, 2017, respondent requested independent evaluations.

On March 15, 2017, petitioner filed a petition for due process with the Office of Special Education Programs (OSEP) seeking a determination that the initial evaluations were appropriate and that respondent is not entitled to the independent evaluations she requested.

On April 24, 2017, OSEP transmitted the case to the Office of Administrative Law (OAL) for hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

The hearing was scheduled for May 4, 2017, but on that date, respondent failed to appear. On May 18, 2017, petitioner submitted the Certification of Christopher Conklin, Assistant Superintendent of Pupil Special Services, in support of the petition for due process. To date, respondent has never contacted this tribunal to explain why she failed to appear for the hearing, let alone oppose the petition.

FINDINGS OF FACT

Given the Certification of Conklin in support of the petition for due process, and the failure of respondent to appear at the hearing, or oppose the petition for due process in any way, I **FIND** the following as **FACT**:

L.G. is currently sixteen years old. On May 13, 2016, the parties participated in an initial evaluation and planning meeting. During that meeting, petitioner proposed

conducting an educational evaluation, a psychological evaluation, and a social history. Respondent provided her consent and did not request any other evaluations. By June 9, 2016, petitioner completed the evaluations.

On June 20, 2016, at the initial eligibility conference, L.G. was determined to be eligible for special education and related services under the category “emotionally disturbed.” At no point during the meeting did respondent express any concerns about the evaluations or the reports. In fact, after discussing the proposed individualized education program, respondent consented to it.

Many months later, in a letter dated February 22, 2017, respondent requested independent evaluations to be completed by a school psychologist, a school social worker, a learning disabilities teacher consultant, a psychiatrist, and a neurologist, but respondent failed to specify the reason why.

CONCLUSIONS OF LAW

A parent may request an independent evaluation if there is a disagreement with an initial evaluation, but the parent must specify the reason why:

Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

[N.J.A.C. 6A:14-2.5(c).]

A school district, however, may refuse. See N.J.A.C. 6A:14-2.5(c)(1). Toward this end, the school district must initiate a due process hearing to show that its evaluation is appropriate. Ibid.

In this case, respondent did not specify why she disagrees with the initial evaluations. She did not do so in her written request, she did not do so at the hearing, and she does not do so now. Indeed, respondent has failed to appear for the hearing or oppose the petition for due process in any way.

Given the fact that respondent fails to oppose the petition for due process, and fails to specify why she disagrees with the initial evaluations, I **CONCLUDE** that petitioner has made a prima facie showing that the initial evaluations it had completed by June 9, 2016, were appropriate, and that petitioner is not required to provide respondent with the independent evaluations she requested on February 22, 2017.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the initial evaluations petitioner had completed in this case by June 9, 2016, be deemed appropriate, and that respondent is not entitled to the independent evaluations she requested on February 22, 2017.

This decision is final under 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016).

May 31, 2017

DATE

BARRY E. MOSCOWITZ, ALJ

dr

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

None

Documents

For Petitioner:

P-1 Certification of Christopher Conklin dated May 15, 2017

For Respondent:

None