

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 07132-17

AGENCY DKT. NO. 2017 26199

FAIRLAWN BOARD OF EDUCATION,

Petitioner,

v.

A.H. AND N.H. ON BEHALF OF M.H.,

Respondent.

Robin Ballard, Esq. for petitioner (Schenck, Price, Smith and King, attorneys)

A.H., and N.H., no appearance

Record Closed: August 24, 2017

Decided: August 25, 2017

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, the Fairlawn Board of Education (the Board) has requested a due process hearing as required by N.J.A.C. 6A:14-2.5(c). The Board, through its Child Study Team (CST) wishes to deny a request for independent evaluations made by A.H. and N.H., the parents of M.H.

A hearing was noticed for August 24, 2017, at 9:00 a.m., which was to be conducted as a settlement conference. The parents did not appear; Board counsel and a representative of the CST timely appeared. The parents were aware of the hearing

date, having duly received notice, and having at least twice previously sought and received adjournments of the scheduled hearing date.

As of approximately 10:30 a.m., the parents still had not appeared. Accordingly, per N.J.A.C. 1:1-1.4(d), I permitted the Board to present ex parte proofs. I have held the matter for one day as required by N.J.A.C. 1:1-1.4(a), and have received no explanation for the parents' nonappearance.

FINDINGS OF FACT

Assistant Superintendent Nicholas Norcia testified on behalf of the Board. M.H., who is four years old, transferred into the Fairlawn district in the summer of 2016 from New York, where she had previously been classified as a Preschool Child with a Disability. After conducting an evaluation planning meeting, it was agreed that an educational evaluation would be conducted. On July 8, 2016, Sarah Goldberg, LDT-C, conducted a comprehensive educational evaluation using appropriate testing instruments for a child of M.H.'s age.

Thereafter, according to Norcia and counsel for the Board, M.H. received an Individualized Education Program (IEP) but her attendance at school was spotty. Via email dated May 2, 2017, the parents requested independent physical therapy, occupational therapy and speech and language evaluations. But they did not indicate that they disagreed with the evaluation completed by the district.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

In seeking to deny the parents' request for independent evaluations, the Board relies on N.J.A.C. 6A:14-2.5(c), which provides that, "upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation..." The district may file for due process, as it did here, "to show that its evaluation is appropriate..." N.J.A.C. 6A:14-2.5(c)(1).

The parents of M.H. did not appear for the duly scheduled hearing. Norcia asserted under oath that the evaluation completed by the district allowed the CST to properly plan M.H.'s educational program. Accordingly, I **CONCLUDE** that the evaluation conducted by the Board, through its CST, was appropriate.

ORDER

Based on the foregoing, the relief sought by the petition is **GRANTED**. Insofar, as I have concluded that the evaluation conducted by the CST was appropriate, the Board is not obligated to provide the independent evaluation sought by the parents.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

August 25, 2017

DATE

ELLEN S. BASS, ALJ

Date Received at Agency

August 25, 2017

Date Mailed to Parties:

sej

APPENDIX

Witnesses:

For petitioner:

Nicholas Norcia

For respondent:

None

Exhibits:

For petitioner:

P-1 Educational Evaluation, dated July 8, 2016

For respondent:

None