State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

GRANTING MOTION FOR

SUMMARY DECISION

OAL DKT. NO. EDS 02353-21

AGENCY DKT. NO. 2021-32498

TINTON FALLS BOARD OF EDUCATION,

Petitioner,

v.

D.B and S.B. on behalf of L.B.,

Respondents.

Eric L. Harrison, Esq., for petitioner (Methfessel & Werbel, attorneys)

Marjorie F. Chertok, Esq., and **Pantea Maddux,** for respondents (Volunteer Lawyers for Justice, attorneys)

Record closed: November 29, 2021 Decided: November 29, 2021

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, Tinton Falls Board of Education (Board or District), filed a due process petition in which it seeks authority to conduct reevaluations of respondent student L.B. Petitioner filed a motion for summary decision.

PROCEDURAL HISTORY

On February 5, 2021, petitioner requested a due process hearing, pursuant to N.J.A.C. 6A:14-2.6 and N.J.A.C. 6A:14-2.7, with the Office of Special Education Programs of the New Jersey Department of Education, (OSEP). The matter was transmitted by OSEP to the Office of Administrative Law, (OAL) where they were filed on March 8, 2021, as a contested case. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-13.

Respondents filed an answer to the due process petition on June 4, 2021. The answer included counterclaims in which respondents assert that L.B. requires a hybrid palliative and educational learning environment. They sought, through the counterclaims, an order requiring independent testing, in-camera production of both parties' records, and a proceeding concerning the appropriate out-of-district placement for L.B. Petitioner filed an answer to the counterclaim on June 8, 2021. On October 28, 2021, respondents withdrew some of their counterclaims.

Petitioner filed the instant motion for summary decision on September 27, 2021. Respondent filed an opposition brief on November 1, 2021.

After the summary decision motion and opposition briefs were filed, the Department of Education advised its OAL liaison that any new claims must be made by way of a due process petition rather than a counterclaim, pursuant to N.J.A.C. 6A:14-2.7(c). This was relayed to the parties during a November 1, 2021, status conference. In light of this, respondents represented that they would withdraw their remaining counterclaims and may opt to file a due process petition with the Department of Education.

Petitioner filed a reply brief on November 3, 2021. During a November 29, 2021, status conference, petitioner withdrew its request for an order compelling respondents to release L.B.'s medical records. The record closed November 29, 2021.

FACTUAL DISCUSSION AND FINDINGS

The following, taken from the parties' pleadings and briefs, is undisputed:

1. Respondents D.B. and S.B. are the parents of minor student L.B. L.B. was born on December 30, 2009. He is eleven years old and in sixth grade.

2. L.B. is enrolled in Tinton Falls Middle School, a school located within the Tinton Falls School District.

3. L.B. is eligible for special education and related services under the classification category multiply disabled.

4. L.B. was provided homebound instruction during the 2019-2020 and 2020-2021 school years.

5. The District's doctor authorized home instruction after he reviewed documentation from Margaret C. Souders, Ph.D., CRNP, L.B.'s medical provider. Respondents provided Dr. Souders' documentation to the District.

6. In October 2019, the Board filed a due process petition to compel access to L.B.'s medical records and providers. On December 5, 2019, respondent S.B. executed a consent form allowing the District's physician, Dr. Steven Miller, to discuss L.B. with Dr. Souders. The release expired on March 4, 2020.

7. L.B.'s Individualized Education Plans (IEPs) for the 2020-2021 school year provided for homebound instruction, with ten hours per week of instruction and one hour per week of speech/language therapy.

8. L.B. has not been evaluated since 2019. The dates of his last evaluations are:

- Speech/language April 29, 2019
- Educational December 19, 2018
- Psychological December 16, 2018
- Social history December 7, 2018
- Physical therapy January 20, 2017
- Occupational therapy January 19, 2017

[Certification of Kerri Walsifer (Walsifer Cert.) Exh. C (November 4, 2020, IEP).]

9. A combined annual IEP review and re-evaluation meeting was conducted on November 4, 2020. Respondents attended, accompanied by their attorney. The District's Child Study Team (CST) determined that a "battery of re-evaluations pursuant to N.J.A.C. 6A:14-3.8 is necessary and appropriate in order to obtain an understanding of L.B.'s current strengths, weaknesses and needs, and to ensure that the District has sufficient evaluative information to allow it to make informed decisions regarding L.B.'s programming, placement, and classification." Walsifer Cert. at ¶19. The CST proposed conducting the following evaluations: educational, psychological, social history, speech/language, occupational therapy, and physical therapy. Respondents refused to consent to the evaluations. Id. at ¶21, Exh. E.

Petitioner offers the following facts in support of its motion:

1. During the 2018-2019 and 2019-2020 school years, respondents consistently submitted requests from Dr. Souders for continued home instruction. Respondents would not permit the District to discuss L.B. with Dr. Souders. Their refusal prompted the District to file its October 2019 due process petition. Walsifer Cert. at ¶¶7,8. Drs. Miller and Souders communicated in or about January 2020. Id. at ¶11. Respondents have not executed subsequent releases permitting access to L.B.'s medical records. Id. at ¶13.

2. During the 2020-2021 school year, L.B. participated in fifty-one and one-half hours of instruction and twenty-one hours of speech/language therapy. During the 2021 extended summer school session, L.B. participated in fifteen and one-half hours of instruction. Id. at ¶16.

3. Because the CST has not had access to L.B.'s medical and treatment records for "nearly a year," the CST requested that respondents execute a release form permitting the District to access Dr. Souders' records and those of "any other professionals who work with L.B. and would be able to provide information to help the District ensure that it is addressing all areas of need." Respondents did not execute the release form. Id. at ¶22, Exhibit F.

4. The current IEP expired on February 3, 2021. Id. at ¶23, Exh. G. The District continued to provide homebound instruction after that date. The District "knows next to nothing about L.B.'s current strengths, weaknesses, diagnoses, or even well-being." Id. at 24. Its IEP team cannot propose an IEP without new evaluations and information about L.B.'s current medical condition and treatment. Ibid.

Respondents offer the following facts in opposition to the motion for summary decision:

1. L.B. "has difficulty functioning outside of the home setting" because of his multiple disabilities. Certification of S.B. (S.B. Cert.) at ¶2. He is "prone to extremes of allergy attacks requiring medical intervention, emotional outbursts, lethargy and severe pain in performing educational and physical tasks." Ibid. L.B. has chronic physical pain; requires frequent and urgent trips to the bathroom; and his "constant stomach pain is often severe and impacts his ability to move around and function normally." Id.at ¶6. A drainage line is used to drain the contents of his stomach. It must be placed on the floor to enable drainage and L.B. must not move. It must also be monitored for blood or other changes. Id. at ¶7. A Gastrostomy-Jejunostomy (GJ) tube is connected to L.B.'s feeding tube in his abdomen. He must transport the lines

used to deliver fluids through the tube, with either an IV pole or backpack. Disconnected, tangled or pulled lines must be immediately addressed and sometimes require hospitalization. Ibid.

2. L.B. had been received homebound instruction since October 2013. He was hospitalized for most of his kindergarten year. In or about August 2016, he was reenrolled for the 2016-2017 school year. In or about April 2018, S.B. requested that L.B. be placed in the school setting with accommodations. S.B. Cert. at ¶9. S.B. subsequently wanted L.B. to return to homebound instruction. Dr. Souders recommended homebound instruction due to his "complex psychiatric and behavioral phenomena. " Id. at ¶11. The District agreed to homebound instruction. Ibid.

3. S.B. advised the District that the homebound instruction was offered inconsistently and by multiple instructors. Her complaint "went unheeded." Id. at ¶11. On August 8, 2019, Dr. Souders advised the District that L.B. required frequent hospitalizations and medical visits, which necessitated time away from school. She requested one homebound instructor "for a consistent learning environment" and that the "instructor should be trained in the Wilson method for reading comprehension." Ibid.

4. On or about October 15, 2018, the District filed a complaint against S.B. with the New Jersey Department of Child Protection and Permanency (DCPP), in which it alleged that she was abusing L.B. by keeping him out of school. DCPP dismissed the complaint and helped to obtain home instruction for L.B. Two additional DCPP complaints were also dismissed. Id. at ¶12.

5. After January 2020, neither the District, Dr. Souders nor Dr. Miller advised S.B. that further discussion was required. S.B. was also not informed that Dr. Miller attempted to contact Dr. Souders since January 2020. Id. at ¶16,17.

6. The District "sent blanket releases allowing Dr. Souders to divulge private and confidential medical information to any non-medical District personnel who

decide to call her." Id. at ¶18. S.B. would not sign the releases because "[t]here is no need for District personnel to speak with her. It is the school physician who makes decisions about the need for home instruction not non-medical District personnel. In addition, [Dr. Souders] is a busy person and doesn't have the time to respond to multiple calls on non-specific subjects and I don't want her to decide she will no longer treat L.B." Ibid.

7. Prior to petitioner's October 2019, due process petition, the District did not have access to all of L.B.'s medical and treatment records. Instead, it relied upon his doctors' diagnoses. Id. at ¶19. The District "knows all of [L.B.'s] diagnoses and has been in agreement with them for years." Id. at ¶21.

8. L.B. has been available for all home instruction sessions except when he was ill or receiving medical care. S.B. explained this to the instructors. Id. at ¶22. The instruction schedule was irregular and was changed by the instructors. Id. at ¶23. S.B. is unable to address L.B.'s attendance because she was not provided with District attendance records. Id. at ¶23.

9. S.B. "agree[s] that . . . assessments are needed." Occupational, physical, educational, psychological, speech/language assessments are necessary to assess L.B.'s current strengths and weaknesses. These assessments would evaluate "his sensory processing and his fine motor skills . . . [and] among other things, assess his gross motor skills, his stamina, ability to navigate." They would also evaluate 'his academic, language, cognitive functioning, and social/emotional/behavioral skills." Id. at ¶21.

10. S.B.'s "disagreement has been with having the evaluations conducted by the District." Ibid.

Parties' Arguments

The District contends that the IDEA requires it to complete a multi-disciplinary evaluation of L.B. every three years, which shall address, in addition to other matters,

whether additions or modification to the special education and related services provided to him are needed to enable him to meet annual goals and participate, if appropriate, in the general education curriculum. Because respondents have refused to consent to the triennial evaluation, as is required, the District must request a due process hearing. The District argues that, without the benefit of current evaluations and medical and treatment information about L.B., it is "unable to make fully informed decisions regarding L.B.'s eligibility, classification, placement and programming." Pet. Brf. at 4. The CST concluded that respondents' "refusal to consent to the proposed evaluations has compromised [its] ability to make informed decisions regarding L.B.'s abilities and needs and, by extension, has delayed a thorough a proper determination as to the appropriateness of L.B.'s placement and programming." Id. 2-3.

Respondents contend that, while the District may seek to reevaluate L.B., they object to District personnel conducting the reevaluations because they have "lost faith in the District." Resp. Brf. at 11. They contend that events that preceded the District's 2019 due process petition that was settled by the parties, including the complaint filed by the District with DCPP, "impaired any remaining faith [respondents] might have had in the District." Id. at 12. Respondents interpret the District's instant motion as denigrating them "for doing nothing more than exercising their legal right to not consent to have District staff conduct the requested reevaluation." Id. at 13. They argue that they have appropriately advocated for L.B. and have a legal right to refuse to "give access to L.B.'s private medical providers by any District personnel who chose to contact them." Id. at 14. They, thus, properly refused to consent to reevaluations and to "blanket releases of all of L.B.'s private medical and treatment records." Ibid. [1]

[1] In their withdrawn counterclaim, respondents sought independent evaluations pursuant to N.J.A.C. 1:6A-14.4(a), which authorizes administrative law judges to order independent educational evaluations upon a showing of good cause. They contend that this section is used when there are conflicting expert reports; no reports on an essential issue; or when a district has refused to conduct an evaluation that was requested by a parent. Resp. Brf. at 16. They argue that an order pursuant to this rule would be appropriate here, given the District's prior DCPP complaints, its denigration of the respondents in its court filings, and the resultant loss of trust by the respondents. Evaluations conducted by third parties will "at least give more credence to their findings and recommendations and possibly [begin] to repair the relationship." Id. at 17.

LEGAL ANALYSIS AND CONCLUSION OF LAW

Summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). "When the evidence is so one-sided that one party must prevail as a matter of law, the [tribunal] should not hesitate to grant summary [decision]." Della Vella v. Bureau of Homeowner Protection, OAL Dkt. No. CAF 17020-13)(quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)).

A party opposing a summary decision motion, "in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b). A party "who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant's papers." Burlington County Welfare Bd. v. Stanley, 214 N.J. Super. 615 (App. Div. 1987). This requirement, however, does not relieve the moving party from having to initially establish in its moving papers that there was no genuine issue of fact and that they were entitled to prevail as a matter of law. "Thus, it is the movant's burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact[.] . . . [T]he absence of undisputed material facts must appear 'palpably.' All inferences of doubt are drawn against the movant in favor of the opponent of the motion. The papers supporting the motion are closely scrutinized and the opposing papers indulgently treated[.]" Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74-75 (1954).

Here, the facts that are material to the issues presented by the summary decision motion are not in dispute. It is undisputed that the District has not evaluated L.B. since 2019 and that some evaluations were most recently conducted in 2017 and 2018. It is also undisputed that S.B. agrees that evaluations must be conducted but does not want the District to conduct the evaluations. Summary decision is, thus, appropriate here.

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482. The IDEA requires school districts to provide all children with

disabilities "free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). In order to provide a FAPE, an IEP should be developed with the participation of parents and members of a district board of education's CST who have participated in the evaluation of the child's eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student's language and communications needs; and the student's need for assistive technology devices and services. The IEP establishes the rationale for the pupil's educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. To meets its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of his circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017).

"Recognizing that a child is not static, and that his or her needs evolve and change with time, the law moreover provides for a triennial review and reassessment of a child's needs and how they appropriately can be met." Wayne Township Board of Education v. G.G. and S.W. o/b/o G.G., OAL DKT. No. EDS 05519-17, 2017 N.J. AGEN LEXIS 359, *3 (June 1, 2017). The controlling regulation, N.J.A.C. 6A:14-3.8, addresses school districts' obligations in this regard:

> (a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted earlier if conditions warrant or if the student's parent or teacher requests the reevaluation. However, a reevaluation shall not be conducted prior to the expiration of one year from the date the parent is provided written notice of the determination with respect to eligibility in the most recent evaluation or reevaluation, unless the parent and district board of education both agree that a reevaluation prior to the expiration of one year as set forth in this subsection is warranted. When a reevaluation is conducted earlier than three years from the previous evaluation as set forth in this

subsection, the reevaluation shall be completed in accordance with the timeframes in (e) below.

. . .

(b) As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:

1. The IEP team shall review existing evaluation data on the student, including:

i. Evaluations and information provided by the parents;

ii. Current classroom-based assessments and observations; and

iii. Observations by teachers and related services providers; and

2. On the basis of that review, and input from the student's parents, the IEP team shall identify what additional data, if any, are needed to determine:

i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);

ii. The present levels of academic achievement and functional performance, and educational and related developmental needs of the student;

iii. Whether the student needs special education and related services, and the student's academic, developmental, functional, and behavioral needs and how they should appropriately be addressed in the student's IEP; and

iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

. . .

4. If additional data are needed, the IEP team shall determine which child study team members and/or

> specialists shall administer tests and other assessment procedures to make the required determinations in (b)2i through iv above.
>
> (c) Prior to conducting any assessment as part of a reevaluation of a student with a disability, the district board of education shall obtain consent from the parent pursuant to N.J.A.C. 6A:14-2.3.[2]
>
> [Emphasis added.]

If a parent refuses to consent to a reevaluation, as required by N.J.A.C. 6A:14-3.8(c), a district may request a due process hearing to permit reevaluation notwithstanding the absence of consent. N.J.A.C. 6A:14-2.7(b) provides:

> [T]he district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when the district board of education is unable to obtain required consent to conduct an initial evaluation or a revaluation, or to release student records. The district board of education shall request a due process hearing when the district board of education denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).
>
> [Emphasis added.]

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

> 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 the district board of education's expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation.

[2] N.J.A.C. 6A:14-2.3(a)3 provides that parental consent shall be obtained "prior to conducting any assessment as part of a reevaluation, except that consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain consent and the parent failed to respond[.]" N.J.A.C. 6A:14-2.3(k)7 addresses documentation of efforts made by a district to notify and obtain parents' consent.

1. Such independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made.

i. Upon receipt of the parental request, the district board of education shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the district board of education shall take steps to ensure that the independent evaluation is provided without undue delay; or

ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the district board of education shall request the due process hearing.

Courts have addressed school districts' obligations to reevaluate students previously determined to be eligible for special education and related services. In Sparta Twp. Bd. of Educ. v. B.Y. and K.Y. o/b/o B.Y., OAL DKT. No. EDS 11958-08. 2009 N.J. AGEN LEXIS 83 (February 26, 2009), the student, B.Y., was in fifth grade and was eligible for special education services and had been reevaluated by the school district and by independent evaluators. Her parents had an independent educational evaluation conducted at the end of her fourth-grade year. Her parents also had her independently evaluated during second and third grade. The District also conducted a reevaluation in other subjects. The District sought to reevaluate B.Y. in two areas in conjunction with its mandatory triennial reevaluation. B.Y.'s parents refused to consent to the reevaluations, arguing that the independent evaluations that they had previously obtained sufficed; she was denied a re-evaluation hearing; the District had not made any changes to B.Y.'s educational program after the last set of testing; and that B.Y. had been evaluated within the last three years. In finding the District's request appropriate, the ALJ determined that if a parent wants their child to receive special education under the IDEA, they are obliged to permit re-evaluation. "[I]f a school district articulates reasonable grounds to conduct a reevaluation of a student, a lack of parental consent will not bar it from doing so." Id. at *304(citing Shelby S ex. rel. Kathleen T. v.

Conroe Independent School Dist., 454 F.3d 450, 454 (5th Cir. 2006)). The ALJ further found that a school district is entitled to reevaluate a special education student by an expert of their choice when the student is due for a triennial evaluation as required by the IDEA. Ibid. (citing Dubois v. Connecticut State Bd. of Educ., 727 F.2d 44, 48 (2d Cir. 1984); M.T.V. v. DeKalb County Sch. Dist., 446 F.3d 1153 (12th Cir. 2006)).

In Washington Township Board of Education v. H.M. o/b/o R.M., OAL DKT. No. 08328-19, 2019 N.J. AGEN LEXIS 706 (August 19, 2019), the parent of a child who was eligible for special education and related services refused to consent to the triennial re-evaluation. The parent would not consent to triennial evaluations unless they were conducted in the manner she believed was necessary for her child. The District objected to the conditions and filed a due process petition to obtain permission to conduct reevaluations. The District filed a motion for summary decision. In granting the motion, the ALJ wrote, "In essence, H.M. wants her child to receive special education under the IDEA, acknowledges that the District has the right to perform evaluations, yet wants the evaluations done under her terms and conditions. Even assuming arguendo H.M.'s assertions are true; the District cannot determine what affect these conditions have on R.M. receiving FAPE without conducting the evaluations. While H.M.'s concerns for her child are commendable and should be taken into consideration during the evaluation process, the District not only has the legal right and authority to conduct the evaluations in question, but also has the obligation to conduct them in an environment that ensures the integrity of the testing process and provide FAPE to R.M." Id. at 5-6. See also Hanover Park Regional High School Bd. of Educ. v. F.S. o/b/o S.S., 2014 N.J. AGEN LEXIS, OAL DKT. No. EDS 9804-14 (August 12, 2014)("the intrusion that an additional evaluation may impose on [the student] is outweighed by the District's obligation to assess areas of suspected disability. Evaluations should be authorized over parental objections where the provider of services expresses concern for the need for such evaluations"); Matawan-Aberdeen Regional Board of Education v. H.G. and R.G. o/b/o S.G., 2005 N.J. AGEN LEXIS 658, OAL DKT No. 8330-05 (November 2, 2005)(N.J.A.C. 6A:14-2.8(a) requires District to perform reevaluations notwithstanding absence of parental consent, parents' offer to pay for independent evaluations, and parents' argument that independent evaluations were previously permitted by the District. "CST members must be permitted to perform the assessments and evaluations

. . . [T]he alternative proposed by the parents would place [the school district] at a disadvantage in performing its educational obligation to [the student] as is required by the [IDEA.]")

It is axiomatic that the IDEA requires the District to fully and routinely assess L.B.'s present levels of academic achievement and functional performance, which includes his current strengths, weaknesses, needs and goals. Mere reliance upon a medical diagnosis is insufficient. Indeed, here, it is undisputed that the District must reevaluate L.B.; however, respondents do not want the District to perform the evaluations. Their argument is based upon their jaundiced view of the District, which developed due to prior interactions that are not the subject of this due process petition or motion.[3] Respondents' subjective concerns in this regard are insufficient to overcome the clear regulatory mandate that the District conduct triennial reevaluations of L.B. Given that L.B. suffers from multiple significant conditions and continues to receive homebound instruction, it is imperative that the District understand his present levels of performance and his needs so that it can properly and robustly respond to those needs.

The regulations provide a mechanism for parents who do not agree with their school district's evaluations. N.J.A.C. 6A:14-2.5(c) affords parents an opportunity to request an independent evaluation if they disagree with the evaluation or reevaluation provided by the district. The district must first be afforded an opportunity to conduct the evaluation or reevaluation. Here, however, respondents seek to deny the District the ability to meet its obligation in this regard.

Respondents rely upon N.J.A.C. 1:6A-14.4(a), which permits an ALJ to order independent evaluations**.** The regulation provides:

[3] Indeed, the parties represent that their prior dispute was settled.

> For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6A:14 by an appropriately certified or licensed professional examiner(s) who is not employed by the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian. (34 CFR 300.502)

Respondents argue that this provision has been utilized when there are conflicting expert reports, an absence of reports, or refusal by the District to conduct a requested evaluation. Resp. Brf. at 16 (citing K.K. o/b/o R.M. v. Gloucester City Bd. of Ed., OAL DKT. No. EDS 18461-17 (April 17, 2018), in which District refused to conduct reevaluations). None of these circumstances is present here. Instead, respondents assert that their loss of trust in the District constitutes good cause to permit independent evaluations. Id. at 17. The regulations referenced above, however, clearly establish that the District is entitled to and must conduct regular evaluations and reevaluations. The regulations provide other mechanisms that respondents may utilize if the District fails to meet its obligation, or a parent contests the product of an evaluation. For all of the foregoing reasons, I **CONCLUDE** that petitioner is authorized and obligated to conduct the reevaluations its CST recommends for L.B., to ensure a thorough and fulsome assessment of his current progress and needs.

ORDER

I hereby **ORDER** that petitioner's motion for summary decision is **GRANTED**. Petitioner is authorized to conduct reevaluations of L.B.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). 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 Policy and Dispute Resolution.

November 29, 2021 _____

DATE

JUDITH LIEBERMAN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

/mph

APPENDIX

EXHIBITS

For petitioner:

1. September 24, 2021, motion and brief with exhibits and Walsifer Certification.
2. November 2, 2021, reply brief

For respondents:

1. October 29, 2021, brief, with S.B Certification