



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO EDS 04587-21

AGY REF NO. 2021-32812

**ELIZABETH CITY BOARD OF
EDUCATION,**

Petitioner

v.

J.P. ON BEHALF OF B.P.,

Respondent.

Richard P. Flaum, Esq., for Petitioner (DiFrancesco, Bateman, Coley, Kunzman,
Davis, Lehrer and Flaum, P.C., attorneys)

J.P., Respondent/Parent of B.P, pro se

Record Closed: September 20, 2021

Decided: September 20, 2021

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition dated May 17, 2021, with the Office of Special Education Policy and Dispute Resolution in the Department of Education.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on May 27, 2021.

A hearing on the matter was scheduled for August 30, 2021, at 9:00 a.m. via Zoom. Petitioner, Petitioner's witness, Petitioner's counsel and a Spanish interpreter all attended the hearing via Zoom. Respondent did not. Petitioner presented its proofs ex parte pursuant to N.J.A.C. 1:1-14.4(d). The matter concluded at approximately 9:15 a.m. on August 30, 2021. Thereafter petitioner emailed both a judicial assistant and one of our IT personnel about how to enter the hearing. The matter was then rescheduled to September 17, 2021 at 9:00 a.m.

A hearing was held on September 17, 2021. Again, respondent failed to attend the hearing. The undersigned did not require the District to re-present its proofs, as it had done so on August 30, 2021. The following decision is based upon the proofs present on that date. The undersigned waited until Monday, September 20, 2021, to issue this decision, as required by N.J.A.C. 1:14-4 et. Seq. No explanation regarding respondent's failure to appear was received. The record closed September 20, 2021.

SUMMARY OF RELEVANT TESTIMONY

Tia LaBruno as follows:

Ms. LaBruno is employed by the Elizabeth City Board of Education as a school psychologist and case worker. She is a member of the Child Study Team (CST). She is B.P.'s Case Manager. She has been his case manager for approximately three years. B.P. attends School 30. B.P. is eligible for special education and related services under the classification Autistic. B.P. will be in seventh grade commencing in September. He attended School 30 last school year, 2020-2021, virtually. B.P. has an Individualized Education Program (IEP) dated November 10, 2020.

Re-evaluations for B.P. were due in January 2021. In November 2020 the District convened reclassification and IEP meetings. Both were held on the same date virtually. J.P. attended both meetings. At the meetings J.P. did not object to what was proposed. The CST requested re-evaluations for the following: psychological and speech. J.P. requested re-evaluations for educational, O.T., P.T. and neurological. The District agreed to do the educational, and thereafter agreed to do the O.T. and P.T. re-evaluations. The District did not agree to a new neurological as the CST did not believe it necessary at that time.

The District was prepared to do all the evaluations, but the neurological. Ms. LaBruno made requests for written parental consent to perform the re-evaluations "several several times". J.P. agreed to some with conditions. The first condition was the re-evaluations be done virtually. The District did not agree as the re-evaluations needed to be in person. The next condition was J.P. insisted on attending to ensure B.P.'s bio safety and to see that proper safety measures were in place. Again the District did not agree to J.P. attending the re-evaluations, and assured him all proper safety protocols would be in place. J.P. declined to bring B.P. to any re-evaluation.

Re-evaluations are still pending. They can be done once school reopens and can be accomplished with weeks.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following:

1. B.P. attends school in the Elizabeth City school district and attends School 30.
2. B.P. will be in the seventh grade, the 2021-2022 school year, in September, 2021.

3. B.P. is eligible for special education and related services under the classification Autistic and has an IEP dated November 10, 2021.
4. B.P. was due for re-evaluations in January 2021.
5. Two meetings were convened by the District in November 2020: an IEP meeting; and, a reclassification hearing. Both meetings were held virtually. J.P. attended both.
6. The District had wanted to perform psychological and speech re-evaluations.
7. J.P. requested O.T., P.T., educational and neurological re-evaluations also be done.
8. The District agreed to perform the following re-evaluations: psychological; speech; educational; O.T.; P.T. The District did not agree to do a neurological re-evaluation as the CST did not believe it necessary at the time.
9. The District made several attempts to schedule the agreed upon evaluations.
10. J.P. placed conditions upon the re-evaluations. At first he wanted them to be done virtually. When advised they needed to be in person he wanted to be present during them. The District did not agree to the same.
11. J.P. never made D.P. available for the same.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 6A:14-3.8(a) states in pertinent part: 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.

N.J.A.C. 6A:14-3.8(c) states: 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.

B.P. is due for re-evaluations. The District and the parent have agreed upon what evaluations are to be done. The parent has failed to provide consent for the re-evaluations.

Based upon the foregoing, I **CONCLUDE** that Petitioner's Due Process Petition be **GRANTED**.

ORDER

It is hereby **ORDERED** that Petitioner's Due Process Petition is **GRANTED**, as follows:

Respondent parent shall immediately sign the consent forms to permit B.P. to be evaluated for psychological; speech; educational; O.T. and P.T.; and, respondent shall fully cooperate with said evaluations and make B.P. available for the same.

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.



September 20, 2021 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

Witnesses

For Petitioner:

Tia La Bruno

For Respondent:

none

Exhibits

For Petitioner:

P-1 IEP

P-2 Porras Timeline

P-3 B.P. Confidential Notes

P-4 Due Process Petition