



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05202-2021

AGENCY DKT. NO. 2021-33026

**EWING TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

C.O. AND A.N. ON BEHALF OF E.O.,

Respondent.

Robin Ballard, Esq., for petitioners (Schenck, Price, Smith & King, LLP, attorneys)

C.O. and A.N., pro se

Record Closed: September 22, 2021

Decided: September 27, 2021

BEFORE **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE

Petitioner, Ewing Township Board of Education ("Board" or "District"), seeks to compel parental consent for completion of a psychiatric evaluation regarding the student identified as E.O. Respondents C.O. (father) and A.N. (mother), parents of E.O., consented to several evaluations requested by the Board; however, the parents did not wish to comply with the Board's

request for a psychiatric evaluation. The Board seeks an order to compel the parents to consent to a psychiatric evaluation of E.O.¹

PROCEDURAL HISTORY

This Special Education case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C.A. §1401 to 1484a. The Board filed it as a request for due process. The Office of Special Education Programs (OSEP) transmitted the matter to the Office of Administrative Law (OAL) where it was filed on June 22, 2021, for final determination in accordance with 20 U.S.C.A. §1415 and 34 CFR 300.500 to 300.587.

The Board requested mediation with C.O. and A.N. on behalf of E.O. on May 21, 2021, seeking compliance with a psychiatric evaluation agreed to as part of E.O.'s initial CST evaluation. A mediation conducted on June 22, 2021 was unsuccessful. The Board then converted its mediation request into a Petition for Due Process.

A settlement conference conducted by the Honorable Sarah G. Crowley on July 1, 2021, was unsuccessful in resolving the matter. The Honorable Carl V. Buck, III was assigned to the matter and conducted a hearing with dates on August 9, 2021 and September 21, 2021.

Petitioner's case was completed on August 9, 2021, and closing briefs were required to be submitted no later than August 23, 2021. Respondent's brief was timely submitted. No brief was submitted by the petitioner and thereafter, the record closed after the second scheduled hearing date of September 21, 2021.

¹ Subsequent to the hearing date, but before issuance of this Decision, respondent parents provided notice to the Tribunal and to the petitioner that the student was placed in private school. This placement was made after the hearing and as E.O. is no longer in a District school, the petitioner may consider its options on the CST request for a psychiatric evaluation made when E.O. was a student of the District.

ISSUE PRESENTED

This due process request presents a very narrow issue for determination; that is, should the Board, through its CST, be granted the authority to conduct a psychiatric evaluation of E.O.?

FINDINGS OF FACT

The following facts are undisputed, and I **FIND** as follows:

1. E.O. was born on December 15, 2014.
2. He was referred to the CST for evaluation prior to reaching the age of three.
3. He was evaluated and classified as eligible for special education and related services under the category of Preschool Child with a Disability on his third birthday, December 15, 2017

FACTS

Based upon the totality of the evidence presented, both testimonial as well as documentary, the following constitute the undisputed facts in this matter and I **FIND**:

Maria Petsos testified that she is the supervisor of special services for Pre-K to 5th grade and has been in this position since 2013. She reviewed her credentials as set forth in her curriculum vitae and stated she is a Board-Certified Behavior Analyst (BCBA). (P-11). She stated that E.O., is seven years old and originally was provided with an Individualized Education Program (IEP) that placed him in a half-day preschool program. E.O. made limited progress and the IEP Team recommended placement in a full-day program based

upon the principles of Applied Behavior Analysis. Respondents removed E.O. from programming following this recommendation but returned him to school in October 2019. The IEP developed on October 28, 2019 for the full-day placement indicated that E.O. would lay on the rug, roll across the circle moaning or crying, fell to the ground, threw tantrums, and evidenced echolalia. (P-1). The IEP noted that E.O.'s self-injurious and tantrum behaviors impacted his educational performance. (P-1).

E.O. demonstrated progress in the full-day program for the remainder of the 2019-2020 school year. In June of 2020, as E.O. was aging out of preschool, the CST proposed a reevaluation to consist of educational, psychological, social, speech/language and psychiatric assessments to determine an appropriate school-aged classification of him. (P-3). An IEP was proposed to keep E.O. in the full-day preschool disabilities class while the reevaluation was being conducted. (P-2). That IEP, dated June 15, 2020, noted that E.O. cried, threw tantrums, fell to the ground, threw materials, fell out of his chair, hit others, refused to walk at times, engaged in headbutting, and flopped to the floor and hit himself in the head if he was frustrated. (P-2).

Respondents did not consent to the proposed reevaluation of E.O. and revoked consent for E.O. to receive special education and related services. (P-4). As a result of respondents' revocation of consent for special education, E.O. attended kindergarten in the 2020-2021 school year as a general education student. E.O. completed the majority of the year through virtual education with supports through Intervention & Referral Services.

During kindergarten, respondents referred E.O. to the Child Study Team (CST) for consideration for classification for special education. An evaluation plan was developed on February 25, 2021. The evaluation of E.O. was to consist of educational, psychological, speech/language, occupational therapy, and psychiatric assessments. (P-5). Respondent, A.N. signed her agreement to the plan on March 4, 2021. (P-5).

The CST wanted to obtain diagnostic clarity for E.O. given the behavioral difficulties and emotionality he evidenced in school, and medical input as to how to support him within the educational environment.

The District completed the educational, psychological, speech/language and occupational therapy assessments of E.O. The occupational therapy assessment noted that E.O. was noticeably distracted and evidenced attention difficulties that impacted his ability to practice academic tasks independently. (P-6). The speech/language assessment noted that E.O.'s teacher reported that he always had trouble paying attention and could not make it through 1:1 meets with the teacher without support from his mother and stated that E.O. displayed fluctuating intermittent eye contact and echolalia. (P-8).

The psychological evaluator obtained input from E.O.'s parent and teacher through rating scales. The parent reported concerns with E.O.'s attention and focus. The teacher input provided indicated that E.O. was easily distracted, had great difficulty regulating his emotions, needed constant guidance and support to stay focused on tasks and engaged and that E.O. was difficult to calm and refocus when upset. (P-7).

The scores from the Teacher Rating Scales (TRS) revealed a 99% probability of Attention Deficit Hyperactivity Disorder, a 99% probability of Autism, a 96% probability of an emotional or behavioral disability and a 99% probability of a functional impairment in E.O. (P-7). On the Behavior Assessment Scales for Children – Third Edition (BASC-3), the parent noted at-risk concerns for attention. The teacher reported clinically significant concerns for E.O. in the areas of hyperactivity, internalizing problems, anxiety, depression, atypicality and withdrawal. The scores from the teacher ratings were clinically significant for the behavioral symptom index, adaptability composite and functional communication composite for E.O. The teacher further noted at-risk concerns for externalizing problems, aggression, school problems and attention problems, as well as the social skills, leadership, and study skills composites. (P-7).

Based upon these results, the school psychologist stated: “It should be noted that although all of the above [TRS] scales are considered to be in the clinically significant range, observation and historical data suggest that a diagnosis of Autism, and not a specific behavioral disability is more likely to be present. According to the BASC-3, it is recommended that further exploration for specific diagnoses that may be affecting [E.]’s school functioning is warranted.” (P-7).

The District attempted to schedule the psychiatric evaluation of E.O. to complete the CST evaluation; however, respondents refused to schedule an appointment. (P-14). They maintained that they had taken E.O. for an evaluation by a doctor at Children's Specialized Hospital. (P-14).

Respondents provided the District with Discharge Instructions for E.O., dated March 24, 2021, prepared by Theresa D’Ambrosio, a nurse practitioner which discharge instructions did not provide a diagnosis of E.O. (P-13). The instructions did indicate that Ms. D’Ambrosio conducted her assessment of E.O. via telehealth during which the connection was poor, the family signed in multiple times, children were crying, and it was otherwise loud in the home during the virtual visit. (P-13) Ms. D’Ambrosio noted that E.O. made poor eye contact, was difficult to engage and sensitive to sound, flopped, demonstrated inattention, used echolalia, and had difficulty interacting. The report from Ms. D’Ambrosio contained a problem list for E.O. that included symptoms of hyperactivity and inattention, without assigning a diagnosis for same. (P-13). The report further referenced Vanderbilt Scales from the parent and the teacher; however, neither was received by Ms. D’Ambrosio to consider in connection with her assessment of E.O. (P-13).

Ms. Petsos testified that the documentation from Ms. D’Ambrosio did not fulfill the purposes for which the CST requested the psychiatric evaluation of E.O. and that the CST still required input from a psychiatric evaluation to comprehensively evaluate E.O. and appropriately program for him.

Subsequent to testimony provided on August 9, 2021, parents provided a notice to the Tribunal and to petitioner stating, "Please find attached to this email a copy of E's Transfer form. He started at his new school on Aug 31, 2021 and has been flourishing to our delight. We as parents will continue to make all efforts to offer him the best as it is our duty." (P-7). During a telephone conference held after receipt of this notice, petitioner requested continuation and issuance of an Initial Decision in this matter.

Petitioner contends that this psychological evaluation is needed to fulfill its obligations to evaluate him in areas of suspected disability. Even if the results of a psychological evaluation do not change the CST's position on E.O.'s educational needs, he is not well served by the delay in exploring other means of addressing his identified challenges.

The basis for the parents' objection is that they believe that the "Children's Specialized Hospital" report of March 24, 2021, satisfies the requirements for a psychological evaluation and that E.O. will be adversely affected by the trauma of undertaking a psychological evaluation from someone he does not know.

Both parties described E.O.'s academic needs and in that regard, I **FIND** the District has provided ample evidence that initial attendance in a pre-school program to the present, E.O. has struggled in the classroom. In particular, E.O.'s IEP of June 15, 2020, noted that he cried, threw tantrums, fell to the ground, threw materials, fell out of his chair, hit others, engaged in disruptive behavior with other students and hit himself if frustrated. I **FIND** that the break in E.O.'s "in person" instruction due to school closures under the COVID-19 emergency protocol, calls for evaluation for the student's current needs. Accordingly, I **FIND** that E.O.'s problems can only be resolved by a thorough and proper evaluation, as recommended by the CST. The parents' failure to cooperate is resulting in the inability of the District to provide E.O. with a FAPE. Further, I **FIND** that this process has been delayed due to the parents' failure to cooperate, underscoring the need to complete the evaluation quickly.

LEGAL ANALYSIS AND CONCLUSIONS

The CST proposed a comprehensive evaluation of E.O. The regulations provide that the District must obtain consent “prior to conducting any assessment as part of an initial evaluation.” N.J.A.C. 6A:14-2.3(a)(1). Given the inattention, behavioral difficulties and emotionality E.O. has exhibited, the CST requested a psychiatric evaluation to provide diagnostic clarity and medical input to provide guidance with how to support E.O. within his educational environment. After completing four of the evaluations deemed necessary to properly determine E.O.’s eligibility for special education services, the CST renewed its request to conduct the psychiatric evaluation. The parents did not schedule an appointment for the psychiatric evaluation, instead they took E.O. for an evaluation at Children’s Specialized Hospital (“Specialized”). (P-14). Specialized issued a report for E.O., dated March 24, 2021, prepared by Theresa D’Ambrosio, a nurse practitioner (but not a doctor).

The report issued was not conducted in person; was not conducted by a doctor; did not provide any diagnosis for E.O.; and was not conducted in an appropriated environment to ascertain E.O.’s condition. The Board provided its reasons for not accepting this report as a psychiatric evaluation to parents and the Board again requested a psychiatric evaluation of E.O. The parents refused. In such a case, the regulations provide that “the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation[.]” N.J.A.C. 6A:14-2.7(b).

Therefore, I **CONCLUDE** that completing the evaluation of E.O.’s eligibility for special education services is necessary under the provisions of N.J.A.C. 6A:14-3.3 and is otherwise consistent with the requirements of the regulations governing special education services. Further, I **CONCLUDE** that parents have received ample notice, but failed to comply with the District's reasonable requests, despite her child’s ongoing problems in the classroom. The CST evaluation of E.O.’s eligibility for special education services must be completed as soon

as possible. For all the foregoing reasons, I **CONCLUDE** that completion of the psychiatric evaluation is warranted and necessary at this time.

Petitioner's request for an Order to compel parents to consent to the psychiatric evaluation of E.O. as requested by the CST is **GRANTED** due to the proofs submitted and respondent's failure to appear to refute any of the testimony or documentary evidence, pursuant to N.J.A.C. 1:1-5.4.

ORDER

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2021) 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 (2021). 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 27, 2021

DATE

CARL V. BUCK III, ALJ

Date Received at Agency

September 27, 2021

Date Mailed to Parties:

CVB/lam

APPENDIX

WITNESSES

For Petitioner:

Maria Petsos

For Respondents:

None

EXHIBITS

For Petitioner:

- P-1 Individualized Education Program (IEP) for E.O., dated 10/28/2019
- P-2 IEP for E.O., dated June 15, 2020
- P-3 Reevaluation Planning – Proposed Action, dated 6/15/2020
- P-4 Revocation of Consent, dated July 2, 2020
- P-5 Evaluation Plan, dated 2/25/2021
- P-6 Occupational Therapy Evaluation of E.O. performed on March 15, 2021 by Rebecca M. Patten, M.S., OTR/L
- P-7 Psychological Evaluation of E.O. conducted by Shari Barkin, M.A., NCSP on March 24, 2021
- P-8 Speech Therapy Evaluation of E.O. completed by Mary Susan Youse, MA, CCC-SLP on April 26 and 28, 2021
- P-9 Report Card for E.O. for 2020-2021 school year
- P-10 Timeline of Events for E.O. 2021
- P-11 Resume of Maria Petsos, LDTC, BCBA
- P-12 Report from Theresa D'Ambrosio regarding E.O., dated March 24, 2021
- P-13 Discharge Summary from T. D'Ambrosio , dated 3/24/2021

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P-14 E-mail exchange between Respondents and Dr. Hewitt's Office, dated April 8, 2021

For Respondents:

None