



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 09317-21

AGENCY DKT. NO. 2022-33517

P.B.,

Petitioner,

v.

SOMERVILLE BOROUGH

BOARD OF EDUCATION,

Respondent.

David R. Giles, Esq., for petitioner

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

Record Closed: November 17, 2022

Decided: November 23, 2022

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, P.B., is an adult student who is challenging the Somerville Borough Board of Education's (respondent/District) decision not to conduct a triennial re-evaluation because the District proposed to graduate him in June 2022. The issue is whether P.B. was entitled to the re-evaluation.

PROCEDURAL HISTORY

At a re-evaluation meeting held on October 12, 2021, the respondent proposed that no additional assessments were warranted for P.B. On October 22, 2021, petitioner's then Guardian Ad Litem, filed a petition asserting that the respondent failed to: 1) provide an appropriate individual education plan (IEP) for P.B. for the 2020–21 and 2021–22 school years; 2) reevaluate P.B.; and 3) provide P.B.'s requested pupil records. Respondent filed its answer to the due process petition on or about October 29, 2021. The Department of Education, Office of Special Education (OSE), transmitted this matter to the Office of Administrative Law (OAL), where it was filed on November 9, 2021, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13.

Hearings were held on May 6, 2022, May 17, 2022, and July 12, 2022. At the hearing, the parties narrowed the three issues to one, specifically, whether the petitioner was entitled to a re-evaluation. The parties ordered transcripts and the record remained open to allow for post-hearing summations which were received, and the record closed on September 19, 2022. The record was reopened to allow for Stipulation of Facts and closed on November 17, 2022.

FACTUAL DISCUSSION

The parties submitted a Joint Stipulation of Facts and thus I **FIND**:

1. P.B. was born on December 17, 2002, and was found eligible for special education and related services.
2. P.B. has been diagnosed with autism spectrum disorder and attention deficit hyperactivity disorder.
3. P.B. is a resident of Branchburg, who became a student of the Somerville Borough Board of Education in ninth grade in the 2017–2018 school year.

4. For high school and during the hearing, P.B. attended The Center for Educational Advancement at South Hunterdon Regional School District (CEA).
5. At CEA, P.B. received academic coursework in general and special education classes, support of a 1:1 aide, speech therapy, individual counseling, group counseling, instruction in activities of daily living, job sampling, job coaching, community-based instruction, job clubs and participated in "Create Your Own Business" courses.
6. At the time of the hearing, in addition to attending CEA, P.B. was taking courses at Raritan Valley Community College (RVCC) with support from the CEA.
7. P.B. was reevaluated by the Somerville Child Study Team on December 20, 2018.
8. Private testing was completed of P.B. between April and September of 2021, as part of guardianship proceedings.
9. A re-evaluation planning meeting was conducted for P.B. on October 12, 2021.
10. Prior to the meeting, a list of the tests administered to P.B. privately was shared with the District by Frank Whittlesey, P.B.'s then education guardian. One of the private reports, prepared by Dr. Jonathan Mack, was shared with the District later.
11. At that meeting, the District proposed that no assessments were warranted of P.B.

12. By letter dated October 15, 2021, Mr. Whittlesey disagreed with the proposal and requested a triennial re-evaluation of P.B. to include a transition assessment.
13. In response, the District then proposed to complete an occupational therapy evaluation of P.B. Mr. Whittlesey consented to the occupational therapy evaluation but handwrote that “the request for additional evaluations remain (sic)”.
14. The District completed the occupational therapy evaluation of P.B. on January 18, 2022.
15. At the IEP meeting held for P.B. in March of 2021, the Team discussed that P.B. was expected to complete the coursework for a New Jersey State Diploma in June of 2021 but that he needed a transitional year at CEA. P.B. expressed his concern about any decision being made about his graduation at that time and indicated that he wanted to preserve the option of continuing in school for one more year if needed. The IEP stated the following in the IEP Notice section:

“The Team is proposing that Peter complete a fifth year of high school programming for transition purposes. During that year, it is anticipated that Peter will further develop his social skills to assist him with pursuing his post-secondary goals after graduation in June of 2022. The Team will monitor Peter's progress throughout the year and is open to considering additional educational programming for him beyond June of 2022, if necessary for Peter to fulfill his graduation requirements as set forth herein.”
16. The District projected at that meeting that P.B. would graduate in June 2022.
17. The District did not propose graduation of P.B. before May 2022.

I further **FIND** as **FACTS**:

P.B. is an adult student who completed the twelfth grade in June 2021. He was deemed eligible to receive special education and related services since 2007 under the category of autism. (T1:35:1–2.)¹

The respondent's Child Study Team (CST) conducted a re-evaluation of P.B. in 2018, that included educational, psychological, speech/language and occupational therapy evaluations.

As a result of a separate guardianship matter, Judge Goodzeit appointed a guardian ad litem (GAL) for P.B. on January 19, 2021, with responsibility to make educational decisions for P.B. The GAL attended and participated in IEP meetings and provided feedback on IEPs.

For the 2019–2020 school year, P.B.'s lowest grade was a B- while attending the CEA. (R-5.) For school year 2020–2021, P.B. successfully passed all classes at the CEA with his lowest grade of a C+. (R-8.) For school year 2021–2022, P.B. successfully passed all classes at the CEA with his lowest grade of a C+. (R-15.)

An IEP was developed at a meeting held on March 11, 2021, which stated:

[P.B.] is in need of a transitional year at the CEA School in order to give him the skills needed to prepare him for either a college or vocational path as he enters into adulthood. At this time, he still has great difficulty with organizational skills, time management, social interaction and task completion as required by the person assigning the task. He is in need of additional exposure to build his skills in these areas in a controlled environment with the help of the CEA Staff as well as practice those skills within a setting that would be in line with his transition plans after completing his program at the CEA school. (R-6 at 4-2.)

¹ "T1" refers to the hearing transcript dated May 6, 2022.

As of March 11, 2021, P.B. met the graduation credit hour requirements. (R-6 at 12-1.)

The IEP proposed at the October 12, 2021, re-evaluation meeting states:

In response to that request [for evaluations] and in accordance with N.J.A.C. 6A:14-3(b)b3iv [sic], the Team is proposing to conduct an occupational therapy evaluation of [P.B.] . . .

The Team considered the request for a transition assessment and rejected this option, as it has consistently acquired data as to [P.B.'s] functioning in regard to his transition goals and offered appropriate supports and programming to continue his progress. Additionally, a transition assessment is not a formalized assessment process, nor is it required to fulfill the purposes of a reevaluation. The Team also rejects the possibility of conducting educational and psychological testing of [P.B.], since he has recently had extensive testing completed of him to assess him in these areas, though the Team has not been provided with the reports from those evaluations. Once they are provided, the Team will review and consider them in connection with [P.B.'s] education. Ibid.

Regarding P.B.'s present levels of academic and functional achievement and related developmental and educational needs, this IEP states:

[P.B.] has been successful in his educational program at this time. He has been participating in his group counseling sessions and making friends with peers. [P.B.] has also been successful in his classes through RVCC [Raritan Valley Community College] and is continuing to build his test taking skills and strategies. (Id. at 3-1.)

For school years 2020–2021 and 2021–2022, P.B. received speech and language therapy once a week for thirty minutes, counseling with a social worker five days per week for twenty minutes, and counseling with a psychologist two days per week for thirty minutes. These related services were also provided during the extended school year for 2021. Curb-to-curb transportation was also provided during this same time period. (Id. at 17-2.)

The GAL was discharged on March 3, 2022, by Superior Court Judge Margaret Goodzeit, and replaced by David R. Giles, Esq. (R-1.)

Testimony

For the petitioner

Naomi Stout (Stout) is the transition teacher at the CEA School for the past five years. She provides services for students starting in seventh grade to age twenty-one. (T2:13:1:12.)² The CEA is located in the South Hunterdon High School but is a separate entity. (T2:14:2.) However, the students enrolled in CEA can participate in general education classes, after school activities and sports. (T2:14:2–6.) She helps students transition from high school to their post-graduate life and adult services. (T2:14:15–21.) She creates lesson plans, schedules activities and classes and transportation. She assigns aides and job coaches to work with the students. (T2:15:1–5.) She teaches classes and participates in IEP meetings as one of the special education teachers. (T2:15:8–24.) She drafts the goals and objectives related to the student’s transition classes or activities along with the present levels of academic performance and presents these to the IEP team. (T2:16:7–16.)

P.B. was in Stout’s career exploration, financial literacy and create your own business classes. (T2:16:24–25; 17:1–2.) However, now P.B. is in his post-academic career so she is helping guide him with the community-based and work-based instruction. (T2:17:3–5.)

Stout attended the IEP meeting held on March 12, 2021. (R-6; T2:17:18–24.) She believes that P.B.’s disabilities adversely affect his ability to transition to post-secondary education or independent living because “his socialization skills were lacking . . . he wouldn’t be able to make the appropriate progress with tasks involving speaking to others or interacting with others or whatever tasks are related to that.” (T2:28:12–18.) She

² “T2” refers to the hearing transcript dated May 17, 2022.

stated that P.B. gets stuck on ideas and may do things that are not socially acceptable. (T2:28:17–20.)

P.B. currently receives instruction in college and career readiness, life skills lunch which helps students practice financial literacy, community-based instruction, activities of daily living, which includes washing dishes, doing laundry, organizing personal computer files; job club where students discuss the jobs they have had; and paid or unpaid internships. (T2:31–34.) Each class was supervised by Stout or another teacher. Ibid. Stout stated that P.B. may benefit from continued education but he also may “soar” from being on his own. (T2:53:9–11.)

On cross-examination, Stout stated that all students may benefit from more time in education. (T2:62:3–6.) It was Stout’s understanding that the IEP meeting was also an eligibility meeting. She stated the IEP team was “discussing if [P.B.] was going to continue next year . . .” (T2:64:13–14.)

Stout stated that neither the staff nor the GAL objected to the proposal to graduate P.B. in June 2022. (T2:64:17–23; 65:6–10.) P.B. was offered a fifth year to continue developing transition skills. (T2:68:5–7.) The Division of Vocational Rehabilitation could help P.B. with job coaching or academic coaching after graduation. (T2:68:19–23.)

She stated that her comments on R-6 regarding P.B. making improvement in his social functioning were more accurate than the testimony she provided earlier on this subject. (T2:70:19–23.)

P.B. has received all “A’s” and “B’s” with his only “C” in driver education. (T2:72:5–10.) He has taken general education classes with support, and advanced placement level classes with success. (T2:72:11–17.) He has taken and passed all classes required for graduation. (T2:76:13–17.) Each year at the CEA, P.B. has demonstrated progress in all areas targeted in his goals and objectives. (T2:77:3–6.) P.B. has taken one course per semester at RVCC since the end of his twelfth-grade year. (T2:81:12–15.) The CEA has provided support to P.B. while attending RVCC in the form of “reviewing his syllabus . . . guiding him in organizing his tasks for the day, reviewing his assignments before he

turns them in and prepping him with appropriate questions and ways to interact in the classroom.” (T2:82:10–14.) P.B. has developed readiness skills to attend college. (T2:83:4–5.)

Stout stated that P.B. will need supports beyond graduation that are available to him through outside agencies or RVCC. (T2:85:23–25; 86:1–5.) However, P.B. will have to seek out services that he needs. (T2:101:19–20.)

On recross examination, Stout stated that the CEA had provided P.B. with the necessary supports and advocacy skills, including information about the various agencies that can help him. (T2:106:2–11.)

Douglas Kohlenstein (Kohlenstein) has worked as a teacher/aide at the CEA for the past four or five years. (T2:117:7–9.) He has been P.B.’s primary teacher in some classes, such as math, including geometry and pre-calculus, English and science. (T2:118:5–11 and 23–25.) He has typically taught P.B. on a one-to-one basis but it depended upon the class. (T2:119:7–9.) Kohlenstein ensures that P.B. follows through on assignments, participates in classes and helps him better understand material when needed even giving him quizzes before tests. (T2:121:12–25; 122:2–4.) He worked with P.B. throughout the entire school day; from 9:00 a.m. to 2:40 p.m. (T2:132:17–25; 133:3–9.) He has helped P.B. stay on task in the classroom by not interjecting inappropriately and derailing class discussions. (T2:122:4–24.) He has seen P.B. make progress in his work at RVCC. (T2:139:4–11.)

Kara Nemeth (Nemeth) has worked at the CEA for nine years and currently serves as the lead social worker/supervisor. She acts as a liaison between parent, the administration and outside agencies. She has known P.B. since 2017, when he joined the program. (T2:151:14–15.) She works with him in a group setting, five days a week for twenty minutes and individually once a week for thirty minutes. (T2:151:17–19.) The group session is a social skills group where P.B. meets in the morning and participates in student-led conversations and discussions, activities, and games. Initially, P.B. had trouble staying on topic. (T2:153:11–25.) P.B.’s target goal in college is to stay on topic and Nemeth helps him with that. She also helps P.B. with “soft skills” such as talking with

your boss, other employees, not talking over people and staying on topic. (T2:158:20–24.)

The psychologist saw P.B. three days per week for thirty minutes. (T2:160:9–11.) P.B. has an individual target behavior plan, which for P.B. is to stay on topic. However, he has not had to use it for the current school year that he has been attending RVCC online classes or his inclusion classes at the high school. (T2:162:8–21.)

For the respondent

Tanya E. Romasz-McDonald, Psy.D. (Dr. McDonald) is a licensed psychologist in the State of New Jersey and a certified school psychologist. She has both master's and doctoral degrees from Rutgers University. She has worked in the field of school psychology since 2002. She currently works as the Director of Special Services for the respondent. In this capacity, she supervises the CST, all related service providers, and instructional assistants. (T1:28:12–14.) She also oversees the health services department which includes nursing, mental health professionals and the guidance department pre-K through twelfth grade. (T1:28:15–20.) She works with federal and state grants, performs budgeting functions, and transportation. (T1:28:21–23.) Since 2004, she has been an adjunct professor at the Graduate School of Applied and Professional Psychology at Rutgers University. (T1:29:1–4.) She has taught courses on cognitive behavioral assessment of childhood disorders and school-based crisis prevention and intervention. (T1:29:5–7.) Dr. McDonald was accepted as an expert in special education, supervision, and administration.

Dr. McDonald attended the October 12, 2021, re-evaluation meeting for P.B. (T1:35:15–16.) She stated that re-evaluations were warranted when the CST:

feel[s] that there is a question regarding continued eligibility or whether or not the classification category is appropriate, so if we ever thought that there might be a need to change the classification category. In addition, we look at reevaluations when we feel that the programming is not appropriate so that we could gather more information to make sure that we are offering the student the most appropriate programming.

In P's case the programming was appropriate and there was no question at all that he would remain eligible within the category that he had been classified which is autistic. (T1:35:21–25; 36:1–9.)

Dr. McDonald and the CST did not recommend a re-evaluation for P.B. because the team already had “a lot of information” regarding P.B.'s “current level of functioning. He had recently been evaluated and we had some of that information available to us.” (T1:36:19–21.) Moreover, there were no questions about P.B.'s continued eligibility, the appropriateness of his classification or the program he was attending. (T1:36:22–25.) The GAL did not express any concerns with this decision at the re-evaluation meeting, however, he sent a letter after the meeting requesting a triennial re-evaluation and a transitional assessment. (T1:37:9–19.)

During the twenty-day period to respond to the request, the GAL filed the due process petition which identified the re-evaluations sought which were speech, occupational therapy, transitional and educational. The CST determined that only the occupational therapy evaluation would be appropriate because P.B. was not receiving services in that area and had not been evaluated since 2020. (T1:38:3–16.)

The neuropsychological evaluation conducted by Dr. Mack dated September 30, 2021, was consistent with the assessment tools used by the CST and included cognitive, achievement, educational, speech, social functional and executive functioning testing. Dr. McDonald found it to be “a very comprehensive evaluation.” (T1:39:7–25.) The occupational therapy assessment determined that P.B. was not in need of services as he was functioning at expected levels. (T1:41:12–15.)

Although the GAL requested a transitional assessment, that assessment was not performed because “there is really no such thing.” (T1:41:22–25.) The information contained in the September 30, 2021, neuropsychological assessment remains current for three years and thus there was no need to re-evaluate P.B. in October 2021. (T1:42:11–17.) Dr. McDonald stated it would not be appropriate to re-test a student when “we have everything that we already need.” (T1:43:12–16.)

Dr. McDonald stated that P.B. had attended the CEA for five years where he received traditional academic curriculum and courses related to daily living, job coaching, college and career coaching in a self-contained setting with opportunities for mainstreaming. (T1:44:12–25; 45:14–16.) P.B. was attending college at RVCC which is his transitional goal. (T1:45:19–20; 46:1–8.) The CEA is helping P.B. access additional supports for when his post-secondary education takes over which includes support available through the Office of Disability Services, the Division of Developmental Disabilities and the Division of Vocational and Rehabilitative Services. (T1:46:9–19.)

P.B. has accumulated 184 credits which exceeds the general education requirement of 120 credits to graduate and receive a New Jersey state diploma. He has taken advanced placement classes (AP) and calculus earning a grade of 85. (T1:50:1–13; 52:22.) P. B. was expected to fulfil the graduation requirement as of June 2021. (T1:51:7.) P.B. is exempt from passing the State examination, however, he passed the English portion but not the math, however, he is “very close to passing that.” (T1:52:1–17.) Dr. McDonald stated that P.B. will continue to need services in the future and possibly for the rest of his life but:

from a special education lens he was provided everything that he needs to prepare him for the graduation. There are other services that can kick in once he leaves us, but we have done our job in terms of providing an ample and comprehensive opportunities [sic] to get what he needs to be able to graduate.

[T1:54:1–6.]

Dr. McDonald stated that P.B. did not graduate in 2021, but was offered a fifth year at CEA due to Covid because many of the community-based sites were not accepting students or accepting students on a limited basis due to Covid-related restrictions. (T1:55:1–9; T1:90:1–11.) In that fifth year, he received college and career readiness, activities of daily living, and community-based instruction. (T1:55:21–25.) At the March 11, 2021, IEP meeting, P.B. agreed to stay for the extra year and he wanted to keep discussions open in the future. (T1:90:18–21.)

Not all students with disabilities attend school until they reach the age of twenty-one. Only those who are unable to show progress toward meeting the standard graduation requirements continue until twenty-one. (T1:56:3–24.) However, according to Dr. McDonald, P.B. is not such a student. P.B. has met all the graduation requirements and “has the skills necessary to transition to the next step.” (T1:57:1–14.) P.B. has shown he can handle college level work. (T1:58:8.) Autism and ADHD are chronic, and lifelong conditions and P.B. will continue to have challenges that he must overcome, but he has learned advocacy skills and how to access the necessary supports for his success. (T1:58:16–24.)

On cross-examination, Dr. McDonald testified that at the October 12, 2021, re-evaluation meeting, the CST had only a list of assessments completed by Dr. Mack but not the actual reports. (T1:67:16–21.) Accordingly, the CST’s decision not to conduct a triennial evaluation was based upon the belief that P.B. remained eligible for special education and related services with a classification of autism. (T1:68:16–19.) There was no question about his continued qualification for special education services. (T1:69:1–6.)

Dr. McDonald believed that the District did not have to honor a parent or guardian’s request for a re-evaluation if the district believed it had enough information to support that the student was in an appropriate placement, program and classification and remained eligible for special education services. (T1:74:4–17.)

Dr. McDonald confirmed that P.B.’s IQ testing score dropped from 103 in 2018 to 89 in 2021, however, she stated that the drop in the score would not impact his programming but in fact made him “look like a better performer educationally and that he is achieving at levels above where we would expect based on his IQ . . .” (T1:82:17–21.)

Based upon Dr. McDonald’s understanding graduation does not constitute a change in placement, however, special education services terminate once a student graduates. (T1:94:10–17.)

Lisa Mulhearn (Mulhearn) is a certified school psychologist and has been employed by the Somerville School District for seventeen years. She prepares

psychological evaluations throughout the school district. She currently serves as a case manager. (T3:19: 1–25.) She was P.B.’s case manager. (T3:20:1–13.)

For school years 2020 through 2022, P.B. received special education services for difficulties with time management organization, focusing on college settings and vocational. (T3:20:20–25; T3:21:1.) He has attended the CEA for five years. P.B. has received instruction with accommodation within a general education setting in typical academic programs and in college program setting. (T3:21:16–19.)

Based upon the data from the CEA, the CST did not have any concerns about the appropriateness of P.B.’s continued placement at the CEA. (T3:28:21–24.) At the October 2021 re-evaluation planning meeting, the CST determined that a re-evaluation was not needed to determine P.B.’s continued eligibility for special education services. (T3:30:2–6.) Drs. Mack and Bressler completed a battery of assessments in 2021 which replicated the assessments the CST would have done and thus, the CST could not duplicate these assessments. (T3:31:18–25.) The same evaluation cannot be completed within a year’s time. (T3:32:1–4.)

The GAL did not object at the re-evaluation planning meeting to the CST’s proposal not to conduct any additional assessments. (T3:32:14–15.) However, he submitted his objection by letter after the meeting and requested an assessment. The CST decided to complete an occupational therapy evaluation. (T3:36:11–18.)

Mulhearn attended the meeting on March 11, 2021, where P.B.’s graduation was discussed. He was slated to graduate in June 2021 based upon his credits. However, he was given an extra year because of the time lost during the pandemic. (T3:44:10–16.) She stated: “P.B. does have disabilities which are life long, he will continue to need some services whether it be in college or in a job placement.” (T3:54:8–10.) P.B. is aware of the available supports and accommodations available in the college environment. (T3:54:15–22.)

On cross-examination, Mulhearn stated that she had not evaluated P.B. since 2018. (T3:58:16–19.) She conducted an informal observation of P.B. this past school

year where she sat in the room with him but she did not reduce the observation to writing. (T3:56:16–25; T3:57:1–7.) She received Dr. Mack’s report but did not share it with the IEP team. (T3:96:7–12.) Although the GAL requested additional assessments, the CST only proposed an occupational assessment. (T3:98:6–22.) At the March 11, 2021, meeting P.B. expressed a desire to “preserve the opportunity to go on for another year if he needed it.” (T3:104:7–10.) She assured him that a final decision had not yet been made about his graduation but would be made at a future IEP meeting. (T3:104:19–25; T3:105:1–4.)

On redirect, Mulhearn stated that a student does not get to stay in school just because he or she wants to but there must be a need for special education services; it is not a choice. (T3:117:10–19.)

ADDITIONAL FINDINGS OF FACT

In order to assess credibility, the witness’ interest in the outcome, motive, or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony, or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958.) In determining credibility, I am not unaware that the District employees would want to support the program they developed for the child and would believe that the District’s recommendations would be appropriate for the child. I am also aware that the petitioner herein is hesitant to move to a new setting and prefers to remain in a familiar environment receiving the same level of academic and social support.

Accordingly, having considered the testimonial and documentary evidence offered by the parties, I find that the District employees, all of whom were qualified in their respective fields, testified credibly and were familiar with the facts and their respective direct contacts with P.B. throughout the school day. The detailed testimony of Kohlenstein, as P.B.’s teacher/aide, Nemeth, P.B.’s social worker and Stout, P.B.’s transition teacher — all of whom personally worked with, and routinely observed P.B, was persuasive as they are all educationally knowledgeable about delivering special

instruction to students with disabilities. The testimony was detailed as far as the chronology of events and evaluations completed to assess the suspected areas of P.B.'s disability; his performance in school; the specific teaching methodologies used for instruction; P.B.'s interactions with his teachers and peers; the modifications and supports in place to assist P.B.; and the assessments utilized to determine that P.B. made reasonable and appropriate educational progress.

I find especially persuasive the testimonies of Dr. McDonald, the Director of Special Services and Ms. Mulhearn, P.B.'s case manager, who were consistent in stating that there were no questions about P.B.'s continued eligibility for special education or concern about his placement and therefore, there was no need for additional evaluations to determine eligibility for special education and related services.

Having considered the testimonial and documentary evidence presented I **FIND** the following additional **FACTS**:

1. P.B. has completed all graduation requirements but has concerns that he will not receive the same level of support at RVCC that he has received and grown accustomed to with the CEA.
2. The GAL did not object at the October 12, 2021, IEP meeting to the CST's recommendation not to conduct additional assessments but submitted his objection in a letter dated October 15, 2021, in which he requested additional assessments, not just one assessment.
3. The CST did not have Dr. Mack's written reports when the CST determined that additional assessments were unwarranted.
4. P.B. was offered a fifth year at the CEA to assist with developing transition skills.

LEGAL ANALYSIS AND CONCLUSIONS

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). The primary purpose of the IDEA is to ensure that all disabled children will be provided a FAPE. 20 U.S.C. § 1400(d)(1)(A).

New Jersey has also enacted legislation and adopted regulations that assure all disabled children the right to a FAPE. N.J.S.A. 18A:46-1 to -46; N.J.A.C. 6A:14-1.1 et seq. The regulations provide that a school district of residence is responsible for “the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a [FAPE] to students with disabilities.” N.J.A.C. 6A:14-1.3. In determining whether a student is eligible for special education services, a school district must conduct an initial evaluation, which “shall consist of a multi-disciplinary assessment in all areas of suspected disability,” and if the child is deemed eligible, a school district must conduct “a multi-disciplinary re-evaluation . . . to determine whether the student continues to be a student with a disability” at least every three years. N.J.A.C. 6A:14-3.4(f); N.J.A.C. 6A:14-3.8(a).

Though both parties agree that P.B. continues to be a student with a disability, the law recognizes that the needs of every student evolve and change with time and therefore, provides for a triennial review and reassessment of those 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); N.J.A.C. 6A:14-3.8 et seq. This regulation states in relevant part:

- (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.

The re-evaluation begins with a review of existing data, classroom observations and input from teachers and related services providers. N.J.A.C. 6A:14-3.8(b). Based on that review, the CST is required to determine what, if any, additional data is needed to determine “[t]he present levels of academic achievement and functional performance and educational and related developmental needs of the student,” and “how they should appropriately be addressed in the student’s IEP[.]” N.J.A.C. 6A:14-3.8(b)(iii). There will both be situations where there is no need for additional assessments, and situations where the educators and parents determine that such assessments are essential to sound educational decision-making. L.M. o/b/o R.M. v. Brick Twp. Bd. of Ed., and Brick Twp. Bod of Ed. v. L.M. and D.M. o/b/o R.M., OAL Dkt. No. EDS 04579-18 and 06220-18 (December 21, 2018). The regulations make it plain, however, that additional formal assessments may be conducted only with the consent of the parent. N.J.A.C. 6A:14-2.3. In the present case, P.B. consents to the evaluations, however, the respondent has declined P.B.’s request on the basis that the additional data is not needed to determine P.B.’s eligibility for special education and related services.

It is undisputed that the respondent has not evaluated P.B. since 2018. Thus, if additional data was needed, P.B. was entitled to a triennial re-evaluation in December 2021. It is also undisputed that the GAL request re-evaluations, but the respondent does not agree that additional evaluations are needed. The GAL contends that the respondent is obligated to conduct the re-evaluations once the GAL requested them pursuant to N.J.A.C. 6A:14-3.8(a). The GAL relies upon New Mexico Public Education Department, New Mexico State Education Agency, 115 LRP 12278 (March 2, 2015) in which the hearing officer determined that once the parent requested a re-evaluation, the school

district was obligated to conduct the testing requested. However, this case is factually distinguishable. First, the student did not have sufficient credits to graduate. Second, due to “significant trauma in his life” the student had a history of disruptive behavioral issues which included “harassing, threatening, physically and verbally abusive conduct toward both peers and staff and leaving the classroom and disrupting other classrooms or destroying property.” Id. at 4-5. Third, the school district had only two evaluations completed — psychological and neuropsychological. Fourth, the parent asserted a FAPE claim. Id. at 2. Finally, the experts had conflicting reports on the student’s educational progress and needs. Accordingly, the hearing officer concluded that failure to conduct the re-evaluation to resolve the conflicts “deprived Parent and the IEP team . . . of the reliable information needed to fashion an appropriate IEP and thereby deprived Student of FAPE.” Id. at 11.

None of these factors are present with P.B. Notably, all the witnesses were consistent in their testimony regarding P.B.’s continued eligibility for special education services and his need for lifetime assistance. P.B. has more than enough credits to graduate. Indeed, P.B. was given an extra school year to assist him in transitioning to post-secondary school or vocational pursuits. There was data from the CEA and his various teachers regarding P.B.’s progress, including his grades and state assessments. He is passing all his classes and is doing college level work with success. In addition, Dr. Mack conducted a battery of comprehensive assessments of P.B. in September 2021, which were identical to the evaluations the CST would have conducted. The test results are not altered or invalidated merely because the assessments were conducted for purposes of a guardianship matter, as P.B. asserts. Based upon the data from the CEA and P.B.’s teachers, the CST determined that it had sufficient and reliable information making re-evaluation unnecessary to determine P.B.’s eligibility for special education services.

The District, conversely, contends that it does not have to automatically conduct re-evaluations upon parental request but maintains it has discretion. The District relies upon L.M.o/b/o R.M. v. Brick Twp. Bd. of Ed. and Brick Twp. Bd. of Ed. v. L.M. and D.M. o/b/o R.M., OAL Dkt. No.: EDS 04579-18 and 06229-18 (December 21, 2018) in which the ALJ determined that there are situations where the IEP Team determines that

additional assessments are not necessary. This case is instructive although it is the school district that is requesting the re-evaluation. The Administrative Law Judge reasoned that the purpose of the triennial re-evaluation was to determine if additional data was needed to determine the student's present levels of academic achievement and functional performance (PLAAFP) and educational and related developmental needs. Id. at 36. Thus, there is discretion if additional data is not needed.

Applying this logic to the present controversy supports the CST's decision. The CST reviewed the information from the CEA and P.B.'s other teachers. Based upon the GAL's request for re-evaluation, the CST determined that the only additional information needed was regarding P.B.'s fine motor skills and ordered an occupational therapy assessment. This assessment revealed that P.B. did not qualify for these services. Accordingly, the CST determined that it had sufficient data to determine P.B.'s PLAAFP, and whether P.B. continued to need special education and related services.

When conducting an initial or re-evaluation, N.J.A.C. 6A:14-3.4(i) provides that a report from the CST, related service providers or professionals in private practice may be used as an assessment if it was conducted within one year of the evaluation. Thus, Ms. Mulhearn correctly testified that the CST could not legally duplicate the assessments done by Dr. Mack until September 2022 because his assessments were completed on numerous days in September 2021.

The essence of this controversy is that P.B. is attempting to use the triennial re-evaluation to keep him in the CEA for another year. However, having exceeded the graduation credit requirements and successfully completing college classes demonstrates P.B.'s college/vocation readiness. Indeed, all the witnesses testified consistently that P.B. had acquired the skills to advocate for himself and seek out any additional services he may need. The present contested case filing is proof of this.

Accordingly, I **CONCLUDE** that the District complied with the regulatory requirements for re-evaluation and appropriately determined that additional assessments were not needed apart from an occupational therapy assessment because there was

sufficient data to substantiate P.B.'s continued eligibility for special education and related services.

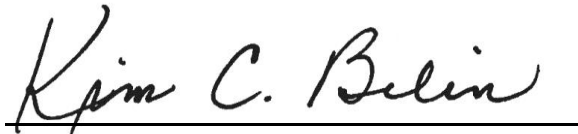
ORDER

For the reasons outlined above, the petitioner's due process petition for a triennial re-evaluation is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

November 23, 2022 _____

DATE



KIM C. BELIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

KCB/am

APPENDIX

WITNESSES

For petitioner

Naomi Stout
Douglas Kohlenstein
Karen Nemeth

For respondent

Tanya E. Ramasz-McDonald
Lisa Mulhearn

EXHIBITS

For petitioner

- P-1 Letter dated October 15, 2021, from Franklin Whittlesey, Esq., and pages 1-1, 1-2, 3-1, 4-1 and 5-1 of the Re-evaluation Plan, dated October 12, 2021
- P-2 Not Admitted
- P-3 Not Admitted
- P-4 Not Admitted
- P-5 Transition Report/PLAAFP April 2022
- P-6 Social Skills Group and Individual Counseling PLAAFP April 2022
- P-7 Speech/Language Therapy PLAAFP April 2022
- P-8 Not Admitted
- P-9 Not Admitted
- P-10 Not Admitted
- P-11 Not Admitted

For respondent

- R-1 Not Admitted

- R-2 Confidential Forensic Report from Dr. Jonathan Mack dated September 30, 2021
- R-3 Not Admitted
- R-4 Not Admitted
- R-5 Not Admitted
- R-6 IEP, dated March 11, 2021
- R-7 Transition Report, dated February 2021
- R-8 Not Admitted
- R-9 Somerville High School Transcript
- R-10 ADL: Cleaning
- R-11 Student ADL Lifeskills Worksheet – TCS Emergency Drill, dated February 24, 2020
- R-12 College Readiness Goals for Year 2021–2022
- R-13 Summary of P.B.'s recent academic/behavioral performance, dated March 3, 2022
- R-14 Summary of P.B.'s recent Transition Performance, dated March 4, 2022
- R-15 2021–2022 Report Card from the CEA School
- R-16 Observational Tracking Form, dated July 30, 2018
- R-17 IEP, dated October 12, 2021
- R-18 Occupational Therapy Evaluation, dated January 18, 2022
- R-19 Curriculum Vitae for Tanya E. Romasz-McDonald
- R-20 Resume for Lisa Mulhearn
- R-21 Resume for Naomi E. Stout
- R-22 Mathematics Assessment Report 2018–19
- R-23 List of Tests administered by Dr. Jonathan H. Mack
- R-24 Accuplacer Individual Score Report, dated August 16, 2021
- R-25 Class of 2022 High School Graduation Assessment Requirements