



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION TO DISMISS

**HADDONFIELD BOROUGH
BOARD OF EDUCATION,**

Petitioner,

v.

M.L. AND T.N. ON BEHALF OF J.N.,

Respondents,

OAL DKT. NO. EDS 05258-22

AGENCY DKT. NO. 2022-34370

(CONSOLIDATED)

AND

M.L. AND T.N. ON BEHALF OF J.N.,

Petitioners,

v.

**HADDONFIELD BOROUGH
BOARD OF EDUCATION,**

Respondent.

OAL DKT. NO. EDS 05882-22

AGENCY DKT. NO. 2022-34517

Robert A. Muccilli, Esq., for petitioner-respondent Haddonfield Borough Board of Education (Capehart & Scatchard, P.A., attorneys)

Jamie Epstein, Esq., for respondents-petitioners M.L. and T.N. on behalf of J.N. (Law Office of Jamie Epstein, attorney)

Record Closed: November 10, 2022

Decided: December 7, 2022

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

On May 9, 2022, the Haddonfield Township Board of Education (Board or District) received a request from M.L. and T.N. requesting independent educational evaluations (IEEs) of J.N. On May 27, 2022, the Board filed a petition for due process seeking an order denying the IEEs. On June 15, 2022, M.L. and T.N. on behalf of J.N. (parents) filed a cross-petition for due process against the Board seeking IEEs at public expense, reimbursement of the cost of a functional behavioral assessment (FBA), which was conducted prior to the filing date, related costs, and all other appropriate relief.

PROCEDURAL HISTORY

These matters were transmitted on June 27, 2022, and July 18, 2022, respectively, to the Office of Administrative Law (OAL) by the Department of Education, Office of Special Education (OSE) for determination as contested cases, pursuant to N.J.A.C. 10:6-1.3. The matters were assigned to me on June 30, 2022, and September 8, 2022,¹ respectively, and a telephone hearing was scheduled for September 16, 2022. On September 13, 2022, petitioner-respondent moved for consolidation of these matters. During the telephone hearing of September 16, 2022, respondents-petitioners stated that they would put their position on the motion on the record on or before September 23, 2022, but failed to do so and on September 27, 2022, an order of consolidation was entered.

On September 19, 2022, the Board filed a motion for summary decision in its favor. The parents failed to file an affidavit in response by October 11, 2022, as required by the regulations. N.J.A.C. 1:1-12.5(b). On October 14, 2022, my chambers inquired of counsel whether his client intended to respond. On October 17, 2022, counsel stated that he intended to file a response. On October 21, 2022, a second inquiry was sent to the parents, setting a deadline of October 28, 2022, on which date the parents filed their

¹ An administrative error resulted in the initial assignment of the second petition to the Honorable Elaine C. Frick, ALJ. The confusion that resulted was addressed in my letter to the parties of September 8, 2022.

response in opposition to the motion to dismiss. The Board filed a reply on November 10, 2022, and the motion is ripe for determination.

BACKGROUND

On May 3, 2022, an order was issued in a related case between these parties granting the Board's emergent request to remove J.N. from his placement in the District to home instruction pending a due process hearing on the grounds that J.N., by his behavior, presented a danger to himself, to other students and staff, and disrupted the educational environment. Haddonfield Boro. Bd. of Educ. v. M.L. and T.N. on behalf of J.N., OAL Dkt. No. EDS 03372-22, Order on Emergent Relief (May 3, 2022). Prior to the due process hearing, the parents filed a cross-petition against the Board with OSE, and the Board duly filed a request to adjourn the hearing pending the resolution process and transmittal by OSE of the cross-petition to the OAL. Although the adjournment was granted and the parents subsequently withdrew their cross-petition, the Board filed in federal district court for interlocutory review of an initial order denying the adjournment request. That action is pending, and the emergent order remains in effect.

FACTUAL DISCUSSION AND FINDINGS

The facts material to this motion are undisputed and I **FIND** as **FACTS**:

1. J.N. is a thirteen-year-old male student who is eligible for special education (SE) and related services in the Autistic classification category.
2. For part of the 2019–2020 school year, beginning with the extended school year program, J.N. attended the Yale School, a private day school for children with disabilities, pursuant to an individualized education program (IEP) developed by the District child study team (CST). Brief of Petitioner-Respondent Haddonfield Borough Board of Education in Support of Motion for Summary Decision (September 19, 2022) (Board Br.), Ex. B.

3. On December 6, 2019, the District Director of Special Services sent M.L. and T.N. a proposal regarding J.N. for review at the January 10, 2020, reevaluation planning meeting, which stated in pertinent part:

[T]he district proposed that no additional information is required to determine that the student continues to have a disability, and/or to develop an [IEP]. . . . Additional testing is not warranted and will not be conducted at this time. However, in accordance with N.J.A.C. 6A:14-3.8(b)(3) you may submit a written request to the district within 15 calendar days of receipt of this notice to ask for additional assessment(s) and the district must provide the additional assessment(s) to determine whether the student continues to be a student with a disability.

Additional assessment is not warranted, therefore no evaluation assessments are proposed.

[Board Br., Ex. A.]

4. By letter dated January 10, 2020, the District CST proposed to conduct educational and psychological evaluations of J.N.
5. M.L. attended the January 10, 2020, reevaluation meeting in person; T.N. attended by telephone. M.L. signed her agreement with the eligibility determination regarding J.N. Board Br., Ex. C. There is no evidence that T.N. opposed the eligibility determination regarding J.N.
6. In January 2020, J.N. was enrolled in the Orchard Friends School, Riverton, New Jersey. Board Br., Ex. D.
7. On February 21, 2020, with the consent of the parents, the District conducted the educational assessment of J.N., as proposed on January 10, 2020. Board Br., Ex. D. The report of the educational assessment was sent to the parents on February 24, 2020. Board Br., Ex. E.
8. On or about February 24, 2020, the District conducted the psychological evaluation of J.N., as proposed on January 10, 2020. The report of the

psychological assessment was sent to the parents on or about March 12, 2020. Ltr. Br. of Respondents-Petitioners in Opposition to Motion for Summary Decision (October 28, 2022) (Parents' Br.), Appendix, at 80-94.

9. J.N. returned to the District for the 2020–2021 school year, enrolling in sixth grade at Haddonfield Middle School (HMS). On four dates between August 23, 2020, and September 16, 2020, the District conducted a Behavioral Observation of J.N. and issued recommendations to support him in the new school year. Id. at 96-102.
10. In the 2021–2022 school year, J.N. was enrolled in the seventh grade at HMS in a general education class where he received in-class support, supplementary instruction, speech and occupational therapy, and related services pursuant to an IEP.
11. By letter dated May 9, 2022, the parents notified the Board that they disagreed with the District's most recent educational evaluation and therefore requested four IEEs at public expense, namely an educational evaluation, a neuropsychological evaluation, a psychiatric evaluation, and an occupational therapy evaluation. Board Br., Ex. F.²
12. On May 27, 2022, the Board filed a due process petition seeking an order denying the parents' request for IEEs.
13. On or about June 15, 2022, the parents retained Dr. Christen Russell to perform an FBA of J.N. Board Br., Ex. H.
14. On June 16, 2022, the parents filed a due process petition seeking IEEs at public expense, reimbursement for the FBA conducted by Dr. Russell (and other related costs), and all other appropriate relief.

² As explained below, the parents' letter gives the names and offices of the professionals they selected to perform assessments but does not specifically list the types of assessments.

POSITIONS OF THE PARTIES

The Board argues that it has no obligation to fund IEEs because the parents did not disagree with the January 2020 reevaluation of J.N. and/or the District's conclusion that no further evaluations were required to determine that J.N. remained eligible for SE and related services.³ Further, the parents' demand for IEEs fell outside the two-year statute of limitations in 20 U.S.C. § 1415(c), coming more than two years after the January 2020 reevaluation of J.N.⁴ Finally, the parents did not request an FBA prior to having it conducted, and therefore cannot seek reimbursement from the Board for those costs.

The parents, however, contend that they notified the District that their most recent evaluations of J.N. were not proper as the District failed to assess him in all suspected areas of disability. The District has not shown that its own evaluations were in fact appropriate or that the parents' evaluation — the FBA — does not meet specified criteria. The statute of limitations does not bar the parents' request because the most recent evaluations, while conducted more than two years prior to that request, are still in effect today.

Finally, the parents contend that disputed issues exist for resolution at hearing, that being whether the Board's most recent evaluations of J.N. were appropriate.

³ Though there were no formal assessments conducted in January 2020, J.N. was evaluated and the CST concluded he remained eligible for SE and related services through review of information provided by his teachers and related service providers, which "constitutes a reevaluation." See Haddon Twp. Sch. Dist. v. New Jersey Dept. of Educ., No. A-1626-14T4 (App. Div. February 4, 2016).

⁴ The request also came more than two years after the educational assessment and psychological evaluation, both conducted by the District in February 2020.

LEGAL ANALYSIS

Summary decision may be granted when “the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). The rule further provides that an adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue which can only be determined at an evidentiary hearing. Ibid. The rule is patterned on the New Jersey Supreme Court’s rules concerning summary judgment. The New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2:

A determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

[Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).]

Here, I **CONCLUDE** that no material facts are at issue, and that the matter is therefore appropriate for summary decision.⁵

The procedure for requesting IEEs of disabled children is found in N.J.A.C. 6A:14-2.5(c). In relevant part, that section states:

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 public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees.

⁵ While there is disagreement over whether the January 2020 reevaluation was appropriate, that dispute is not material to this decision because the parents did not challenge the reevaluation within the two-year statute of limitations.

The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

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

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

This procedure is consistent with federal law in granting parents a right to IEEs of their children. The federal regulation is as follows:

(a) General.

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

- (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
- (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) Parent right to evaluation at public expense.

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.
- (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
- (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the

independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

[34 C.F.R. § 300.502 (2022).]

Taken together, the above regulations require the parents to state their disagreement with the school's evaluation, specify the assessments requested, and follow the criteria provided by the school for obtaining the IEEs. Despite the Board's argument otherwise, the parents' request here does not fail for lack of specificity regarding the assessments with which they disagreed and request to have conducted by independent professionals. While the parents' May 9, 2022, letter provides only the names and offices of the professionals they would use for the IEEs, rather than the type of assessment each would conduct, it is easy enough using the information provided to determine which assessments are being requested.

A petition for due process filed under the IDEA, however, must be brought within strict statutory timelines. The statute provides that:

[a] parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

[20 U.S.C. § 1415(f)(3)(C)]

Elsewhere, the statute provides that the procedures required by the IDEA shall include:

(6) An opportunity for any party to present a complaint—

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

[20 U.S.C. § 1415(b)(6) (emphasis added).]

The Third Circuit Court of Appeals has interpreted these provisions to mean that “parents have two years from the date they knew or should have known of the violation to request a due process hearing through the filing of an administrative complaint . . .” G.L. v. Ligonier Valley School District Authority, 802 F. 3d 601, 626 (3rd. Cir. 2015). In G.L. the parties had urged that these two statutory provisions contained an incongruity that arguably expanded the window for relief available to a petitioner. The court rejected this argument, holding that the IDEA’s “two-year statute of limitations . . . functions in a traditional way, that is, as a filing deadline that runs from the date of reasonable discovery and not as a cap on a child’s remedy for timely-filed claims that happen to date back more than two years before the complaint is filed.” Id. at 616.

The date from which the limitations period begins to run is the date the parents knew or should have known of the basis for their claim that the 2020 reevaluation of J.N. was not appropriate. Respondents-petitioners claim now that they could not have known the 2020 reevaluation was inappropriate until after the behavioral incidents (described above and the basis by which J.N. was deemed a danger to himself and others) occurred in 2022. Parents’ Br., at 13. While it is impossible to determine what the parents knew, the report of the psychological evaluation of J.N. conducted in 2020 includes the following descriptions of J.N.’s in-school behavior,⁶ as provided by his teachers, a clear warning of the behavior that J.N. presented two years later at HMS:

J.N. is diagnosed with autism, [oppositional defiance disorder], bipolar disorder, ADHD, anxiety, and sleep disturbance. I am worried about his potential to injure someone when he is raging. J.N. has great difficulty with self-

⁶ J.N. was, at the time of this evaluation, placed at a private school, out-of-district.

regulation, particularly when he is angry. He reports a great deal of frustration in general, and specifically about feeling out of control when raging.

[J.N.] says he hates himself, his family, and that he is stupid. He acts “strange” and talks about inappropriate things often both in class and personally. His anger escalates very quickly and can become violent.

When J.N. is challenged in class, even in a small way, he will become very emotional and tearful and this appears to be an awkward response to the situation. When he is confronted about his inappropriate actions when he does not transition well from activity to activity, his response can be a type of tantrum and when he is addressed when he responds in this manner, he can become violent in nature, throwing objects and chairs.

[Parents’ Br., App., at 88-90.]

This is not to say that the District could not have done more, or that the programming proposed by the District was appropriate given the information that it collected; whether the District fully met its obligation to J.N. before he was removed from school in May 2022, will likely be determined in another proceeding. The sole issue here is the IEEs. The parents’ request for IEEs was sent to the District on May 9, 2022, based on the alleged failure of the District to properly evaluate J.N. more than two years earlier. While there are exceptions to the two-year statute of limitations, I **CONCLUDE** that the parents have failed to establish that any of them are applicable in the instant matter. 20 U.S.C. § 1415(f)(3)D).

Notwithstanding the inability of the parents to secure independent educational evaluations of J.N. at this time, J.N. is due for a triennial reevaluation by the District CST in less than two months. 20 U.S.C. § 1414(a)(2)(B)(ii). Given the difficulty that the District has had programming for J.N. in the past year, and the dissatisfaction his parents have expressed with J.N.’s program and placement — both for the 2021–2022 school year at HMS and the out-of-district placement currently proposed by the District and under review in the related matter referenced above — it is imperative that the parties cooperate to

assess J.N. in all suspected areas of disability and with respect to his significant behavioral challenges.⁷

Should the parents disagree with the results of evaluations conducted by the District, the procedures provided at N.J.A.C. 6A:14-2.5(c), will be available, and the parents may then renew their request for IEEs.

ORDER

For the above reasons, I **ORDER** that the motion of petitioner-respondent Board for summary decision in its favor is **GRANTED** and the petition of respondents-petitioners M.L. and T.N. on behalf of J.N. is **DISMISSED**.

I further **ORDER** that the request of respondents-petitioners for all other appropriate relief is **GRANTED** as follows:

- By January 10, 2023, the parties shall develop a proposal for a full reevaluation of J.N. in all suspected areas of disability, including but not limited to an educational evaluation, a neuropsychological evaluation, a psychiatric evaluation, an occupational evaluation, and an FBA.
- By March 1, 2023, the parents shall make J.N. available for all above-listed evaluations, notwithstanding that the FBA may not be fully performed by that date.
- The Board shall share with the parents the results of such evaluations within three days of receipt by the CST.

⁷ See Order on Emergent Relief, Haddonfield Borough Bd. of Educ. v. M.L. and T.N. on behalf of J.N., OAL Dkt. No. EDS 03372-22 (May 4, 2022).

- By March 31, 2023, the parties shall meet to review the results of the evaluations and a draft IEP, notwithstanding the pending litigation in federal court.

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.

December 7, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/nn