



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10738-23

AGENCY DKT. NO. 2024-36259

**WYCKOFF TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

M.C. AND A.S. ON BEHALF OF J.C.,

Respondents.

Stephen R. Fogarty, Esq., for petitioner (Fogarty & Hara, attorneys)

M.C. and **A.S.**, respondents, pro se

Record Closed: February 6, 2024

Decided: February 6, 2024

BEFORE **BARRY E. MOSCOWITZ**, Acting Director and Chief ALJ:

STATEMENT OF THE CASE

J.C. is ten years old and resides in the Wyckoff School District. Petitioner Wyckoff Township Board of Education suspects that J.C. needs special education and related services. Must petitioner evaluate J.C. for special education and related services? Yes. Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482, school districts are obligated to identify, locate, and evaluate all children with disabilities

residing in their school district whom they suspect need special education and related services.

PROCEDURAL HISTORY

On July 25, 2023, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education (OSE). In its request, petitioner asserts that J.C. is struggling in school and suspects that J.C. needs special education and related services. As a result, petitioner seeks an order authorizing it to evaluate J.C. so petitioner can determine whether J.C. is eligible for special education and related services in fulfillment of its “child find” obligation under the IDEA.

On October 13, 2023, the OSE transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

On October 17, 2023, the case was assigned to me for hearing, and an initial prehearing telephone conference was scheduled for November 16, 2023.

During the telephone conference, respondent A.S. stated that neither she nor respondent M.C. would consent to evaluation, and a follow-up telephone conference was scheduled for December 13, 2023, to pick dates for a hearing.

On November 29, 2023, A.S. emailed me that she would not appear at the follow-up telephone conference. On December 13, 2023, I held the follow-up telephone conference, and neither A.S. nor M.C. appeared. On December 14, 2023, I notified the parties that the hearing had been scheduled for January 22, 2024, and A.S. emailed me that she would not appear at the hearing either.

On January 22, 2024, I held the hearing. Neither M.C. nor A.S. appeared. As a result, the hearing proceeded without them.

FINDINGS OF FACTS

Given the testimony petitioner provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

J.C. is ten years old. He lives with his mother, A.S., and his father, M.C., in Wyckoff, New Jersey, and is in fifth grade in the Wyckoff School District. When J.C. was in fourth grade, the Intervention and Referral Services (I&RS) Team referred J.C. to the Child Study Team (CST) because the I&RS Team suspected that J.C. needed special education and related services. The I&RS Team had provided J.C. with tiered interventions for math and reading during second, third, and fourth grades, but J.C. was still having difficulty in fourth grade completing his work independently and grasping grade-level concepts, despite receiving intervention for math four days a week, intervention for reading two days a week, and counseling for social and emotional support as needed during these past three years. J.C. also received check-ins and prompts from his teachers as well as modifications to the presentation and implementation of curriculum. The area of suspected disability remains “communication impairment” or “specific learning disability.”

On March 9, 2023, the CST notified respondents of an evaluation and planning meeting to discuss the referral, but respondents refused to attend the meeting scheduled for March 17, 2023, so the CST met without them. At the meeting, the CST proposed an initial evaluation to include an educational assessment, a social history assessment, a psychological assessment, a bilingual speech and language assessment, and an occupational therapy assessment. On March 20, 2023, the CST team notified respondents of this plan. To date, respondents have refused to provide their consent for this initial evaluation and for all these assessments.

This referral by the I&RS Team to the CST was the third time the I&RS Team had referred J.C. to the CST. The I&RS Team had first referred J.C. to the CST when J.C. was in second grade because his academic performance and his social behavior were

concerning, but respondents refused their consent to an initial evaluation. The I&RS Team referred J.C. to the Child Study Team again the following year when J.C. was in third grade, but respondents again refused their consent to an initial evaluation. Thus, this case constitutes the third time that respondents have refused their consent to an initial evaluation. Meanwhile, J.C. continues to struggle.

The testimonial and documentary evidence reveal weaknesses in reading, writing, and math. The English Language Arts Assessment Reports from third and fourth grades denote Performance Level 1 (Did Not Yet Meet Expectations). The Mathematics Assessment Report from third grade denotes Performance Level 2 (Partially Met Expectations), but the Mathematics Assessment Report from fourth grade denotes Performance Level 1 (Did Not Yet Meet Expectations). Thus, the evidence also reveals regression.

J.C.'s benchmark assessments and report cards also reveal regression. The aimswebPlus benchmark assessments for second and third grades denote medium risk for reading and high risk for math, but the assessments for fourth grade denote high risk for reading and high risk for math. Likewise, the report cards from second, third, fourth, and fifth grades denote "progress toward meeting marking period benchmark standards" in the earlier marking periods but "limited progress toward meeting marking period benchmark standards" in the later marking periods. Indeed, teachers' comments in fourth grade highlight the regression: J.C. struggles in reading, writing, and math, as well as socially, with difficulty following directions, completing work independently, and staying on task.

The suspicion is that J.C. cannot move forward without one-to-one support in a smaller group setting. As Diane Ciaramella, the director of Student Personnel Services, testified, J.C. "struggles to understand concepts and build on them, even with intervention," or as she also testified, "the foundational skills are not sticking." More concerning, however, are the behaviors. As Ciaramella further testified, the frustrations with academics have resulted in behaviors that are increasing in both frequency and intensity, and the fear is that J.C. will not be ready for middle school next year. As

Ciaramella concluded, "It's extraordinary that we would not provide [the] support [J.C. needs]."

CONCLUSIONS OF LAW

Under the IDEA, school districts must identify, locate, and evaluate all children with disabilities residing in their school district whom they suspect need special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.11 (2023); N.J.A.C. 6A:14-3.3(a). This obligation is known as child find. In this case, petitioner has suspected and continues to suspect that J.C. needs special education and related services, but respondents have refused and continue to refuse their consent to an initial evaluation. Without this consent, petitioner cannot fulfil its child find obligation. Given this circumstance, I believe that J.C. should be evaluated to determine whether he is eligible for special education and related services, but I will not order respondents to provide that consent. As parents, respondents have the right to refuse their consent. Nevertheless, I **CONCLUDE** that petitioner, by dint of filing this request for due process hearing seeking an order to evaluate J.C., whom petitioner rightly suspects needs special education and related services, has fulfilled its child find obligation under the law. As such, respondents cannot complain in the future that petitioner did not fulfill its child find obligation for their child in either second, third, fourth, or fifth grade.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case is **DISMISSED**.

This decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2023) and is appealable by filing a complaint and bringing a civil action 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 (2023). If the parent or adult student believes that this decision is not being fully implemented with respect to a program or a service, this concern should be communicated in writing to the Director, Office of Special Education.

February 6, 2024

DATE



BARRY E. MOSCOWITZ

Acting Director and Chief ALJ

Date Received at Agency

February 6, 2024

Date Mailed to Parties:
dr

February 6, 2024

APPENDIX

Witnesses

For Petitioner:

Diane Ciaramella

For Respondents:

None

Documents

For Petitioner:

- P-1 English Language Arts Assessment Report, 2021–22
Mathematics Assessment Report, 2021–22
English Language Arts Assessment Report, 2022–23
Mathematics Assessment Report, 2022–23
- P-2 aimswebPlus, Benchmark Assessment, Performance Summary, 2020–21
aimswebPlus, Benchmark Assessment, Performance Summary, 2021–22
aimswebPlus, Benchmark Assessment, Performance Summary, 2022–23
aimswebPlus, Benchmark Assessment, Performance Summary, 2023–24
- P-3 Report Card for Grade 2, 2020–21
Report Card for Grade 3, 2021–22
Report Card for Grade 4, 2022–23
Report Card for Grade 5, 2023–24

For Respondents:

None