



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 10751-24

AGENCY DKT. NO. 2024-37443

M.D. ON BEHALF OF J.F.,

Petitioner,

v.

SOUTH ORANGE-MAPLEWOOD

BOARD OF EDUCATION,

Respondent.

M.D., petitioner, pro se

Amanda N. Castrogiovanni, Esq., **Marc G. Mucciolo**, Esq., and **Douglas M. Silvestro**, Esq., for respondent (The Busch Law Group, attorneys)

Record Closed: September 26, 2024

Decided: October 24, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

STATEMENT OF THE CASE
AND PROCEDURAL HISTORY

Petitioner, M.D., on behalf of her son, J.F., seeks re-evaluations, or independent educational evaluations (comprehensive social, educational, and psychological) of J.F.

Petitioner's position is that the original evaluations were done while J.F. was medicated. The Petition requests that the testing be performed on J.F. while he is not medicated. The South Orange-Maplewood Board of Education (respondent, District, or Board) has moved to dismiss the petition and grant its petition denying any current further evaluations.

This matter was transmitted to and filed with the Office of Administrative Law (OAL) on August 6, 2024, by the Department of Education 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 -23. Respondent moved for summary disposition on September 10, 2024. Petitioner submitted an uncertified e-mail in opposition to the relief requested. The tribunal requested petitioner's e-mail be certified; petitioner never responded further. Oral argument was scheduled for September 26, 2024, but petitioner failed to appear. The record closed on September 26, 2024.

FACTUAL FINDINGS

1. J.F. was born on August 24, 2010. He was evaluated by the Board's Child Study Team (CST) and found to be eligible for special education and related services on June 12, 2024, based on the disability category of "Other Health Impaired."

2. On February 12, 2024, M.D. sent a draft Petition for Due Process to the Board, requesting that J.F.'s Section 504 Plan be implemented with fidelity, that he be assigned a 1:1 aide, and that he be evaluated for an individualized education program (IEP). That Petition was not filed with the New Jersey Office of Special Education until April 30, 2024. See Petition for Due Process, attached hereto as Exhibit M.

3. On or about March 15, 2024, M.D. submitted a request for evaluation by the CST for determination of eligibility of services. Assistant Superintendent for Special Services Susie Budine responded to the parent to confirm the referral that same day.

4. As a result of that referral, on April 9, 2024, an initial planning meeting was held with the Board's CST. The CST determined that J.F. should receive evaluations to determine eligibility for special education and related services. A true and exact copy of the invitation dated March 19, 2024, for the initial identification and evaluation planning meeting on April 9, 2024 is attached hereto as Exhibit A.

5. M.D. and the CST agreed that the Board would conduct an Educational Evaluation, Social History Assessment, and a Psychological Evaluation. A true and exact copy of the meeting recap via email dated April 9, 2024, from Case Manager Genelle Gutierrez to M.D., the initial identification and evaluation planning meeting report dated April 11, 2024, and M.D.'s signed consent for the evaluations are attached hereto as Exhibit B.

6. On May 15, 2024, Genelle Gutierrez, LCSW, school social worker, conducted a social history assessment of J.F. and prepared a report. A true and exact copy of the Social History Assessment report is attached hereto as Exhibit C.

7. On May 17, 2024, Maria Serpico, LDTC, conducted an educational evaluation of J.F. and prepared a report. A true and exact copy of the Educational Evaluation report dated May 28, 2024, is attached hereto as Exhibit D.

8. On May 22, 2024, Lisa Kleitsch, M.A., Ed.S., school psychologist, conducted a psychological evaluation of J.F. and prepared a report. A true and exact copy of the Psychological Evaluation report is attached hereto as Exhibit E.

9. The CST scheduled an initial eligibility determination and IEP planning meeting for June 12, 2024, to review the evaluation reports and discuss J.F.'s eligibility for special education and related services. A true and exact copy of the emails between M.D. and Ms. Gutierrez regarding availability and scheduling, and the letter dated May 29, 2024, scheduling the initial eligibility

determination and IEP planning meeting for June 12, 2024, are attached hereto as Exhibit F.

10. By correspondence dated June 5, 2024, M.D. requested “an independent evaluation.” In the correspondence, M.D. openly states that she is “not in agreement with the district evaluation findings.” M.D. sent the letter prior to the eligibility meeting and without having reviewed the evaluations with the CST. A true and exact copy of the correspondence from M.D. dated June 5, 2024, is attached hereto as Exhibit G.

11. The morning of June 12, 2024, Ms. Gutierrez submitted an email reminder for the initial eligibility determination and IEP planning meeting with the meeting link to M.D. A true and exact copy of the email dated June 12, 2024, is attached hereto as Exhibit H.

12. On June 12, 2024, the eligibility determination and IEP planning meeting was conducted.

13. As a result of the evaluations and other information available to the CST at the time, J.F. was determined to be eligible for special education and related services at the eligibility meeting conducted on June 12, 2024.

14. After finding J.F. eligible for classification and services, an IEP was discussed and proposed at the June 12, 2024, meeting. A true and exact copy of the eligibility determination and proposed IEP dated June 12, 2024, is attached hereto as Exhibit I.

15. M.D. did not appear for the June 12th initial eligibility determination and IEP planning meeting. Accordingly, Ms. Gutierrez sent M.D. email correspondence dated June 13, 2024, providing a summary of the discussion during the initial eligibility and IEP meeting. A true and exact copy of the email from Ms. Gutierrez to M.D. dated June 13, 2024, is attached hereto as Exhibit J.

16. Although M.D. claims she sees “a lot of areas of concern where he is assessed as average,” she did not attend the meeting during which the CST could discuss the evaluations with her. She also failed to identify any specific issues with the evaluations themselves and did not identify which independent evaluation or evaluations she is seeking. See Exhibit G.

17. M.D. sent further correspondence, dated June 14, 2024, stating she wants the independent evaluations “because it’s In a one-to-one setting and he is medicated and that is typically not what occurs in a normal day with him.” In other words, M.D. wants J.F. tested while he is not on his daily medications and wants the evaluations done in a noisy setting, instead of a controlled environment. Essentially, M.D. wants the evaluations done in such a way and in an environment where J.F. is destined to perform worse in the evaluations, even though the CST has already found J.F. to be eligible for special education and related services. A true and exact copy of the email from Ms. Gutierrez to M.D. dated June 13, 2024, is attached hereto as Exhibit K.

18. On or about June 24, 2024, the Board filed a Petition to deny the request for unspecified independent evaluations. In that Petition, the Board maintained that all its evaluations were conducted in accordance with all applicable professional standards as well as the requirements of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. None of the evaluations were in any way inappropriate, including the process in which they were conducted, the assessments that were utilized, and the summaries of the evaluator’s findings as set forth in their respective reports. See Petition to Deny Independent Evaluations, attached hereto as Exhibit L.

19. The petitioner’s failure to attend the CST meeting, failure to execute the IEP, and failure to appear or properly submit information requested by the tribunal all support the finding that the parent has failed to cooperate with the District.

LEGAL ANALYSIS

Summary decision, or as it is known in judicial matters, summary judgment, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial as well as executive branch administrative cases. N.J.A.C. 1:1-12.5. The standards for determining motions for summary judgment are contained in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74–75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there are no “genuine disputes” of “material fact.” The determination as to whether disputes of material fact exist is made after a “discriminating search” of the record, consisting as it may of affidavits, certifications, documentary exhibits, and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of “genuine” disputes of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than “facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful, frivolous, gauzy or merely suspicious.’” Judson, 17 N.J. at 75 (citations omitted). The Brill decision focuses upon the analytical procedure for determining whether a purported dispute of material fact is “genuine” or is simply of an “insubstantial nature.” Brill, 142 N.J. at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary decision motions. “[T]he essence of the inquiry in each is the same: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986)). In searching the proffered evidence to determine the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the “burden of persuasion” that would apply at trial on the merits, whether that is the preponderance of the evidence standard

or the clear and convincing evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law.

The IDEA, 20 U.S.C. §§ 1400–1482, requires states to ensure that all children with disabilities have access to a free appropriate public education (FAPE) that is designed to meet their unique needs, and establishes procedural due process rights for the children. Each school district's board of education must have policies, procedures, and programs to ensure that all students with disabilities between the ages of three and twenty-one have access to a FAPE and are educated to the maximum extent appropriate in the least restrictive environment (LRE). N.J.A.C. 6A:14-1.2(b). Education in the LRE requires, whenever possible, that the child is educated in the regular educational environment with children who are not disabled, i.e., the child is included in the mainstream education system. N.J.A.C. 6A:14-4.2; 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114. See also Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993). An education is “appropriate” if it includes “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). In New Jersey, a FAPE must include both special education and any necessary related services, such as counseling, occupational or physical therapy, and speech-language services. N.J.A.C. 6A:14-1.1(b)(3), (d); N.J.A.C. 6A:14-3.9(a). See also 20 U.S.C. § 1401(9), (26)(A); 34 C.F.R. § 300.34(a).

Once a student is determined to be eligible for special education and related services, the local educational agency (LEA) must develop an IEP that establishes the rationale for a student's educational placement and serves as the basis for program implementation. N.J.A.C. 6A:14-1.3; -3.7.

Here, the District did perform evaluations by their internal staff and concluded that petitioner satisfied the requirements for special education assistance, under other health impairments. The parent requested re-evaluations, or independent evaluations prior to

the scheduled date of the CST meeting, and did not attend that meeting. This is a failure by the parent to cooperate with the District. The parent appears to question the evaluations related to the fact that the evaluations were performed while the petitioner was medicated and within a secluded location (i.e., not in a distracting environment). The District had no reason to question that the child would not be medicated. However, if the child attends school unmedicated, her ADHD conditions may result in less effective educational benefit. That circumstance will have to be addressed by the District if in fact the student is unmedicated. The parent sought a 1:1 aide for the student but provided no medical evidence to justify the need for such intensive support.

Here, the parent has some disagreement with the proposed IEP, but this must be resolved by working with the CST.

An independent educational evaluation (IEE) 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.” 34 C.F.R. § 300.502(a)(3)(i); N.J.A.C. 1:6A-14.4(a). According to the Supreme Court, the purpose of the IEE is to ensure that parents have “access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion.” Schaffer v. Weast, 546 U.S. 49, 60–61 (2005). The IEE further ensures that parents, in contesting a school district’s assessment, “are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.” Id. at 61. It is easy to imagine how difficult it would be for many parents to “match the firepower” of the government if they could not afford to pay the evaluator. Here, the District is not seeking an outside expert to support its determination. If a hearing were held regarding whether the District provided the student with a FAPE, the District would rely on its internal staff and the educational records of the student to satisfy that they are providing the student with a FAPE, as he is making appropriate educational, emotional, and social progress.

Pursuant to N.J.A.C.1:6A-14.4(a), if a district denies a parental request for an IEE, one may still be afforded to the parent by order of an ALJ. That regulation provides that “[f]or good cause and after giving the parties an opportunity to be heard, the judge may

order an independent educational evaluation of the pupil.” To determine whether there is good cause, a factual determination must be made as to whether the CST conducted the appropriate evaluations, and whether those evaluations contained enough information about the pupil and his educational needs, to aid in the development of an appropriate IEP. Union Twp. Bd. of Educ. v. V.K. o/b/o R.K., EDS 5964-03, Final Decision (Nov. 5, 2003), https://njlaw.rutgers.edu/collections/oal/final/eds05964-03_1.html. Petitioner has failed to provide any support for this tribunal to find good cause to order IEEs, pursuant to N.J.A.C. 1:6A-14.4.

In the event the student does not make meaningful progress educationally, socially, and emotionally, the District is subject to due process for failing to provide a FAPE.

CONCLUSION

I **CONCLUDE**, the District did provide an appropriate analysis of J.F. and assessed him qualified for special educational assistance for other health impairments, providing him with an IEP designed to provide a free appropriate public education.

I **FUTHER CONCLUDE** that petitioner has not shown good cause for this tribunal to direct further IEEs of J.F.

ORDER

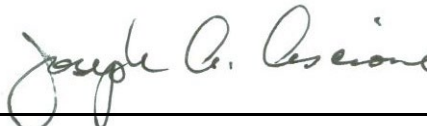
It is hereby **ORDERED** that respondent’s motion for summary disposition dismissing the petition is **GRANTED**, and

It is hereby **FURTHER ORDERED** that petitioner’s claim for IEEs for J.F. is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

October 24, 2024

DATE



JOSEPH A. ASCIONE, ALJ (Ret., on recall)

Date Received at Agency:

October 24, 2024

Date Sent to Parties:
cc

October 24, 2024

APPENDIX

Exhibits

For Petitioner:

None

For Respondent:

R-1 Motion for Summary Decision, dated 9/10/24

- Exhibit A: Invitation for the Initial Identification and Evaluation Planning Meeting, dated 3/19/24
- Exhibit B: Meeting recap via email, dated 4/9/24, Initial Identification and Evaluation Planning Meeting Report, dated 4/11/24 and M.D.'s Signed Consent for the Evaluations, dated 4/18/24
- Exhibit C: Social History Assessment Report
- Exhibit D: Educational Evaluation Report, dated 5/28/24
- Exhibit E: Psychological Evaluation Report, dated 5/22/24
- Exhibit F: Emails between M.D. and Ms. Gutierrez, dated 5/29/24 – 5/30/24, Letter Scheduling the Initial Eligibility Determination and IEP Planning Meeting, dated 5/29/24
- Exhibit G: Correspondence from M.D., dated 6/5/24
- Exhibit H: Email Reminder from Ms. Gutierrez, dated 6/12/24
- Exhibit I: Eligibility Determination and Proposed IEP, dated 6/12/24
- Exhibit J: Email from Ms. Gutierrez to M.D., dated 6/13/24
- Exhibit K: Email from M.D. to Ms. Gutierrez, dated 6/14/24
- Exhibit L: Petition to Deny Independent Evaluations
- Exhibit M: Due Process Petition