



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 12856-24

AGENCY DKT NO. 2024-37728

UNION TOWNSHIP BOARD OF EDUCATION,

Petitioner,

v.

K.V. ON BEHALF OF T.V.,

Respondent.

Lester E. Taylor III, Esq. for petitioner (Taylor Law Group, LLC, attorneys)

K.V., respondent, pro se

Record Closed: October 17, 2024

Decided: October 18, 2024

BEFORE **PATRICE E. HOBBS, ALJ:**

STATEMENT OF THE CASE

Petitioner, Union Township Board of Education, seeks an order compelling respondent to allow petitioner to perform an educational and psychological evaluations as part of a triennial re-evaluation. Must K.V. consent to re-evaluations? Yes. Under N.J.A.C. 6A:14-3.8(a), petitioner is required to re-evaluate a classified student to continue to provide special education and related services.

PROCEDURAL HISTORY

On May 21, 2024, respondent withdrew his consent for educational and psychological examinations and instead requested independent educational and psychological evaluations for his son, K.V. On September 12, 2024, petitioner filed a petition for due process with the Office of Special Education (OSE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., §504 of the Rehabilitation Act (§504), 42 U.S. C. §12131 et seq. (The ADA) and the New Jersey Law Against Discrimination (NJLAD), seeking an order to deny the request. In addition, petitioner seeks an order compelling respondent to allow petitioner to perform re-evaluations. On July 12, 2024, OSE transmitted the case to the Office of Administrative Law (OAL) under 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 -18.5. On September 25, 2024, I held the prehearing conference. On October 17, 2024, I held the hearing and closed the record.

FINDINGS OF FACT

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

Petitioner's Initial Evaluation

T.V. is a student at Township of Union High School, which is a school district governed by the Union Township Board of Education. T.V. qualifies for special education and related services and is classified as Other Health Impaired (OHI) based on his diagnosis of attention deficit, hyperactivity disorder (ADHD), autism spectrum disorder, central auditory processing disorder, expressive language disorder, specific learning disorder with impairment in written expression and congenital hypotonia. (P-3.)

T.V. has had an individualized education program (IEP) since at least 2018 and currently receives in-class resources for Reading, Language Arts, Math, Science, Social Studies, Speech Language Therapy, and Social Skills Group. (P-10.)

On March 21, 2024, K.V. submitted an independent psychological evaluation conducted by the Children's Specialized Hospital, which recommended that T.V. continue to receive all the supports in his IEP. (P-3.). Petitioner did not accept the independent psychological evaluation.

On May 14, 2024, at the annual IEP review, the parties agreed that T.V. continues to be eligible for special education and related services through the classification of OHI. At the meeting, the parties also agreed to educational and psychological evaluations (P-6), but on May 21, 2024, K.V. withdrew his consent and instead requested that these evaluations be conducted independently, by personnel not employed by petitioner. (P-7.)

On July 3, 2024, T.V. was evaluated by an independent neurologist, Dr. Romana Kulikova, and petitioner accepted that evaluation and subsequent report. (P-9.)

Sometime in October 2024, before the hearing date, petitioner requested respondent's consent to have T.V. evaluated by an independent psychological and educational testing center, Kid Clan, and respondent agreed at the hearing.

CONCLUSIONS OF LAW

States are obligated to identify, classify, and provide a free, appropriate public education (FAPE) to all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1. This responsibility rests with the local public school district. N.J.A.C. 6A:14-1.1(d). School districts have an affirmative and continuing obligation to identify and evaluate students reasonably suspected of a disability under the IDEA and Section 504 of the Rehabilitation Act. This responsibility is known as a district's "child find" obligation. See D.K. v. Abington Sch. Dist. 696 F. 3d. 233, 249 (3d. Cir. 2012), 20 U.S.C. § 1412(a)(3). Each district must

develop written procedures to identify students within the location of the district who may have a disability due to “physical, sensory, emotional, communication, cognitive, or social difficulties.” N.J.A.C. 6A:14-3.3(a). These procedures must include evaluation measures to determine a student’s eligibility for special education and related services. N.J.A.C. 6A:14-3.3(a)(3)(iii).

Within three years of the previous classification, a multi-disciplinary re-evaluation must be completed to determine whether the student continues to be a student with a disability. N.J.A.C. 6A:14-3.8(a). The “school district is required to re-evaluate a classified student every three years to confirm the student’s classification and the appropriateness of the student’s program and placement.” Bordentown Reg’l Bd. of Educ. v. M.R. & M.R. ex rel. A.R., OAL DKT. NO. EDS 679-12 2012 N.J. AGEN LEXIS 54 at *3.

Before conducting any assessment as part of a re-evaluation of a student with a disability, the district must obtain consent from the parent. N.J.A.C. 6A:14-2.3. If a parent refuses to provide consent, the district may request a due process hearing, as they have here. See N.J.A.C. 6A:14-2.3(c), -2.7(b). Indeed, a school district has a legal right to evaluate: “If a student’s parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student, and they cannot force the school to rely solely on an independent evaluation.” IM.S. v. Mullica Twp. Bd. of Educ., 485 F. Supp.2d 555, 568 (D.N.J. 2007) (quoting M.T.V. v. Dekalb Cty. Sch. Dist., 446 F.3d 1153, 1160 (11th Cir. 2006)). Further, since “the school is required to provide the child with an education, it ought to have the right to conduct its own evaluation.” Andress v. Cleveland Indep. Sch. Dist., 64 F.3d 176, 178–79 (5th Cir. 1995). “Parents must permit mandatory reassessments under the Education of the Handicapped Act, the IDEA’s predecessor, if they want their child to receive special-education services.” Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1315 (9th Cir. 1987).

Furthermore, New Jersey’s regulations provide that a parent who refuses to consent to services cannot later argue that the district failed to provide a FAPE. N.J.A.C. 6A:14-2.3(c), -2.3(e)(4). Thus, “a parent cannot refuse to allow the school district to offer a FAPE, and later seek reimbursement for a unilateral placement, predicated on the

school district's failure to offer a FAPE. N.J.A.C. 6A:14-2.3(c); N.J.A.C. 6A:14-2.3(e)(4).” S.W. & J.W. ex rel. W.W. v. Florham Park Bd. of Educ., 2015 N.J. AGEN LEXIS 384 at *71.

In this case, T.V. is classified as OHI based on his diagnoses of attention deficit, hyperactivity disorder (ADHD), autism spectrum disorder, central auditory processing disorder, expressive language disorder, specific learning disorder with impairment in written expression and congenital hypotonia. T.V. has an IEP and has been receiving special education services since at least 2018. His last psychological and educational assessments were done in 2021.

Petitioner is entitled to an updated assessment of T.V. to continue to provide special education and related services. K.V. consented to the evaluations but later withdrew his consent and requested an independent evaluator. Petitioner agreed to the request, and T.V. was eventually assessed by an independent neurologist and this examination and report was accepted by petitioner. Given this circumstance, I **CONCLUDE** that the request for an independent neurological evaluation is no longer at issue.

Respondent's Right to an IEE

Parents of a child with a disability have a right to obtain an IEE of a child under federal and state law. 34 C.F.R. § 300.502(a)(1); N.J.A.C. 6A:14-2.5(c). An IEE is defined as 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). A parent has a right to an IEE at the public's expense if the parent disagrees with an evaluation obtained by the public agency unless the agency files a due process complaint and can demonstrate that their evaluation was appropriate. 34 C.F.R. § 300.502(b)(2)(i); N.J.A.C. 6A:14-2.5(c)(1). If the public agency's evaluation is considered appropriate after a due process hearing, a parent still has the right to an IEE but not at the public's expense. 34 C.F.R. § 300.502(b)(3).

In this case, the parties agree that T.V. must be re-evaluated to amend his IEP. In addition, the parties agree that the psychological and educational assessment will be performed by an independent educational and psychological evaluator, Kid Clan. Given this circumstance, I **CONCLUDE** that K.V. must provide his consent for the evaluations by Kid Clan.

ORDER

Based upon my findings of fact and conclusions of law, I **ORDER** that K.V. must consent to the educational and psychiatric evaluation of T.V. by Kid Clan.

This decision is final under 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 believes 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 18, 2024
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency:

October 18, 2024

Date Mailed to Parties:

October 18, 2024

Isr

APPENDIX

WITNESSES

For Petitioner:

Michaela Whiteman-Land, School Psychologist

For Respondent:

K.V., Father

EXHIBITS

For Petitioner:

- P-1 March 21, 2021, Psychological Evaluation
- P-2 May 21, 2022, Educational Evaluation
- P-3 March 7 & 21, 2024, Independent Psychological Evaluation Reports
- P-4 May 8 - October 1, 2024, Board Emails to Parents
- P-5 May 14, 2024, IEP
- P-6 May 14, 2024, Parent Consent for Re-evaluation
- P-7 May 21, 2024, Parental Request for IEEs
- P-8 June 10, 2024, Board's Due Process Petition
- P-9 July 3, 2024, Neurological Evaluation
- P-10 Parental Consent to Amend IEP without Meeting
- P-11 October 1, 2024, IEP
- P-12 October 7, 2024, Board Email to Parent re: Evaluations

For Respondent:

None