



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 09424-24

AGENCY DKT NO. 2025-37870

**VERONA BORO BOARD OF EDUCATION,**

Petitioner,

v.

**D.L. and B.L. ON BEHALF OF S.L.,**

Respondent.

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**Kyle Trent**, Esq. for petitioner (Apruzzese, McDermott, Mastro & Murphy,  
attorneys)

**D.L.**, pro se, for respondents

Record Closed: September 3, 2024

Decided: September 17, 2024

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

**STATEMENT OF THE CASE**

Verona Boro Board of Education (petitioner) filed a due process petition seeking an order compelling D.L. and B.L. (respondents), to allow petitioner to perform necessary psychiatric re-evaluations of S.L., a special education student. Must D.L. and B.L. consent to a psychiatric re-evaluation of S.L.? Yes. Under N.J.A.C. 6A:14-3.8(a), the

petitioner is required to re-evaluate a classified student to continue to provide special education and related services.

### **PROCEDURAL HISTORY**

On July 2, 2024, petitioner filed a petition for due process with the Office of Special Education Programs (OSEP) 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). On July 12, 2024, the case was transmitted 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 July 19, 2024, a prehearing conference was held. On August 5, 2024, an adjournment was granted because petitioner's witnesses were not available.

Respondent requested an enlargement of time for after the November elections for personal and professional reasons. The request was denied. A hearing was conducted on September 3, 2024, and on that date, I 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 Requested a Psychiatric Re-Evaluation**

S.L. is a student at H.B. Whitehorne Middle School, which is a school district governed by the Verona Boro Board of Education. S.L. is classified as an Other Health Impaired based on her diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD), General Anxiety Disorder (GAD), and Specific Learning Disorder (SLD) with impairments in reading, writing, and mathematics. (P-1.)

Since 2022, S.L. has had an individualized education program (IEP) and receives in-class resources, pull-out supplemental instruction, supplementary support by a teacher aide in class, and weekly counseling services. (P-3.)

Tania Symmons (Symmons), the school psychologist, is a part of the Child Study Team (CST) and has been a part of the IEP meetings and evaluations for S.L. since 2022. During the 2022-2023 school year, respondents expressed concerns that petitioner was not providing S.L. with a free and appropriate public education (FAPE) and requested an out-of-district placement. (P-2.) Because of the request, an IEP meeting was scheduled for December 2, 2022. Subsequently, petitioner amended the IEP to include additional social and emotional goals for S.L., and the revised draft was sent to respondents. (P-4.)

At the IEP meeting, petitioner requested a psychiatric re-evaluation. Symmons stated that petitioner needed a psychiatric re-evaluation to amend the IEP and/or to consider an out-of-district placement.

### **Respondents Initiated a Title IX Complaint**

During the 2022 school year, respondents initiated a sexual harassment investigation against the school because a ten-year-old male student made inappropriate sexual comments to S.L. The incident was investigated by Title IX coordinators and investigators and an investigative report was issued on February 15, 2023. Based on the report, the Superintendent determined that the incident did not meet the criteria for sexual harassment under Title IX. (P-51.) Respondents appealed. On March 24, 2023, an administrative law judge determined that the incident did not constitute sexual harassment under Title IX either. (P-51.)

### **The Parties Convene an IEP Meeting**

On January 9, 2023, respondents reported to petitioner that there was an incident at the school with S.L. and her aide and once again requested an IEP meeting and an

out-of-district placement. (P-5.) On January 27, 2023, petitioner proposed an IEP meeting for February 2, 2023. (P-6.)

Before the scheduled IEP meeting, on January 30, 2023, S.L. was released from school to the care of her parents because of an incident in one of her classes. S.L. told her teacher that she may physically harm herself. S.L. was seen by a psychiatrist, Dr. Matthew Wasser (Wasser) and was authorized to return to school. Petitioner wished to speak with Wasser, however, respondents insisted that they must be present for any communications with Wasser. Petitioner declined to communicate with Wasser.

On February 2, 2023, an IEP meeting was held with respondents. Petitioner requested that respondents authorize petitioner to contact Wasser. (P-9.) D.L. signed the form with a provision that respondents would be the only source of medical information and that respondents must be present on all telephone calls with S.L.'s medical providers. (P-10.) D.L. again requested an IEP meeting. (P-12.) Petitioner requested that D.L. submit the reasons for another IEP meeting and renewed its request for a complete psychiatric evaluation to determine what other programming S.L. may require. S.L. was doing well in school but there was increased school avoidance and emotional dysregulation.

### **Respondents Request Additional Educational Supports**

On February 6, 2023, B.L. requested additional instructional and written language accommodations for S.L. (P-15.) Petitioner agreed and amended the IEP to include these additional accommodations. (P-16, P-17.)

Verona School Psychologist, Kimberly Asmar (Asmar), advised respondents that because of S.L.'s increased school avoidance and emotional dysregulation, it was necessary that S.L. undergo a psychiatric re-evaluation. Petitioner was willing to use the private psychiatric evaluation that the parents had already conducted; however, D.L. refused to allow petitioner to speak with the psychiatrist or obtain his complete records. (P-18.)

D.L. offered a redacted version of the report disclosing only what respondents deemed relevant to petitioner which was not acceptable to petitioner. (P-19.) Petitioner once again reiterated to respondents the need for the psychiatric re-evaluation in its February 28, 2023, letter to respondents. (P-20.) On March 29, 2023, petitioner held its annual IEP meeting for S.L. (P-23.)

### **S.L. Continues to Have Emotional Dysregulation and School Avoidance**

On October 14, 2023, petitioner confirmed that S.L. was the target of a confirmed harassment, intimidation, and bullying investigation, and that the children involved would be punished accordingly.

On November 4, 2023, D.L. reported to petitioner that S.L. heard the staff say the word “nigger,” and that she was told to ignore it.

On February 6, 2024, S.L. alleged that she was physically assaulted by a teacher during lunch period. The incident was also reported to the Division of Child Protection and Permanency (DCP&P). (P-24.) The alleged assault was reported to the Verona Police Department. (R-19.) The teacher in question was suspended from teaching for six weeks. On March 16, 2024, respondents were informed that the teacher would be returning to work even though the investigation had not concluded. (P-30.) Respondents were upset that the teacher returned to work without sufficient support to ensure that S.L. would be safe and would have no interactions with the teacher. (R-17.)

### **The Parties Convene an IEP Meeting**

On February 19, 2024, petitioner scheduled an IEP meeting with respondents. (P-27.) Respondents reiterated their request for an out-of-district placement for S.L. Petitioner informed respondents at the IEP meeting the need for re-evaluations for S.L., including a complete psychiatric evaluation. D.L. insisted that any evaluations be submitted to respondents and that the requests would be reviewed with their medical

providers and their attorneys. D.L. further reiterated that they will choose the medical providers for all the evaluations.

On March 19, 2024, S.L. saw the teacher who allegedly assaulted her in one of her classrooms. This caused S.L. to be emotionally dysregulated and requested to leave school. Petitioner assured respondents that S.L. had no physical contact with the teacher and explained that the teacher was in the classroom to retrieve teaching materials. Respondents did not accept that explanation, and D.L. once again requested an out-of-district placement for S.L. (P-32.)

A third IEP meeting was held on March 22, 2024. During this meeting, respondents were belligerent and uncooperative. Shortly after the meeting began, respondents left the meeting. The proposed IEP was sent to respondents for approval. The IEP included a psychiatric re-evaluation of S.L. (P-36.)

#### **Petitioner Filed a Due Process Petition**

On March 27, 2024, petitioner informed respondents that S.L. was once again the target of an HIB investigation and that the children involved would be punished accordingly.

Respondents did not consent to a psychiatric evaluation of S.L., and on April 12, 2024, petitioner filed a due process petition. Subsequently, petitioner and respondents agreed to a psychiatric assessment with Dr. Bryan Fennelly (Fennelly). The parties signed a mediation agreement, and the petition was dismissed without prejudice. Petitioner scheduled the psychiatric evaluation with Fennelly. (P-40.)

Fennelly scheduled an evaluation for June 17, 2024. Fennelly provided the paperwork that was required to be completed by the respondents. (R-7, R-9.) On June 12, 2024, respondents requested a different date due to a religious commitment. The appointment was rescheduled for June 24, 2024. Respondents refused to complete the forms requested by Fennelly. In addition, respondents insisted to be present during the

evaluation and to videotape the evaluation. (P-41.) Fennelly declined to complete the evaluation under the parameters requested by the parents.

Upon learning that the psychiatric examination by Fennelly was canceled, petitioner attempted to schedule the evaluation with Dr. Sandra Cammarata (Cammarata). Petitioner contacted Cammarata and she indicated that she would not be comfortable video-taping any psychiatric evaluations. (P-48.)

### **Respondents Continue to Refuse to Consent to a Re-Evaluation**

D.L. vehemently objects to any psychiatric examination by Fennelly. He stated that based on his review of Yelp and Google, Fennelly was “racist” and “not a very good psychiatrist.” He also vehemently objects to Fennelly’s intake form which asks for a family history.

D.L. executed the release of information from Jennifer Picinich (Picinich), S.L.’s current treating psychologist. (R-5.) However, when Asmar contacted Picinich, Picinich indicated that B.L. would be present during all conversations. (P-52.) Asmar declined speaking with Picinich.

D.L. understands the need for the psychiatric re-evaluation for S.L. As a result, S.L. completed a full psychiatric re-evaluation sometime in the last four weeks. However, neither parent claims he or she knows the name of the psychiatrist, the date of the evaluation, or when the report will be ready.

### **CONCLUSIONS OF LAW**

The IDEA requires New Jersey to effectuate procedures that ensure that all children with disabilities residing in the State have available to them a FAPE consisting of special education and related services. The IDEA “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).

States are obligated to identify, classify, and provide a 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 (Section 504 or 504). 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).

S.L. is classified as Other Health Impaired based on her diagnoses of Attention Deficit/Hyperactivity Disorder (ADHD), General Anxiety Disorder (GAD), and Specific Learning Disorder (SLD) with impairments in reading, writing, and mathematics. S.L. has an IEP and has been receiving special education services since 2021. Respondents expressed concerns that petitioner is not providing sufficient support to assist S.L., and she should therefore be afforded an out-of-district placement. As a result, petitioner requested a re-evaluation of S.L. to re-assess her needs. Respondents refused.

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.

In addition, prior to conducting any assessment as part of a re-evaluation of a student with a disability, the district shall 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. N.J.A.C. 6A:14-2.3(c), -2.7(b). Petitioner has a legal right to evaluate S.L. Respondents have stated that they do not object to the evaluation, but that they are entitled to dictate to the psychiatrist the conditions under which they will allow the evaluation to take place. Such restriction is not consent for an evaluation. In addition, Fennelly and Cammarata refused to conduct the evaluation under the restrictions required by the respondents.

As noted above, respondents are insisting that their own independent evaluations are sufficient for the petitioner to rely on, and no further evaluations are needed. “Every court to consider the [Individuals with Disabilities Education Act’s (IDEA’s)] reevaluation requirements has concluded 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.” M.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).

Assuming *arguendo* that petitioner would accept the respondents’ private psychiatric evaluation, petitioner asked to speak with the psychiatrist to discuss the evaluation. Respondents have refused to allow the petitioner to speak with the psychiatrist without their presence, thereby restricting the free flow of information necessary for petitioner to determine what additional programming might be required or whether out-of-district placement is warranted. In addition, respondents indicated that S.L. only recently underwent a full psychiatric evaluation but could not remember either the first or last name of psychiatrist, nor could they remember the address where she was evaluated.

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.

Respondents are concerned parents who want the best possible outcome for their daughter, S.L. An in-district program may not be the proper fit for S.L. given her diagnoses; however, petitioner must be allowed to evaluate S.L. to determine what additional programming could be required to provide her with a FAPE, whether in district or out-of-district. As Symmons indicated, even if petitioner were to recommend an out-of-district placement, the receiving school district would require petitioner’s psychiatric evaluation to determine what programming S.L. would need that petitioner was not able to provide.

Based on the above, I **CONCLUDE** that petitioner’s request for parental consent from respondents for a complete psychiatric evaluation of S.L. is necessary to continue to provide S.L. with special education and related services or to recommend out-of-district placement for S.L. under N.J.A.C. 6A:14-3.8(a).

### **ORDER**

Based upon the foregoing, it is **ORDERED** that respondents provide full consent, without restrictions, for the psychiatric evaluation for S.L. Should respondents refuse to provide full consent, respondents will have waived their rights to challenge petitioner’s programming for S.L. or otherwise allege that petitioner’s programming for S.L. failed to provide a FAPE at any time after March 20, 2024.

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.



September 17, 2024  
DATE

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**PATRICE E. HOBBS, ALJ**

Date Received at Agency:

September 17, 2024

Date Mailed to Parties:

September 17, 2024

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**APPENDIX**

**WITNESSES**

**For Petitioner:**

Tania Symmons, School Psychologist

**For Respondent:**

D.L., Father

**EXHIBITS**

**For Petitioner:**

- P-1 2021 Dr. Ra Evaluation - Review of Outside Assessment Form
- P-2 Out-of-district placement request email correspondence (November 2022)
- P-3 IEP (December 2, 2022)
- P-4 Alleged abuse by teacher emails (December 2022)
- P-5 Alleged harassment by teacher emails (January 2023)
- P-6 IEP meeting email (January 27, 2023)
- P-7 Risk assessment and re-entry emails (January 2, 2023)
- P-8 Incident and re-entry email with attachments (February 1, 2023)
- P-9 Request to communicate with healthcare provider email with attachment (February 2, 2023)
- P-10 Refusal to Consent for Communication Form from parents (February 2, 2023)
- P-11 Refusal to provide consent to communicate with healthcare providers emails (February 2, 2023)
- P-12 Parent email Re: Request for IEP meeting (February 2, 2023)
- P-13 Email from Director to parent Re: Psychiatric evaluation and meeting request (February 3, 2023)
- P-14 IEP meeting and psychiatric evaluation emails (February 2023)
- P-15 IEP accommodations emails (February 6, 2023)
- P-16 IEP proposal email (February 6, 2023)
- P-17 IEP (February 6, 2023)

- P-18 Re-evaluation Planning Notice - Additional assessment warranted (February 6, 2023)
- P-19 Parent email about refusal to consent to evaluation (February 6, 2023)
- P-20 Letter from Director to parents (February 8, 2023)
- P-21 Parent response to Director's letter (February 9, 2023)
- P-22 IEP meeting email (March 16, 2023)
- P-23 IEP (March 29, 2023)
- P-24 Alleged kicking by teacher email (February 6, 2024)
- P-25 Alleged kicking by teacher email (February 7, 2024)
- P-26 Alleged kicking by teacher investigation emails (February 8, 2024)
- P-27 IEP meeting and request for out-of-district placement email (February 19, 2024)
- P-28 Response to request for out-of-district placement email (February 21, 2024)
- P-29 Evaluations and meeting emails (February 3, 2024)
- P-30 Return to school protocol emails (March 2024)
- P-31 Email with advance notice of expected re-evaluation plan (March 19, 2024)
- P-32 Student's anxiety and protocols emails (March 2024)
- P-33 Anxiety and protocols emails (March 20, 2024)
- P-34 S.L. leaving classroom/school and anxiety emails (March 21, 2024)
- P-35 IEP and evaluation plan email (March 25, 2024)
- P-36 IEP (March 22, 2024)
- P-37 Proposed re-evaluation plan (March 22, 2024)
- P-38 Evaluations emails (May 21, 2024)
- P-39 Mediation agreement with consent emails (May 21, 2024)
- P-40 Parent email selecting Dr. Fennelly (May 24, 2024)
- P-41 Emails between parent and Dr. Fennelly (June 6, 2024)
- P-42 Emails between Director and Dr. Fennelly (June 6, 2024)
- P-43 Email from parent forwarding April 18, 2024, treating psychiatrist note (June 19, 2024)
- P-44 2022-2023 Report Card
- P-45 2022-2023 Attendance Summary
- P-46 2023-2024 Report Card
- P-47 2023-2024 Attendance Summary
- P-48 Email from Dr. Cammarata's Office

- P-49 Tania Symmons' Resume
- P-50 Kimberly Ann Asmar's Resume
- P-51 Bass Report of Title IX Appeal dated March 24, 2023
- P-52 Emails between Dr. Picinich and Director (March 21, 2024)

For Respondent:

- R-1 Letter from Dr. Matthew Wasser dated April 18, 2024
- R-2 Psychological Evaluation Report from Dr. Jennifer Ra 2024
- R-3 Title IX Investigation dated February 15, 2023
- R-4 Emails between Asmar and parents and Release for Dr. Ra dated May 9, 2024
- R-5 Release for Dr. Picinich dated March 20, 2024
- R-6 Emails between Asmar and parents and Release for Dr. Picinich dated March 20, 2024
- R-7 Authorization form for Dr. Bryan Fennelly
- R-8 Verona Police Department Report dated September 28, 2023
- R-9 Patient Questionnaire from Dr. Fennelly
- R-10 Google reviews of Dr. Fennelly
- R-11 Yelp reviews of Dr. Fennelly
- R-12 Emails between parents and principal dated November 4, 2023
- R-13 Emails between parents and principal dated September 30, 2022
- R-14 Emails between parents and principal dated February 6, 2024
- R-15 Letter from principal Re: HIB finding dated March 27, 2024
- R-16 Letter from principal Re: HIB finding dated October 14, 2023
- R-17 Emails between parents and principal dated March 18, 2024
- R-18 Emails between parents and principal dated March 16, 2024
- R-19 Verona Police Department Report dated February 6, 2024
- R-20 IEP dated March 22, 2024
- R-21 Emails between parents and principal dated March 21, 2024