

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 1864-16

AGENCY DKT. NO. 2016 23957

**FLORENCE TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

T.J. AND E.S. ON BEHALF OF A.S.,

Respondents.

Sanmathi Dev, Esq., for petitioners (Capehart Scatchard, attorneys)

No appearance by or on behalf of respondents,

Record Closed: February 18, 2016

Decided: February 22, 2016

BEFORE **LISA JAMES-BEAVERS, ALJ:**

STATEMENT OF THE CASE

Petitioner, Florence Township Board of Education (hereinafter "Florence"), seeks completion of an initial child study team evaluation regarding the child identified as A.S. Petitioner also seeks reimbursement of funds paid for respondent's missed appointments.

PROCEDURAL HISTORY

This Special Education case arises under the Individual with Disabilities Education Act (hereinafter "IDEA"), 20 U.S.C.A. §1401 to 1484a. Petitioner filed it as a request for Emergent Relief.

The Office of Special Education Programs (hereinafter "OSEP") transmitted the matter to the Office of Administrative Law (hereinafter "OAL") as a regular due process petition where it was filed on February 4, 2016, for final determination in accordance with 20 U.S.C.A. §1415 and 34 CFR 300.500 to 300.587. The Office of Special Education Programs requested that an Administrative Law Judge be assigned to conduct the hearing. The Acting Director of the OAL assigned Judge John Futey (T/A) to hear the case. N.J.S.A. 52:14F-5(o).

The hearing was scheduled to be heard on February 18, 2016, which was converted to an early settlement conference. On the scheduled hearing date, only petitioner appeared at the OAL, Trenton, New Jersey for the due process hearing. No one appeared on behalf of respondents. Petitioner asked Judge Futey for permission to conduct a proof hearing, which he granted. The case was transferred to the undersigned to conduct the hearing. After waiting approximately one and one-half hours from the scheduled hearing time, I confirmed that respondents had received notice. The proof hearing was held on February 18, 2016, at the OAL, Trenton, New Jersey. Petitioner appeared and presented proofs relative to the issue whether the District is entitled to conduct evaluations and be reimbursed for the cost of missed appointments.

UNDISPUTED FACTS

Based upon the totality of the evidence presented, both testimonial as well as documentary, the following constitute the undisputed facts in this matter as adduced from the one witness who testified.

Caitlin Cavagnaro testified that she is the Director of Special Services in the District. She reviewed her credentials as set forth in her Certification. (Exhibit A to Petitioner's brief.)

The student, A.S., was referred to the Child Study Team (CST) in September 2015 as a new referral. She sat in on the referral meeting and worked with the case manager and the team to come up with an evaluation plan. A.S. is a sixteen-year-old student who is repeating ninth grade. T.J. is his mother and E.S. is his grandmother who had custody at the time of the evaluation plan. By letter dated June 2, 2105, E.S. requested that Ms. Cavagnaro meet and consider A.S. for a CST evaluation and a meeting was scheduled. (Exhibit B.) The CST sent out an invitation for initial identification and evaluation planning on August 20, 2015 that scheduled a meeting for September 1, 2015. E.S. confirmed the date and time of the meeting. (Exhibit C.) The CST reviewed his records and current progress, which showed that E.S. began failing at Florence High School and accumulating in-school suspensions in May 2015. A meeting at school at the end of May 2015 resulted in a suspension and request for drug testing due to a significant change in behavior at school. A.S. began a program at Princeton House in summer of 2015, which he completed on September 3, 2015.

E.S. and T.J. both attended the meeting along with A.S. and the CST. They came up with a plan for A.S. to be evaluated. Specifically, the CST proposed the following assessments: educational; psychological; social; psychiatric; and a functional behavioral assessment. E.S. provided consent since she had custody and A.S.'s mother, T.J., did not object. (Exhibit D.) The psychological, social, and educational evaluations were conducted by school staff and those assessments are attached as Exhibits E, F, and G to the petitioner's brief. However, the psychiatric evaluation was never completed. T.J. obtained custody of A.S. on October 1, 2015, and she did not want to take him to the psychiatrist, Dr. Zoe Salman. According to the notes in the data management system (Exhibit H), on October 27, 2015, School Psychologist Rachel Taylor contacted T.J. to inform her that she had scheduled an appointment for A.S. with Dr. Salman on November 16, 2015, which T.J. agreed to keep, despite other commitments that T.J. had with A.S., so they would not lose the date. On November 16, 2015, Ms. Taylor called T.J. to remind her of the appointment and T.J. told her that she would be unable to take A.S. because she has to appear in court. She also reported that A.S. will be starting Job Corps on November 24, 2015. A.S. did not keep

the appointment. According to the data system notes, when Ms. Taylor called Dr. Salman's office they had no record of a rescheduled appointment for him.

Dr. Salman's office wrote and called Ms. Cavagnaro and she rescheduled the appointment. On November 19, 2015, Ms. Cavagnaro wrote to T.J. and E.S. who share the same address and informed them that A.S. had been scheduled for an appointment on December 10, 2015. The letter asked them to call Dr. Salman's office if A.S. could not make the appointment and informed T.J. and E.S. that "Missed appointments are subject to a charge by the school district of \$500.00." (Exhibit I.) The exhibit also contains the CST form used to schedule outside evaluations and the record release form. T.J. indicated that she was available all day from Monday to Friday and both T.J. and E.S. signed the record release form. Dr. Salman sent an invoice indicating that A.S.'s mother called the evening before the evaluation and said that A.S. would not be coming to the evaluation. Dr. Salman billed the office \$500 for the missed appointment.

On January 4, 2016, Ms. Cavagnaro wrote to T.J. noting the missed appointment and advising her that the evaluation plan cannot be completed because A.S. missed the psychiatric appointment. She also informed T.J. that, due to several in and out of school suspensions, the FBA also could not be completed. She asked that T.J. respond within five school days to reschedule the appointment or call the office to ask for a meeting to seek removal of the psychiatric and FBA from A.S.'s evaluation plan. To date, she has not heard from T.J.

To illustrate the need for the psychiatric evaluation and FBA, Ms. Cavagnaro introduced the student conduct list enumerating A.S.'s infractions for cutting class, insubordination, threatening to harm another student, drug/alcohol possession and the various detentions and suspensions associated with the infractions. The incidents were dated from September 2015 to December 2015. A.S. has been on home instruction since January 2016, after the last incident occurred. Ms. Cavagnaro testified that home instruction is the most restrictive setting, so it is important that the CST be able to complete the plan to be able to help him. He has to return to school to complete the FBA and he cannot return to school without having the psychiatric evaluation done.

The CST does not have enough information to classify him at this time. She has received nothing in writing regarding Job Corps and he is still enrolled in school.

Ms. Cavagnaro concluded by indicating that the child is in desperate need of evaluation in order to properly assess the extent of his on-going problems.

LEGAL ANALYSIS

As indicated hereinabove, the mother of A.S. has failed to appear at a due process hearing in order to provide input regarding the on-going problems relative to her son. In that regard, I **FIND** that the District has provided ample evidence of the escalating behavioral difficulties of A.S. In particular, I **FIND** that his failing and retention in ninth grade, along with the on-going disciplinary problems, strongly suggest problems which can only be resolved by completing the planned evaluation of the student at this time in order to equip the CST to determine eligibility for special education. The parent's failure to cooperate is resulting in the inability of the District to provide a FAPE. Further, I **FIND** that the most recent reports of discipline problems, when coupled with the mother's report of A.S.'s frustrations in the academic arena, reflect the need to complete the evaluation quickly. And I so **FIND**.

Therefore, I **FIND** that completing A.S.'s evaluation for eligibility for services is absolutely necessary under the provisions of N.J.A.C. 6A:14-3.3. In the process, I also **FIND** that the parent has received ample notice, but failed to comply with the District's reasonable requests, despite the escalating problems manifested regarding her child. This is most regrettable and can only be best resolved by having the complete child study team evaluation completed immediately. For all of the foregoing reasons, I **FIND** and **CONCLUDE** that completion of the psychiatric evaluation is warranted and necessary at this time. Completion of the FBA is also warranted and necessary, but the District has made clear that the CST cannot complete the FBA until A.S. returns to school. Once A.S. returns, A.S. must cooperate with the CST to complete the FBA.

Petitioner requests that the case be handled as an emergent relief request and lays out in its brief the reasons that it meets the standards for emergent relief. Specifically, it argues that the irreparable harm is that the District cannot provide FAPE to the student while the evaluation plan is pending. However, the motion to treat this case as an emergent relief request is **DENIED**. The OSEP transmitted the case as a regular due process petition and I see no reason to change the designation, especially since I am deciding the case in an expedited fashion. The request for an Order to complete the evaluations as set forth in the evaluation plan is **GRANTED** due to the proofs submitted and the respondents' failure to appear to refute any of the testimony pursuant to N.J.A.C. 1:1-5.4.

The District has also asked to be reimbursed for the cost of respondents' missed appointment, specifically \$500 for the missed December 10, 2015 appointment. This is a reasonable request in light of the letter specifically telling T.J. that the District would charge her \$500 for a missed appointment. The request for an Order for T.J. to reimburse the District in the amount of \$500 is **GRANTED**. However, if T.J. makes an appointment for A.S. with Dr. Salman and A.S. keeps the appointment and has the evaluation done within forty-five days from the date of this decision, the \$500 will be waived.

ORDER

It is therefore **ORDERED** that the Florence Township School District shall complete a child study team evaluation regarding A.S. as soon as possible. The parent is **ORDERED** and **DIRECTED** to co-operate regarding completion of the psychiatric evaluation. And, based upon the results of that evaluation, the parties are **ORDERED** and **DIRECTED** to then meet and review the results of that evaluation and plan for A.S.'s return to school within the Florence Township School District and the completion of the FBA. It is further **ORDERED** that T.J. reimburse the Florence Township School District \$500 for the missed psychiatric appointment on December 10, 2015; however, I **ORDER** the District to waive the reimbursement of \$500 if T.J. makes and keeps the

appointment and A.S. completes the psychiatric evaluation within forty-five days of the date of this decision.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2015). 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.

February 22, 2016

DATE

LISA JAMES-BEAVERS, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

cmo

APPENDIX
WITNESSES

For Petitioner:

Caitlin Cavagnaro

For Respondents:

None

EXHIBITS

For Petitioner:

P-1 Brief with Exhibits A through L

For Respondents:

None