

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 07068-15

AGENCY DKT. NO. 2015 22604

SCHOOL DISTRICT OF THE CHATHAMS,

Petitioner,

v.

S.P. AND J.P. ON BEHALF OF L.P.,

Respondents.

Danielle Pantaleo, Esq. for petitioner (Cleary, Giacobbe, Alfieri and Jacobs,
attorneys)

No Appearance by S.P. and J.P., pro se

Record Closed: June 4, 2015

Decided: June 4, 2015

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, the School District of the Chathams (the District) has requested a due process hearing to compel the parents of L.P. to permit the District, through its Child Study Team (CST), to conduct formal triennial re-evaluations. The parents have withheld their consent for these evaluations. Additionally, pursuant to N.J.A.C. 6A:14-2.5, the District initiated this due process proceeding to challenge the request by the parents for an independent neuropsychological evaluation.

A hearing was noticed for June 4, 2015. When the parents did not timely appear, my assistant contacted S.P. via telephone, and she advised that she did not intend to appear. An email forwarded by her shortly thereafter, indicated that she and her husband were “unable to continue with these legal proceedings at this time.” In accordance with N.J.A.C. 1:1-14.4(d) I proceeded to receive ex parte proofs from the school district.

FINDINGS OF FACT

Based upon the documentary and testimonial evidence presented at the hearing, I **FIND** as follows:

L.P. is a twelve-year-old sixth grade student who was classified as eligible for special education services under the classification category Other Health Impaired (OHI) in June 2012, when he was completing third grade. At that time psychological, educational and social evaluations were completed. On February 9, 2015, the District provided notice to the parents of a reevaluation planning meeting and annual review Individualized Education Program (IEP) meeting scheduled for February 27, 2015. At that meeting, the CST indicated that it wished to conduct a triennial reevaluation, to include updated educational testing, a social history update, and an update by the school psychologist of L.P.’s social and emotional functioning. The parents declined to formally consent to such additional testing.

Via letter dated March 17, 2015, the parents requested an independent neuropsychological evaluation of L.P. at district expense. The District replied via letter dated March 20, 2015, indicating that it would be filing for due process as it considered this testing unnecessary.

Dr. Vincent D’Elia testified at the hearing. He is the Assistant Superintendent of Student Support Services for the District, and is a licensed school psychologist. He supervises the work of the CST and was familiar with the documents presented in evidence, as they are student records kept in the ordinary course of the special services department’s business. Apparently, at the February 2015 IEP meeting, the District

offered placement in the Resource Center for English and Mathematics; this offer was rejected by the parents. The District seeks additional testing so that it can better understand L.P.'s current educational status and his instructional needs. The CST remains concerned that he needs the proposed Resource Center placement to benefit from instruction.

D'Elia indicated that the testing proposed by the District will assist in educational planning for L.P.; conversely, the neuropsychological testing sought by the parents will not assist the CST in planning for L.P. and is unnecessary.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The Triennial

Eligibility for special education services starts with a comprehensive multi-disciplinary evaluation intended to identify disabilities that are interfering with learning, and inform the decision to classify and individualize an educational program for a special needs student. N.J.A.C. 6A:14-3.4. Recognizing that a child is not static, and that his or her needs evolve and change with time, the law moreover provides for a triennial review and reassessment of a child's needs and how they appropriately can be met.

N.J.A.C. 6A:14-3.8 provides that "within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be student with a disability." That reevaluation begins with a review of existing data, classroom observations and input from teachers and related services providers. N.J.A.C. 6A:14-3.8(b). On the basis of that review, the Individualized Educational Program (IEP) Team is required to determine what, if any, additional data is needed to determine "[t]he present levels of academic achievement and functional performance and educational and related developmental needs of the student," and "how they should appropriately be addressed in the student's IEP..." N.J.A.C. 6A:14-3.8(b)(iii). There thus are both situations where there is no need for additional assessments, and situations where the IEP Team determines that such assessments

are essential to sound educational decision-making. The regulations make it plain, however, that additional formal assessments may be conducted only with the consent of the parent. N.J.A.C. 6A:14-2.3. Where, as here, consent has been withheld, the school district may file for due process. N.J.A.C. 6A:14-2.7(b).

I **CONCLUDE**, based on the record before me, that the Board's request for leave to conduct formal assessments as part of a reevaluation of L.P. is reasonable, appropriate, and necessary to guide the IEP Team's programmatic decision-making, and that its application to compel consent for such testing should be granted under N.J.A.C. 6A:14-3.4(c). The testing proposed by the February 27, 2015, evaluation planning document (P-4) should be completed within sixty days (60) of the date of this decision. See: N.J.A.C. 6A:14-3.8(c).

The Independent Evaluation

I **CONCLUDE**, based on the record presented that the District has correctly asserted that the neuropsychological evaluation sought by the parents is unwarranted at this time, and that the testing the District has proposed is appropriate. The parental request for an independent neuropsychological examination accordingly, is denied.

ORDER

Based on the foregoing, the relief sought by the petition is **GRANTED** as follows:

1. The Board, through its CST, is granted the authority to conduct the following evaluations of L.P., and the parents are directed to consent to such evaluations and cooperated in making him available:

- a. Psychological
- b. Educational
- c. Social Work Update

This testing is to be completed within sixty days (60) of the date of this order.

2. The request by the parents for an independent neuropsychological evaluation at public expense is **DENIED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2010) 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 (2010). 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.

June 4, 2015

DATE

ELLEN S. BASS, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

APPENDIX

Witnesses

For Petitioner

Vincent D'Elia

For Respondent

None

Exhibits

For Petitioner

- P-1 IEP dated 3/14/2015
- P-2 IEP dated 9/6/2012
- P-3 IEP dated 5/3/2013
- P-4 Notice dated 2/27/2015
- P-5 Invitation to a meeting dated 2/9/2015
- P-6 Letter dated March 17, 2015
- P-7 Letter dated March 20, 2015

For Respondent

None