



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03954-24

AGENCY DKT. NO. 2024-37080

OAKLAND BORO BOARD OF EDUCATION,

Petitioners,

v.

C.G. AND R.G. ON BEHALF OF A.G.,

Respondent.

Stacey Cherry, Esq., for petitioner (Fogarty and Hara, attorneys)

R.G., respondent, pro se

Record Closed: June 17, 2024

Decided: March 14, 2025

BEFORE **WILLIAM COURTNEY, ALJ:**

STATEMENT OF THE CASE

Petitioner, Oakland Boro Board of Education ("District") seeks an Order declaring that it has complied with all state and federal laws in connection with its evaluation of respondents' minor child A.G. and denying respondents' request for an independent educational evaluation ("IEE").

PROCEDURAL HISTORY

On February 7, 2024, the District received respondents' letter request for an IEE consisting of a neuropsychological assessment and psychiatric assessment. On February 14, 2024 the District timely filed a Request for a Due Process Hearing pursuant to N.J.A.C. 6A:14-2.5(c)(2) and the matter was transmitted to the Office of Administrative Law on March 25, 2024. The hearing was held June 17, 2024 and the record closed on that same date.

ISSUE

Does the Oakland School District have to fund an Independent Educational Evaluation consisting of a neuropsychological evaluation and a psychiatric evaluation as requested by the parents on February 7, 2024.

Was the reevaluation of A.G., (which took place between April and June of 2022) appropriate under the State and federal regulations.

FACTUAL DISCUSSION AND FINDINGS OF FACT

A.G. is a rising 9th Grade student who just completed 8th Grade at Barnstable Academy. Prior to Barnstable, A.G. attended Valley Middle School which is part of the public school district in Oakland and was receiving special education on related services. As an 8th grade student, A.G. was in all general education classes and through her IEP had physical therapy and counselling in a small group. Her placement was changed to Barnstable Academy (a general education preparatory school) in December of 2023.

A.G. was first considered for special education and related services in March of 2019 at the request of her mother, R.G.

The Districts' expert witness was Jennifer M. Zimmerle, Director of the Department of Student Personnel and Special Services and holds a Bachelor's degree in psychology, with a minor in education. She went on to earn a master's degree in learning disabilities and also received a Teacher of the Handicapped Certification (for pre-K to age 21). She went on to earn a Learning Disabilities Teacher Consultant ("LDTC") Certification after completing an additional 15 credits and an internship after her master's degree. The LDTC certification authorized her to conduct testing and diagnosis of learning disabilities (including but not limited to cognitive assessments and educational assessments in the areas of reading, writing, math, oral language, oral expression and listening comprehension). Subsequently she received a State of New Jersey Certificate in Supervision. She later attended the College of New Jersey and Ramapo college and obtained a master's degree in educational leadership.

She first started teaching at Hawthorn Christian Academy where she taught Kindergarten, 4th grade, 5th grade and created their special education program from the elementary level through high school. She then taught in the Chatham school district where she was a middle school special education English teacher and also served as a learning consultant on their child study team. After receiving tenure in Chatham, she was hired by the Oakland school district where she served for her first 10 years as the Learning Disabilities Consultant ("LDC") on the Child Study Team ("CST") as well as a case manager at Valley Middle School (where she tested children from pre-K to 8th Grade).

In the Role as LDC she tested approximately 100 children per year and cased managed approximately 75 students with a variety of disabilities and worked closely with parents and educators to ensure the children received the services they needed. For the past 10 years she served as the Director of Student Personnel and Special Services for the Oakland Public Schools overseeing all of student personnel (including counseling, gifted and English as a second language) and all special services personnel which includes the CST, Special education and all related services teachers throughout the

district. She also coordinates and supervises the programs. As part of her job duties, she also reviews CST evaluations and evaluations from outside experts.

Ms. Zimmerle was admitted, without objection, as an expert in special education, assessment to students with disabilities, including learning disabilities (specifically in reading writing and math), interpretations of CST evaluations and IEP development.

Ms. Zimmerle testified that she has reviewed all of A.G.'s CST records (J-1 through 73). A.G. was first referred to the CST on March 25, 2019 via a letter request from her mother. (J-1). The concerns were because of alchemic and emotional challenges. The District first conducted a social history which revealed some stressors at home but an unremarkable health history. Some struggles with her classwork. During her observation she interacted more than her peers with the adults in the environment. Although she was able to interact with her peers appropriately the majority of the time, she did not always respond to social cues given by her peers.

A comprehensive psychological evaluation was conducted by Jennifer Gioia, Psy. D., a Certified School Psychologist. (J-3) On the WISC-V, A.G. earned a full-scale IQ of 97 which classifies her global IQ as within the average range. Her overall intellectual ability as evidenced by her General Ability Index ("GAI") was 107¹ which also placed her in the average range. A.G.'s verbal comprehension skills (VCI=113, High Average), visual spatial processing skills (VSI = 108 Average), fluid reasoning skills (FRI = 97, Average) and short term / working memory (WMI =91 Average) were all within normal limits of functioning. She did display significant weakness in her processing speed abilities (PSI =77, Very low/ Normative Weakness) which suggest that she may have difficulty processing information quickly, especially under conditions that require her to be focused and attentive.

¹ A.G.'s slower speed on processing tasks on the IQ test attenuated her full-scale IQ score.

An Educational Evaluation was conducted by Juliet Letz, M.Ed., LDT-C on 6/14 and 6/17/2019. A.G.'s scores in reading fell within the average range and did not show any concern of a learning disability. In fact, her scores for word attack, reading recall and oral reading were in the high average range. In the areas of written language, A.G.'s scores were Average to High Average with no indication of a learning disability. Her scores in Mathematics were all average with the exception for a Low Average score of 88 in Calculation. This Low Average score was not, however, low enough to indicate a learning disability. A.G.'s scores in listening comprehension were all average and her scores in oral language were all average with the exception of sentence repetition which was Above Average. Again, there was no indication of a learning disability in the areas of oral language or listening comprehension.

Upon receipt of the evaluations the district held an eligibility meeting on July 18, 2019 and A.G. was found not to be eligible for special education and related services at that time. (J-5). Ms. Zimmerle testified that the basis for the non-eligibility determination was that the evaluations conducted did not show the presence of any learning disabilities. A.G.'s parents followed up on the same day of the non-eligibility finding with a letter requesting additional testing.(J-6). Specifically, the parents requested a neuropsychological evaluation and a psychiatric evaluation. The District, upon receiving the written consent of the parents to conduct the Neuropsychological and psychiatric evaluations (J-7), agreed to conduct these two additional evaluations. Shortly after giving consent for the neuropsychological evaluation the parents sent a letter to the District documenting a specific request that the neuropsychologist's testing include memory and attention testing to determine whether A.G.'s deficits are solely the result of processing speed deficits. The District agreed to an additional day of testing so that the additional testing could be accomplished. (J-9, J-10).

Dr. Debra Couturier-Fagan, Ph.D. ABSNP MEd. conducted the Neuropsychological evaluation on August 6 and 7, 2019 and issued her report on August 19, 2019. (J-11). The report revealed the evaluation was focused on Processing Speed, Academic Processing Speed/ fluency, Attention and Memory which were the areas the

parents requested the Neuropsychological evaluation focus on. Various standardized tests were administered, and the results were analyzed in the report. Dr. Fagan found that A.G. met the diagnostic criteria for Unspecified Anxiety Disorder (“AD”) (Situational - Performance) and Attention Deficit Hyperactivity Disorder (“ADHD”) (Mild -Moderate :Situational). Dr. Fagan also reported that although A.G. can at times process material slower than her peers, all the academic fluency measures (Fluency being accuracy and speed) A.G. scored in the Average or higher levels compared to her same aged peers. She also found that her slower processing, some of the time, appears to be primarily related to her AD and ADHD. Dr. Fagen ultimately recommended that A.G. have an IEP and that she be classified as “Other Health Impaired” for her AD and ADHD.

The District also completed the psychiatric evaluation requested by the parents. (J-12). The evaluation was conducted by Ester Fridman, M.D. on August 13, 2019. Dr. Fridman was asked to consider A.G.’s social and emotional concerns in her evaluation. In addition to meeting with A.G., Dr. Fridman met with A.G.’s parents to get a clearer picture of the difficulties A.G. was encountering. Dr. Fridman made a diagnosis similar to that of Dr. Fagen when she concluded that A.G. suffered from ADHD (Inattentive Type) and Adjustment Disorder with Anxiety. She recommended that A.G. initiate outside psychotherapy to further develop her coping skills and address her self- esteem. She also suggested the parents consider stimulant medication to address A.G.’s ADHD. According to the District’s witness, Dr. Fridman considered the possibility that the student may have autism but did not make that finding in this case.

After the Neuropsychological and Psychiatric evaluations were completed, the District convened an eligibility Conference on September 25, 2019 and found A.G. eligible for special education and related services under the classification of Other Health Impaired (“OHI”). (J-13). That determination of eligibility under OHI was consistent with recommendation of the evaluators. The parents acknowledged that they participated in the evaluation and waived the 15-day waiting period and proceeded immediately with an IEP meeting. They did not raise any concerns regarding autism, dyscalculia (math),

dyslexia (reading) or dysgraphia (writing) at that time. The District also did not express any concerns in these areas at that time.

At the IEP meeting held on September 25, 2019 the proposed program for A.G. was General education for all subjects except for mathematics which was a Pull-Out Resource Program. J-14 at p.117. Related services were physical therapy² and counseling in small groups once per week. The counseling was in school counseling to work on her interactions with adults and peers and to assist in her development of positive decision-making skills.

The First annual review of the IEP took place in May of 2020 when A.G. was in fourth grade and the District was planning for 5th grade. Her proposed program going into 5th grade remained the same with all general education subjects with a Pull-out Resource Program for math and continuation of physical therapy and counseling as related services with the same.(J-16, p.146).

The second annual review of A.G.'s IEP took place on May 5, 2021 when A.G. was a rising 6th grader. She remained in general education courses for all subjects and her math instruction was changed from a Pull-out Resource Program to an In Class Resource Program.³ (J-16, p. 178). The reason A.G. was moved into the general education math course was due to the advancements she had made in her skill level in mathematics and she was ready to be moved out of the resource center into a general education math class with support. She continued to receive counseling as a related service so she could continue to work on communication and interaction with her peers.

The physical therapist recommended that A.G. be reevaluated now. In October of 2021, the District proposed conducting a new Physical Therapy ("PT") evaluation and

² Prior to the 1st IEP, A.G. had already been receiving physical therapy pursuant to a 504 plan and the same was incorporated into the IEP.

³ The In Class Resource Program was taught in class by a general education teacher and a special education teacher, A.G. was recommended for this class.

the parents consented. (See J-17). The new PT evaluation was conducted by Micheal K. Serey, MPT on October 26 and 28, 2021. Mr. Serey recommended that A.G. continue with PT and the District agreed to continue providing the PT as a related service to A.G. (J-18).

A.G.'s triennial re-evaluation was due to take place in April of 2022 when A.G. was finishing 7th grade and going into 8th grade. The parents had some questions about the process and the case manager explained the process to them. (J-21). The parents participated in an annual review on April 19, 2022 in advance of the Re-evaluation Planning meeting. (J-23). The following day a copy of the proposed IEP was forwarded to the parents for their review and consideration. (J-24). The IEP again proposed general education for all classes with math continued in the In Class Resource Program. PT and Counseling would also continue on a once per week basis in small groups. (J-22, p.232). At this point the Child study team had no concerns with A.G.'s progress or with her social development.

As a result of the Re-evaluation Planning Meeting held on April 19, 2022, the CST decided that additional information was needed to determine A.G.'s continued eligibility for Special education and related services. It was mutually decided by the CST that psychological, psychiatric and educational assessments were warranted. (J-23) and the parents agreed with the planned evaluations. There were no concerns raised by the parents or any members of the team that A.G. might be suffering from autism. Ms. Zimmerle testified that if Autism was a concern at the time of the Re-evaluation it would have been listed as a concern in the District's April 22, 2022 letter identifying the additional assessments warranted as derived from testing reports, A.G.'s academic progress, teacher observation and parental input. Id. The parents consented to the reevaluation to determine whether A.G. was still eligible for special education and related services under the category of Other Health Impairment due to the diagnosis of ADHD and Anxiety. (J-23) Ms. Zimmerle testified that the parents raised no concerns when they consented.

The district completed an observation of A.G. on May 3, 2022 as part of the re-evaluation. It was reported that she remained attentive to her, followed all directions and appeared to keep up with the lesson and activity. It was also noted that she did not require teacher assistance and that she chatted with her peers while she worked. A.G. never raised her hand to participate.(J-25). Ms. Zimmerle testified that there were no concerns raised about A.G.'s ability to interact with her peers.

Dr. Fridman was again retained to conduct the psychiatric evaluation. Prior to that evaluation she was provided with a letter from A.G.'s case manager, Seton Sweeny, MSW. The letter provided background information concerning A.G., including her current grades and present levels of academic achievement prepared by her teachers and related service providers detailing their observations, her current academic performance and classroom functioning. (J-26). Dr. Fridman was also advised of the parent's concerns that "[A.G.] worries constantly, is sensitive (especially when she perceives that something is unjust) and struggles to let go and move on when issues occur. They shared that [A.G. finds it difficult to do assignments if she doesn't feel they are important. There has been no medical follow up since the initial ADHD diagnosis on 2019." The letter concluded by informing Dr. Fridman that the District is seeking "current diagnostic information and treatment recommendations to assist in determining [A.G.'s] continued eligibility for special education and related services and planning for her educational needs." (J-26, p.254). The present levels of A.G.'s current IEP were also shared with Dr. Fridman, including parental concerns regarding the impact of her anxiety and ADHD on her academic progress. The parents' concerns indicated that A.G. did not do assignments that she did not feel were important and believed that this was related to her ADHD diagnosis. Dr. Fridman analyzed the parent's feedback using the Vanderbilt Assessment which is a rating scale to determine if a child had ADHD.

Dr. Fridman's evaluation noted that he did an interview with the parents and did not indicate any concern was expressed by the parents that A.G. may have been suffering from Autism. She specifically noted in her summary that A.G.'s mother indicated that A.G. has an attitude and is oppositional, but only in school. Dr. Fridman did not give a

diagnosis of autism. The only diagnosis given by Dr. Fridman was ADHD, Combined type. She did not include the additional diagnoses of Adjustment Disorder with Anxiety and Peer Difficulties as he had in his 2019 report three years earlier.

The District also conducted an educational assessment and a report was generated dated June 1, 2022. The report assessed reading, written language, oral language and listening comprehension. Regarding reading, A.G. scored in the average range in all areas except reading recall where she scored in the low average range. There was no indication of dyslexia.

In written language areas assessed, A.G. scored in the average to high average range. There was no evidence of dysgraphia.

In mathematics A.G. tested average in calculation and applied problems and low average in broad math cluster and math calculation cluster. She scored low in math facts fluency which is a timed assessment. This result, according to Ms. Zimmerle, is because her processing speed, due to her IQ, is “a bit lower”. Ms. Zimmerle testified that A.G.’s lower scores in math did not indicate that she could not perform the mathematical tasks but that her slower processing speeds resulted in it taking more **time** to complete the tasks. Moreover, the lower processing speed is no indication of dyscalculia.

Here oral language and listening comprehension scores were either average or high average raising no concerns with weakness in those areas.

The psychological evaluation resulted in a report dated June 5, 2022 which update her cognitive skills. The report indicated that her full-scale IQ of 103 fell within the average range. Subareas of her IQ test indicated that her verbal comprehension was in the superior range. The subtests in the lower range reflected lower processing speeds

according to Ms. Zimmerle. Also, according to Ms. Zimmerle, none of the subtests were indicative of a learning disability⁴.

The psychological, psychiatric and educational evaluations were all provided to the parents on June 6, 2022. (Exhibit 30). The Physical Therapist that was providing A.G. PT services provided an update that indicated she continued to show improvement in her gross motor skills, overall strength, flexibility and balance. (Exhibit 31).

A.G.'s re-evaluation eligibility conference took place on June 15, 2022 to review the results of the evaluations and provide a Re-evaluation Eligibility Report. (Exhibit 33). The report revealed that A.G. remained eligible for Special Education and Related Services under the category OHI based on her diagnosis of ADHD.

After the re-evaluation eligibility determination was made, on June 17, 2022, the parents expressed some concern over the fact that the evaluation was performed virtually and that Dr. Fridman did not include her 2019 diagnosis of Adjustment Disorder with Anxiety and Peer Difficulties in her current report. At the same time the parents indicated that Dr. Fridman's feedback on this issue needs to be determined before deciding whether they would submit a request for an independent evaluation. (Exhibit 33, p. 311).

In response to the parents' concern, the District followed up with Dr. Fridman who, in turn, responded by explaining the prior diagnoses were removed "because based on [A.G.'s] assessment, these issues do not appear to be causing dysfunction and do not reach the level of clinical significance to warrant diagnosis at this time." (Exhibit 33, p.311). Dr. Fridman's response was related to the parents on June 21, 2022, two working days after they first raised their concern with Dr. Fridman's report. The parents do not

⁴ This is due to the fact the none of the subtest scores on the Woodcock Johnson IV test (See Exhibit 28) were 22 points or more below the full scale IQ score of 103 on the WISC-V IQ test. A.G. had no scores on the Woodcock Johnson test, in the areas of reading writing or math the were below an 81, that in turn would indicate a learning disability. Ms. Zimmerle also testified that validity studies were conducted that would permit the diagnosis of a learning disability based upon the scores of the two separate assessment tools.

dispute that the response to their only question concerning the re-evaluation eligibility determination was provided to them on June 21, 2022.

After receiving on July 21, 2022, the only information they claimed they needed to decide if they were going to submit a request for an Independent Educational Evaluation ("IEE"), no request for an IEE was submitted at any time during the remainder of 2022 or the entire year of 2023. What the parents did request on June 23, 2022, after they received the re-evaluation report and one day after receiving their response from Dr. Fridman, was an Occupational Therapy ("OT") evaluation. (Exhibit 34). The District agreed to perform the OT evaluation.

A.G.'s yearly IEP meeting was scheduled for and took place on June 28, 2022. The purpose of the IEP meeting was to consider the results of the reevaluation and plan for any changes that needed to be made for 7th grade.

A notice scheduling the same was provided to the parents and parents were invited to attend. (Exhibit 35). Prior to the IEP meeting, the parents were provided with a progress report showing that A.G. was progressing with regard to her IEP goals and objectives with regard to services she was then receiving in the areas of math, PT and counseling at the end of 6th Grade. (Exhibit 37).

Immediately after the virtual IEP meeting on June 28, 2022, a proposed IEP was emailed to the parents which took into consideration the reports listed above. (Exhibit 39). The parents have an option of signing, filing for due process within 15-days or, as the parents did in this case, simply let the IEP go into effect.

The District did not alter A.G. program in their proposed IEP based upon the re-valuation they had just conducted and according to Ms. Zimmerle, they believed they had sufficient information to prepare and propose the June 28, 2022 IEP. The IEP set continued Goals in Math, PT and Counseling. In counseling added goals were that A.G.

would deal with stressful situations and that she will provide a sense of responsibility. She was also to continue working on her interactions with adults and peers.

For each of the four marking periods in 6th grade, A.G.'s grades for each of her subjects was either an A or a B except for one C that she received in the 3rd marking period in Reading. In each of the four marking periods, for each of her subjects, her teachers commented on A.G.'s progress. For the vast majority of her courses, her teachers indicated that she was doing "excellent work" or that she was "enthusiastic, cooperative and actively contributing." In the remaining 2 courses in single marking periods, she received comment that the teacher was "very pleased" with her progress. There were no negative comments from any of her teachers in any subject or marking period for 6th grade. (Exhibit 41).

As her 7th grade classes began in September of the 2022 school year, the OT evaluation was completed. The conclusion of the OT evaluator was that A.G. demonstrated age-appropriate fine motor and visual motor strengths and abilities. She also demonstrated the skills necessary to be able to independently and efficiently complete all common and necessary classroom tasks such as handwriting, construction and typing tasks. The evaluator concluded that A.G. did not need OT services. (Exhibit 42). The parents thanked the school for conducting the OT evaluation. (Exhibit 43).

The District's review of her goals and objectives after her first marking period in 7th grade shows that A.G. was progressing in the areas of math and counseling. In a memo from her physical therapist, she indicated that A.G. continues to show improvement in her gross motor skills, overall strength, flexibility and balance. (Exhibit 45). Accordingly, it appears that A.G. was progressing in all relevant areas of the IEP imposed after the 2022 re-evaluation. That progress continued in these areas throughout the remainder of status as a 7th grade student at Valley Middle School. (See Exhibits 46 and 47).

After participating in A.G.'s annual review IEP meeting in May of her 7th grade year, the parents were forwarded a copy of her proposed IEP. (Exhibit 48).

In reviewing her progression in Math for the first 3 marking periods in 7th grade, the CST noted A.G. was demonstrating progress in her new in-class math resource program. She received an A in math for all three marking periods.

She also demonstrated progress in science and had As in all three marking periods.

In Social studies she again showed progress and her grades for the first three marking periods were again, all As.

Her physical therapist indicated that she made steady gains in strength, endurance and balance, demonstrated good improvements in her bilateral extremity coordination and good progress with her gross motor skills. He also recommended that she continue to receive PT going forward 1x/week for 30 minutes in an individualized setting.

In Counseling, her counselor reported that A.G. had grown "a lot" over the past year and that their discussions had become much more meaningful. She opened up easily during sessions, was comfortable sharing and had no problem seeking assistance when she needed it. The counselor, while acknowledging A.G.'s progress, indicated they were going to continue to work on interacting with adults and peers, dealing with stressful situations and developing decision-making skills and a sense of responsibility.

The IEP also documented the concerns the parents had as A.G. was about to enter 8th grade. They were concerned about the impact of her ADHD and anxiety on her academic performance and is the cause of her finding it difficult to complete assignments she feels are unimportant. They also expressed concerns about A.G.'s emotional sensitivity and executive functioning skills.

For A.G.'s program as she entered into 8th grade, the CST recommended that she continue in general education classes for Language Arts, Science, Social Studies, Physical Education, Cycle Electives, Lunch and World Language. In Math she was to continue in the In-Class Resource Program. The related services that were recommended continued to be PT and Counseling.

After first discussing the yearly review just prior to the issuance of the IEP, the parents did request a modification to A.G.'s program going forward. They requested that tests and quizzes be given to their daughter in a written version as opposed to computerized version as she entered into her 8th grade year. Even though their daughter was receiving straight As in science and other classes, they felt that grades on exams and quizzes were bringing down higher grades she was receiving on her participation and group projects⁵. In response to the parents' concerns request, the CST agreed to include a modification to the IEP that A.G. would be given an option for paper-based tests and quizzes as opposed to an online version when possible. The parents confirmed, at the hearing, that this request had nothing to do with a belief that A.G. was suffering from autism.

Indeed, the stated reason for the request was to address the effects of ADHD, which was Dr. Fridman's diagnosis in 2022.

After receiving the IEP the parents indicated that they reviewed the IEP and that the IEP "Looked good". They thanked the CST for all their efforts and attention to their concerns and raised no issues with the IEP. (Exhibit 50). Later however, on June 1, 2023, the parents expressed concerns about their daughter's grades for physical education because she had apparently missed some classes. In response to their expressed concerns, the District permitted extra credit so A.G. could bring her grade up. The parents, however, requested modification to the recently approved IEP regarding physical

⁵ The parents relied on an article they reviewed that indicated children with ADHD had difficulty working with technology.

education. The parents requested an accommodation for Physical education to address A.G.'s PT weaknesses. The District then agreed to provide an additional accommodation for her PT weakness and modified the IEP to reflect: "[A.G.] will not be penalized for eye hand coordination skills in Physical Education grading." (Exhibit 54).

In her 4th and final marking period in 7th Grade A.G. received As in all 9 of her courses including Math, Reading, English, Science, Social Studies, Intro to French, Health and Wellness, Physical Education and Engineering Design. (Exhibit 59). All her courses were general education classes. In fact, of the 36 grades she received throughout 7th grade, 32 were As and the other 4 were Bs.

At the end of the 2023 school year, A.G.'s Reading skills were evaluated using the Lexile Reading inventory. The results indicated that she was "Advanced" in her reading skills, and she ranked in the 93rd percentile with respect to her grade level. Her scores on the same assessment tool in 2022 were similar and she ranked in the 94th percentile. Accordingly, there were no concerns with A.G.'s reading level as she was entering 8th grade.

Over the summer, before entering 8th grade, A.G.'s IEP was amended once again. The Amendment changed her 8th grade Math class from an in-class resource Math class, with both a general education and special education math teacher, to a general education math class with no special education teacher. The parents requested this amendment and the District consented to the parents request.

In October of 2023, after the start of 8th grade, the parents requested another amendment to the IEP that would increase A.G.'s weekly counseling from 30 minutes to 44 minutes. Once again, the District complied with the parents' request and increased A.G.'s counseling time.

As of November of 2023, A.G. was attending all general education courses and was receiving counselling and PTV through her IEP. Her grades for her first marking

period of 8th grade were all As except for a B in French. (Exhibit 64, p. 557). A.G.'s November 2023 progress report on her IEP goals and objectives showed progress in her counseling goals and objectives⁶.

In December of 2023, A.G.'s May 23, 2023 IEP was amended for a third time at the request of the parents. This time the parents requested, and the District consented, to transfer A.G. to Barnstable Academy ("Barnstable"), a small private preparatory school. This transfer request came about after the parents attended a Board meeting and expressed their concerns that their daughter was being bullied at school. This complaint by the parents resulted in the superintendent informing them that they would be willing to change A.G.'s placement if they so desired. The parents ultimately agreed to the District's offer to place A.G. at Barnstable.

After A.G. was placed at Barnstable, the District arranged for a transition meeting with the parents and Barnstable to be held on January 17, 2024, to write a new IEP for A.G. Barnstable indicated that A.G.'s level of academic achievement / grade average was an A in math, A in English with her reading and vocabulary at or above grade level. Her Counselor reported that she was easily connecting with her peers and appears to be very happy. Her report card for the 3rd quarter of 8th grade reveals As in English, Physical Science, Pre-Algebra and Accent Reading. She received one B (86) in World History and a Pass in all of her Pass/Fail courses. She ultimately graduated 8th grade from Barnstable. At the time of the hearing her final grades for the year were not reported.

On February 7, 2024, prior to her graduation the parents sent a letter to Ms. Zimmerle requesting an Independent Educational Evaluation for A.G. In the letter they claimed, for the first time in almost two years, and after agreeing with the 2022 re-evaluation, a new IEP and 3 different IEP amendments, that they now disagreed with the re-evaluation conducted in 2022 because it was incomplete and did not address A.G.'s

⁶ The only goals and objectives reviewed in the November 2023 progress report were counseling goals and objectives because there were no longer any goals and objectives to review for Math because A.G. was no longer receiving special education support for math.

needs. Specifically, the parents allege that the Psychiatric evaluation was incomplete and incorrect.

The defects the parents assert concerning the reevaluation are that 1) evaluations should have been conducted to determine the presence of specific learning disabilities including Dyslexia, Dysgraphia and Dyscalculia; 2) a neurological exam is needed to determine the presence of neurological disorders including ADHD and Autism Spectrum Disorder; and 3) There was an insufficient evaluation of A.G.'s social and educational needs in the educational setting.

LEGAL ANALYSIS

This action is predicated on the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400 to-1487, and N.J.S.A. 18A:46-1 to-46. The IDEA provides the framework for special education in New Jersey as reflected in the statutes at N.J.S.A. 18A:46-1 to-46, and the regulations at N.J.A.C. 6A:14-1.1 to-10.2. It requires that Boards of Education provide students between the ages of three (3) and twenty-one (21) who suffer from a disability with a free appropriate public education, ("FAPE"). 20 U.S.C.A. § 1412 (a)(1). In fulfilling its FAPE obligation the Board must develop an Individual Education Plan ("IEP") for the student. N.J.A.C. 6A:14-3.7.

The IEP must provide a "significant and meaningful" educational benefit. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989); Ridgewood Board of Education v. N.E., 172 F.3d 238, 247-48 (3d Cir. 1999). The CST is responsible for conducting evaluations, N.J.A.C. 6A:14-3.1, and the district board of education shall ensure that the evaluations are "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category." N.J.A.C. 6A:14-2.5(b)(7). "A parent may request an independent evaluation if there is disagreement with the evaluation provided by a district board of education." N.J.A.C. 6A:14-2.5(c).

According to N.J.A.C.1:6A-14.4. (a), if the district denies a parental request for an independent evaluation, one may still be afforded to the parents 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.” Ibid. To defeat the parents right to an independent educational evaluation, the district must show that its evaluation is appropriate. See also 34 C.F.R. 300.502(b)(2)(i). Therefore, the issue that must be addressed is whether good cause exists to order an independent evaluation at public expense.

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. There is no good cause to order independent evaluations if it is determined that the CST evaluations are appropriate.

In the matter at issue, the parents originally agreed with the triennial re-evaluation that took place in 2022. They also consented to the IEP that was prepared based on the re-evaluation and requested numerous amendments to the IEP which were all agreed to and implemented by the District. While I **FIND** these actions by the parents are inconsistent with their current position that the re-evaluation was incomplete, this does not necessarily mean that the parents are prohibited from seeking an IEE at public expense.

IDEA does not provide a statute of limitations for a parent's right to disagree with an evaluation for the purpose of obtaining an IEE at public expense. But that does not mean that a parent will be able to abuse the process to obtain a publicly funded independent educational evaluation based on their disagreement with an old evaluation. As a practical matter, a parent's right to disagree with an evaluation and obtain an independent educational evaluation at public expense is tied to the frequency with which the child is evaluated. The IDEA establishes a logical timeframe in which a parent's right

to request an independent educational evaluation is actionable. D.S. Trumbull Bd. of Educ., 975 F.3d 152, 169 (2d. Cir. 2020).

An IEE at public expense is only available to a parent once each time the public agency conducts an evaluation with which a parent disagrees. 34 C.F.R. 300.502(b)(5). The only evaluations that trigger a parent's right to an IEE at public expense are the initial evaluation and the triennial evaluation and that right to an IEE ripens whenever a new evaluation is completed. Id at 170-71. Accordingly, the period within which a parent must express their disagreement and request an IEE is dependent upon the frequency of the evaluations.⁷

At the hearing, the District suggested that the parent's request for an IEE should be denied due to their significant delay in disputing the 2023 re-evaluation. **I FIND** that the IEE was requested prior to the 2025 triennial reevaluation (the next scheduled mandatory or agreed upon re-valuation) and therefore, the parents' request for an IEE was timely. However, before this tribunal can enforce the parents right to an IEE, a determination must be made as to whether the District has shown that its 2022 re-evaluation was appropriate. See also 34 C.F.R. 300.502(b)(2)(i)

After considering all of the testimonial and documentary evidence submitted at the hearing, **I FIND** that the District has shown, by a preponderance of the evidence, that their 2022 re-evaluation was appropriate and that the IEPs developed from 2022 re-evaluation were reasonably calculated to enable A.G. to make progress in light of her circumstances.

From A.G.'s initial referral to the CST in 2019, the facts presented by the Board reveal a continuous and diligent effort to work in unison with the A.G. and her parents to ensure that she thrived during her time in the Oakland Public Schools. The Districts'

⁷ Although the time period for the triennial evaluations are fixed, the parties may agree to more frequent evaluations which would, in turn, increase the number of time a parent could seek an IEE at public expense. *see* 20 U.S.C. 1414(a)(B)(ii).

expert witness was Jennifer M. Zimmerle. For the past 10 years, which includes the entire time A.G. was receiving special education and related services in the District, she served as the Director of Student Personnel and Special Services for the Oakland Public Schools overseeing all of student personnel (including counseling, gifted and English as a second language) and all special services personnel which includes the CST, Special Education teachers and all related services throughout the district. She also coordinates and supervises the programs. As part of her job duties, she also reviews CST evaluations and evaluations from outside experts.

Ms. Zimmerle was admitted, without objection, as an expert in special education, assessment to students with disabilities, including learning disabilities (specifically in reading, writing and math), interpretations of CST evaluations and IEP development.

I **FIND** that Ms. Zimmerle's testimony to be highly credible. She was personally familiar with A.G.'s receipt of special education and related services and on numerous occasions interacted directly with A.G. and her parents. She was thoroughly familiar with A.G.'s extensive file and responsible for the detailed and comprehensive background information provided above. All the Exhibits reviewed and described above were presented by Ms. Zimmerle. The Exhibits were so comprehensive, respondents agreed to the admission of all District's Exhibits as Joint Exhibits.

In finding that the 2022 Re-evaluation was appropriate, I relied on all of the information provided at the hearing but I do place great weight on two factors. The first is that I **FIND** that the evaluations conducted for both the 2019 initial evaluation and the 2022 re-evaluation were sufficiently comprehensive to identify all of A.G.'s special education and related services needs, whether or not commonly linked to the suspected eligibility category of OHI. The second factor, I strongly relied upon in making my decision that the evaluations were appropriate is that I **FIND** that A.G. did in fact thrive in the education environment provided as a result of the evaluations and the IEP'S that grew out of them.

Testimony concerning the appropriateness and the comprehensive nature of the Evaluations was provided by Ms. Zimmerle and is set forth in detail above. There was no credible evidence provided by the parents that would indicate that any of these evaluations were not comprehensive, incomplete or incorrect as alleged in her February 7, 2024 letter requesting an IEE.

The parents also allege in their letter requesting the IEE that discrepancies in the results of the Woodcock Johnson test should have indicated that additional tests were necessary to determine the presence or absence of specific learning disabilities including dyslexia (a disorder that effects reading abilities), dysgraphia (a learning disorder that effects the ability to write) and dyscalculia (a learning disability to process and understand numbers). They also claimed that the discrepancy between A.G.'s verbal comprehension score and her processing speed warranted an evaluation of ADHD and Autism Spectrum Disorder. I **FIND** these conclusions by the parents to be unpersuasive and in total disregard of the facts presented at the hearing.

Dr. Fridman's evaluation noted that he did an interview with the parents and did not indicate any concern was expressed by the parents that A.G. may have been suffering from Autism. She specifically noted in her summary that A.G.'s mother indicated that A.G. has an attitude and is oppositional, but only in school. Dr. Fridman did not give a diagnosis of autism. The only diagnosis given by Dr. Fridman was ADHD, Combined type.

The District also conducted an educational assessment and a report was generated dated June 1, 2022. The report assessed reading, written language, oral language and listening comprehension. Regarding reading, A.G. scored in the average range in all areas except reading recall where she scored in the low average range. According to Ms. Zimmerle, who is a learning disabilities expert, there was no indication of dyslexia.

In written language areas assessed, A.G. scored in the average to high average range. Again, according to the learning disabilities expert Ms. Zimmerle, this indicated there was no evidence of dysgraphia.

In mathematics, A.G. tested average in calculation and applied problems and low average in broad math cluster and math calculation cluster. She scored low in math facts fluency which is a timed assessment. This result, according to Ms. Zimmerle, is because her processing speed, due to her IQ, is “a bit lower”. Ms. Zimmerle testified that A.G.’s lower scores in math did not indicate that she could not perform the mathematical tasks but that her slower processing speeds resulted in it taking more time to complete the tasks. Moreover, the lower processing speed was no indication of dyscalculia.

Also, and perhaps most importantly, time has provided the best indicator that dyslexia, dysgraphia and dyscalculia are not areas of concern and that analysis if the evaluators and CST members on these issues is correct. A.G.’s actual ability to read, write and to perform mathematical calculations are reflected in her grades in the following subject areas :

1. Reading and English

in 6th grade = A

In 7th grade= A

First marking period at Barnstable Academy =A

2. Math

in 6th grade= B

in 7th grade = A

First marking period at Barnstable Academy =A

3. Reading

In 6th grade =A

In 7th grade = A

First marking period at Barnstable Academy =A

In fact, A.G.'s grades, since she has been receiving special education and related services, have been mostly As with a few B's. Her continued progress since she started receiving special education and related services in 2019 can be seen most dramatically in her progress in mathematics. Originally, she received a pull-out resource program for math instruction with a special education teacher. In 7th grade, due to her improving math skills, she was changed to general education math with in-class assistance from a special education teacher and general education teacher. In 8th grade her in-class math instruction was changed to a general education math class, without supports. When that occurred, A.G. was in all general education classes and was only receiving counseling as a related service in her special education program.

With regard to her continuing small group counseling she continues to receive as the only special education service in her IEP, she does appear to be progressing there also. Her IEP Progress Reports while she was attending the Oakland Public Schools all show she was progressing with respect to her goals and objectives. (see Exhibits 37, 44, 46,47,57). Another important indication of A.G.'s progress and ability to interact with her peers, something she has been working on in her counselling sessions for some time, is contained in the January 4, 2024 report of A.G.'s Present Level of Academic Achievement and Functioning Performance from her social worker at Barnstable. The report states:

It has been a pleasure getting to know [A.G.] so far. She and I connected right away, and it's seemingly been even easier for her to connect with her peers. From the day she started, everyone's goal was for [A.G.] to be their best friend! Every time I see her, she's smiling, giggling, chatting, and appears very happy to be here. We're so happy to have her!

Overall, I think [A.G.] has done a beautiful job transitioning to Barnstable, and I'm looking forward to seeing her grow this year!

Based upon a review of the totality of the evidence presented, I **CONCLUDE** that the District has established, by a preponderance of the credible evidence, that the District complied with all legal requirements for conducting evaluations, that the evaluations it performed were appropriate and constitute an accurate and complete representation of A.G.'s abilities, and that no additional evaluations are necessary or warranted. Accordingly, I further **CONCLUDE** that the parent's request for independent evaluations should be denied.

ORDER

I **ORDER** that the District's due process petition be and hereby is **GRANTED** and the parent's request for independent evaluations be and hereby is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) 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.



March 14, 2025

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner

Jennifer Zimmerle, Director of Student Personnel and Special Services

For Respondent:

R.G., parent, respondent

List of Exhibits

Joint Exhibits

- | | |
|------|---|
| J-1 | Initial Referral to CST and referral records |
| J-2 | Social/Developmental History by Susan Wyrovsky, MSW, LSW |
| J-3 | Psychological Evaluation by Jennifer Gioia, Psy.D |
| J-4 | Educational Evaluation by Juliet Letz, M.Ed., LDT-C |
| J-5 | Eligibility Conference Report |
| J-6 | Email from Parents to Jennifer Zimmerle regarding request for further evaluations |
| J-7 | Request for Consent for an Addition to Initial Evaluation Plan |
| J-8 | Email from Parents to Juliet Letz regarding Neuropsychological Evaluation |
| J-9 | Email from Jennifer Zimmerle to Parents regarding appointment dates with Debra Couturier-Fagan PhD ABSNP MEd |
| J-10 | Email from Parents to Jennifer Zimmerle regarding appointment dates with Debra Couturier-Fagan PhD ABSNP MEd |
| J-11 | Cross-Battery Assessment of Processing, Attention and Memory by Debra Couturier-Fagan PhD ABSNP MEd dated 8/19/2018 |
| J-12 | Psychiatric Evaluation by Ester Fridman, M.D. dated 8/13/2019 |
| J-13 | Eligibility Conference Report |

- J-14 Individualized Education Program
- J-15 Individualized Education Program
- J-16 Individualized Education Program
- J-17 Letter from Seton Feeney, MSW to Parents regarding re-evaluation and enclosing Request for Consent for an Evaluation
- J-18 Physical Therapy Evaluation by Michael K. Serey, PT, MPT
- J-19 Email between Seton Feeney, MSW and Parents regarding IEP and re-evaluation planning meeting
- J-20 Email from Seton Feeney, MSW to Parents and enclosed letter regarding IEP and re-evaluation planning meeting
- J-21 Emails between Seton Feeney, MSW and Parents regarding IEP and re-evaluation planning meeting
- J-22 Email from Seton Feeney, MSW to Parents and enclosed proposed IEP dated 4/19/2022
- J-23 Email from Seton Feeney, MSW to Parents and enclosed letter and evaluation plan regarding Child Study Team re-evaluation planning meeting and parent consent to re-evaluation plan
- J-24 Email from Seton Feeney, MSW to Parents regarding Psychiatric Evaluation and enclosed Authorization to Share Information
- J-25 Case Manager Classroom Observation by Seton Feeney, MSW
- J-26 Email from Seton Feeney, MSW to Ester Fridman, M.D. and enclosed letter regarding Psychiatric Evaluation and Present Levels of Academic Achievement and Functional Performance
- J-27 Psychiatric Evaluation by Ester Fridman, M.D.
- J-28 Educational Re-Evaluation by Arlene Ishak, M.A., LDT-C
- J-29 Psychological Evaluation by Anna Zalokostas, M.S.Ed.
- J-30 Email from Seton Feeney, MSW to Parents and enclosed letter regarding Re-Evaluation Eligibility Meeting and evaluation reports
- J-31 Physical Therapy Progress Report by Rachel Secemski, PT, DPT
- J-32 Email from Seton Feeney, MSW to Parents and enclosed Eligibility Conference Report
- J-33 Email from Seton Feeney, MSW to Parents regarding Psychiatric Evaluation by Ester Fridman, M.D.
- J-34 Email between Seton Feeney, MSW and Parents regarding request for Occupational Therapy Evaluation
- J-35 Letter from Seton Feeney, MSW to Parents regarding IEP meeting and enclosed Consent for Excusal form

- J-36 Email from Seton Feeney, MSW to Parents enclosing letter and consent regarding request for Occupational Therapy Evaluation
- J-37 IEP Goals and Objectives Progress Reporting
- J-38 Email from Seton Feeney, MSW to Parents regarding IEP meeting and Occupational Therapy Evaluation
- J-39 Email from Seton Feeney, MSW to Parents and enclosed proposed IEP of 6/28/2022
- J-40 Notes regarding IEP meeting
- J-41 Report Card (Sixth Grade)
- J-42 Letter from Seton Feeney, MSW to Parents and enclosed Occupational Therapy Evaluation by Lisa Macaluso, OTD, OTR/L dated 7/14/2022
- J-43 Email between Seton Feeney, MSW and Parents regarding Back to School Check In
- J-44 IEP Goals and Objectives Progress Reporting
- J-45 Email from Seton Feeney, MSW to Parents and enclosed Physical Therapy Progress Report by Rachel Secemski PT, DPT dated 11/14/2022
- J-46 IEP Goals and Objectives Progress Reporting
- J-47 IEP Goals and Objectives Progress Reporting
- J-48 Email from Seton Feeney, MSW to Parents and enclosed proposed IEP dated 5/5/2023
- J-49 Email between Seton Feeney, MSW and Parents regarding proposed IEP dated 5/5/2023
- J-50 Email from Seton Feeney, MSW to Parents regarding IEP
- J-51 Email between Seton Feeney, MSW and Parents regarding Physical Education class
- J-52 Email from Parents to Seton Feeney, MSW regarding Physical Education class
- J-53 Email from Seton Feeney, MSW to Parents regarding Physical Education class
- J-54 Email between Seton Feeney, MSW and Parents regarding proposed IEP Amendment for Physical Education class
- J-55 Email from Seton Feeney, MSW to Parents enclosing letter and consent form regarding proposed IEP Amendment
- J-56 Email from Seton Feeney, MSW to Parents regarding IEP Amendment consent form
- J-57 IEP Goals and Objectives Progress Reporting

J-58	Email from Seton Feeney, MSW to Parents regarding IEP Amendment Request letter and consent form
J-59	Report Card
J-60	Reading Inventory
J-61	IEP Amendment
J-62	IEP Amendment
J-63	IEP Amendment
J-64	Courses and Grades for Marking Period 1 and Progress Report
J-65	IEP Amendment
J-66	LinkIt Score Reports
J-67	Quarter 2 Report Card (Barnstable)
J-68	IEP and Present Levels from Barnstable
J-69	Quarter 3 Report Card (Barnstable)
J-70	Letter from Parents to Jennifer Zimmerle regarding Request for Independent Educational Evaluation
J-71	Fountas and Pinnell Text Level Gradient
J-72	Curriculum Vitae and Certifications of Jennifer Zimmerlee
J-73	Email between Parents and case manager