

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

**FINAL DECISION**

OAL DKT. NO. EDS 05268-18

AGENCY DKT. NO. 2018-27744

**PARSIPPANY-TROY HILLS TOWNSHIP**

**BOARD OF EDUCATION,**

Petitioner,

v.

**K.K. AND A.K. ON BEHALF OF A.K.,**

Respondents.

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**Alison Kenny**, Esq., for petitioner (Schenck, Price, Smith & King, LLP, attorneys)

**Donald Soutar**, Esq., for respondents (John D. Rue & Associates, LLC, attorneys)

Record Closed: August 2, 2019

Decided: August 8, 2019

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

**STATEMENT OF THE CASE**

On October 2, 2017, petitioner Parsippany-Troy Hills Township Board of Education proposed an educational evaluation, a functional psychological evaluation, and a social history to determine whether respondents' son A.K. was eligible for special education and related services. Respondents K.K. and A.K. neither objected to the evaluations nor provided expert testimony to rebut their appropriateness. Are respondents entitled to an independent psychiatric evaluation? No. A parent shall be entitled to independent

evaluations unless the school district shows that its evaluations were appropriate. N.J.A.C. 6A:14-2.5(c)(1).

## **PROCEDURAL HISTORY**

### **I.**

A.K. is currently eleven years old. He is in fifth grade and receives accommodations under a 504 Plan. In September 2017, respondents referred A.K. to the child study team for an evaluation due to their concerns about their son's social and emotional development. Before the evaluation-and-planning meeting, respondents provided a copy of a report from Robert Trobliger, a licensed neuropsychologist, who had evaluated A.K. in May 2017, which the child study team reviewed and considered.

On October 2, 2017, the evaluation-and-planning meeting was held, and the parties agreed that the child study team would update the social history and perform both an educational evaluation and a functional psychological evaluation, because respondents suspected that A.K. was emotionally disturbed, which affected his educational performance, and he was in need of special education and related services.

On November 3, 2017, Christina D'Ambola, a learning disabilities teacher consultant (LDTC), performed the educational assessment. The evaluation included an interview with A.K., an interview with his classroom teacher, an observation of A.K. in class, and an observation of A.K. while testing. The testing included standardized testing appropriate for his age.

On November 6, 2017, Kim Rom, a school social worker, completed the social history. This update included interviews with respondents and with the classroom teacher. The update also included a review of Trobliger's report.

On November 15, 2017, Jessica Hensal, a certified school psychologist, performed a functional psychological evaluation, which included a review of records, an observation of A.K. in class, and consideration of both parent and student rating scales.

On December 18, 2017, the parties met to consider the results of these evaluations, and the child study team determined that A.K. was ineligible for special education and related services but could continue to participate in the general-education classroom setting with the accommodations provided in his 504 Plan.

To date, A.K. continues to participate in the general-education classroom setting, has achieved satisfactory academic marks, and has either met or exceeded expectations in the PARCC assessments.

On March 19, 2018, respondents notified petitioner that they disagreed with the evaluations and requested independent educational, psychological, and psychiatric evaluations.

## II.

On February 27, 2018, K.K. notified Rom by email that she disagreed with the evaluations and requested independent educational, psychological, and psychiatric evaluations.

Since Rom was not the case manager for A.K., and since petitioner does not accept email for such requests under board policy, Rom advised A.K. to put her request in writing.<sup>1</sup>

On March 29, 2018, petitioner filed a petition for a due-process hearing with the Office of Special Education Policy and Procedure (OSEPP), seeking an order denying the request for independent evaluations.

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<sup>1</sup> Board policy explicitly states that the school district does not accept email requests for evaluations:

The school district will not accept the use of electronic email from the parent(s) to submit requests to a school official regarding referral, identification, evaluation, classification, and the provision of a free, appropriate public education.

[Policy 2460, Special Education, Paragraph 18]

On April 12, 2018, OSEPP transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, 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 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 -18.4.

Currently, respondents only seek a psychiatric evaluation, so whether respondents are entitled to an independent psychiatric evaluation is the only issue to be resolved in this case.

On May 1, 2019, I held the hearing; on August 2, 2019, the parties submitted their post-hearing briefs; and on that date, I closed the record.

### **FINDINGS OF FACT**

Based on 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 as **FACT**:

#### **I.**

Christina D'Ambola is an experienced LDTC and is the case manager for A.K. Among her responsibilities as an LDTC and case manager are writing and updating individualized education programs and performing educational testing for eligibility. Throughout the course of her career, D'Ambola has participated in over 100 procedures and proceedings to determine the eligibility of students for special education and related services. After she testified about her education, training, and experience as a special-education teacher, LDTC, and education evaluator, I accepted her as an expert in these three areas. From her testimony, D'Ambola proved to be both a credible and reliable witness.

On October 2, 2017, the parties met for an evaluation-and-planning meeting, and the child study team proposed that an evaluation was warranted to determine if A.K. had

a disability. It was determined that A.K. was suspected of having a disability that adversely affected his educational performance and was in need of special education and related services. The area of suspected disability was emotionally disturbed.

At the meeting, respondents shared their concerns and provided the report from Trobliger, who had evaluated A.K. on May 30, 2017.

At the hearing, A.K.'s mother testified that A.K. had a history of seizures and chronic headaches, that A.K. had been diagnosed with attention deficit hyperactivity disorder (ADHD) and autism, and that A.K. had difficulty making friends. She also explained that A.K. had been picked on at school during his time in-district. Although K.K. used the term "bullied," the record is devoid of any instances of harassment, intimidation, or bullying.

For the sake of completeness, the record also indicates that A.K. was first found eligible for special education and related services under the category preschool child with a disability, but respondents left the district when A.K. was in kindergarten. They returned when A.K. was in first grade, when A.K. was again found eligible for special education and related services, but this time under the category other health impaired, and A.K. was placed in a language-learning-disabilities class.

In second grade, A.K. was placed in a general-education class with in-class support for math and study skills. At the end of second grade, A.K. was reevaluated and found ineligible for special education and related services. Nevertheless, A.K. was provided with accommodations under a 504 Plan and remained in his general-education class for third, fourth, and fifth grades.

It was during the start of fifth grade, late September 2017, when respondents referred A.K. to the child study team for evaluation because they had concerns about his social and emotional development.

Meanwhile, respondents had already referred A.K. to Trobliger for a neuropsychological evaluation.

In his report, dated May 30, 2017, Trobliger details his comprehensive evaluation and summarizes that A.K. has an overall level of intellectual functioning in the average range, which is generally appropriate for his age and background and is consistent with prior testing. The sub-indices of language, visuospatial/visuomotor ability, and information-processing speed were in the average range and suggested no weaknesses. Overall level of reasoning ability and overall level of attention/working memory were in the high-average range, had improved from the average range from two years before, and were of no concern. Likewise, A.K.'s scores on various tasks assessing his cognitive functioning were in the low-average to high-average range and were consistent with prior testing. Difficulties in the areas of visuomotor integration and fine motor control, combined with the variable legibility of his handwriting, merely suggested an evaluation to determine if occupational therapy were warranted. Moreover, scores involving academic-achievement levels for reading, written expression, and mathematics were in the average to very superior range. As Trobliger wrote, "These scores did not suggest any need for any pull-out class or other special education setting to address academic difficulties." In fact, Trobliger attributed any difficulties with homework to A.K.'s periodic absences and missing class.

Trobliger continued that he observed only some mild inattentiveness during his evaluation, and considering the information he took from both the parent and the teacher questionnaires, he believed a diagnosis of "other specified ADHD" (a milder version of the original diagnosis of "ADHD—predominantly hyperactive-impulsive presentation") was warranted, which according to Trobliger, suggested improvement in A.K.'s condition. Trobliger specified that A.K.'s tendencies for losing things, leaving his seat, and impulsivity were areas of improvement. Nevertheless, Trobliger acknowledged that A.K. still had trouble focusing, attending to details, and managing distractions, suggesting that the accommodations in the 504 Plan remained beneficial.

Similarly, Trobliger wrote that the information he gathered from his interview with A.K., his observations of A.K., his evaluation of A.K., and the information he gathered from both the parent and the teacher questionnaires indicated that the diagnosis of autism also remained appropriate, and he suggested that A.K. would benefit from ongoing

therapy to develop his social skills. But Trobliger did not even suggest that this social-skills development take place in or at school. In fact, Trobliger wrote that his primary recommendation, given the reports of teasing or bullying by others, combined with A.K.'s demonstrated interest in forming friendships and awareness of his difficulties in doing so, was therapy outside of school. As such, Trobliger does not write, suggest, indicate, or otherwise imply that A.K. should receive special education and related services under any category, let alone under the category emotionally disturbed.

Regardless, the child study team—from its review of records and from its consultation with respondents—proposed an educational evaluation, a functional psychological evaluation, and a social history to determine whether A.K. was eligible for special education and related services under the category emotionally disturbed. Significantly, respondents did not object to any of these evaluations or assessments and did not suggest or request any others. Hensal would later corroborate this. Accordingly, at the conclusion of the evaluation-and-planning meeting on October 2, 2017, A.K.'s father provided his written consent for these evaluations.

## II.

On November 3, 2017, D'Ambola performed the educational evaluation. At the hearing, D'Ambola testified that she evaluated A.K. in the areas of reading, written expression, and mathematics; that A.K. scored in the average to high-average range for all tests; and that A.K. neared the superior range for some subtests. D'Ambola continued that A.K. exhibited a lot of strengths and no weaknesses, comparable to what Trobliger had found. D'Ambola added that A.K. was “a pleasure to work with” and exhibited none of the nervousness or anxiousness she would have expected to find in a child who was suspected of being emotionally disturbed.

In her report, D'Ambola provided greater detail. She wrote that A.K.'s classroom teacher also reported that A.K. is a pleasure to have in class, and that A.K. is an attentive, hardworking, and self-motivated individual, who takes his responsibilities seriously, participates in class, is both cooperative and respectful, and takes suggestions well. A.K.'s teacher continued that A.K. quickly transitions from one task to another and

catches on quickly to concepts he misses when he is absent. Although A.K.'s teacher identified two boys with whom A.K. prefers to work and play, she acknowledged that A.K. prefers to work alone when given the choice. A.K.'s teacher also acknowledged that A.K. does have difficulty making connections and would benefit from support in this area. Nevertheless, A.K.'s teacher reported that A.K. doesn't give up easily, became more comfortable asking for clarification as the year progressed, is highly organized, and never missed turning in an assignment. In short, A.K.'s teacher made no mention of anything that would even suggest that A.K. is emotionally disturbed.

D'Ambola reported that A.K. was polite and personable during their encounter and comfortable and at ease during the testing. In fact, she wrote that A.K. was "exceptionally cooperative." Moreover, D'Ambola asserted that A.K.'s conversational proficiency is advanced, and that A.K. was attentive to the tasks. Indeed, D'Ambola wrote that that A.K. liked school—with no mention of teasing or bullying:

When asked about school, [A.K.] reported that he likes fifth grade and Mrs. Correia is very nice. He enjoys school and likes recess. [A.K.'s] favorite subject is Language Arts because he is good at spelling, meanings of words, and he's a good writer. His favorite story he wrote this year is The Turtle. He indicated that it was his favorite because it had seven paragraphs. [A.K.'s] least favorite subject is math because there are lots of steps to solve problems. When asked about homework, [A.K.] said it was easy and sometimes he needs help with spelling and math. His favorite books he's read are Wonder and Lego Books. [A.K.] also enjoys playing with Legos when he is at home. Extra-curricular activities include Jiu-Jit-Su and Mathnasium.

[J-2.]

Because A.K.'s test scores were so good, D'Ambola testified that she, and the other members of the child study team, saw no reason for any additional testing whatsoever, and certainly not to determine whether A.K. was emotionally disturbed.



III.

On November 15, 2017, Hensal performed the psychological evaluation. At the hearing, Hensal testified that in her capacity as a school psychologist, she performs intelligence testing; gauges behavioral measures; attends planning, eligibility, and IEP meetings; and has performed all these functions more than seventy times over her six-year career. Based on her education, training, and experience, Hensal was accepted as an expert in school psychology. Like D'Ambola, Hansel proved to be both a credible and reliable witness.

To start, Hensal corroborated that respondents did not object to any of the proposed evaluations or assessments and did not suggest or request any others. She testified that she did a functional psychological evaluation because emotional disturbance was the concern. She continued that A.K. was reported at risk for some domains, but explained that those results only correlated with what his mother had reported and not what his teacher had reported. As Hensal further explained, it did not manifest in the classroom. In fact, Hensal noted that A.K. did the work he was assigned when she observed him, and that he did it independently, without any negative interactions with his peers.

Regarding the testing, Hensal testified that A.K. did "fine," that her findings correlated with Trobliger's findings, and that no additional testing was necessary. When asked about the need for a psychiatric evaluation, which respondents were requesting, as opposed to a psychological evaluation, which she had performed, Hensal asserted that a psychiatric evaluation is not needed for a determination of emotional disturbance in general, let alone for an assessment of A.K. in particular. In sum, Hensal asserted that A.K.'s social and emotional state did not impact his ability to access the education in the classroom.

In her report, Hensal provided background information from her review of records and from her interviews with teachers and respondents, a summary of her classroom observation, and her interpretation of the tests she administered. Hensal specified at the hearing and in her report that A.K.'s teacher and mother were administered the Behavior

Assessment System for Children-Third Edition (BASC-3), which is used to measure the behavior and emotions of children and adolescents using three different rating scales. Regarding the Teacher Rating Scale, the results indicate that A.K. is functioning within normal limits across all scales.

Regarding the Parent Rating Scale, however, the results indicate that A.K. is functioning within the clinically significant range in some domains (internalizing problems domain, behavioral symptom index, and adaptive skills domain), the at-risk range in one domain (externalizing problems), the clinically significant range in some subdomains (hyperactivity, anxiety, depression, somatization, atypicality, withdrawal, adaptability, social skills, leadership, daily living skills, and functional communication), and the at-risk range for other domains (attention problems and aggression).

Regarding the Self-Report, the results indicate that A.K. is functioning within the normal range on the internalizing problems, inattention/hyperactivity, and emotional symptom indexes, but in the at-risk range for the personal adjustment and school problems domains, the at-risk range for the attitude to school, anxiety, personal adjustment, and interpersonal relations subdomains, and the clinically significant range for the self-reliance subdomain.

In the Self-Report, A.K. reported that he didn't like school but didn't want to quit it. He also reported that he was often nervous and stressed. He noted that he had difficulty making friends, but didn't think that his classmates didn't like him or that they didn't want to be with him. A.K., however, did not think he could solve his problems on his own. Nevertheless, he reported that he is sometimes a dependable friend, that he is sometimes good at schoolwork, and that he is sometimes good at decision-making.

From his interview, A.K. stated that his favorite subject is media because he enjoys reading, that his favorite academic subject is language arts because he loves writing stories, but that his least favorite subject is math because he finds it difficult, although he still considered himself good at it. A.K. acknowledged that he does find socializing and making friends difficult, yet he stated that he still has three friends with whom he is comfortable and whom he could trust. A.K. even shared that he has friends outside of

school who live in his apartment complex. In fact, A.K. said, in contrast to his Self-Report, that he actually enjoys class, that he actually likes his teacher, and that he actually feels comfortable in the classroom. Finally, A.K. stated that outside of school he enjoys playing with Legos and on his iPad, that he participates in Jiu-Jitsu, and that he goes to Mathnasium for tutoring.

In her report, Hensal merely recommended that the results be discussed with the child study team and used for appropriate programming. She did not even hint at the need for any further evaluations, let alone a psychiatric one. Once again, Hensal opined that while A.K.'s overall self-concept wasn't strong, it did not manifest in the classroom. In other words, it did not adversely affect his educational performance.

#### IV.

On December 18, 2017, the parties met for an eligibility-determination meeting. D'Ambola testified that the child study team reviewed all the evaluations and records in its possession and determined that A.K. was ineligible for special education and related services because he did not have a disability that adversely affected his educational performance. The notice was admitted into evidence as J-7. In fact, D'Ambola noted that A.K. continues to work at or above grade level. Still, the child study team recommended the continuation of the accommodations in the 504 Plan, including the provision of a social-skills group. It also recommended private counseling outside of school.

Although respondents disagreed with the determination of ineligibility, they had no questions about the evaluations or their recommendations, and they requested no additional evaluations or assessments.

Meanwhile, D'Ambola asserted that the child study team had no concerns whatsoever about its determination of ineligibility, how it was obtained, or whether any additional evaluations or assessments were needed, all points that Hensal echoed during her testimony.

More significantly, respondents provided no expert testimony to discount or challenge the straightforward and unadorned testimony petitioner provided.

Likewise, respondents provided no expert testimony to support their claim that A.K.'s absences from school somehow warranted psychiatric evaluation.

## **CONCLUSIONS OF LAW**

### **I.**

As a threshold issue, respondents argue that petitioner filed its petition for a due process hearing out of time because K.K. requested the independent evaluations on February 27, 2016, and petitioner did not file its petition until March 29, 2017, in violation of N.J.A.C. 6A:14-2.5(c)(1)(ii), which states that an independent evaluation must be provided unless the school district initiates a due process hearing “not later than 20 calendar days after receipt of the parental request.” In addition, respondents argue that any board policy restricting their ability to request such evaluations is *ultra vires*. In the alternative, respondents argue that petitioner waived this policy because petitioner had previously communicated with respondents by email. At bottom, respondents argue, referencing federal law, 20 U.S.C. 1415(b), and 34 C.F.R. 300.502, that petitioner caused “unnecessary delay” in violation of the spirit of these federal laws.

These arguments, however, are overstated. As petitioner rightly notes, under N.J.A.C. 6A:14-1.2(b)(18), each district board of education must have policies, procedures, and programs approved by the Department of Education to inform parents whether they may use email to submit requests for independent evaluations, and that petitioner has such a policy, which explicitly states that it does not accept email requests for evaluations. In addition, petitioner rightly notes that this policy has been approved by the Department of Education, has not been challenged, and has not been overturned. Moreover, petitioner rightly notes that Rom informed K.K. of this policy, and advised her to put her request in writing, which petitioner did not receive until March 19, 2019. As such, the filing on March 29, 2019, is well within the requisite 20 days, and any alleged

delay is on the part of respondents, not petitioner. Accordingly, I **CONCLUDE** that petitioner filed its petition timely.

II.

A parent shall be entitled to independent evaluations unless the school district shows that its evaluations were appropriate. N.J.A.C. 6A:14-2.5(c)(1).

In this case, petitioner has shown that its evaluations were appropriate. From the start, the child study team, from its review of records and from its consultation with respondents, proposed an educational evaluation, a functional psychological evaluation, and a social history to determine whether A.K. was eligible for special education and related services under the category emotionally disturbed, and respondents did not object to any of these evaluations or assessments nor request any additional evaluations or assessments, including the psychiatric evaluation they now seek. Moreover, neither the educational evaluation D'Ambola later performed nor the functional psychological evaluation Hensal later performed indicated any emotional disturbance, let alone a need for a psychiatric evaluation, as both D'Ambola and Hensal both testified and wrote.

For example, D'Ambola testified that A.K. exhibited none of the nervousness or anxiousness she would have expected to find in a child who was suspected of being emotionally disturbed. Similarly, Hensal testified that she thought that A.K. had done fine during his testing, that her findings correlated with Trobliger's findings, and that no additional testing was necessary. Indeed, Hensal asserted that a psychiatric evaluation is not even the right test for A.K. if one wanted to determine emotional disturbance. Above all, Hensal opined that A.K.'s social and emotional state, as it was, did not impact his ability to access the education in the classroom.

Meanwhile, respondents have not shown that the evaluations were inappropriate or that a psychiatric evaluation is either appropriate or necessary in this case. To be sure, respondents provided no expert testimony whatsoever to counter any of the expert testimony petitioners provided. Even if petitioner's witnesses are not considered experts, as respondents argue, a preponderance of the evidence still does not exist to show that

the evaluations were inappropriate or that a psychiatric evaluation is either appropriate or necessary in this case. As a result, I **CONCLUDE** that petitioner has proven by a preponderance of the evidence that the evaluations in this case were appropriate.

**ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the request for an independent psychiatric evaluation is hereby **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Programs.

August 8, 2019  
\_\_\_\_\_  
DATE

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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency

August 8, 2019  
\_\_\_\_\_

Date Mailed to Parties:  
dr

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**APPENDIX**

Witnesses

For Petitioner:

Christina D'Ambola  
Jessica Hensal

For Respondents:

K.K.

Documents

Joint:

- J-1 Initial Identification and Evaluation Planning—Proposed Action Notice dated October 2, 2017
- J-2 Educational Evaluation by D'Ambola dated November 20, 2017
- J-3 Social Assessment by Kim Rom, School Social Worker, dated November 20, 2017
- J-4 Functional Psychological Evaluation by Hensal dated November 20, 2017
- J-5 Neuropsychological Evaluation by Robert Trobliger, Ph.D., dated May 30, 2017
- J-6 Email exchange between K.K. and Richard Breiten, School Counselor, Northvail Elementary School, from December 10, 2017, to December 11, 2017
- J-7 Initial Eligibility Determination—Not Eligible Notice dated December 18, 2017
- J-8 Email exchange from K.K. to Rom dated February 27, 2018
- J-9 Letter from K.K. to Anthony Giordano, Executive Director of Pupil Services, dated March 15, 2018

For Petitioner:

- P-1 District Policy 2460 Special Education

For Respondents:

- R-1 Email exchange between K.K. and Richard Breiten from January 25, 2016, to January 26, 2016
- R-2 Identified; not in evidence
- R-3 Identified; not in evidence
- R-4 Identified; not in evidence
- R-5 Identified; not in evidence
- R-6 Identified; not in evidence
- R-7 Student Daily Attendance Report dated October 9, 2017
- R-8 Email from Rom to Hensal dated November 7, 2017