

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

**DECISION**

OAL DKT. NO. EDS 05392-16

AGENCY DKT. NO. 2016 24267

**HADDONFIELD BOARD OF  
EDUCATION,**

Petitioner,

v.

**S.R. O/B/O P.R.,**

Respondent.

---

**Sanmathi Dev**, Esq., for petitioner (Capehart Scatchard, attorneys)

**S.R.**, respondent, pro se

Record Closed: June 17, 2016

Decided: June 24, 2016

BEFORE **ROBERT BINGHAM II**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On April 11, 2016, petitioner, Haddonfield Board of Education filed for due process objecting to respondent S.R.'s request for an independent neuropsychological evaluation. On April 19, 2016, in lieu of an answer, S.R. filed a motion to dismiss the petition. On April 29, 2016, the Board filed an opposition to S.R.'s motion. By Prehearing Order dated June 9, 2016, the matter was scheduled for hearing on July 11 and August 30, 2016. By letters dated June 6 and 10, S.R. and the Board respectively submitted supplemental arguments that were each filed on June 13, 2016. Also on June 13, S.R. filed a reply, as did the Board on June 17, 2016, when this record closed for purposes of the instant motion to dismiss.

## **FACTUAL DISCUSSION**

This matter arises from S.R.'s request for an Independent Educational Evaluation ("IEE") for her daughter, P.R., in order to create an appropriate Individualized Education Plan ("IEP"). (Respondent's Brief.) P.R. is a seventh grade student at Haddonfield Middle School who is eligible for special education and related services. (Due Process Petition) On January 15, 2016, S.R. emailed P.R.'s case manager with concerns about P.R.'s reading and writing skills. (Id. at 2, p. 6.) On January 26, 2016, P.R. provided written consent for Haddonfield School District ("the District") to conduct a learning assessment and a psychological assessment. (Id.) The District completed the assessments and, on March 9, 2016, the District reviewed the results with S.R. (Id.) On March 10, 2016, S.R. requested an IEE. (Id.)

On March 18, 2016, the District's director of Special Education notified S.R. that her request for an IEE was denied and that the District would be filing for due process. (Petitioner's Brief.) The District then closed for the entire week beginning March 21, 2016, for spring break. (Id.)

The Board filed a petition for due process on April 6, 2016, asserting that the additional IEE is not required. (Due Process Petition) On April 19, 2016, S.R. filed a motion to dismiss the due process petition claiming that it was not filed in a timely manner.

## **LEGAL ANALYSIS AND CONCLUSION**

S.R. claims that the District's petition for due process should be denied and that the District is required to provide the requested independent evaluation for P.R. The Board opposes, citing "mitigating circumstances" and asserts that respondent is not entitled to the requested independent evaluation, even if the petition was untimely.

Under the Individuals with Disabilities in Education Act (“IDEA”), all states receiving federal education funding must provide every disabled student in their districts with a “free appropriate public education [“FAPE”] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” G.A. v. River Vale Bd. of Educ., 2013 U.S. Dist. LEXIS 133911, \*32 (D.N.J. Sept. 18, 2013); (quoting 20 U.S.C. 1412(a)(1)(A)). To accomplish this, districts must specially create a program for each handicapped child. Id. “School districts achieve this goal by first evaluating the student, and then discussing the results in a meeting with the student’s parents, teachers, and a curriculum specialist from the local school district.” Id. at \*32-33; 20 U.S.C. 1414(d)(1)(B). Then the district must implement an IEP for the student. Id.; 20 U.S.C. 1412(a), 1414 (d).

In New Jersey, if, during a re-evaluation of student to create an IEP, the parents of a classified student disagree with any of the evaluation reports generated as part of a school district’s re-evaluation, the parents may request an independent evaluation at the district’s expense. N.J.A.C. 6A:14-2.5(c). “The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.” Id.

“The Code further directs that the Board must either provide the parents with information on how to obtain an independent evaluation, or request a due process hearing within 20 days.” K.R. v. Jefferson Twp. Bd. of Educ., 2002 U.S. Dist. LEXIS 13267, \*22-23 (D.N.J. June 25, 2002); N.J.A.C. 6A:14-2.5(c)(1)(i-ii). “Valid and comprehensive evaluation results are required to identify and describe a student’s unique educational needs, and guide the Child Study Team in the design of an IEP.” Id.; 34 C.F.R. 300.324(a).

N.J.A.C. 6A:14-2.5(c) gives school districts a choice; conduct an evaluation, or file for due process. N.S. o/b/o W.S. v. Newark Bd. of Educ., EWR 08229-14, Final Decision (November 19, 2014), < <http://njlaw.rutgers.edu/collections/oal/final/eds08229->

14\_1.html>; N.J.A.C. 6A:14-2.5(c)(1)(ii), (iii). “The regulation does not permit the school district to refuse to evaluate indefinitely, without recourse to the parent.” Id.

Indeed, the regulation provides a specific timeframe for each course of action. See N.J.A.C. 6A:14-2.5(c)(1)(i), (ii) (iv); N.J.A.C. 6A:14-2.5(c)(2)(ii). First, the school district has ten days to decide whether to conduct an evaluation or file for due process. N.J.A.C. 6A:14-2.5(c)(1)(i). If the school district decides to evaluate first, that evaluation must be completed within forty-five days of the parent's request. N.J.A.C. 6A:14-2.5(c)(1)(ii). If the school district's evaluation is not completed within forty-five days, the parent may again request an independent evaluation. N.J.A.C. 6A:14-2.5(c)(1)(ii). If the school district decides not to evaluate first, as here, the school district must file due process within twenty days. N.J.A.C. 6A:14-2.5(c)(2)(ii). Even by the terms of this questionable regulation, a school district may not simply refuse to evaluate indefinitely, and refuse to grant an independent evaluation. See N.J.A.C. 6A:14-2.5(c)(1)(i), (ii) (iv); N.J.A.C. 6A:14-2.5(c)(2)(ii).

[Id.]

If a parent requests an independent evaluation, “the Board may proceed as it sees fit under N.J.A.C. 6A:14-2.5(c)(1) and (2), but the parent has a right to the evaluation if the Board takes no action.” K.B. v. Haledon Bd. of Educ., 2010 U.S. Dist. LEXIS 51337 (D.N.J. May 24, 2010).

“A ‘procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.’” G.A., supra, 2013 U.S. Dist. LEXIS 133911 (D.N.J. Sept. 18, 2013); (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 274 (3d Cir. 2012)). The “plaintiff bears the burden of establishing the harm caused by the procedural shortcomings.” Id. “Absent substantive harm, plaintiffs ‘alleging only that a school district has failed to comply with a procedural requirement of the IDEA, independent of any resulting deprivation of a FAPE, may only seek injunctive relief for prospective compliance.’” Id.; (quoting C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66 (3d Cir. 2010)).

Here, after reviewing the Districts assessments on P.R., S.R. requested an independent evaluation. The District did not provide S.R. information on how to obtain an independent evaluation, nor did it request a due process hearing within 20 days. Instead, the District filed a request for a due process hearing on April 6, 2016, 27 days after S.R. requested an independent evaluation.

The District claims that its petition should not be dismissed because it notified P.R. that the District would be filing for due process on March 18, 2016, and that the twenty-day time limit should be extended in this matter because part of that time period was during the District's spring break. The District also claims that even if it did violate N.J.A.C. 6A:14-2.5(c), S.R. is not automatically entitled to an independent evaluation and P.R. has not suffered any harm so the procedural violation is not actionable.

As discussed above, N.J.A.C. 6A:14-2.5(c) gives school districts a choice when a parent requests an independent evaluation; conduct an evaluation, or file for due process. Therefore, it does not matter that the District notified P.R. that it would be filing for due process in the future. The regulation does not allow the District to delay its filing indefinitely, but instead imposes a twenty-day limit on the District. If the District takes no action, the parent has a right to the evaluation at the District's expense. K.B. v. Haledon Bd. of Educ., 2010 U.S. Dist. LEXIS 51337 (D.N.J. May 24, 2010). Thus, because the District took no action within the twenty-day time limit, P.R. is entitled to the independent evaluation.

The District does not cite any authority stating that the twenty-day time limit for filing for due process should be extended because the District was on spring break. Likewise, my independent research has not uncovered any authority that states the time limit should be extended due to spring break. P.R. made the request for an independent evaluation on March 10, 2016. The District's spring break was during the week of March 21, 2016. Even if spring break made it more difficult to gather information for the due process petition, the District had sufficient time before and after the break to gather its resources. Also, spring break was a planned break for the

District. Thus, it was not an unforeseen or extraordinary circumstance that would allow the time period to be extended.

Finally, by filing for due process after the twenty-day time limit, the District has caused harm to S.R. and P.R. so the violation is actionable. By filing the due process petition challenging the request for an independent evaluation after the deadline, the District is depriving S.R. of her right to take an active role in creating an appropriate IEP for P.R. Allowing late filings in this matter would allow school districts to delay parents from getting an independent evaluation, which would provide additional information to the parent that would ensure that the disabled child receive the proper services. Also, the results of an independent evaluation may change what is required by the IEP. So the delay in filing the due process petition harms P.R. because she may not be receiving the proper services through her current IEP. Allowing the District to delay filing its petition past the deadline may deprive P.R. from receiving the correct services for an indefinite time period. Thus, the late filing of the due process petition causes harm to both the student and the parent and is actionable under the IDEA.

Therefore, **I CONCLUDE** that, the District having filed its request for due process after the twenty-day time limit imposed by N.J.A.C. 6A:14-2.5(c), S.R. is entitled to an independent evaluation and the District's petition should be dismissed.

### **ORDER**

Accordingly, I hereby **ORDER** that the Board provide an independent neuropsychological evaluation as requested by S.R. and that the Board's due process petition is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2015). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

June 24, 2016  
DATE

\_\_\_\_\_  
**ROBERT BINGHAM II, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Sent to Parties:

\_\_\_\_\_

/lam

**APPENDIX**

**LIST OF EXHIBITS**

For petitioner:

Due Process Petition

Petitioner's Brief

For respondent:

Respondent's Brief

**LIST OF WITNESSES**

For petitioner:

None

For respondent:

None