

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05519-17

AGENCY DKT. NO. 2017 25881

WAYNE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

v.

G.G. AND S.W. ON BEHALF OF G.G.,

Respondent.

Jessika Kleen, Esq. for petitioner (Machado Law Group, attorneys)

G.G. and S.W., no appearance

Record Closed: May 31, 2017

Decided: June 1, 2017

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, the Wayne Township Board of Education (the Board) has requested a due process hearing to compel the parents of G.G. to permit the Board, through its Child Study Team (CST), to conduct formal re-evaluations. The parents have withheld their consent for these evaluations.

A hearing was noticed for May 4, 2017, which was to be conducted as a settlement conference. The parents did not appear. Accordingly, the matter was assigned that day to me for hearing. After unsuccessfully attempting to contact the

parents for purposes of scheduling a telephonic pre-hearing conference, via letter dated May 9, 2017, I informed both parties that the telephone conference was scheduled for May 25, 2017, and that failure to participate “could result in the granting of the relief sought by the school district.”

A formal notice of the telephone conference was also sent out to the parties on May 9, 2017. Neither document was returned as undeliverable. On May 25, 2017, I again tried to contact the parents via telephone, but with no success. I spoke with counsel for the Board, and asked that she forward an explanation of the relief sought in certification form. She did so on May 31, 2017, at which time the record closed.

ISSUE PRESENTED

This due process request presents a very narrow issue for determination; that is, should the Board, through its CST, be granted the authority to conduct a comprehensive evaluation of G.G., to include, psychological, educational, and neurological evaluations?

FINDINGS OF FACT

Based upon the certification of Michael Reinknecht, Director of Student Support Services, I **FIND** as follows:

G.G. is a seventeen-year-old eleventh grader who is classified as eligible for special education services under the category of Other Health Impaired (OHI). Educational and psychological assessments were last conducted in 2012. A neurological assessment was last completed in February 2013. Accordingly, G.G. has not been formally evaluated for over three years.

A reevaluation planning meeting took place on January 5, 2017, at which time the CST recommended that updated psychological, educational and neurological evaluation take place. Insofar as this was the team recommendation, it is clear that school personnel believe updated testing is needed to plan for G.G.’s educational

programming. The parents asked for a follow-up meeting, and on January 18, 2017, they consented to the evaluation plan.

But later that day, the parents withdrew their consent. As noted above, attempts to communicate with them and develop an understanding of their concerns were unsuccessful.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

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

N.J.A.C. 6A:14-3.8 provides that "within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be student with a disability." That reevaluation begins with a review of existing data, classroom observations and input from teachers and related services providers. N.J.A.C. 6A:14-3.8(b). Based on that review, the Individualized Educational Program (IEP) Team is required to determine what, if any, additional data is needed to determine "[t]he present levels of academic achievement and functional performance and educational and related developmental needs of the student," and "how they should appropriately be addressed in the student's IEP..." N.J.A.C. 6A:14-3.8(b)(iii). There thus are both situations where there is no need for additional assessments, and situations where the IEP Team determines that such assessments are essential to sound educational decision-making. The regulations make it plain, however, that additional formal assessments may be conducted only with the consent of the parent. N.J.A.C. 6A:14-2.3. Where, as here, consent has been withheld, the school district may file for due process. N.J.A.C. 6A:14-2.7(b).

I **CONCLUDE**, based on the record before me, that the Board's request for leave to conduct formal assessments as part of a reevaluation of G.G. is reasonable, appropriate, and necessary to guide the IEP Team's programmatic decision-making. G.G. is at a critical juncture in his educational career, where transitional planning is needed to ensure that he is prepared for life outside the school district when he graduates or reaches twenty-one years of age. See: N.J.A.C. 6A:14-3.7(e)(9).

ORDER

Based on the foregoing, the relief sought by the petition is **GRANTED**, and the parents are directed to make G.G. available for educational, psychological and neurological evaluations.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). 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.

June 1, 2017

DATE

ELLEN S. BASS, ALJ

Date Received at Agency

Date Mailed to Parties:
