

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION GRANTING
PETITIONER'S REQUEST TO
CONDUCT EVALUATIONS OF S.L.
TO DETERMINE HIS ELIGIBILITY
FOR SPECIAL SERVICES

OAL DKT. NO. EDS 08045-14

AGENCY DKT. NO. 2014-21123

HOBOKEN BOARD OF EDUCATION,

Petitioner,

v.

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

Respondents.

Marie- Laurence Fabian, Esq., for petitioner (Porzio, Bromberg & Newman,
P.C., attorneys)

J.L., mother of **S.L.,** respondent, pro se

Record Closed: July 11, 2014

Decided: July 14, 2014

BEFORE **CAROL I. COHEN, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 9, 2014, the Board of Education of the City of Hoboken filed a due process petition asking for the District to conduct evaluations to determine if S.L. is eligible for special education and related services. A copy of the petition, with Exhibits attached, was forwarded to J.L. on the same date. The petition was received by the Department of Education on May 12, 2014. On June 30, 2014 the petition was forwarded to the Office of Administrative Law. At the same time a notice was sent by the Department of Education to J.L. and the attorney for the District scheduling the matter for a hearing before ALJ Carol I. Cohen for July 11, 2014 at 10:30 a.m. The attorney for the District requested an adjournment of the date because she was going to be out of town on vacation. She represented that she had sought J.L.'s consent to an adjournment but J.L. had not responded to the voicemail messages. My secretary also sought to contact J.L. but received no response. Under the circumstance, I told the attorney for the District that I would not adjourn the hearing. The attorney for the District was told that they would have to have someone on call in case J.L. appeared. J.L. did not appear on the date of the hearing nor did she contact the court to explain her failure to appear.

FINDINGS OF FACTS

S.L. is a 5 1/2-year-old student with a history of behavioral issues, who was in kindergarten at the Brandt School. During this past school year his teacher referred him to the Intervention & Referral Services ("I&RS") Team on November 1, 2013 because of concerns with inappropriate physical interactions with peers, lack of impulse control and motivation to complete tasks, all of which led to a limited amount of time spent on academic goals. The I&RS Team held a meeting on November 19, 2013. Although the Parent attended the meeting, she refused to call it an I&RS meeting. The Team determined to implement various strategies in the classroom to assist S.L. and the parent consented to an Occupational Therapy screening. The Occupational Therapy screening resulted in a report with suggestions for in-class sensory input,

which was implemented in the classroom. An I&RS meeting was held on November 25, 2013, at which time an Action Intervention Plan was developed for S.L, which included performing a Functional Behavioral Assessment ("FBA"). The Parent refused to participate in the meeting. The Parent subsequently submitted a form from a physician requesting accommodations for S.L. under section 504, including a recommendation that the District perform a Functional Behavioral Assessment ("FBA") in order to create a Behavior Intervention Plan ("BIP").

The I&RS Team met on December 9, 2013, during which the Parent participated by telephone. It was agreed that the Team would meet again once the FBA was completed. On December 9, 10 and 11, 2013, the School Psychologist observed S.L. for purposes of an FBA and reported the data she collected and developed a BIP in a report dated December 17, 2013. A copy of the FBA report and the BIP were provided to the Parent under cover of a letter dated December 18, 2013, in which the Director of the Early Childhood Program reminded the Parent about S.L.'s ongoing behavior problems, which often resulted in injury to other students and staff, and of the District's request that she have him evaluated by a psychiatrist. The letter also enclosed a copy of the FBA/BIP report. The letter also informed the Parent that S.L. had been referred to the Child Study Team for an evaluation to determine eligibility for special education services. The referral was received by the Department of Special Services on December 18, 2013.

By letter dated January 7, 2014, the Child Study Team invited the Parent to an Initial Identification and Evaluation Planning Meeting to be held on January 14, 2014. The Parent did not respond to this invitation. On January 14, 2014 the Parent told the Case Manager she would not attend the meeting and did not wish to reschedule. In an email to the Parent dated January 16, 2014, the Case Manager nonetheless gave her the opportunity to propose an alternative date and time for such a meeting. The Parent did not propose an alternative date for the meeting. Instead, she stated that her previous request for a 504 meeting had been ignored.

After the winter break (December 23 - January 1), despite implementation of the BIP, S.L. continued to engage in aggressive behavior that resulted in injury to students and staff and disrupted his learning and the learning of others. In a letter dated January 16, 2014, the District notified the Parent that it was not safe for S.L. to be in school and that the District would begin home instruction pending receipt of a psychiatric evaluation. The District urged the Parent to participate in the evaluation planning meeting proposed by the Child Study Team. S.L. was later cleared by a 2-line note from a psychiatrist to return to school.

By letter dated January 20, 2014, the Child Study Team sent the Parent another invitation to an Initial Identification and Evaluation Planning Meeting to be held on February 4, 2014. The Parent did not respond and later indicated that she did not receive the invitation. A review of all correspondence indicates that the District has been using the correct address and that no mail has been returned. In an email dated January 31, 2014, the Case Manager told the Parent that the Team would be happy to arrange the meeting for another day and that she could participate by telephone if that was more convenient for her. The Parent did not propose an alternative date for this meeting.

On or about February 27, 2014, Carrie Ellis, the School Social Worker on the Child Study Team, conducted an observation of S.L. in his classroom and reported to the Parent that he has significant difficulty sustaining attention, following teacher directives and completing tasks in the classroom and was observed to use inappropriate language and exhibit defiance in the face of educational demands. In an email dated February 28, 2014, Ms. Ellis reminded the Parent that the Child Study Team had been attempting to meet with her to discuss an evaluation under the IDEA and confirmed conversations in which the District had offered to pay for independent evaluations in order to encourage the Parent to consent to evaluations. Ms. Ellis also stated that although the District felt that it was appropriate to evaluate S.L. under the IDEA, as the Parent seemed to prefer a section 504 approach, the District would be willing to evaluate S.L. under that statute as well. Subsequent to Ms. Ellis's

observation, S.L. engaged in aggressive behavior that again resulted in his being kept out of school.

A 504 meeting was held on March 7, 2014, with the Parent participating by telephone, during which the District informed her that it would need to evaluate S.L. in order to determine whether he qualified for services under section 504 and if so, what services would be appropriate. Following the meeting, the District sent a notice of proposed action form requesting written consent from the Parent to conduct educational, psychological, social, occupational therapy, physical therapy and psychiatric evaluations.

S.L. was cleared to return to school in a letter dated March 14, 2014, in which his doctor referred to his "significant ADHD" and made certain recommendations, many of which the District was already providing. Although this medical information is helpful, the District needs more information in order to address S.L.'s needs. During a meeting on March 20, 2014, the I&RS Team agreed that S.L. continues to struggle academically and behaviorally. At its most recent meeting on May 1, 2014, the I&RS Team noted that S.L.'s behavior had improved and that he had made progress academically. They noted, however, that he continued to lag behind his kindergarten peers.

As no consent has been provided, no evaluations have been done and the District is without the necessary information to determine whether or not S.L. qualifies for services and, if so, what services would be appropriate, under Section 504 or the IDEA until the end of the school year the District has been providing S.L. with home instruction after school hours in order to make up for time that he missed while the District was waiting for clearance from his psychiatrist.

To date, despite all of the efforts made by the District, S.L continues to struggle academically and behaviorally. However, it has been unable to secure the consent of the Parent to conduct the assessments that they believe are necessary in order to determine how it can meet his needs.

CONCLUSION

Based on the petition presented and supporting documents submitted by counsel for the petitioner and the respondent's failure to appear and to present evidence refuting the assertions of the District, I **CONCLUDE** that the District's application to order evaluations should be granted.

ORDER

I hereby **ORDER** that the relief sought in the Hoboken Board of Education's due process petition be granted and evaluations be conducted by the district to determine if S.L. is eligible for special education and related services

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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 (2012). 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.

July 14, 2014

DATE

CAROL I. COHEN, ALJ

Date Mailed to Parties: _____