

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 10972-18

AGENCY DKT. NO. 2019 28418

**MANALAPAN-ENGLISHTOWN REGIONAL
BOARD OF EDUCATION,**

Petitioner,

v.

A.D. AND M.D. ON BEHALF OF S.D.,

Respondent.

Caitlin W. Lundquist, Esq. for petitioner (Busch Law Group, attorneys)

No appearance by or on behalf of respondents

Record Closed: October 2, 2018

Decided: October 11, 2018

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, the Manalapan-Englishtown Regional Board of Education (Board) has requested a due process hearing to compel the parents of S.D. to permit the Board, through its Child Study Team (CST), to conduct an initial evaluation of S.D. The parents have withheld their consent for this evaluation.

PROCEDURAL HISTORY

On July 2, 2018, the Board filed a request for a due process hearing with the Office of Special Education Programs (OSEP). The case was transmitted to the Office of Administrative Law (OAL) on August 1, 2018 and scheduled for a hearing on August 16, 2018. The Board requested an adjournment of the hearing date and sought the consent of S.D.'s parents. Because the parents did not respond to the request for the adjournment or appear at the August 16, 2018 hearing date, the hearing judge adjourned the matter until August 30, 2018 to avoid any confusion about the hearing date.

A hearing was noticed for August 30, 2018. The parents did not appear. The hearing notice informed both parties that failure to attend could result in the granting of the relief requested by the school district.

On September 12, 2018, the Board filed a motion for summary decision, pursuant to N.J.A.C. 1:1-12.5, for an Order compelling an initial evaluation of S.D. and requesting M.D. and A.D. to comply with the assessments and testing necessary to complete the evaluation. On September 24, 2018, Armen McOmber, Esq. executed an Acknowledgement of Service of the Board's motion on behalf of respondents, M.D. and A.D., acknowledging receipt of the Board's motion on September 12, 2018. Respondents did not file an opposition within the twenty days required under N.J.A.C. 1:1-12.5 or request additional time to respond. Therefore, I closed the record on October 2, 2018.

ISSUE PRESENTED

This due process request presents a very narrow issue for determination; that is, should the Board be granted the authority to conduct an initial evaluation of S.D. by the Board's CST to determine S.D.'s eligibility for special education and related services?

FINDINGS OF FACT

Based upon the certification of Kimberly DiMarco, Director of Special Project for the Manalapan-Englishtown Regional Board of Education, I **FIND** as follows:

S.D. is a nine-year-old student who was born on November 5, 2008 and attended Wemrock Brook School during the 2017-2018 school year. In response to S.D.'s academic difficulties, the Board had provided multi-tiered, evidence-based interventions and supports using a Response to Intervention (RTI) model, with the assistance and oversight of its Intervention and Referral Services (I&RS) committee. S.D.'s progress was monitored, and the interventions were implemented in both classroom and small group settings. Despite receiving Tier 1, Tier 2, and Tier 3 interventions, including a Tier 3 intervention implemented in a 1:1 setting with an RTI interventionist, S.D. continued to struggle academically. Even with the targeted interventions, S.D. demonstrated regression in reading. S.D. had not shown appropriate measurable progress and she continued to perform below grade level expectations.

On November 15, 2017, the Board identified S.D. as a possible student with a disability. As a result, the Board referred S.D. to the Child Study Team (CST) for an initial evaluation to determine her eligibility for special education and related services. The CST scheduled a meeting for December 1, 2017 and invited M.D. and A.D. to attend. M.D. participated in the evaluation meeting by telephone. The CST determined that an evaluation of S.D. was warranted and proposed an initial evaluation plan. At the end of the meeting, a copy of the proposed evaluation plan was sent to S.D.'s parents for their review and consent. On December 14, 2017, M.D. signed the proposed evaluation stating that she did **not** consent to the proposed assessment of S.D. detailed in the evaluation plan.

Without consent, the Board was not authorized to evaluate S.D. and she continued to regress and perform at below grade-level. In March 2018, the Board again identified S.D. as a student with a possible disability and referred her to the CST for evaluation. By letter dated March 23, 2018, S.D.'s parents were invited to participate in a planning meeting on April 11, 2018, to review S.D.'s progress and determine whether she should be evaluated for eligibility for special education and related services. S.D.'s parents did not respond to the invitation and did not participate in the meeting on April 11, 2018. The

meeting was convened in their absence, where it was determined that evaluations were warranted. By letter dated April 11, 2018, S.D.'s case manager, Heather Mistry, sent a letter to S.D.'s parents outlining their attempts to contact them and requesting their consent for S.D.'s evaluation. When no response was forthcoming, S.D.'s case manager sent a follow-up letter dated April 30, 2018 to S.D.'s parents requesting consent for evaluation. On May 11, 2018, M.D. returned the consent statement with her signature refusing permission to evaluate her daughter.

As noted above, the Board's attempts to communicate with S.D.'s parents were unsuccessful. Without S.D.'s parents' consent, the Board is not able to evaluate S.D. to determine if special education or related services are warranted.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

It is well settled that the Individuals with Disabilities Act (IDEA) requires a school district to provide a free appropriate public education (FAPE) to all children with disabilities and determined eligible for special education. 20 U.S.C.A. 1412(a)(1)(A). A district board of education is required to locate, refer, and identify any student who may have a disability due to physical, sensory, emotional, communication, cognitive, or social difficulties. N.J.A.C. 6A:14-3.3(a).

Eligibility for special education services starts with a comprehensive multi-disciplinary evaluation intended to identify disabilities that are interfering with learning to determine whether the student needs special education and related services. N.J.A.C. 6A:14-3.4. Prior to conducting any assessment as part of an initial evaluation, the district shall request and obtain consent from a parent to evaluate. N.J.A.C. 6A:14-2.3(a)(1). If a parent refuses to provide consent for an initial evaluation, the district board of education may request a due process hearing. N.J.A.C. 6A:14-2.7(b).

I **CONCLUDE**, based on the record before me, that the Board's request to conduct an initial evaluation is reasonable, appropriate, and necessary to determine whether S.D. needs special education and related services. As set forth in the Certification of DiMarco, S.D. requires more intensive education interventions than those that have been

implemented without success. S.D.'s academic struggles continued despite receiving RTI interventions. Even with such interventions, S.D. regressed in reading. Despite attempts, the Board has not been successful in engaging S.D.'s parents to consent to an evaluation during the 2017-2018 school year. An evaluation is required to determine whether S.D. needs special education and related services to meet her needs and allow her to make appropriate progress.

ORDER

Based on the foregoing, the relief sought by the petition is **GRANTED**, and the parents are directed to make S.D. available for an initial evaluation 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 (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.

October 11, 2018

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

cmo