



Special Education Bulletin

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summary

Board ordered to reimburse parents for tuition, room and board, and counsel fees following parents' unilateral placement of child in out-of district residential facility (page 3). District not obligated to reimburse parents for unilateral out-of-state placement since their children were not initially enrolled in a New Jersey public or non-public school (page 5). Non-custodial parent, whose rights to participate in the education of his child are limited by divorce decree, does not have standing to file due process petition (page 6). District permitted to conduct assessments as part of re-evaluation despite parental objection (page 7). ALJ rejects district's proposed IEP which would return disabled child to in-district placement; child was placed out-of-district due to alleged abusive remarks by teacher and not for educational reasons (page 8). Petition requesting change in classification to Autism/Asperger Syndrome dismissed (page 10).

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Please note: Each *Special Education Bulletin* will contain a list of abbreviations commonly used in the field of special education.

LIST OF ABBREVIATIONS FOR SPECIAL EDUCATION BULLETIN

ADA	Americans with Disabilities Act
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
AH	Auditorily Handicapped
ALJ	Administrative Law Judge
CH	Communication Handicapped
CST	Child Study Team
DDD	Division of Developmental Disabilities
DHS	Department of Human Services
DYFS	Division of Youth and Family Services
ED	Emotionally Disturbed
EDT	Eligible for Day Training
EMR	Educable Mentally Retarded
FAPE	Free and Appropriate Public Education
IDEA	Individuals with Disability Education Act
IEP	Individualized Education Program
LDTC	Learning Disabilities Teacher Consultant
LRE	Least Restrictive Environment
MH	Multiply Handicapped
MR	Mentally Retarded
NI	Neurologically Impaired
OAL	Office of Administrative Law
OT	Occupational Therapy
PAC	Pupil Assistance Committee
PI	Perceptually Impaired
PT	Physical Therapy
§504	Federal Rehabilitation Act
SM	Socially Maladjusted
TMR	Trainable Mentally Retarded
VH	Visually Handicapped

**Board Ordered to Reimburse
Parents for Tuition, Room and
Board, and Counsel Fees
Following Parents' Unilateral
Placement of Child in Out-of-
District Residential Facility**

*J.M.S. and M.S., on behalf of M.S.,
Petitioners, v. West Windsor-Plainsboro
Regional Board of Education, Respondent,
EDS No. 28-03 (May 28, 2004). [Decided by
Steven C. Reback, ALJ]*

M.S. was born on May 21, 1986. She attended eighth and ninth grades in the district. During the eighth and ninth grades, M.S. began to engage in destructive behavior including drinking alcohol, disappearing from home and staying out all night, and having sexual relations. She also suffered from an eating disorder and began to have attendance problems at school. She was also apparently raped but refused to prosecute the perpetrator.

Following these experiences, M.S.'s parents met with the CST and were advised to seek treatment for M.S. at a residential drug rehabilitation center. Her parents then admitted her to the Caron Foundation to treat her alcoholism. While in treatment, it was learned that she was also using marijuana.

In August 2001, she met with a psychiatrist, Dr. Julie E. Lewerenz. Dr. Lewerenz concluded that M.S. suffered from major depression and social phobia, and she prescribed Paxil for M.S. M.S.'s parents then decided to transfer M.S. to a private parochial school, and during the 2001-02 school year, she attended tenth grade at Notre Dame.

M.S.'s behavior did not improve, and she became more aggressive and violent towards her parents. She also continued to have problems with absenteeism.

On May 15, 2002, Dr. Lewerenz was contacted because M.S. was apparently raging out of control. M.S. met with Dr. Lewerenz and was placed on a mood stabilizer called Zyprexa. She was also switched from Paxil to Prozac. Dr. Lewerenz found M.S.'s social phobia to be severe, and believed that she required medical treatment. Dr. Lewerenz saw M.S. at a follow-up visit on July 22, 2002, and diagnosed her as suffering from Intermittent Explosive Disorder and post-traumatic stress syndrome.

On July 29, 2002, following the completion of the tenth grade, M.S. was classified as ED. In late August 2002, M.S. was arrested for assaulting her parents and spent the next thirty days in the Middlesex County Detention Center. M.S.'s parents then contacted Dr. Lewerenz and advised what had happened. On August 22, 2002, Dr. Lewerenz wrote a letter to the court advising of her earlier diagnoses and treatments, and also advising that M.S. was possibly suffering from bipolar disorder.

M.S.'s parents then met with the CST on September 2, 2002. Her father, J.M.S., told the CST that, under the circumstances, he believed that the only appropriate placement for M.S. was an out-of-district residential placement at the Family Foundation School (FFS). J.M.S. learned of the school during the course of M.S.'s treatment for alcoholism. FFS is an unapproved school, located in West Chester County, New York. FFS has a highly disciplined and restrictive program where M.S. would be monitored 24-hours per day. The school also uses a 12-step method to treat addictions. Although the

CST had not met with and evaluated M.S., it recommended an out-of-district day placement.

On September 4, 2002, while M.S. was still in detention, at the request of the court which was handling her juvenile case, she was evaluated by the Middlesex County Jewish Family and Vocational Services Facility. The report prepared by a social worker noted a family history of alcoholism and mental illness. It recommended that she be placed in a residential treatment facility that will provide comprehensive psychiatric, psychological, educational and substance abuse treatment. It also noted concerns about M.S.'s personal safety due to her reckless behavior.

Subsequently, members of the CST met with M.S. for approximately 1.5 hours at the detention center. On September 27, 2002, the CST and M.S.'s parents met again; this time their attorneys were present. M.S.'s parents again insisted on M.S.'s placement at FFS. The CST believed FFS was too restrictive. The CST recommended three private day-placements which were more expensive than FFS—Kollier, UMDNJ Adolescent Treatment Program, and the East Mountain School. These placements were subsequently proposed in an IEP dated October 8, 2002.

M.S.'s parents consulted with a special education expert, Dr. Johanna Huntowski. Dr. Huntowski initially interviewed M.S. in October 2002 while she was still in custody. M.S. acknowledged that she needed a lot of help but also felt comfortable where she was.

M.S.'s parents also consulted with a clinical psychologist named Dr. Richard Levine. Dr. Levine also met with M.S. in

October 2002 while she was still in custody. Dr. Levine concluded that M.S.'s lack of attendance at school is directly related to her being emotionally disturbed. M.S. acknowledged that she had difficulty dealing with alcohol and sex, and while she did not want to be in a residential setting, she needed to learn to function in society. Following this assessment, Dr. Levine recommended a residential therapeutic high school program.

Since the district did not agree to the placement at FFS, M.S.'s parents made the decision to unilaterally place her at FFS. They subsequently filed a due process petition requesting payment for tuition and costs for the 2002-03 school year. Before the ALJ, the parties stipulated that whatever judgment is entered for the 2002-03 school year, the same would apply to the 2003-04 school year.

Ten separate hearings were conducted by the ALJ between October 15, 2003 and April 28, 2004. Drs. Huntowski, Lewerenz and Levine all testified on M.S.'s behalf, and were all qualified as expert witnesses by the ALJ in their respective areas of expertise. Dr. Huntowski testified that she observed M.S. on April 2, 2003 while M.S. was attending FFS. Dr. Huntowski found that M.S. had matured, had learned to accept responsibility for her own actions, and was learning coping skills. Dr. Huntowski opined that FFS offered M.S. the most appropriate placement in the LRE. Dr. Huntowski found that M.S. needs a full-time, residential setting including a 12-step program. Therefore, she recommended that M.S. remain at FFS until she is ready to go to college. Dr. Huntowski also found that the proposed IEP did not address M.S.'s needs, and was basically an outline of a plan rather than a plan itself.

Dr. Levine also visited M.S. in the spring of 2003 while she attended FFS. Based on his observations, he reaffirmed that M.S. needed a 24-hour-per-day, 7-days-per-week program to deal with her behavioral problems. He also opined that the IEP's "present levels of performance" section was inadequate. He also noted that the IEP omits goals and objectives to address M.S.'s self-esteem, attitude toward school, and attitude towards students and staff.

Based, in large part, on the testimony of Drs. Huntowski, Lewerenz, and Levine, the ALJ ruled in M.S.'s favor. The ALJ explained that courts have consistently recognized that parents have the right to withdraw their children from a school district without the consent of the board, and place the child in a private, nonapproved school if they are dissatisfied with the district's proposed IEP. The determination of whether parents are entitled to tuition reimbursement depends on the application of a two-pronged test which asks: (1) whether the district failed to provide a FAPE; and (2) whether the placement is proper. Citing *Florence Cty. Sch. Dist. Four v. Carter*, 520 U.S. 1 (1993), the ALJ commented that private parental placements do not have to satisfy state standards.

The ALJ found that, despite its good faith efforts, the district failed to provide a FAPE. He also found that the placement at FFS was appropriate. The ALJ rejected the notion that a residential placement is too restrictive even if the child has only been initially classified within weeks prior to the placement. The ALJ also rejected the district's argument that there should be no or reduced tuition reimbursement because of M.S.'s parents alleged unreasonableness in trying to find a proper placement. The ALJ found no evidence that M.S.'s parents acted

unreasonably or in bad faith. Therefore, the ALJ ordered the district to reimburse the petitioners for tuition, room and board, and for their reasonable costs and counsel fees.

District Not Obligated to Reimburse Parents for Unilateral Out-of-State Placement since Their Children Were Not Initially Enrolled in a New Jersey Public or Non-public School

P.R., on behalf of M.R., Petitioner, v. Englewood Board of Education, Respondent, and P.R., on behalf of L.R., Petitioner, v. Englewood Board of Education, Respondent, EDS Nos. 5185-04 and 5186-04 (consolidated) (October 18, 2004). [Decided by Maria Mancini LaFiandra, ALJ]

Mr. and Mrs. R. have identical twin girls, M.R. and L.R., who have been diagnosed as suffering from Obsessive Compulsive Disorder. The girls never attended public school anywhere in New Jersey until they were enrolled in the district in June 2004. During that month, the girls attended school on June 18, 21 and 24.

Prior to attending school in the district, the girls were apparently enrolled in the Stephen Gaynor School in New York. Subsequent to their enrollment in the district, Mr. and Mrs. R. filed a due process petition seeking reimbursement for this placement. The district denied any legal obligation to reimburse them, and the parties filed cross-motions for summary decision with the ALJ.

The ALJ framed the issue as whether, prior to the girls' enrollment in June 2004, the district had an obligation under 20

U.S.C.A. §1412(a), known as the “Child Find” provision, to identify and evaluate them. The parties agreed that a local district in which the children suspected of having a disability reside, is the one responsible for identifying and evaluating the children, unless the state assigns responsibility elsewhere.

The ALJ indicated that a local district has an obligation to identify and evaluate children enrolled in the district and those enrolled in nonpublic schools. However, the ALJ noted that there is no legal authority which addresses the precise issue as to whether a local district has an obligation to evaluate students placed unilaterally in an out-of-state school. It was clear that the girls were not enrolled in a New Jersey public school prior to the unilateral placement. Therefore, the only question was whether the term “nonpublic schools” includes out-of-state schools. Relying on the case of *Fostrom v. Byrne*, 341 N.J.Super. 45 (App.Div. 2001), the ALJ determined that a “nonpublic school” only includes non-public elementary or secondary schools that are located within New Jersey. Therefore, the district did not have an obligation to evaluate M.R. or L.R. prior to June 2004, and the ALJ dismissed the petition.

Non-custodial Parent, Whose Rights to Participate in the Education of His Child Are Limited by Divorce Decree, Does Not Have Standing to File Due Process Petition

L.T., on behalf of C.T., Petitioner, v. Denville Township Board of Education, Respondent, EDS No. 5899-03 (October 28, 2004). [Decided by Leslie Z. Celentano, ALJ]

C.T. is eleven years old and lives with his mother, D.T., in the district. C.T. is classified and receives special education services from the district. C.T.’s parents were divorced in June 2000. Prior to filing for divorce, C.T.’s mother had a restraining order issued against C.T.’s father, L.T., for acts of domestic violence. The judgment of divorce grants joint custody to both parents, but physical custody to D.T. The judgment states, in pertinent part, as follows:

Both parties shall have complete access to the medical, dental, psychiatric, psychological and school records of their children. Both parties shall have the right to communicate with the children’s teachers, doctors, school officials and other individuals so as to give full force and effect to each parent’s right to have complete access to the information set forth above. [L.T., C.T.’s father] has the right to consult with [C.T.’s mother] with respect to major decisions regarding the children such as decisions regarding doctors, course of medical treatment, major school decisions, by telephone or mail. ***However, after considering [L.T.’s] input with respect to these major decisions, the right to make these major decisions regarding the children is left to [C.T.’s mother].***

[L.T.] may attend, whatever school functions, conferences,

activities, which the children participate in, and/or related to the children which are otherwise open to the public and or parents generally, in accordance with the policies and procedures of the school, activity, or special event. [L.T.'s] attendance at these events will not be deemed a violation of the final restraining order . . . with the understanding that [L.T.] will maintain adequate space between himself and [C.T.'s mother] if, [C.T.'s mother] also elects to attend these events. The court shall enter a modified final restraining order to take into account the above.

(Emphasis added).

Near the end of the 2002-03 school year, C.T.'s father filed a due process petition seeking an order for an extended school year, independent evaluations, and counseling services. C.T.'s father also claimed that the district had prevented him from participating in decisions affecting his son because the district precluded him from attending CST meetings and allowing independent evaluations.

The district denied that L.T. had been precluded from participating at any meetings. Moreover, since C.T.'s mother had final decision-making authority, he could not request evaluations, nor could he contest the placement without her agreement. C.T.'s mother chose not to participate in the case, and L.T. subsequently filed a motion for summary decision.

The ALJ explained that the IDEA confers parents with certain guaranteed procedural safeguards including access to school records, notice of proposed changes in educational placement, and the right to present complaints related to the placement. The district has not contested L.T.'s right to access C.T.'s school records, or the right to communicate with school officials. Rather, the district maintains that D.T. has the ultimate decision-making authority by virtue of the divorce decree signed by L.T.

The ALJ agreed with the district's position and found that L.T.'s claim is incompatible with D.T.'s rights under the divorce decree. The family court had the authority to make orders concerning the care, custody and education of the child. An order was entered giving D.T. the right to make major decisions regarding the education of C.T. In addition, there is no evidence to suggest that the district failed to provide C.T. a FAPE; the district had already obtained independent evaluations and provided them to L.T. The ALJ stated that the district is entitled to rely on the court order. In dismissing the petition, the ALJ determined that L.T. did not possess the legal authority to request an independent evaluation of C.T. or to oppose the IEP and demand due process.

District Permitted to Conduct Assessments as Part of Re-evaluation Despite Parental Objection

Princeton Regional Township Board of Education, Petitioner, v. L.L., on behalf of C.F., Respondents, EDS No. 6688-04 (November 18, 2004). [Decided by Joseph F. Fidler, ALJ]

C.F. is an eleventh-grade student in the district. Prior to his attending school in the district, he was classified as CH.

On January 30, 2004, the district conducted a re-evaluation team meeting. The meeting was scheduled in accordance with *N.J.A.C. 6A:14-3.8*, because it would be three years since the last evaluation. Moreover, the district had not done any evaluations of C.F.

The re-evaluation team meeting was attended by C.F.'s mother, L.L., the school psychologist, the LDTC, the school social worker who was C.F.'s case manager, and two teachers. The case manager advised L.L. that the team recommended an updated evaluation to determine C.F.'s current academic strengths and weaknesses, along with an updated psychological evaluation to determine his current IQ and cognitive levels. L.L. refused to consent to the evaluation plan, and wrote on the consent form that she refused to give permission because she already completed an independent evaluation.

On February 17, 2004, the district's student services administrator wrote to L.L. and requested copies of the independent evaluation(s). L.L. wrote back and reiterated her refusal to allow district personnel to evaluate her son based on numerous disrespectful encounters with school staff. L.L. had previously written to the student services administrator and superintendent to complain about disrespectful and possibly discriminatory conduct by a CST member. The allegations were investigated and there was no inappropriate conduct found. L.L.'s letter also requested an independent evaluation.

On May 17, 2004, the student services administrator responded to L.L. and denied the request for an independent evaluation.

She informed L.L. that, because the district had not yet done any evaluation with which L.L. could disagree, the district had no obligation to provide an independent evaluation.

On August 13, 2004, in accordance with *N.J.A.C. 6A:14-2.3(b)*, the district filed a petition to obtain judicial consent to proceed with the re-evaluation assessments. In addition to the educational and psychological evaluations, the district also requested neurodevelopmental and psychiatric evaluations to assess C.F.'s social and emotional status.

The ALJ found that the district was justified in seeking these assessments and granted the district permission to perform them. The ALJ noted that, in light of L.L.'s concern about CST members, the district should make every reasonable effort to have the assessments performed by other qualified district employees.

ALJ Rejects District's Proposed IEP Which Would Return Disabled Child to In-district Placement; Child Was Placed Out-of-District Due to Alleged Abusive Remarks by Teacher and Not for Educational Reasons

R.D., on behalf of S.D., Petitioner, v. Penns Grove-Carneys Point Regional Board of Education, Respondent, EDS No. 6057-04 (November 19, 2004). [Decided by Bruce M. Gorman, ALJ]

S.D. is currently a fourth-grade student and is classified as Other Health Impaired. While in first grade at Penns Grove-Carneys Point Regional School District (the regional

district), S.D. told the school nurse that her teacher had made disparaging remarks about her. The nurse told S.D.'s mother, who in turn, complained to school officials. The regional district subsequently terminated the nurse who reported the alleged emotional abuse, and arranged for S.D. to be transferred to an elementary school in the neighboring school district of Mannington.

The out-of district placement was only to be temporary, pending the outcome of the investigation of the charges against the teacher. Nonetheless, the regional district's CST prepared and implemented an IEP dated April 16, 2002, which stated that S.D. will attend school in an out-of-district placement, and that all parties were in agreement with the contents of the IEP.

S.D. concluded the second and third grades in the Mannington School District with the regional district paying tuition to Mannington. The regional district also paid for S.D.'s nurse and aide.

During S.D.'s second-grade year, the regional district and DYFS concluded their investigations, and the teacher was exonerated. Although the regional district's director of special services considered bringing S.D. back into the district, he decided to leave her in Mannington for another year.

Following the conclusion of her third-grade year, the regional district decided that it wanted S.D. to resume an in-district placement. However, S.D.'s mother refused and, on July 19, 2004, she filed a due process petition to prevent a change in placement.

At the hearing before the ALJ, the regional district's director of special services and its social worker admitted that S.D.'s placement in Mannington was not related to

her disability but, rather, was an accommodation to defuse the situation regarding the complaint against the teacher. S.D.'s mother maintained her opposition to returning S.D. to the regional district. She testified that during first grade, S.D. performed poorly academically and socially, and her medical needs were not properly addressed. She testified that S.D. did not receive small group instruction or her required therapy. She also testified that, after the nurse was fired, the nurse was not replaced. S.D.'s mother further testified that, since S.D.'s enrollment in Mannington, she became an honor roll student with an "A" average. S.D. now reads at a level higher than other students in her class, and is one of the most popular girls in school.

The ALJ essentially explained that the regional district had the burden of proving that S.D.'s out-of-district placement fails to provide a FAPE. However, the regional district originally arranged for and agreed to the out-of-district placement. Moreover, the IEPs from prior years state that the out-of-district placement is educationally necessary and constitutes the best placement for S.D.

The ALJ commented that the placement has worked despite having been done for the wrong reasons. He stated that the regional district is now disingenuously arguing that the LRE for S.D. is a return to an in-district placement. He concluded that this argument is a "subterfuge" to avoid having to pay for S.D.'s education in Mannington. He stated that the regional district offered no educational basis for the proposed change.

The ALJ ultimately found that the out-of-district placement is more appropriate than the in-district placement, and that the change in placement was motivated by the regional district's desire to relieve itself of "an

unwanted (and self-inflicted) financial obligation.” Therefore, the ALJ ordered the regional district to continue to pay all costs for S.D. to attend school in Mannington.

Petition Requesting Change in Classification to Autism/Asperger Syndrome Dismissed

J.H., on behalf of J.H., Petitioner, v. Upper Deerfield Township Board of Education, Respondent, and Upper Deerfield Township Board of Education, Petitioner, v. J.H., on behalf of J.H., Respondent, EDS Nos. 934-04 and 8234-04 (consolidated) (December 7, 2004). [Decided by Bruce M. Gorman, ALJ]

J.H. was born on March 20, 1995 and is a classified student who attends school in the district. Back in 1999, due to concerns with his development, J.H.’s parents had him evaluated by Dr. Samuel Tucker at Children’s Hospital of Philadelphia. J.H.’s mother was convinced that he was autistic. Dr. Tucker’s examination and observations found J.H. to be normal but in obvious conflict with the history provided by J.H.’s mother. Dr. Tucker’s report concluded that J.H. was difficult to classify. It stated that J.H. is “bright, but many of his behaviors, especially as given in the mother’s history, are quite atypical” It also noted that there are “some elements of ADD, some possibly obsessive rituals, some ‘autisoid’ behaviors, and some suggestions of complex and simple tics,” but none of these allowed for a particularized classification.

In September 2000, J.H.’s mother, D.H., sought special services from the district for him. The CST obtained a neurological evaluation from Dr. Chester J. Minarcik, Jr.

Dr. Minarcik’s report states that J.H.’s mother described a child with PDD, most likely a high form of autism. However, Dr. Minarcik did not observe any of the symptoms described by D.H. The report stated that “[Dr. Minarcik had never] had a situation in which [he] did not see (during [his] evaluation) clear evidence of the autistic characteristics described.”

The CST also obtained a psychiatric evaluation of J.H. from Dr. James L. Hewitt. Dr. Hewitt found some evidence of Autistic Spectrum Disorder issues, but recommended that J.H. not be classified at that time. Based on the reports from Drs. Hewitt and Minarcik, the CST declined to classify J.H. at that time.

In May 2002, D.H. had J.H. evaluated at the Dupont Hospital for Children. J.H. was evaluated by Dr. Susan B. Stine and Dr. Gregory B. Luma. Their report does not reference the reports from Drs. Hewitt and Minarcik; it does reference the report by Dr. Tucker. The Dupont report states that J.H. “displays atypical Asperger Syndrome in that he does have socialization problems as well as the repetitive behavior, but has good motor coordination, which is atypical for Asperger’s.” The report recommended that J.H. see a child psychiatrist for possible therapy.

In the fall of 2002, D.H.’s mother had him evaluated by the Rowan University Assessment and Learning Center. J.H. was examined by a school psychologist, Dr. Elizabeth Cusack, and a LDTC, Dr. Stanley Urban. Dr. Cusack did not find any behavior in the school setting or in testing observation that demonstrated that J.H. had autism. Dr. Cusack recommended counseling for J.H.’s parents. Dr. Urban also noticed an extreme variance between D.H.’s descriptions of

J.H.'s behavior and the behavior he observed. Dr. Urban only found a severe deficiency in J.H.'s reading skills.

During the 2003-04 school year, at D.H.'s insistence, the district agreed to remove J.H. from his third-grade class, and place him in a resource room. In January 2003, D.H. experienced severe problems with J.H. at home, and J.H. began treatment with a psychiatrist named Dr. Chandra Weerasinghe located in Bala Cynwyd, Pennsylvania. Dr. Weerasinghe placed J.H. on a series of medications that reduced his disruptive behavior. While he was on the medication, he received good marks and was not disciplined at school.

In December 2003, D.H. unilaterally took J.H. off his medication, and discontinued the services of Dr. Weerasinghe. J.H. again became violent at home and at school. He was taken to the emergency room on January 17, 2004, and was subsequently hospitalized from April 7, 2004 to April 14, 2004. The physician who discharged him diagnosed him as "Bipolar Not Otherwise" and "Oppositional Defiant."

On March 9, 2004, at D.H.'s urging, Dr. Stine, who had evaluated J.H. approximately two years before, wrote a memo "To whom it may concern" stating that "The boy has Asperger Syndrome." However, in a report dated July 27, 2004, Dr. Stine recanted that diagnosis, stating that it was based on information given by J.H.'s mother. Dr. Stine could not offer a specific diagnosis of J.H. other than that he suffers from mental health difficulties.

On March 29, 2004, J.H. was evaluated by a pediatric neurologist named Dr. Olga Goldfarb. Dr. Goldfarb failed to observe any

symptoms of Asperger Syndrome. She offered no specific diagnosis but suggested depression and bipolar disorder as possibilities.

In the spring of 2004, J.H.'s parents filed a due process petition requesting a change in classification to Autism/Asperger Syndrome along with a change in his program. At the ALJ's direction, the parties selected two neutral experts to examine J.H. The parties selected Dr. Daniel LeGoff and Dr. Raymond Schweibert.

Dr. Schweibert, a child psychiatrist, concluded that J.H. does not suffer from PDD or Asperger Syndrome, and that J.H. has a diagnosis that does not fit into any known diagnostic categories. Dr. LeGoff, a clinical psychologist, observed J.H. on April 5, 2004 in the school setting, and interviewed him on April 6, 2004. Dr. LeGoff found that J.H. was not socially clumsy like Asperger patients, and in fact, was extremely manipulative with his peers and teachers. Dr. LeGoff found that J.H. had a problem with visual guidance which is the root cause of his reading deficiency, and that reading deficiency may be a significant contributing factor to J.H.'s Oppositional Defiance Disorder. The results of J.H.'s Asperger Syndrome Diagnosis test showed that he was very unlikely to have Asperger Syndrome. Based on his observations, testing, and review of J.H.'s history, Dr. LeGoff concluded that J.H. did not have Asperger Syndrome.

At the hearing, J.H.'s parents attempted to offer an advanced nurse practitioner, who holds a master's degree in child family psychiatric nursing, as an expert witness. Citing *State of New Jersey v. One Marlin Rifle*, 319 N.J.Super. 359 (App.Div. 1999)

and *N.J.S.A. 45:11-23b*, which distinguishes between diagnoses in nursing practice and medical diagnoses, the ALJ determined that the nurse was not competent to provide a medical diagnoses of J.H.

The ALJ stated that the district has the burden of proving that it is providing J.H.

with a FAPE. In this case, the ALJ found that there was overwhelming evidence that J.H. does not suffer from Asperger Syndrome or any other form of autism despite J.H.'s parents' belief to the contrary. Therefore, the ALJ ordered the petition dismissed.

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