

ORDER

OAL DKT. NO. EDS 00311-20
AND EDS 06990-20
AGENCY DKT. NO. 2020-30999
AND 2021-31832
(CONSOLIDATED)

E.K. ON BEHALF OF W.W.,

Petitioners,

v.

MANTUA TOWNSHIP BOARD OF EDUCATION

Respondent.

Jamie Epstein, Esq. for petitioners

William C. Morlok, Esq. for respondent (Parker McCay P.A.)

BEFORE **CARL V. BUCK, III**, ALJ

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415, E.K. ("petitioner") has requested a due process hearing on behalf of her son W.W., who is classified as eligible for special education and related services. Petitioner requests payment in full for payment for Independent Educational Evaluations ("IEE") from respondent Mantua Township Board of Education ("Board" or "District") for independent evaluations performed on W.W. at petitioner's expense.

PROCEDURAL HISTORY, BACKGROUND AND FINDINGS OF FACT

Please refer to the Final Decision of EDS 00311-20 and EDS 06990-20 for the complete procedural history, background, and findings of fact in this matter.

One of the requested reliefs in petitioner's petition filed on December 8, 2019, was for the Board to pay for W.W. to receive independent educational evaluations in the areas of suspected disability by evaluators selected by W.W.'s parents. On December 30, 2019, the District agreed to publicly fund the evaluations requested by petitioners, subject to the District's reasonable cost criteria. Id. at 74. Petitioner's July 6, 2020 petition was based on W.W.'s IEE assessments obtained by petitioner in the areas of: psychiatry, behavior, occupational therapy, speech therapy, reading, assistive technology and school psychology.

After the evaluations were completed, five of the eight evaluations were compensated by the District, however the remaining three providers exceeded the District's expenditure criteria. These include Partners in Learning (FBA), Maxability Learning (Reading), and Grow Now Therapy (Speech and Language). Ibid. For the three provider who were not compensated, respondent sent \$1,200, which it states is the "maximum amount the District's cost criteria permitted." Ibid.

The Board contends it is not responsible for the "extremely high" independent evaluation costs incurred by petitioner. Resp't's Br. 73. Respondent contends it is not responsible to pay the full amount owed given that (1) that Mr. McLeod is not certificated to provide speech and language services in New Jersey, (2) the IEEs are unreasonably expensive and petitioner did not demonstrate unique circumstances to warrant a deviation from the District's cost criteria, and (3) the district was not required to file for due process to retain their right to dispute IEE charges and compliance with the District's reasonable cost criteria.

LEGAL ANALYSIS

N.J.A.C. 6A:14-2.5(c) states:

Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at the district board of education's expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees.

Furthermore, N.J.A.C. 6A:14-2.5(c)states

(1) Such independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made.

...

ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the district board of education shall request the due process hearing.

The Board argues that it was not required to file for due process for a hearing to retain its right to dispute noncompliance with its own reasonable cost criteria. Resp't's Br. 77. However, the code clearly states that such evaluation shall be at no cost, unless they initiate a process showing their evaluation was appropriate. The Board did not provide an appropriate filing to the court or inquiry to petitioner (within twenty days) which clearly articulated that their evaluations were appropriate. Rather, the Board agreed to pay for petitioner's evaluations, some of which had not been performed by the Board and is choosing to contest the costs after the fact.

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Thus, the Board owes payment for the evaluations for which payment is still due, which include Partners in Learning (FBA), Maxability Learning (Reading), and Grow Now Therapy (Speech and Language).


ORDER

Based upon the foregoing, it is hereby **ORDERED** that the petitioner's request for compensation for the independent evaluations provided to W.W. is **GRANTED**. Respondent shall pay the remainder of the invoices for the independent evaluations of W.W. which have not yet been paid by the Board.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). 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.

September 29, 2022 _____

DATE



C/....., ALJ

CVB/tat

cc: Clerk, OAL/Trenton