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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 8022-05

AGENCY DKT. NO. 2006 10508

AUDUBON BOARD OF EDUCATION,

Petitioner

v.

P. G. and V.G. O/B/O H.G.

Respondents.

Frank P. Cavallo, Jr., Esq., for petitioner (Parker and McCay, attorneys)

Jamie Epstein, Esq., for respondents

Record Closed: October 11, 2005 Decided: October 12, 2005

BEFORE JOHN R. FUTEY, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter, the Audubon Board of Education (hereinafter "Audubon") seeks to conduct evaluations on the child H.G. After agreeing upon various matters relating to the evaluations, the only remaining issue at this time is whether or not Audubon should choose the psychiatrist to conduct the psychiatric evaluation or whether the parents' choice is more appropriate under the circumstances.

This matter commenced with the filing of due process by Audubon after a prior case involving the issue of evaluation of the child had been heard before ALJ Solomon Metzger on July 12, 2005 (EPS 4668-05). Mediation was conducted on September 26, 2005 regarding this instant matter by the Office of Special Education Programs, after which the matter was referred to the Office of Administrative Law (hereafter "OAL") as a contested case pursuant to provisions of *N.J.S.A. 52:14B-1* through *-15* and *N.J.S.A. 52:14F -1* through *-13*. A due process hearing was held at the OAL, Mercerville, New Jersey, on October 11, 2005. After testimony was taken, the hearing record closed and an oral Decision was rendered at that time. All operative terms of that decision became effective as of the rendering of that oral Decision. This written decision memorializes the terms of the oral Decision.

FACTUAL DISCUSSION

H.G. is the thirteen year old, youngest of ten children of respondents. She suffers from significant and severe medical issues, among them irritable bowel syndrome, an ulcer in her esophagus, which is associated with stomach reflux, and numerous allergies. She frequently suffers pain associated with her stomach ailments and she has developed major stresses which have added to her pain and anxiety. She is in such pain that it frequently interferes with her homework. She has also been taunted by fellow classmates both in class as well as in social settings due to her need to leave class frequently to attend to her medical needs. This is created additional anxiety in her and has adversely affected her schoolwork, her school performance, and her homework on a routine basis. Her parents have attempted numerous strategies at home in order to assist her in the completion of her homework after having undergone extremely upsetting days at school due to the stresses there. Her school attendance has suffered significantly because of those issues. During her seventh grade year, she was out of class, absent or left early over 2/3 of the time to such an extent that she was held back to repeat the seventh grade this year. She has been receiving section 504 accommodations for a period of time but has not yet been classified for special education purposes. The purpose of this due process hearing is to conduct evaluations in order to determine whether or not she is eligible to receive special education and related services.

Approximately three years ago the parents and the district entered into a series of negotiations as a result of which the district provided the parents with a list of approved psychiatrists in order to conduct evaluations at the time. Dr. Joseph Mobilio was selected by

the parents from that list to conduct a psychiatric evaluation on H.G., the results of which were shared with the district thereafter. The district maintains that it included the report by Dr. Mobilio in it's overall assessment of her needs at the time. Dr. Mobilio saw her one time as part of that process. Her mother, V.G., testified at the due process hearing that her daughter liked Dr. Mobilio and felt comfortable with him. Further, her daughter has expressed the current desire to have an updated evaluation performed by him as opposed to anyone else whom she does not already know since she is already experiencing overload regarding an explanation and discussion of her emotions with a whole host of professionals. Another name in that mix will just aggravate the overload even more.

Since that time three years ago H.G. underwent another psychiatric evaluation with another professional approximately eighteen months to two years ago, but no additional report was generated. However, the family has engaged her in extensive psychological counseling's over the long haul and it has taken an additional toll upon her. Part of the problem has involved the periodic change in her counselors due to them changing their hours or generally becoming unavailable to service her needs. Or, in other cases it has been difficult for the family to obtain appropriate counselors due to their available insurance coverage.

And, as stated hereinabove as it pertains to H.G.'s perception, at this time, the parents also believe that the addition of another new psychiatrist will only add additional stress and confusion to H.G. since she has been the subject of so many professionals who have injected themselves into her life and have repeatedly pounded her with questions. She has developed a type of "social phobia" about having to tell so many people about herself repeatedly. At the same time, they believe that she needs someone she can trust and that her comfort level with Dr. Mobilio is totally appropriate for that purpose.

Audubon contends that a "fresh approach" is appropriate and, as a result, they prefer Dr. Brancato of the Center for Child Guidance, Marlton, New Jersey, as being better able to address her needs. Audubon has developed a working relationship with Dr. Brancato and his team, which is staffed primarily by child psychiatrists and not young adult or adult psychiatrists. Further, his team provides treatment plans in addition to diagnosis, which the district finds to be helpful. At the same time, Audubon places little stock in the one time evaluation conducted by Dr. Mobilio three years ago. Yet, it conceded at the hearing that it never challenged, discounted, rejected or protested the report by Dr. Mobilio at any time.

LEGAL DISCUSSION AND ANALYSIS

The above-recited facts reflect the testimony of V.G. and Audubon's Director of Special Services and school psychologist, Patricia Porreca, as well as the arguments of counsel. After having considered all of those proofs and argument, I FIND that, although a district ordinarily reserves the right to conduct an initial evaluation and, accordingly, can select its own professionals to conduct the appropriate evaluations, the circumstances in this unique matter are most distinguished from the usual course of events. For here, the parties had engaged in a series of discussions and negotiations three years ago, as a result of which the parents chose Dr. Mobilio from the list which was supplied by the district. They had the evaluation performed by him accordingly and the results of his diagnosis were shared with the district, which never rejected it at any time thereafter. I FIND that Audubon's intimate involvement in that process was significant and set the stage for the current and totally appropriate request by the parents to continue to engage him at this time in order to assist in the evaluation process relative to a possible classification of their daughter for special education purposes. In the process, I REJECT the claim by Audubon that a fresh approach is appropriate at this time. It has presented no tangible proofs that a change from Dr. Mobilio is warranted. Rather, it appears that Audubon's more recent unrelated history of successes with the Dr. Brancato group to other matters provides it with a comfort zone which may serve its own purposes but which does not necessarily translate into providing similar appropriate services to H.G.

Instead, I FIND that the mother has presented sufficiently convincing and totally unrebutted testimony regarding her daughter's extensive and seemingly overly saturated corps of psychological professionals/counselors so as to have added heaps of anxiety and unwarranted stresses upon and to the child's fragile state even though no one has apparently yet come to full grips regarding her true needs. This is not to say that the parents have caused these problems. Rather, it is more a reflection of their dedicated efforts to try to find solutions for their daughter's complex problems as well as their own struggles to deal with medical insurance coverage. Thus, I am satisfied and further FIND that, absent any other proofs to the contrary, the introduction of another psychiatrist into the mix will merely add to the anxiety levels of this child at a time when she least needs additional stresses. It appears that she is on the threshold of blossoming forth as a young teenager and is attempting to cope with the myriad of stresses which come along with that package. As a result, since she,

according to our mother, had expressed a comfort level with Dr. Mobilio and, even though it was only a one shot interaction three years ago. I FIND that, for all of the reasons stated hereinabove (which includes the direct interactions between Audubon and the family at that time), it would be more prudent, realistic, and responsive to the unique needs of H.G. to allow Dr. Mobilio the opportunity to interface with H.G. once again and prepare a report and diagnosis to be shared with Audubon and the family as soon as possible. After all, he did establish a baseline which could be most helpful at this time and particularly since there appears to be a significant crying out by the child for some significant help, as most graphically evidenced by her overwhelmingly poor attendance during her first try at seventh grade last year. The parties hereto are exhorted to make every positive immediate effort to engage Dr. Mobilio as part of that evaluation process. They have already expressed a desire to cooperate in that regard, which is most encouraging. H.G. needs thoroughgoing support from every one at this juncture in her life, and that joint commitment should go a long way toward helping her achieve meaningful success in life.

CONCLUSION AND ORDER

Based upon all of the foregoing, I CONCLUDE that Audubon has demonstrated the need to have a psychiatric evaluation conducted at this time while the parents have demonstrated the appropriate need to have Dr. Molbilio perform that evaluation. I make all of these findings and form all these conclusions by a preponderance of the credible evidence.

Further, it is noted that this determination and conclusion shall become part of the other relevant terms of the agreement which had previously been worked out between Audubon and the parents on September 26, 2005, at the mediation session conducted by the Office of Special Education Programs (but absent any representation by counsel on behalf of the parents at the time, who thereafter, upon his reappointment by the family, offered a counterproposal to that initial agreement) and which have been further refined and defined at the due process hearing today.

Therefore, it is ORDERED:

(1) H.G. shall immediately receive psychological, psychiatric and medical evaluations. They all shall be scheduled as soon as possible. The psychological evaluation shall not be delayed until after the psychiatric and medical evaluations have been completed, there being no

indication that such a delay is warranted. The psychological evaluation shall be performed by someone other than Patricia Porreca. The learning evaluation has already been completed. Audubon shall be responsible for providing transportation to and from all sites of such evaluations at its own cost.

(2) Autobahn shall provide three dates for the psychiatric evaluation, from which the parents shall choose one.

(3) Dr. Joseph Mobilio shall perform the psychiatric evaluation.

(4) P.G. and V.G. agree to provide all past medical records with respect to H.G. to Audubon no later than Friday, October 14, 2005.

(5) P.G. and V.G. agree to have Dr. Malowe comment upon all the above medical records and comment on the overall health of H.G. and make any recommendations relative there to. Audubon shall be responsible for the cost of paying for that medical report.

(6) Audubon shall bear the cost of all of the above.

This decision is final pursuant to [20 U.S.C.A. Â§1415\(i\)\(1\)\(A\)](#) and [34 CFR 300.510](#) (2005) 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. Â§1415\(i\)\(2\)](#); [34 CFR 300.512](#) (2005). If either party feels that this decision is not being fully implemented, this concern should be communicated in writing to the Director, Office of Special Education Programs.

October 12, 2005

DATE **JOHN R. FUTEY, ALJ**

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