



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03574-24

AGENCY DKT. NO. 2024-36969

J.B. and P.B. ON BEHALF OF Y.B.,

Petitioners,

v.

ELMWOOD PARK

BOARD OF EDUCATION,

Respondent.

Michael I. Inzelbuch, Esq., for petitioners, J.B. and P.B. on behalf of Y.B.

Jaclyn S. D'Arminio, Esq., for respondent, Elmwood Park Board of Education,
(Cleary Jacobbe Alfieri Jacobs, LLC, attorneys)

Record Closed: May 27, 2025

Decided: May 27, 2025

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

The petitioners, J.B. and P.B. on behalf of their minor child Y.B., sought an Individualized Education Program (IEP) and reimbursement for unilateral placement at Sinai at Joseph Kushner Hebrew Academy (Sinai), along with continued placement, transportation, compensatory education, and reimbursement of all costs. Respondent,

the Elmwood Park Board of Education (Elmwood Park, Board, or District), asserted that the Individualized Service Plan (ISP) proposed would have provided Y.B. with a free appropriate public education (FAPE) in the least restrictive environment and, alternatively, that the petitioners' unilateral decision to place Y.B. at Sinai was unreasonable and petitioners should be denied reimbursement.

PROCEDURAL HISTORY

On January 23, 2024, petitioners filed a Demand for Due Process. The Office of Special Education (OSE) transmitted petitioners' claim to the Office of Administrative Law, where it was filed on March 18, 2024, as a contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Due to scheduling conflicts with the parties, hearings were conducted on September 3, 2024, October 7, 2024, and January 13, 2025, with a Hebrew interpreter. The parties agreed that summation briefs were to be received on April 3, 2025, and the record closed on that day.

FACTUAL DISCUSSION

Testimony

For respondent:

Kathleen Gesumaria testified that she has a master's degree in educational leadership and completed her doctoral degree in educational leadership. She began working at Elmwood Park in April 2020 and was the director of Special Services for Elmwood Park until August 30, 2024. Currently she is the director of South Orange.

Gesumaria testified that as Director of Special Services, her job is to lead the child study team and to make sure the goals and objectives are being followed. An Individualized Service Plan is the nonpublic version of an IEP. When a student attends a nonpublic school and they need special education services, they are given an ISP. If

the student transfers to a public school, that ISP is given as the transfer document to the public school. Under the Individuals with Disabilities Education Act (IDEA), when a student with an ISP transfers into public school, it is the district's obligation to review the ISP within sixty days and to use it, along with the knowledge it has of the student, to develop an IEP for the public school that provides comparable services. Gesumaria testified that it is best to follow the "public school rule," which allows only thirty days to develop the IEP. It is good to extend that timeline to students coming from nonpublic schools so as not to delay any necessary changes or a less restrictive environment.

On August 29, 2023, she got a registration packet for Y.B. with an outdated ISP from the 2021–2022 school year. Gesumaria testified that except for the 2021–2022 ISP (R-4), she received minimal documents for him. (R-3.) She reviewed it for the most comparable program the District could provide and decided that an in-class resource support was the least restrictive environment because it consists of a general education and a special education teacher. She believes she put this information in an email, but she could be mistaken, and it might have been a conversation. Gesumaria testified that she assigned the case manager to Y.B., but at no time did he ever attend the proposed program, nor did any member of the team ever meet him. Nevertheless, they still could provide FAPE. She suggested that the case manager hold a meeting with the parent, but she does not believe a meeting occurred. Her next contact with Y.B. was September 14, 2023, when the District received an email stating that Y.B. was unilaterally placed at the Sinai School, and it was at that point that Y.B. was disenrolled from the District. However, Y.B.'s mother responded via correspondence stating that she disagreed. Gesumaria wanted to make sure that Y.B.'s mother understood and was clear on the process, and they discussed the program that would be most comparable. The District offered a reevaluation, and Y.B.'s mother observed the programs. Again, Gesumaria testified that, in her opinion, had Y.B. attended Elmwood Park, the District would have provided him with FAPE because it has a wide range of programs, from the least restrictive environment all the way up to the most restrictive environment in a public school, and by looking at Y.B.'s ISP, it could have provided a comparable and even more intensive program, if necessary.

On cross-examination, Gesumaria testified that she read the parents' concerns prior to the out-of-district placement but felt that she could still provide a comparable program that included FAPE. Y.B. was offered in-class resource support and more intensive pullout resources, but that was rejected by the parents. There were no evaluations of Y.B. because the parents didn't want them. However, "the mother was not uncooperative." The parents never enrolled Y.B. back in the District, but Gesumaria agreed that the District had an obligation to educate him. Also, there were no emails to the parents about the classes for special education or any programming. Gesumaria testified that Y.B. was disenrolled upon Y.B.'s unilateral placement on September 13, 2023, but the District responded on September 20, 2023, and met with the family. At this meeting, the District received additional reports from Y.B.'s mom, and Y.B.'s mom visited the school in an effort to resolve the disagreement and welcome Y.B. back to start at the District. Gesumaria testified that Y.B.'s mom did not fill out any "un-enrollment forms" or transfer forms on behalf of Y.B., and the District offered reevaluations under the auspices that it would be able to evaluate him and his progress in their program. Again, Y.B. was never presented any program.

Iwona Drozd-Majdanski has a master's degree in social work and is a social worker and case manager at Elmwood Park. She explained that in Elmwood Park, they hold a thirty-day transfer meeting as opposed to a sixty-day period. There were no changes to reflect the proper placement. At no time were there any concerns about the ISP. All communications with the family were through the family portal, the parents were told this prior to admission to the District.

Y.B. did not attend school on September 7, 2023, or September 8, 2023. Drozd-Majdanski exchanged emails with Y.B.'s parents, but Y.B.'s mother disagreed with the services being offered, and she was requesting an immediate IEP meeting. She was aware that there was a unilateral placement placing Y.B. at Sinai, and the District held a meeting on October 2, 2023, wherein it discussed providing services, including use of classroom and occupational services. She also reiterated that no one from the District ever met with Y.B. nor observed him while at Sinai. Also, there were never any attempts to contact Sinai about the program nor any contact with his former school. Also, there were never any attempts to contact or meet with Y.B.

On cross-examination, she explained that Y.B.'s scores were in the low to very low range on the Woodcock-Johnson test and that this warranted discussing pullout or in-class resources. Despite that, the District could offer a comparable program. Exhibit R-16 was not the schedule that the District showed to the parents. This was completed after and doesn't reflect the special education teacher. The actual schedule was discarded. There was never any written notice sent to the parents about any IEP meeting. They never contacted the director about having an IEP meeting.

For petitioners:

Anthony Iachetti was the superintendent of Elmwood Park for six years and the director of various areas throughout those years. He didn't know anything about this case and only provided documentation when he was asked for it.

Susan Caplan has thirty-two years of experience as a learning disability teaching consultant, with a Learning Disabilities Teaching Certificate (LDTC) and a supervisor's certificate and is currently working for Marlboro Township Public Schools. She was qualified as an expert witness in special education, case management, formulation of IEPs, nonpublic special education, learning disabilities teaching, and review and interpretation of testing in special education. She testified that the District-offered programming for Y.B. was inappropriate, while the placement at Sinai was appropriate.

Ms. Caplan testified that Elmwood Park did not offer an appropriate program for this child for the 2023–2024 school year because the proposed program was not in writing but testified that she felt Sinai was appropriate for Y.B. because the classes are small and all of the subjects are integrated. She tested Y.B. in October 2023 when Y.B. was in ninth grade, and the testing showed that he was at a second- or third-grade level, but intellectually, he is right there with the other kids, so he needs face-to-face learning, and that is how he has met with success.

Caplan testified that the parents were reasonable in their placement at Sinai because the District would not commit in writing to anything; nor was there any in-class

support program that functioned at Y.B.'s grade level even with accommodations appropriate for him. Y.B.'s mother asked Caplan to perform testing because she was concerned with his achievement and wanted the District to see where he was functioning. She would have liked the District to evaluate him, but it did not offer to. According to the results, Y.B.'s overall academic skills were at the second percentile, meaning that out of 100 children, 98 students would perform better than Y.B. Y.B.'s scores were low to very low with Reading Comprehension in the first percentile, Spelling in the first percentile, and Letter/Word Recognition in the fourth percentile, and she does not think he would be successful in an in-class support setting. These scores show that Y.B. has significant academic delays.

Different than an IEP, ISPs are very limited in what they can provide academically because their funding is controlled by what Caplan called the "host district" in which they are located. The money in Y.B.'s case comes from Teaneck and goes into Yeshivat He'Atid. There is usually only money for supplemental instruction or related services, and students usually only get thirty minutes per week of supplemental instruction.

On cross-examination, Caplan testified that she is familiar with the regulation that provides guidance to the District and states that when a student appears with an ISP in hand, the District is to "Conduct an immediate review of the service plan and . . . provide comparable services pending completion of any necessary assessments." Due to the severity of Y.B.'s needs, two weeks before the school year, in her opinion, was enough time for the District to fully evaluate him. The District did not evaluate him.

Ms. Caplan testified that the New Jersey Administrative Code (Code) states that the District has an obligation to produce an IEP within sixty days but was unable to clarify whether it required the District to produce any other writing during that time.

Y.B. had never attended school in the District; in fact, the District never educated him, and she is not certain if Y.B.'s mother ever appeared in the District with Y.B. She further testified that, under the Code, if Y.B. had shown up on September 6, 2023, the District was required to "offer an appropriate program." Instead, Y.B. was unilaterally placed at Sinai and started there on October 9, 2023.

Ariela Brum testified that she has been a licensed clinical social worker (LCSW) for the past eleven years, eight of which she has been at Yeshivat He'Atid, which is a school that educates students from nursery through eighth grade. She is the sole director of guidance.

Y.B. was a hearing-impaired student of hers and was functioning very far behind his grade level. In fact, he was functioning as a second grader when in eighth grade in all subjects except math. He never was a behavioral problem and was a "good kid." In fact, he would sit "front and center" in the class, but he needed daily help. At no point in time did anybody from Elmwood Park contact her regarding Y.B. for his education prior to entering Elmwood Park.

On cross-examination, Ms. Brum recalled discussing with Y.B.'s parents the support needed for him in Elmwood Park and in high school. In fact, she recalled that they were not happy with the education he was receiving and the services provided by Elmwood Park.

Melanie Feller testified as an expert in speech and language pathology, special education, and DIR floor time (developmental individual differences relationship). Her report (P-54) indicates that an out-of-district placement is appropriate because of Y.B.'s challenges and the lack of his ability to catch up. She "couldn't imagine a child like him catching up." She personally observed the Sinai School in a self-contained biology class that would be more conducive for Y.B.'s productive learning. Review of this case indicated that there was no notice of any evaluation plan nor any notice of an IEP meeting. Her examination of the records revealed Y.B. had significant expressive language delays, significant written delays, social challenges, and neurobiological diagnoses. Despite these challenges, the District failed to hold a twenty-day IEP meeting. She noted that registration with the District triggers the District's responsibility to hold a meeting and that the District did not provide FAPE because there was no evaluation planning and no IEP for Y.B. Feller clarified that an email does not count and that the District failed this young man.

On cross-examination, she reiterated that there should have been a twenty-day meeting even if Y.B. had an ISP because the initial eligibility meeting still should take place even if the District is challenging it. The meeting still should have taken place to establish a plan or program for the child even if evaluations were not required. The Code requires a writing and a meeting. This was not done here.

Credibility

When evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story that considers its rationality or internal consistency and the way it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Further, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

For respondent:

Kathleen Gesumaria, the Director of Special Services at Elmwood Park during the events of the case, was knowledgeable about her duties as Director and about the IDEA provisions that are relevant to this matter. She explained that her primary role was to lead the child study team and ensure it met all applicable timelines and was legally compliant with regard to IEPs for students. She was also able to answer most, if not all, of the questions by opposing counsel regarding her role in the program proposed to Y.B. by respondent.

She was also a very patient witness, clearly explaining her responses. While she was at times unable to remember exact dates and specifics regarding the timeline of Y.B.'s registration and the nature of the District's interactions with the parents, this would certainly be understandable since the events had occurred more than a year before her testimony. Gesumaria was honest in her answers, even when they did not suit the arguments respondent was trying to make. Generally, she made it clear when she did not know answers to the questions. I find her testimony to be credible.

Iwona Drozd-Majdanski testified about her role as a licensed social worker and as the case manager assigned to Y.B. following his registration with the District in August 2023. Having previously attained a master's in social work, she explained her responsibilities as a case manager and was knowledgeable about the differences between ISPs and IEPs. She was also familiar with the sixty-day deadline to provide an incoming former private school student who has an ISP with an IEP. She had served as a case manager at Elmwood since March 2023 and had been working in public school districts since 2015. She came across as sincere and honest about what she did know versus what she did not.

While some of her testimony contradicted that of Ms. Gesumaria's concerning whether evaluations and/or IEP meetings were formally offered to the parents, she was honest in her responses even when her responses weighed in petitioners' favor. She also admitted that neither she nor anyone from the District had ever met Y.B. or attempted

to observe him at Sinai following his unilateral placement there. However, she stated that based on what she reviewed in the ISP provided to her, she felt that what the District was proposing would have supported Y.B.'s educational needs. I find her testimony to be credible.

For petitioners:

Anthony Iachetti was the superintendent of Elmwood Park for six years and the director of various areas throughout those years. He became acting Director of Special Services at Elmwood Park after the events of this case occurred. Thus, he didn't know anything about this case and only provided documentation when he was asked for it. To the extent it is relevant, I find his testimony to be acceptable.

Susan Caplan was qualified as an expert witness in special education (public and nonpublic), case management, formulation of IEPs, learning disabilities teaching, and interpretation of testing in special education. Having spent thirty-two years as an LDTC with a public school, Ms. Caplan was very knowledgeable about special education in New Jersey. She conducted evaluations of Y.B., which revealed that he had significant academic delays, ranking in the second percentile overall. She felt that because the District never provided anything in writing to the parents, it had failed to offer an appropriate program when they had ample time to do it.

On cross-examination, she admitted that, under the Code (N.J.A.C. 6A:14-4.1(m)), there is no clear requirement that the District provide a separate writing during the sixty-day window before an IEP must be produced. Altogether, Ms. Caplan presented as a well-spoken, honest expert who was very familiar with Y.B.'s educational issues and needs. Like the other witnesses, she did not shy away from giving answers that would not be favorable to Y.B. winning the case, and she did not allow opposing counsel to put words in her mouth. I find her testimony to be credible.

Ariela Brum testified about her role as an LCSW for eleven years, the last eight of which she has been at Yeshivat He'Atid as its sole director of guidance. She explained how she had worked with Y.B. during eighth grade and found him to be well behind his

peers, functioning at a second-grade level. She also explained that she had met with petitioners during the eighth-grade school year to discuss where Y.B. would attend following graduation from Yeshivat He'Atid. Asked on cross-examination about this, she said she recommended both Elmwood Park and the Sinai School.

According to her, petitioners were not happy about her first recommendation, while the second also initially upset them because it demonstrated how far behind Y.B. had fallen. She also admitted that she had told petitioners in the past that Yeshivat He'Atid could not meet Y.B.'s needs, but that they elected to remain. She was unable to remember some details, including when she had met with petitioners and whether they had reached out to her during the summer of 2023. What she could say, however, was that as of her last conversations with petitioners, it was her understanding that Y.B. was likely going to be enrolled at Sinai. In sum, Ms. Brum was a credible witness, as she was fully transparent about her interactions with Y.B. and his parents to the extent she could remember them in detail.

Melanie Feller was qualified to testify in this case as an expert in speech-language pathology, special education, and DIR/Floor Time. She testified about how she conducted both the CASL II (spoken language) and OWL II (oral and written language) assessments for Y.B. She explained that he received a score of low average for listening comprehension but that he was in the 0.1 percentile for oral and written expression, which was the lowest possible score. Based on this, it was Ms. Feller's opinion that Y.B. would not succeed in a general education setting, and she felt that a twenty-day meeting to discuss an IEP should have occurred.

On cross-examination, however, she acknowledged that the twenty-day meeting refers to eligibility for special education, and that if the district does not challenge eligibility, the meeting is to review existing documents and prepare a document that allows the child to begin school in a district's program. Furthermore, while she admitted that the 2021 evaluations used by the District were technically current, she felt best practice would have been to request new evaluations based on the concerns expressed by Y.B.'s mother. In total, Ms. Feller was a credible witness.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** as **FACT** that on Friday, August 18, 2023, Y.B.'s parent contacted the Elmwood Park Public School District to register her son, Y.B., for the 2023–2024 academic year. Y.B. attended a private program through the eighth grade. Because that program did not extend beyond middle school, Y.B.'s parent intended to enroll him in the District as a high school freshman. The first day of school for students in the District would take place on Wednesday, September 6, 2023, after Labor Day.

On Monday, August 21, 2023, Y.B.'s parent provided the District with current evaluations as well as Y.B.'s 2020–2021 ISP from the previous program, created by Bergen County Special Services School District ("BCSSSD"). Petitioner's Brief at 1, 5. The following week, on Tuesday, August 29, 2023, Special Services Secretary Noellia Juarez confirmed Y.B.'s registration in the District and receipt of Y.B.'s registration packet, including ISPs for the 2022–2023 and 2023–2024 school years. Id. at 1, 6. Y.B.'s parent followed up with the District Registrar on Wednesday, August 30, 2023, to inquire if someone would be confirming plans for Y.B.'s IEP with her. Ibid.

On Thursday, August 31, 2023, Director of Special Education Services Kathleen Gesumaria suggested to Y.B.'s parent that Y.B. be placed in general education classes with support where possible and to start the evaluation process from scratch if he struggled. Id. at 1, 7. By Friday, September 1, 2023, Director Gesumaria confirmed receipt of the most updated ISP from BCSSSD and assigned Iwona Drozd-Majdanski as Y.B.'s case manager. Id. at 7; see Respondent's Brief at ¶ 18.

Y.B. did not attend school on September 6, 2023. Y.B.'s parent reached out to Y.B.'s assigned guidance counselor, Stephanie Pontidis, noting that Y.B. "has significant special education needs and I have been asking for an IEP. When will my son's IEP meeting be scheduled? I am unable to send him to school until I know what program he will [be] recommend[ed]." Petitioner's Brief at 7. Y.B.'s case manager followed up with the guidance counselor later that day to discuss "the program and the IEP." Ibid. On

Thursday, September 7, 2023, Y.B.'s parent and case manager met by telephone. Ibid.; see Respondent's Brief at ¶ 22. On Friday, September 8, 2023, the case manager sent an email summarizing the meeting and schedule of proposed resources, stating that

As we discussed, we will follow the service plan completed by the BCSSSD which you provided us. Y.B. was placed in an In Class Resource where he will receive modifications and accommodations to support him. In addition to that, as per his plan, Y.B. will receive speech and occupational therapy services once a week in a group setting. As we also discussed, we will have a meeting within 30 days to review his current plan and to determine if there is a need to make any changes.

[Petitioner's Brief at 7; see Respondent's Brief at ¶ 23.]

On September 10, 2023, Y.B.'s parent rejected the proposed resources and again requested "an immediate meeting to discuss [her] son's many needs." Petitioner's Brief at 8; see Respondent's Brief at ¶ 24. The case manager responded on September 11, 2023, proposing an in-person meeting on September 13, 2023, and explaining that "by law, [the District must] implement the most comparable program to the IEP or ISP from the school the student transferred in from for the first 30 days. Then, [the child study team meets] with the teachers to see if this program works in the current setting." Petitioner's Brief at 8; see Respondent's Brief at ¶ 25. At the hearing, representatives of the District, including Director Gesumaria and Superintendent Anthony Iachetti, reiterated that the school has a preference and an unwritten policy to develop IEPs based on ISPs within thirty days rather than the sixty permitted by New Jersey Administrative Code 6A:14-4.1(m).

No in-person meeting occurred. On September 13, 2023, Y.B.'s parent informed the District that Y.B. would be unilaterally placed at the Sinai School in Livingston, New Jersey. Petitioner's Brief at 8; see Respondent's Brief at ¶ 26. Y.B.'s parent explicitly stated that she would seek reimbursement as well as "continu[ing] to seek a public placement that is appropriate for [Y.B.] that has yet to be offered." Petitioner's Brief at 8. On September 20, 2023, Director Gesumaria denied reimbursement and responsibility for any costs associated with the private placement. Petitioner's Brief at 9; see

Respondent's Brief at ¶ 27. The District also notified Y.B.'s parent that Y.B. would be considered unenrolled from the Elmwood Park School District. Respondent's Brief at ¶ 28.

On October 2, 2023, Y.B.'s parent, along with Learning Disabilities Teaching Consultant, Susan Caplan, met with the District. Y.B.'s parent and the teaching consultant expressed their concerns that the available proposed resources were insufficient for Y.B.'s needs. Petitioner's Brief at 9; see Respondent's Brief at ¶ 31–32. No IEP was completed during or after the meeting. Petitioner's Brief at 9. To date, no IEP has been provided. Y.B. remains at the Sinai School.

LEGAL ANALYSIS

The New Jersey special education regulations require public school districts to take action when a student with an ISP from a nonpublic school requests to transfer in. Specifically, the New Jersey Administrative Code provides that

When a student with a disability transfers from a nonpublic school with a services plan, appropriate school district staff shall conduct an immediate review of the services plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. An IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school district.

[N.J.A.C. 6A:14-4.1(m).]

The regulations also require public school districts to determine eligibility for special education services quickly when a parent refers a child to a public district. In particular, the Code states that

when a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent, and the regular education teacher of the student who is knowledgeable about the

student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the school district's programs, shall be convened within 20 calendar days (excluding school holidays, but not summer vacation) of receipt of the written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation pursuant to N.J.A.C. 6A:14-3.4(a). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. The parent shall be provided written notice of the determination(s), including a request for consent to evaluate, if an evaluation will be conducted pursuant to N.J.A.C. 6A:14-2.3.

[N.J.A.C. 6A:14-3.3(e).]

Once a child is deemed eligible for special education services, "a meeting to develop the IEP shall be held within 30 calendar days." N.J.A.C. 6A:14-3.7(a). The IEP "shall be in effect before" any services are provided to the student. Ibid. Further, an IEP shall be in effect "at the beginning of each school year . . . for every student who is receiving special education and related services." Id. at -3.7(a)(1). Additionally, there must be "no delay in implementing a student's IEP," even if "the payment source for providing or paying for special education and related services is being determined." Id. at -3.7(a)(4).

When a student who is eligible for special education services transfers into a public school, an IEP must be created in a timely fashion. A.Z. ex rel. M.Z. v. Mahwah Twp. Bd. of Educ., EDS 09972-03, Final Decision (Jul. 2, 2004) <https://njlaw.rutgers.edu/collections/oal/>. M.Z. was a student unilaterally placed in a private school without reimbursement from the public school district. After the student completed kindergarten and was evaluated by the county special services child study team, the parents contacted the public school to request a school child study team meeting. The parent registered the student in early June for the school year beginning in September, and in mid-June, the parent provided the school's social worker with all evaluation reports and the existing ISP. The ISP provided for occupational and physical therapy, which the public school stated it would be unable to provide.

In August, the parent contacted the principal of the school and requested a meeting to discuss educational needs, even noting her understanding that the meeting must be conducted within twenty days of receiving a referral. The district conducted the meeting, but the parent advised that M.Z. would remain at the private school and continue to seek reimbursement, as well as occupational and physical therapy, from the public school. The public school declined the placement and argued that the ISP constituted a sufficient interim document for “initial entrance” until the student “actually start[ed] attending” the public school.

The ALJ disagreed. Because “the ISP process lacks many of the procedural requirements for an IEP,” it is insufficient for the student’s initial entrance into the public school. Ibid. Under N.J.A.C. 6A:14-4.1(g), the district is required to immediately review “the evaluation information and the IEP” and then implement either the agreed-upon IEP or an interim IEP if the parties do not agree. A school district might be permitted “to implement an interim educational program consistent with available information where the records from the previous school [are] incomplete or unavailable.” Ibid. However, “there simply is no reason to delay development of an IEP where the evaluations and information are complete and no IEP already exists.” Ibid.

“Since M.Z. had already been evaluated and determined eligible for special education,” the school was required to convene an IEP meeting within thirty days of receipt of all evaluation reports and ISP documents. Ibid. Relying solely on “what the child has when he/she actually enters school” would “run counter to the requirements” that an IEP must be in effect at the beginning of each school year, with no delay, and prior to the provision of special education and related services. Ibid. Thus, as soon as full records and evaluations are available for a transfer student, the school has thirty days to complete an initial IEP. No part of the process is tied to the student’s “actual entry” or physical presence at the school.

M.Z. predates N.J.A.C. 6A:14-4.1(m), but the subsection does not supersede a school’s timely obligations to provide FAPE using an IEP. The Department proposed amendments, including the addition of subsection 14-4.1(m), to Title 6A in 2004 to better align the regulations with the 2004 reauthorization of the IDEA and its goal to “infuse

flexibility in making educational policy determinations and reduce administrative requirements that take time away from . . . the provision of a free, appropriate public education to students with disabilities.” 38 N.J.R. 2253(a). The 2004 IDEA seeks to provide FAPE “as efficiently and expeditiously as possible.” Ibid. In alignment with that goal, an IEP providing FAPE must be created in compliance with all other statutory and regulatory deadlines, and the total timeline to do so must not exceed sixty days as per subsection 14-4.1(m).

“Procedural violations on the part of a school district may justify compensatory education or tuition reimbursement when the procedural defects caused such substantial harm that a FAPE was denied.” J.H. and S.R. ex rel. E.H. v. Morris Sch. Dist. Bd. of Educ., EDS 12404-19, Final Decision (Jan. 7, 2021) <https://njlaw.rutgers.edu/collections/oal/>. In E.H., the parents registered the student in late June and provided the student’s prior IEP from 2016, and staff confirmed that someone would be in touch. No one from the school contacted the parents, who followed up with the district through counsel in August to formally request a child study team referral. The parents kept the student in a private school for the beginning of the school year “at least in part because the district had not yet developed a program for E.H.”

The petitioners reached out again in October to request that the district develop an IEP. The district ultimately responded and scheduled a meeting to take place in December, five months after the student’s registration with the district. The ALJ found that

E.H.’s right to a FAPE was impeded when the District did not have an IEP or any services ready for him at the start of the school year despite the fact that the District knew, or certainly should have known . . . that the parents informed staff in late June 2018 that he had an IEP in 2016, and that the parents wrote to the District in August.

[E.H., EDS 12404-19, Final Decision.]

“A parent who is compelled to unilaterally place a child in the face of a denial of FAPE” is not required to place the student in a school that meets state standards. Ibid.

“When a public-school system has defaulted on its obligations under the IDEA,” parents may make a unilateral placement in any private school “if the education provided by the private school is ‘reasonably calculated to enable . . . [E.H.] to make progress appropriate in light of [his] circumstances.’” Ibid. (citation omitted). The ALJ concluded that the student’s private school did enable him to make the appropriate progress, and thus, that the parents were entitled to reimbursement for the school year.

School districts bear the burden to provide FAPE, but “the IDEA contemplates a collaborative effort between the parties in the preparation of the IEP and makes available a host of procedural safeguards to counterbalance district bargaining advantages.” T.P. and P.P. ex rel. J.P. v. Bernards Twp. Bd. of Educ., EDS 6476-03, Final Decision (March 12, 2004) <http://njlaw.rutgers.edu/collections/oal/>; Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982). Before parents make a unilateral placement, they must meaningfully engage in the IEP process. J.P., EDS 6476-03, Final Decision (citing Sch. Comm. of Burlington v. Massachusetts Dep’t of Educ., 471 U.S. 359 (1985); Schoenfeld v. Parkway Sch. Dist., 138 F.3d 379 (8th Cir. 1998)). In J.P., the parents of a fifth-grade student received in-district and independent evaluations and were ultimately presented with a draft IEP at an IEP meeting held on June 30. On July 10, the parents rejected the IEP on the grounds that it was “inappropriate” and unilaterally placed the student into a private school.

The ALJ found that the parents had not participated in the “collaborative effort” contemplated by the IDEA and the corresponding New Jersey regulatory scheme. N.J.A.C. 6A:14-2.10(c) requires parents to give notice of “concerns and intent to enroll their child in a nonpublic school at public expense” so that the district may have an “opportunity to address alleged deficiencies.” N.J.A.C. 6A:14-2.10(c); J.P., EDS 6476-03, Final Decision. The district “intended to incorporate” the recommendations of the independent evaluation, and because the IEP presented was the first draft of the first IEP developed between the parties, “petitioners were obliged to express [concerns] and demand modifications.” J.P., EDS 6476 03, Final Decision. Additionally, “there was ample time before the new school year to make adjustments” had the parents expressed their concerns instead of making the immediate unilateral placement. Ibid.

Here, Y.B.'s parent contacted the District to register Y.B. on August 18, 2023. Y.B.'s parent provided the most updated ISP on August 21, 2023. By September 1, 2023, the updated ISP had reached Kathleen Gesumaria, the Director of Special Services, who assigned Iwona Drozd-Manjaski as Y.B.'s case manager. The first day of school at Elmwood Park was on September 6, 2023. Like in M.Z., the District here indicates that it intended to begin the process of creating an IEP once Y.B. physically reported to the school. This interpretation is incorrect, as the process must commence once the student is enrolled and all documentation has been provided to the school.

Though it is fair to the District to acknowledge that Y.B.'s parents likely could have contacted the District earlier in the summer, the District's obligation to prepare an IEP for Y.B. began at the time when he was both enrolled and when all up-to-date documentation was provided to the school, as in E.H. and M.Z. Thus, beginning on August 21, 2023, the District was obligated to begin creating an IEP for Y.B. Although the District had some services available for Y.B. beginning on September 6, 2023, and those services arguably corresponded to the existing ISP, the outcome remains the same as E.H. where no services were provided at all. The services that the District prepared for Y.B.'s intended first day of school, September 6, 2023, were based on the ISP. Due to the limited timeline, the District acted appropriately to have some services in place for Y.B.'s first day based on the existing documentation and evaluations. However, Y.B.'s parent rejected the proposed services on September 7, 2023, on the grounds that they would be insufficient for Y.B.'s needs. Thus, Y.B.'s parent correctly refrained from sending Y.B. to Elmwood Park, with no intent to do so until an IEP that could fully address Y.B.'s needs was created.

Y.B.'s parent reached out on August 30, 2023, and again on September 6, 2023, to inquire about an IEP. She met with Y.B.'s assigned case manager by phone on September 7, 2023, but afterwards was told that the school would continue to follow the ISP. The case manager described the resources that Y.B. would receive, which Y.B.'s parent rejected, stating that they were inappropriate for Y.B.'s needs. On September 10, 2023, Y.B.'s parent again requested a meeting. The case manager offered a meeting but notified Y.B.'s parent that "by law, we have to implement the most comparable program to the IEP or ISP from the school the student transferred in from for the first 30 days. Then, we meet as a team with the teachers to see if this program works in the current

setting.” Even though there is no evidence that this statement was made in bad faith, it incorrectly describes the law. As of August 21, 2023, Elmwood Park was required to prepare an IEP for Y.B. in line with the requirements prescribed by N.J.A.C. 6A:14-3.7. Because it failed to do so, it failed to provide Y.B. with FAPE, thus defaulting on its IDEA obligations and permitting Y.B.’s parents to make the unilateral placement. Not only did thirty days pass—violating both N.J.A.C. 6A:14-3.7 and the informal preference expressed by the school—but sixty days passed without any IEP, violating N.J.A.C. 6A:14-4.1(m).

As in J.P., Y.B.’s parent did not inform the school of the unilateral placement prior to making it—but she had already rejected the proposed services as of September 10, 2023. Again, because no IEP was provided, the unilateral placement was proper even if Y.B.’s parent had not participated in the requisite “collaborative effort,” which she did. Finally, it need not be addressed whether the unilateral placement meets state standards. So long as the unilateral placement is reasonably calculated to enable Y.B. to make appropriate progress, Y.B.’s parent was within her rights to select any unilateral placement, regardless of state standards.

To date, no IEP has been created. Y.B.’s parent even retained an expert in special education to conduct up-to-date evaluations of Y.B., which were then shared with the District in mid-October 2023. Further, the child study team (1) has never shared the 2021 evaluations with District-employed experts in each corresponding field to ensure the District’s original recommendations were sound, (2) has never attempted to evaluate Y.B. or offered to do such evaluations (unless and until Y.B. is enrolled and physically present at school), (3) has never reached out to Y.B.’s teachers at the former nonpublic placement to ask them for insights into Y.B.’s past learning difficulties, and (4) has never attempted to observe Y.B. at the unilateral private placement or reached out to his teachers there. 9/3/24 Transcript at 306:06–307:06; Petitioners’ Brief at 1; Respondent’s Brief at 2; 9/3/24 Trans. at 303:55–3:04:30; 9/3/24 Trans. at 338:02–338:13.

It is possible that, had Y.B.’s mother not raised concerns about the proposed interim program and had Y.B. attended the Elmwood Park School as originally intended, the Elmwood Park child study team would have convened an IEP meeting within or at

thirty days after observing whether the proposed in-class resource program fit Y.B.'s specific needs. There is no reason to doubt that this was the District's original intention, as this is what Y.B.'s assigned case manager communicated to Y.B.'s parent.

However, once Y.B.'s parent raised her concerns about the proposed program, the case manager repeatedly assured petitioners that the proposal was comparable to Y.B.'s ISP and that the child study team would hold a meeting to develop an IEP within thirty days. See Respondent's Post-Hearing Brief at 8, 22, 25, 29. After the in-person meeting on October 2, 2023, the District made no further attempt to create an IEP for Y.B. When Y.B.'s parent rejected the proposed program and made the unilateral placement, the District stopped engaging in the IEP process altogether and prepared for the present litigation. The District's failure to convene an IEP meeting and draft an IEP for Y.B. within sixty days of his registration with the District was a violation of N.J.A.C. 6A:14-4.1(m), and thus a denial of FAPE to Y.B. Petitioners should prevail and be reimbursed for their costs related to Y.B.'s unilateral placement.

CONCLUSION

Based on the foregoing, Y.B.'s parents should be reimbursed for the cost of the unilateral placement. The District failed to provide Y.B. with FAPE when it failed to create an IEP and relied solely on the existing ISP to propose initial services for Y.B. despite Y.B.'s parent's requests to initiate the IEP process. Because it denied FAPE to Y.B. and has not yet provided any IEP, the District should bear the cost of Y.B.'s chosen unilateral placement.

ORDER

I hereby **ORDER** that petitioners be reimbursed the tuition for their unilateral placement of Y.B. at Sinai at Joseph Kushner Hebrew Academy.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) 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 (2025). 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.

May 27, 2025

DATE



DEAN J. BUONO, ALJ

Date Received at Agency

Date Mailed to Parties:

DJB/oni

APPENDIX

Witnesses

For petitioners:

Anthony Iachetti
Susan Caplan
Ariela Brum
Melanie Feller

For respondent:

Kathleen Gesumaria
Iwona Drozd-Majdanski

Exhibits

For petitioners:

P-2 District Answer to Petition February 2, 2024
P-5 Opposition to District Motion for Summary Decision with Cross Motion for
Summary Decision April 18, 2024
P-9 Order Denying Summary Decision April 4, 2024
P-49 Parent Unilateral Notice August 16, 2024
P-52 Susan Caplan Curriculum Vitae
P-52 Educational Report by Susan Caplan October 15, 2023
P-52 Meeting Notes by Susan Caplan October 2, 2023
P-52 Educational Report by Susan Caplan August 22, 2024
P-54 Melanie Feller Curriculum Vitae
P-62 Registration Information from J. Tarella to M. Inzelbuch September 3, 2024
P-63 Respondent E-Mail to Court with January 30, 2023, Service Plan
P-64 Email Thread Re: Schedule M. Saadeh, K. Gesumaria, I. Drozd-Majdanski
P-31 S. Pontidis Email with Parents September 5, 2023

For respondent:

- R-3 Registration Forms August 28, 2023
- R-4 BCSS Service Plan March 21, 2021
- R-5 BCSSS Service Plan January 30, 2023
- R-8 BCSS Psychological Evaluation By: Alysa Schulgasser February 2021
- R-9 BCSS Occupational Therapy Questionnaire and Evaluation By: Scott Borge February 2021
- R-10 BCSS Educational Evaluation By: Joseph Melone March 2021
- R-11 BCSS Speech Questionnaire and Evaluation By: Brooke Gaslow March 2021
- R-14 Neurological Evaluation By: Susan Caplan October 15, 2023
- R-16 Elmwood Park Proposed Schedule 2023-2024
- R-17 Parent E-mails with Director and Special Services Secretary September 1, 2023
- R-18 E-mails – Parents, Case Manager and Guidance Counselor September 5, 2023, through September 6, 2023
- R-19 E-mails – Parents, Case Manager and Director of Special Services September 2023
- R-20 E-mails – Case Manager and Director of Special Services September 11, 2023
- R-21 E-mails – Parents, Case Manager and Director of Special Services September 13, 2023, through September 20, 2023
- R-23 E-mails – Parents and Case Manager September 13, 2023
- R-25 E-mails – Parent, Case Manager and Director of Special Services October 18, 2023 through November 17, 2023
- R-30 District Letter to Parents – Rejection of Unilateral Placement September 20, 2023
- R-42 Certification of Iwona Drozd-Majdanski – Case Manager
- R-43 Certification of Kathleen Gesumaria – Director
- R-44 Certification of Mother