



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

(CONSOLIDATED)

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 13507-24

AGENCY DKT. NO. 2025-37984

**SCHOOL DISTRICT OF THE
CHATHAMS BOARD OF EDUCATION,**

Petitioner,

v.

K.P. ON BEHALF OF A.P.,

Respondent.

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Petitioner,

v.

**SCHOOL DISTRICT OF THE
CHATHAMS BOARD OF EDUCATION,**

Respondent

OAL DKT. NO. EDS 13508-24

AGENCY DKT. NO. 2025-37949

K.P. on behalf of **A.P.** petitioner, pro se

Frances L. Febres, Esq., for respondent School District of the Chathams Board
of Education (Machado Law Group, attorneys)

Record Closed: February 21, 2025

Decided: March 20, 2025

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The above matters were transferred to the Office of Administrative Law (OAL) as contested matters where they were filed on September 27, 2024.

The undersigned consolidates the matters sua sponte. For purposes of identification, the School Board shall be referred to as respondent and the Parent referred to as petitioner.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matters on October 4, 2024, and a prehearing order was entered on October 8, 2024.

In EDS 13507-24 respondent seeks denial of petitioner's request for independent evaluation.

In EDS 13508-24 petitioner seeks stay put, FBA evaluations, and appropriate supports.

Respondent filed a motion for summary decision dated January 7, 2025. Petitioner failed to file a timely response thereto and was permitted by the undersigned to file a response out of time. Petitioner filed her brief in response to respondent's motion for summary decision, together with a notice of motion for leave to file a late response (which the undersigned had previously granted sua sponte), requesting a closed hearing (all EDS hearings are closed hearings) and requesting an order to address discovery deficiencies and third-party disclosures. On February 21, 2025 respondent filed its reply brief whereupon the record closed.

FINDINGS OF FACTⁱ

1. A.P. is a tenth-grade student in the School District of Chathams. He is entitled to special education and related services under the classification of Autism.
2. A.P.'s education is governed by a March 4, 2024, individualized education program (IEP).
3. A.P. sent an email to his special education and biology teacher on November 29, 2023, wherein he threatened to harm himself. The teacher forwarded the email to A.P.'s counselor and two school psychologists, one of which was Dr. Jacqueline Calle-Andrade.
4. Dr. Calle-Andrade completed a Suicide Risk Assessment Form that day and determined A.P. was at risk. She completed a School Clearance Assessment Referral Form and indicated A.P. required a high-risk evaluation.
5. Petitioner was notified that A.P. would require a psychiatric examination and clearance to return to school. This is in accordance with Board Policy 5141.6, Suicide Prevention.
6. On November 30, 2023, A.P. was cleared to return to school by St. Clare's Behavioral Health.
7. On February 15, 2024, A.P. was flagged through educational software used to monitor student web browsing, etc., concerning searches regarding drug sertraline and why antidepressants cause suicidal thoughts. The student assistant counselor, Heather Flaherty, conducted a Suicide Risk Assessment, and referred A.P. for psychiatric evaluations.
8. A discharge screening was done by Rutgers University Behavioral Health Care on February 16, 2024.

ⁱ Findings of Fact are substantially taken from Respondent's Statement of Material Fact filed with their motion for summary decision. Petitioner does make unsubstantiated factual claims in her submission but does not dispute any facts asserted by respondent.

9. On February 26, 2024, staff held a re-entry meeting and completed a Re-Entry Form. A.P. was cleared to return to school on February 27, 2024.
10. On March 4, 2024, an IEP meeting was held to address the two risk assessments, update the Behavioral Intervention Plan (BIP) remove property destruction and add the use of functional communication. The March 4, 2024 IEP did not modify A.P.'s class placement.
11. A.P. threatened to stab a teacher with a pencil on May 20, 2024. Aime Schwartz, the school psychologist, conducted a suicide risk assessment and determined a risk existed. A.P. was referred to GenPsych Adolescent Program.
12. On the same date GenPsych completed a school clearance evaluation. A.P. was not cleared to return to school. GenPsych recommended that A.P. complete a Full Columbia Suicide Risk Assessment and a general risk assessment.
13. At Petitioner's request, the IEP team met to review and assess A.P.'s progress and program on May 31, 2024. Petitioner requested an autism specific GenPsych where his IEP can be implemented. Petitioner was advised at the meeting that the District is not affiliated with GenPsych and that the IEP could not be implemented at the hospitalization program.
14. Students enrolled at GenPsych are offered instruction through Silvergate Prep. The IEP is unable to be provided through Silvergate or GenPsych.
15. The March 4, 2024 IEP remains in place. The May 31, 2024 IEP was amended to add updated information on A.P.'s status. The programming in the IEP was not changed. No changes have been made since the May 31, 2024 IEP meeting.
16. A.P. received the following evaluations, which the Child Study Team (CST) originally proposed: educational, psychological, physical therapy, speech and language, occupational therapy which included a sensory profile, along with an FBA.
17. Petitioner requested a neuropsychological evaluation, which was found to be not necessary as it would be a duplication of evaluation services. An independent psychological evaluation was also deemed a duplication of evaluation services.
18. A.P. was also examined by clinicians at GenPsych.

19.A.P. was cleared to return to school on June 11, 2024. On June 13, 2024 the District completed a re-entry form.

20.A.P. returned to receive the same programming set forth in the March 4, 2024, which continues to be the IEP for A.P.

21.Petitioner's due process petition requests the following relief: stay put, FBA, evaluations and appropriate support. Anything further requested in Petitioner's filing regarding the instant motion, and Petitioner's cross motions, that are not part of the due process petition are not considered herein.

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536 (citation omitted).

In the instant matter there is no dispute as to material facts and the matter is ripe for summary decision. While Petitioner asserts facts in her filing, none are substantiated

by any documentation or affidavit or certification. They are simply assertions without substance.

Individuals with Disabilities Education Act

Federal funding of state special education programs is contingent upon the states providing a “free and appropriate education” (FAPE) to all disabled children. 20 U.S.C.A. §1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C.A. §§1400 et seq. “[T]he IDEA specifies that the education the states provide to these children ‘specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.’” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. §1401(9); N.J.A.C. 6A:14-1.1(d). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C.A. §1412(a)(1)(A), (B). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The IDEA does not require that a school district “maximize the potential” of the student but requires a school district to provide a “basic floor of opportunity”. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 102 S. Ct. 3034, 3047, 73 L. Ed. 2d 690, 708 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the child’s education plan provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000) (internal citations omitted).

The Individuals With Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1401 to 1482, and State statutes, N.J.S.A. 18A:46-1 to -55, are designed “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). A state may qualify for federal funds under the IDEA by adopting “policies and procedures to ensure that it meets” several enumerated conditions. 20 U.S.C.A. § 1412(a). These requirements for federal funding include the following conditions: all eligible children must be provided with FAPE, 20 U.S.C.A. § 1412(a)(1), and education agencies and intermediate educational units must develop an IEP for each eligible child before the beginning of each school year. 20 U.S.C.A. § 1412(a)(4).

Although the ultimate obligation to offer a FAPE is borne by the school district, 20 U.S.C.A. §1412(1); 34 CFR 300.1(a) (2013); N.J.A.C. 6:28-1.1(a), (e), -2.1(a), “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 o/b/o J.P. v. Bernards Twp. Bd. of Educ., EDS 6476-03, Final Decision (March 12, 2004), <<http://njlaw.rutgers.edu/collections/oal/>>; Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed.2d 690 (1982). A judicially created equitable remedy has been created whereby parents can make a unilateral placement for their child if they are dissatisfied with the actions of the school district. However, this first requires that the parents meaningfully engage in the IEP process. T.P., supra (citing Sch. Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed.2d 385 (1985); Schoenfeld v. Parkway Sch. Dist., 138 F.3d 379 (8th Cir. 1998)).

Petitioner’s position that the District failed to comply with A.P.’s IEP is mistaken. While not clear in petitioner’s due process petition, or in petitioner’s filings, in regard to the instant motion, it seems petitioner claims that A.P. was not provided FAPE during his admission to a psychiatric hospital. The IEP could not be implemented while A.P. was at the hospital. (See SOMF ¶¶29-30)

A.P.'s IEP was not changed and remained in place. The programming was not modified.

N.J.S.A. 18A:40-7 states:

When there is evidence of departure from normal health of any pupil, the principal of the school shall upon the recommendation of the school physician or school nurse exclude such pupil from the school building, and in the absence from the building of the school physician or school nurse, the classroom teacher may exclude the pupil from the classroom and the principal may exclude the pupil from the school building.

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

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 public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

1. Such independent evaluation(s) shall be provided at no cost to the parent unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.
 - i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or

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

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

This procedure is consistent with federal law in granting parents a right to an independent evaluation of their children. The federal regulation is as follows:

(a) General.

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this subpart—
 - (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
 - (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) Parent right to evaluation at public expense.

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

- (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
- (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

[34 CFR 300.502 (2017).]

In the instant matter, the petitioner requested an FBA evaluation. Respondent has more than amply demonstrated that an FBA was conducted by Ms. Cohen on June 14, 2024. Further, the Respondent has conducted many other evaluations of A.P. Petitioner's requests for additional evaluations are not warranted. The District has done extensive evaluations of A.P. and has demonstrated that the need for District funded evaluations are not warranted. Petitioner is, of course, free to have any evaluations of A.P. done at her expense.

Regarding Petitioner's motion to compel discovery I note that Petitioner does not certify that she complied with N.J.A.C. 1:1-10.2, or that she requested any specific item in discovery. Further, Petitioner did not comply with N.J.A.C. 1:1-10.4(d). Petitioner did

not request a telephone conference, as required by rule, to address any discovery concerns prior to filing a motion to compel discovery. I note further that the request for discovery is nonspecific. The undersigned does not know what discovery was requested or what was allegedly denied. I note that Petitioner did make OPRA requests. However, an allegation of a governmental unit's failure to comply with OPRA is outside the scope of this matter.

Regarding Petitioner's motion for late filing, that was granted by the undersigned sua sponte prior to any motion for the same by Petitioner and is moot.

Regarding Petitioner's motion for a closed hearing, the same is also moot as all EDS hearings are closed hearings.

Regarding Petitioner's request for "stay put", the matter is moot. Respondent is not trying to change the IEP. Rather, Respondent agrees that the current IEP is the "stay put". There is no relief that can be granted regarding this.

I **CONCLUDE** that respondent is entitled to summary decision.

ORDER

It is hereby **ORDERED** that the Respondents' motion for summary decision is granted;

It is further **ORDERED** that Petitioner's cross motion is denied; and,

It is further **ORDERED** that Petitioners' due process petition is dismissed with prejudice.

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 (2024). 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.



March 20, 2025

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency

Date Mailed to Parties:

db

List of Moving Papers

For Petitioner:

Brief in opposition to motion for summary decision

Motion to file late response, discover and third-party disclosures

Petitioner's certification with exhibits

For Respondent:

Motion for Summary Decision

Respondents' brief in support of Motion for Summary Decision

Certification of Counsel with exhibits

Certification of Dr. Emily Sortino with exhibits

Certification of Melissa Quiceno, LDTC with exhibits

Certification of Jessica Cohen with exhibits

Certification of Dr. Jacqueline Calle-Andrade with exhibits

Respondents' reply brief