State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION GRANTING MOTION TO DISMISS
OAL DKT. NO. EDS 15799-24
AGENCY DKT. NO. 2025-38264

S.E. ON BEHALF OF S.E.,
Petitioner,
v.
KEANSBURG BOROUGH BOARD OF EDUCATION,
Respondent.

S.E. on behalf of S.E., petitioner, pro se

Gabrielle Pettineo, Esq., for respondent (Kenney, Gross, Kovats & Parton, attorneys)

Record Closed: February 10, 2025 Decided: May 29, 2025

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Respondent, Keansburg Borough Board of Education (Keansburg or respondent), seeks an order to dismiss the petitioner S.E.'s petition for stay put at Middletown High School North in Middletown, New Jersey, for her minor son, S.E. Has the respondent met

the requirements for a motion to dismiss? Yes, S.E. has failed to state a claim upon which relief can be granted.

PROCEDURAL HISTORY

S.E., on behalf of minor child S.E., filed a petition dated October 21, 2024, with the New Jersey Department of Education, Office of Special Education (OSE), seeking a "stay put" order that would keep her son at Middletown High School North. The respondent filed a response dated October 31, 2024. The petitioner waived the resolution period, and the petition was transmitted by the OSE to the Office of Administrative Law (OAL) on November 8, 2024, for hearing as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

On November 25, 2024, the parties appeared for a settlement conference before the Honorable Patricia Caliguire, ALJ; however, the matter did not settle. The case was transferred to the undersigned, and a telephone prehearing conference call was held on December 10, 2024, during which the Board requested a briefing schedule for its pending motion to dismiss, and a hearing was scheduled for February 10, 2025.

On January 29, 2025, the respondent filed a motion to dismiss. The petitioner responded on the same date. Oral argument was heard on the motion on February 10, 2025, and the motion is now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

The respondent's motion was filed in accordance with N.J.A.C. 1:1-12.1, which allows parties to file motions, and N.J.A.C. 1:1-1.3(a), which declares that administrative practice and procedure are to be "construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." In addition, the New Jersey Supreme Court explained that the analysis required when considering a motion to dismiss is "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988) (citations omitted). Further:

> Because the matter arises on defendants' motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor. A reviewing court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim[.]"
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> [Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625–26 (1995) (citations omitted); see also Maeker v. Ross, 219 N.J. 565, 569 (2014).]

A motion to dismiss should only be granted in the rarest of instances. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989).[1] In reviewing the complaint, the question is not whether the petitioner can prove the allegations, but whether the facts alleged are sufficient to state a cause of action. Id. at 746. Accordingly, for the purposes of the motion, all facts alleged by the petition will be deemed admitted, and I **FIND** as follows:

1. The Board administers the Keansburg School District (District), a public school district serving students in grades kindergarten through twelfth grade.

2. From 2020 to 2024, the petitioner and her two sons lived in Middletown and the minor child S.E. attended Middletown High School North from ninth to eleventh grades.

3. In December 2023, the petitioner lost her housing in Middletown and the family was forced to move out of Middletown into a hotel, however, under the McKinney-Vento Act (citation omitted), her son, S.E., continued to attend Middletown High School North. He was in the eleventh grade.

[1] See also F.G. v. MacDonell, 150 N.J. 550, 556 (1997) ("If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.").

4. On or about March 2024, the petitioner found a house in Keansburg, and the family moved. For the 2024–25 school year, the minor child S.E. was in a shared program in which S.E. attended the Keansburg Law Enforcement Academy (KLEA) for half a day and Middletown High School North for the other part of the school day. The Middletown School District (Middletown) provided transportation from the KLEA program to Middletown High School North.

5. For the 2024–25 school year, S.E. was deemed eligible for special education services under the category of Other Health Impairment (OHI) and placed in the Language and Learning Disabilities (LLD) setting for English, Math, and Science by an Individualized Education Plan (IEP) prepared by Middletown.[2] (Resp't's Ex. B.) Middletown provided transportation from "the closest safe area determined by [the] transportation department" from September 1, 2024, to October 25, 2024. (Ibid.) This IEP is dated October 12, 2023, with a projected end date of October 25, 2024. (Id.)

6. The IEP prepared by the Keansburg School District and dated October 10, 2024, with a projected end date of June 18, 2025, placed S.E. in the LLD class for English only.[3] (C-1.) Transportation was not included in the IEP. (Ibid.)

7. On or about September 2024, S.E. stopped attending the KLEA program and stopped attending classes at Middletown High School North on or about October 7, 2024. Transportation services stopped when S.E. stopped attending the KLEA program. (P-4.)

[2] This IEP has the address for Keansburg School District but designates Middlesex High School North and grade 12.
[3] This IEP also lists the address for Keansburg School District but designates Keansburg High School and grade 12.

8. Middletown was unwilling to accept S.E. as a student because he did not reside in Middletown and was not homeless. Middletown did not accept S.E. as a tuition student. (Resp't's Ex. E.)

9. Keansburg did not provide transportation for its students.

POSITIONS OF THE PARTIES

Respondent moves to dismiss the petition for failure to state a cause for which relief can be granted based upon several grounds. First, Keansburg cannot coerce Middletown to accept S.E. as a student because neither the petitioner nor minor child S.E. are residents of Middletown. Second, Middletown has no legal obligation to educate S.E. and has refused to permit S.E. to attend its schools as a tuition student. Third, Middletown is not a party in this matter and cannot be compelled to accept S.E.

In response, the petitioner asserts that since 2020, her son's IEP mandated that he receive transportation from Middletown regardless of the McKinney-Vento Act. His current IEP mandates transportation and thus he remains entitled to transportation. She also wanted to honor her son's desire to graduate from Middletown High School North, the high school he had attended since ninth grade. She believed that Middletown High School North was a better school for her son.

LEGAL ANALYSIS AND CONCLUSION

When reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, the New Jersey Supreme Court has ruled that the truth of the non-moving party's allegations must be assumed and the reviewing court must "[search] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart-Morristown, 116 N.J. at 746 (citing Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). In addition, in Green v. Morgan Properties, 215 N.J. 431, 451 (2013), the Court stated, "[t]he standard traditionally utilized by courts to determine whether to dismiss a pleading for failure to

state a claim on which relief may be granted is a generous one." "At this preliminary stage of the litigation the Court is not concerned with the ability of [petitioner] to prove the allegation contained in the [petition]." Printing Mart-Morristown, 116 N.J. at 746. For the reasons that follow, I **CONCLUDE** that respondent's motion to dismiss for failure to state a cause of action should be granted because petitioner's petition may not be read to state a recognizable claim under New Jersey law.

In her petition, the petitioner alleges that she is entitled to a "stay put" order because she was not in agreement with the IEP drafted on October 10, 2024. In addition, she wants him to remain in Middletown because he had attended there for three years and did not want to attend Keansburg High School.

N.J.A.C. 6A:14-2.7(u) provides:

> Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program, or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law . . . .
>
> [Emphasis added.]

Under IDEA jurisprudence, the Third Circuit has held that the "stay-put" mechanism acts "as an automatic preliminary injunction" and "protects the status quo of a child's educational placement while a parent challenges a proposed change to, or elimination of, services." Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (discussing the federal analogue to New Jersey's stay-put provisions) (citation omitted); C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 71–72 (3d Cir. 2010). A child's "educational placement" for stay-put purposes has been interpreted as "the operative placement actually functioning at the time the dispute" arises between a parent and a school district. Drinker, 78 F.3d at 867. In other words, with a "stay put" claim, the petitioner is seeking an automatic statutory injunction against any effort to change her son's placement at the time the provision is invoked.

Here, "stay put" would require S.E. to return to the KLEA program. However, that is not the petitioner's request or her son's desire. Instead, she seeks to have him remain enrolled in Middletown and she implicitly seeks transportation because she cannot transport him due to health issues. There are several faults with this logic. First, Middletown is not a party to this litigation. Middletown is a third party, and pursuant to N.J.A.C. 1:1-1.3(a), this tribunal cannot compel action upon a third party. Specifically, this regulation provides in relevant part:

> Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.
>
> [N.J.A.C. 1:1-1.3(a).]

In New Jersey, special education matters are governed by special education rules. See N.J.A.C. 1:6A-1.1 through 1:6A-18.4. These special education rules do not specially authorize the administrative law judge to join third parties. This principle was explored and explained in Washington Commons, LLC v. Public Service Electric & Gas Co., 2013 N.J. PUC LEXIS 17, wherein the Board of Public Utilities affirmed the ALJ's Initial Decision denying the respondent's motion to join a third party to a billing dispute. In reliance upon N.J.A.C. 1:1-1.3(a), the Board stated:

> [A]n ALJ cannot compel a party to join an existing administrative proceeding unless a separate rule or law authorizes joinder.
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> [Id., at *12.]

Similarly, in the absence of a special rule or law, this tribunal cannot compel Middletown to be a party to the present litigation.

Second, the IEP that was in place at the time the petition was filed provided that S.E. receive transportation from the "closest safe area determined by transportation" starting September 1, 2024, and ending October 25, 2024. (Resp't's Ex. B.) Thus, at the time the petition was filed, S.E. was entitled to transportation for four additional days. However, it is undisputed that S.E. stopped attending the KLEA program at the start of

the 2024–25 school year. Thus, it strains logic to require a school district to provide transportation for a student who was not attending the program. Accordingly, I **CONCLUDE** that stay put is not applicable under these circumstances.

Finally, it is undisputed that S.E. was a resident of Middletown from 2020 through 2023 and thus was entitled to an educational program and transportation. N.J.S.A. 18A:38-1 provides that every student between the ages of five and twenty is entitled to a free public education in the school district in which the student is domiciled. However, once the family moved to Keansburg, the respondent became the local educational agency responsible for S.E.'s educational needs, and attending school in another district was discretionary, requiring agreement between the home district and the new district. Specifically, N.J.S.A. 18A:38-3(a) states:

> Any person not resident in a school district, if eligible except for residence, may be admitted to the schools of the district with the consent of the board of education upon such terms, and with payment of tuition, as the board prescribes.
>
> [Ibid. (Emphasis added.)]

For the 2023–24 school year and the start of the 2024–25 school year, the two districts agreed to allow S.E. to participate in a shared program in which S.E. took academic classes at Middletown while also attending the KLEA program in Keansburg. However, because S.E. stopped attending the KLEA program and academic classes at Middletown, Middletown exercised its discretion not to accept S.E. as a tuition student. The petitioner contends that her son only stopped taking the academic classes because Middletown failed to provide transportation from her home in Keansburg to Middletown as required in her son's IEP. However, the IEP in place at the time the petition was filed did not mandate transportation from her home in Keansburg to Middletown but rather from the "closest safe area determined by transportation." The petitioner did not provide evidence to support the idea that this language meant transporting her son from his home in Keansburg to Middletown. Middletown only provided transportation from the KLEA program to Middletown High School North.

Moreover, the superintendent of Middletown certified that Middletown was unwilling to accept S.E. as a tuition student because he was no longer a resident, or homeless. (Resp't's Ex. E.) Accordingly, I **CONCLUDE** that the petitioner has not made a claim for which relief can be granted. By operation of law, S.E. must attend school where he resides.

ORDER

For the reasons set forth above, I **ORDER** that the motion of respondent Keansburg Board of Education to dismiss the petition of S.E. on behalf of S.E. for failure to state a claim on which relief may be granted under the IDEA is hereby **GRANTED**, and S.E.'s petition is hereby **DISMISSED**.

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.

May 29, 2025 — Kim C. Belin

DATE — **KIM C. BELIN**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KCB/am

Exhibits

For Petitioner:

P-1 S.E.'s letter dated July 31, 2024

P-2 Alice Kain letter dated July 30, 2024

P-3 Not admitted

P-4 Emails dated September 12, 2024, through September 17, 2024

P-5 Not admitted

For Respondent:

Exhibit A McKinney-Vento forms

Exhibit B IEP from Middletown dated October 12, 2023

Exhibit C Not admitted

Exhibit D Not admitted

Exhibit E Certification by Dr. Jessica Alfone dated January 22, 2025

Exhibit F Not admitted

For the Tribunal:

C-1 IEP from Keansburg dated October 10, 2024