State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 08249-25
AGENCY DKT. NO. 2025-39081

HIGHLAND PARK BORO
BOARD OF EDUCATION,
Petitioner,
v.
A.B. ON BEHALF OF J.B.,
Respondent.

David B. Rubin, Esq., for petitioner (Busch Law Group, LLC, attorneys)

A.B. on behalf of J.B., pro se, respondent

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

Record Closed: September 16, 2025 Decided: October 22, 2025

STATEMENT OF THE CASE

Petitioner, Highland Park School District ("District"), seeks a determination that respondent, A.B., is not authorized to request independent educational evaluations (IEEs) on behalf of her son, J.B., and a determination that the District is not required to provide J.B. with the requested teacher of the deaf IEE.

PROCEDURAL HISTORY AND FACTUAL DISCUSSION

J.B. is a fourteen-year-old student enrolled in the District. J.B. receives special education and related services for multiple disabilities, including deafness in both ears.

This is the second due process hearing the District initiated against J.B.'s mother, A.B., in response to her requests for IEEs. The first arose after J.B.'s most recent triennial reevaluation, conducted before his June 10, 2022, individualized education program (IEP) meeting. After the meeting, on June 20, 2022, A.B. requested an IEE consisting of physical therapy, occupational therapy, speech/language therapy, behavioral, communication, and neurodevelopmental assessments. The District filed for due process on July 11, 2022. That matter, Highland Park Borough Board of Education v. A.B. ex rel. J.B., OAL Dkt. No. EDS 07736-22 was transmitted to this tribunal.

On May 22, 2023, A.B. and the District entered into a settlement agreement, under which the District agreed to complete physical therapy, occupational therapy, speech/language therapy, augmentative assistive communication, functional behavioral, and neurodevelopmental assessments. All but one of the IEEs have been completed; the physical therapy assessment remains outstanding. The District claims that A.B. cancelled the evaluation but presents no evidence at this time.

In March 2025, J.B. began attending Highland Park Middle School in a specialized class for children with multiple disabilities. Prior to May 2024, J.B. received teacher of the deaf services focused on "supporting the classroom teacher, therapists, and staff in implementing the strategies and accommodations needed to provide [J.B.] . . . access to his education." On April 1, 2025, Melissa Phillips, an itinerant teacher of the deaf, conducted an observation of J.B. The stated purposes were to (1) ensure J.B.'s instruction and services are adequate for a student who is deaf with multiple disabilities, and (2) determine the type and frequency of teacher of the deaf services needed to support his placement in an in-district, self-contained class.

On April 25, 2025, in response to Phillips's "Initial Observation Report," A.B. requested an independent teacher of the deaf assessment. On April 30, 2025, the District convened an IEP meeting proposing a change in placement for J.B. to an out-of-district school, with home placement in the interim. At the meeting, the District informed A.B. that Phillips's observation was not an evaluation under N.J.A.C. 6A:14-3.4. A.B. has indicated she may contest this IEP in the future but has not done so yet; it went into effect on May 17, 2025.

On May 12, 2025, the District filed for due process, and on the same date, the matter was transmitted to the Office of Administrative Law, where it was filed as a contested case. The plenary hearing was scheduled for June 24, 2025. On May 29, 2025, the District submitted a motion for summary decision. A.B. has not submitted a response.

LEGAL DISCUSSION

Under N.J.A.C. 1:1-12.5(a), "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." A motion for summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The key consideration is "whether [the evidence] is so one-sided that one party must prevail as a matter of law." Brill v. Guardian Life Insurance Company of America. 142 N.J. 520, 533 (1995) (quoting Anderson v. Liberty Lobby, 447 U.S. 242, 251–52 (1986)).

I. The law governing IEEs

Parents have the right to obtain an IEE by a qualified professional not employed by the district. 34 C.F.R. § 300.502(a)(1), (a)(3)(i) (2025). If a parent disagrees with a district evaluation, they may request an IEE at public expense, and the district must either fund the IEE or defend its evaluation through due process. Id. at § 300.502(b)(1)– (2). Any publicly funded IEE must be considered in decisions about the child's program. Id. at § 300.502(c)(1). The Individuals with Disabilities Education

Act (IDEA) does not precisely define "evaluation," leaving some uncertainty about whether narrower assessments or observations qualify.

a. What constitutes an "evaluation" triggering a parent's right to request an IEE

Neither the IDEA nor its implementing regulations state with particularity what constitutes an "evaluation." Two main approaches exist under the case law. The first, advanced by the District, adopts a narrow reading whereby an "evaluation" is limited to comprehensive assessments, such as initial evaluations, triennial reevaluations, or other holistic evaluations agreed to by the parties. Under this view, stand-alone or targeted assessments do not trigger a parent's right to request an IEE.

The leading example of this approach is found in D.S. v. Trumbull Board of Education, 975 F.3d 152 (2d Cir. 2020), where the parents and the school district had agreed to conduct functional behavioral assessments (FBAs) annually, separate from the child's formal triennial reevaluations.[1] Ibid. As contemplated, the district completed a stand-alone FBA. Applying a plain language analysis, the court held that "stand-alone" assessments like annual FBAs do not entitle a parent to an IEE, limiting "evaluation" to initial, triennial, or mutually agreed-upon holistic assessments addressing all aspects of a child's disability. Id. at 155.

The second approach takes a broader view, recognizing that an "evaluation" may include any assessment or observation that provides information central to determining a child's eligibility for special education or the services the child needs. Under this perspective, stand-alone assessments, targeted observations, or specialized reports can qualify as evaluations if they meaningfully inform the development of the child's

[1] Because so many of these cases revolve around FBAs, it is probably worth noting that they are assessments targeted at understanding the purpose of behaviors, generally as part of a broader intervention plan. FBAs are generally designed by a team, and they use many strategies to isolate and understand the cause of behaviors and collect data about the behaviors. See U.S. Dep't of Educ. Office of Spec. Ed. and Rehab. Servs., Using Functional Behavioral Assessments to Create Supportive Learning Environments, Nov. 2024, https://sites.ed.gov/idea/idea-files/using-functional-behavioral-assessments-to-create-supportive-learning-environments/. They are different from the teacher of the deaf assessment in this case, which doesn't involve any significant data collection beyond a few observations.

IEP. Courts adopting this view have emphasized that the parent's right to an IEE is triggered whenever the school relies on such information to make decisions about a child's program, even if the assessment is not part of a full initial or triennial evaluation.

This broader interpretation was applied in Harris v. District of Columbia, 561 F. Supp. 2d 63 (D.D.C. 2008), where the parents argued that an FBA is an "educational evaluation" because it is central to the development of an IEP. Id. at 67. The court agreed with the parents, noting that "evaluation" is defined as "procedures used . . . to determine whether a child has a disability and the nature and extent of the special education and related services the child needs." Ibid. (quoting 34 C.F.R. § 300.15). Since the "information gleaned from the assessment [was] central to formulating an IEP," the FBA constituted an evaluation. Id. at 68.

Neither Trumbull nor Harris are binding; however, the Third Circuit and New Jersey courts have not spoken on this issue in any meaningful way. The few cases addressing this issue in New Jersey offer inconsistent guidance, with New Jersey courts and administrative bodies having applied both approaches.

In Pequannock Township Board of Education v. K.K. ex rel. G.R., 2021 N.J. AGEN LEXIS 730 (July 12, 2021), the ALJ considered whether a stand-alone FBA constituted an evaluation. Relying on Trumbull, the school district maintained that the FBA did not constitute an evaluation. Id. at *18. The ALJ considered Trumbull but explicitly declined to adopt its narrow holding, stating that neither the Third Circuit, nor any New Jersey court, has concluded that an FBA is not an evaluation. In fact, the U.S. Department of Education has issued at least two policy letters[2] in which it endorses the conclusion that FBAs are evaluations for purposes of triggering the right to an IEE, and the New Jersey Office of Administrative Law has historically viewed FBAs as one type of evaluation for which a parent may request an IEE. Id. at **18–19.

[2] These letters are no longer available on the Department of Education's website, at least using the URLs found in Trumbull. They can still be found at https://web.archive.org/web/20170216223436/https:/www2.ed.gov/policy/speced/guid/idea/letters/2007-1/christiansen020907discipline1q2007.pdf and https://web.archive.org/web/20170301025456/https:/www2.ed.gov/policy/speced/guid/idea/letters/2000-2/scheinz060700evals2q2000.pdf on the Internet Archive's Wayback Machine.

Further, the ALJ found the holding in Trumbull of limited relevance since the FBA in Pequannock had been part of a triennial reevaluation rather than a "stand-alone" assessment like the one in Trumbull. Id. at *20.

By contrast, in Oakland Boro Board of Education v. C.G. and R.G. ex rel. A.G., 2025 N.J. AGEN LEXIS 143, *31 (March 14, 2025), the ALJ, citing Trumbull and 34 C.F.R. § 300.502, rejected a broad interpretation of evaluations, holding that initial and triennial evaluations trigger a parent's right to an IEE at public expense and "that right to an IEE ripens whenever a new evaluation is completed." The decision, however, focused primarily on the timing of an IEE request rather than whether the underlying event constituted an evaluation triggering the parent's right to request an IEE at public expense.

This differs from D.L. and C.L. ex rel. C.L. v. Nutley Board of Education, 2015 N.J. AGEN LEXIS 412 (July 13, 2015), where the district was alleged to have conducted an evaluation without parental consent. The "evaluation" in question consisted of a series of reports, observations, and recommendations by an on-staff occupational therapist who was working regularly with the child. Id. at **10–12. The therapist's recommendations primarily involved adjusting the exercises the child was completing in the classroom and altering the amount of time he spent in occupational therapy as he completed goals and developed his skills. Ibid. The ALJ concluded that, although some of her recommendations informed the child's IEP, it did not rise to the level of an evaluation because it was part of routine service delivery rather than a formal assessment designed to determine the child's special education needs. Id. at *31.

In Haddon Township School District v. N.J. Department of Education, 2016 N.J. Super. Unpub. LEXIS 235 (N.J. App. Div. Feb. 4, 2016), the court adopted a broad interpretation in addressing a parent's request for an independent FBA. The school had asked the court to determine that an evaluation was "something more than a review of data." Id. at **5–8. The Haddon court rejected this argument because the IEP team's review of existing data, including teacher observations, could meaningfully inform the child's program and help determine the extent of services needed. This review of data

for the development of an IEP, then, could be an evaluation triggering a parent's right to an IEE. Id. at **8–9.

Haddon was distinguished by S.S. v. Hillsborough Township Public School District, 2019 U.S. Dist. LEXIS 15136 (January 31, 2019), another case about IEEs. The parents in Hillsborough wanted IEEs for their child's triennial review, but they refused to consent to the school's assessments, preventing the school from collecting any data the evaluation could rely on; the Hillsborough court referenced the holding in Haddon favorably, only noting that it had been misapplied by the ALJ. Id. at *18.

Together, these cases illustrate the tension in New Jersey between a narrow view of evaluations as formal, comprehensive assessments and a broader view that considers targeted assessments or professional observations that meaningfully inform a child's IEP.

II. Summary decision must be granted because a hearing is not necessary to determine how Phillips's report was used in developing J.B.'s IEP.

The District's motion for summary decision must be granted because there are no genuine issues of material fact concerning how Phillips's observation report was used in developing J.B.'s IEP. Phillips conducted an observation on April 1, 2025, to evaluate J.B.'s instructional needs and determine the type and frequency of teacher of the deaf services required in his self-contained classroom. Her report recommended placement in a specialized program for deaf children with multiple disabilities (which was not available in-district); continued use of assistive technology; additional efforts to integrate sign language into J.B.'s current placement; and future teacher of the deaf support. At the IEP meeting, the District proposed an out-of-district placement, and A.B. and the child study team apparently discussed Phillips's report. Clearly, the recommendations in the report influenced the IEP in some way.

Whether Phillips's observation constitutes an evaluation for purposes of triggering a parent's right to an IEE depends on how the report informed the IEP. Unlike the prior teachers of the deaf services extended to J.B., which were focused on

supporting classroom staff, Phillips's observation did not address all of J.B.'s needed services yet recommended a placement change, which were ultimately adopted in the IEP. If the observation report materially influenced decisions about J.B.'s placement and services, especially something as substantial as an out-of-district placement, it would likely constitute an evaluation under the broader approach reflected in Harris and Haddon. At the same time, because it was not created as part of a major, comprehensive initial evaluation or reevaluation and is, based on the evidence that has been presented so far, not part of a holistic assessment, it also falls within the narrower framing described in Trumbull. I believe this is mere semantics.

Neither case is controlling authority, but the more expansive view of evaluations appears to be more common in New Jersey, given that it has been applied in Haddon and cited neutrally, if not positively, by the District Court in Hillsborough. The record shows that Phillips's report was used, but reasonable minds could conclude that it does not constitute an evaluation. The uncontested facts presented by the District are truly uncontroverted. Accordingly, a hearing is not necessary to resolve any factual question. Viewing the evidence in the light most favorable to A.B., summary decision is appropriate, and the District's motion should be granted. Therefore, I **CONCLUDE** that summary decision is appropriate.

ORDER

It is **ORDERED** that the motion for summary decision be and hereby is **GRANTED**.

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.

October 22, 2025
DATE

DEAN J. BUONO, ALJ

Date Received at Agency

Date Mailed to Parties:

DJB/ol/gd