State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 08947-25
AGENCY DKT. NO. 2025-38781

M.B.,

Petitioner,

v.

NEWARK CITY BOARD OF EDUCATION AND
NEW JERSEY DEPARTMENT OF EDUCATION
AND ESSEX COUNTY DEPARTMENT OF CORRECTIONS

Respondents.

Regina Ann Smith, Esq., for petitioner (Disability Rights New Jersey, attorneys)

Isabel Machado, Esq., for respondent, Newark Public School District (Machado Law Group, attorneys)

Gary J. Cucchiara, Esq., Assistant County Counsel**,** for respondent, Essex County Department of Corrections

Luke D. Hertzel-Lagonokis and **Rachel B. Kristol**, Deputy Attorney Generals for respondent, New Jersey Department of Education, (Matthew J. Platkin, Attorney General of New Jersey, attorney

Michael Vomacka, Deputy Attorney General, for respondent, New Jersey Department of Corrections (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: December 15, 2025 Decided: January 13, 2026

BEFORE **MATTHEW G. MILLER,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1400 to 1482. Petitioner, M.B., who is now twenty-one years-old, claims that he was denied a Free and Appropriate Public Education (FAPE) in violation of the IDEA by respondents while he was detained at the Essex County Correctional Facility (a/k/a Essex County Jail – "ECJ").

M.B. has a short but turbulent history before the OAL. On April 9, 2024, he filed a Petition for Emergent Relief and a Due Process Petition against the Essex County Educational Services Commission ("ERESC"), the Essex County Youth Detention Center ("CYDF ") and the New Jersey Juvenile Justice Commission ("JJC")[1]. In the Petition for Emergent Relief, he maintained that there was a break in the provision of educational services and sought an order for immediate implementation of his IEP and provision of four hours of instruction, five days per week, at Sojourn High School, the "in-house" school he attended while detained at the CYDF. (C-1.) The Emergent Petition was settled on April 26, 2024 and that settlement was approved on May 13, 2024. (P-J.)

Litigation concerning the Due Process Complaint continued and that matter was ultimately resolved on January 17, 2025 with the settlement being approved on January 23, 2025. (C-2, C-3 and P-1.)

[1] Now the Youth Justice Commission.

In the interim, on October 18, 2024, M.B. had filed another Petition for Emergent Relief and Due Process against the Newark Board of Education, seeking to have an IEP meeting convened as well as for Compensatory Education. (C-4.) It appears as if this case was withdrawn on or about September 10, 2025.

Unfortunately, M.B., now of majority age, had been re-arrested and, as of December 28, 2024, was incarcerated at the Essex County Jail. Ultimately, that led to the filing of a third Petition for Emergent Relief and Due Process on March 11, 2025. (C-5.) On April 11, 2025, the Hon. Julio C. Morejon authored a Final Decision on the Emergent Petition and the Due Process Complaint proceeded. (P-K.)

The Due Process Complaint was filed on May 20, 2025, with M.B. requesting an order providing educational services in accordance of the IEP, special education services and compensatory education. The respondents included the Newark Board of Education, the New Jersey Department of Corrections ("NJDOC"), the New Jersey Department of Education ("NJDOE") and the Essex County Department of Corrections ("ECDOC"). (C-6.) The Petition was transmitted by the Department of Education, Office of Special Education (OSE), to the Office of Administrative Law (OAL), where it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The case was the subject of multiple status and settlement conferences beginning on May 23, 2025. That was followed by conferences on June 11, June 23 and June 30, 2025. An in-person settlement conference took place on July 15 and that was followed by a conference on August 27, 2025. During that conference, the parties agreed that this matter should resolve via a Motion for Summary Decision and a briefing schedule was set. Following conferences on September 16, 2025 and October 3, 2025, oral argument on the Motion for Summary Decision was held on October 21, 2025. During that oral argument, the petitioner agreed to voluntarily withdraw its case against both the Essex County Department of Corrections and the New Jersey Department of Corrections. A final telephone conference was held on December 15, 2025 and the record closed that day.

MOTION

Respondent, NJDOE filed a Motion for Summary Decision, which was joined by the NJDOC. NJDOE argued that at least two things are clear; (1) That it does not have any responsibility to provide FAPE to M.B., and; (2) That the settling party, the Newark Board of Education, is the sole party responsible to provide FAPE to M.B.

After tracing M.B.'s tortured educational and life history, the DOE, citing to N.J.A.C. 6A:22-3.1 and N.J.A.C. 14-4.1, argues that if M.B. were not incarcerated, there would be no doubt that the provision of FAPE would be Newark's responsibility. There is nothing in either the IDEA or the New Jersey Administrative Code that would change that responsibility. See 20 U.S.C. §1415(m)(1). It further argues that there is nothing about the facts of this case that would mandate that it, as the SEA, to step in the LEA's stead, since neither Newark nor the petitioner has alleged that Newark was unable or unwilling to provide FAPE or the compensatory educational services requested by M.B. See 20 USCS § 1413(g).

The DOE also argued that the case of Barnes v. Dist. of Columbia, 2025 U.S. Dist. LEXIS 59298 (D.D.C., Mar. 28, 2025), while factually similar to the case at bar, involves a unique, dissimilar educational structure and should neither be relied upon or looked at for guidance.

Finally, it is argued that the OAL lacks jurisdiction to order DOE to promulgate rules and regulations, irrespective of any perceived omissions or shortcomings in the current version of the Administrative Code. That jurisdiction, even if such a finding were made, vests within the Appellate Division per N.J. Ct. R. 2:2-3(a)(1) and (2). See also, Prado v. State, 186 N.J. 413, 422 (2006).

In conjunction with that argument, the DOE also argues that its regulations are adequate in any event, since they, even with the lack of direct reference to county jails, are clear enough to demonstrate that it is the LEA that has the responsibility to provide FAPE to an incarcerated student.

The petitioner's arguments are more general, now that he has settled his claims against the Newark BOE. First, it argues that the New Jersey Administrative Code lacks the necessary detail and direction to adequately cover situations such as M.B.'s, where there are residency questions and the responsible LEA is either not readily apparent or refuses to accept responsibility. While there are regulations concerning the responsibility for special education students in at-home instruction, hospitals and other institutions and youth detention facilities, there are no such regulations concerning those incarcerated in county jails.

In conjunction with the LEA issue, M.B. argues that as an SEA, the DOE's acknowledged supervisory role becomes primary "once (it) became aware that the LEA was not acting". 34 C.F.R. §300.149, 300.600. It is also argued that the DOE is misinterpreting 20 U.S.C. §1413(g) and that it should have stepped into the breach even absent an express declaration of unwillingness or inability to provide FAPE by the LEA. It is argued that the "unwilling or unable" clause "governs reimbursement and funding, not the SEA's fundamental responsibility to ensure FAPE when it know an LEA is failing to do so." [Pet'r's Br. at 6.]

In essence, M.B. argues that the DOE should have stepped in when it became aware that M.B. was being deprived of educational services per 20 U.S.C. §1412(a)(11)(A).

The petitioner also points to Barnes, arguing that even though it is an out-of-jurisdiction case, it is strikingly similar to the case at bar and is both persuasive and consistent with Federal authority. Counsel also points to Zapata v. Hays Cty. Juvenile Det. Ctr. & Brett Littlejohn, 2022 U.S. Dist. LEXIS 89178 (W.D. Tx., Nov. 15, 2023), where the only reason that the SEA was "let off the hook" was because Texas state law made it clear which entity (the LEA) was responsible for the student-detainee's education.

FACTUAL STIPULATIONS AND FINDINGS

Because the following is undisputed, I **FIND** the following as **FACT**.

1. M.B. is a twenty-year-old who is eligible for Special Education under the classifications Other Health Impairment and Specific Learning Disorder. He has been eligible for Special Education since at least 2015.

2. An Individualized Education Plan (IEP) was developed for M.B. on March 27, 2024 at the behest of the Juvenile Justice Commission. (P-G.)

3. M.B. was detained at the Essex County Jail on December 28, 2024 and remained incarcerated there through September 15, 2025 when he was released from custody pending trial and moved in with his mother in Irvington, New Jersey.

4. An updated IEP was authored on May 8, 2025 while he was still incarcerated at the ECJ.

5. Unfortunately, M.B.'s freedom was fleeting. He was rearrested on new charges and was remanded back to the jail on September 26, 2025, where he remains.

6. For the purposes of this decision, that stopped the clock, since it is conceded that the Newark Board of Education no longer had any potential responsibility as M.B. was now, undoubtedly, an Irvington, New Jersey resident.

7. Following his re-incarceration, M.B. settled with the Newark Board of Education and withdrew all claims against that respondent. Further, M.B. withdrew his claims against the DOC and ECJ on the record on October 21, 2025. He is now pursuing this claim only against the DOE.

8. The petitioner concedes that the only remaining claim in this case is for the provision of 294 hours of compensatory education for the period of his incarceration at the ECJ from December 28, 2024 through September 15, 2025.

9. Neither party contests the amount of compensatory education requested.

LEGAL DISCUSSION

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 OAL summary decision rule is essentially the same as the summary judgment rule under the New Jersey Court Rules, which states:

> The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.
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> [R. 4:46-2(c).]

The New Jersey Supreme Court has modified and clarified the analysis required when considering a motion for summary decision/judgment. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), the Court adopted the summary judgment standard utilized by federal courts:

> Under this new standard, a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." [Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986).] . . . If there exists a single, unavoidable resolution of

> the alleged disputed issue of fact, that issue should be considered insufficient to constitute a "genuine" issue of material fact for purposes of Rule 4:46-2. Liberty Lobby, supra, 477 U.S. at 250, 106 S. Ct. at 2511, 91 L. Ed. 2d at 213. The import of our holding is that when the evidence "is so one-sided that one party must prevail as a matter of law," Liberty Lobby, supra, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, the trial court should not hesitate to grant summary judgment.
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> [Ibid.]

The burden is on the moving party to exclude all reasonable doubt as to the existence of any genuine issue of material fact and all inferences of doubt are drawn against the moving party and in favor of the non-moving party. Saldana v. DiMedio, 275 N.J. Super. 488, 494 (App. Div. 1994). The critical question therefore is "whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 533 (citation omitted). If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400-1487, requires States to ensure that all children with disabilities have access to a Free Appropriate Public Education ("FAPE") which is designed to meet their unique needs, and establishes procedural due process procedures, and programs to ensure that all students with disabilities between the ages of three and twenty-one have access to a FAPE and are educated to the maximum extent appropriate in the least restrictive environment ("LRE"). N.J.A.C. 6A:14-1.2(b). See also Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993). In New Jersey, FAPE must include both special education and any necessary related services, such as counseling, occupational or physical therapy and speech-language services. N.J.A.C. 6A:14-1.1(b)(3), (d); N.J.A.C. 6A:14-3.9(a). See also 20 U.S.C. § 1401(9), (26)(A); 34 C.F.R. 300.34(a).

Once a student is determined to be eligible for special education and related services the Local Educational Agency ("LEA") must develop an Individualized Education Program ("IEP") which establishes the rationale for a student's educational placement and serves as the basis for program implementation. N.J.A.C. 6A:14-1.3; -3.7. When determining if an IEP is appropriate, the court should look at the IEP actually offered, and not at the IEP which could have been offered. Lascari v. Ramapo Indian Hills Reg'l Sch. Dist., 116 N.J. 30, 46-47 (1989). An IEP is appropriate if it offers "more than a trivial or de minimis educational benefit," and must provide "significant learning" and confer a "meaningful benefit" to the disabled child when gauged in relation to the child's potential. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 182, 184-85 (3d Cir. 1988). See also, Ridgewood Bd. or Educ. v. N.E., 172 F.3d 238, 248 (3d Cir. 1999).

The purpose of compensatory education is to "replace educational services the child should have received in the first place," and the remedy "should aim to place disabled children in the same position they would have occupied but for the school district's violation of the IDEA." Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 717-18 (3d Cir. 2010) (internal citations omitted). See also Ridgewood Bd. of Educ., 172 F.3d at 249. Compensatory education is due from the time the school district knew, or should have known, the student was not receiving a FAPE, but excluding the reasonable time required for the district to remedy the problem. M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996). Considering the purposes of compensatory education and the goals of the IDEA, a student that was deprived of a FAPE should still be entitled to compensatory education even if they have reached the age of twenty-one and aged out of the IDEA's coverage. Ridgewood Bd. of Educ., 172 F.3d. at 249; M.C. v. Central Reg. Dist., 81 F.3d 389, 395 (3d Cir. 1996); Carlisle Area Sch. Dist. v. Scott P., 62 F.3d 520 at 536.

Title 34, Part 300, provides the Federal regulations for the IDEA and as 34 C.F.R. 300.2 explains, the regulations apply to State and local juvenile and adult correctional facilities, regardless whether the facility receives funds under the IDEA:

> (b) Public agencies within the State. The provisions of this part-

> (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:
>
> (i) The State educational agency (SEA).
>
> (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.
>
> (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).
>
> (iv) State and local juvenile and adult correctional facilities; and
>
> (2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.
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> [Emphasis added]

See also 34 C.F.R. § 300.33 ("Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA[2], and any other political subdivisions of the State that are responsible for providing education to children with disabilities").

As in many areas of special education, there is little case law on some of the more nuanced issues and here, we have the complicating factor of the emergent hearing and Judge Morejon's decision. Much of M.B.'s opposition to the Motion focused on the role of an SEA when an LEA cannot or will not accept responsibility for providing FAPE to a special education prisoner. Here, Judge Morejon accepted that argument and ordered all parties, including the SEA, to cooperate and coordinate efforts to provide M.B. with the services required by the IDEA.

[2] Educational Service Agency

> **ORDERED** that within ten (10) days of the date herein, respondents immediately convene and begin the process of providing M.B. with FAPE as required under the IDEA. Specifically, **IT IS ORDERED** that respondents coordinate an IEP meeting, remote or in-person, and determine the necessary evaluation(s) to commence the program set forth in the IEP.
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> [P-K.]

In other words, M.B. received the relief that he requested. Once the emergent aspect was decided, the case proceeded to the Due Process Petition, where he sought "special education services and compensatory education." (C-6.) Once the immediacy of the problem was addressed (as it was by Judge Morejon), it was up to me to decide whose responsibility it was to actually supply the services.

And, frankly, that question has been answered. As admitted by M.B., he entered into a confidential settlement agreement with the Newark BOE. No one denies that Newark accepted its role as the responsible LEA and, in fact when I asked counsel during oral argument, "Now does your settlement (with Newark) kind of erase that comp. ed.?", I did not get an answer that truly addressed the question. Instead, counsel argued that in some undefined, vague way, the DOE need to "find a way to partially cover some of M.B.'s claim" and that the settlement "does not make M.B. whole".

So, for all of the discussion concerning whose responsibility it was to provide M.B. his educational services, by settling the case with the sole LEA in the case and with the emergent relief having been granted, arguably, the petitioner's case is moot.

However, after reviewing both the administrative and case law, M.B. would not prevail against the DOE in any event.

One of the few persuasive cases is, as noted above, Barnes v. District of Columbia, 2025 U.S. Dist. LEXIS 59298 (D.D.C., Mar. 28, 2025). There, Judge Lamberth granted in part and denied in part a Motion to Dismiss in a case with a similar, albeit not identical, set of circumstances. In Barnes, the Special Education eligible plaintiffs were Washington, D.C. residents who were convicted of felonies and were

therefore imprisoned in facilities operated by the Federal Bureaus of Prisons ("BOP"). Id. at *7-*8. It was undisputed that since their imprisonment, they had not been receiving special education services and they sued both the BOP and the District. The BOP is not bound by the IDEA, so the plaintiffs sued on constitutional grounds, while the District was sued under the IDEA for not providing them FAPE. Id. at *2.

Since D.C. is unique in its structure, it has one entity, the D.C. Public Schools ("DCPS") which acts as the LEA and the Office of the State Superintendent of Education ("OSSE"), which acts as the SEA. For the plaintiffs, none of the BOP facilities they had been incarcerated at had a high school program. The hearing officer found that, based on Brown v. District of Columbia[3], DCPS was responsible for providing the plaintiffs FAPE under the IDEA and it is OSSE's responsibility to ensure that any non-compliance "is corrected as soon as possible." Id. at *5. The plaintiffs sued the LEA for not providing them FAPE, while the SEA was sued for not ensuring that the LEA effectively "did its job." Id. at *10. Amongst the relief requested for the plaintiff was compensatory education.

Based on other aspects of his decision that are not relevant to the case at bar, the plaintiffs appealed the hearing officer's findings despite having prevailed on the majority of their claims.

While a significant portion of the case concerned whether a class action was appropriate and, if it was, the composition of the class, there was an extensive discussion of which entity has the responsibility for providing the educational services for the plaintiffs. DCPS argues that they could not be responsible for providing the requested educational services since it was the BOP which had control of the students and that they were refusing access to them. The Court held that even if this were proven (and the judge found that it had not been), it would not extinguish DCPS's responsibilities under the IDEA, since, per 20 U.S.C. §1415(m)(1)(D), the IDEA expressly applies to

[3] Brown v. District of Columbia, No. 17-cv-348-GMH, 2018 WL 774902, at *1 (Jan. 24, 2018) ("Brown 1"); Brown v. District of Columbia, 324 F. Supp. 3d 154 (D.D.C. 2018) ("Brown II"); Brown v. Dist. of Columbia, No. 17-cv-348-RDM, 2019 U.S. Dist. LEXIS 72755, 2019 WL 1924245 (D.D.C. Apr. 30, 2019) ("Brown III"); Brown v. Dist. of Columbia, No. 17- cv-348-GMH, 2019 U.S. Dist. LEXIS 130692, 2019 WL 3423208, at *1 (D.D.C. Jul. 8, 2019) ("Brown IV").

individuals in "adult or juvenile Federal, State, or local correctional institutions." Id. at *23, quot. Brown II, 324 F. Supp. 3d 154, 161-62.

Here, the LEA (Newark) does not face the problem alleged by DCPS in Barnes. In fact, the evidence shows that the ECJ is willing to provide access to M.B., so the "rock (of requiring that it provide a FAPE to plaintiffs under the IDEA) and a hard place (of assigning physical custody over the plaintiffs to the BOP" is not an issue. Id. at *24.

The upshot of Barnes is that the court made a specific finding that the LEA is the party responsible for providing FAPE to the incarcerated student.

Here, the DOE argues that per N.J.A.C. 6A:22-3.1, if M.B. were not incarcerated, his domicile in Newark, as established by his attempts to enroll in the District in July, 2024 and the convening of a Child Study Team in January 2025, would mean that Newark is his LEA and would be responsible for providing him FAPE.

While M.B. argues that the regulations are unclear, he was unable to effectively counter the DOE's arguments. I agree that the delineation of the entity responsible for providing special educational services to the detainee in Zapata is clearer than in New Jersey. However, that case is much more in line both factually and legally with M.B.'s prior case involving the provision of special education services in the Essex County Youth Detention Facility. There, the Administrative Code assigned particular roles to the LEA, the JJC and the BOE in providing education (including special education) to YDF detainees. (C-1, C-2, C-3 and P-I.) Now that M.B. is housed in the ECJ, those specific regulations no longer apply.

A case consistent with Zapata is T.H. v. DeKalb Cty. Sch. Dist., 564 F. Supp. 3d 1349, 1357 (N.D. Ga. 2021), disabled students who were confined at a county jail claimed they were denied the special education services to which they were entitled, in violation of the IDEA and Section 504 of the Rehabilitation Act, 29 U.S.C. 794. They named the county school district, its superintendent, the state Department of Education, State School Superintendent and county sheriff as defendants. The court observed, "Federal regulations implementing the IDEA apply to state and local education agencies, as well

as '[s]tate and local juvenile and adult correctional facilities[.]' 34 C.F.R. § 300.2(b)(1). The statute itself contemplates the provision of FAPE to incarcerated children with disabilities. 20 U.S.C. § 1412(a)(11)(C)." Id. at 1357. The court held, though, that state law determines the manner in which each entity shall be responsible for the provision of FAPE:

> However, the statutory and regulatory schemes give states broad discretion in structuring and implementing programs across its agencies to ensure the provision of FAPE. See Los Angeles Unified School Dist. v. Garcia, 669 F.3d 956, 959-60 (9th Cir. 2012) ("[Q]uestions of which agency is responsible for providing a student with a FAPE are determined under state law."). While the statute and accompanying regulations oblige the state and its political subdivisions to identify eligible students and provide FAPE, the systems and processes for achieving those goals are left entirely to the individual states. Thus, while the state and its political subdivisions are collectively responsible for IDEA compliance, the scope of each subdivision's specific responsibilities depends upon state law.
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> [Id. at 1357.]

Granted, in New Jersey there are no specific rules delineating the responsibility for educating county jail prisoners. However, as noted by the DOE, a logical read of the "regular" special education regulations, including N.J.A.C. 6A:14-1.1, N.J.A.C. 6A:14-4.1 and N.J.S.A. 6A:22-3.1 leads me to **CONCLUDE** that M.B.'s status as an ECJ prisoner would not impact a determination that the LEA would be his district of residence. In addition, 20 U.S.C. §1413(g) supports the DOE's position;

> (g) Direct services by the State educational agency
>
> (1) In general
>
> A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State

> educational agency determines that the local educational agency or State agency, as the case may be—
>
> > (A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;
> >
> > (B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);
> >
> > (C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or
> >
> > (D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.
>
> (2) Manner and location of education and services
>
> The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this subchapter.

Given the undisputed facts of this case, there is no evidence that the LEA is unable or unwilling to provide services. At this point, only if Newark were to come back to M.B. and say, "we can't/won't live up to our obligations under the settlement agreement", or if Irvington were to refuse to provide services would the SEA, under 20 U.S.C. §1413(g), step into the void.

Finally, and practically parenthetically, I agree with the DOE that the OAL does not have rulemaking authority and I am unable to direct/order it to propose or implement new ones. See generally, Pascucci v. Vagott, 71 N.J. 40 (1976), Musconetcong Sewerage Authority v. N.J. Dept. of Environ. Prot., 2023 N.J. Agen. LEXIS 908 at *17 - *18 (Dec. 13, 2023).

CONCLUSION

Based on the stipulated and undisputed **FACTS** noted above, a review of the case, statutory and administrative law, the limited nature of the claim (compensatory education only) and considering oral argument, I **CONCLUDE** that respondent, the New Jersey Department of Education has successfully demonstrated that, even viewing the evidence most favorably to the petitioner, it is entitled to summary decision as a matter of law. More specifically, I **CONCLUDE** that the Newark Board of Education was the applicable LEA during the time period in question and that no evidence has been presented that it is unwilling or unable to fulfill its mandate to provide FAPE, including compensatory education during the time period in question.

Accordingly, I **CONCLUDE** that the DOE's Motion for Summary Decision should be **GRANTED**.

ORDER

I **ORDER** that the petitioner's Due Process Petition be and hereby is **DISMISSED,** and it is;

FURTHER ORDERED that all claims against respondents, New Jersey Department of Education, New Jersey Department of Corrections and the Essex County Department of Corrections be and are hereby **DISMISSED.**

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 Policy and Dispute Resolution.

January 13, 2026
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: January 13, 2026

Date Mailed to Parties: January 13, 2026

sej

APPENDIX

EXHIBITS

FOR COURT:

C-1 M.B. v. Essex County Education Services (EDS 04649-2024) – Petition for Emergent Relief

C-2 M.B. v. Essex County Education Services (EDS 06532-2024) – Due Process Petition

C-3 M.B. v. Essex County Education Services (EDS 06532-2024) – Final Decision Approving Settlement (May 13, 2024)

C-4 M.B. v. Newark Board of Education (EDS 17151-2024) – Petition for Emergent Relief,

C-5 M.B. v. Newark Board of Education (EDS 04658-2025) – Petition for Emergent Relief

C-6 M.B. v. Newark Board of Education (EDS 04658-2025) – Final Decision (April 11, 2025)

FOR PETITIONER:

P-A US DOE letter (December 5, 2014)

P-B Letter from petitioner's counsel to NJDOC, re: rules issues (March 19, 2025)

P-C Letter from NJDOC to petitioner's counsel, re: rules issues (May 7, 2025)

P-D Email chain between petitioner's counsel and NJDOE (November 12, 2024 through February 27, 2025)

P-E SID Management information (June 2024)

P-F NJ Smart, School Exit Withdrawal Codes and Graduation Cohort Status Overview (May 2023)

P-G IEP (March 27, 2024)

P-H NJDOE Determination of Services, Fiscal Responsibility, and Data Reporting Requirements for Students

P-I Scheduling meeting email, petitioner's attorney and DOE (March 3, 2025)

P-J M.B. v. Essex County Education Services (EDS 04649-2024) – Final Decision Approving Settlement (May 13, 2024)

P-K M.B. v. Essex County Education Services (EDS 04649-2024) – Settlement Agreement (April 25, 2024)

P-L M.B. v. Essex County Education Services (EDS 06542-2024) – Settlement Agreement (January 2, 2025)

P-M Letter from Petitioner to DOE, emergent petition (March 10, 2025)

P-N M.B. v. Newark Board of Education (EDS 04658-2025) – Final Decision (April 11, 2025)

For Respondent

None