



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

(CONSOLIDATED)

C.H. ON BEHALF OF O.A.,

Petitioner,

v.

**EVESHAM TOWNSHIP BOARD OF
EDUCATION AND Y.A.L.E. SCHOOL,
CHERRY HILL,**

Respondents,

and

**EVESHAM TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

C.H. ON BEHALF OF O.A.,

Respondent.

OAL DKT. NO. EDS 18181-25

AGENCY DKT. NO. 2026-39855

OAL DKT. NO. EDS 21338-25

AGENCY DKT. NO. 2026-40161

C.H., petitioner-respondent, pro se

Amy Houck-Elco, Esq., for respondent-petitioner, Evesham Township Board of Education (Cooper Levenson, P.A. attorneys)

Jade M. Moustakas, Esq., for respondent, Y.A.L.E. School, Inc.

Record Closed: June 29, 2026

Decided: July 30, 2026

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

C.H., on behalf of her daughter O.A., filed a due process petition under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., against Evesham Township Board of Education (Board) and O.A.'s out-of-district placement, Y.A.L.E. School, Cherry Hill (Yale School), alleging that the Board's and Yale School's failures to provide access to video surveillance footage of an in-school incident, prepare a functional behavior assessment (FBA) and behavior intervention plan, assign a one-on-one behavioral aide, and hold a suspension in abeyance denied O.A. a free and appropriate public education (FAPE). These alleged failures did not occur, and as a result, O.A. was not denied a FAPE under the IDEA.

The Board filed a cross-petition for due process against C.H., on behalf of O.A., regarding an independent education evaluation for O.A. that was agreed upon in a settlement agreement. Can the Office of Administrative Law (OAL) enforce the terms of a settlement agreement? No, and as a result, the Board's cross-petition must be dismissed as moot.

PROCEDURAL HISTORY

On or around October 9, 2025, C.H. filed a petition for a due process hearing with the New Jersey Department of Education, Office of Special Education (OSE). The matter was transmitted to the OAL, where it was filed as a contested case on November 10, 2025 (EDS 18181-25). N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On or around November 24, 2025, C.H. filed her first request for emergent relief with the OSE in EDS 18181-25. A status conference was held on November 25, 2025. After the Yale School and the Board filed their opposition to the motion, oral argument was heard on December 22, 2025. Another status conference was held on January 7,

2026. Under an Order Denying Emergency Relief dated February 20, 2026, C.H.'s motion for emergent relief was denied.

On or around December 17, 2025, the Board filed a petition for due process relief with the OSE. The matter was transmitted to the OAL, where it was filed as a contested case on December 18, 2025 (EDS 21338-25). N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An Order of Consolidation for EDS 18181-25 and EDS 21338-25 was entered on January 8, 2026.

On or around January 28, 2026, Yale School and the Board filed motions for summary decision on issues raised in C.H.'s due process petition (EDS 18181-25). C.H. filed opposition to these motions on or around March 3, 2026, requesting leave to file her opposition as if filed within time, which was granted. Counsel for Yale School and the Board filed their reply briefs on March 18, 2026, and March 20, 2026, respectively. Oral argument was heard on the motions on April 21, 2026, and under a Letter Order dated April 27, 2026, the motions were denied.

On or around March 16, 2026, C.H. filed her second motion for emergency relief, along with a petition for due process and expedited due process hearing, directly to me.¹ On March 26, 2026, oral argument was heard, and an Order Granting Emergent Relief was entered on April 30, 2026.

Hearings were scheduled for May 13, 2026, and June 1, 2026. When C.H. was not prepared to proceed on May 13, 2026, the May 13, 2026, hearing date was converted to a settlement conference, and a second settlement conference was held on May 27, 2026. After brief settlement discussions on June 1, 2026, the hearing proceeded, with a second hearing date scheduled for June 22, 2026.

¹ During oral argument on the motion for emergent relief, I advised C.H. that I could only consider her request for emergency relief, not the due process and expedited hearing request, as the petition was filed directly with me, rather than the OSE. C.H. was directed to file the due process petition with the OSE if she wished to have those issues heard. C.H. did not advise me that she filed the due process and expedited hearing request with the OSE.

On or around June 3, 2026, C.H. filed a motion to compel discovery, arguing that Yale School failed to provide her with a copy of video surveillance footage from an October 9, 2025, incident. The Board and Yale School opposed C.H.'s motion, and C.H. filed reply papers. At the beginning of the June 22, 2026, hearing, the motion to compel discovery was denied for the reasons placed on the record.

After the June 22, 2026, hearing, the parties were permitted to provide post-hearing summation briefs in ex parte fashion by June 29, 2026, and those briefs were received.

FACTUAL DISCUSSION AND FINDINGS

O.A. is a sixth-grade student who resides in Evesham Township. O.A. has been classified as other health impaired due to diagnoses of attention deficit hyperactivity disorder, unspecified mood disorder, unspecified anxiety disorder, and sensory integration symptoms. Despite information that O.A. may be on the autism spectrum, she has never undergone an educational evaluation for autism.

O.A. began attending Yale School located in Cherry Hill, an out-of-district placement, on or around July 7, 2025, as an extended school year placement. (J-1.) O.A. continued attending Yale School for the 2025–2026 school year. O.A.'s last individualized education program (IEP), which includes placement at Yale School, is dated May 29, 2025. (Ibid.)

C.H.'s due process petition contains allegations that the Board and/or Yale School failed to do the following: (i) comply with the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232f to 1232j, to provide C.H. with video access to the October 9, 2025, incident; (ii) prepare a comprehensive functional behavior assessment and behavior intervention plan for O.A.; (iii) assign a qualified one-to-one behavioral aide trained in de-escalation for O.A.; and (iv) hold O.A.'s October 10, 2025, suspension in abeyance.

October 9, 2025, incident at Yale School

On October 9, 2025, Yale School staff prepared three incident reports regarding O.A.'s in-school conduct. (J-5.) For the first incident at 9:25 a.m., the description of the incident is as follows:

During gym class outside, [O.A.] repeatedly made instigative comments towards a peer. The peer attempted to walk towards [O.A.] but staff redirected both students. [O.A.] got on a bike and staff reminded her of the expectation to remain on the field, basketball court or tennis court. [O.A.] rode the bike into the parking lot and then rode to the front parking lot towards Church Road. Staff redirected [O.A.] and blocked her from biking off school property. [O.A.] then engaged in physical aggression toward staff. Staff continued to implement less restrictive procedures and de-escalation until [O.A.] rode the bike to the back field. At the end of the class, [O.A.] refused to get off the bike and threw her helmet. After several minutes of noncompliance, [O.A.] got off the bike and walked to the back of the field. Staff prompted [O.A.] to go inside but she refused. Instead she walked around the perimeter of the building and into the parking lot. After almost an hour of refusal, [O.A.] walked into the building.

[Ibid.]

The second incident at 10:30 a.m. that day is described as follows:

After [O.A.] entered the building, she began to walk towards her homeroom. She attempted to pull the fire alarm in the hallway but was blocked by staff. Once in the upstairs hallway, [O.A.] attempted to elope but was blocked by staff. She also engaged in physical aggression towards staff. Staff utilized less restrictive procedures. Once she entered 220, [O.A.] began engaging in property destruction around the room. Staff continued to utilize less restrictive procedures and de-escalation strategies. [O.A.] sat and ate her snack. She requested water and staff brought her a cup of water. She threw the water and cup at a staff member. [O.A.] engaged in physical aggression and yelling at staff. Due to [O.A.] continuing to demonstrate unsafe behavior staff directed her to walk with staff to an alternative location for the following class period. [O.A.] continued to yell at staff and after several

minutes of noncompliance, she transitioned to the alternate location.

[Ibid.]

Finally, at 12:00 p.m., the incident report notes the following regarding O.A.'s behavior:

While in an alternate location, staff presented [O.A.] with a task. She proceeded to rip up the assignment. [O.A.] attempted to close the classroom door but this attempt was blocked by staff. [O.A.] continuously tried to close the door and became physically aggressive when staff redirected her to sit down. After several minutes of noncompliance, [O.A.] sat safely. She engaged in property destruction around the room and threw water onto a staff member from her water bottle. Staff presented [O.A.] with her lunch but she refused to eat. [O.A.] tried to get out of the room again, but staff blocked this attempt. [O.A.] began shouting at a peer that was passing by in the hallway. [O.A.] became physically aggressive when staff blocked her from entering the hallway. After several minutes, [O.A.] moved away from the door and attempted to use her water bottle as a weapon to hit staff. Staff removed her water bottle for safety purposes. [O.A.] engaged in physical aggression towards staff and shouted verbal threats. Staff initially implemented less restrictive procedures, but due to repeated physical aggression, staff implemented a physical management procedure. Upon release of the hold, [O.A.] remained seated safely until her bus was called for dismissal. When her bus was called, she was able to successfully transition to her bus with a staff member.

[Ibid.]

The water bottle that O.A. used to attempt to hit staff was made from metal.

For these three incidents, O.A. was suspended from school for one day, on October 10, 2025. (Ibid.) According to Michael Monaco, administrator for Yale School, the Board was provided a copy of these incident reports, and C.H. was notified of the incident and suspension.

C.H.'s request for access to the October 9, 2025, incident video surveillance footage

If a parent wishes to review video surveillance footage² of their student at Yale School, Yale School's policy is that the parent must make that request by phone or in writing, and Yale School will allow the parent to view the video surveillance footage with Yale School's security resource officer and an administrator at the school. On October 27, 2025, Yale School allowed C.H. to view the video surveillance footage from the October 9, 2025, incident, and Monaco was present during that review. C.H. acknowledged that she reviewed the video surveillance footage on October 27, 2025.

Jennifer K. Bland, Ed.D., director of special services for the Board, was qualified as an expert in special education. She testified that on October 24, 2025, in a resolution meeting, she discussed C.H.'s request to review the video surveillance footage from the October 9, 2025, incident with Yale School representatives, and they told her that they would allow C.H. to review the video surveillance footage. She believes that Yale School complied with C.H.'s request.

During the hearing, C.H. argued that her request for access to the October 9, 2025, incident video surveillance footage implied that she should receive a copy of the video surveillance footage.

Holding O.A.'s October 10, 2025, suspension in abeyance/expungement of O.A.'s student records

C.H. requested that Yale School expunge O.A.'s October 10, 2025, suspension from her school records. Generally, incident reports are part of a student's records at Yale School. Yale School typically does not expunge suspensions from student records, and it has not held suspensions in abeyance.

Monaco testified that the video surveillance footage accurately represented the information in the October 9, 2025, incident reports. During gym class, another student attempted to approach O.A., and staff redirected the other student away from O.A. O.A.

² Yale School video surveillance does not include audio.

then went to a shed to obtain a bicycle that could be used during gym. For the next hour, O.A. then began using the bicycle in prohibited areas in some circumstances. According to Monaco, Yale School refused to expunge O.A.'s student records because it believed that the incident reports were an accurate representation of what occurred on October 9, 2025. Incident reports may be expunged from a Yale School student's record if they are found to be inaccurate.

On or around October 27, 2025, C.H. prepared a video observation summary from her review of the video surveillance footage of the October 9, 2025, incident. (P-1.) In the summary, C.H. indicated that she observed an unidentified student moving towards O.A. in an outdoor field at Yale School. (Ibid.) O.A. is observed riding a bicycle away from the area rapidly, and the unidentified student continues moving toward O.A. (Ibid.) O.A. is then observed riding in a parking lot and traveling between parked vehicles while Yale School staff attempt to pursue and/or intercept O.A. (Ibid.)

Preparation of an FBA and behavior intervention plan and assigning a one-to-one aide for O.A.

O.A.'s concerning behaviors while attending Yale School include property damage, physical aggression towards staff and students, and elopement. Erika Kostishak, a board-certified behavioral analyst who works at Yale School and oversees O.A.'s classroom, has observed some of these concerning behaviors from O.A. since September 2025, which include hitting, punching, and kicking. O.A. has pulled Kostishak's hair hard and yanked it down. O.A. has also eloped from Yale School, which is troubling because the school is located near a busy road. Several people are required to manage O.A. when O.A. is physically aggressive to ensure that she and others around her are safe.

On or around October 17, 2025, Kostishak sent an email to C.H. indicating that she was completing an FBA for O.A. (J-8.) With this email, Kostishak attached a functional assessment interview, questions that establish the function of a student's behavior, and requested that C.H. complete the interview form and return it to her. (Ibid.)

C.H.'s responses would be considered in preparing the FBA. (Ibid.) C.H. never returned a complete assessment form to Kostishak.

On or around October 24, 2025, Kostishak prepared an FBA for O.A. (J-11.) Among the documents Kostishak relied upon to prepare the FBA were her observations of O.A. in the classroom, incident reports, an assessment from O.A.'s homeroom teacher, and O.A.'s records, documents that Kostishak would typically review when preparing an FBA. Kostishak also included the antecedents to O.A.'s behaviors and the consequences after the behavior, which helps determine the function of O.A.'s behaviors. Because the FBA included this information, Kostishak described her FBA as comprehensive. The FBA was tailored to O.A.'s needs to address her challenging behaviors. Dr. Bland opined that the FBA was comprehensive.

Based on the information in the FBA, Kostishak prepared an individualized behavior support plan³ for O.A., also designed to address O.A.'s challenging behaviors at Yale School. (J-12.) Kostishak signed the individualized behavior support plan; C.H. did not. (Ibid.)

Dr. Bland testified that the fact that Yale School was completing an FBA and behavior support plan for O.A. was discussed during an October 24, 2025, resolution meeting with C.H.

On or around October 30, 2025, Kostishak sent C.H. an email asking her to respond to key points in the functional assessment interview. (J-17.) Kostishak requested the following information from C.H.:

1. What types of behaviors do you see from [O.A.] at home[?]
Describe what they look like[.]
2. What types of events usually happen before these behaviors?

³ According to Kostishak, "behavior support plan" and "behavior intervention plans" are interchangeable terms at Yale School.

3. What usually happens right after the behaviors? How do you respond to her when exhibiting the behaviors?
4. Any medical conditions that may affect her behavior?
5. Do you think her eating and sleeping patterns affect her behaviors at all? How?

[Ibid.]

C.H. did not respond to Kostishak's email.

On or around October 31, 2025, Kostishak sent C.H. a completed FBA and behavior support plan. (J-18.) Kostishak relied upon the information in the FBA summary to prepare the behavior support plan. Kostishak asked C.H. to sign the behavior support plan so that Yale School could implement the plan. (Ibid.) Kostishak never received any feedback from C.H. to the FBA or the behavior support plan.

C.H. reviewed the FBA and the behavior support plan and agreed with about 80 percent of the documents. She made recommendations to Yale School to address O.A.'s neurological and safety issues at Yale School. She sent Yale School a request for prior written notice on November 7, 2025, expecting a written response from Yale School on why certain suggestions of hers were not included in the behavior support plan, and she did not sign the documents when she did not receive a response from Yale School to her request for prior written notice.

On or around November 10, 2025, Monaco sent C.H. an email enclosing a revised behavior support plan. (J-13.) In the email, Monaco asked C.H. to sign the revised behavior support plan so that Yale School could implement it. (Ibid.)

On or around November 25, 2025, Monaco and Yale School representatives met with C.H. to discuss C.H.'s proposed revisions to the behavior support plan. The revised behavior support plan included all of C.H.'s suggestions that Yale School could potentially implement, including providing O.A. with two non-contingent breaks, the zones of regulation, using a soft tone with O.A., and acknowledging her responses and providing

a de-escalation corner that O.A. could use. During this meeting, Monaco advised C.H. that Yale School could not implement certain suggestions of hers such as the Panda program, which Yale School was not familiar with, and they would not negotiate with C.H. According to Monaco, Yale School did not provide C.H. with a response to her prior written notice request because its response was discussed with C.H. during this meeting. A draft IEP dated November 25, 2025, was proposed. (J-28.)

C.H. did not sign the revised behavior support plan or the November 25, 2025, draft IEP. Yale School could not implement the behavior support plan because C.H. did not sign it and consent to its implementation. If C.H. had signed the behavior support plan, Yale School would have been able to train staff and implement it. This would have included reinforcement and strategies on appropriate peer interaction and successful transitioning.

According to Dr. Bland, the initial request for an FBA and behavior support plan did not include a trauma-informed component. The FBA and the behavior support plan developed for O.A. included trauma-informed practices, such as proactive strategies for monitoring behavior, positive interventional strategies, ways to build relationships, and de-escalation strategies.

To address O.A.'s concerning behaviors, Yale School provided O.A. with a one-to-one personal aide. The aide was able to follow O.A. outside if she eloped and use de-escalation strategies to address O.A.'s behavior. When O.A. first came to Yale School, Yale School did not recommend a one-to-one aide for O.A.

On or around November 25, 2025, Yale School agreed that it would begin the process to hire an external candidate to serve as O.A.'s one-to-one aide. In the interim, Yale School assigned a trained staff member familiar with O.A. to serve as her aide. Dr. Bland understood that the aide was trained to serve O.A. The draft November 25, 2025, IEP included a personal aide as part of O.A.'s services. (J-28 at 1.)

FAPE

Monaco believed that the Board and Yale School provided O.A. with a FAPE. Dr. Bland opined that Yale School and the Board provided O.A. with a FAPE based on the academic, social, behavioral, and emotional supports included in O.A.'s IEP. (J-1.) She also testified that Yale School implemented O.A.'s IEP. (J-1.)

C.H. testified that the Board failed to provide O.A. a FAPE based on the number of incident reports involving O.A., times that she was restrained or eloping that took her away from her learning. According to C.H., when she is attending Yale School, either O.A. is learning or she is being disciplined. She also attributed the failure to implement a behavior service plan to the Board, saying that the lack of a behavior service plan denied O.A. a FAPE for failing to support O.A.'s diagnosis.

C.H.'s belief that Yale School failed to provide O.A. a FAPE was based on the allegation that Yale School was unable to stabilize O.A.'s alleged aggressive behaviors so that she could learn. She also cited the number of incident reports that O.A. received at Yale School with no therapy provisions to mitigate O.A.'s alleged behaviors as evidence that O.A. did not receive a FAPE. C.H. cited the "school to prison pipeline,"⁴ indicating that O.A. was treated differently.

Attempted resolution of C.H.'s due process petition

On or around October 24, 2025, the parties engaged in a resolution session to resolve this matter. (J-10.) Under a resolution session agreement, Yale School agreed to allow C.H. to review the video surveillance footage of the October 9, 2025, incident, and the Board added another provider to the list of providers for the anticipated independent evaluation of O.A. (*Ibid.*) Finally, the parties agreed that a functional behavior assessment would be completed for O.A., and the results would be used to

⁴ The "school-to-prison pipeline" refers to the policies and practices that push our nation's schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems. See ACLU, <https://www.aclu.org/documents/what-school-prison-pipeline> (last visited July 22, 2026).

determine O.A.'s need for 1:1 paraprofessional support. (Ibid.) C.H. did not sign the resolution session agreement.

Board's petition for due process

The issue in the Board's petition for due process is whether the Board and C.H. agreed upon a provider to conduct an independent educational evaluation for O.A., specific to C.H.'s assertions that O.A. is on the autism spectrum and is dyslexic. On or around July 22, 2025, C.H. and the Board entered into a Settlement Agreement for a matter captioned Evesham Township, Board of Education v. C.H. ex rel. O.A., OAL Dkt. No. EDS 06952-25. (J-3.) The relevant terms of this agreement are as follows:

1. The [Board] will email [C.H.] a list of Independent Evaluators for a Dyslexia Screener and Autism Assessment within 7 days of both parties signing this Agreement. [C.H.] shall select the provider and notify the Director of Special Education of her selection within 14 days of receiving the list. Evaluations will occur based upon the providers schedule, but no earlier than October 1 so that O.A. can get acclimated to her new fall schedule.
2. Pursuant to the prior Agreement, the [Board] will begin an FBA no earlier than September 29, 2025. Once the [Board] has determined who will be conducting the FBA, they will provide [C.H.] with that individual's name.
3. The signing of this Agreement is [C.H.'s] consent for the above listed assessments in items 1 and 2.

[Ibid.]

C.H. acknowledged that she signed this document.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Under the IDEA, federal funds are made available to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 34 (1989). As a recipient of

federal funds under the IDEA, the State must have a policy that assures that all children with disabilities will receive a FAPE. See 20 U.S.C. § 1412. A FAPE includes special education and related services. See 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(b)(3).

The responsibility to deliver special education and related services rests with the local public school district. See N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver a FAPE, the school district must offer O.A. “an educational program reasonably calculated to enable [her] to make progress appropriate in light of [her] circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 403 (2017).

For a school district to provide a FAPE to a disabled child under the IDEA it must develop and implement an IEP—a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP is to be developed by a school district’s child study team in conjunction with the child’s parents or guardians. See N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b). An IEP must contain “a statement of detailed measurable annual academic and functional goals that shall be related, as appropriate, to the New Jersey Student Learning Standards through the general education curriculum unless otherwise required according to the student’s educational needs, or appropriate, student-specific functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2).

Finally, Yale School and the Board have the burden of proof and production in a due process hearing determining whether a student received a FAPE. N.J.S.A. 18A:46-1.1. Under this backdrop of what constitutes a FAPE, I will address each of C.H.’s claims.

C.H.'s request for access to the October 9, 2025, incident video surveillance footage

C.H. claims that the Board and/or Yale School did not comply with FERPA to provide her with meaningful access to the video surveillance of the October 9, 2025, incident at Yale School. See Pet'r's Summ. Br. at 1–2.

FERPA prohibits educational agencies, namely public or private educational agencies or institutions that receive funds under any applicable program, from disclosing certain student records and personal information. 20 U.S.C. § 1232g(a)(3), (b)(1). Education records are defined as “those records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A)(i), (ii). According to guidance from the U.S. Department of Education, “FERPA requires the educational agency or institution to allow, upon request, an individual parent of a student . . . to whom the video directly relates to inspect and review, or ‘be informed of’ the content of the video, consistent with the FERPA statutory provisions in 20 U.S.C. § 1232g(a)(1)(A) and regulatory provisions at 34 CFR § 99.12(a).” See Protecting Student Privacy, <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa#:~:text=When%20a%20video%20is%20an,or%20%22be%20informed%20of%22%20the> (last visited July 22, 2026).

The regulations accompanying FERPA state that a parent has the right to “inspect and review any education records relating to their children that are collected, maintained, or used by the [local public school district] under this part.” 34 C.F.R. § 300.613(a) (2026). A parent’s right to request that the local public school district provide a copy of the records exists only when the “failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records[.]” 34 C.F.R. § 300.613(b)(2) (2026). Furthermore, U.S. Department of Education guidance indicates that generally, local public school districts are not required to release copies of videos to parents. See Protecting Student Privacy, <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under->

ferpa#:~:text=When%20a%20video%20is%20an,or%20%22be%20informed%20of%22%20the (last visited July 22, 2026).

C.H. acknowledges that she was able to review Yale School's October 9, 2025, video surveillance on October 27, 2025. She argues that her request for access to the October 9, 2025, incident video surveillance footage implied that she should receive a copy of the video surveillance footage. C.H. cites no legal authority in support of this contention, including any statutes or regulations allowing for such an implication, and her argument is directly contrary to U.S. Department of Education guidance. For these reasons alone, C.H.'s argument fails.

Even if, for the sake of argument, Yale School violated FERPA when it failed to provide C.H. with a copy of surveillance video footage from the October 9, 2025, incident, C.H. does not have a private remedy under FERPA. A failure for a local educational agency, such as the Board or Yale School, to follow FERPA means that the federal government will terminate federal funds to the applicable state. See Gonzaga Univ. v. Doe, 536 U.S. 273, 280 (2002).

Finally, C.H. has made no reasonable or logical connection between an alleged FERPA violation, for which there was no violation, and an alleged failure either by the Board or Yale School to provide O.A. with a FAPE. C.H. has presented no tangible evidence, other than her supposition, in response to testimony from Monaco and Dr. Bland that Yale School and the Board provided O.A. with a FAPE.

Holding O.A.'s October 10, 2025, suspension in abeyance/expungement of O.A.'s student records

C.H. argues that the October 9, 2025, incident reports should be expunged from O.A.'s student records because they are an inaccurate reflection of the October 9, 2025, incident. She also argues that O.A.'s suspension should be held in abeyance as a result. Pet'r's Summ. Br. at 2–3.

There is no evidence in this record that the October 9, 2025, incident reports are inaccurate. In her video observation summary, C.H. admits that O.A. was riding in a parking lot and traveling between parked vehicles, and Yale School staff attempted to pursue and intercept O.A. This is the first documented interaction out of three on October 9, 2025; C.H. has presented no evidence contrary to Monaco's testimony that the three incident reports on October 9, 2025, were an accurate reflection of O.A.'s conduct that day.

I note that New Jersey regulations allow parents the opportunity to request the expungement of certain information in their student's records. See generally N.J.A.C. 6A:32-7.7. This regulation includes specific timelines for those requests; it does not appear that C.H. has availed herself of that process.

Because there is no evidence that the October 9, 2025, incident reports are erroneous, there is no factual basis supporting C.H.'s claims that the October 10, 2025, suspension should be held in abeyance or that the October 9, 2025, incident reports should be expunged from O.A.'s student records.

Preparation of an FBA and behavior support plan and assigning a one-to-one aide for O.A.

C.H. argues generally that Yale School and the Board failed to consider her input when developing the FBA and behavior support plan for O.A., claiming that it is a violation of prior written notice requirements under the IDEA. C.H.'s argument lacks merit.

There is no factual basis for C.H.'s allegation that Yale School and the Board failed to prepare an FBA and a behavior support plan for O.A. Kostishak prepared a comprehensive FBA and behavior support plan that included trauma-informed practices for O.A. between October and November 2025, and after C.H. suggested revisions to these documents, they were revised to reflect those modifications that Yale School could implement. C.H. never signed O.A.'s behavior support plan, neither the first version submitted to C.H. nor the revised version implementing C.H.'s suggestions. None of these facts are controverted. As Kostishak and Monaco both testified, Yale School could

not implement the behavior support plan without C.H.'s consent, and therefore, O.A. lacked some of the needed in-school supports to address her concerning behavior at Yale School. Yale School did provide O.A. with a one-to-one aide, but that aide was unable to implement any portion of the behavior support plan.

C.H. asserts that she did not sign O.A.'s proposed behavior support plan because she did not receive prior written notice from Yale School or the Board regarding which portions of her proposed modifications to the behavior support plan would be implemented. Prior written notice is required under the following circumstances and in the following format:

- (f) Written notice that meets the requirements of this section shall be provided to the parent when a district board of education:
 - 1. Proposes to initiate or change the identification, classification, evaluation, or educational placement of the student or the provision of a free, appropriate public education to the student; or
 - 2. Declines to initiate or change the identification, classification, evaluation, or educational placement of the student or the provision of a free, appropriate public education to the student.

[N.J.A.C. 6A:14-2.3 (emphasis added).]

New Jersey's notice requirements are substantially similar to those in the IDEA. See 34 C.F.R. § 300.503 (2026).

Here, Yale School and the Board attempted to implement a behavior support plan for O.A. and update O.A.'s IEP accordingly. The implementation of a behavior support plan is not one that requires prior written notice under state and federal regulation. The Board and Yale School were not changing O.A.'s identification, classification, evaluation, or educational placement or declining to make a change to O.A.'s identification, classification, evaluation, or educational placement. C.H. did not have a right to prior written notice under N.J.A.C. 6A:14-2.3(f) or 34 C.F.R. § 300.503 (2026), and therefore,

the reason that C.H. withheld her consent to implement O.A.'s behavior support plan has no legal basis.

Even if, for the sake of argument, the Board or Yale School failed to provide a response to C.H.'s request for prior written notice in response to Yale School's proposed behavior support plan, this failure is not a procedural violation of the IDEA. "[A] procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents." C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66 (3d Cir. 2010). Under the IDEA, procedural violations are as follows:

- (ii) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a [FAPE] only if the procedural inadequacies—
 - (I) impeded the child's right to a [FAPE];
 - (II) significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a [FAPE] to the parent's child; or
 - (III) caused a deprivation of educational benefits.

[20 U.S.C. § 1415(f)(3)(E).]

There is no evidence that the Board and/or Yale School's alleged failure to respond to C.H.'s request to provide prior written notice regarding O.A.'s behavior support plan caused substantive harm to either O.A. or C.H. It is important to note that C.H. was provided the opportunity to submit proposed changes to O.A.'s behavior support plan; Yale School considered those proposed changes and modified the behavior support plan with those proposals it could implement. Finally, on November 25, 2025, C.H. met with Board and Yale School representatives, where they discussed C.H.'s proposed changes that could not be implemented. C.H. was not only given the opportunity to propose changes, some of which were included, but she also learned why Yale School rejected

those that were not included in the revised behavior support plan. C.H. was given the opportunity to participate fully in the decision-making process.

There is no evidence here that O.A. was deprived of an educational benefit, and finally, O.A. was not denied a FAPE. C.H. has not provided any information or evidence in response to testimony from the Board and Yale School that O.A. was provided a FAPE showing that the failure to implement the behavior support plan denied O.A. a FAPE. C.H.'s reasons for not signing O.A.'s behavior support plans are based upon her misunderstanding of the law.

The Board and Yale School did provide O.A. with a one-to-one aide, even though that aide's impact was limited from C.H.'s refusal to sign a behavior support plan. Accordingly, neither the lack of a behavior support plan nor a one-to-one aide is a viable basis to find that Yale School and the Board failed to provide O.A. with a FAPE.

The evidence here shows that Yale School and the Board provided O.A. with a FAPE, as through the July 2025 IEP, the Board and Yale School offered O.A. an educational program that was reasonably calculated to enable her to make progress appropriate under the circumstances. Assumptions that O.A. did not receive a FAPE because of the number of incidents at Yale School that O.A. was either restrained or eloping during the school day do not successfully rebut Yale School and the Board's evidence. Accordingly, I **CONCLUDE** that Yale School and the Board provided O.A. a FAPE.

C.H. seeks compensatory education for O.A. and ongoing monitoring and corrective training for the Board and Yale School. I **FURTHER CONCLUDE** that there is no basis for this relief that C.H. seeks, as I have found that O.A. received a FAPE from Yale School and the Board.

Board's petition for due process.

In its due process petition against C.H., the Board seeks a determination that C.H. and the Board agreed upon a provider to provide an independent educational evaluation

for O.A. This issue, however, directly pertains to the July 22, 2025, settlement agreement in a separate due process petition that the Board brought against C.H. In sum, the Board is seeking to enforce its prior settlement agreement against C.H.

The OAL “is without authority or jurisdiction to either enforce or set aside an enforceable contract. Such enforcement (or set aside) is within the purview and jurisdiction of our State’s Superior Court or the United States District Court, not the OAL.” A.P. v. Dennis Twp. Bd. of Educ., 1998 N.J. AGEN LEXIS 346 at **14–15 (May 8, 1998). Because the Board cannot obtain the relief that it requests before the OAL, its due process petition must be dismissed as moot. See Redd v. Bowman, 223 N.J. 87, 104 (2015) (stating an action is moot when the decision sought “can have no practical effect on the existing controversy.”) Accordingly, I **CONCLUDE** that the issues raised in the Board’s due process petition are moot and must be dismissed.

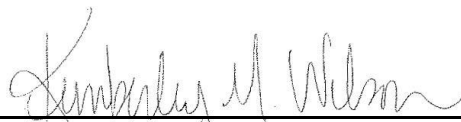
ORDER

I hereby **ORDER** that Yale School and the Board provided O.A. with a FAPE. I **ORDER** that there is no basis for compensatory education for O.A. and ongoing monitoring and corrective training for the Board and Yale School. I **FURTHER ORDER** that the Board’s due process petition shall be dismissed as moot.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2026) 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 (2026). 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.

July 30, 2026

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency

July 30, 2026

Date Mailed to Parties:

KMW/ml

APPENDIX

Witnesses

For petitioner:

C.H.

For respondents:

Michael Monaco

Erika Kostishak

Jennifer K. Bland, Ed.D.

Exhibits

Joint:

- J-1 IEP dated May 29, 2025
- J-3 Settlement Agreement dated July 22, 2025
- J-4 Letter from Dr. Bland to C.H. dated July 29, 2025
- J-5 Yale School disciplinary reports for O.A. (October 9, 2025 incident reports only)
- J-8 Email from Kostishak to C.H. dated October 17, 2025
- J-9 Resolution meeting attendance dated October 22, 2025
- J-10 Resolution session agreement
- J-11 Functional Behavior Assessment Summary dated October 24, 2025
- J-12 Individualized Behavior Support Plan for O.A.
- J-13 Emails between C.H. and Monaco dated November 7, 2025 to November 10, 2025
- J-15 Letter from Dr. Bland to C.H. dated October 29, 2025
- J-16 Emails between Dr. Bland and C.H. dated October 24, 2025 and October 28, 2025
- J-17 Email from Kostishak to C.H. dated October 30, 2025
- J-18 Email from Kostishak to C.H. dated October 31, 2025

- J-20 Emails between Dr. Bland and C.H. dated November 11, 2025 and November 12, 2025
- J-21 Emails between Dr. Bland and C.H. dated November 11, 2025 and November 12, 2025
- J-22 Resolution Session Agreement
- J-24 Email from C.H. to Dr. Bland dated November 18, 2025
- J-25 Emails among Dr. Arcari to C.H. and others dated October 29, 2025 to November 19, 2025
- J-27 Emails among C.H., Dr. Bland and Dr. Arcari dated October 29, 2025 to November 20, 2025
- J-28 IEP dated November 25, 2025
- J-29 Email from C.H. to Dr. Bland dated November 28, 2025
- J-30 Physicians notes regarding O.A. dated December 3, 2025

For petitioner:

- P-1 Video observation summary dated October 27, 2025
- P-3 Incident Report vs. Video vs. Prior Safety Notice dated May 8, 2026

For respondent Board:

- R-1 Evesham Curriculum vitae for Jennifer K. Bland, Ed.D.