



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 18366-25

AGENCY DKT. NO. 2026-39914

**GLEN ROCK BOROUGH
BOARD OF EDUCATION,**

Petitioner,

v.

M.K. AND Y.X. ON BEHALF OF G.K.,

Respondents.

Robin S. Ballard, Esq., for petitioner (Schenck Price Smith & King, LLP, attorneys)

Y.X., pro se, for respondents

Record Closed: December 17, 2025

Decided: January 15, 2026

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

The Board of Education of the Borough of Glen Rock, Bergen County, filed a Petition for Due Process against M.K. and Y.X. on behalf of G.K. to deny a request for an independent educational evaluation.

PROCEDURAL HISTORY

On October 8, 2025, respondents, M.K. (Dad) and Y.X. (Mom), requested an independent educational evaluation (IEE) in the form of a functional behavioral assessment (FBA) for G.K. On October 23, 2025, petitioner, Board of Education of the Borough of Glen Rock, Bergen County (Board), filed a Petition for Due Process (Petition) against the respondents, M.K. and Y.X. (the parents), on behalf of G.K., seeking to deny the parents' request for an IEE. The matter was transmitted by the New Jersey Department of Education (Department), Office of Special Education, to the Office of Administrative Law (OAL), where it was filed on October 24, 2025. A telephone prehearing conference was held on October 31, 2025, and the hearing was scheduled for December 1, 2025. On November 3, 2025, the undersigned received an "emergency motion to enforce stay-put and for interim relief" from respondents. However, because the sole issue in the pending due process petition filed by the Board and transmitted to the OAL was the Board's denial of the respondents' request for an IEE, the respondents' motion—which alleged violations related to "stay-put" and implementation of a proposed IEP and sought relief unrelated to the denial of the request for an independent FBA—was not accepted. Additionally, on November 7, 2025, the parents filed with the Department a request for emergent relief and due process. On November 10, 2025, the OAL received a request from petitioner to consolidate this matter with the parents' request for emergent relief and due process,¹ but petitioner's request was denied. The hearing was held on December 1, 2025, and the record closed on December 17, 2025, after receipt of the parties' post-hearing submissions.

FACTUAL DISCUSSION

Findings of Fact

Lorin Muir and Kimberly Zoretic testified on behalf of petitioner. Y.X. testified on behalf of respondents. Having had an opportunity to consider the evidence and to observe

¹ Oral argument on parents' request for emergent relief was scheduled for November 20, 2025, and the parents' due process petition had not yet been transmitted to the OAL.

the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

G.K. was born in March 2020. In August 2023, he moved from West New York, New Jersey, where he was receiving special education and related services, to Glen Rock, New Jersey. (P-8.) In Glen Rock, G.K. continued to receive special education and related services and was placed in the preschool disabled program.

By Reevaluation Planning–Proposed Action letter, dated January 21, 2025, the District proposed the following assessments for G.K.: educational evaluation; psychological evaluation; social history; speech/language evaluation; occupational therapy evaluation; and physical therapy evaluation. (P-1.) Mom consented to the foregoing evaluations on January 21, 2025. (P-1.)

Lisa Morales, M.S., CCC-SLP, conducted a speech and language evaluation on January 23–30, 2025. Morales administered the following standardized tests/assessments: Test of Language Development–Primary: Fifth Edition (TOLD-P:5); Comprehensive Assessment of Spoken Language–Second Edition (CASL-2) selected subtests; and Goldman-Fristoe Test of Articulation–3 (GFTA-3). (P-2.) Morales also considered informal speech-language tasks and observation, teacher input and review of records. (P-2.) Morales prepared a Speech–Language Re-Evaluation Report, dated February 19, 2025. (P-2.) At that time, G.K. was four years and ten months old. Morales summarized the evaluation, in pertinent part, as follows:

Results of formal and informal testing indicate that [G.K.] presents with a moderate receptive/expressive language delay. Administration of the Test of Language Development–Primary: Fifth Edition (TOLD-P:5) revealed that [G.K.] achieved a Spoken Language Index Score of 75 (5th percentile), a Listening Index Score of 71 (3rd percentile), an Organizing Index Score of 83 (13th percentile), a Speaking Index Score of 80 (9th percentile), a Grammar Index Score of 72 (3rd percentile) and a Semantics Index Score of 82 (12th percentile). These index scores place him in the below average range for this test (mean = 100; standard deviation = +/- 15).

Selected subtests of the Comprehensive Assessment of Spoken Language–Second Edition (CASL-2) were administered to further assess [G.K.'s] receptive and expressive language skills. [G.K.] achieved a Sentence Comprehension subtest standard score of 68 (2nd percentile). This scaled score places [G.K.] in the below average range for this subtest (mean = 100; standard deviation = +/- 15). [G.K.] achieved an Inference subtest standard score of 74 (4th percentile). This scaled score places [G.K.] in the below average range for this subtest (mean = 100; standard deviation = +/- 15).

The Goldman-Fristoe Test of Articulation–Third Edition (GFTA-3) was administered to assess [G.K.'s] production of English consonants. During the Sounds-in-Words subtest, [G.K.] demonstrated 8 errors, which yields a standard score of 103. This standard score places him at the 58th percentile for his age and gender. During the Sounds-in-Sentences subtest, [G.K.] demonstrated 8 errors, which yields a standard score of 105. This standard score places him at the 63rd percentile for his age and gender.

Analysis of the results revealed that [G.K.'s] articulation errors were characterized by substitution of the f/th (voiceless) phoneme in the initial, medial and final positions of words and the d/th (voiced) phoneme in the initial and medial positions of words. In addition, [G.K.'s] articulation errors were characterized by distortion of the /l/ phoneme in the final position of words. These errors are considered to be age-appropriate at this time. [G.K.] also demonstrated omission of the /p/ phoneme in the final position of words on one test item (i.e. “soap”). Extension testing revealed that [G.K.] was able to produce the /p/ phoneme in the final position of words when additional stimulus words were presented. Speech intelligibility was judged to be “good” in connected.

Based on informal observation, oral motor structures and function appear to be adequate for speech production. Based on informal observation, resonance, vocal pitch and intensity appeared normal. No dysfluencies were noted.

[P-2.]

Rosa Lanausse, NCSP, conducted a psychological evaluation on February 11, 2025. In addition to a review of records and student interview, she administered the following standardized tests/assessments: Wechsler Preschool and Primary Test of Intelligence–Fourth Edition (WPPSI-IV); Behavior Assessment System for Children–Third

Edition, BESS Parent Preschool; and Behavior Assessment System for Children–Third Edition, BESS Teacher Preschool. (P-7.) Lanausse prepared a Confidential School Psychological Evaluation report, dated March 7, 2025. (P-7.) Lanausse summarized the evaluation, in pertinent part, as follows:

[G.K.'s] overall behavior was conducive to the goals of the assessments administered. His cognitive functioning was assessed using the WPPSI-IV. [G.K.'s] Full-Scale IQ (FSIQ – 91) fell within the Average range. [G.K.'s] performance on the WPPSI-IV subtests ranged from the Borderline to Average range. [G.K.'s] scores fell within the Borderline range on the following: processing speed (PSI – 73). His verbal comprehension skills (VCI – 108), visual spatial skills (VSI – 94), fluid reasoning (FRI – 91), and working memory (WMI – 90) fall in the Average range.

[G.K.'s] mother and special education preschool teacher completed the appropriate forms of the Behavior Assessment System for Children, Third Edition (BASC-3). The BASC-3 is a standardized rating system designed to evaluate and measure a wide range of areas including personality, behavior, adaptive functioning, and emotional disturbances. [G.K.] received scores in the Clinically Significant range on the following: Externalizing Problems Composite (Parent, Teacher), Aggression scale (Parent, Teacher), Behavioral Symptoms Composite (Parent, Teacher), Activities of Daily Living Scale (Parent), Hyperactivity scale (Teacher), Atypicality scale (Teacher), Withdrawal scale (Teacher), Social Skills scale (Teacher). He was rated in the At-Risk range on the following: Internalizing Problems Composite (Parent, Teacher), Attention Problems scale (Parent, Teacher) Adaptive Skills Composite (Parent, Teacher), Hyperactivity scale (Parent), Somatization scale (Parent), Atypicality scale (Parent), Withdrawal scale (Parent), Social Skills scale (Parent), Functional Communication scale (Parent), Anxiety scale (Teacher), Depression scale (Teacher), Adaptability scale (Teacher).

[P-7.]

Lorin Muir holds standard certificates for teacher of students with disabilities (2014), teacher of preschool through grade 3 (2015), elementary school teacher in grades K–6 (2014), and is a certified learning disabilities teacher consultant (LDT-C) (2021). She has been employed by the Board as an LDT-C since 2021. (P-9.) Muir was G.K.'s case manager for the 2024–2025 school year. Muir conducted an educational evaluation on

February 24, 2025. In addition to a teacher interview, student interview, and review of records, Muir administered the standardized Woodcock-Johnson Tests of Achievement, Form B (WJ-IV). Muir prepared an Educational Evaluation report, dated March 3, 2025. (P-3.) Muir summarized the evaluation, in pertinent part, as follows:

[G.K.] came willingly with the examiner. He was curious and energetic. When asked, "How old are you?" [G.K.] replied, "I don't know, 5?" [G.K.] is bilingual and speaks Mandarin at home. He was observed to comment and ask questions in English during the evaluation.

During testing, [G.K.] was not observed to exhibit any visual or auditory problems that negatively affected his performance. Throughout the evaluation, [G.K.] required repetition and prompting to answer questions.

The Woodcock-Johnson Tests of Achievement IV Form B was administered to assess [G.K.'s] current levels of academic performance. The test provided a comprehensive review of abilities in reading, writing, and math, while revealing competencies with basic skills and applications in each academic area. [G.K.'s] overall academic achievement, as measured by the WJ IV Brief Achievement standard score, is in the average range of others his age (Percentile Rank of 38, Standard Score of 95).

Among the WJ IV achievement measures, [G.K.'s] standard scores are within the average range for four clusters [Reading (97), Basic Reading Skills (90), Written Language (101), and Academic Applications (98)] and five tests [Letter-Word Identification (91), Applied Problems (90), Spelling (105), Passage Comprehension (103), and Writing Samples (99)]. [G.K.'s] scores are within the low average range for one test [Word Attack (89)].

[P-3.]

Laura H. D'Alessio, OTR/L, conducted an occupational therapy evaluation on February 12, 19, and 26, 2025, utilizing the standardized Peabody Developmental Motor Scales, Third Edition, Fine Motor Scales (PDMS-3) and clinical observations. (P-4.) She prepared an Occupational Therapy Re-evaluation report. (P-4.) D'Alessio summarized the evaluation, in pertinent part, as follows:

[G.K.] has been receiving a monthly occupational therapy consultation with his teacher to address sensory processing and behavioral issues. The re-evaluation took place during three 30-minute sessions on the quiet stage at the Central School. [G.K.] came easily with the classroom occupational therapist for each testing session. His happy, friendly nature and lively disposition are areas of strength. He communicated his needs in short sentences and occasionally echoed the last phrase of what was said to him. [G.K.'s] attention span was brief. He was impulsive and highly distracted by his environment. Occasionally, he grabbed items that were on the table, or tried to pry items from the therapist's hands. He frequently left his seat to wander the area. At times, he stared so intently at items hanging on the wall that the therapist had to remove them. He was rigid and occasionally would not follow the directions given, choosing instead to use the test items in his own way. At times he became hyper-focused on certain topics, and engaged in compulsive behavior that interfered with his ability to complete test items. Problem solving ability, organization and self-correction were not observed due to [G.K.'s] lack of focus. Due to these behavioral issues [G.K.'s] test score is likely to be an underestimation of his actual fine motor abilities. Results of the Fine Motor Scales of The Peabody Developmental Motor Scales (PDMS-3) indicate that [G.K.'s] fine motor skills are above the 14th percentile for his age, which is one point Below Average, with a standard score of 84. His self-care skills have improved and he is now independent in all areas with supervision needed when toileting due to his distractibility. [G.K.'s] sensory processing was evaluated using the Home and School Forms of the Sensory Processing Measure (SPM-2). The teacher's responses indicate that [G.K.] is experiencing Moderate Difficulties with sensory processing, Planning and Ideas and Social Participation. Some improvement in his sensory processing has been noted since his initial evaluation. [G.K.'s] parents' [sic] responses on the Home Form indicate that they have seen improvement in sensory processing, Planning and Ideas and Social Participation. They now rate [G.K.] as Typical in all of these areas. A comparison of the school and home ratings show that there are significantly more problems in the school environment than the home. In school, [G.K.] continues to have difficulty modulating his behavior in response to sensory input, particularly in the areas of vision, hearing, touch, balance, and to a slightly lesser degree, body awareness. As a result, he continues to engage in sensory-seeking behaviors such as making sounds or noises, bumping into or touching peers, and staring intently. These behaviors negatively impact his ability to

interact socially with adults and peers, as well as his ability to meet the academic demands of the preschool.

[P-4.]

Christina DeGennaro, PT, DPT, conducted a physical therapy evaluation on February 19 and 26, 2025, and in addition to clinical observation and task analysis, DeGennaro utilized the standardized Peabody Developmental Motor Scales, Edition 3 (PDMS-3). (P-5.) DeGennaro prepared a Physical Therapy Evaluation report. (P-5.) DeGennaro summarized the evaluation, in pertinent part, as follows:

[G.K.] was evaluated based upon clinical observation, task analysis and the use of the Peabody Developmental Motor Scales, Edition 3 (PDMS-3). [G.K.'s] gross motor function was assessed using the Peabody Developmental Motor Scales-3 (PDMS-3). The PDMS-3 is a standardized test that allows for the comparison of a child's performance with that of peers in their age group. The subtests that are completed on the physical therapy portion of the assessment are: Body Control, Body Transport and Object Control. [G.K.] scored in the 25th percentile on the Body Control Subtest with a 15.3% delay, the 25th percentile on the Body Transport Subtest with an 18.6% delay and the <1st percentile on the Object Control Subtest with a greater than 33% delay. The Gross Motor index score represents the child's ability to use the large muscle systems to react to environment changes, assume a stable posture when not moving, move from place to place and catch, throw and kick balls. [G.K.'s] Gross Motor index is 72, with a descriptive term of borderline impaired or delayed.

[P-5.]

Ayala Ahdoot, LSW, conducted a social history evaluation based upon a phone interview with Mom and the parent social history questionnaire, and she prepared a Social History Assessment report, dated March 5, 2025. (P-6.) Ahdoot summarized the evaluation, in pertinent part, as follows:

[G.K.'s] gross motor skills are reported as satisfactory as he is still learning cycling and throwing. His fine motor skills are reported as "improving but still behind" as he struggles holding a pencil correctly and drawing a circle. His mother reported that although they're improving, his motor skills are "not at the same

level of his peers.” In terms of speech, [G.K.] was diagnosed with a significant delay during the last evaluation “but has experienced improvement.” [G.K.’s] mother reported social concerns. She reported that [G.K.] has a hard time playing with other children and doesn’t always know how. He “sometimes can be aggressive or grab a toy from them or doesn’t know how to communicate.” She notices a social delay. [G.K.’s] interests are vehicles, trains, reading books, watching tv, soccer, and painting class. His psychosocial strength is his strong willed personality.

[P-6.]

G.K. was determined eligible for continued special education and related services under the classification “preschool child with a disability.” (P-8.) His individualized education program (IEP), dated March 21, 2025, reflects his program for the remainder of the 2024–2025 school year as follows: Special Class Preschool Disabilities Half-Day: Reading/Writing/Math/Science/Social Studies/Specials; In-class Supplementary Instruction: Reading/Writing/Math/Science/Social Studies/Specials; Speech-Language Therapy: Group (not to exceed two) (six times monthly for thirty minutes); Occupational Therapy Consultation: Group (once monthly for thirty minutes); Physical Therapy: Individual (once weekly for thirty minutes); Speech-Language Therapy: Group (not to exceed two) (six times monthly for thirty minutes); Speech-Language Consultation: Group (once monthly for thirty minutes); Occupational Therapy Consultation: Group (once monthly for thirty minutes); Physical Therapy: Individual (once weekly for thirty minutes); Special Transportation: Curb to Curb Transportation (twice daily). The March 2025 IEP also reflects an extended school year (ESY) special education program and related services. (P-8.)

In September 2025, G.K. commenced kindergarten in-district. On October 8, 2025, respondents emailed the District as follows:

We are writing to formally request an Independent Educational Evaluation (IEE) in the form of a Functional Behavioral Assessment (FBA) for our child, [G.K.], under the provisions of the Individuals with Disabilities Education Act (IDEA, 34 C.F.R. §300.502).

Given the recurring behavioral concerns discussed in recent communications, it appears that the current supports have not

effectively addressed [G.K.'s] needs. A comprehensive FBA conducted by a qualified Board Certified Behavior Analyst (BCBA) is necessary to accurately identify the underlying functions of [G.K.'s] behaviors and to inform an effective Behavior Intervention Plan (BIP). Under IDEA §300.324(a)(2)(i) and NJAC 6A:14-3.7(c)(5), when a child's behavior interferes with learning, the IEP team must consider positive behavioral interventions and supports based on data. In practice, this requires conducting a Functional Behavioral Assessment (FBA) to determine the function of the behavior before developing a Behavior Intervention Plan (BIP). Implementing a BIP without first conducting an FBA is inconsistent with the intent of these regulations and is unlikely to produce effective or educationally meaningful outcomes.

We are therefore requesting that:

1. The district fund this independent FBA as part of [G.K.'s] right to a Free Appropriate Public Education (FAPE); and
2. The assessment be conducted by an independent BCBA experienced in early childhood behavior and IEP implementation.

At this time, we have not yet selected an independent evaluator. Once the district confirms approval of this IEE request and provides its evaluator criteria or a list of approved evaluators, we will either select an evaluator from the district's list or propose one who meets the district's qualifications. Please provide the district's procedures for obtaining an IEE, any criteria for evaluators, and any necessary consent forms to initiate this process.

We do not consent to any internal or informal assessment that does not meet IDEA's definition of an FBA. Please consider this a formal IEE request under IDEA and Section 504 procedural safeguards.

We would appreciate a written response within 10 calendar days, consistent with NJDOE procedural timelines. We remain open to collaboration and appreciate your attention to ensuring [G.K.] receives appropriate behavioral and educational supports.

Thank you for your time, support, and continued partnership.

[J-1.]

On October 17, 2025, respondents emailed the District as follows:

This is a follow-up to our Independent Educational Evaluation (IEE) request, originally sent on October 8, 2025, which included a request for an independent Functional Behavioral Assessment (FBA).

As of today, we have not received any written response from the district regarding this request. Please kindly confirm the status or next steps for our IEE/FBA request at your earliest convenience.

Thank you for your attention.

[R-5.]

On October 23, 2025, the Board filed the Petition, seeking to deny the parents' request for an IEE.

By email dated October 31, 2025, the District requested that the parents advise as to their availability for a meeting on November 13, 2025, to discuss the FBA. (R-3.) The parents replied, requesting clarification of the purpose of the meeting and stating, inter alia, that "the District should not initiate or conduct any new FBA or related behavioral assessment activities until the due process proceedings have concluded." (R-3.) By email dated November 10, 2025, the District advised that it was requesting the meeting to propose that the District conduct its own FBA. (R-3.) The parents replied, stating, inter alia, that they "will not be participating in any new 'evaluation planning meeting' while the current due process case is pending before the OAL." (R-3.)

By Invitation for Reevaluation Planning, dated November 10, 2025, the District proposed a meeting on November 13, 2025, the purpose of which was as follows:

The purpose of this meeting is to review the student's educational program, existing evaluation data, and any other relevant information to decide whether additional assessment is warranted to determine if the student continues to have a disability which adversely affects the student's educational performance, and is in need of special education and related services, or speech-language services only.

If it is decided that additional assessment is warranted, the district will propose the nature and scope of the assessments to be conducted.

If it is decided that additional assessment is not warranted and the student continues to be eligible, an Individualized Education Program (IEP) will be developed at this meeting, if feasible.

Propose an FBA to be conducted by the district[.]

[R-3.]

By email dated November 14, 2025, the parents advised the District that they had “previously declined the district’s proposed Functional Behavioral Assessment (FBA) meeting, as the evaluation is currently the subject of a pending due process proceeding before the Office of Administrative Law (OAL Dkt. No. EDS-18366-25),” and asserted that it is a violation of stay-put. (R-3.)

A Request for Additional Assessment–Proposed Action, dated November 18, 2025, reflects that the District was “proposing that an additional assessment is required to better understand how the student’s disability adversely affects the student’s educational performance, and to help determine appropriate services” and that “[r]eview of behavioral functioning since transitioning to kindergarten at Hamilton School indicates the presence of aggressive and noncompliant behaviors that warrant a Functional Behavioral Assessment conducted by the district behaviorist.” (R-3.) The Request for Additional Assessment further reflects that the parents requested the FBA be conducted by an independent evaluator, and the District proposed that it be conducted by the District’s behaviorist. (R-3.)

Testimony

Lorin Muir

Muir put together a comprehensive proposed evaluation plan to assess the areas of suspected disability based on G.K.’s current program, teacher and therapist input, and his prior evaluations. G.K. was evaluated to determine if he continued to require special education and related services and to develop his program. His parents consented to the

evaluations. The evaluations were comprehensive and appropriate for G.K., and they provided information necessary to assist the child study team (CST) in determining special education eligibility and programming. The speech-language assessment assessed his receptive and expressive language and speech articulation; the educational evaluation assessed his academic skills, including reading and math; the occupational therapy evaluation assessed his fine motor and sensory needs; the physical therapy evaluation assessed his gross motor skills; and the psychological evaluation assessed his cognitive and behavioral functioning. G.K.'s transfer records did not include a social history, so a social history assessment was conducted to include all background information from the family as part of the evaluation. The BASC-3 was administered because the parent raised concerns about a social delay during the interview with Lanausse. An FBA was not necessary because there were no significant behavior concerns at that time, and behavior was assessed as part of the psychological evaluation. There was no request for further behavioral assessment. All the evaluators were experienced, certified, and qualified to conduct the tests/assessments. She has no reservations about the appropriateness of the evaluations conducted by CST. There is no good cause for an IEE because all areas of suspected disability were addressed by the evaluations.

At the March 2025 IEP meeting, there was a discussion about kindergarten placement. G.K. had been determined eligible for continued special education and related services under "communication impairment," and his program was discussed. The CST recommendation was the general education kindergarten class with the related services he presently receives, but there was some discussion because his teacher expressed some apprehension about the transition from a small class size of five students with three adults to a larger class size, based on his communication needs. The March 2025 IEP reflects his placement in the general education classroom with a shared aide, which was determined least restrictive due to his language needs. She is not G.K.'s case manager for the current school year and did not attend the September 2025 IEP meeting, and she did not discuss G.K.'s behaviors in October and November 2025.

Kimberly Zoretic

Zoretic holds certifications/licenses as an elementary school teacher, special education teacher, reading specialist, principal, supervisor, and behavior analyst. She is presently the district behaviorist. From September 2025 to January 2026, she was in G.K.'s classroom approximately ten to fifteen times to observe other students. His teacher did not report any concerns to her or ask for assistance regarding G.K.'s behavior, and no staff member contacted her about G.K.'s behavior. His behavior was energetic at times but typical of a preschooler. An FBA is an assessment used to determine the function of maladaptive behavior in school when there is behavior that is impeding the student's learning or the learning of others. An FBA was not needed as part of the reevaluation in January 2025 because there were no maladaptive behaviors impeding G.K.'s learning or others' learning. Antecedent behavior consequences (ABC) data for G.K. has been collected during kindergarten year. An FBA has not been conducted.

Y.X. (Mom)

The parents requested an IEE in the form of an FBA because the District never conducted an FBA but is relying on behavior data and behavior interventions and considering restrictive placement options. The September 2025 IEP reflects a behavior intervention plan (BIP), but no FBA was conducted, and the District collected no ABC data. Therefore, the BIP and behavior conclusions are not based upon any evaluation. There have been undocumented and illegal removals from the classroom (October 9, 2025, November 14, 2025, and November 24, 2025) in violation of stay-put. None of the removals appear in the District's behavior reporting, so the behavior records are incomplete and unreliable and prove that an independent FBA is required. Fundamental data is missing or incorrect, and the District's behavior reporting cannot be trusted because of illegal removals. The District has misapplied the Code of Conduct. The District has suggested moving G.K. to a more restrictive placement, which is reflected in the October 6, 2025, IEP meeting recording. The District cannot be objective if it wants to move G.K. to a restrictive placement. The parents' private occupational therapist, speech therapist and pediatrician have documented normal behavior and none of the school-reported issues, so the only logical

conclusion is that the issue lies with the school environment and the District's inability to properly evaluate. The District's behavior logs are unlawful and unusable.

The District exhibits pertain to the March IEP meeting, not to the September IEP meeting. The parents requested the FBA because of the September 2025 IEP. The January–March 2025 evaluations are outdated and not relevant to the September 2025 IEP or the BIP. The District wants to use future FBA results to justify a more restrictive placement. An FBA conducted by the District will not be independent or objective. They are concerned that there is a BIP without an FBA or other behavioral tools. They have no concern about the March IEP. During the March 2025 IEP meeting, there were no behavioral concerns, and no FBA was proposed, and the District did not propose a special class for March 2025. They disagree with the District's proposal for a special class for kindergarten. Any behavior or related data collected about a student requires parental consent, and they did not consent. They want an independent FBA in order to get a data-driven BIP. There is no information to support placement in a special class.

LEGAL ANALYSIS AND CONCLUSIONS

In part, the purpose of special education is to ensure that all students with disabilities have available to them a free, appropriate public education (FAPE) as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.). N.J.A.C. 6A:14-1.1(b)(1). Per 20 U.S.C. § 1401(9), a FAPE means special education and related services that – (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program (IEP) required under section 614(d) [20 U.S.C. § 1414(d)].

Generally, “evaluation” means procedures used in accordance with C.F.R. §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15 (2025). Each public agency must conduct a full and individual initial evaluation, in accordance with 34 C.F.R. §§ 300.304 through 300.306, before the initial provision of

special education and related services to a child with a disability. 34 C.F.R. § 300.301(a) (2025). Thereafter, a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 – (1) if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) if the child’s parent or teacher requests a reevaluation. 34 C.F.R. § 300.303(a) (2025). A reevaluation conducted under 34 C.F.R. § 300.303(a) may occur not more than once a year, unless the parent and the public agency agree otherwise, and must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(1) and (2) (2025).

In conducting the evaluation, the public agency shall: (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability under § 300.8, and (ii) the content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b) (2025); N.J.A.C. 6A:14-2.5(a)(1)(i) and (ii), (2) and (3); 20 U.S.C. § 1414(b)(2)(A)(i) and (ii), (B), and (C). The district board of education shall ensure that the student is assessed in all areas of suspected disability and that the evaluation is sufficiently comprehensive to identify all the child’s special education and related services needs, whether or not commonly linked to the suspected eligibility category. N.J.A.C. 6A:14-2.5(b)(3) and (7).

As part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, and based on that review and input from the child’s parents, identify what additional data, if any, are needed to determine:

- (i)
 - (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
- (ii) The present levels of academic achievement and related developmental needs of the child;
- (iii)
 - (A) Whether the child needs special education and related services; or
 - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

[34 C.F.R. § 300.305(a)(1) and (2) (2025).]

The parents of a child with a disability have the right under 34 C.F.R. § 300.502 to obtain an independent educational evaluation (IEE), subject to 34 C.F.R. § 300.502(b) through (e). 34 C.F.R. § 300.502(a)(1) (2025). For these purposes, an IEE means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question, and public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 C.F.R. § 300.103. 34 C.F.R. § 300.502(a)(3)(i) and (ii).

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in 34 C.F.R. §300.502(b)(2) through (4). 34 C.F.R. § 300.502(b)(1). Upon completion of an initial

evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. N.J.A.C. 6A:14-2.5(c). A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 C.F.R. § 300.502(b)(5); N.J.A.C. 6A:14-2.5(c). The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation. N.J.A.C. 6A:14-2.5(c). Such independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made. N.J.A.C. 6A:14-2.5(c)(1); 34 C.F.R. § 300.502(b)(2)(i) and (ii). If a parent requests an independent evaluation, the district board of education may ask the parent to explain why he or she objects to the district board of education's evaluation. N.J.A.C. 6A:14-2.5(c)(5); 34 C.F.R. § 300.502(b)(4). However, the district board of education shall not require an explanation, and the district board of education shall not delay either providing the independent evaluation or initiating a due process hearing to defend the district board of education's evaluation. Ibid. If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3).

The parents argue that “the **disputed domain as behavioral evaluation related to the September 2025 IEP/BIP**, including the District's failure to conduct a Functional Behavioral Assessment (FBA) or any equivalent behavior-focused evaluative process,” and that “the dispute does **not** concern the unrelated January–March 2025 Child Study Team (CST) reevaluation, which did not include any behavioral assessment or behavior-focused evaluative component.” The parents further argue that their “disagreement—and the corresponding IEE request—arose in connection with the **September 2025 IEP and BIP**, when the District identified behavioral needs and implemented behavioral interventions without conducting any behavioral evaluation.”

The Board's proposed list of evaluations, signed by Mom on January 21, 2025, did not include an FBA, and there is no evidence that one was requested at that time. The IEE request was not made until the following school year, after G.K. had commenced kindergarten, and the IEE request did not reference any FBA or behavioral assessment

already conducted by the Board, nor did it reference any of the six evaluations conducted between January 2025 and March 2025. While parents are not required to explain why they object to a public evaluation, the parents' request for an IEE in the form of an FBA does not reflect a "disagreement" with any of the District's evaluations. There was no objection to the evaluations proposed, no objection to the contents of the reports, and no objection to the qualifications of any evaluators. Instead, the parents' October 2025 request references "recurring behavioral concerns discussed in recent communications" and asserts that "current supports have not effectively addressed [G.K.'s] needs" and that "[a] comprehensive FBA conducted by a qualified Board Certified Behavior Analyst (BCBA) is necessary to accurately identify the underlying functions of [G.K.'s] behaviors and to inform an effective Behavior Intervention Plan (BIP)."

The record is devoid of evidence of any behavioral concerns resulting in communications to the parents or evidence that G.K.'s supports did not effectively address his needs during the 2024–2025 school year. The testimony of the District's witnesses was consistent with and corroborated by the March 2025 IEP, which reflects that behavioral interventions were not appropriate at that time, and Mom testified that the parents have no concern about the March IEP. Instead, the parents assert that behavioral issues arose during the 2025–2026 school year, and that their disagreement is with the September 2025 IEP and the BIP. In October 2025, the District proposed that an FBA be conducted by the District behaviorist, and it appears that there has been discussion of a possible change in placement—which the parents are opposed to. However, while G.K.'s behavior may now warrant an FBA, and the parents may have an objection to the most recent IEP, the record herein does not support a right to an "independent" FBA at public expense.

I **CONCLUDE** that the District obtained the required functional, developmental, and academic information to determine continued eligibility for special education and related services and to determine the contents of G.K.'s IEP, including an appropriate educational program. I further **CONCLUDE** that the evaluations were sufficiently comprehensive to identify G.K.'s special education and related services needs. Accordingly, I **CONCLUDE** that the District's evaluations from January 2025 through March 2025 were appropriate, and the respondents do not have a right to the requested independent FBA at public expense.

ORDER

It is hereby **ORDERED** that the District's evaluations were appropriate and the respondents' request for an IEE, specifically an FBA, is **DENIED**.

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.



January 15, 2026 _____

DATE

KELLY J. KIRK, ALJ

Date Received at Agency

January 15, 2026 _____

Date Mailed to Parties:

January 15, 2026 _____

am

APPENDIX

Witnesses

For petitioner:

Lorin Muir
Kimberly Zoretic

For respondents:

Y.X. (Interpreter: Mahmoud 22236)

Exhibits

Joint:

J-1 October 8, 2025, Email

For petitioner:

P-1 Reevaluation Planning–Proposed Action, dated January 21, 2025
P-2 Speech Language Reevaluation, dated February 19, 2025
P-3 Educational Evaluation, dated March 3, 2025
P-4 Occupational Therapy Reevaluation
P-5 Physical Therapy Evaluation
P-6 Social History Assessment
P-7 Confidential School Psychological Evaluation, dated March 7, 2025
P-8 IEP, dated March 21, 2025
P-9 (Not in Evidence)
P-10 Lorin Muir resume

For respondents:

R-1 (Not in Evidence)
R-2 (Not in Evidence)
R-3 Emails

R-4 (Not in Evidence)

R-5 October 17, 2025, email