



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03097-26

AGENCY DKT. NO. 2026-40519

A.F. ON BEHALF OF A.F.,

Petitioner,

v.

BAYONNE CITY BOARD OF EDUCATION,

Respondent.

A.F. on behalf of A.F., petitioner, pro se

Robin S. Ballard, Esq., for respondent, Bayonne City Board of Education
(Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: June 23, 2026

Decided: July 22, 2026

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner A.F. on behalf of A.F. alleges in his underlying due process petition that respondent Bayonne City Board of Education (the Board or the District) denied the student a Free Appropriate Public Education (FAPE) when it wrongfully denied his request for an initial evaluation to determine whether the student is eligible for special education.

PROCEDURAL HISTORY

On or about January 22, 2026, petitioner A.F. on behalf of A.F. (the student) filed a Mediation Request on a form created by the Indiana Department of Education (Mediation Request), with the New Jersey Department of Education, Office of Special Education (OSE).

On February 20, 2026, mediation was held, which was unsuccessful in resolving this dispute. On said date, petitioner then converted the Mediation Request to a Petition for Due Process (due process petition) against respondent, Bayonne City Board of Education.

Petitioner alleges that the Board denied the student a FAPE when it wrongfully denied his request for an initial evaluation to determine whether the student is eligible for special education. Petitioner claims the Board knew about the student's "emotional regulation impairment" and was required to provide an evaluation for the student. Additionally, petitioner alleges the Board falsified and inflated the student's grades to mask her need for an evaluation and "protective services." Petitioner seeks an independent educational evaluation (IEE) for the student, a "human" audit of the student's grades to correct "discrepancies," and "supportive measures" under Title IX. Petitioner also seeks to enforce stay put protections preventing graduation while this matter is pending.¹

On or about February 27, 2026, the Board filed its Answer to the due process petition. The Board admitted information concerning the student's age and the student's attendance at Bayonne High School, and it considered petitioner's request for the student

¹ On May 29, 2026, after the underlying due process petition was submitted to the Office of Administrative Law (OAL), petitioner submitted an Emergency Application for Emergent Relief/Motion to Enforce Stay-Put, which was filed on May 30, 2026. On June 3, 2026, a status conference was held and a scheduling order regarding petitioner's Emergency Application was issued. On June 10, 2026, the Board filed its opposition to the emergent relief application, and on June 11, 2026, petitioner filed his reply thereto. On June 22, 2026, an Order denying petitioner's Emergency Application for Emergent Relief was entered. Consequently, petitioner's requested stay put relief contained in the due process petition was adjudicated and will not be addressed in the decision herein.

to be evaluated by the Board's Child Study Team (CST), which determined that there was no reason to suspect the student might have a disabling condition requiring special education. The Board denied the remaining allegations contained in the due process petition.

On March 23, 2026, the OSE transmitted this matter to the OAL, where it was filed as a contested case for a due process hearing. On April 1, 2026, a status conference was held, at which time the Board requested leave to file a motion for summary decision. A motion schedule was established. On May 15, 2026, petitioner filed his opposition to the Board's motion and a cross-motion for summary decision. On May 29, 2026, the Board filed its opposition to the cross-motion.

I closed the record on June 23, 2026.

ISSUES

- (1) Did the Board deny the student a FAPE by declining to conduct an initial evaluation?
- (2) Does denial of an initial evaluation entitle petitioner to a publicly funded IEE?
- (3) Does graduation make a special education matter moot?
- (4) Is this case ripe for summary decision?

Brief Answers

- (1) No. While the District has an ongoing child find obligation up until the student graduates high school, the Individuals with Disabilities Education Act (IDEA) only requires the evaluation of a child who the District reasonably suspects has a disability. Upon request by a parent, the CST must meet and determine whether there is reasonable suspicion that the child has a disability and if so, evaluate the child. However, a referral does not automatically necessitate an evaluation. If the

school denies an evaluation, it must provide written notice as to the reasons for the denial.

- (2) No. Petitioner is not entitled to a publicly funded IEE without an initial evaluation to contest.
- (3) No. Whether graduation makes a matter moot depends on the remedy. In cases like this, where compensatory education is the likely relief available, graduation does not make a due process petition in a special education matter moot since post-graduation relief may still be available.
- (4) Yes. There are no genuine issues of material fact remaining, and the Board is entitled to summary decision as a matter of law. The record shows that the CST timely considered petitioner's request, reviewed the student's academic, attendance, testing, social, emotional, and behavioral information, and reasonably found no basis to suspect that the student may have a disability requiring special education services. Petitioner's cross-motion should therefore be denied.

FACTUAL FINDINGS

After a review of the moving papers submitted in connection with the underlying motion for summary decision and cross-motion for summary decision, including the due process petition filed herein, I **FIND** the following as **FACT**.

The student was born July 5, 2008. She attends Bayonne High School in the school district of Bayonne City and is in the twelfth grade. The student is a general education student and is not classified for special education. She currently meets the State graduation criteria and was on track to graduate on June 25, 2026.²

On January 6, 2026, during the student's last year of high school in the 2025–2026, school year, petitioner requested the Board conduct an IEE of the student, claiming

² During the pre-hearing phone conference on June 3, 2026, the Board notified the tribunal that the student had applied and was accepted into college. However, which college is unknown, even by petitioner.

that the student has emotional regulation impairment. Petitioner based his referral on discrepancies between the student's course grades and standardized test scores, including her SAT scores and district assessments, as well as changes in her attendance and academic performance. On January 22, 2026, the Board's CST met, discussed, and denied the request. (Evaluation Plan.) In coming to its determination, the CST considered the student's high school transcripts, current report card, input from a teacher knowledgeable of her work, testing and attendance records, and parental input (Evaluation Plan.) The CST ultimately found that there was no reason to suspect that the student may have a disability requiring special education services.

Petitioner disagrees with the Board CST's decision, arguing that the data he identified gave the Board reasonable suspicion of a disability, triggering its obligation to conduct an initial evaluation, and that its failure to do so denied the student a FAPE.

LEGAL DISCUSSION AND CONCLUSIONS

I. Standards for Summary Decision

Summary decision is the administrative counterpart to summary judgment in the judicial arena. Under the Uniform Administrative Procedure Rules, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits," and "[t]he decision sought may be rendered 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). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." *Ibid.*

The New Jersey Supreme Court encouraged trial-level courts not to refrain from granting summary judgment when the proper circumstances present themselves. *Brill v.*

Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995). While cautioning that a judge should not weigh the truth of the evidence or resolve factual disputes at this early stage of the proceedings, the Court clarified that when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540. Appellate courts recognize that “[a]n evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995) (quoting In re Farmers’ Mut. Fire Assurance Ass’n of N.J., 256 N.J. Super. 607, 618 (App. Div. 1992)), certif. denied, 145 N.J. 372 (1996).

For the reasons discussed below, I **CONCLUDE** that this case is ripe for summary decision in favor of the Board.

II. Standards for Child Find

Under the IDEA, participating states have a responsibility to identify, locate, and evaluate children who are in need of special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(i) (2026); N.J.A.C. 6A:14-3.3. This responsibility known as “child find” requires the district, upon “reasonable suspicion” that a child has a disability, to evaluate the child within a reasonable amount of time to determine whether the child’s disability qualifies for special education and related services. See K.C. and M.C. ex rel. C.C. v. Holmdel Twp. Bd. of Educ., 2024 N.J. AGEN LEXIS 1153 (Nov. 22, 2024) (citing D.K. v. Abington Sch. Dist., 696 F.3d 233, 244 (3d Cir. 2012)). A “child with a disability” is one who by reason of the disability needs special education and related services. 20 U.S.C. § 1401(3)(A).

The suspicion that triggers child find is linked with the IDEA’s purpose of providing special education not to any student, but to those who have a qualified disability that impacts their educational performance. Therefore, the child find obligation occurs when there is reasonable suspicion that: (1) the student has a disability; (2) the disability adversely affects the student’s educational performance; and (3) the student is in need of “special education” and related services. See N.J.A.C. 6A:14-3.5(c); see also Mr. F. v. MSAD #35, 2021 U.S. Dist. LEXIS 100636 (D. Me., May 21, 2021) (emphasizing that the

disability must be a qualifying disability). “In assessing whether a district’s child find obligation is triggered, the first question is whether the district had reason to suspect that the child has a qualifying disability.” Id. at *3. To be deemed eligible for special education and related services, the qualifying disability must adversely affect the student’s educational performance. See N.J.A.C. 6A:14-3.5(c).

When suspected, either a parent of a child, state agency, or local educational agency may request an initial evaluation of a child to determine eligibility. See 20 U.S.C. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b) (2026); N.J.A.C. 6A:14-3.3(d)(1). A referral request by a parent must be forwarded to the CST without delay, and a meeting with the CST, parent, and knowledgeable teacher shall be convened within twenty calendar days. N.J.A.C. 6A:14-3.3(d)(1) and (e). An evaluation, however, is not automatic.

A district is not required to provide a formal evaluation of every student who struggles, and “failure to diagnose a disability at the earliest possible moment is not *per se* actionable.” D.K. v. Abington Sch. Dist., 696 F.3d at 249. “Schools need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities.” Id. at 252. The Office of Special Education Programs (OSEP) has long interpreted the obligation for evaluation to be at the opinion of the Local Educational Agency (LEA):

The parent’s request for a Part B evaluation does not automatically trigger the obligation of the LEA to conduct that evaluation. Rather, the LEA must conduct an evaluation without undue delay **only if** the LEA suspects that the child has a disability and is in need of special education and related services. Therefore, under Part B, an LEA may refuse to conduct an evaluation **only if** the LEA does not suspect that the child has a disability.

[Letter to Williams, 20 IDELR 1210, 1211 (OSEP 1993)
(emphasis added).]

“If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child.” OSEP Memo 11-07 (Jan. 21, 2011) <https://sites.ed.gov/idea/>. If the

LEA does not suspect a disability, it must provide written notice with an explanation of denial, which may be challenged by requesting a due process hearing. See *ibid.*; 34 C.F.R. §§ 300.503(a) and (b) (2026); N.J.A.C. 6A:14-3.3(e). An absence of a written explanation of denial constitutes a procedural violation of the IDEA. See *S.B. and H.B. ex rel. G.B. v. East Greenwich Twp. Bd. of Educ.*, 2019 N.J. AGEN LEXIS 881, Final Decision (Oct. 15, 2019). Ultimately, the District bears the burden of proving, by a preponderance of the credible evidence, that it met its child find obligations in that a student is ineligible for special education. N.J.S.A. 18A:46-1.1; see also *J.M. and E.M. ex rel. C.M. v. Summit City Bd. of Educ.*, 2018 N.J. AGEN LEXIS 530, Final Decision (Oct. 12, 2018).³

Here, there are no genuine disputes of material fact concerning the Board's decision to deny the student an initial evaluation. There is no dispute as to the academic, social, emotional, or behavioral information the CST considered in determining an initial evaluation was not warranted. As explained further below, while petitioner makes broad and speculative allegations regarding grade inflation, petitioner is unable to offer material factual disputes as to the District's pre-evaluation assessment, which ultimately isolates his grade dispute as an independent issue. A dispute over grades alone is not a special education matter. Here, there is no dispute as to what objective and raw academic data the school used to make its decision, nor is there a factual dispute over the school's social and behavioral assessment of the student.

A district's initial evaluation obligations are triggered when there is a reasonable suspicion of a qualifying disability. See 20 U.S.C. § 1401(3)(A); N.J.A.C. 6A:14-3.5(c). Here, the Board argues that it had no reason to suspect that the student had any disability. It was not until January 6, 2026, in the student's last year of high school, and at petitioner's request, that the CST became aware of the student's alleged need for special education. Accordingly, on January 22, 2026, the school's CST assessed the student as a twelfth grader who is set to graduate, has achieved an average to above-average mastery of her

³ The CST team did not suspect that the student had a disability. To rebut this, petitioner alleges the student should be evaluated for "emotional regulation impairment." Classification for this disability requires the existence of specific characteristics listed in N.J.A.C. 6A:14-3.5(c)(5); thus, petitioner must be able to show the school had reasonable suspicion of these characteristics.

coursework curriculum, and has not exhibited any social, emotional, or behavioral concerns that impact her educational performance.

In reaching its determination, the CST considered the student's high school transcripts, her current report card, input from a knowledgeable teacher, attendance and testing records, and parental input. (Evaluation Plan.) The CST's academic assessment was that the student's transcript showed no academic concerns and that her English teacher stated that the student is an "excellent student, has a 92 grade, student is on task, participates, and does not hesitate to ask questions." (Evaluation Plan.) The teacher reported no issues. The CST considered the student's behavioral record and reviewed school reports, which showed no documented conduct issues.

The CST also considered the student's social and emotional records, to which the student's Unified Physical Education teacher stated that "[the student] is empathetic and hardworking with the students with disabilities." (Evaluation Plan.) The CST recorded petitioner's concerns and objections but found that, without more, there was no reason to suspect the student may have a disability requiring special education. The CST provided written notice of its findings to the student's parents on January 22, 2026, to which they acknowledged receipt and stated objections. (Evaluation Plan.)

Petitioner disagrees, arguing that the student should have been evaluated based on a suspected "emotional regulation impairment." However, petitioner has not identified facts that would have given the District reason to suspect that the student may have a disability requiring special education, including emotional regulation impairment. Petitioner has not shown any significant change in the student's coursework grades, which have mostly remained stable or improved, supporting the District's assessment that the student has an average to above-average mastery of the curriculum.

While petitioner has expressed concerns about the student's attendance, he is unable to demonstrate how this may have affected the student's educational performance. While the student's attendance record between years 9 and 12 may have declined, petitioner admits the student's attendance record did not impact her educational performance in grades 9 and 10, and he has not shown any relationship between her

decreased attendance record and an impact on her educational performance. (Petitioner Opp. Br. Ex. D–J.) Additionally, petitioner has not provided any information as to how or why the student’s absences and tardies increased and whether they were the result of a disability or at the direction of a parent. Petitioner therefore has not identified any facts that call the CST’s academic assessment into dispute.

Petitioner has also failed to identify any facts suggesting social, emotional, or behavioral concerns that would have given the District reason to suspect the student may have a disability requiring special education. Petitioner originally alleged that the District knew about “trauma” affecting the student, but he does not identify any facts related to the trauma or explain how it affected her academic, social, or behavioral functioning in school. Even so, petitioner has not presented any facts that establish the school was or reasonably should have been aware of such a condition.

For those reasons, I **CONCLUDE** that the District did not deny the student a FAPE by declining to conduct an initial evaluation, inasmuch as it has established it had no reason to suspect that the student may have a disability requiring special education, and petitioner has not identified evidence creating a genuine dispute on that issue.

III. Standards for publicly funded Independent Educational Evaluations

Under N.J.A.C. 6A:14-2.5(c), parents are entitled to an IEE at the district board of education’s expense; however, this is predicated upon the completion of an initial evaluation or reevaluation with which the parent disagrees. E.P. ex rel. L.P. v. Newton Town Bd. of Educ., 2024 N.J. AGEN LEXIS 672 at *10 (July 23, 2024); see also Hamilton Twp. Bd. of Educ. v. K.H. ex rel. V.H., 2016 N.J. AGEN LEXIS 699, Final Decision (Aug. 1, 2016) (holding that because the school district never performed an initial evaluation, the petitioner was not entitled to an IEE); 34 C.F.R. § 300.502(b) (2026); N.J.A.C. 6A:14-2.5(c).

New Jersey administrative cases have similarly interpreted the entitlement to an IEE in this way. In E.P. ex rel. L.P. v. Newton Town Board of Education, an ALJ granted a motion for summary decision denying a publicly funded IEE where a school district had

denied and not yet conducted an initial evaluation of a student who was diagnosed with Autism Spectrum Disorder. Where neither an initial evaluation nor reevaluation have been performed, there is nothing to contest, and therefore a publicly funded IEE is unavailable.

In the present case, petitioner requests the District fund an IEE. However, upon request and referral for initial evaluation by petitioner, the CST declined to evaluate the student. I **CONCLUDE** that because there is no District evaluation with which petitioner could disagree, he is not entitled to a publicly funded IEE.

IV. Standards of a cognizable special education claim

Under N.J.A.C. 6A:14-2.7, the OAL may hear matters “when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action.” See J.L. and B.L. ex rel. B.L. v. Cherry Hill Bd. of Educ., 2016 N.J. AGEN LEXIS 786, Final Decision (Sept. 19, 2016). “Where no such disagreement exists, a request for due process should be dismissed for lack of jurisdiction.” Id. at *4.

a. Claims of Falsified/Inflated Grades

Petitioner conflates special education and non-special education matters in the due process petition claim. To the extent petitioner relies on alleged grade discrepancies as evidence that the Board had reason to suspect the student may have a disability, those allegations have been addressed herein. Any independent dispute over the accuracy of the student’s grades, district assessments, or SAT performance does not present a special education claim.

The goal of the IDEA is to financially aid states in “provid[ing] special education and related services to children with disabilities.” 20 U.S.C. § 1411(a)(1). The IDEA through its regulations requires states to provide a free appropriate public education to children with disabilities to “meet their unique needs and prepare them for further education, employment, and independent living.” 34 C.F.R. § 300.1(a) (2026). There is

nothing in the IDEA that ties a district's FAPE responsibilities to the performance of standardized district assessments or third-party admission test performance. Nor is there anything that requires those standardized tests to be the basis of an evaluation or classification/qualification determination. Simply stated, if the grade discrepancy is not tied to a suspected disability (i.e. the standardized test or grade performance is not caused by the student's disability), then the grade dispute remains an independent issue outside the scope of this special education case. See e.g. D.K. v. Abington Sch. Dist., 696 F.3d at 249 (citing 34 C.F.R. § 300.111(c)(1)).

Petitioner's concerns about the student's SAT performance and alleged grade discrepancies do not present special education claims. The SAT is a third-party college-admissions test, not an assessment used by school districts for IDEA identification or evaluation.⁴ I **CONCLUDE** that any dispute over the accuracy of the student's grades, district assessments, or SAT performance therefore falls outside the scope of this special education case.

b. Title IX Claim

Petitioner makes a vague claim in the due process petition related to Title IX by requesting "supportive measures under [the Title] to address the hostile environment created by the exploitation." (Petition.) However, the due process petition does not explain what "exploitation" occurred, how it relates to Title IX, or how it bears on any issue under the IDEA. Nor does petitioner allege that the Board discriminated against the student on the basis of sex. As stated above, a special education due process hearing is limited to disputes concerning the "identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action" under the IDEA, or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a. N.J.S.A. 18A:46-1.1; see N.J.A.C. 6A:14-2.7(a) and (w). For the reasons

⁴ A 2009 Department of Education policy letter clarified a question regarding a district's responsibility under the IDEA to test students with individualized education programs to secure testing and accommodations on the SAT/ACT. The Department expressed that "there is no requirement under Part B of the IDEA that a public agency conduct a reevaluation of a child with a disability or additional testing solely to satisfy the eligibility criteria established by the College Board or other testing programs." United States Department of Education, Policy Letter to Tara Moffett (August 24, 2009), <https://sites.ed.gov/idea/policy-letters-policy-support-documents/>.

stated herein, I **CONCLUDE** that because petitioner's Title IX allegations do not state a cognizable special education claim, they should be dismissed.

V. Does graduation make a special education matter moot

Mootness occurs when a controversy is no longer justiciable because the question has become academic or hypothetical, effective relief cannot be granted, or there is no concrete adversity of interest. See Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Generally, moot issues are improper for judicial review. Ibid. (citing Oxford v. N.J. State Bd. of Ed., 68 N.J. 301, 303–04 (1975); In re Geraghty, 68 N.J. 209, 212–13 (1975); Sente v. Clifton Mayor and Mun. Coun., 66 N.J. 204, 206 (1974)). Mootness extends to administrative tribunals, and if the relief sought is no longer available, then the case should be dismissed. See West Morris Reg. Bd. of Educ. v. A.M. and K.H. ex rel. A.M., EDS 07418-05, Final Decision (Nov. 30, 2005), <https://njlaw.rutgers.edu/OAL/>.

Where compensatory education is at issue, as it is in the underlying due process petition, the claim is insulated from a mootness challenge. See San Dieguito Union High Sch. Dist. v. Guray-Jacobs, 2005 U.S. Dist. LEXIS 52124 (S.D. Cal. Oct. 27, 2005) (citing Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993); Capistrano Unified Sch. Dist. v. Wartenberg, 59 F.3d 884, 890 (9th Cir. 1995); Maine Sch. Administrative Dist. No. 35 v. Mr. and Mrs. R., 321 F.3d 9, 17–18 (1st Cir. 2003)).

As petitioner may be entitled to an available remedy of compensatory education in this matter, the student's graduation alone would not moot petitioner's FAPE claims as alleged in the due process petition. As I have discussed that the Board did not deny the student a FAPE by declining to conduct an initial evaluation, I **CONCLUDE** that this issue does not require a ruling and will be disregarded.

Because there are no genuine disputes of material facts and the Board has met its burden establishing it did not deny the student a FAPE by declining to conduct an initial evaluation, I **CONCLUDE** that the Board is entitled to the relief requested in its motion for summary decision, that the due process petition is **DISMISSED**, and that petitioner's cross-motion for summary decision is **DENIED**.

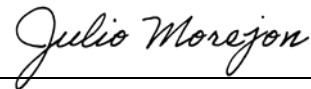
ORDER

Because there are no genuine disputes of material fact and the Board has met its burden establishing it did not deny the student a FAPE by declining to conduct an initial evaluation, I **ORDER** that the Board's motion for summary decision is **GRANTED** and the due process petition is **DISMISSED**, and it is **ORDERED** that petitioner's cross-motion for summary decision is **DENIED**.

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 22, 2026

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

July 22, 2026

Date Sent to Parties:

July 22, 2026

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APPENDIX

Exhibits

For the OAL:

OAL-1 Evaluation Denied by the CST
OAL-2 Due Process Petition

For Petitioner:

Petitioner's Opposition to Summary Decision and Cross-Motion For Summary Decision
Petitioner's Sur-Reply to Respondent's Reply Brief and Renewed Motion for Emergent Relief

For Respondent:

Letter Brief in support of motion for summary decision, with Exhibits A and B.
Certification of Jennifer Vecchiarelli
Letter Brief in reply to Petitioner's Opposition to the District's Motion for Summary Decision and Opposition to Petitioner's Cross-Motion for Summary Decision