



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING
RESPONDENT'S REQUEST
FOR IEES

OAL DKT. NO. EDS 06391-26

AGENCY DKT. NO. 2026-40837

JERSEY CITY BOARD OF EDUCATION,

Petitioner,

v.

R.W.S. ON BEHALF OF C.W.,

Respondent.

Isabel Machado, Esq., for petitioner (Machado Law Group, attorneys)

R.W.S., respondent, pro se

Record Closed: June 4, 2026

Decided: June 25, 2026¹

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

¹ The decision in this matter was issued on August 28, 2026, as the tribunal obtained an extension of time to issue the decision from the parties, in an attempt to allow the parties to discuss the placement and program issues to be resolved without the necessity of refiling for a separate due process hearing. Communication with the respondent compelled the issuance of this decision rather than the anticipated withdrawal from the District.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this case, the Jersey City Board of Education, (petitioner or District) seeks by summary disposition motion to deny respondent R.W.S. independent educational evaluations (IEEs) (Comprehensive Psychological, Educational, and Speech Language) of her son, C.W. The initial request for IEEs did not specify the types of evaluations, nor the student. The requests were not identified until the May 4, 2026, initial conference. Respondent had sought the District to publicly fund these independent evaluations after the District conducted its own Educational, Social, Psychological, and Speech Language evaluations. Respondent also requested IEEs for C.W.'s sibling, A.S., under OAL Dkt. No. EDS 06390-26. The District offered to convene a meeting to discuss the evaluation request, but respondent claimed she had no obligation to meet. The District concurred with the classification of C.W. as eligible for special education based upon other health impaired (OHI), but not as an autistic student. The District provided some services similar to those that C.W. received from his transferring school in Harrisburg, Pennsylvania. It appears transportation was not provided, no evidence was provided that the student received transportation due to his classification, as opposed to distance from school.

This matter was transmitted to and filed with the Office of Administrative Law (OAL) on April 22, 2026, by the Department of Education for determination as a contested case, under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Petitioner moved for summary disposition on May 22, 2026. Respondent never filed an answer to the petition. She filed a response to the motion on June 2, 2026, requesting that her submissions in the related case be considered by the tribunal. Petitioner submitted a reply brief on June 3, 2026. No oral argument was held. The record closed on June 4, 2026.

BACKGROUND

Respondent and her children recently relocated to Jersey City where R.W.S.'s parents reside. The family was initially placed at a motel, but they obtained a residential placement by the time of the evaluations. C.W. is eleven years and eight months old, and as of February 2, 2026, he is a registered student in the District. According to C.W.'s previous individualized educational program (IEP) from his old school in Harrisburg,

Pennsylvania, he is diagnosed with Autism with a Speech and Language impairment. C.W. was provided special education assistance by being pulled out of the general education setting for approximately two hours per day. He was supposedly provided Speech Language Therapy three times a month, though it appears this may not have been provided.

The District then held an identification meeting on February 2, 2026. Ashana Torani, M.S. CCC-SLP, the Speech Language Therapist of the District, compiled the report; reviewed the IEP of C.W. from Harrisburg, PA.; interviewed the parent; interviewed the teacher; observed the student; and conducted assessments. She found C.W. to have appropriate functional communication skills. She noted that C.W. had not had Speech Language assistance since December 2023. C.W. participates in classroom discussions and can communicate his needs. He answered questions he could answer and acknowledged not knowing the answers to some questions.

The District administered the Wechsler Intelligence Scale for Children, Fifth Edition, and the testing reflected overall Low and Very Low Average results with a Full Scale IQ of seventy-one, with weakness in verbal comprehension, working memory, and processing speed, the latter being extremely low.

The District performed a social evaluation as well as an educational evaluation of C.W. The District administered the Woodcock-Johnson IV Tests of Oral Language and Woodcock-Johnson IV Tests of Achievement, which reflected C.W. as performing at a grade level, sometimes short of second grade with weakness in reading comprehension and academic applications, reflecting Very Low grade abilities.

The Child Study Team (CST) reviewed and considered sources of data and information about C.W., including an interview with R.W.S. and a review of C.W.'s educational developmental history, including records and interviews, academic records, behavior and social history, teacher reports, and R.W.S.'s input. Based on this information, the District concluded that C.W. requires special education under the category OHI. It proffered an IEP, which provides in-class and pull-out support for English and Math (forty-five minutes each daily), and in-class support for Science and Social

Studies (forty-five minutes each daily). The program provides more in-class assistance than previously provided at Harrisburg. Counseling services are provided twice a month for thirty minutes.

FACTUAL FINDINGS

Based upon consideration of the documentary evidence presented, I **FIND** the following **FACTS**:

1. C.W. was eleven years and eight months old at the time of registration as a student in the Jersey City School District. He is a sixth-grade student.
2. On or about February 2, 2026, the District conducted several evaluations of C.W., including Educational, Social, Psychological, and Speech Language.
3. On or about March 19, 2026, the District found C.W. eligible for special education under the category OHI.
4. On April 16, 2026, respondent filed a complaint with the Office of Special Education Programs, claiming IEEs were denied.
5. No evidence exists that the request for IEEs identified C.W. as the student, nor the evaluations that respondent objected to, nor the evaluations requested.
6. Respondent's disagreement with the evaluations relates to C.W.'s anxiety during the evaluations as a result of the transfer and transportation issues.
7. Respondent also disputes that the classification, placement, and services offered are equivalent to those provided by the Harrisburg district.

LEGAL ANALYSIS

Summary decision, or as it is known in judicial matters, summary judgment, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that

set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial as well as executive branch administrative cases. N.J.A.C. 1:1-12.5. The standards for determining motions for summary judgment are contained in Judson v. People's Bank and Trust Co. of Westfield, 17 N.J. 67, 74–75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there are no “genuine issues” of “material fact.” The determination as to whether issues of material fact exist is made after a “discriminating search” of the record, consisting as it may of affidavits, certifications, documentary exhibits and any other evidence filed by the movant, and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of “genuine” issues of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than “facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful, frivolous, gauzy or merely suspicious.’” Judson, 17 N.J. at 75 (citations omitted). The Brill decision focuses upon the analytical procedure for determining whether a purported issue of material fact is “genuine” or is simply of an “insubstantial nature.” Brill, 142 N.J. at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary decision motions. “[T]he essence of the inquiry in each is the same: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, (1986)). In searching the proffered evidence to determine the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the “burden of persuasion” that would apply at a trial on the merits, whether that is the preponderance of the evidence standard or the clear and convincing evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1487, requires states to ensure that all children with disabilities have access to a free appropriate public education (FAPE) that is designed to meet their unique needs, and establishes procedural due process rights for the children. Each school district’s board of education must have policies, procedures, and programs to ensure that all students with disabilities between the ages of three and twenty-one have access to a FAPE and are educated to the maximum extent appropriate in the least restrictive environment (LRE). N.J.A.C. 6A:14-1.2(b). Education in the LRE requires that whenever possible, the child is educated in the regular educational environment with children who are not disabled, i.e., the child is included in the mainstream education system. N.J.A.C. 6A:14-4.2; 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114 (2026). See also Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993). An education is “appropriate” if it includes “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). In New Jersey, a FAPE must include both special education and any necessary related services, such as counseling, occupational or physical therapy, and speech-language services. N.J.A.C. 6A:14-1.1(b)(3), (d); N.J.A.C. 6A:14-3.9(a). See also 20 U.S.C. § 1401(9), (26)(A); 34 C.F.R. 300.34(a) (2026).

Once a student is determined to be eligible for special education and related services, the local educational agency must develop an IEP that establishes the rationale for a student’s educational placement and serves as the basis for program implementation. N.J.A.C. 6A:14-1.3; -3.7.

Here, the District did classify C.W. as in need of special education and has provided special education services.

An IEE is “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” 34 C.F.R. 300.502(a)(3)(i) (2026); N.J.A.C. 1:6A-14.4(a). According to the Supreme Court, the purpose of the IEE is to ensure that parents have “access to an expert who can evaluate all the materials that the school must make available, and who can give an independent

opinion.” Schafer v. Weast, 546 U.S. 49, 60–61 (2005). The IEE further ensures that parents, in contesting a school district’s assessment, “are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.” Id. at 61. It is easy to imagine how difficult it would be for many parents to “match the firepower” of the government if they could not afford to pay the evaluator.

Autism is one of the categories of disabilities that may qualify a student for special education; however, 34 C.F.R. 300.8(c)(1) (2026) defines autism as “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, . . . that adversely affects a child’s educational performance.”

Under N.J.A.C. 1:6A-14.4(a), if a district denies a parental request for an IEE, one may still be afforded to the parent by order of an ALJ. That regulation provides that “[f]or good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil.” To determine whether there is good cause, a factual determination must be made as to whether the CST conducted the appropriate evaluations, and whether those evaluations contained enough information about the pupil and his educational needs, to aid in the development of an appropriate IEP. Union Twp. Bd. of Educ. v. V.K. ex rel. R.K., EDS 05964-03, Final Decision (Nov. 5, 2003) <https://njlaw.rutgers.edu/OAL/index.php>. Here though, the District’s evaluations are consistent with the evaluations of Harrisburg, done in November 2025. Both these evaluations provide sufficient support for this tribunal to confirm the District’s evaluation was sufficient to properly place C.W.

The parent submitted an unsworn statement with exhibits that could not be introduced into evidence in totality. The parent had submitted exhibits that were modified to include arguments and positions. The exhibits reflect summaries and legal citations. These cannot be considered evidence but argument. The individual e-mails, which were received in evidence, do not reflect the request for IEEs or for which student the request was made. The e-mails state that the position of the parent is that during the evaluation period, the student was under stress due to the change of location and the loss of transportation. These are valid concerns; however, the evaluations from the fall of 2025

are consistent with the current evaluations by the District. Reexamining the student may result in better performance, reducing the services provided to the student. C.W. does appear to be substantially behind his peers. Hopefully, the District's IEP will assist in making progress for C.W.

The denial of IEEs is based upon the factor that the request appears not to dispute the evaluations but rather the placement and loss of transportation. The dispute with the evaluations appears related to the turmoil and the change of location. If the student performs better on the evaluations due to repeated taking or the assimilation to the new environment, it will not assist the student in obtaining better services. Whether the services provided are sufficient to provide FAPE to C.W. is not the jurisdiction of the tribunal at this time.

In the event C.W. does not make meaningful progress educationally, socially, or emotionally, the District is subject to due process for failing to provide FAPE.

CONCLUSION

I **CONCLUDE** that Jersey City did provide an appropriate analysis of C.W. and found a disability, OHI, which needed to be addressed.

I **FUTHER CONCLUDE** respondent's failure to answer the petition has been excused, sufficient joinder of issue has been presented.

I **FUTHER CONCLUDE** respondent has not provided sufficient evidence of a dispute with the existing evaluations sufficient to warrant ordering new IEEs.

ORDER

It is hereby **ORDERED** that petitioner's motion for summary disposition is **GRANTED**, and

It is hereby **FURTHER ORDERED** that respondent's request for IEEs for C.W. 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 Policy and Dispute Resolution.

June 25, 2026

DATE



JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

August 28, 2026

Date Sent to Parties:
cc

August 28, 2026

APPENDIX

Exhibits

For Petitioner:

- P-1 Moving Papers and certification, dated 5/22/26
- P-2 Reply Papers, dated 7/3/26

For Respondent:

- R-1 Opposition (Exhibits A, B, and C, the actual e-mail images are in Evidence, the remaining exhibits are not in evidence as they are modified and present argument and legal citation.)