



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**  
**GRANTING MOTION FOR**  
**SUMMARY DECISION**

OAL DKT. NO. EDS 00425-23

AGENCY DKT. NO. 2023-35223

**JERSEY CITY BOARD OF EDUCATION,**

Petitioner.

v.

**D.A. ON BEHALF OF D.A.,**

Respondent.

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**Jessica Kleen, Esq.,** for petitioner (Machado Law Group, attorneys)

**D.A.,** respondent, pro se

Record Closed: November 28, 2023

Decided: January 5, 2024

BEFORE **WILLIAM J. COURTNEY, ALJ:**

**STATEMENT OF THE CASE**

The Jersey City Board of Education (District) has moved for summary decision on its petition for due process to deny respondent's request for an Independent Educational Evaluation (IEE). Respondent advised the District and this tribunal that she filed her petition seeking an IEE to obtain a magnetic resonance imaging scan (MRI) for her

daughter D.A. Respondent has also revealed that D.A. is no longer in her care because the State of New Jersey has taken custody away from her. This information raises two issues which the District maintains, and this tribunal agrees, are dispositive to respondent's request for an IEE.

First, an MRI is a medically based service or assessment. The information an MRI could provide is not necessary to develop an appropriate educational program for D.A., and respondent has not identified any reason to support her request. The District conducted a reevaluation of D.A. in May 2022, which provided all the information necessary to address the student's educational needs. Second, D.A.'s custodial status renders respondent's request for an MRI moot. Without custody, respondent is unable to provide the consent required to carry out the IEE, and she is unable to produce D.A. to be evaluated.

### **UNCONTESTED STATEMENT OF FACTS**

D.A. is an eleven-year-old student born on September 22, 2012. She is currently eligible for special education and related services under the classification of multiple disabilities. The district completed a triennial evaluation in May 2022 which included a social assessment and a psychological evaluation. At an eligibility meeting conducted on May 19, 2022, D.A.'s child study team found she remained eligible for special education services based on their review of the evaluation data, and a new Individualized Educational Plan (IEP) was developed.

Prior to the 2022-2023 school year, D.A. attended a state approved private school for students with disabilities. On September 7, 2022, one day before the school year began, respondent advised the District she was withdrawing D.A. from her private school. She informed the District that D.A.'s treating psychiatrist determined it was medically necessary for her to enter RU Cares, a partial hospitalization program that provides specialized services to children and adolescents with autism who engage in dangerous behaviors. Respondent requested that the District provide home instruction pending D.A.'s discharge from RU Cares.

On September 14, 2022, the District proposed an IEP providing home instruction until D.A. enrolled in an appropriate out-of-district placement. On November 30, 2022, respondent requested an IEE at public expense. On December 2, 2022, the District filed a petition for due process to deny respondent's request for an IEE.

D.A. was not enrolled in RU Cares until May 3, 2023. To date, respondent has not enrolled D.A. in any district school and has refused the home instruction that has been available to D.A. since September 2022. On October 10, 2023, the parties appeared for a case management conference with the Office of Administrative Law. During the conference, respondent advised that she was seeking an IEE for her daughter because she wanted an MRI to be conducted on her daughter. Respondent further advised that she had withdrawn D.A. from RU Cares before the program was completed, and shortly thereafter, D.A. was removed from her custody by the State of New Jersey. Respondent was unable to provide further information on the location, status, or her custody of D.A. except to say that D.A. was not living with her.

### **LEGAL ANALYSIS**

The moving party is entitled to summary decision "if 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). To defeat a motion for summary decision, the opposing party must "set forth specific facts showing there is a genuine issue which can only be determined in an evidentiary proceeding." *Id.* Failure to do so entitles the moving party to summary decision. See Brill v. The Guardian Life Ins. Co. of America, 142 NJ 520, 529 (1995). In this case, the respondent has failed to file any opposition to this motion. Accordingly, the Statement of Facts provided by the petitioner is deemed uncontested.

The respondent has failed to offer any support for her assertion that an MRI is necessary to provide D.A. with a free and appropriate public education. The Individuals with Disabilities Education Act (IDEA) does not require school districts to fund medical services and/or assessments unless they are necessary to determine a child's need for special education. The respondent has failed to identify any information an MRI could

provide that would assist in developing an educational plan for D.A. Citing information contained on the Johns Hopkins Medicine website<sup>1</sup> respondent maintains that magnetic resonance imaging (MRI) is a non-invasive medical imaging test that produces detailed images of almost every internal structure in the human body, including the organs, bones, muscles, and blood vessels. The images resulting from the MRI provide a physician with important information in diagnosing a patient's medical condition and planning a course of treatment. Id.

I agree with the petitioner's position that the Third Circuit has differentiated between certain medical services which a school district must provide under the IDEA, and those which are too attenuated from a student's education to be required by the IDEA. In Mary Courtney T. v. School Dist., 575 F.3d 235 (3<sup>rd</sup> Cir. 2009), the court explained that school districts are only required to provide medical services which are intended to enable a student "to remain at school during the day". Id. at 248.

In this case, I **FIND** that it was D.A.'s treating psychiatrist who determined it was medically necessary for D.A. to attend the RU Care's day program for stabilization of severe behavioral issues. At that time, D.A. was due to return to her state approved private school for students with disabilities at the beginning of the 2022-2023 school year. The recommendation to remove D.A. from her educational setting and admit her to RU Cares was medically based and was not influenced by any educational considerations. Accordingly, to the extent respondent contends an MRI is necessary to obtain information needed to enable D.A. "to remain at school during the day", the District was ready and willing to provide educational programming to D.A. upon her return at the beginning of the 2022-2023 school year which demonstrates that an MRI was not necessary.

Furthermore, I **FIND** that the District's May 2022 evaluation was appropriate. The state regulation that dictates the standard for an appropriate evaluation is N.J.A.C. 6A:14-2.5(a) which states:

In conducting an evaluation, each district Board of Education shall:

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<sup>1</sup> <https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/magnetic-resonance-imaging-mri>

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information . . . ;
2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and
3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

[N.J.A.C. 6A:14-2.5(a)]

School districts must also ensure that any standardized test is validated and administered by properly certified personnel, the student is assessed in all areas of suspected disability, and it provides assessment tools and strategies that assist in determining the educational needs of the student. See N.J.A.C. 6A:14-2.5(b). The evaluation must be sufficiently comprehensive to identify all the child's special education and related service needs. See N.J.A.C. 6A:14-2.5(b)(7).

The District's evaluation meets all the criteria required for an appropriate evaluation. The psychological and social assessments conducted as part of the May 2022 evaluation used a variety of tools and strategies, including functional and formal/informal assessments. See N.J.A.C. 6A:14-2.5(a). The District did not rely upon a single data point or procedure to determine D.A.'s eligibility or to develop her educational program. The District's evaluation also used technically sound assessment instruments. See N.J.A.C. 6A:14-2.5(a)(3). The psychological evaluation administered the Comprehensive Test of Nonverbal Intelligence, 2<sup>nd</sup> Edition and the Childhood Autism Rating Scale, 2<sup>nd</sup> Edition. The social assessment administered the Child Behavior Checklist For Ages 6-18 via parent interview and teacher's report form.

Based on the foregoing, along with respondent's failure to offer any justification for the requested MRI or an IEE, I **CONCLUDE** that an MRI is not warranted, that the District's May 2022 evaluation was appropriate and that respondent's request for an IEE should be denied.

I further **FIND** that D.A. is no longer in respondent's custody. The District maintains that respondent's lack of custody renders her request for an IEE moot because she cannot produce the student to be evaluated if D.A. is not in her care. N.J.A.C. 6A:14-2.3 also requires the District to obtain parental consent prior to conducting assessments, releasing student records, or amending an IEP. Respondent does not dispute that D.P. has been removed from her custody. In fact, she is the person who revealed her lack of custody to the District and to this tribunal during a status conference in this matter. Respondent also has not disputed the District's argument that she is unable to produce D.P. for an evaluation or that she does not have the ability or authority to provide the necessary parental consent. Based on the uncontradicted facts presented in the District's motion, I also separately **CONCLUDE** that respondent's request for an IEE, originally made when she was the legal guardian of D.A., has been rendered moot by her loss of custody.

**ORDER**

For each of the reasons set forth above, **IT IS** on this 5<sup>th</sup> day of January 2024 **ORDERED** that

1. Respondent's motion for summary decision be, and is hereby, **GRANTED**.
  
2. There are no remaining issues to be decided and the matter entitled Jersey City Board of Education v. D.A. o/b/o D.A. EDS 00425-2023 be and is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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 5, 2024  
DATE

William Courtney, ALJ

Date Received at Agency

January 5, 2024

Date Mailed to Parties:

January 5, 2024