



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

**FINAL DECISION**

OAL DKT. NO. EDS 01707-24

AGENCY DKT. NO. 2024-36735

**CLIFTON CITY BOARD OF EDUCATION,**

Petitioner,

v.

**B.S. AND J.G. ON BEHALF OF D.S.,**

Respondent.

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

**B.S. and J.G.**, parents of **D.S.**, respondent, pro se

Record Closed: May 20, 2024

Decided: May 23, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

**PROCEDURAL HISTORY AND STATEMENT OF THE CASE**

On November 8, 2023, the Clifton City Board of Education ("District") filed a petition for due process seeking an order denying respondent's request for an Independent Educational Evaluation ("IEE") at public expense. Respondents disagreed with the District's evaluation and requested an IEE at public expense. This matter was then transmitted to the Office of Administrative Law (OAL) for resolution.

Notice that a prehearing telephone conference would take place at 3:00 pm on February 14, 2024 was sent via email to both parties on February 9, 2024. Counsel for the District appeared for the prehearing conference on February 14, 2024 and no one appeared on behalf of respondent. There was also no communication from respondents indicating they would not or could not attend. A second prehearing conference was then scheduled for March 1, 2024 and notice was again sent to respondents via email and regular mail. Again, no one appeared on behalf of respondents and there was also no communication from respondents indicating they would not or could not attend.

On April 30, 2024, the District filed a motion for summary decision seeking an Order denying respondent's request for an IEE. No opposition to the District's motion for summary decision was received within the 20 day period established by N.J.A.C. 1: 1-12.5(b).

### **FACTUAL FINDINGS**

I **FIND** that the facts set forth below are uncontested:

1. D.G is a six-year-old student residing at 580 Paulison Avenue, 2<sup>nd</sup> Floor, Clifton, New Jersey 07011.
2. D.S. is eligible for special ad related services under the classification Communication Impaired.
3. The District completed an initial evaluation of D.S. in October of 2022. At that time, the District conducted the following evaluations: Psychological, Speech and Language and Social.
4. The District also contracted with Dr. Poorvi Patel, who completed a Neurological evaluation of D.S. on January 17, 2023.
5. On October 29, 2023, respondents sent correspondence to the District advising they disagreed with the District's evaluation and requesting an IEE at public

expense in the in the areas of Academic Achievement (Education and Learning), Alternative/Augmentative Communication, Assistive technology, Health, Occupational Therapy, Psychological, Physical therapy and Speech and Language.

6. On November 8, 2024, the District filed a Request for Due Process with the Office of Administrative Law, seeking an Order denying respondents' request for an IEE at public expense because the evaluations conducted by the District were appropriate, relevant, and in compliance with N.J.A.C. 6A:14.
7. To date, there has been no response to the District's due process request.
8. Attempts made by the Office of Special Education to reach respondents and schedule a mediation were unsuccessful.
9. On February 9, 2024, the OAL scheduled a telephonic prehearing conference and provided notice via email to both parties that the conference would take place at 3:00 pm on February 14, 2024.
10. The respondents failed to appear for the February 14, 2024 prehearing conference and failed to provide any reason or explanation for their failure to appear.
11. The prehearing conference was rescheduled for March 1, 2024 and notice was sent to the respondents via email and regular mail of the conference.
12. The respondents failed to appear for the rescheduled March 1, 2024 prehearing conference and again failed to provide any reason or explanation for their failure to appear.
13. The respondents have filed no opposition to the District's Motion for Summary Decision.

### **LEGAL ANALYSIS**

A motion for summary decision must be granted “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 alleged and that the moving party is entitled to prevail as a matter of law.” N.J. A. C. 1:1-12.5(b). An opposing party cannot rely “only on facts that are immaterial or of an insubstantial nature” to defeat summary decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). The New Jersey Supreme Court has encouraged courts “not to refrain from granting summary judgement when the proper circumstances present themselves” Id. at 541. “[W]hen the evidence is so one-sided that one party must prevail as a matter of law, the court should not hesitate to grant summary judgement.” Id. at 540.

In the case at bar, the respondents have not only failed to oppose petitioner’s petition for due process, but they have also failed to appear at any of the scheduled prehearing conferences and have not opposed this motion for summary decision.

In support of its motion for summary decision, the District has provided the Certification of Heather Rotolo, Director of Special Services. Ms. Rotolo provides copies all of the evaluations conducted on D.S. that were considered in the initial evaluation of D.S. in in October of 2022. She also provided a copy of the Neurological evaluation conducted in January of 2023. I **FIND** these evaluations to be comprehensive and appropriate in determining D.S.’s special education needs. There is nothing in the record to support anything to the contrary.

Furthermore, pursuant to N.J.A.C. 6A:14-2.7, respondents were required to file a written response to the District’s due process petition within 10 days of its filing on November 8, 2023. That required response must specifically address the issues raised in the due process petition. Respondents’ failure to provide this required response combined with respondents’ failure to participate in any of the schedule proceedings leaves no legitimate challenge to the propriety, comprehensiveness, or appropriateness

of the District's October 2022 evaluation. Accordingly, I **CONCLUDE** that the District's motion for summary decision must be granted.

**ORDER**

It is **ORDERED** that:

1. The District's motion for summary decision I **GRANTED**; and
2. Respondent's request of an IEE at public expense is **DENIED** and the matter is **DISMISSED**.

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



May 23, 2024

DATE

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**WILLIAM J. COURTNEY, ALJ**

Date Received at Agency

Date Mailed to Parties:

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