



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 20142-25

AGENCY DKT. NO. 2026-40003

S.H. AND J.H. ON BEHALF OF S.H.,

Petitioner,

v.

MIDDLESEX BOROUGH BOARD OF EDUCATION,

Respondent.

Norman R. Jimerson, Jr., Esq., for petitioner (The Jimerson Practice LLC,
attorneys)

Rita F. Barone, Esq., for respondent (Flanagan, Barone, and O'Brien LLC,
attorneys)

Record Closed: March 2, 2026

Decided: March 25, 2026

BEFORE **MAMTA PATEL, ALJ:**

STATEMENT OF THE CASE

Petitioners, S.H. and J.H., assert that their child, S.H., is not and has never been a child with a disability. May petitioners bring this claim that their child was mistakenly identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA)? No. The IDEA guarantees procedural safeguards to children with disabilities,

not to children whose parents claim that their children are not, and never were, disabled. S.H. v. Lower Merion School District, 729 F.3d 248, 257–58 (3d Cir. 2013).

PROCEDURAL HISTORY

On July 24, 2018, S.H. was deemed eligible for special education and related services under the category of other health impairment (OHI). Petitioners have consented to or failed to oppose the annual implementation of S.H.'s individualized education program (IEP) since the 2018–2019 school year.

During the June 2025 annual IEP review meeting, petitioners inquired about S.H.'s declassification. On October 8, 2025, petitioners submitted unilateral evaluations of S.H. to the Middlesex Borough Board of Education's (the Board) child study team (CST).

On November 12, 2025, petitioners filed a due process petition with the Office of Special Education (OSE) seeking an order finding that S.H. was misclassified, directing S.H.'s declassification, and removing S.H.'s special education classification from all educational records. Additionally, petitioners request an order requiring the Board to provide compensatory educational and emotional-well-being services to S.H. The parties participated in a resolution session on December 9, 2025, during which the Board offered to declassify S.H.

On December 12, 2025, the OSE transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to 52:14B-15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to 52:14F-23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to 1:1-21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to 1:6A-18.4.

On December 16, 2025, the District proposed that S.H. is no longer eligible for special education and related services, including speech-language services. Petitioners did not respond to the proposal, and during a CST meeting on January 27, 2026, at which the parents failed to appear, S.H. was determined to be ineligible for special education.

On December 29, 2025, petitioners filed a motion for summary decision ordering that S.H. was misclassified under other health impairment-mood disorder under 34 C.F.R. § 300.8(c)(9) (2025) and N.J.A.C. 6A:14-3.5(c). On January 9, 2026, I held a telephone conference regarding this motion, during which Ms. Rita Barone, Esq., on behalf of the Board, requested until January 30, 2026, to submit the Board's opposition to petitioners' motion and to also file a cross-motion for summary decision.

On January 13, 2026, I issued a briefing schedule that permitted the Board to file its opposition and cross-motion for summary decision by January 30, 2026. Petitioners' response to the Board's cross-motion and their motion for summary decision were due by February 19, 2026, and the Board's response to any opposition to their cross-motion for summary decision was due by March 2, 2026, and is now ready for decision.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to their respective motions for summary decision, I **FIND** the following as **FACT** for purposes of these motions only:

1. In 2018, S.H. attended kindergarten at Hazelwood Elementary School in the Middlesex Borough Public School District.
2. On May 24, 2018, S.H. was involved in an altercation with her teacher and two students.
3. Subsequently, the principal of Hazelwood Elementary School requested a psychiatric evaluation of S.H.
4. On May 25, 2018, S.H. was examined by R. Christopher Stucky, M.D., and diagnosed with a mood disorder, with a recommendation for an evaluation by the CST.

5. During the summer of 2018, S.H. underwent evaluations, including:
 - a. On June 13, 2018, a neurodevelopment evaluation was conducted with Dr. Jesse Mintz, M.D., FAAP.
 - b. On June 17, 2018, a psychological evaluation was conducted with the District's school psychologist, Kate Tkac.
 - c. On July 10, 2018, a social assessment was conducted with Lacey Wallace Czirjak, MSM, LCSW.
6. On July 24, 2018, S.H. was classified as eligible for special education and related services under the category of other health impaired.
7. On July 25, 2018, petitioners attended an initial IEP meeting, during which they received the initial IEP effective from July 26, 2018, to June 19, 2019, for first grade. On the same day, petitioners signed the consent to implement the IEP.
8. On June 3, 2019, petitioners attended the IEP meeting to discuss S.H.'s IEP, which was effective from June 4, 2019, through June 2, 2020.
9. From 2018 to 2021, petitioners attended each annual IEP meeting and either consented or acquiesced to the implementation of S.H.'s annual IEPs without objection or filing for mediation or a due process petition.
10. At the April 26, 2022, triennial reevaluation IEP meeting, petitioners requested a neurodevelopmental reevaluation, to which the Board consented. The reevaluation was conducted by Rajeswari Muthuswamy, M.D., on May 2, 2022.

11. On May 4, 2022, petitioners attended an IEP meeting to review the 2022–2023 school year. During the meeting, petitioners disagreed with Dr. Muthuswamy’s assessment and requested an independent evaluation.
12. The Board consented, and on August 8, 2022, Kavita Sinha, M.D., whom the petitioners selected, conducted her evaluation of S.H.
13. In September 2022, petitioners consented to the implementation of S.H.’s IEP, effective September 12, 2022, through May 12, 2023.
14. S.H. continued to receive special education services during the 2023–2024 and 2024–2025 school years without objection or the filing of a due process petition.
15. On June 3, 2025, the CST, including petitioners, met to discuss S.H.’s 2025–2026 IEP, during which petitioners asked for information about the process for declassifying S.H.
16. Petitioners did not consent to the reevaluation and, on October 8, 2025, submitted the Board’s CST with unilateral, independent evaluations as part of a request for a 504 plan from:
 - a. Dr. Andrew McNutly, who conducted a psychological evaluation on S.H. on March 12, 2025.
 - b. Dr. Maria Salvanto, from The Parent TRAIN, who conducted an educational referral on S.H. on March 25, 2025.
 - c. Dr. Cledicianne Dorvil, who conducted a psychological evaluation on S.H. on April 10 and April 18, 2025.

17. During the CST meeting on January 27, 2026, it was determined that S.H. is no longer eligible for special education. Although invited to the meeting, the parents did not attend.
18. Since 2018, petitioners have actively participated in the IEP process, including attending IEP meetings, consenting to evaluations, requesting independent evaluations, and consenting to the implementation of S.H.'s IEPs.
19. Since 2018, all IEPs have been sent with a Procedural Safeguards Statement, a copy of "Parental Rights in Special Education" (PRISE), and contact information for the CST members.
20. Petitioners have not submitted any documentation revoking their consent to implement special education and related services.
21. Petitioners have not asked the Board to modify S.H.'s school records.
22. S.H. is now in eighth grade.

CONCLUSIONS OF LAW

IDEA

Petitioners filed the instant due process petition under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482. The IDEA requires a school district to provide a free appropriate public education (FAPE) to all children with disabilities who are determined eligible for special education. 20 U.S.C. §1412(a)(1)(A); N.J.A.C. 6A:14-1.1(b)(1).

“Child with a disability” is a statutory term that is defined as a child

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title [20 USCS §§ 1400 et seq.] as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

[20 U.S.C. § 1401(3)(A).]

N.J.A.C. 6A:14-1.1(b) states:

The purpose of this chapter is to:

1. Ensure that all students with disabilities, as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.)

Under N.J.A.C. 6A:14-2.7(a), parents may file a due process petition for a hearing on identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action.

N.J.A.C. 6A:14-2.7(k) states:

The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination of whether the child received a free, appropriate public education (FAPE). In matters alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:

1. Impeded the child’s right to a FAPE;

2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or
3. Caused a deprivation of educational benefits.

Parents, however, are expected to be involved in their children's education and to actively participate in their child's IEP team, including providing consent for services. 20 U.S.C. § 1414(d)(1)(B) and (a)(1)(D)(ii). Nevertheless, the IDEA neither requires nor compels parents to accept special education and related services for their children.

In a Third Circuit Court of Appeals case decided over a decade ago, S.H. v. Lower Merion School District, 729 F.3d 248 (3d Cir. 2013), a mother and daughter claimed that a school district "misdiagnosed [the daughter] as disabled for several years, and that, as a result, it is liable under the IDEA for compensatory education[.]" Id. at 251. The family admitted that the daughter is not, and had never been, a "child with a disability." Id. at 258. As a result, a district court dismissed her IDEA claim, ruling that "because [the daughter] asserts that she is not disabled, she cannot be, for pleading purposes, 'a "child with a disability" and thus cannot seek relief under the IDEA.'" Id. at 255. The Third Circuit affirmed.

In doing so, the court held that the plain language of the IDEA "guarantees 'procedural safeguards with respect to the provision of a free appropriate public education' to '*children with disabilities* and their parents.'" Id. at 257. And because "[t]here is no indication that the term 'child with a disability' includes children who are mistakenly identified as disabled, but who are, in fact, not disabled[.]" "under the [IDEA's] plain language, it is clear that the IDEA creates a cause of action *only* for individuals with disabilities." Id. at 257–58. By asserting that the daughter "is not, and never was, a child with a disability, [the daughter] is excluded from the IDEA's provisions and may not bring a claim under the [IDEA]." Id. at 258.

Here, like in Lower Merion, the parents assert that S.H. is not, and never was, a "child with a disability," and that the Board misclassified her as eligible for, and mistakenly

provided her with, special education for many years. Consequently, like the child in Lower Merion, S.H. “is excluded from the IDEA’s provisions and may not bring a claim under the [IDEA].” In addition, petitioners were very active in S.H.’s education and the IEP process. At no time did petitioners refuse or revoke special education services, and, in fact, they consented to the implementation of S.H.’s IEPs since 2018. Written consent may be revoked by the parent, in writing, at any time. N.J.A.C. 6A:14-2.3(e). However, revocation of consent shall not be retroactive, and revocation shall not negate any action taken after consent was provided and before it was revoked. N.J.A.C. 6A:14-2.3(e)(1).

Summary Decision

Under N.J.A.C. 1:1-12.5(b), a summary decision may be rendered when there is no genuine issue as to any material fact, and the moving party is entitled to prevail as a matter of law. The Board concedes in its motion brief that S.H. is not a “child with a disability”; thus, there is no genuine issue of material fact in this regard. Because the parties agree that S.H. is not a “child with a disability,” I **CONCLUDE** that the Board is entitled to prevail as a matter of law.

I further **CONCLUDE** that petitioners’ motion for summary decision must be denied.

ORDER

For the reasons set forth above, I **ORDER** that Middlesex Borough Board of Education’s cross-motion for summary decision is **GRANTED**, and petitioners’ motion for summary decision is **DENIED**, and this due process petition is **DISMISSED**.

This decision is final under 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.

March 25, 2026

DATE



MAMTA PATEL, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

MP/sb/jm

APPENDIX

Exhibits

For Petitioners:

Motion for Summary Decision and Brief, filed December 29, 2025

- Ex. 1 Parent letter to superintendent (May 14, 2018)
- Ex. 2 R. Christopher Stucky, M.D., Psychiatric Evaluation (May 25, 2018)
- Ex. 2A Certificate of Completion of R. Christopher Stucky, M.D.'s, November 18, 2025, deposition testimony
- Ex. 3 Dr. Jesse Mintz Neurodevelopmental Evaluation (June 13, 2018)
- Ex. 4 Kate Tkac, Ed.S., Psychological Evaluation (June 27, 2018)
- Ex. 5 Rashell Arabatzis, LDT-C, Educational Evaluation (July 18, 2018)
- Ex. 6 Lacey Wallace-Czirjak Social Assessment (July 10, 2018)
- Exs. 7–11 CPI Restraint Forms & related emails
- Ex. 12 Waxman Psychological Evaluation (April 27, 2022)
- Ex. 13 Dr. Muthuswamy Neurodevelopmental Evaluation (May 2, 2022)
- Exs. 14–22 Grades K–6 Academic Records and Analyses
- Ex. 23 Parent Affidavits (Home Behavior, Dr. Stucky; Dr. Muthuswamy)
- Ex. 24 March 2, 2021, Decision: “No Reevaluation Needed”
- Ex. 25 April 28, 2021, IEP
- Ex. 26 April 20, 2023, IEP
- Ex. 27 Additional Supporting Records (athletics, attendance, etc.)
- Ex. 28 Deposition Transcript of R. Christopher Stucky, M.D. (full) Deposition
- Ex. 29 Deposition Highlight Set A (Medical Verification Deficiencies)
- Ex. 30 Deposition Highlight Set B (Reliance on Teacher Anecdote: No Diagnosis)
- NOTE: Exhibit Nos. 29 and 30 are attached to the Certification of Norman Jimerson regarding deposition testimony of R. Christopher Stucky, M.D.

Petitioners' Reply Brief, dated February 4, 2026

- Ex. 31 May 18, 2020, IEP

- Ex. 32 June 3, 2025, IEP
- Ex. 33 S.H.'s Disciplinary History
- Petitioner's Supplement Brief, dated February 7, 2026

For Respondent:

Respondent's Cross-Motion for Summary Decision and Opposition to petitioners' Motion for Summary Decision, filed January 30, 2026

Certification of Counsel

- Ex. A Petitioners' Due Process Petition filed on November 12, 2025
- Ex. B Dr. Christopher Stucky's Psychiatric Evaluation Report, dated May 25, 2018
- Ex. C Dr. Jesse Mintz's Neurodevelopmental Evaluation Report, dated June 13, 2018
- Ex. D Kate Tkac's CST Evaluation, dated July 10, 2018
- Ex. E Lacey Wallace Czirjak's Social Assessment Evaluation, dated July 10, 2018
- Ex. F Initial 2018–2019 signed IEP, date July 24, 2018
- Ex. G S.H.'s IEPs 2018–2021
- Ex. H Annual IEP Review Meeting dated April 26, 2022
- Ex. I Dr. Rajeswari Muthuswamy's Neurodevelopmental Reevaluation Report, dated May 2, 2022
- Ex. J Assess Progress and Review or Revise IEP dated May 13, 2022
- Ex. K Dr. Kavita Sinha's Independent Neurodevelopmental Reevaluation, dated August 8, 2022
- Ex. L Assess Progress and Review or Revise IEP dated September 12, 2022
- Ex. M Assess Progress and Review or Revise IEP dated June 3, 2025
- Ex. N June 24, 2025, and August 29, 2025, email correspondence with petitioner and Ms. Bloom
- Ex. O Letter to district from petitioners, dated October 8, 2025

- Ex. P Email correspondence from Ms. Bloom to petitioner dated October 28, 2025, from Counsel Norman Jimerson to the District, dated October 29, 2025
- Ex. Q Email correspondence from Counsel Norman Jimerson to the District, dated October 29, 2025
- Ex. R Email correspondence from petitioners and Ms. Bloom dated December 15, 2025, and January 2, 2026
- Ex. S District's Proposal to Declassify S.H., dated December 16, 2025
- Ex. T Declassification Meeting Attendance Sheet dated January 27, 2026
- Ex. U Declassification Determination dated January 27, 2026

Respondent's Reply Brief, dated March 2, 2026

Certification of Rita F. Barone, Esq.

- Ex. 1 Emails, dated November 13, 2025
- Ex. 2 Copy of P.S. and S.S. o/b/o A.S. v. Springfield Twp. Bd. of Educ., F.D. August 28, 2017
- Ex. 3 Copy of R.S. v Hillsborough Bd. of Educ., F.D. April 18, 2020
- Ex. 4 Copy of J.E. v East Orange Bd. of Educ., F.D. June 1, 2020
- Ex. 5 Copy A.L. and L.L. o/b/o G.L. v. Ringwood Bd. of Educ., F.D. November 9, 2020
- Ex. 6 Copy of C.P. and A.P. o/b/o S.P. v. Pt. Pleasant Beach Boro Bd. of Educ., F.D. August 26, 2024