State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NOS. EDS 20013-25 & 21044-25
AGENCY DKT. NO. 2026-39983 & 2026-40066

M.K. AND Y.X. ON BEHALF OF G.K.,
Petitioners,
v.
GLEN ROCK BORO BOARD OF EDUCATION,
Respondent.

M.K. and Y.X. on behalf of G.K., petitioners, pro se

Robin Ballard, Esq., for respondent (Schenck, Price, Smith & King, attorneys)

BEFORE **ANDREA PERRY VILLANI**, ALJ:

Record Closed: February 9, 2026 Decided: March 3, 2026

STATEMENT OF THE CASE

Petitioners, M.K. and Y.K., filed an emergent application and two complaints objecting to the Glen Rock Boro Board of Education (District) collecting behavioral data on their son, G.K. I decided the emergent application and denied their claim, leaving no further relief to be granted. Should petitioners' two complaints be dismissed? Yes. New

Jersey Court Rule 4:6-2(e) provides for dismissal when a party fails to present a claim upon which relief can be granted.

PROCEDURAL HISTORY

On September 30, 2025, the Glen Rock Board of Education (District) issued an Amended Individualized Education Program (IEP) to the petitioners, M.K. and Y.X., for their son, G.K.. Among other things, the IEP included a Behavior Intervention Plan (BIP) to address behaviors that G.K. demonstrated during his first month in kindergarten.

On October 8, 2025, petitioners asked the District for an Independent Educational Evaluation (IEE) of G.K. in the form of a Functional Behavioral Assessment (FBA).

On October 16, 2026, petitioners filed a Request for Mediation with the Office of Special Education (OSE), and G.K.'s previous IEP dated March 21, 2025, became G.K.'s stay put placement.

On October 23, 2025, the District filed a petition seeking denial of the IEE. Administrative Law Judge (ALJ) Kelly Kirk later granted this petition finding the District was not required to provide an independent FBA because the District's evaluations conducted at the time were sufficient to identify G.K.'s special education needs.

On October 28, 2025, the District notified OSE that it was declining mediation, and OSE informed petitioners that it was closing the mediation request.

On October 31, 2025, the District requested that petitioners attend a meeting. The District explained that it requested the meeting to propose conducting its own FBA. The petitioners declined to participate in the meeting.

On November 7, 2025, petitioners filed a Request for Emergent Relief and a Due Process Complaint (Complaint One) claiming that the District violated stay put by collecting behavioral data on G.K..

On November 7, 2025, OSE transmitted the Request for Emergent Relief to the Office Administrative Law (OAL), and on November 14, 2025, it transmitted the Due Process Complaint (Complaint One) to the OAL under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

On November 20, 2025, I heard oral argument and denied the Request for Emergent Relief, finding that the District had not violated stay put by collecting behavioral data.

On November 21, 2025, the next day, petitioners filed another Due Process Complaint (Complaint Two) again requesting that the district stop all behavioral data collection.

On December 11, 2025, OSE transmitted Complaint Two to the OAL.

On December 16, 2025, petitioners filed a third Due Process Complaint (Complaint Three). In Complaint Three, petitioners alleged a denial of FAPE because G.K. was removed from class on December 12, 2025. Petitioners requested compensatory education and appropriate supports related to the removal from class. OSE transmitted Complaint Three to the OAL on January 15, 2026.

Also on January 15, 2026, petitioners filed a fourth Due Process Complaint (Complaint Four). In Complaint Four, petitioners stated that the District has "continued to provide a meeting link for an IEP meeting notwithstanding parental objection." OSE transmitted Complaint Four to the OAL on February 13, 2026.

Petitioners have since filed another complaint (Complaint Five), which remains at OSE until expiration of the resolution period.

On January 16, 2026, the District filed a Motion to Dismiss Complaint One and Complaint Two. On February 9, 2026, petitioners filed their response, and I closed the record.

FINDINGS OF FACT

Upon reviewing Complaint One and Complaint Two, and treating the allegations contained in them as true, and giving petitioners the benefit of all legitimate inferences that may be drawn from them, I **FIND** the following as **FACT** for purposes of this Motion only:

G.K. was born in March 2020. In August 2023, he moved from West New York, New Jersey, where he was receiving Special Education and Related Services, to Glen Rock, New Jersey. In Glen Rock, G.K. continued to receive Special Education and Related Services and was placed in the preschool disabled program for the 2024-2025 academic year.

G.K. was re-evaluated for kindergarten in February 2025. The resulting March 21, 2025 IEP (March IEP) provided him with supplementary instruction, speech-language therapy, occupational therapy, physical therapy, and transportation. The March IEP noted various behavioral issues:

> [G.K.] tends to bump into and run past peers. He will often just strike and hit a peer as he passes by them…When [G.K.] started the program…he would run full force into staff, grab their legs, arms, and bodies. He has even hit staff. These behaviors had significantly subsided last year as the school year progressed but are on a significant rise this year since September. [G.K.] is attention seeking. He does not appear to discriminate between positive and negative attention…He will often escalate behaviors to prolong the attention. Staff has been instructed to ignore persistent negative behaviors such as balking like a parrot, grabbing of staff, and unusual rote phrases…When he sees something he likes, he will get very loud and jump around…The yelling does not stop…[G.K.] will sometimes refuse by throwing things…

G.K. is now in kindergarten at Alexander Hamilton Elementary School in Glen Rock. His current classification is communication impairment. On September 30, 2025, to address issues staff observed during G.K.'s first month of kindergarten, the District issued an

Amended IEP (September IEP) providing: in-class supplementary instruction, pull-out support for phonics, speech-language therapy, occupational therapy, physical therapy, BCBA consultation, a Behavioral Intervention Plan (BIP), and a 1:1 aide. The September IEP states:

> The attached IEP describes the proposed program and placement and was developed as a result of a 30-day review meeting…At this 30-day review meeting, [G.K.'s] transition was reviewed. He at times demonstrated physical aggression towards adults and peers such as pinching and scratching. Related service members have been supporting him with access to alternate seating, movement breaks, a para, consultation from the behaviorist and occupational therapist, access to headphones and a weighted backpack as well as a token system where he can earn rewards throughout the day. At this meeting, it was proposed that direct occupational therapy be added once a week, behavioral consultation be added three times per month, the shared para be changed to an individual para as well as access to a Special Education teacher three times per week…

About two weeks later on October 16, 2025, petitioners filed their Request for Mediation with OSE. Neither party provided a copy of this filing, however the timing indicates that petitioners filed the request to reject the September IEP and invoke stay put of the March IEP. Indeed, on November 7, 2026, about a week after the District declined to mediate, petitioners filed their Request for Emergent Relief and Complaint to Enforce Stay Put of the March IEP (Complaint One).

Both the Request for Emergent Relief and Complaint One state that the District violated stay put by implementing portions of the rejected September IEP. Specifically, petitioners allege that District staff violated stay put and implemented the rejected IEP when they "began daily behavioral data collection and tally-mark tracking." The District does not dispute that they collect behavioral data on G.K.; however, they maintain this is not a violation of stay put.

Petitioners' Complaint One also states that the District violated stay put by "reassign[ing] the student's 1:1 aide" and "invoking Crisis Prevention Intervention (CPI)

provisions." Regarding the aide, petitioners confirmed during oral argument that G.K. still has a 1:1 aide. They also acknowledged that the provision for the 1:1 aide appears in the rejected September IEP but *not* the stay put March IEP. Regarding CPI procedures, petitioners never stated they were used (just that they wanted "confirmation" that they wouldn't be used), and the rejected September IEP does not make any mention of CPI procedures.

Petitioners' Complaint Two reiterates their argument from Complaint One: that the District violated stay put by collecting data on their son. Again, they object to any "tally tracking, frequency counts, written behavior logs" or other data collection. However, in Complaint Two, petitioners add the argument that such "quantitative behavioral measurements" amount to "unauthorized evaluations" that they did not consent to, and they also claim that the data collected was inaccurate.

CONCLUSIONS OF LAW

The Uniform Procedure Rules, N.J.A.C. 1:1-1.1 et seq., do not provide for motions to dismiss. However, N.J.A.C. 1:1-1.3 states that, in the absence of a rule, an Administrative Law Judge may proceed in accordance with the New Jersey Court Rules. New Jersey Court Rule 4:6-2 governs motions to dismiss. Under Rule 4:6-2(e), a judge may grant dismissal when a party fails to state a claim upon which relief can be granted. The inquiry is limited to "a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." See Rieder v. State of N.J. Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). In other words, the court considers whether the complaint states a cognizable cause of action. Ibid. In ruling on the motion, "all facts in the alleged complaint and legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div. 1975).

The stay put provision of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(j), states that "during the pendency of any proceedings conducted pursuant to this section…the child shall remain in the then-current educational placement of the child." The provision "functions, in essence, as an automatic preliminary injunction," In Re Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (quoting Zvi D. v.

Ambach, 694 F.2d 904, 906 (2d Cir. 1982)), requiring the District to maintain the status quo for the child while the IEP dispute remains unresolved, Ringwood Bd. of Educ. v. K.H.J., 469 F. Supp. 2d 267, 270–71 (D.N.J. 2006). Because the purpose of stay put is to maintain the status quo while an underlying dispute is pending, stay put without an underlying claim is not a valid cause of action. See C.F. and T.F. o/b/o J.F. v. Franklin Twp. Bd. of Educ., OAL Dkt No. EDS 50-10 (2010) ("By definition then, there can be no viable, independent cause of action for "stay put"…[i]t is a derivative cause of action applicable only when the placement of a child is challenged.")

In this case, petitioners' Complaint One does not state a cognizable cause of action because it asks only for stay put temporary injunctive relief. Petitioners did not bring any underlying claims. Stay put injunctive relief cannot be granted without an underlying cause of action. Thus, Complaint One must be dismissed for failure to state a claim upon which relief can be granted.

Also, despite the fact that petitioners raised no underlying claim, their stay put request was decided on the merits when they filed for emergent relief. In their Request for Emergent Relief, petitioners argued that the District violated stay put by collecting daily behavioral data on their son. I concluded that this was not a violation of stay put. The data collection did not change the child's agreed-upon placement or services, it was not referenced in the rejected September IEP, and it is required under N.J.A.C. 6A:14. Indeed, N.J.A.C. 6A:14-3.8 requires schools to collect and review data for the periodic reevaluation of special education students, including the type of data that the petitioners object to in this case: daily observations of teachers and related services providers. For these reasons, I concluded that the District did not violate stay put. Once I concluded this and denied petitioners' emergent application for stay put, petitioners' duplicative claim for stay put in Complaint One became moot. Thus, again, petitioners' Complaint One fails to state a claim upon which relief can be granted.

Similarly, petitioners' Complaint Two, which repeats their claim that the District must stop collecting behavioral data but adds the argument that data collection amounts to an unauthorized behavioral assessment, is duplicative and moot. I already concluded

that schools are authorized, indeed required, to collect data on special education students. N.J.A.C. 6A:14.

Petitioners also claim in their Complaint Two that the data collected by the District is inaccurate, but this, likewise, is not a claim upon which relief can be granted. In their brief, petitioners argue that a district may not "rely on disputed data to materially alter a student's educational program." However, the District did not alter G.K.'s program, and petitioners did not even allege this in their Complaint Two. They raise the claim for the first time in their brief, wherein they further claim that the District relied on disputed data to develop an IEP on January 26, 2026, two months *after* they filed their Complaint Two. Petitioners could have filed a due process complaint to dispute the January 26, 2026 IEP because they believe it is based on inaccurate data; however, their Complaint Two filed two months before said IEP existed cannot be decided on this basis. Again, petitioners' Complaint Two did not allege any change to G.K.'s classification, program, or placement, and thus, by petitioners' own reasoning, it presents no claim upon which relief can be granted.

For all of the foregoing reasons, I **CONCLUDE** that petitioners' Complaint One and Complaint Two must be dismissed for failure to state a claim upon which relief can be granted.

ORDER

Given my Findings of Fact and Conclusions of Law, I **ORDER** that petitioners' Complaint One and Complaint Two are **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2014). 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 3, 2026
DATE

ANDREA PERRY VILLANI, ALJ

Date Received at Agency: March 3, 2026

Date Sent to Parties: March 3, 2026

sej

DOCUMENTS RELIED ON

Responent's January 16, 2026 Motion to Dismiss and Certification of Jennifer MacKay

Exhibit 1 March 21, 2025 IEP

Exhibit 2 September 30, 2025 IEP

Petitioners' February 9, 2026 Response to Motion to Dismiss

Exhibit 1 Page 19 from Respondent's Opposition to Emergent Relief