



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 20968-25

AGENCY DKT. NO. 2026-40135

**DEPTFORD TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

N.E. ON BEHALF OF N.E.,

Respondent.

John A. Carleton, Esq., for petitioner Deptford Township Board of Education
(Marmero Law, LLC, attorneys)

N.E., respondent, pro se

Record Closed: January 26, 2026

Decided: March 4, 2026

BEFORE **ROBERT D. HERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner Deptford Township Board of Education (Board or District) filed a due process petition with the New Jersey Department of Education, Office of Special Education (OSE), pursuant to N.J.A.C. 6A:14-2.5(c)(1), seeking to demonstrate that its educational evaluations were appropriate and to deny respondent's, Ms. N.E.'s, request

seeking independent educational evaluations (IEEs) for her son, N.E.¹ Ms. N.E. later sought to remove N.E. from the school district and, as a result, withdrew her opposition to the Board's due process petition, effectively terminating her request for IEEs. Where the Board filed a due process complaint seeking to establish the propriety of its educational evaluations, and the respondent withdraws her opposition and disenrolls the child from the school district to be homeschooled, should the matter be dismissed? Yes. Pursuant to N.J.A.C. 6A:14-2.5(c)(1) and N.J.A.C. 1:1-1.3, the withdrawal of opposition under the circumstances presented does not result in a de jure determination that the evaluations provided by the Board were appropriate, but rather that, with disenrollment, the matter was no longer justiciable in the Office of Administrative Law (OAL).

PROCEDURAL HISTORY AND FACTS

In fall of 2025, following an agreement between the parties, the Board completed evaluations for respondent's son, to wit: educational/learning; psychological; social history; occupational therapy; and speech evaluations. An eligibility meeting was attempted on December 8, 2025. Respondent declined to attend and requested IEEs pursuant to N.J.A.C. 6A:14-2.5(c). On December 9, 2025, the Board filed a due process petition with the New Jersey Department of Education, OSE, pursuant to N.J.A.C. 6A:14-2.5(c)(1). As a result, on December 10, 2025, the Board's due process petition was transmitted to the OAL to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

An initial prehearing conference scheduled for December 11, 2025, was attempted; however, it was unable to be completed. On December 12, 2025, respondent submitted a response to the Board's due process petition pursuant to N.J.A.C. 6A:14-2.7(d). On December 16, 2025, a prehearing conference involving the parties was completed, resulting in the final prehearing order (FPHO) dated December 17, 2025. As set forth in the FPHO, no motions were contemplated by either party, and a plenary hearing was set for January 8, 2026, via Zoom.

¹ Because respondent and her son share the identical initials, respondent shall be referred to herein as "Ms. N.E."

On January 2, 2026, however, Ms. N.E. filed a motion for summary decision on short notice pursuant to N.J.A.C. 1:1-12.5 (Motion for Summary Decision), N.J.A.C. 1:1-1.3(a) (Construction and Relaxation), and N.J.A.C. 6A:3-1.12 (Summary Decision).^{2,3} On January 5, 2026, Ms. N.E.'s motion for summary decision was denied.

On Thursday, January 8, 2026, the plenary hearing commenced, with testimony taking the bulk of the day. With the requirement of additional testimony, the hearing continued into the following day, January 9, 2026. After the conclusion of the first witness' testimony on January 9, 2026, settlement discussions appeared to bear fruit and a resolution colloquy occurred on the record, with reservation for the Board's approval at its next Board of Education meeting. The matter was then scheduled for follow-up on January 26, 2026.

In the late afternoon of Friday, January 16, 2026, Ms. N.E. sent an email to the OAL stating that she sought to "de-enroll" her son, N.E., from the school district and "pursue home education at this time." Ms. N.E. further stated in her email:

Accordingly, I am no longer seeking relief through the above-referenced due process proceeding at this time.

This notice is not intended as, and should not be construed as, a waiver of any rights under IDEA or Section 504, nor as a concession regarding the appropriateness or sufficiency of the District's evaluations, proposed services, or positions.

[Respondent's email of Jan. 16, 2026.]

Following requests for a response, on January 21, 2026, the Board advised:

As Your Honor is aware, this matter was filed by the District due to disagreement about evaluations for special education

² Ms. N.E.'s motion was submitted electronically on December 31, 2025, at 9:37 p.m. Because it was after hours and January 1, 2026, was a federal holiday, the filing date flows to the next business day, January 2, 2026. See generally N.J.A.C. 1:1-1.4 (Computation of Time) (date runs to next day following a holiday).

³ See generally N.J.A.C. 6A:3-1.12(b) ("Applications for summary decision after a matter has been transmitted to the OAL shall be filed with the ALJ in accordance with applicable rules of the OAL.").

services and eligibility. Upon receipt of [Ms. N.E.'s] email, I spoke with Mr. Nicely and while it is ultimately [Ms. N.E.'s] decision to homeschool her child, we must confirm that she understands the implications of this decision before we agree to dismiss our petition.

To be clear, once the student is withdrawn from the District, the District shall have no further legal obligation or responsibility for education, special education, evaluation, eligibility, services, related services or curriculum. There will be no further evaluations nor an eligibility meeting, and the District has no further legal obligation to provide an education to the student. All prior issues will be deemed closed.

[Petitioner's email of Jan. 21, 2026.]

Additionally, the Board requested for the matter to proceed on January 26, 2026, and that a colloquy be conducted to ensure Ms. N.E. understood that, "once [N.E.] is withdrawn from the District, the District shall have no further legal obligation or responsibility for education, special education, evaluation, eligibility, services, related services or curriculum[;]" "[t]here will be no further evaluations nor an eligibility meeting[;]" [] the District has no further legal obligation to provide an education to the student[,] and [a]ll prior issues will be deemed closed." Moreover, the Board sought for me to inquire on the record whether Ms. N.E. "fully understands the legal ramifications of this decision."⁴ (ibid.)

On Sunday, January 25, 2026, Ms. N.E. sent the following to the OAL:

Dear Judge Herman,

I write to formally clarify my position for the record.

Respondent exercised her right to disengage from this proceeding in her child's best interests. Respondent is not seeking relief at this time and respectfully requests that the matter be closed procedurally without prejudice.

⁴ See generally Forstrom v. Byrne, 341 N.J. Super. 45, 50 (App. Div. 2001) (homeschooled children are not considered to be enrolled in "nonpublic schools"); see also L.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290, 296 (D.N.J. 2003); J.F. v. Egg Harbor Twp. Sch. Dist., 2024 N.J. Super. Unpub. LEXIS 2346, at *24 (App. Div. Oct. 8, 2024).

As previously notified on January 16, 2026, Respondent de-enrolled the student from the District effective immediately and notified the Office of Administrative Law that she was no longer seeking relief in this matter. That notice expressly stated that it was not intended as a waiver of any rights under IDEA or Section 504, nor as a concession regarding the District's evaluations, proposed services, or positions.

No settlement has been executed, and Respondent does not agree that all issues have been resolved. This request is made solely to reflect the current posture of the case and Respondent's decision to disengage at this time.

Respectfully submitted,

[Ms. N.E.]

On Monday, January 26, 2026, a hearing was conducted telephonically in the above matter. Following a discussion on the record and as a result, Ms. N.E.'s response to the Board's due process petition was dismissed.

DISCUSSION AND CONCLUSIONS OF LAW

The procedure involved with a parental (or guardian's) request for IEEs, while straightforward itself, is somewhat unusual when linked with the facts in the present matter. Pursuant to N.J.A.C. 6A:14-2.5(c):

(c) Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at the district board of education's expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation.

1. Such independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made.

i. Upon receipt of the parental request, the district board of education shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the district board of education shall take steps to ensure that the independent evaluation is provided without undue delay; or

ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the district board of education shall request the due process hearing.

2. Any independent evaluation obtained at the district board of education's expense shall:

i. Be conducted according to N.J.A.C. 6A:14-3.4; and

ii. Be obtained from another public district board of education, educational services commission, jointure commission, a clinic or agency approved pursuant to N.J.A.C. 6A:14-5, or a private practitioner who is appropriately certified and/or licensed, where a license is required.

....

5. If a parent requests an independent evaluation, the district board of education may ask the parent to explain why he or she objects to the district board of education's evaluation. However, the district board of education shall not require an explanation and the district board of education shall not delay either providing the independent evaluation or initiating a due process hearing to defend the district board of education's evaluation.

....

7. If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district

board of education in accordance with the decision or order of the administrative law judge, and the district board of education shall pay the cost of the independent evaluation.

Reduced to its essence, N.J.A.C. 6A:14-2.5(c) presents school districts with a binary choice: pay for the IEEs or oppose and file a due process petition. Here, the Board chose the latter.

Following the Board's filing of its due process petition, Ms. N.E. submitted opposition, conducted motion practice (a motion for summary decision), and in the wake of the motion's denial, the matter proceeded to a hearing. After a majority of the Board's proofs entered, the parties agreed to a tentative settlement agreement—from which Ms. N.E. sought to depart one week thereafter by withdrawing her requested relief (IEEs) and N.E. from the school district for homeschooling.

While normally, as part of pleading and practice, when an opposing party withdraws in toto, the opposed-to relief shall be granted; or where the withdrawing party is the one seeking relief, that relief will be denied. Here, N.J.A.C. 6A:14-2.5(c) shifts the burden to the Board, making it file a due process petition to preclude an obligation to provide IEEs, that is, to refuse the relief sought by Ms. N.E. In other words, and in this instance, the one initially seeking relief (IEEs) is withdrawing her opposition against the party (the Board) who is actively attempting to preclude that relief by filing a petition seeking to establish the relief sought by the one initially requesting it is unnecessary. With such circumstances, logical exercises employed to discern the appropriate conclusion may ensnarl the unwary in an ever-unyielding knot.

To its rescue, N.J.A.C. 1:1-1.3 provides the following:

- (a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such

procedures are specifically statutorily authorized in administrative hearings.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

[N.J.A.C. 1:1-1.3.]

Fairness is the heavier weight, followed closely by simplicity and avoidance of unnecessary delay and expense. Provided the circumstances present in the instant matter—that upon withdrawal for homeschooling and in the absence of espoused Equal Protection concerns—the Board does not have any special education obligations currently flowing to N.E. A live issue is a necessity for a matter to continue in the OAL; that is, at least one component of the relief sought is left to be determined. See generally N.J.A.C. 1:1-3.2 (Jurisdiction of the Office of Administrative Law). Here, within the context of N.E.'s withdrawal from the school district, the purpose for the requested relief—a special education eligibility meeting—is not continuing. As the due process petition in the present matter was to establish the propriety of the Board's educational evaluations to be used for special education purposes, and explained above, that special education consideration no longer exists, in its most base form, there is no issue in controversy to be decided.

Accordingly, and in the absence of a justiciable controversy, I **HEREBY CONCLUDE** that the matter shall be and hereby is **DISMISSED**.

ORDER

For the reasons set forth above, I **ORDER** that the Board's due process petition shall be and hereby is **DISMISSED**. Further, I hereby direct that this case be returned to the transmitting agency for disposition consistent with this decision.

This decision is final pursuant to 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 4, 2026

DATE



ROBERT D. HERMAN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

RDH/cb

APPENDIX

Documents

For the judge:

- DOC 1 Ms. N.E.'s email (January 16, 2026) (two pages)
- DOC 2 The District's email (January 21, 2026) (two pages)
- DOC 3 Ms. N.E.'s email (January 25, 2026) (two pages)