



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

**FINAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDS 21496-25

AGENCY DKT. NO. 2026-40166

**T.A. ON BEHALF OF M.A.,**

Petitioner,

v.

**WEST ORANGE TOWN**

**BOARD OF EDUCATION,**

Respondent.

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**T.A.**, petitioner, pro se

**Jared S. Schure**, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: March 12, 2026

Decided: April 1, 2026

BEFORE **KELLY J. KIRK**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, T.A., on behalf of her son, M.A., filed for due process against the West Orange Township Board of Education (Board or District), seeking an order requiring the District “to provide all complete evaluation records . . . including raw data, scoring documentation, examiner notes, testing protocols, confidence intervals, and SEM values,

in a manner that permits meaningful review” and an “Independent Educational Evaluation at public expense.”<sup>1</sup>

### **PROCEDURAL HISTORY**

On December 17, 2025, petitioner filed a Petition for Due Process (Petition) with the New Jersey Department of Education (Department), Office of Special Education (OSE). The OSE transmitted the case to the Office of Administrative Law (OAL), where it was filed on January 16, 2026, as a contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

The hearing was scheduled for April 13, 2026. On February 11, 2026, the District filed a motion to dismiss for failure to state a claim, consisting of a brief and Certification of Jared Schure. On February 19, 2026, petitioner filed opposition to the Board’s motion. On February 27, 2026, the Board filed a reply letter brief. On March 2, 2026, petitioner filed a “supplemental clarification” (sur-reply), and on March 12, 2026, the Board filed a letter brief in reply to the supplemental clarification.

### **FACTUAL DISCUSSION**

The Petition alleges the following:

#### **I. NATURE OF THE PROBLEM**

This petition concerns my inability to meaningfully inspect and review my son [M.A.’s] complete evaluation records, and the resulting dispute regarding the appropriateness of the district’s evaluations and my request for an Independent Educational Evaluation (IEE).

I requested an IEE after developing concerns regarding the completeness, administration, and interpretive validity of the district’s evaluations. The district’s continued failure to provide complete evaluation records has prevented meaningful

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<sup>1</sup> It is undisputed that the District filed a petition for due process with respect to petitioner’s request for an independent educational evaluation (IEE) but withdrew its petition and agreed to provide the IEE—a neuropsychological evaluation—at public expense.

review, prolonged this dispute, and delayed informed decision-making regarding [M.A.'s] educational needs and supports.

Although the district filed and later withdrew a due process petition related to my IEE request, the underlying dispute remains unresolved because I still do not have access to the complete evaluation records necessary to assess the adequacy of the district's evaluations or to resolve the IEE dispute.

This petition is brought pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and N.J.A.C. 6A:14.

## **II. RELEVANT FACTS**

The district conducted evaluations of [M.A.] through its Child Study Team during summer 2025.

On August 7, 2025, I requested [M.A.'s] complete evaluation records, including raw data, scoring documentation, examiner notes, testing protocols, confidence intervals, and SEM values.

I renewed this request during [M.A.'s] eligibility meeting on August 11, 2025.

On October 16, 2025, I submitted a written request for an Independent Educational Evaluation outlining concerns regarding the district's evaluations. A copy of that request is attached as Exhibit A.

On November 5, 2025, the district formally denied my request for an IEE and filed a due process petition to defend its evaluations.

During the dispute, the district provided limited evaluation summaries but did not provide complete evaluation records, including:

- raw data and item-level responses
- scoring sheets and examiner notes
- testing protocols
- confidence intervals and/or SEM values

The district stated that testing protocols could only be viewed in person without copies and advised that review could be conducted by a retained third-party expert.

On November 15, 2025, I submitted supplemental clinical documentation from [M.A.'s] treating psychiatrist, including a written statement confirming diagnoses of Autism Spectrum Disorder, ADHD (combined presentation), and Panic Disorder, and recommending a comprehensive independent neuropsychological evaluation. The psychiatrist's letter is attached as Exhibit B. Following receipt of this documentation, the district did not revise its position or provide the complete evaluation records I had requested.

The district later withdrew its due process petition. Despite that withdrawal, I remain unable to inspect and review the complete evaluation records necessary to assess the appropriateness of the district's evaluations or to resolve the IEE dispute.

### **III. ONGOING IMPACT ON THE STUDENT**

The continued delay in resolving this dispute has coincided with increased behavioral dysregulation and school-related distress for [M.A.].

[M.A.] has reported experiencing panic symptoms at school and has demonstrated increasing school refusal behaviors. He has also exhibited regression in behavioral regulation, including increased impulsivity and difficulty managing demands within the school environment. These concerns have been communicated to the district but remain unresolved in the absence of complete evaluation data and appropriate educational planning.

[See Petition.]

The Petition requests the following relief:

1. An order requiring the district to provide all complete evaluation records for [M.A.], including raw data, scoring documentation, examiner notes, testing protocols, confidence intervals, and SEM values, in a manner that permits meaningful review.

2. A determination that my request for an Independent Educational Evaluation at public expense is appropriate under applicable law.

3. Any additional relief the Administrative Law Judge deems just and equitable.

[See Petition.]

### **LEGAL ANALYSIS AND CONCLUSION**

A respondent is not precluded from filing a motion to dismiss in lieu of an answer to a petition. N.J.A.C. 6A:3-1.5(g). Further, at any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner of Education may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true. N.J.A.C. 6A:3-1.10.

In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible. N.J.A.C. 1:1-1.3(a). In this regard, R. 4:6-2 states, in part: "Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, [and] (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1."

Because the matter arises on defendants' motion to dismiss, we accept as true the facts alleged in the complaint. Rieder v. Department of Transp., 221 N.J. Super. 547, 552, 535, A.2d 512 (App. Div. 1987). The test is whether the alleged facts "suggest" a cause of action. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192, 536 A.2d 237 (1988). Plaintiffs are entitled to every reasonable inference in their favor. A reviewing court must "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of

action may be gleaned even from an obscure statement of claim. . . .” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746, 563 A.2d 31 (1989) (quoting Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252, 128 A.2d 281 (App. Div. 1957)).

[Craig v. Suburban Cablevision, 140 N.J. 623, 625–626 (1995).]

In part, the purpose of special education is to ensure that all students with disabilities have available to them a free, appropriate public education (FAPE) as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.). N.J.A.C. 6A:14-1.1(b)(1). Per 20 U.S.C. § 1401(9), a FAPE means special education and related services that: “(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program [IEP] required under section 614(d) [20 U.S.C. § 1414(d)].”

Generally, “evaluation” means procedures used in accordance with 34 C.F.R. §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15 (2025). Each public agency must conduct a full and individual initial evaluation, in accordance with 34 C.F.R. §§ 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability. 34 C.F.R. § 300.301(a) (2025). Thereafter, a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 (1) if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or (2) if the child’s parent or teacher requests a reevaluation. 34 C.F.R. § 300.303(a) (2025). A reevaluation conducted under 34 C.F.R. § 300.303(a) may occur not more than once a year, unless the parent and the public agency agree otherwise, and must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(1) and (2) (2025).

In conducting the evaluation, the public agency shall: (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability under § 300.8, and (ii) the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b) (2025); N.J.A.C. 6A:14-2.5(a)(1)(i) and (ii), (2) and (3); 20 U.S.C. § 1414(b)(2)(A)(i) and (ii), (B), and (C). The district board of education shall ensure that the "student is assessed in all areas of suspected disability" and that "the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category." N.J.A.C. 6A:14-2.5(b)(3) and (7).

As part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, and based on that review and input from the child's parents, identify what additional data, if any, are needed to determine:

(i)

(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)

(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

[34 C.F.R. § 300.305(a)(2) (2025).]

The parents of a child with a disability have the right to obtain an independent educational evaluation (IEE), subject to 34 C.F.R. § 300.502(b) through (e). 34 C.F.R. § 300.502(a)(1) (2025). For these purposes, an IEE means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question, and public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 C.F.R. § 300.103. 34 C.F.R. § 300.502(a)(3)(i) and (ii) (2025). More specifically, a parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in 34 C.F.R. §300.502(b)(2) through (4). 34 C.F.R. § 300.502(b)(1) (2025). 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. N.J.A.C. 6A:14-2.5(c). A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 C.F.R. § 300.502(b)(5) (2025); N.J.A.C. 6A:14-2.5(c). The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation. N.J.A.C. 6A:14-2.5(c). 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. N.J.A.C. 6A:14-2.5(c)(1); 34 C.F.R. § 300.502(b)(2)(i) and (ii) (2025). 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. N.J.A.C. 6A:14-2.5(c)(5); 34 C.F.R. § 300.502(b)(4) (2025). 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. N.J.A.C. 6A:14-2.5(c)(5); 34 C.F.R. § 300.502(b)(4) (2025). If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3) (2025).

The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to “inspect and review” all education records with respect to: (1) the identification, evaluation, and educational placement of the child; and (2) the provision of FAPE to the child. 34 C.F.R. § 300.501(a) (2025). With respect to access rights, the public agency “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used” by the public agency. 34 C.F.R. § 300.613(a) (2025). In this regard, the right to inspect and review education records includes: (1) the right to a response from the public agency to reasonable requests for explanations and interpretations of the records; (2) the right to request that the public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) the right to have a representative of the parent inspect and review the records. 34 C.F.R. § 300.613(b) (2025).

The Board argues that petitioner has failed to state a claim upon which relief can be granted and the Petition should be dismissed because the “only issue the Petition raises is production of copies of certain student records,” and “[n]either N.J.A.C. 6A:14-2.7(a) nor 34 C.F.R. 300.507 provide that a demand for providing copies of student's records may be the subject of a due process hearing.”

Pursuant to N.J.A.C. 6A:14-2.7(a), a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or

disciplinary action. 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 FAPE. N.J.A.C. 6A:14-2.7(k). 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. Ibid. Petitioner disagreed with the District's evaluation and requested an IEE, which the District agreed to provide at public expense. The Petition does not seek a determination that procedural inadequacies impeded M.A.'s right to a FAPE or significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits.

The Petition reflects that it is "brought pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and N.J.A.C. 6A:14," with no further specificity. Petitioner's opposition states, "This is an evaluation dispute under N.J.A.C. 6A:14-2.7(a) and 34 C.F.R. § 300.507(a)," and petitioner argues that the Petition "challenges the adequacy and reliability of the Child Study Team evaluation relied upon for classification, services, and placement decisions for M.A." and that "[t]he requested evaluative data relates directly to whether that evaluation was properly administered, sufficiently comprehensive, and psychometrically reliable for educational decision-making." However, the Petition does not seek a determination that the evaluations were inadequate or unreliable, or that the evaluation was improperly administered, not sufficiently comprehensive, or not reliable for educational decision-making.

Petitioner's opposition cites 20 U.S.C. § 1414(b), 34 C.F.R. § 300.304, and N.J.A.C. 6A:14-3.4, and states that the "IDEA requires that evaluations: Use a variety of assessment tools and strategies; Assess all areas of suspected disability; Be sufficiently comprehensive; [and] Be administered in accordance with standardized procedures," and argues "[t]he issue presented is whether the evaluation relied upon for classification and placement satisfies those substantive requirements." Similarly, petitioner's sur-reply argues that the challenge is "whether the Child Study Team evaluation relied upon for

classification and placement is adequate, reliable, and properly interpreted,” and that the “requested data is sought for the limited purpose of assessing the validity and sufficiency of that evaluation.” However, the arguments in the opposition and sur-reply are not supported by the Petition. The Petition contains no request for a determination that the District violated the law with respect to evaluation procedures, and no request for a determination that M.A.’s present levels of academic achievement, educational needs, or development needs cannot be identified from the evaluations. Additionally, if the evaluation was determined to be invalid or insufficient, an IEE could be ordered—and the District agreed to provide an IEE.

Petitioner’s sur-reply cites 34 C.F.R. § 300.502, and petitioner argues that a “request for an IEE arises only when a parent disagrees with a district evaluation” and asserts that “[t]his confirms that the Petition concerns evaluation adequacy, not mere access to records.” Petitioner also argues that the “Petition expressly challenges the adequacy of the Child Study Team evaluation,” and that the “Petition alleges that the district failed to evaluate in all areas of suspected disability and failed to comply with IDEA procedural and reporting requirements,” noting that the “Petition further requested an IEE on this basis.” However, the Petition does not seek a determination that the CST evaluations were inadequate or that the District failed to evaluate in all areas of suspected disability or failed to comply with IDEA procedural and reporting requirements.

Even accepting that the dispute stems from the evaluation, a parent may dispute the evaluation and request an IEE, which was done in this case, and the District agreed to provide an IEE. There is no request for a determination of any violation regarding M.A.’s evaluation or placement; no request for a determination that the District did not permit meaningful review of the evaluations or a determination that “failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;” no request for a determination that the District’s IEP failed to provide M.A. a FAPE; and no request for a change in the student’s programming or placement, a change in the IEP, or compensatory education.

It is apparent that petitioner disagreed with an evaluation—as that is a prerequisite to filing for an IEE at public expense—and as a result, she filed a request for due process

to obtain an IEE. The Petition seeks no relief other than copies of the evaluation records, and there is no entitlement to a special education due process hearing solely to obtain a student's records. Accordingly, I **CONCLUDE** that the Petition has failed to state a claim upon which relief can be granted, and it should be dismissed.

**ORDER**

It is hereby **ORDERED** that respondent's motion to dismiss is **GRANTED**, and the Petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2026) 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 (2026).



April 1, 2026

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DATE

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**KELLY J. KIRK, ALJ**

Date Received at Agency

\_\_\_\_\_  
April 1, 2026

Date Mailed to Parties:

\_\_\_\_\_  
April 1, 2026

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