



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 02567-26

AGENCY DKT NO. 2026-40437

**LIVINGSTON TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

K.D. AND E.H.D. ON BEHALF OF A.H.D.,

Respondents.

Isabel Machado, Esq., for petitioner (Machado Law Group, attorneys)

Frances E. Barto, Esq., respondents (Barto & Barto, LLC., attorneys)

Record Closed: March 2, 2026

Decided: March 3, 2026

BEFORE **PATRICE E. HOBBS**, ALJ:

STATEMENT OF THE CASE

Petitioner, Livingston Board of Education, seeks an order compelling respondent to allow petitioner to conduct a psychological evaluation, social history evaluation and a psychiatric evaluation, a physical therapy evaluation, as well as an order compelling the respondents to cooperate with the petitioner to complete the 504 accommodation plan,

attendance plan and individualized education program (IEP) for A.H.D., if applicable. Must petitioner be permitted to obtain these evaluations and cooperation from respondents? Yes. Petitioner cannot provide a FAPE without these evaluations and must obtain parental consent to conduct the evaluations under N.J.A.C. 6A:14-2.3(a).

PROCEDURAL HISTORY

On February 11, 2026, petitioner filed a request for emergent relief and due process petition with the Office of Special Education Programs (OSEP) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., §504 of the Rehabilitation Act (§504), 42 U.S.C. §12131 et seq. (the ADA), and the New Jersey Law Against Discrimination (NJLAD). Petitioner is requesting an order compelling the respondents to permit the petitioner to conduct a psychiatric evaluation, social history evaluation and psychological evaluation. On February 11, 2026, the case was transmitted to the Office of Administrative Law (OAL) under N.J.S.A. 52:14B-1 to -15 and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5. On February 17, 2026, respondent's counsel entered an appearance and requested an adjournment with petitioner's consent. At that time, the parties actively engaged in resolving the issues. On February 27, 2026, respondents filed an opposition brief. Based on respondents' submissions, petitioner orally amended their request to include a physical therapy evaluation, which I granted on March 2, 2026, after an unsuccessful settlement conference, I held a hearing and closed the record. On March 2, 2026, after the record was closed, respondents submitted an additional opinion letter from Dr. Rina Goldberg.

FINDINGS OF FACT

Based upon the testimony the parties provided and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following **FACTS**:

A.H.D. is a fifteen-year-old student in the tenth grade at Livingston High School. A.H.D. suffered a traumatic fall in 2016 when she fell forward and hit her head on a concrete floor. Since that time, she has suffered from post-traumatic concussion syndrome, attention deficit/hyperactivity disorder and Hashimoto's disease. In the 2023–2024 school year, A.H.D. has accrued thirty-one unexcused absences in English, language arts, and math, thirty unexcused absences in social studies and fifty-four unexcused absences in Spanish. In the 2024–2025 school year, she has thirty-four unexcused absences and 128 tardies.

On July 26, 2022, Dr. Rina Goldberg wrote an opinion letter (R-A) recommending that A.H.D. be permitted to have additional time for classwork, homework and testing, more frequent breaks and rest time and be excused from gym as needed. The letter does not request home instruction.

On May 7, 2024, Dr. Rina Goldberg wrote an opinion letter (R-B) recommending that A.H.D. be permitted to have additional time for classwork, homework and testing, more frequent breaks and rest time and be excused from gym as needed. The note does not request home instruction.

On February 27, 2025, Dr. Ellen Dean wrote an opinion letter (R-C) diagnosing A.H.D. with amplified musculoskeletal pain syndrome and prescribed physical therapy.

On May 29, 2025, Dr. Sharon Babineau wrote an opinion letter (R-D) recommending that A.H.D. be allowed extra time for assignments, a lighter workload, free access to the restroom and leniency in attendance. The letter does not request home instruction.

On December 11, 2025, a 504 meeting was held, and E.H.D. refused to permit petitioner to communicate with A.H.D.'s treating physicians. E.H.D. also refused to permit petitioner to conduct a psychiatric evaluation, social history evaluation and psychological evaluation.

On December 29, 2025, Dr. Rina Goldberg wrote an opinion letter recommending that A.H.D. be permitted to make up missed time and be late for school without penalty. This opinion letter was reviewed by petitioner's physician, Dr. Michael Kelly. Dr. Kelly deemed the request medically unnecessary.

On January 7, 2026, petitioner referred A.H.D. to the Child Study Team (CST) for an Initial Identification and Evaluation Planning Meeting. K.H.D. stated she was not interested in attending that meeting. On January 21, 2026, the petitioner and respondents convened an eligibility meeting, and it was determined that a psychiatric evaluation, social history evaluation and psychological evaluation were warranted. E.H.D. refused consent for those evaluations. A proposed 504 evaluation plan was prepared for A.H.D. It has still not been signed and returned to petitioner.

On March 2, 2026, Dr. Rina Goldberg wrote an opinion letter recommending that A.H.D. be placed on home instruction. No medical reason was provided.

E.H.D. has continuously requested home instruction for A.H.D. Petitioner has denied this request because the respondent's physician must provide a letter explaining how home instruction for A.H.D. is therapeutically necessary. A.H.D. continues to accrue absences and missed credit in core classes.

K.D. and E.H.D. stated that A.H.D.'s issues are only medical; she is not educationally handicapped, and she does well in school. K.D. and E.H.D. stated that there is no need for any of the evaluations that the petitioner is requesting. K.D. and E.H.D. want a modified home instruction plan for A.H.D.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., requires New Jersey to effectuate procedures that ensure that all children with disabilities residing in the State have available to them a free appropriate public education ("FAPE") consisting of special education and related services. The IDEA "emphasizes special

education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).

States are obligated to identify, classify, and provide a FAPE to all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1. This responsibility rests with the local public school district. N.J.A.C. 6A:14-1.1(d). School districts have an affirmative and continuing obligation to identify and evaluate students reasonably suspected of having a disability under the IDEA and Section 504 of the Rehabilitation Act. This responsibility is known as a district’s “child find” obligation. See D.K. v. Abington Sch. Dist., 696 F. 3d. 233, 249 (3d. Cir. 2012); 20 U.S.C. § 1412(a)(3). Each district must develop written procedures to identify students within the location of the district who may have a disability due to “physical, sensory, emotional, communication, cognitive, or social difficulties.” N.J.A.C. 6A:14-3.3(a). These procedures must include evaluation measures to determine a student’s eligibility for special education and related services. N.J.A.C. 6A:14-3.3(a)(3)(iii.).

An “individual with a disability” is defined under Section 504 as any person who “has a physical or mental impairment which substantially limits one or more of such person’s major life activities, has a record of such impairment, or is regarded as having such an impairment.” 29 U.S.C. 705(20)(B). Section 504 defines a disability as a physical or mental impairment that substantially limits a person’s ability to participate in a major life activity, such as learning. Section 504 has a broad definition of “disability.” By contrast, the IDEA defines a “child with a disability” more narrowly to include individuals with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.” 20 U.S.C. § 1401(3)(A). Children who are not eligible for an IEP may, therefore, be eligible for a 504 plan.

The scope of the Rehabilitation Act of 1973 (Section 504) is broader than the IDEA. Under Section 504, a student is provided with a 504 plan that provides students with equal access to free, appropriate public education (FAPE). 29 U.S.C. § 794(a). Individuals with a disability and individuals who are perceived as having a disability can have a 504 plan,

even if the perception is incorrect and the individual is not disabled. Muller v. Comm. on Special Edu. of the E. Islip Union Free Sch. Dist., 145 F.3d 95, 100 (2d Cir. 1998). Students who are eligible for special education services under the IDEA also fall under the scope of Section 504; however, there may be general education students who qualify for a 504 plan and are ineligible for special education and related services under the IDEA. Section 504 defines “handicapped” as “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.” 34 C.F.R. 104.3(j)(1).

Under Section 504, a school district must offer an appropriate education that “reasonably accommodate[s] the needs of the handicapped child so as to ensure meaningful participation in educational activities and meaningful access to educational benefits.” Ridley Sch. Dist. v. M.R., 680 F.3d 260, 280–81 (3d Cir. 2012). However, Section 504 does not require “substantial” changes to a school’s programs. Id. Section 504 also does not require a school to provide a covered student with special education services. The school may provide general education or special education and related services, like modifications or accommodations to the general education curriculum, depending on the student’s needs. 34 C.F.R. 104.33 (b)(1).

A parent requesting home instruction because of a temporary or chronic health condition must submit to the school district a written request that includes a determination from a physician documenting the projected need for confinement for more than ten consecutive school days or twenty cumulative school days during the year. N.J.A.C. 6A:16-10.1(a)(1).

The school must obtain consent from the parents to conduct any assessment of the student. N.J.A.C. 6A:14-2.3(a). If a student’s parents refuse to permit the school district to assess the student as part of an initial evaluation, the school must request a due process hearing to obtain consent. N.J.A.C. 6A:14-2.3(c), -2.7(b). If, after an evaluation is conducted, a parent refuses special education and related services, the school must not be determined to have denied the student FAPE. N.J.A.C. 6A:14-2.3.

Emergent relief shall only be requested for specific issues, including a break in the delivery of services and/or placement pending the outcome of due process proceedings. N.J.A.C. 6A:14-2.7(r). The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6: (i) the petitioner will suffer irreparable harm if the requested relief is not granted; (ii) the legal right underlying the petitioner’s claim is settled; (iii) the petitioner has a likelihood of prevailing on the merits of the underlying claim; and (iv) when the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted. See also Crowe v. DeGioia, 90 N.J. 126 (1982). The applicant bears the burden of satisfying all four prongs of this test by clear and convincing evidence. Crowe, 90 N.J. at 132–34.

New Jersey’s regulations also provide that a parent who refuses to consent to services cannot later argue that the district failed to provide a FAPE. N.J.A.C. 6A:14-2.3(c), -2.3(e)(4). Thus, “a parent cannot refuse to allow the school to offer a FAPE, and later seek reimbursement for a unilateral placement, predicated on the school’s failure to offer a FAPE. N.J.A.C. 6A:14-2.3(c); N.J.A.C. 6A:14-2.3(e)(4).” S.W. & J.W. ex rel. W.W. v. Florham Park Bd. of Educ., 2015 N.J. AGEN LEXIS 384 at *71.

Irreparable Harm

Petitioner must make a “clear showing of immediate irreparable injury” or a “presently existing actual threat.” Cont’l. Group, Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (D.N.J. 1980). In an educational setting, “irreparable harm may be shown when there is a substantial risk of physical injury to the child or others, or when there is a significant interruption or termination of educational services.” Ocean Twp. Bd. of Educ. v. J.E. and T.B. obo J.E., OAL Dkt. No. EDS 00592-04, 2004 NJ AGEN LEXIS 115, at *8 (Feb. 23, 2004). See also Sparta Twp. Bd. of Educ. v. R.M. and V.M. obo C.M., OAL Dkt. No. 01975-20, 2020 NJ AGEN LEXIS, at *14 (Feb. 21, 2020) (inappropriate interactions with other students and breaking a desk deemed “sufficient evidence of the risk of harm to student, school staff, teachers and students”). Harm is irreparable when there can be no adequate after-the-fact remedy in law or equity, or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132–133.

Respondents argue that the harm is not irreparable because A.H.D. has participated in credit recovery, attended summer school and has made up her missed classwork. Respondents also argue that A.H.D. is a student with a disability and that the petitioner is failing to provide appropriate accommodations under her 504 plan. The respondents cannot have it both ways. If they want to have accommodations under the 504 plan, they must allow the petitioner to communicate with A.H.D.'s treating physicians or allow her to be evaluated. If they do not want any accommodations, A.H.D. must attend school regularly. The petitioner has an obligation under the IDEA to provide a FAPE to every student who is registered at their school. Petitioner cannot provide a FAPE because A.H.D. is not attending classes, and they are unable to determine what services she may need to help her attend school and obtain the necessary credits to advance to the next grade.

I **CONCLUDE** that K.D. and E.H.D.'s refusal to consent meets the "special circumstances" contemplated by 20 U.S.C. §1415(k)(1)(G), because A.H.D. has significant absences and tardiness, which have resulted in a loss of credits in core classes. The petitioner must provide a FAPE under the IDEA, and they are unable to provide FAPE because the parents have not consented to the evaluations or even communications with A.H.D.'s medical providers.

The Legal Right is Settled and the Likelihood of Prevailing on the Merits

The second consideration is whether the legal right underlying the petitioner's claim is settled, N.J.A.C. 6A:3-1.6(b)(2), and then third, the petitioner must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133.

Petitioner is obligated to provide a FAPE to all children with disabilities residing in the state. There is no dispute that A.H.D. is a child and that she currently has a 504 plan. To provide FAPE under the IDEA and Section 504, the petitioner must evaluate A.H.D. or be afforded the opportunity to communicate with her physicians. A.H.D. has had significant absences and has lost credit in her core classes. There is a break in services for the support that A.H.D. must receive under the 504 plan, and there is a great likelihood

that petitioner will prevail on the merits of this claim. This is particularly true given that there has been no challenge to the applicability of the 504 plan, and the petitioner is unable to determine what is the least restrictive environment. Moreover, the respondents are asking for accommodations and alleging that the petitioner is not fulfilling their obligations under Section 504. The petitioner does not know what accommodations are required and therefore cannot provide them without access to A.H.D.'s physicians or evaluations.

Respondents argue that A.H.D. does well in school, receives A's and B's, and does not need special education because she is not disabled. She only has a medical condition and simply needs an accommodation to be given a modified home instruction schedule. After the record closed, the respondents submitted an opinion letter from Dr. Goldberg recommending home instruction for A.H.D. This opinion letter is insufficient. Under the regulations, the request for home instruction must state that the medical reasons that A.H.D. is confined to the home for more than ten consecutive or twenty cumulative school days.

For the above reasons, I **CONCLUDE** that the petitioner meets the second and third prongs of the emergent relief standard.

Balance of Equities and Interests

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief to the petitioner. Here, petitioner is attempting to fulfill its obligations under the IDEA and Section 504, and respondents are preventing the petitioner from doing so. Denying the petitioner's request would not only cause A.H.D. irreparable harm, but also no compensation can be awarded to petitioner for not being able to fulfill their obligations. Respondents argue that compensatory education is available, A.H.D. can make up her absences, and they are willing to work with the petitioner to formulate a plan for these accommodations. The petitioner cannot formulate a plan without the evaluations. They do not have sufficient information to determine what additional services would be required. Petitioner has requested that their doctor speak with A.H.D.'s doctors, and the respondents have refused.

Accordingly, I **CONCLUDE** that the petitioner would suffer greater harm if the requested relief was not granted because petitioner is unable to fulfill its obligations under the law.

Since I concluded that petitioner has demonstrated the conditions set forth in Crowe, as codified in N.J.A.C. 6A:3-1.6(b), I **CONCLUDE** that petitioner is entitled to the emergency relief as requested and that the petitioner can conduct a psychiatric evaluation, a social history evaluation, a psychological evaluation, an educational evaluation and a physical therapy evaluation. I further **CONCLUDE** that respondents must permit the petitioner to communicate with A.H.D.'s outside providers to develop an appropriate 504 plan, attendance plan and IEP, if required. Should respondents refuse to provide full consent, respondents will have waived their rights to challenge petitioner's programming for A.H.D. or otherwise allege that petitioner's programming for A.H.D. failed to provide a FAPE at any time after January 21, 2026.

ORDER

I **ORDER** that respondents provide consent for the petitioner to conduct a psychiatric evaluation, a social history evaluation, a psychological evaluation, an educational evaluation and a physical therapy evaluation. I further **ORDER** that respondents must permit the petitioner to communicate with A.H.D.'s outside providers to develop an appropriate 504 plan, attendance plan and IEP, if required. Should respondents refuse to provide full consent, respondents will have waived their rights to challenge petitioner's programming for A.H.D. or otherwise allege that petitioner's programming for A.H.D. failed to provide a FAPE at any time after January 21, 2026.

This decision on the application for emergency relief resolves all the issues in the due process complaint. No further proceedings are necessary, and this case is now closed. If the parent or adult student believes that this decision is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. This decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 and is appealable by bringing a civil action

in the Law Division of the Superior Court of New Jersey or in the United States District Court for the District of New Jersey under U.S.C. § 1415(i)(2) and 34 C.F.R. § 300.516.

March 3, 2026

DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency:

March 3, 2026

Date Mailed to Parties:

March 3, 2026

APPENDIX

Witnesses

For petitioner:

K.D.
E.H.D.

For respondent:

None.

Exhibits

For petitioner:

P-A Section 504 accommodation plan, dated 6/10/25
P-B Attendance Totals Report as of 9/3/24
P-C Livingston's letter to K.D. and E.H.D., dated 4/11/25
P-D Student Attendance Report, dated 10/31/25
P-E Livingston's letter to K.D. and E.H.D., dated 12/15/25
P-F Letter from Dr. Karl Goldberg dated 12/29/25
P-G Emails between E.H.D. and Livingston from 1/7/26
P-H Letter from Livingston to K.D. and E.H.D., dated 1/7/26
P-I Emails between E.H.D. and Livingston from 1/9/26
P-J Emails between E.H.D. and Livingston from 1/23/26
P-K Letter from Livingston to K.D. and E.H.D., dated 1/23/26
P-L Student Attendance Report, dated 10/31/25
P-M Initial Identification and Evaluation Planning letter to K.D. and E.H.D.,
dated 1/21/26

For respondent:

R-A Letter from Dr. Rina Goldberg, dated July 26, 2022

- R-B Letter from Dr. Rina Goldberg, dated May 7, 2024
- R-C Letter from Dr. Ellen Dean, dated February 27, 2025
- R-D Letter from Dr. Shannon Babineau, dated May 29, 2025
- R-E Letter from Rina Goldberg dated March 2, 2026