



STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF

**D.R. AND E.C., ON BEHALF OF MINOR
CHILD, M.C.,**

OAL Docket No.: EDS 03819-26
Agency Docket No.: 2026-40569

Petitioner,

v.

UNION CITY BOARD OF EDUCATION,

Respondent.

Mayra A. Cano, Esq., for petitioners

Elise DiNardo, Esq., for respondent

BEFORE **WILLIAM COURTNEY, ALJ:**

STATEMENT OF THE CASE

The Petitioners D.R. and E.C. are the parents of M.C., who is classified as eligible for special education and related services under the category of Emotional Regulation Impairment, seek emergent relief from the court ordering the Union City Board of Education (“UCBOE”) to immediately authorize and fund Independent Educational

Evaluations (“IEE” or “IEEs”) in all areas of suspected disability including psychological; psychiatric; speech-language; educational, occupational therapy; neurological and comprehensive Functional Behavioral Assessment. Petitioners also seek increased home instruction while the IEEs are being completed.

PROCEDURAL HISTORY

On or about March 4, 2026, the Petitioners filed a request for emergent relief request with due-process petition seeking IEEs, along with increased home instruction for M.C. On March 5, 2026, the request for emergent relief was transmitted to the Office of Administrative Law. The due process petition remained at the Office of Special Education until which time the 30-day resolution period expires, on or about April 4, 2026.

On March 19, 2026, the UCBOE filed a letter brief consenting to the IEEs. The emergent relief application was argued on the record on March 20, 2026.

FACTUAL DISCUSSION

M.C. is a bright fifth-grade student with a history of aggression, defiance, and oppositional behavior. On September 19, 2025, while a fifth-grade student at Colin Powell Elementary School, M.C.’s emotional regulation impairment led to his placement on an out-of-school suspension and thereafter homebound instruction. On September 29, 2025, a manifestation determination was held wherein it was determined that the incident which occurred on September 18, 2025, was a manifestation of M.C.’s classification. On October 23, 2025, the UCBOE child study team and M.C.’s parents held a reevaluation individualized education plan (“IEP”) meeting wherein it was determined that an out of district placement was appropriate. On November 3, 2025, a home instruction IEP meeting was convened as the 45-day timeline following the September 18th incident was approaching. On January 21, 2026, a reevaluation IEP meeting was held with M.C.’s parents wherein it was determined that the homebound instruction would continue

pending an out-of-district placement. By letter dated February 23, 2026, counsel for Petitioners requested Independent Educational Evaluations.

The Parties do not dispute that evaluations of M.C. were conducted in 2022. Respondent argues that petitioners refused to provide consent for assessments to occur at the reevaluation IEP meetings held on April 3, 2025, October 23, 2025 and January 21, 2026. Petitioners argue that the UCBOE failed to conduct assessments in violation of law.

It appeared to the court on March 20, 2026, that the parties had reached an agreement on the issues in dispute but by the following day the parties could not agree as to the terms of settlement. After several additional telephone conferences over the next several days it was determined on March 27, 2026, that the parties could not reach an agreement and the court needed to rule on the motion for emergent relief.

After my review of the submissions of the parties and after consideration of the arguments of counsel, I **FIND** that the District has made repeated attempts to obtain evaluations of M.C. since April of 2025 and that petitioners have not been cooperative in providing the necessary authorizations and releases. On April 3, 2025 the district held a reevaluation meeting to discuss M.C.'s IEP. At the meeting the parents indicated that M.C. was becoming more defiant and uncooperative at home but also requested that no evaluations be conducted at that time. The parents also requested ending counseling sessions for M.C. because that did not feel comfortable with the counselor anymore (See April 2025 Eligibility Conference Report, Petitioner's Brief ("PB") at Exhibit C). After the stabbing incident at school the following September, a Manifestation Determination Report ("MDR") dated 9/29/25 (See PB at Exhibit B) was issued indicating that M.C.'s conduct was caused by and had a direct and substantial relationship to his disability. The MDR also stated that the conduct in question was not a direct result of the School's failure to implement the IEP and went on to state:

[B]ased on [M.C.'s] extensive history of behavioral incidents requiring psychiatric admission and clearance, it was collaboratively decided that his current academic setting is not sufficient to meet his behavioral and emotional needs, even with the implementation of his behavioral plan and the additional accommodations outlined in his IEP. Therefore, the Child Study Team is recommending that he be placed on virtual home instruction pending an out-of-district placement. [Id.]

On October 23, 2025, a reevaluation planning meeting was held with M.C.'s parents in attendance. The purpose of the meeting was to obtain parental consent for evaluations to be conducted and to obtain a release for medical records so that an appropriate out-of-district placement could be determined. Parents refused to sign documents because they did not agree with the wording contained in the Evaluation Plan that described M.C.'s ongoing difficulties with emotional regulation, behavioral incidents and prior contact with crisis intervention (See PB at Exhibit D). The parents apparently believed that this description of their son's behavior would limit his choices of out-of-district placements. I FIND that this concern was a major factor in the parents repeated refusals to authorize evaluations and cooperate in out-of-district placement of M.C.

On November 3, 2025, an IEP meeting was convened in an attempt to once again obtain the parent's consent for evaluations and releases to obtain medical information to provide evaluators and locate an appropriate out of district placement. Once again, however, petitioners refused to consent to evaluations and refused to provide medical information to assist in the location of an appropriate out-of-district placement. (See PB at Exhibit E).

According to the district, on December 16th and December 18th, 2025, M.C. 's case manager contacted petitioners via email to schedule and IEP meeting to ensure home instruction services continued in compliance. Parents, however, declined to meet and indicated that they were not available until late January. This is not contested by petitioners, and an IEP meeting was eventually scheduled and conducted on January 21,

2026. Once again, however, parents refused to provide consent for evaluations or to sign needed forms to release student records to potential out-of-district placements.

In Affidavits submitted by both parents they assert that no evaluations were conducted in 2025 (See Respondents' Exhibits 35 and 36) but they fail to address their request, specifically documented in the April 3, 2025, IEP Re-Evaluation that, "No evaluations were conducted at this time as per parental request." (See PB at Exhibit C). They also both assert that they have made repeated requests for evaluations but do not address the repeated requests by the district for consent to conduct evaluations for M.C. which are well documented above.

I **FIND** that the district has made repeated attempts to obtain petitioners' consent to provide evaluations for M.C. and that petitioners have refused to provide that consent. I also **FIND** that petitioners have consented to an out-of-district placement for M.C. and that current evaluations are necessary to provide M.C. with an appropriate out-of-district placement.

LEGAL DISCUSSION

The IDEA is designed to assure that disabled children may access a free appropriate public education ("FAPE") that is tailored to their specific needs. 20 U.S.C. §1400(c). Under the state regulations implementing the IDEA, N.J.A.C. 6A:14-1.1 to 10.2, a school district of residence is responsible for "the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a [FAPE] to students with disabilities." N.J.A.C. 6A:14-1.3. In determining whether a student is eligible for special education services, a school district must conduct an initial evaluation, which "shall consist of a multi-disciplinary assessment in all areas of suspected disability," and if the child is deemed eligible, a school district must conduct "a multi-disciplinary reevaluation....to determine whether the student continues to be a student with a disability" at least every three years. N.J.A.C. 6A:14-3.4(f); N.J.A.C. 6A:14-3.8(a).

Pursuant to N.J.A.C. 6A:14-2.5(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 public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

The school district shall pay for the IEE “unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing”. N.J.A.C. 6A:14-2.5(c) and (c)(1). N.J.A.C. 6A:14-2.5(c)(1)(ii) specifies that “[n]ot later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.” Thus, “[t]he school district shall not delay either providing the independent evaluation or initiating a due process hearing to defend the school district’s evaluation. N.J.A.C. 6A:14-2.5(c)(5).

The district argues that without the parents’ consent, assessments could not be conducted. N.J.A.C. 6A:14-2.3. The district contends that reasonable measures were taken to acquire the parents’ consent on April 3, 2025; October 23, 2025, and January 21, 2026. Petitioners contend that the district failed to conduct initial evaluations following the expiration of the three (3) year period in 2025. Moreover, the Petitioners contend that the district failed to act when noticed by their counsel on February 23, 2026, of the request to conduct independent evaluations. The emergent relief/due process complaint was filed by Petitioners on March 5, 2026, approximately ten (10) days following the request by Petitioners’ counsel.

The district has not disputed and does not now dispute that evaluations are necessary in order of M.C. to be placed in an appropriate out-of-district program. The district consented to evaluations in all of the areas requested by petitioners at public expense, but petitioners do not trust that the district will follow through on the evaluations.

I agree with the district that these evaluations are necessary to find an appropriate out-of-district placement for M.C., and I **FIND** that the district has, in good faith, been attempting to conduct these evaluations since the Manifestation Determination in September of 2025. I **FIND** that the petitioners have not cooperated with the district in obtaining the evaluations but instead have repeatedly refused to provide their consent for M.C. to be evaluated, which has resulted in a delay in M.C.'s placement in an appropriate out-of-district program.

To avoid any further delay in obtaining M.C.'s needed evaluations I will order them pursuant to the authority granted to me by 34 U.S.C. 300.502(d) and N.J.A.C. 1:6A-14.4 Accordingly, for the reasons set forth above,

IT IS on this on this 30th day of March 2026 **ORDERED:**

1. Respondent, Shall publicly fund the following IEEs:
 - a. Mercedes A. Paine, child psychiatrist – fee not to exceed \$1500.00.
 - b. Vicki Reichardt, Speech Therapist – fee not to exceed \$800.00.
 - c. Rose Santos-Martinez, Occupational Therapist – fee not to exceed \$800.00.
 - d. Dr. Kavita Singha, MD – neurologist. Dr. Singha is an independent contractor for the district. Petitioners will cooperate with M.C.'s case manager to provide all necessary medical documentation/forms for Dr. Singha to conduct the evaluation.
 - e. Petitioners shall select paraprofessional(s) who meet the district's criteria for Independent Educational Evaluations (IEEs) to perform the

psychological evaluation and educational evaluation from the New Jersey Department of Education clinics/providers list. The district shall provide a written copy of said criteria and mandated requirements – including applicable fee caps – to the Petitioner within three (3) days.

2. Petitioners shall supply all medical information in their possession and execute all medical releases requested by the evaluators.
3. M.C. shall remain on homebound instruction until the IEEs are completed and an out-of-district placement is selected.
4. The district is hereby directed to release all of M.C.'s records to the paraprofessionals performing the IEEs, as well as all prospective out-of-district placements.
5. A Comprehensive Functional Behavioral Assessment will occur following M.C.'s enrollment and attendance in an out-of-district placement. The Parties recognize that M.C. must be attending the out-of-district placement for a reasonable period of time for observations to take place to ensure accuracy when conducting the Functional Behavioral Assessment.
6. Petitioners' request for the payment of their counsel fees by the district is **MOOT** as this Court does not have the authority to order same.
7. The Petitioner's application for emergent relief is resolved by the entry order and all requested relief not specifically addressed herein is dismissed without prejudice.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order 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. Since the parents requested the due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).



March 30, 2026 _____

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

db

List of Moving Papers

For Petitioner:

March 18, 2026 Brief in Support of Emergent Relief and Exhibits P-1- 41

For Respondent:

March 19, 2026 Brief Consenting to Emergent Relief and Exhibits A-E