

LITIGATION GUIDE

PARTIES REPRESENTING THEMSELVES IN NJ SPECIAL EDUCATION DUE PROCESS HEARINGS



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NOTICE — PLEASE READ

Pursuant to Paragraph 39(b) of the [Amended Consent Order](#) in *C.P. v. New Jersey Dep't of Educ.*, 19-cv-12807-ESK-MJS (D.N.J.), the New Jersey Department of Education (NJDOE) prepared a short *pro se* litigation guide. For *pro se* parents seeking further support, NJDOE agreed to link to this longer guide produced by Class Counsel. Class Counsel thank Rebecca Spar, Esquire, for her extensive *pro bono* work related to preparation of this guide.

This guide provides general information about the special education due process system in New Jersey. It does not provide legal advice and does not address the facts of any individual case. It also cannot and does not anticipate every possible scenario that might arise during a due process proceeding.

The guide reflects the law, regulations, and procedures in effect as of September 18, 2026. The law, regulations and procedures can change with time, however, so before you rely on any deadline or procedure described here, you should confirm with the New Jersey Office of Administrative Law (OAL) or an attorney that it is still current.

Class Counsel represent the certified class of families with pending due process petitions in the OAL, as described in the Court's Order appointing Class Counsel. Class Counsel's mandate does not extend beyond what the Court ordered, and Class Counsel do not represent you individually – indeed, they do not know your child, your school district, or the facts of your case. Thus, Class Counsel are not providing attorney-client services by virtue of preparing this guide; nor does reading this guide create an attorney-client relationship with Class Counsel for any individual claim, including any individual due process case that you may file or have filed.

Because a due process hearing can affect your child's legal rights, you are encouraged to consult your own attorney or a qualified advocate before proceeding, particularly if your case involves disputed facts or complex legal issues.

We may update this guide in the future if we learn of significant changes to law or practice. To provide feedback for potential future updates, please email your suggestions to info@nj45dayclassaction.com.

I. INTRODUCTION

A. Purpose

This guide is for parents and guardians who do not have a lawyer. It will help you take part in due process hearings, expedited hearings, and emergent relief applications. It will also help you with mediation and settlement conferences. At the end of this guide, there is a [Glossary](#) (p. 131) defining commonly-used terms.

B. Sources For Free/Low Cost Legal Services

The New Jersey Department of Education has a list of [free and low-cost lawyers and advocates](#).

C. Representation By A Non-Lawyer¹

If you do not have a lawyer, someone else can help you at the hearing. This person should know about the problems that children with disabilities face. Their job is to help you tell your side. They can share evidence, speak for you, and make arguments. They can also ask questions to witnesses and answer questions from the other side.

But there are some things this person cannot do. They cannot sign a consent order. They cannot agree to facts or sign any legal papers for you. You cannot pay this person for the time they spend at the hearing. But you can pay them for time they spend helping you outside of the hearing. What you tell this person is private. In special education cases, the law protects your talks with them. It also protects their notes and work to help your case.²

The non-lawyer must fill out a form. It is called a [Notice of Appearance/Application form](#). On this form, they must explain their knowledge about students with disabilities. They should also share their schooling, work history, or other skills that help them do this job. When the form is done, send it to the Administrative Law Judge (ALJ). This is the judge assigned to your case. Send a copy to the school district's lawyer too. If you do not know your ALJ's name, send the form to the of the New Jersey Office of Administrative Law (OAL) instead. The ALJ must get the form at least ten days before the hearing starts.

D. Requesting An Interpreter³

If you need one, the ALJ can order the Department of Education to give you an interpreter at the hearing. The ALJ can also order a written translation of the hearing, or both. You do not have to pay for this.⁴

¹ N.J.A.C. 1:1-5.4(b); N.J.A.C. 1:6A-5.1(b); 20 U.S.C. § 1415(h), 34 C.F.R. 300.512(a) and [Opinion 57](#), Non-lawyer Special Education Advocates and the Unauthorized Practice of Law-Superseding Opinion 56, Committee on the Unauthorized Practice of Law (April 9, 2021).

² [Woods v. New Jersey Dep't of Educ.](#), 858 F. Supp. 51 (D.N.J. 1993).

³ N.J.A.C. 1:6A-14.3

⁴ Id.

E. Rights In Due Process Hearings, Expedited Hearings And Emergent Relief Proceedings

Individuals with Disabilities Education Act (IDEA) is a federal law. It gives parents and students many rights. State rules can add more protections. But state rules cannot give you less than the federal law requires.⁵ When a state rule and a federal rule do not agree, the federal rule wins.⁶

Here are some of the rights parents have:

- The right to look at all your child's school records, no matter where they are kept.⁷
- The right to written notice when the district wants to start or change how your child is identified, tested, or placed in school. This also covers changes to the free appropriate public education (called FAPE) your child is required to receive.⁸
- The right to a hearing on any matter that requires that written notice.⁹
- The right to be told about free or low-cost legal help. This includes help from people who are not lawyers, called advocates.
- The right to be told that you may get your lawyer's fees paid if you win your case.¹⁰
- The right to keep your child in their current school placement while you wait for mediation or a hearing to finish. This starts once you file. It is called "stay-put."¹¹
- The right to decide if the hearing is open to the public.¹²
- The right to have your child at the hearing.¹³
- The right to bring a lawyer to the hearing. Or you can bring a non-lawyer who has special knowledge or training about children with disabilities.¹⁴
- The right to have an interpreter at the hearing at no cost to you.¹⁵

⁵ *Geis v Bd. Of Educ. Of Parsippany-Troy Hills*, 774 F.2d 575 (3d Cir. 1985).

⁶ N.J.A.C. 1:6A-1.1(b).

⁷ 34 C.F.R. 300.501.

⁸ 34 C.F.R. 300.503.

⁹ 34 C.F.R. 300.507.

¹⁰ 34 C.F.R. 300.517.

¹¹ 20 U.S.C. § 1415(j).

¹² 34 C.F.R. 300.512(c)(2).

¹³ 34 C.F.R. 300.512(c)(1).

¹⁴ 34 C.F.R. 300.512(a)(1); N.J.A.C. 1:6A-5.1(b).

¹⁵ N.J.A.C. 1:6A-14.3.

- The right to a fair judge (Administrative Law Judge or ALJ) who knows the federal and state special education laws and rules.¹⁶
- The right to make the school district prove its case. The district carries this burden, not you.¹⁷
- The right to have hearings and arguments held at a time and place that works for you.¹⁸
- The right to show evidence, call witnesses, and question the other side's witnesses.¹⁹
- The right to use an outside evaluation of your child as evidence. The evaluator does not have to come to the hearing.²⁰

F. Appearing *Pro Se* Without An Attorney Or Non-Lawyer Advocate

In 2024, parents appeared without attorneys in 59 of the decisions posted on DOE's website. That is 52% of all decisions.²¹

Rule 3.7 of New Jersey's Code of Judicial Conduct states:

A judge shall accord to every person who is legally interested in a proceeding, or to that person's lawyer, the right to be heard according to law or court rule.

Comment: A judge may make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard.

In plain words: the judge must let you be heard. The judge can also make changes to help you take part when you do not have a lawyer.

When you file a petition, you must include enough facts to show that you have a claim. If the facts are taken as true, they must show you have a real case. But the courts know that people who represent themselves are not lawyers. In *Haines v. Kerner*,²² the Supreme Court said that courts must apply a more forgiving standard to *pro se* complaints. Courts should not treat *pro se* papers as if lawyers drafted them. In plain words: the court should not hold your paperwork to the same strict rules it uses for lawyers. In *Estelle v. Gamble*,²³ the Supreme Court said that even a handwritten *pro se* paper should be read in a more lenient way.

In *Rubin v. Rubin*,²⁴ a man who represented himself came to court for a motion filed by the other side. He thought he could say why he disagreed orally. But the judge said the rules required a

¹⁶ 20 U.S.C. § 1415(f)(3)(A).

¹⁷ N.J.S.A. 18A:46-1.1.

¹⁸ 34 C.F.R. § 500.515(d).

¹⁹ 34 C.F.R. § 300.512(a)(2).

²⁰ 34 C.F.R. § 300.502(c)(2).

²¹ [New Jersey Lawyer](#), page 49, October 2025.

²² 404 U.S. 519, 520-21 (1972).

²³ 429 U.S. 97, 106-107 (1976).

²⁴ 188 N.J. Super. 155, 159 (App. Div. 1982).

written answer, and the judge ruled for the other side. The higher court said the judge must protect the rights of everyone in court. In this case, the judge should have kept in mind that the man was representing himself.

Here are some other ways a judge can help:

- Explain legal terms in everyday words.
- Ask fair, neutral questions to get or clear up information.
- Let people tell their story in their own words.
- Point people to any help or resources that are available.
- Tell people what will happen next in the case.

Even when a *pro se* party loses, some things can ensure the process was fair. Here are those things:

- **Taking part** - Did the party get a chance to take part? For example, were they able to share their side of the case?
- **Fairness** - Did the judge treat both sides the same? Did the judge base the decision on facts and legal rules, not on the judge's own feelings or bias?
- **Trust** - Did the judge care about the case and the people in it? Did the judge seem to care about their situation? Was the judge trying to do what was right? Was everything done out in the open?
- **Respect** - Was the party treated like a person and a valued member of society?²⁵

Anyone can ask for a reasonable accommodation because of a disability. This is true whether you have a lawyer or not. You can also ask for an accommodation to prevent discrimination.

²⁵ [“Ensuring the Right to be Heard: Guidance for Trial Judges in Cases Involving Self-Represented Litigants,”](#) (BIAALS November 2019).

II. LEGAL ISSUES IN DUE PROCESS HEARINGS

A. IDEA's Stay-Put Right

IDEA says:

during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child...²⁶

This means something important. Once you file for mediation or a due process hearing, the school district cannot change your child's program, placement, or classification.

There are two times when the stay-put rule does not apply:

- The parent and the school district agree on a different placement.²⁷
- The student just moved to New Jersey, or just changed school districts inside New Jersey. In that case, the student gets an IEP and comparable placement either the same or much like the one before.²⁸

There are three times when a student's stay-put can be changed for up to 45 calendar days. Two later sections explain these three exceptions in detail. See "[Expedited Petition for Due Process](#)" (p. 26); "[Opposing Emergent Relief When A District Claims The Student Is Dangerous Or Substantially Likely To Injure Others](#)" (p. 48).

Note: A parent has the right to place their child in a private school and to ask for reimbursement from the school district. The parent must follow certain steps to do this.²⁹ That does not violate the stay-put rule.

B. When The District Must Provide Notice Of, And Can Make, Changes

The school district must give you written notice before it can change your child's IEP, placement, and classification. They must also give you written notice of the date your child will graduate.³⁰ Some districts use the written notice part of your child's IEP to give written notice. If the district hands you a draft IEP at the end of the meeting, ask them to put in writing that it is not the final IEP. If it is a draft, the district cannot make the changes until 15 days after you get the final IEP. Other districts give written notice in a letter.

²⁶ 20 U.S.C. § 1415(j); 34 C.F.R. 300.518; N.J.A.C. 6A:14-2.7(u); "[Revised Procedures for Determining a Student's Status During a Special Education Due Process Hearing](#)."

²⁷ *Id.*

²⁸ 20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. 300.323 (e) & (f); N.J.A.C. 6A:14-4.1(g).

²⁹ 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; N.J.A.C. 6A:14-4.11.

³⁰ 20 U.S.C. § 1415(b)(3); 34 C.F.R. 300.503; N.J.A.C. 6A:14-2.3(f); N.J.A.C. 6A:14-4.11.

The district can make a change 15 days after you get the written notice. It can make the change sooner than 15 days only if you give written consent.³¹ To stop the change from going into effect, you must file for mediation, due process, or an expedited hearing.

For example, on April 15, 2026, the district says in writing it will stop speech services in 15 days. If you want your child to keep getting speech services while your case is decided, you MUST file by April 29, 2026.³²

Sometimes the district sends written notice of a change long before it will happen. The school district might tell you on April 15, 2026, that it will change your child's placement in September 2026. You do not have to file for mediation or due process within 15 days of getting that notice. But you MUST file before the change actually takes effect.³³ The stay-put stays in place until a decision on the due process petition is made and any appeals are finished.³⁴

C. Time Limit (Statute Of Limitations) For Filing For Due Process Or Mediation

Under IDEA, you have two years to file a claim.³⁵ The two years start on the day you knew, or should have known (KOSHK), about the actions your claim is about. For example, you file for due process on June 2, 2023. You can raise claims about actions going back to at least June 2, 2021.

There are two times when the two-year limit does not apply.³⁶

- The school district told the parent that the problem was fixed when it was not.

Example: The district said it was giving a certain service, but it was not.

- The district did not give the parent information that special education law says it must give.

Examples: Not giving prior written notice, not giving the parent the Parent's Rights in Special Education (PRISE) at the right times, and not giving copies of evaluations.

These two exceptions are very narrow. To count, the district must have lied on purpose or fooled the parent on purpose. A simple mistake or poor work is not enough. For both exceptions, the parent must show that the lie, or the missing information, is the reason they did not ask for a hearing in time.³⁷

³¹ N.J.A.C. 6A:14-2.3(h).

³² Filing for an Independent Educational Evaluation does not result in stay-put rights. "[Letter to Anonymous](#)" (OSEP June 28, 2018).

³³ [Drinker v. Colonial School District](#), 78 F.3d 859, 867-68 (3d Cir. 1996) (change must be operational or functioning to change stay-put).

³⁴ [M.R. v. Ridley](#), 744 F.3d 112 (3d Cir. 2014).

³⁵ 20 U.S.C. § 1415(b)(6); 20 U.S.C. 1415(f)(3)(C) and (D); 34 C.F.R. § 300.507(a)(2); N.J.A.C. 6A:14-2.7(a)(1).

³⁶ 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f); N.J.A.C. 6A:14-2.7(a)(1)

³⁷ [D.K. v. Abington Sch. Dist.](#), 696 F.3d 233, 245-247 (3d Cir. 2012).

1. The “Knew Or Should Have Known” (KOSHK) Date

The KOSHK date is the day you actually found out about the problem, or it is the day a careful parent should have found out, whichever comes first. The law puts it this way: the day the parent discovered, or a reasonably diligent parent would have discovered, the “action that forms the basis of the complaint.” In plain words, it is the day you found out about the problem, or the day a careful parent would have found out – whichever comes first.

2. “Knew Or Should Have Known” Example: When You Can Go Back Further Than Two Years For Relief

One claim in the parent’s due process petition is that their child has a specific learning disability that the district never dealt with. The parent filed the petition on June 2, 2023. That means they can raise claims going back to at least June 2, 2021. But the parent thinks their child needs more than two years of relief. To go back further, the parent must show they filed within two years of their KOSHK date.

The parent says their KOSHK date is April 1, 2023. That is the day they got the results of a private evaluation and first learned their child had a specific learning disability. If the ALJ agrees that April 1, 2023 is the parent’s KOSHK date, then the parent’s June 2, 2023 petition is timely. In that example, the parent may go back for the full length of the violation, even before June 2, 2021.³⁸

BE AWARE: Trying to go back more than two years will make your case harder. Be aware that the district will search its records for evidence that your KOSHK date was earlier than you claim. It will likely file a motion for summary decision. This asks the ALJ to block any claims that go back more than two years. You will need to gather evidence that supports your KOSHK date, or the exceptions you say apply. Even if the ALJ denies the district’s motion, there will likely be a small, separate hearing just to decide your KOSHK date.³⁹

D. Independent Educational Evaluations

A parent who disagrees with a district’s evaluation may ask the school district to pay for an Independent Educational Evaluation (IEE).⁴⁰ The **purpose of an IEE** is two-fold. It allows the meaningful participation of parents in the development of their child’s IEP and placement.⁴¹ Its purpose is also to ensure that parents “are not left to challenge the government...without an expert with the firepower to match the opposition.”⁴²

³⁸ “[Letter to Zirkel](#)” (OSEP, Dec. 9, 2015) (you can go back for the entire period of the violation if you file within two years of the KOSHK date).

³⁹ For a decision that talks about how to find a parent’s KOSHK date, see [McLean v. Eastampton Sch. Dist.](#), No. 19-11009, 2020 WL 728816, 2020 U.S. Dist. LEXIS 25345 (D.N.J. Feb. 11, 2020).

⁴⁰ 34 C.F.R. § 300.502; N.J.A.C. 6A:14-2.5(c); N.J.A.C. 6A:14-2.7(b); N.J.A.C. 1:6A-14.4.

⁴¹ [Honig v. Doe](#), 484 U.S. 305, 311 (1988).

⁴² [Schaffer v. Weast](#), 546 U.S. 49, 60-61 (2003).

DOE has put together a document titled “[Frequently Asked Questions—Independent Educational Evaluation \(OSE, Oct. 1, 2013\)](#)” (hereinafter referred to as “FAQs on IEEs”). In this document, Office of Special Education (OSE) responds to numerous questions about IEEs.

The school district may ask a parent to explain why they want an IEE. It cannot, however, require the parent to respond. Nor can it delay or refuse to provide the IEE on the ground that a parent did not say why they disagreed with the district’s evaluation.⁴³ An IEE cannot be conducted by someone who is employed by the school district responsible for the child’s education. This includes any individual or agency that has a contract with the student’s school district.⁴⁴

New Jersey asks a parent to list in their IEE request the specific assessments they want. An assessment is a component of an evaluation. A school district’s evaluation often consists of psychological, social, and educational assessments and may include other relevant assessments. A parent may request assessments not previously done by the district. The district does not have the right to conduct any new assessment first.⁴⁵ A parent can include the names of individuals they would like to conduct each assessment and the cost.

A parent may obtain their IEE “from another public district board of education, educational services commission, jointure commission,⁴⁶ 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.”⁴⁷

A parent may pay for an IEE and, after receiving it, ask the district to reimburse them for the cost.⁴⁸ A parent is entitled to request one IEE each time the school district evaluates the student. Tests that all students (with and without disabilities) take are not evaluations.⁴⁹

Upon receiving a request for an IEE, a school district has two options. It can agree to fund the IEE requested by the parent. If it does not want to fund the IEE, the district must file for due process within 20 calendar days of receiving the parent’s IEE request.⁵⁰ The burden of proof and production is on the district to prove at the hearing that its evaluation is appropriate.⁵¹

⁴³ 34 C.F.R. § 300.502(b)(4).

⁴⁴ 34 C.F.R. § 300.502(a)(3)(i).

⁴⁵ See PRISE at p.9; [Letter to Carroll \(OSEP Oct. 22, 2026\)](#).

⁴⁶ A jointure commission is a regional cooperative public school district created to provide shared educational and support services – such as special education programs and student transportation – across multiple member school districts.

⁴⁷ N.J.A.C. 6A:14-2.5(c)2.

⁴⁸ [Warren G. v. Cumberland County School District](#), 190 F.3d 80, 87 (1999).

⁴⁹ N.J.A.C. 6A:14-3.4(d).

⁵⁰ N.J.A.C. 6A:14-2.5(c).

⁵¹ N.J.S.A. 18A:46-1.1.

Any independent evaluation provided to the district by a parent may be introduced at a hearing. The evaluator is not required to testify.⁵² It is preferable that they do testify, however, because the ALJ will likely give greater weight to their testimony.

Upon receiving an IEE request, the school district must send the parent the district's criteria for an IEE and a list of all qualified evaluators in the area. A district can require a parent to choose an evaluator from its list only if (1) the child's needs can be appropriately evaluated by someone on the list, and (2) the list includes all qualified examiners in the geographic area.⁵³

If the district gives you a list of evaluators, you should contact as many as you can. Ask them some of the following questions. By doing this, you may find an evaluator you would like to use and who is agreeable to the district. If not, you may be able to use information you learn to oppose the district's due process petition or to defeat their summary decision motion.

Questions you might ask include:

- Training or experience the evaluator has with respect to your child's disability and educational issues.
- If the evaluator has ever been employed by the district or if they are currently working for an agency that has a contract with the district.
- Does the evaluator know what the criteria for eligibility under IDEA are? What are the required criteria for the disabilities your child may have. Do they know what factors must be considered in determining what the child needs for an appropriate education? Or whether the child is being educated in the least restrictive environment?
- What is the district paying for the assessment and what is included. If you believe additional components are required, ask whether those can be included and, if so, the cost.
- Names of testing instruments and questionnaires the evaluator would use with your child? Are there other testing instruments the evaluator is qualified to use?
- How will they collect information from teachers, related service providers, parents?
- What student records do they typically review? Will they review other records if asked?
- Will they have any contact with district personnel. If so, what will it consist of?
- Do they interview the parent? Will they review any documents provided by the parent? Will they meet with parent at the conclusion of the assessment to review findings? Will they attend the IEP meeting to discuss their results? Is a meeting with the parent or attending an IEP meeting included in the cost? If not, what would the cost be?
- Will they observe your child in their school program, and what is the evaluator's estimate of the length of observation needed and in what settings. Will this be an additional fee and, if so, how much? DOE requires school districts to allow independent evaluators to observe the child in their school setting.⁵⁴ Disabilities such as specific learning disability and

⁵² 34 C.F.R. § 300.502(c)(2).

⁵³ [FAQs on IEEs](#), No. 9.

⁵⁴ N.J.A.C. 6A:14-2.5(c)6.

communication impairment require an observation outside of the testing environment. In addition, without an observation, the likelihood is that the ALJ will give less weight to their findings and testimony in a hearing.

- Will their report include recommendations about how to meet your child's educational needs? Or what should be included in your child's IEP? If not, why not?
- When are they available to conduct the assessment. Will it require more than one session? How long will each testing session be? How long will it take to produce their report?
- Will the evaluator make accommodations for the student, including conducting the assessment in more than one session or offering more frequent breaks.
- What is the estimated total cost of the assessment: Include additional costs for observation and any additional testing you believe is required.
- Are they willing to wait for payment until the IEE is completed and provided to you and the district.
- Will they share their report with you at the same time it is shared with the district? If not, why not?
- Have they ever testified in an administrative hearing and will they testify if asked.

1. Standard In Due Process Concerning An IEE

Federal and state regulations give school districts two options: either fund a parent's request for an IEE or file for due process within a reasonable time and prove that its evaluation is appropriate. For two examples of "The Problem, The Facts and The Solution" the parent might use in a due process proceeding about an IEE, see Examples 4 and 5 at "[Examples Of Problems, Facts, And Solutions](#)" (pp. 21-22).

State regulations require the district to file for due process within 20 calendar days of the parent's request for an IEE. DOE has consistently interpreted its state regulation to require the district to file for due process within 20 calendar days even when the district agrees to provide an IEE but will not agree to the provider selected by the parent or that provider's cost. New Jersey set its position out most recently in its July 1, 2026 PRISE, which says on page 9 that:

If you do not agree to select a provider from those suggested by the school district the district must consider your request for a different provider. Also, the school district must consider your request for an evaluator that costs more than the school district usually pays for the same evaluation. If the school district disagrees with your request, it must request a due process hearing to deny your request.

Such consideration and the district's decision to grant or request a due process hearing to deny the request must occur within 20 days of receipt of the request for an independent evaluation.

There have been many ALJ decisions that require a school district to provide the IEE requested by the parent (including the evaluators and their fees) if the district did not file for due process within 20 calendar days after it received a parent's IEE request.⁵⁵

There have been some recent decisions, however, that have held that although the district loses its right to claim its evaluation was appropriate by not filing within 20 calendar days, it can still argue that the cost of the proposed IEE was “unreasonably excessive” or the evaluator did not meet other district criteria.⁵⁶

Bottom-line: Remember – the district has the burden of proof and production in a due process hearing about an IEE. This is true whether the district or the parent filed for due process. If the district filed for due process within 20 calendar days, it must prove its evaluation was appropriate. If the district does not file for due process at all or does not file within 20 calendar days, you can argue that the district lost the right to claim its evaluation was appropriate so the district must pay for the assessments you requested, as well as the specific evaluators and their fees. The district may still be allowed to argue, though, that the cost caps and other criteria must be met.

2. Challenges A Parent May Raise In An IEE Due Process Proceeding

The federal and state regulations about district evaluations are at 34 C.F.R. §§ 300.122, 300.15, 300.301 to 310; N.J.A.C. 6A:14-2.5, 14-3.4 to 14-3.6 and 14-3.8. The following are challenges that, depending on the facts in your case and whether the district filed due process within 20 calendar days, you may use in a due process concerning your IEE request. The first four listed Challenges concern the appropriateness of the district's evaluation. The second four listed Challenges concern the district's cost caps and other criteria.

a. Challenge The District Evaluator's Qualifications

The district must prove that the people who tested the child were legally allowed to do so. Most individuals have the required licenses or certifications. They may, however, lack experience with your child's disabling condition. Or they specialize in a different age group. For example, the psychiatrist the district is using may specialize in adult psychiatry but your child is eight years old.

⁵⁵ [*C.B. o/b/o C.B. v. Hopewell Twp. Bd. Of Educ.*](#), OAL DKT NO EDS 10497-18 & 11689-18 (December 5, 2018), *aff'd*, [*Hopewell Township Bd. Of Educ. v. C.B.*](#), 2020 U.S. Dist. LEXIS 136604 (D.N.J. July 31, 2020); [*K.K. v. Parsippany-Troy Hills Township Board of Education*](#), No. 19-19937 (D.N.J. Aug. 30, 2021) (same); [*Edison Township Board of Education v. E.L and M.L. o/b/o E.L.*](#), OAL DKT NO EDS 08095-18 (2018).

⁵⁶ See [*Gloucester Township Board of Education v. E.N. and M.N. on behalf of A.N.*](#), No. 22-06568 (D.N.J. Oct. 30, 2025) (school district concedes it must pay for an IEE if it does not file due process within 20 calendar days but may still claim that the IEE proposed by the parent does not meet district criteria such as cost); [*C.P. o/b/o F.P. v. Clifton Board of Education*](#), No. 19-8469, 2020 WL 4530031 (D.N.J. Aug. 6, 2020) (same); [*M.D. v. Vineland City Board of Education*](#), No. 19-12134, 2024 WL 195371 (D.N.J. Jan. 17, 2024) (same); [*Mantua Township Board of Education v. E.K. ex rel W.W.*](#), No. 22-07496, 2025 WL 2753580 (D.N.J. Sept. 26, 2025) (same).

b. Challenge The Scope Of The District Evaluation

The child must be “assessed in all areas related to the suspected disability.”⁵⁷ The evaluation must also be “sufficiently comprehensive to identify all of the child’s special education and related service needs.”⁵⁸

c. Challenge What The Evaluator Did Not Do

The parent can also dispute the appropriateness of the evaluation and raise a factual dispute by showing what the district did not do in the evaluation.

- **Unexamined Areas:** Not testing a student in all areas of suspected need may make an evaluation legally inappropriate.⁵⁹ **Examples:** The student’s known struggles with motor skills, social skills, sensory issues, attention, or behavior were ignored in the evaluation. Or the student has significant issues with attendance or school refusal that were not considered in the reports.
- **Missing Assessments:** Some disabilities require specific assessments. N.J.A.C. 6A:14-3.5(c) lists each possible disabling condition in New Jersey and the required assessments for finding that disabling condition. If, after conducting an initial evaluation, the district found your child did not qualify for a particular disabling condition, check the regulation to see whether required assessments were conducted. If you requested assessments not previously conducted by the district, explain why the additional assessments are important and that the failure to include them shows the district’s evaluation was not appropriate.

d. Critique The Testing Methods And Conditions

- **Wrong Tools:** State if the tests used were outdated, or not built for the child’s specific age or suspected condition. The current version of tests and the age groups they are for can be found on the internet or from the test publisher.
- **Tools not sufficiently comprehensive:** 34 C.F.R. § 300.532(b) requires that the school district use “[t]ests and other evaluation materials...tailored to assess specific areas of educational need.” In [*M.Z. v. Bethlehem Area School District*](#),⁶⁰ the Court found that the tools and strategies used by evaluators were not enough to provide the information needed to determine the student’s educational needs. Among other things, the evaluator failed to

⁵⁷ 34 C.F.R. § 300.304(c)(4).

⁵⁸ 34 C.F.R. § 300.304 (c)(6); [*Warren G. v. Cumberland County School District*](#), 190 F.3d 80, 87 (3d Cir. 1999) (primary deficiency in district evaluation was “their failure to uncover the specific areas of [the students’] learning disabilities”; [*Rose Tree Media School District v. M.J. o/b/o M.J.*](#), 2019 U.S. Dist. LEXIS 35630 (E.D. Pa. March 6, 2019) (although the district did not dispute that it suspected Other Health Impaired (OHI) was an area of disability, its evaluation did not set out any assessment or discussion related to OHI and the district also failed to explore whether there was a causal connection between the student’s emotional functioning and her attendance, which the district agreed was adversely impacting her performance).

⁵⁹ 34 C.F.R. 300.304 (e)(4) and 34 C.F.R. 300.304(c)(6).

⁶⁰ 521 F. App’x 74 (3d Cir. March 27, 2013).

consider the student's ability to use pragmatic or social language skills in peer settings on a daily basis. Data collected was only "anecdotal" meaning it was based on casual observation and not objective.

- **Bad Environment:** Explain and provide documentation if the testing took place, over parent's objections, at a time when the child was sick, highly anxious, or medication was being changed. Or your child has trouble focusing, but the testing took place in an environment where people were constantly walking in and out of the room or chatting with one another.
- **Ignored Accommodations:** Highlight if the evaluator refused to give the child their normal breaks or glasses during the test. Or the evaluation was conducted in a two-hour session with only a few minutes break, when school records show the student needed shorter sessions and more frequent breaks.
- **No Formal Observation in Non-Testing Environment:** How some students respond in a one-on-one testing situation may be quite different than in a typical classroom environment. In addition, if the child's suspected disability is a specific learning disability, then observation in their classes is required.⁶¹
- **Parent Shut Out of the Process:** 34 C.F.R. § 300.304(b)(1) requires evaluators to gather relevant information from the parents. *Example:* After the evaluation planning meeting was held, parent never heard from the individuals conducting the psychological or educational evaluations. She emailed them asking for a time to talk but never received a response. She heard nothing until she received copies of the assessment reports in the mail.
 - Parent received copies of the reports only two days before the scheduled meeting to discuss their findings. When parent complained that they were entitled to receive the reports ten days before the meeting, they were told the meeting could not be rescheduled. Parent did not have time to properly review the reports before the meeting.

e. Show There Are Contradictions In The Data

An evaluation is arguably not appropriate if its final written conclusions contradict the data inside the report. For example, the test scores are low but the evaluator says in their final summary that the child is "doing fine." Or the report ignores findings in questionnaires completed by the parents or teachers. Or the evaluator says the test scores are average, but ignores progress reports or report cards that show the student is performing poorly in the classroom and cannot do their homework without one-on-one support. Point out if the report completely ignores written warnings from teachers or parents about severe emotional outbursts, reading failures, or social struggles.

⁶¹ 34 C.F.R. 300.305 & 310; N.J.A.C. 6A:14-3.4(f)4.

f. Dispute District's Cost Criteria

Some district policies say a district will not pay for anything other than the evaluation itself. A district must pay for the cost of the IEE. This can include transportation of the child to and from the assessments.⁶²

Any cost criteria should be set out in board policy and applied consistently.⁶³ Most board of education policies and procedures are on the Board website. If not, contact the Board office and request copies of the policies and procedures for IEEs.

The maximum allowable cost for an IEE cannot be an average of what the district charges or even what the average cost in the area is. Instead, it should allow the parent to choose from among qualified individuals in the area and should only eliminate “unreasonably excessive fees.”⁶⁴

Even if the district's cost or other criteria are properly set, a district must still consider whether unique circumstances justify a parent's selection of an evaluator who does not meet all the district's criteria.⁶⁵

g. Challenge District's Use Of Different Criteria Than When The District Conducts Evaluations

The district cannot impose criteria for IEEs that are different than the district uses when it initiates an evaluation.⁶⁶ **Example:** Districts cannot limit an observation by an independent evaluator to a set limit when it does not impose similar limitations on district evaluators.⁶⁷

h. Challenge School District Telling An IEE Evaluator How To Conduct Their Assessment Or What Can Be Included In Their Reports

An independent evaluator must conduct their assessment in accordance with the requirements of the testing instrument. The district cannot prohibit an IEE evaluator from including recommendations, grade level scores or other information in their reports. According to DOE, “[t]o limit independent evaluation reports in this way would dilute the efficacy of such reports and the independence of the evaluator...”⁶⁸

⁶² [FAQs on IEEs, No. 18](#); [Raymond S. v. Ramirez](#), 918 F. Supp. 1280 (N.D. Iowa 1996) (ordered to reimburse parents for \$769.65 that parents incurred for transportation and meal expenses).

⁶³ [FAQs on IEEs, No. 7, 15, 16](#).

⁶⁴ [FAQs on IEEs, No. 15, 16](#).

⁶⁵ [FAQs on IEE, No. 14](#); PRISE at p.9.

⁶⁶ 34 C.F.R. 300.502(e); [FAQS on IEE, No. 6, 7](#).

⁶⁷ [FAQs on IEEs, No. 6, 7](#).

⁶⁸ [NJDOE Letter from Gantwerk, Code Clarification-Independent Evaluations \(Sept. 2004\)](#).

i. Challenge Districts' Requirement That IEE Evaluator Hold A New Jersey Certification Or License

Most districts' policies require independent evaluators to hold a New Jersey certification or license, if there is one. According to OSE, a district does not even need to file for due process if the proposed evaluator does not have a New Jersey license or certification.⁶⁹

If you want to use an evaluator who does not have a New Jersey certification or license and your district requires a New Jersey license, this may be an uphill battle. You will need to show that there are no available New Jersey certified or licensed evaluators with the expertise needed to conduct your child's IEE or to make appropriate recommendations.

⁶⁹ PRISE at p. 9.

III. DUE PROCESS PETITION

A. Overview

A due process hearing is a legal process. It is used to resolve a dispute between you and the school district.⁷⁰ You must send your request for due process to the OSE. After you file, there is a 30-day Resolution Period, which is explained below. During these 30 days, you and the district will meet to try to settle the dispute. If the district agrees, you can go to mediation. If not, you **MUST** attend the resolution session. After 30 days, your request for due process is sent to the OAL and is set for a hearing.

An ALJ will run the hearing. You have the right to bring a lawyer or an advocate. The school district has the burden of proof and production.⁷¹ This is true whether you file the petition or the district does. You and the district will present evidence, such as expert reports, witness testimony, and documents. Each side may question the other side's witnesses. After the hearing ends, the ALJ will decide if the district violated your child's rights. If it did, the ALJ will decide what the district must do to fix it. The ALJ must give a written decision within 45 days after your petition reaches the OAL.⁷²

The two sides can agree to delays that push back the 45-day limit. These delays are called adjournments. Either the parent or the district may ask for one. The request must be for a set amount of time. The ALJ may say yes or no. The ALJ may not grant a delay just because of their own schedule. The request must be written on an [adjournment form](#) and signed by both the parent and the district.

Either side may also file for emergent relief, a summary decision, or a motion to dismiss. What each of these means, and how you might fight one or win one, is explained below.

B. Matters A Parent Can Raise In A Due Process Petition

Parents can raise any matter about how their child is identified, evaluated, or placed in school. A parent can also claim the district is not giving their child an appropriate education.

Examples:

- The student is not getting an education that truly helps them (a denial of FAPE).
- The student is not being taught in the Least Restrictive Environment (LRE).
- The district refuses to evaluate your child.
- The district did evaluate, but says your child does not qualify for special education.
- The district is not implementing or fully following your child's IEP.
- The district took your child out of special education. This is called declassifying your child.

⁷⁰ 20 U.S.C. § 1415(f); 34 C.F.R. 300.508; 34 C.F.R. 300.510-513; N.J.A.C. 6A:14-2.7.

⁷¹ N.J.S.A. 18A:46-1.1.

⁷² 34 C.F.R. § 300.515; N.J.A.C. 6A:2.7(j).

- You disagree with the district’s evaluation and ask the district to pay for an outside evaluation. This is called an Independent Educational Evaluation, or IEE.

Parents can also claim the district broke one or more of the procedural rules in special education law.

Examples:

- The district held one or more IEP meetings without inviting you.
- The district decided ahead of time, before the IEP meeting, what services it would offer.
- The district did not answer your written request for an IEP meeting.
- The district did not give proper written notice when it turned down your request for a 1:1 aide for your child.

An ALJ can give relief to you or your child for a procedural violation in only three cases:

1. The violation strongly got in the way of your right to help make decisions.
2. It got in the way of your child getting a FAPE.
3. It took away educational benefits from your child.⁷³

C. Relief The ALJ Can Order At The End Of A Due Process Hearing

An ALJ can order “appropriate relief.” Relief is appropriate when it does two things. It must serve IDEA’s purpose of meeting the student’s unique needs. It must also protect the rights of parents and students. So, the ALJ decides what is appropriate one case at a time.

Relief can be changes going forward or something to make up for past failures to comply with IDEA. Relief can include both.

1. Relief Going Forward (Examples)

- The ALJ could order a change in where the student goes to school. This can include paying for an out-of-district special school.
- The ALJ could require that the district make changes to the student’s IEP.
- The ALJ could order more help so the student can stay in a general education class for more of the day.
- The ALJ could order the district to pay for an outside evaluation (an IEE).
- The ALJ could order staff to be trained.
- The ALJ could order the district to evaluate your child.
- The ALJ could rule that your child qualifies, or still qualifies, for special education.
- The ALJ can order the district to follow a procedural rule from now on.

⁷³ 20 U.S.C. § 1415(f)(3)(E)(ii).

2. Relief Or Remedies For Past Violations

a. Compensatory Education

You may be able to get compensatory education for many kinds of violations. Here are some examples:

- Not fully following a child's IEP
- Not providing a FAPE
- Not providing a FAPE in the LRE
- Not doing an appropriate evaluation

Compensatory education has one goal – to put your child where they would have been if the district had followed the law.⁷⁴

Courts in New Jersey use an “hour-for-hour” approach to decide how much compensatory education a student gets.⁷⁵ This means the student can be given one hour of compensatory education for each hour they did not get a FAPE. A parent can ask for compensatory education for each day their child had an inappropriate education. If the district did not fully follow your child's IEP, ask for the services the district should have given in the first place.

The rule is a little different when the district's IEP is not appropriate. Then the district must give compensatory education starting from the time it knew, or should have known, that the IEP did not provide a FAPE. The district also gets a reasonable amount of time to fix the problem.⁷⁶ A student's right to compensatory education does not depend on the vigilance of the parents. Nor does it depend on whether the district acted in bad faith.⁷⁷

Compensatory education can be given before or after school, on weekends, or in the summer. If your child is turning 21, they can still get it after they turn 21. You can also ask that the hours be turned into money and put into a trust fund. That lets you buy services from private providers, up to a set amount.

⁷⁴ [*G.L. v. Ligonier Valley School District Authority*](#), 802 F.3d 601, 608 (3d Cir. 2015) (compensatory education “aim[s] to place disabled children in the same position they would have occupied...by providing the educational services children should have received in the first instance.”)

⁷⁵ [*Lester H. by Octavia P. v. Gilhool*](#), 916 F.2d 865 (3d Cir. 1990) (award of 30 months of compensatory education services for the 30 months the student did not receive an appropriate education); [*D.E. v. Central Dauphin School District*](#), 765 F. 3d 260 (3d Cir. 2014) (award of “one hour for each hour of each school day for each year he attended”); [*Ferren C. v. School District of Philadelphia*](#), 612 F.3d 712, 715 (3d Cir. 2010) (affirming award of three years of compensatory education).

⁷⁶ [*M.C. v. Central Regional School District*](#), 81 F.3d 389, 396-97 (3d Cir. 1996).

⁷⁷ *Id.* at 397.

b. Reimbursement To Parent

The ALJ may order the district to pay you back for services you paid for yourself. This can happen when the district did not fully follow your child's IEP, or did not provide a FAPE. It can also include paying you back for an out-of-district school. But there is a notice rule. You must tell the school district that you plan to ask for this money at least 10 business days before you take your child out of the school. You do not have to give this notice if the district stopped you from giving it, or if it was an emergency.⁷⁸ This is a tricky area of the law. You may want to talk to a lawyer before you give notice.

D. Model Forms For Due Process

NJDOE's [Parental Rights in Special Education booklet \(PRISE\)](#) includes model forms for due process in eleven languages. **Note:** The PRISE was revised in July 2026. The most recent version is only available in English. You do not have to use the model form but must include all information it requests.

E. What You MUST Include In A Due Process Petition

- **Parent(s) or Guardian(s) Information:** You must give the name of the parent(s) or guardian(s), the address, and a phone number. It is a good idea to also add one or more emails that YOU check every day. OSE and OAL send scheduling notices by email. If you do not check your email often, you may miss important notices.
- **Student Information:** The child's full name, home address, and date of birth.
- **School Information:** The name of the school district responsible for the student. It is also a good idea to add the name of the school the child attends.
- **Homeless Status:** For a homeless child or youth, give contact information for the child and the name of the school the child attends.
- **The Problem:** A full description of each problem.
- **The Facts:** The dates, events, and details that show what happened for each problem.
- **Proposed Resolution of Each Problem:** You must clearly explain what remedy, or "relief," you are asking the ALJ for to resolve the dispute.

At a hearing, you will only be allowed to raise problems or issues that you put in your petition, unless the other side agrees.⁷⁹ Before you file, read your petition carefully. Make sure you included each problem, the facts that go with it, and the way you want the ALJ to fix it.

F. When Children Turn Eighteen

When your child turns eighteen, all rights to make educational decisions pass to the child.⁸⁰ If you are the guardian, you can keep acting for your child in mediation or due process after he or she

⁷⁸ 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; N.J.A.C. 6A:14-2.10.

⁷⁹ 20 U.S.C. § 1415(f)(3)(B); N.J.A.C. 6A:14-2.7(d).

⁸⁰ 34 C.F.R. 300.520; N.J.A.C. 6A:14-2.3(m).

turns 18. Include proof of your guardianship with any petition you file. If the guardianship is not final yet, include proof that you filed for it.

Your adult child may also sign a paper called a “Delegation of Rights to Make Education Decisions.” In that paper, your child gives you the right to make school decisions for them. That includes the right to give consent. It also includes the right to file for mediation, due process, or emergent relief.⁸¹ Send this paper with your due process petition.

G. Filing A Due Process Petition

You file the petition with the Office of Special Education. The address is New Jersey Department of Education, P.O. Box 500, Trenton, NJ 08625-0500. You can save a completed petition as a PDF and send it as an email attachment to osepdisputeresolution@doe.nj.gov. The DOE will let you know it got your petition. The 30-day resolution period starts on the day they receive it.

You **MUST** also send one copy of the petition and the attachments to the school district.

H. Preparing Discovery Requests

When you file your case, or when the district files against you, start thinking about evidence. Ask yourself: what documents do I need to prove my case, and which ones don't I have yet? You can immediately ask the district for copies of your child's school records. You cannot make other informal discovery requests until your petition is sent to OAL. For more detailed information, see [“Discovery in Special Education Matters”](#) (p. 55).

I. The District's Response To A Due Process Request

Has the district already told you in writing:

- why the district proposed or refused to act on the problem you raised in your petition.
- other options the IEP team looked at, and why those options were turned down.
- each evaluation, test, record, or report the district used when it acted or refused to act.
- the other things the district thought about when it made its decision.

Did the district skip this step? Then it must send you a written answer within ten days of getting your petition.⁸² If the district does not respond within ten days, you may bring it to the attention of the ALJ and ask that they require the district to respond.

J. Examples Of Problems, Facts, And Solutions

1. Example 1: IEP Not Appropriate

- **The Problem:** The district is not giving my child the supports and services he needs to do well in school.

⁸¹ N.J.A.C. 6A:14-2.3(m)(4).

⁸² N.J.A.C. 6A:14-2.7(e).

- **The Facts:** My child has an IEP, but he is still failing math and reading. He hates going to school. Each day, it is very hard to get him on the bus. He often calls me during the day, saying he is sick and needs to come home. He cannot do the homework for any of his classes unless I sit next to him the whole time. I have brought up this problem, and others, for the past year and a half. I have raised it in IEP meetings, sent emails, and pointed it out at parent-teacher conferences. But no changes have been made to his IEP. His progress reports still show little or no progress. He has become more and more anxious and sad about school.
- **The Solution:** The district needs to change his IEP and give him the supports and services he needs, so he can make progress in math and reading. I think he also needs counseling now. I am also asking for compensatory services for the past year and a half. I ask that the value of the services be put in a fund that I can access to pay for services.

2. Example 2: Failure To Implement IEP

- **The Problem:** The school district is not giving my child all of the related services in her IEP.
- **The Facts:** The IEP requires 60 minutes of one-on-one speech therapy each week. Between January 5, 2026 and April 30, 2026, the district's speech therapist was on leave. The district did not bring in a substitute. The student missed 16 hours of one-on-one speech therapy.
- **The Solution:** The child needs 16 hours of compensatory speech and language therapy. A private, properly certified or licensed provider, paid for by the district, must provide the services. They can be given during the summer, after school, or on weekends. I also ask that transportation be provided to and from the provider.

3. Example 3: District Not Placing Student In Least Restrictive Environment

- **The Problem:** The district has proposed an IEP that would move my child to a more restrictive placement. The district will not try less restrictive options first.
- **The Facts:** The student has an eligibility classification of Autism. Right now, he is in a general education classroom with a 1:1 aide. In the proposed IEP, the district wants to move him to a self-contained behavioral class. But the behavior logs show that his outbursts only happen during math. The district has refused to create a behavior plan. The district also will not change math instruction in the general classroom.
- **The Solution:** Request that the student stay in his general education class. Ask for an order that requires the district to hire an outside expert. That expert would do a behavior assessment and develop a behavior plan.

4. Example 4: District Did Not Respond To Request For An IEE Within 20 Calendar Days

- **The Problem:** I disagreed with the school district's reevaluation. I asked for an independent evaluation. I have not heard back from the district.

- **The Facts:** The district finished a reevaluation in February 2025. On [date], I sent an email to [name and title]. I said I disagreed with the reevaluation and asked for an IEE. I asked for these assessments: [list each one]. Under New Jersey rules, the district had 20 calendar days to do one of two things: agree to pay for the IEE, or file for due process and prove its reevaluation was appropriate. It has now been 22 calendar days since my request, and the district has not answered.
- **The Solution:** Ask the ALJ to order the district to pay for an IEE with each of the assessments I requested. Also ask that the assessments be done by a certified or licensed provider that I choose.

5. Example 5: District Agrees To Provide IEE But Cannot Reach Agreement On IEE Evaluator Or Cost And Does Not File For Due Process

- **The Problem:** I disagreed with the school district's reevaluation and requested an IEE. The district agreed to provide the requested assessments. We cannot agree on specific evaluators.
- **The Facts:** The district completed a reevaluation in February 2025. I wrote an email to [name and title] on [date] saying I disagreed with the reevaluation and requested an IEE. I requested the following assessments [list each one]. The district got back to me and gave me a list of possible evaluators. I contacted each of the evaluators on the list. For various reasons, they could not conduct the assessment I requested. I emailed the district explaining the issues. I gave them two names for each assessment I requested. The district would not accept any of the evaluators I proposed. They said the cost was too high or they had evaluated other children in the district. I researched the cost for the evaluators I proposed. It is not "unreasonably excessive." I cannot locate a board policy that limits district staff when they evaluate a student if they have evaluated other students. It has now been over 20 calendar days and the district has not filed due process.
- **The Solution:** Request that the ALJ order the school district to pay for an IEE consisting of each of the requested assessments. Request that the parent be allowed to choose a certified or licensed provider for each assessment. The cost should be no more than the cost of the evaluators initially proposed by the parent.

6. Example 6: District Wants To Graduate Student On June 13, 2026, Saying He Has Met All Credits Required For A High School Diploma

If you file for due process claiming your child is not ready to graduate, you may want to also file for emergent relief. This way you can enforce the stay-put. Otherwise, your child may receive NO services while the due process hearing takes place. The stay-put services would likely be a continuation of the services in your child's IEP. You and the district can agree to different services. Your child should not accept the diploma. They do have a right to participate in the graduation ceremony.⁸³ See "[Emergent Relief Enforcing Stay-Put Rights](#)" (p. 43).

⁸³ N.J.S.A. 18A:7C-5.2; N.J.A.C. 6A:14-4.11(e).

- **The Problem:** I disagree with the school district's decision that my child should graduate.
- **The Facts:** My child will not turn 21 until [give date]. My child's "current educational placement" is the IEP dated [date]. That IEP places him in a self-contained class for all academic subjects. My child has been in this self-contained class all through high school. He has not taken the statewide proficiency exams. His attendance, doing his homework, and taking part in class determine whether he earns credit. Earning the required credits does not mean he is ready to graduate. [You may add more facts that show your child should not graduate. Did the district give you proper written notice? Did the district give you a written summary of academic and functional performance? Is the written summary correct?]
 - **Unmet IEP Goals:** List specific academic or functional goals in the current IEP that the student has not met.
 - **Recycled Goals:** Show that the district used the exact same IEP goals year after year without changing them. This shows a lack of real progress.
 - **Weak or Missing Transition Services:** Did the district give your child the classes, community outings, job training, and work goals they need for life after high school?
 - **Lack of Functional Life Skills:** Explain what basic daily tasks your child cannot do. Some examples are riding a bus, handling money, speaking up for themselves, taking care of themselves, and staying safe around strangers.
 - **Harm to the Student With No Services During Due Process:** If your emergent relief request is not granted, your child will have no services while the case goes on. Give facts that show how this will affect your child. It could be at least 75 calendar days after your due process petition is received. It could be much longer, depending on delays the district asks for and the ALJ grants.
 - **The Solution:** List the services you want at the end of the due process hearing. Be as specific as you can about the goals, transition services, functional life skills, or other services your child needs. Also describe the hardships your child will face if forced to graduate now. It is not enough to just say your child needs more time. You must set out as many facts and as much evidence as you can. This helps you avoid dismissal before the hearing and helps you win in the end.

K. Insufficient Petition

A due process petition that is missing required information may be dismissed as "insufficient." The district must tell the OAL and you if your petition is missing required information. It must do this within 15 days of when OSE received your petition. The ALJ must answer in writing within 5 days. The ALJ will either find your petition sufficient or dismiss it. You can also file for insufficiency against the school district.⁸⁴

⁸⁴ 20 U.S.C. § 1415(c)(7)(A)(ii) & (B); 34 C.F.R. § 300.508(e); N.J.A.C. 6A:14-2.7(f).

The district might say that your petition is insufficient because you already settled the claim. They might say that you missed the statute of limitations. You can object to this. To be sufficient, a petition only needs to contain the required information.

If the ALJ finds your petition is insufficient, there are a few ways to fix it. First, the district can agree in writing to let you add the missing information. If you do that, the district can ask for another 30-day resolution session. Second, the ALJ can give you permission to add the missing information. If neither one happens, you can add what is missing and file the petition again with OSE. Filing again restarts the 30-day resolution period.

Note: If the school district files a sufficiency challenge and it appears that they may be correct that the petition was insufficient, if you have stay-put rights, you should re-file immediately with all required information – before the ALJ rules – to ensure that you do not lose those rights.

L. Resolution Session

The resolution period is a 30-day window. During this time, parents and school districts meet and try to work out the problems in the due process petition.⁸⁵ If both sides agree, they can use mediation instead of a resolution meeting. If the district agrees to mediate, the district's attorney must contact OSE to set up the mediation. After 30 days, the petition goes to OAL for a hearing. There is no resolution meeting when the school district files for due process.

The resolution meeting must happen within 15 days after OSE gets the due process petition. For a fast-track (expedited) petition, it must happen within 7 days. The district must set up the meeting. If the district does not set it up within 15 days, you may ask OSE to send your case to OAL.

The school district must make a real effort to get you to take part. It must keep records showing it tried. If you refuse to attend, the district may ask the ALJ to throw out your petition.

Someone from the district who has the power to make decisions must attend the meeting. The district should also bring IEP team members who know the facts in your petition. You may ask the district to bring certain IEP team members. Parents often bring a lay advocate or someone who knows their child well. The school district may not bring its attorney unless you bring an attorney. A lay advocate is not an attorney.

The resolution meeting may be recorded if both sides say yes. This meeting is different from mediation. What people say at a resolution meeting can be used later at the hearing. Both sides can agree in writing to keep what they discuss private. But you cannot refuse to attend just because there is no written promise of confidentiality.

If you reach an agreement, it will be written down and signed by both sides. Either side can cancel the agreement within three business days of the signing date. The side that wants to cancel must do it in writing. If no one cancels in writing within three business days, the agreement becomes legally binding. That means both sides must follow it.

If you do not reach an agreement that day, you can agree to keep talking with the school district. You may not reach agreement within 30 days of when OSE got your due process petition. If that happens, your petition will go to OAL for a hearing.

⁸⁵ 34 C.F.R. 300.510(b)(3) & (4); N.J.A.C. 6A:14-2.7(h).

What if one side does not follow the agreement? The other side can go to State or Federal Court and ask the court to enforce it.

M. When School Districts File For Due Process

School districts also have the right to file a due process petition.

They often ask to be able to evaluate the child when the parent refuses to sign consent. Or to send school records to an outside program. They can object to a request for an IEE.⁸⁶

OSE immediately sends school district petitions to the OAL. There is no 30-day resolution period.

N. Response To School District's Due Process Petition

You must answer the school district's due process request. In your written answer, you must respond to each problem the school district listed. Your answer is due 10 days after you got the petition. Send your answer to the board attorney who filed the petition.⁸⁷

Do you need more time to write your answer? First, ask the district's attorney for more time. If the attorney says no, you may email the ALJ. Send a copy of the email to the district's attorney. In your email, say that the district's attorney would not give you more time. If the judge gives you more time, make sure you get the new due date in writing. Send a copy to the district's attorney.

O. Objecting To A Request To Evaluate Or Send Records To Another School

Districts often win when they ask for an order to evaluate your child. They also often win when they ask to send records to schools they suggest. The district will likely say it is just trying to do its job of educating your child. If you say "no" to an evaluation without a good reason, you will probably lose.

Here is one example of when you might say no to an evaluation. The district wants a certain person to do a psychiatric evaluation of your child. Other parents tell you this person has done many of these evaluations for the district. Each time, this person takes the district's side. Even then, the ALJ may still order a psychiatric evaluation, but by a different person.

If you do not agree to an evaluation, the ALJ may say the district is not responsible for providing your child with a FAPE.

You may have more ways to fight a district's request to send records to possible schools. But it still will be hard to get the judge to deny the district's request completely.

- **Example 1:** The district's request may come too early. Maybe the IEP team has not met yet. The team has not decided what your child needs to get a FAPE. The school placement is supposed to be picked based on your child's IEP. It should not work the other way around, where the IEP is based on what a school offers.
- **Example 2:** The IEP team, which includes you as the parent, should decide at an IEP meeting which schools to consider for your child. If there has been no IEP meeting to talk about

⁸⁶ N.J.A.C. 6A:14-2.7(b).

⁸⁷ 20 U.S.C. § 1415(c)(2)(B)(ii); 34 C.F.R. 300.508(f); N.J.A.C. 6A:14-2.7(d).

possible schools, you can argue the district's request is too early. You can make a similar argument if the district asks you to sign a consent form but has not named the schools.

- ***Example 3:*** The district agreed in the past that your child's bus ride to and from school cannot be more than 40 minutes. None of the suggested schools are within a 40-minute bus ride.

IV. EXPEDITED PETITION FOR DUE PROCESS⁸⁸

A. What Is The Difference Between An Expedited Hearing And A Due Process Hearing?

In expedited hearings:

- The issues are limited. The hearing can only cover whether the district can remove a student or where the student is placed because of discipline. You must file a separate due process petition for other issues.
- The case moves faster. The judge must decide the petition on a quicker timeline. No extensions of time are allowed in expedited cases.

Everything else is the same. A parent has the same rights and duties in an expedited hearing as in a regular due process hearing.

B. Timeline For Expedited Hearings⁸⁹

- No extensions of time are allowed.
- No insufficiency petitions are allowed.
- The resolution meeting must happen within seven days after OSE receives your petition. Both sides can agree to use mediation instead. There is no resolution meeting when the district is the one who files.
- If the case does not settle, the petition goes to OAL fifteen days after OSE gets it.
- ALJ must complete hearing within twenty school days after OSE received request.
- The ALJ must issue a decision within ten school days after the hearing ends.
- Both sides must share the documents and information they plan to use at the hearing at least 2 days before the hearing.

C. What Problems Can A Parent Raise In An Expedited Hearing?

You can ask for an expedited hearing about your child's discipline placement or program. You might do this when you disagree with:

- **District's manifestation determination:** A manifestation meeting is to decide whether your child's behavior was caused by or had a substantial relationship to their disability. If the team, including the parent, decides your child's behavior was not a manifestation of their disability and the district was fully implementing your child's IEP, the district can suspend your child

⁸⁸ 20 U.S.C. § 1415(k)(3); 34 C.F.R. 300.532; NJDOE Broadcast Memo "[Expedited Hearings](#)" There is an error in the second to last paragraph where the memo says the removal is for 45 school days. It should say 45 calendar days.

⁸⁹ 34 C.F.R. 300.532; N.J.A.C. 6A:14-2.7(h).

up to 45 calendar days, if it would suspend a student without disabilities for the same amount of time. Problems you can raise include:⁹⁰

- The district did not hold a manifestation meeting or did not hold a timely one. It must hold one within 10 school days of your child's suspension. A manifestation meeting asks whether your child's behavior was caused by or had a substantial relationship to their disability.
 - The IEP team decided your child's behavior was not caused by or had a substantial relationship to their disability. You believe it was.
 - Or you believe your child's behavior happened because the school district did not follow your child's IEP.⁹¹
 - The district found the behavior was a manifestation of their disability. But the district has not done a functional behavioral assessment. It also has not given behavior services and supports to help stop the behavior from happening again.
 - The district found the behavior was a manifestation of their disability but still will not let your child return to school. If the IEP team found the behavior was a manifestation of your child's disability, the suspension must end. Your child must be allowed back in school.
- **Services the student gets in the interim alternative educational setting (IAES):** The new setting does not let your child keep learning the same lessons as other students their age. Your child also cannot make progress on their IEP goals.⁹²
 - **Application of one of the special circumstances in 20 U.S.C. § 1415(k)(1)(G):** There are three things that allow a district to remove a student from school for up to 45 days without a court order. Those are causing "serious bodily injury," having a weapon, or having drugs.⁹³ You may argue that the district incorrectly used one of the special circumstances to remove your child.

If you file, your child will stay in the temporary setting (IAES) until one of two things happens. Either the ALJ will make a decision, or the district's suspension ends. Because a hearing decision can take 30 school days, you may also want to think about also filing for emergent relief.

D. When Can A School District Request An Expedited Hearing?

A school district may ask for an expedited hearing to change a student's placement for up to 45 calendar days. The district must prove that keeping the student in the current placement is

⁹⁰ 20 U.S.C. § 1415(k)(C), (D), (E) & (F); 34 C.F.R. § 300.530.

⁹¹ 20 U.S.C. § 1415(k)(1)(E)(1)(II); 34 C.F.R. § 300.530(e)(1)(ii).

⁹² 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(d).

⁹³ For the legal meaning of "weapon," *see* 20 U.S.C. § 1415(k)(7)(C), which points to 18 U.S.C. § 930(g). For the legal meaning of "serious bodily injury," *see* 20 U.S.C. § 1415(k)(7)(D), which points to 18 U.S.C. § 1365(h).

substantially likely to injure the student or others and that the proposed IAES is appropriate.⁹⁴ Districts usually also file for emergent relief that asks for an order right away letting the district remove the student for up to 45 calendar days. It is the same amount of time the district could get at the end of an expedited hearing. To learn how to fight this, *see* “[Opposing Emergent Relief When A District Claims The Student Is Dangerous Or Substantially Likely To Injure Others](#)” (p. 48).

⁹⁴ 20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 532(b)(2)(ii). New Jersey limits removal to 45 calendar days. N.J.A.C. 6A:14-2.8(d).

V. MEDIATION AFTER DUE PROCESS OR EXPEDITED DUE PROCESS PETITION IS FILED

ALJs now also act as mediators after a parent or district files for due process. The ALJ who acts as mediator must be a different person from the ALJ who will run the hearing. All the rules for Mediation Only also apply when an ALJ acts as mediator.⁹⁵ What people say during mediation is confidential. It cannot be used as evidence in any hearing or court case. ALJ mediators cannot testify about anything they learn during mediation. Mediation must be set for a time and place that works reasonably well for both sides.

The ALJ mediator's job is to stay neutral, help both sides talk to each other, and help them reach an agreement. The ALJ mediator must make sure the agreement follows federal and state law. The ALJ mediator should not decide the facts or the terms of any agreement. They also should not push either side to settle the case without a hearing. If the two sides reach an agreement, the ALJ mediator must write down the terms. Both sides review the paper and make any changes. Then they sign it. The ALJ will give a copy to each side. A mediation agreement is legally binding as soon as it is signed. That means both sides must follow it right away.

You can ask for more time if you need to talk to someone or gather information before you sign anything. A mediation meeting may be moved to a later date. The new date cannot be more than 45 days from the date mediation was requested.⁹⁶ Do not sign a mediation agreement until you are sure.

Mediation agreements are supposed to be written. The mediator should put all the terms in writing.

If no agreement is reached, the ALJ mediator will write down the date of the meeting and who attended. No other record of the mediation can be made. This includes audio recordings.

What if the district does not follow a term in the mediation agreement? A parent can send a written request for enforcement to the Director of OSE. Use the model form in PRISE. There is a deadline. You must file the request within 90 calendar days of the date the district was supposed to do the thing it promised.⁹⁷ A mediation agreement can also be enforced in state or federal court.⁹⁸

⁹⁵ N.J.A.C. 6A:14-2.6(d)4. [Notice of Changes to the Procedures for Mediation and Due Process Hearing Requests](#), NJDOE (Feb. 19, 2025).

⁹⁶ N.J.A.C. 6A:14-2.6(d)(4)(v).

⁹⁷ N.J.A.C. 6A:14-2.6(d)(11).

⁹⁸ 34 C.F.R. § 300.506(b)(7); N.J.A.C. 6A:14-2.6(d)(11).

VI. WHEN THE CASE IS AT OAL

A. What OAL Staff Can And Cannot Do

This is a list of some things OAL staff CAN and CANNOT do for you. Please read it carefully before asking the staff for help.

- OAL staff CAN explain and answer questions about how the OAL works.
- OAL staff CAN give you some information from your case file.
- OAL staff CAN usually answer questions about court deadlines.
- OAL staff CAN give you available samples of forms.
- OAL staff CAN provide guidance on how to fill out forms.
- OAL staff CANNOT give you legal advice. Only your lawyer can give you legal advice.
- OAL staff CANNOT tell you how to proceed.
- OAL staff CANNOT give you an opinion about what will happen.
- OAL staff CANNOT recommend a lawyer.
- OAL staff CANNOT talk to the ALJ for you about your case.
- OAL staff CANNOT let you talk to the ALJ outside of court.
- OAL staff CANNOT change an order issued by an ALJ.

B. Scheduling Due Process, Expedited Petitions, And Other Matters at OAL

All hearings, including oral arguments, must be set for a day, time, and place that works reasonably well for the parent and adult student. 34 C.F.R. 300.515(d).

What if you truly cannot be there at the set time or place? You must send an email right away to the ALJ (judge) on your case, with a copy to the district's attorney. Say you cannot attend on the set date and explain why. List other days or times when you are free. If you do not know who the ALJ is, call the Clerk's Office for the OAL location where your case was sent: Newark (973) 648-7136, Trenton (609) 689-4034, or Atlantic City (609) 441-3692 and give them your docket number. You may also use this link: [OAL Contact US](#) to send a message to all OAL locations. They will tell you the ALJ's name and how to reach them.

If oral argument on a motion will be in person, you can ask to join by video or phone instead. If your request to change the date is denied over the phone, send an email to the ALJ saying your request was denied. Send a copy to the district's attorney.

Do NOT just skip the hearing. If you do not show up, the ALJ may throw out your petition. If the hearing is about a motion or petition the district filed, then the ALJ may listen to the district's side and grant the order the district asked for – without you there.

C. Amending Due Process Or Expedited Petitions

You can change (amend) your petition if the other side agrees. The ALJ may also approve a change if you ask at least five days before the hearing starts.⁹⁹

D. Failure To Appear¹⁰⁰

Maybe you filed a due process or expedited petition and have decided you no longer want to go forward. If so, it is best to ask to withdraw your petition. Do not just skip the scheduled dates over and over. *See* next section, “Withdrawal of Hearing Request” for how to withdraw your petition.

What if you miss a scheduled conference, emergent relief date, or hearing date? You must call the ALJ’s assistant no later than one day after the missed date. In your call, explain why you were not there. The assistant will likely tell you to email a letter explaining why you missed the date. You must also email a copy of your letter to the school district’s attorney. It is VERY IMPORTANT that you act within this time.

What if you miss a hearing or emergent relief argument that the district asked for? The district may ask to present its witnesses that same day. If the ALJ says yes, the ALJ will listen to the testimony. Then the ALJ may enter an order that grants or denies the district’s request. If the ALJ grants the district’s emergent relief request, you have 2 days to ask that the order be undone (dissolved).¹⁰¹ In some cases, ALJs have dismissed a parent’s petition “with prejudice” when the parent missed many dates. This means you can never file a new claim about the district’s violations during that time period.

E. Withdrawal Of Hearing Request

Do you want to withdraw your petition for a due process or expedited hearing? Send an email to the ALJ (judge) with a copy to the school district. Say in the email that you want to withdraw your petition “without prejudice.” This means you could file the request again in the future. You should get a reply confirming that your case is closed. The petition and documents will be sent back to the Department of Education. If you do not hear back from the ALJ, send another email to follow up. Keep one thing in mind: if you withdraw your hearing request, the district can go ahead and make the changes it proposed.

F. Pre-Hearing Conferences With The ALJ

The ALJ may schedule pre-hearing conferences. Either side can also ask for one. Are there times or days you cannot attend because of work, child care, or other reasons? Let the ALJ know.

Pre-hearing conferences usually happen by phone. The Notice of Pre-hearing Conference will tell you the date, the time, and how the conference will be held. It should also tell you what will be talked about. If you want to add topics, send an email to the ALJ’s assistant. After the conference, the ALJ should issue a pre-hearing order based on what was discussed.

⁹⁹ 20 U.S.C. § 1415(c)(2)(E); 34 C.F.R. 300.508(d)(3), N.J.A.C. 6A:14-2.7(i).

¹⁰⁰ N.J.A.C. 1:1-14.4.

¹⁰¹ N.J.A.C. 1:6A-12.1.

All pre-hearing conferences with *pro se* parents will be recorded. You may ask for a copy of the recording. Get the recording of each pre-hearing conference. That way you have a record of what was said, and you can listen to it again as your case moves forward.

At a pre-hearing conference, the ALJ will go over the rules that will be used at the hearing. The ALJ may also want to list all the issues the hearing must decide. When you filed for due process, you were asked to describe the problem that concerned you. This was the story of what went wrong and the facts behind it. When an ALJ talks about “issues,” the ALJ wants to turn your problem and facts into specific legal questions based on special education law. This may sound confusing at first. But it will help you in the long run. To win at a hearing, strong facts are not enough. The facts must show that the school district broke a law or rule, or did not follow what courts have already decided.

- **Problem:** This is the “what happened” part. It is written in everyday words. It tells what the school did and how it hurt the child.
- **Issue:** This is the legal question. It is written in legal terms. It asks if the school broke a specific rule. One problem can lead to more than one issue.

1. Example 1: Related Services

- **Problem:** The school promised my child speech therapy three times a week in the IEP. The speech therapist was sick for two months. My child did not get any therapy at all.
- **Issue for the ALJ:** Did the District fail to implement the student’s IEP during those two months? If so, is the student entitled to compensatory education?

2. Example 2: Evaluation And Eligibility

- **Problem:** My daughter gets special education but is failing reading. She cries every night. Two months ago, I asked the school in writing to test her for dyslexia. They ignored my letter and did nothing.
- **Issue 1 for the ALJ:** Did the school district fail to respond to parent’s written request within 20 calendar days?
- **Issue 2 for the ALJ:** Did the school district fail to evaluate the student in all areas of suspected disability?

3. Example 3: Placement

- **Problem:** The school moved my son out of his regular classroom. Now he is in a special education class all day. Before the move, he was passing his classes, had friends, and wanted to go to school each day. Now he says he hates school and never sees his friends. From what I have seen, he is not learning anything new. I did not agree to this change. I did not even know about it until my son told me he was in the new class.
- **Issue 1 for the ALJ:** Did the District fail to place the student in the Least Restrictive Environment (LRE) as required by law?
- **Issue 2 for the ALJ:** Could the district have supported the student so he could stay in his regular classroom?

- **Issue 3 for the ALJ:** Is the special education class appropriate for the child?
- **Issue 4 for the ALJ if this was the child's initial IEP:** Did the District start using an initial (first) IEP without getting the parent's consent? (*Note:* a parent's consent is required for the first IEP only. It is not required for later IEPs.)
- **Issue 5 for the ALJ if the District moved the child without giving 15 days' written notice:** Did the District tell the parent 15 days before it moved the child into the special education class? Did the District tell the parent in writing?

4. Example 4: IEP Not Providing FAPE

- **Problem:** My child has an IEP. But for at least the past 18 months, the district has not given my child the supports and services my child needs to do well in school.
- **Issue 1 for the ALJ:** Did the district fail to provide an IEP that was reasonably calculated to enable the student to make meaningful progress in light of the child's circumstances?
- **Issue 2 for the ALJ:** Did the district know, or should it have known, that the IEP would not provide benefit? Should the district have made changes to the IEP?

After the conference, the ALJ may send both sides a list of the issues she believes the hearing will decide. She may also list the relief (the fix you asked for) for each issue. Read this list carefully. Make sure it matches your understanding of the issues and the relief you want. If it does not match, send an email to the ALJ. Explain what is different and what you believe the issues are.

The ALJ will likely ask about expert witnesses and how many witnesses each side plans to call. The ALJ will also want to know how many hearing days you think you need. Then the ALJ will set the hearing dates. Be as clear as you can about your witnesses and the number of hearing days. Have your calendar ready to schedule hearing dates.

The ALJ may also talk about discovery (*see* "[Discovery in Special Education Matters](#)" (p. 55)). The ALJ may ask what motions each side plans to file (*see* "[Emergent Relief In Cases Not Involving Stay-Put](#)" (p. 32); "[Emergent Relief Enforcing Stay-Put Rights](#)" (p. 43); and "[Summary Decision Motions](#)" (p. 62)).

The district may say it plans to file a motion for summary decision. That motion asks the judge to throw out all or part of your petition without a full hearing. You have the right to object to summary decisions in special education cases. *See* "[Summary Decision Motions](#)" (p. 62). Do you need documents from the district to fight the motion? Ask for them at the pre-hearing conference. Ask that no summary decision motions be filed until the district gives you those documents.

G. Emergent Relief In Cases Not Involving Stay-Put¹⁰²

A party can ask for a temporary order about a specific issue in their due process or expedited petition. There must be an urgent reason why a temporary order is needed right away. There are separate rules, discussed in the next section, when you file for emergent relief to enforce stay-put rights.

¹⁰² N.J.A.C. 6A:14-2.7(r); N.J.A.C. 1:6A-12.1.

You can file an emergent relief request at the time you ask for a due process or expedited hearing. You can also file it at any time before that hearing is decided. If NJDOE has not yet sent your petition to OAL, send your request to the Office of Special Education Programs (OSE), NJ Department of Education, P.O. Box 500, Trenton, NJ 08625-0500. You can also email it as a PDF to osepdisputeresolution@doe.nj.gov. If OSE has already sent your petition to OAL, send your emergent relief request to the ALJ assigned to your case. If you do not know who that is, call the Clerk's Office for the OAL location where your case was sent: Newark (973) 648-7136, Trenton (609) 689-4034, or Atlantic City (609) 441-3692 and give them your docket number. You may also use this link: [OAL Contact US](#) to send a message to all OAL locations. They will tell you the ALJ's name and how to reach them.

You MUST send a copy of everything you filed to the district or its attorney. In your request, you must say that you sent a copy to the school district or the district's attorney. You can send copies to the superintendent of the district. You can find the superintendent's name and contact information on the district's website, or by searching the [New Jersey School Directory for your district](#).

A request for emergent relief is quickly sent to the OAL for an ALJ to make a temporary decision. The emergent relief decision will remain in place until the due process or expedited decision is issued. An emergent relief decision is usually based on oral argument and previously submitted written certifications and evidence. In some cases, the ALJ will allow certifications to be supplemented with testimony at oral argument.¹⁰³

To request emergent relief, you must, at a minimum, prepare a [Request for Emergent Relief](#) and a [Certification in Lieu of Affidavit or Notarized Statement](#) of Petitioner Seeking Emergent Relief. If you have not already filed for due process or expedited petition, you must file for due process or an expedited petition with your emergent relief request.

1. What Can Be Requested In An Emergent Relief Filing?

Issues involving a break in the delivery of services: The district stops giving your child help, like speech therapy or bus rides, that is in the IEP.¹⁰⁴

Issues involving disciplinary action: The school wants to discipline your child or place them for a time in a different setting. You could raise this discipline issue in an expedited case.¹⁰⁵

Issues concerning placement while the due process or expedited petition is decided: Something changes about where your child goes to school while your case is still going. For example, the school will not allow the student to come to school. Or the school stops being open. Or the district stops paying for it.¹⁰⁶

¹⁰³ N.J.A.C. 1:6A-12.1(e).

¹⁰⁴ N.J.A.C. 6A:14-2.7(r)(1)(i).

¹⁰⁵ N.J.A.C. 6A:14-2.7(r)(1)(ii).

¹⁰⁶ N.J.A.C. 6A:14-2.7(r)(1)(iii).

Issues involving graduation: You need to stop graduation until the hearing is done. Or, the district will not let your child walk in the graduation ceremony.¹⁰⁷

2. What Must Be Included In The Request For Emergent Relief?

If you have not already filed for due process or expedited petition, you must file that request along with your emergent relief request.

You **must** tell the ALJ exactly what you want and why it is an emergency.

You **must** tell the ALJ what the problem is and the facts that matter.

You **must** say what would fix the problem.

3. What Must Be Included In Your Emergent Relief Certification?

Certifications are sworn statements of fact. A certification is accepted if it includes the following specific language:

I certify that the foregoing statements made by me are true. I am aware that I am subject to punishment if any of the foregoing statements made by me are willfully false.

This replaces a traditional notarized affidavit but carries the same legal force under N.J. Court Rule 1:4-4(b). To be effective, a certification must also be signed and dated.

Your Emergent Relief Certification must include the following:

- Name of Person making the certification
- Whether you are the Adult Student, Parent, Legal Guardian, Attorney or Advocate of [full name of student or school district]
- Must say “I make this Certification in support of my request for emergent relief, which is attached to this Certification.”
- I understand that pursuant to regulations promulgated by the Department of Education (N.J.A.C. 6A:14-2.7(r) and the Office of Administrative Law (N.J.A.C. 1:6A-12.1), I am entitled to Emergent Relief because the contested matter involves one or more of the following issues: (Check all that apply)
 - Issues involving a break in the delivery of services;
 - Issues involving disciplinary action, including manifestation determinations, and determinations of interim alternate educational settings;
 - Issues concerning placement pending the outcome of due process proceedings or expedited hearing;
 - Issues involving graduation or participation in graduation ceremonies.
- I have completed the Request for Emergent Relief and provided the New Jersey Department of Education with the relevant information required on the Request for Emergent Relief.

¹⁰⁷ N.J.A.C. 6A:14-2.7(r)(1)(iv).

- I have provided a completed and signed copy of my request for Emergent Relief to the Respondent (Opposing Party) [Print name of Respondent].
- Full address of Respondent and Date submitted to Respondent.
- I certify that the foregoing statements made by me are true. I am aware that I am subject to punishment if any of the foregoing statements made by me are willfully false.
- Petitioner's Signature and Date

You should also include in your certification the facts that matter to your case. The facts must be based on personal knowledge.¹⁰⁸ Personal knowledge is information that the person observed or experienced through their own senses (such as hearing, seeing, or doing).

You may also include certifications from other individuals with knowledge of the facts. If the certification is by an expert, he/she must give their education, experience, training and the basis for their opinion.

Suppose the doctor who is treating your child for anxiety met with your child while he was on home instruction. The doctor then told you that your child seemed more anxious and expressed sadness. The doctor recommended school counseling while on home instruction. The doctor also recommended some interaction with peers. You can ask the doctor to write a certification for you. This is not always possible. If the doctor will not write a formal legal certification, ask them to send you a letter saying the above. Attach the letter from the doctor to your own certification. In your certification, say that federal rule 34 C.F.R. 300.502(c)(2) requires that a parent's outside evaluation must be admitted at the hearing. This is true even if the evaluator does not come to the hearing.

The evaluator's letter should include:

- Their credentials, job title, license, and experience;
- The diagnosis they are treating the child for;
- When they examined your child;
- A specific description of what they determined from their examination;
- A clear and direct recommendation for services based on their examination.

There are sample Certifications for different types of cases at the end of this Guide.

4. Scheduling The Emergent Relief Hearing

OSE may send emergent relief requests to OAL by the end of the next business day after it gets the request. You will then get a written notice telling you the time and place to appear before an ALJ.

It is rare for an emergent relief request to be so urgent that it must be heard within a few days of filing. But these requests are called "emergent relief" for a reason. They matter and they need quick

¹⁰⁸ N.J.A.C. 1:6A-12.1(a).

attention. Try to be as flexible as you can, and once a date is set, make sure you show up on that date.

State rules say OAL “must schedule an emergent relief hearing as soon as possible.” The hearing date can only be changed (adjourned) for “good cause.”¹⁰⁹ But OAL must also follow federal law.¹¹⁰ Federal law says hearings must be set at a time and place that works well for the parent and child.¹¹¹ Following this federal rule matters even more when a parent does not have a lawyer. Always put your requests in writing. If someone gives you an answer by phone or in person, write it down and send a follow-up message to confirm it.

If you truly cannot go on the scheduled date or time, email the ALJ right away to explain why. Ask them to pick a new date and time, and suggest some dates that work for you. Send a copy of the email to the district’s attorney. Good reasons to reschedule include: you cannot get off work without more notice, you cannot find child care, you are traveling, or you are sick or in the hospital. You can also ask to delay the emergent relief hearing so you have time to find a lawyer or advocate.

If the ALJ says no to your request to reschedule, you still have a right to join by phone if you are fighting a request the district filed.¹¹² If you want to join by phone or video, tell the ALJ in writing and send a copy to the district’s attorney. Ask for the phone number or link you will need to call in on the day of the hearing.

If you miss the hearing and the ALJ enters an order, you can still ask to cancel or change that order. But you must give two days’ notice before you do this.¹¹³

You also have the right to file opposing papers. If you cannot go to court on the scheduled day, and there is not enough time to write your opposing papers, you can send another email to the judge. Stay calm and polite, but say you respectfully disagree with the decision not to reschedule. Explain that you need a time you can attend and enough time to prepare your papers. Ask the ALJ to reconsider and give a short delay to one of the days and times you suggest. Point out that since you do not have a lawyer, no one will be there to speak for your child if the judge says no.

DO NOT just fail to appear! Your child will have no one to advocate on his or her behalf.

5. Will The Witnesses Testify At The Emergent Relief Hearing?

The ALJ may let a person add spoken testimony to what is already in their sworn statements. If you file for emergent relief and the district does not file an affidavit, the ALJ should not let the district give spoken testimony instead. You can object to this, because the rules expect both sides to file sworn statements before testimony is allowed.¹¹⁴

¹⁰⁹ N.J.A.C. 1:6A-12.1(d).

¹¹⁰ N.J.A.C. 1:6A-1.1(a).

¹¹¹ 34 C.F.R. § 300.515(d).

¹¹² N.J.A.C. 1:6A-12.1(d).

¹¹³ N.J.A.C. 1:6A-12.1.

¹¹⁴ N.J.A.C. 1:6A-12.1(e).

If the ALJ lets the district testify anyway, ask for a short delay to give the district time to send you a brief summary of what the witness will say. The district should also send you any papers they plan to use. The law says the district must tell you in writing about the testimony and papers it plans to use before the hearing starts.¹¹⁵

6. Examples Of Problems Supporting Emergent Relief Request

Example 1: Student needs help to get around the school.

- **Problem:** My child is legally blind. She needs a 1:1 aide to walk with her from the bus to school, to all of her classes, to lunch, and back to the bus.
- **Facts:** My child is in 9th grade. She just came back to school after eye surgery. She had surgery to fix a torn retina. Right now, she can only see light with her right eye. Her doctor says it may take six months before she can see better with that eye. Until then, she could lose all sight in her right eye if it gets bumped or hit by accident.

Her left eye is also having problems. It has high pressure, and she sees spots. Her doctors are watching her closely to make sure her left eye does not get the same kind of tear.

My child's school has over 1,000 students. I have driven her to school sometimes, and I always see many students, parents, and teachers around the bus. She has to move through this crowd to get on and off the bus.

I have also been inside the school when classes change. The hallways are very crowded. The doors to each classroom stay locked until the next class starts. This means that even after she reaches her next classroom, she must stand in the crowded hallway with other students until the door unlocks.

- **Solution:** Provide my child with a 1:1 aide. That way, she can safely get into the school and go from one class or activity to another.

Example 2: School district put student on home instruction while it looks for a school. The home instruction is not appropriate.

- **Problem:** The district is looking for an out-of-district school. While it looks, it is giving my child home instruction. I agree that my son should go to the right out-of-district school. But it has been many weeks since he started home instruction, and it has been very poor.

The district did not give him the home instruction he needed. Because of this, I had no choice but to file for due process.

- **Facts:** My son started 9th grade on September 6, 2025. His IEP said he would be in general education classes all day. A special education teacher was supposed to help him during Algebra 1 and Language Arts, three hours a day, five days a week. His other classes were Social Studies, Biology, Physical Education, Study Skills with a special education teacher, Art, and Music. He also got counseling two times a week for 30 minutes, and joined a social skills group once a week.

¹¹⁵ 34 C.F.R. 300.512(a)(3) and (b)(1); N.J.A.C. 6A:10.1(b) & (c); [B.G. v. Ocean City Board of Education](#), 2014 WL 4798647, 2014 U.S. Dist. LEXIS 135768 (D.N.J. Sept. 26, 2014).

He has been on home instruction for four weeks after something happened at school. He has very bad anxiety. During a fire drill, he had a panic attack and would not leave the classroom.

The district was already looking for an out-of-district school, and I agreed he needed one. But four weeks later, he is still on home instruction. He still does not have the right out-of-district placement.

His home instruction has not been consistent. One week he got 10 hours of teaching. Another week he got no teaching at all. In the other two weeks, he got 10 hours total. Most of his teaching has been in math and reading, but his teachers are not trained in special education. He has gotten very little teaching in Biology or Social Studies, maybe just an hour in each. He has not gotten any counseling, social skills group, physical education, art, or music.

I offered to bring my son to school for counseling, social skills group, and chorus, but I was told “no.” When I asked again, the case manager told me the district does not let any student on home instruction come into the school building. I signed him up for a physical activity outside of school and paid the fee, just so he could spend time with other kids his age.

Home instruction is very lonely for my son. Even after just one month, going without his school counselor or friends for any longer is wrong. It is very bad for his feelings and well-being.

The lack of appropriate instruction has also been very hard on my son. Every day he asks me, “How will I ever catch up? I’m going to fail 9th grade.” On [enter date], I filed for due process and emergent relief.

- **Solution:** Order the school district to give at least ten hours of teaching each week. This should include three hours a week of Algebra and three hours a week of Language Arts. That should be spread over at least 3 days a week. It should also include two hours a week of Social Studies and two hours a week of Biology.

The school district should also let his counselor come to our home for counseling. Otherwise, it should set up a time for in-school counseling, social skills group, and chorus. I can drive my son to and from school.

I am also asking to be paid back the \$75.00 I spent to sign him up for the physical activity.

7. What Do I Need To Prove To Get Emergent Relief?

The requirements for emergent relief are known as the “*Crowe* factors,” after a case called [*Crowe v. DiGioia*](#).¹¹⁶ The standard of proof is clear and convincing evidence. This is evidence that firmly convinces the ALJ that the facts are highly probable.¹¹⁷ The following must be shown by clear and convincing evidence.

¹¹⁶ 90 N.J. 126, 132-33 (1982).

¹¹⁷ [*Colorado v. New Mexico*](#), 467 U.S. 310, 316 (1984).

a. Irreparable Harm

First, the party must show that it will experience harm that cannot be fixed if it does not get immediate relief. The legal standard is: “The petitioner will suffer irreparable harm if the relief is not granted.” It is harm that cannot be fixed by monetary damages.

Irreparable harm means it is happening right now or about to happen very soon.¹¹⁸ This means it must be more than just a small chance of harm happening far in the future.¹¹⁹ There must be more than just a risk of irreparable harm. It is not enough to show a “significant potential” of irreparable harm.¹²⁰

In the following cases, courts have held that a student suffers irreparable harm when deprived of any education.

- [*Papacoda v. Connecticut*](#), 528 F. Supp. 68 (D. Conn. 1981) (student will suffer irreparable injury if removed from residential placement)
- [*Ross v. Disare*](#), 500 F. Supp. 928, 934 (S.D.N.Y. 1977) (“interruption of a child’s schooling causing a hiatus not only in the student’s education but also in other social and psychological developmental processes that take place during the child’s schooling, raises a strong possibility of irreparable injury”)
- [*Cronin v. Board of Education of the East Ramapo School District*](#), 689 F. Supp. 197, 205 (S.D.N.Y. 1988) (“Without an injunction, Bruce will continue to remain out of school, receiving no instruction at all. A cessation of a handicapped child’s schooling and the accompanying loss of educational, vocational and social development constitutes irreparable injury”)

In the following cases, courts held that an inappropriate education can cause irreparable harm.

- [*G.L. v. Ligonier Valley School District Authority*](#), 802 F.3d 601, 625 (3d Cir. 2015) (a sound educational program can change the trajectory of a child’s life)
- [*Issa v. School District of Lancaster*](#), 847 F.3d 121, 142-43 (3d Cir. 2017) (remaining in unsound educational program likely to cause irreparable harm)
- [*Nieves-Marquez v. Puerto Rico*](#), 353 F.3d 108, 121-22 (1st Cir. 2003) (even a few months in an unsound program can make a “world of difference in harm”)
- [*Plyler v. Doe*](#), 457 U.S. 202, 221 (1982) (deprivation of education can make a lasting impact on a child’s life)
- [*Board of Education v. F.C.*](#), 2 F. Supp. 2d 637, 645 (D.N.J. 1998) (loss of appropriate education would result in irreparable harm)
- [*J.B. v. Killingly Board of Education*](#), 990 F. Supp. 57 (D. Conn. 1997) (continued denial of right to FAPE is irreparable harm)

¹¹⁸ [*Subcarrier Communications Inc. v. Day*](#), 299 N.J. Super. 634, 638 (App. Div. 1997).

¹¹⁹ [*Acierno v. New Castle County*](#), 40 F.3d 645, 655 (3d Cir. 1994).

¹²⁰ [*Olu-Cole v. E.L. Haynes Public Charter School*](#), 930 F.3d 519, 529 (D.C. Cir. 2019).

In the following cases, courts held that removing students from any interaction with teachers or peers and the daily structure provided by school causes irreparable harm.

- [*Steldt v. School Board of Riverdale School District*](#), 885 F. Supp. 1192, 1198-99 (E.D. Wisc. 1995) (“One need not be a professional educator to realize the harm to a student of keeping him from learning opportunities, from the company of his friends and from the daily structure provided by a school.”)
- [*Stuart v. Nappi*](#), 443 F. Supp. 1235, 1240 (D. Conn. 1978) (limiting student to homebound tutoring “can only serve to hinder plaintiff’s social development and to perpetuate the vicious cycle in which she is caught.”)
- [*Board of Education of the City of Plainfield v. Cooperman*](#), 209 N.J. Super. 174, 215 (App. Div. 1986) (it is imperative that every child receive an education with his or her peers if it is at all possible)
- [*John T. v. Delaware County Intermediate Unit*](#), 2000 WL 558582 (E.D. Pa. May 8, 2000) (compensatory services or money can never atone for deprivation of a meaningful education in an appropriate manner at the appropriate time), *aff’d*, 318 F.3d 545 (3d Cir. 2003).

You are the parent, so you know your child better than anyone. You can use what you have seen to describe the irreparable harm your child is facing from suddenly being removed from school and placed on home instruction. Some of this harm comes from having no time with friends and missing many parts of a normal school day.

Using the examples discussed above:

Example 1: My daughter is legally blind and is recovering from a torn retina. She will suffer irreparable harm if she does not have an aide to walk with her safely around school. If she falls, gets bumped, gets pushed, or walks into a person or thing, she could hurt her eyes even more. This could make her go completely blind.

Example 2: My son is not receiving appropriate instruction. He is also not getting the counseling he needs, and he has no time with friends. This is causing irreparable harm to his education and to his mental health. He has lost trust in his teachers and counselor. He keeps asking me, “Why won’t they let me come back to school? I thought they liked me.” His anxiety was already very bad before this happened. Over the past four weeks, I have seen his anxiety get worse. [describe what you observed]

b. Legal Right Is Well-Settled

Second, the party must show that the legal issue in the Emergent Relief request is well-settled. The legal standard is: “The legal right underlying the petitioner’s claim is settled.”¹²¹

The “underlying claim” is what you or the district asked for in the due process petition. Using the examples discussed above:

Example 1: It is settled law that a student with a disability has the right to support, like a 1:1 aide, when needed to move safely around their school. Students also have the right to the help and changes needed so they can learn in the least restrictive environment. The school district must look

¹²¹ N.J.A.C. 6A:14-2.7(s)(1)(ii).

at many kinds of extra supports and services. It must make a real, personal effort to keep each child learning together with their classmates.¹²²

Example 2: It is settled law that my child has a right to an appropriate education, even during home instruction. All I am asking for in my emergent relief request is the same support and services listed in my child's IEP. These are the services the IEP team decided my child needed for an appropriate education. It is also settled law that home instruction must comply with N.J.A.C. 6A:14-4.8. It is settled law, too, that my child must be taught in the least restrictive setting.¹²³ This means the school must think about the whole range of extra help and services available. Right now, my child is being taught in the most restrictive way possible. He gets 1:1 teaching at home with no time around other kids. When I asked for my son to join school just for counseling, social skills group, and chorus, the district said no. They said their rule does not allow any student on home instruction to enter the school building. It is also settled law that a school district must meet each student's own needs. It cannot use one blanket rule for everyone instead.¹²⁴

c. Likelihood Of Success

Third, the party must show that it is likely to win in the final hearing. The legal standard is: "The petitioner has a likelihood of prevailing on the merits of the underlying claim."¹²⁵

Using the examples discussed above:

Example 1: I am likely to win my request for a 1:1 aide by the end of the due process hearing. I gave the school two doctor's notes. One note proved my child had surgery. The other note showed she needs help walking through school. The school district never disagreed with this proof. They also gave no other medical proof to show she does not need a 1:1 aide.

Example 2: I am likely to win my claim by the end of the due process hearing. I am only asking the district to give the services already listed in my son's IEP. This means proper special education teachers for Algebra 1, Language Arts, and Study Skills. I am also asking that he go into the school for counseling, chorus, and social skills group. I am also entitled to get paid back the \$75 I spent on his physical activity. There is settled law and strong evidence behind all of my requests.

d. Balancing The Equities And Interests Of The Parties¹²⁶

Fourth, assume you filed for emergent relief. You must show your child will be harmed more if your Emergent Relief request is denied than the district will be harmed if it is granted. You can also show the public interest supports your Emergent Relief request. If the district files an

¹²² [*Oberti v. Board of Education*](#), 995 F.2d 1204 (3d Cir. 1993).

¹²³ 34 C.F.R. 300.114; N.J.A.C. 6A:14-4.2.

¹²⁴ [*Battle v. Commonwealth of Pennsylvania*](#), 629 F.2d 269, 276 (3d Cir. 1980) (limiting school year to 280 days does not comply with emphasis on meeting student's individual needs); [*Polk v. Central Susquehanna Intermediate Unit 16*](#), 853 F.2d 171, 177 (3d Cir. 1988) (blanket policies that do not allow consideration of child's needs conflict with federal law).

¹²⁵ N.J.A.C. 6A:14-2.7(s)(1)(iii).

¹²⁶ N.J.A.C. 6A:14-2.7(s)(1)(iv).

Emergent Relief request, it must show it will experience more harm if its Emergent Relief request is denied than your child will if it is granted.

Using the examples discussed above:

Example 1: My child's health and safety matter much more than any cost to the district. If she does not get the help she needs, she could go completely blind. The only "harm" to the district is that it may have to pay for an aide, which is far less "harm" than my child possibly going blind.

Example 2: My child is being seriously harmed by home instruction that is not good enough, not lawful, and very lonely. The district faces no harm at all. All they need to do is pay for home instruction that matches my child's IEP and state rules. They need to let my child come to school for the counseling, social skills group, and chorus he had before home instruction started. None of this causes any harm to the district, let alone irreparable harm. There is also a strong public interest in teaching a student with a disability alongside other students. Keeping my child isolated at home goes against that interest.

8. Letter Brief

You can provide a letter brief (a legal argument) supporting your request for emergent relief. A Sample Letter Brief is included at the end of this Guide. If you do not have a computer, you can handwrite the brief.

9. Contents Of Parent's Submission

- Emergent relief request
- Certification in lieu of an affidavit with attached documents
- Other certifications (if any)
- Letter brief (not required but recommended)
- Include in certification or letter brief that you have sent the district's attorney a copy of your emergent relief request and certification with attached documents and how this was sent

10. Oral Argument

At oral argument, be prepared to:

- Emphasize the relief you are seeking
- Explain the irreparable harm to your child
- Explain why your legal claim is settled and you are likely to succeed in your due process hearing
- Discuss how the public interest and equities favor your child and not the district
- Respond to any arguments the district has made and explain why they are not valid

11. What Does The ALJ Do After The Emergent Relief Hearing?

The ALJ will write a decision that says yes or no to the request from the district or parent. If the request is granted, the ALJ will say exactly what temporary relief the parent or district will get. A parent's emergent relief request might be decided before thirty days have passed. If that happens, the case will go back to OSE after the ALJ makes the emergent relief decision. This allows the district to hold a resolution meeting.

H. Emergent Relief Enforcing Stay-Put Rights

You can enforce your child's right to stay-put by requesting emergent relief. If you have not already filed for due process, you will have to file a due process request along with your request for emergent relief. You must file an [Emergent Relief Request](#) and [Certification in Lieu of an Affidavit](#) containing the same information as set out in the preceding section.

The difference, however, is that stay-put cases use a different rule than other emergency requests. For stay-put, you do NOT have to prove your child will be irreparably harmed if the request is denied. You also do NOT have to prove that granting the request is fair or best for everyone. In other words, you do not have to meet the legal test of showing irreparable harm or balancing the equities and public interest as discussed in the following cases:

- [Pardini v. Allegheny County Intermediate Unit](#), 420 F.3d 181 (3d Cir. 2005) (court wrongly applied four-part standard for an injunction when parent filed to impose stay-put because court should have treated stay-put right as an "automatic injunction")
- [M.R. v. Ridley School District](#), 744 F.3d 112, 118 (3d Cir. 2014) (stay-put serves as automatic preliminary injunction)
- [R.B. v. Mastery Charter School](#), 762 F. Supp. 3d 745 (E.D. Pa. 2010), *aff'd*, 532 F. App'x 136 (3d Cir. 2013) (court applied automatic injunction in stay-put case)
- [Ringwood Board of Education v. K.H.J. on behalf of K.F.J.](#), 469 F. Supp. 2d 267, 271 (D.N.J. 2006) (four-part injunction standard does not apply in stay-put case).

It does not matter who asks the court for emergent relief under the "stay-put" rule. The school has the burden of proof and production. To win, it must prove the stay-put is something different than what you claim it is. The district must prove this by clear and convincing evidence.¹²⁷

1. How Is Stay-Put Determined?

Stay-put is usually the IEP and placement in place when you or the district filed for due process or an expedited hearing.

If the district wrote a new IEP, but your child never started getting services under it, your child's stay-put placement is still the old IEP.

¹²⁷ If a school district wants to change the student's stay-put it must file an expedited petition, claiming that the student is substantially likely to injure self or others if the stay-put is not changed for up to 45 calendar days. 20 U.S.C. § 1415(k)(3) & (4). See "[Expedited Petition for Due Process](#)" (p. 26).

Sometimes part of an IEP starts on one date, and another part starts later. If that happens, stay-put is only the part your child was already getting services under when due process was filed.

Sometimes, the district or private school just stops providing services. In that case, stay-put is the IEP and placement from before services stopped.¹²⁸

If this is your child's first IEP, stay-put may be the general education program they were already attending. This happens when due process is filed before the first IEP starts.

Example 1:

The district found a student was eligible. The district developed an IEP.

In the spring, the parent consented to the IEP. But the district and the parent agreed to delay implementing the IEP until September.

The parent filed a request for due process in the summer.

The proposed IEP was not the stay-put placement. This was because it would not go into effect until September.¹²⁹

Example 2:

The IEP recommended a "self-contained out of district" program. It did not identify a specific school. The parents agreed to this IEP. The parents disagreed with the new school identified by the district. The parents wanted the child to stay in the in-district school. The stay-put placement was the school the child was attending. It was not the new school proposed by the district.¹³⁰

2. Why Does The District Say I Lost Stay-Put Because I Did Not File Within 15 Days Of A Proposed Change?

Until 2019, parents were told in PRISE they must file for due process or mediation within 15 days of receiving written notice of a proposed change or lose the stay-put. This was true even if the change had never been put into effect when the parent filed.

In 2019, the federal government told NJDOE this was wrong. IDEA did not place a 15-day limit on a parent's right to invoke stay-put. DOE was told to remove the language from PRISE and issue a memo to ALJs. DOE removed the language from PRISE and issued a Broadcast Memo. The memo states that "A student's right to 'stay-put' applies even if the filing occurs more than 15 calendar days after the proposed change." It also said that the proposed change would likely be the new stay-put once the change was implemented.¹³¹

Example: District gave you written notice in the 2025-2026 IEP that it intended to graduate your child at the end of the 2025-2026 school year. It is now May 2026 and you filed due process and

¹²⁸ [*R.B. v Mastery Charter School*](#), 532 F. App'x 136 (3d Cir. 2013).

¹²⁹ [*Northfield City Board of Education v. K.S.*](#), 847 F. App'x 130, 134 (3d Cir. 2021).

¹³⁰ *K.T. v. West Orange Board of Education*, 2001 U.S. Dist. LEXIS 22265, 2001 WL 1717587 (D.N.J. Oct. 23, 2001).

¹³¹ ["Revised Procedures for Determining a Student's Status During a Special Education Due Process Hearing"](#).

emergent relief to prevent the graduation from taking place. Graduation has not taken place. The stay-put should be the 2025-2026 IEP because the district's proposal to graduate your child never became operational or functioning.¹³²

3. What Do I Need To Say In My Emergent Relief Request To Enforce Stay-Put?

Filing for stay-put has the same basic rules as any emergent relief request. You must explain the problem, give the facts about it, and say how to fix it. When you file to enforce stay-put, we suggest adding a sentence to the problem. You should say you are enforcing your child's stay-put right to an automatic injunction. This helps the judge understand what you are asking for.

a. Example 1: Refusal To Provide Service In IEP (Failure to Implement IEP)

- **The Problem:** My child is entitled to transportation to extended school year (ESY). The district will not provide transportation. I request my emergent relief be decided under the stay-put provision. Stay-put is contained in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u), which entitle my child to an automatic injunction.
- **The Facts:** My child's current educational placement is in an IEP dated [insert date]. It provides for ESY including transportation to and from. My child's ESY starts on June 28, 2021. I was told that my child could attend the ESY. The district said, though, it could not provide transportation. Transportation to and from ESY is in my child's IEP. My child cannot attend unless transportation is provided. I filed due process on [insert date of filing or I filed due process with my emergent relief papers].
- **The Solution:** I request that the school district be required to comply with the stay-put and arrange for transportation to and from the ESY. I also ask that the school district be required to make up any ESY days missed if transportation does not start on time.

b. Example 2: Refusal To Comply With Stay-Put While Parent Objects To New IEP

- **The Problem:** I filed due process claiming that the district's proposed IEP is not appropriate for my child. It would place my child in an in-district program in September that is not appropriate for my child. I want my child to remain in the private school they have attended for the past two years. I ask that my emergent relief be decided under the stay-put provision contained in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u). The stay-put entitles my child to an automatic injunction.
- **The Facts:** I filed due process objecting to the new IEP on [insert date] My child's current educational placement is set out in the [date] IEP which provides for placement in [insert name] private school. The district's proposed IEP to bring my

¹³² See *J.D. and K.D. o/b/o C.D. v. Haddonfield School District*, 811 F. Supp. 3d 682 (D.N.J. 2025); *Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 867-68 (3d Cir. 1996)

child in-district does not go into effect until September. On [insert date], I received a telephone call from [insert name] at the private school. [insert name] told me they had not heard back from the district about paying for next year's placement. They said they needed to know soon whether my child would be returning. Otherwise, they could not guarantee they would have an opening in September. I reached out to [name and title of person at the district]. They told me I did not file my due process within 15 days of receiving written notice of the new IEP so I lost the right to stay-put. After getting off the phone, I sent an email to [name and title] confirming our conversation.

- **The Solution:** I request that the district be ordered to continue to pay for my child's placement in the private school during the due process proceeding and any appeals. The district should also be ordered to immediately notify the private school in writing that the student will continue there next year and until such time as the due process hearing is decided and any appeals are concluded.

c. Example 3: Stopping Graduation Of Student

- **The Problem:** The district wants to graduate my child because they have enough academic credits. I do not believe that my child is ready to graduate just because they have enough credits. I am asking that my emergent relief be decided under the stay-put provision contained in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u). The stay-put entitles my child to an automatic injunction.
- **The Facts:** Graduation is to take place on [include date]. I filed for due process objecting to my child's graduation on [insert date]. My child's current educational placement is set out in the [date] IEP, which provides for placement in [insert name]. **Note:** these are the facts needed to determine the stay-put. You should also include facts supporting your argument that your child should not be graduated. Some ALJs are reluctant to impose the stay-put to prevent graduation when the student has the required credits.
- **The Solution:** Tell the school district that it cannot graduate my child until due process and any appeals are over.¹³³

d. Example 4: School Refusing To Allow Return After Student Receives Psychiatric Clearance

- **The Problem:** The district required a note from a psychiatrist to allow my child to return to school. They will not let my child return even though I got the note. I am asking that my emergent relief be decided under the stay-put provision contained

¹³³ Relevant decisions staying graduation: [*Cronin v. Board of Education of East Ramapo*](#), 689 F. Supp. 197, 203 (S.D.N.Y. 1988); [*Trenton Public School District Board of Education v. S.M. on behalf of D.M.*](#), No. 24-9269, 2024 U.S. Dist. LEXIS 199750, 2024 WL 4664097 (D.N.J. Nov. 4, 2024) (stay-put applied when student did not receive fifteen-day written notice before district issued diploma); [*S.M. o/b/o D.M. v. Robbinsville Township Board of Education*](#), OAL Dkt. No. EDS 8743-18 (SEA NJ June 25, 2018).

in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u). The stay-put entitles my child to an automatic injunction.

- **The Facts:** On May 5, 2026 after an incident in school, the principal [name] told me that my son could not return to school until I obtained a psychiatric clearance. I was told that my son was not being suspended. My son's stay-put placement at that time was set out in the [date] IEP. I arranged for my son to be seen by his treating psychiatrist [name] the following day. That same day, the psychiatrist gave me a document in which she said my son was cleared to return to school. She said that he was not a danger to self or others. I hand-delivered the document to my son's case manager [name] on May 7, 2026. The case manager said she would get back to me as to whether I could bring my son to school on May 8, 2026. She did not get back to me. The case manager called me on May 11, 2026. She said that the psychiatric clearance was not sufficient. I asked why it was not sufficient. She said she did not know – that's just what she was told. I tried to get an appointment with a different psychiatrist but they are booked until June 25, 2026. In the meantime, my son is out of school with no education. On May 20, 2026, I filed due process and emergent relief.
- **The Solution:** My son should be immediately allowed to return to school to his stay-put placement. I am requesting compensatory services for each day of education starting with May 6, 2026, through the day he is allowed to return to school. I also request reimbursement for the \$300.00 I paid for the psychiatric clearance.
- **Note:** In a case like this example, you do not need to prove the four *Crowe* factors to enforce stay-put. However, you could argue in the alternative, showing you are likely to win even using those four factors. Emphasize that the school district still has the burden of proof.
 - The law is settled that a school district cannot stop providing services while a parent obtains a psychiatric clearance.¹³⁴
 - Parent is likely to succeed at due process. No law allows a school district to stop providing services, even for a psychiatric clearance. Even if such a law existed, the parent provided a clearance saying a return to school is safe. The district has no mental health expert opinion saying it is not safe.
 - The interruption in schooling is irreparable harm. (Use the cases discussed above.)
 - Exclusion from school causes great harm to the child while there is no harm to the district when there is a psychiatric note saying he is safe to return to school. There is a strong public interest in preventing exclusion of students with emotional or behavioral issues.

¹³⁴ [NJDOE Broadcast Memorandum “Guidance Regarding the Use of Psychiatric Clearances for Students with Disabilities” \(February 8, 2023\).](#)

4. What Should I Include In My Certification?

If you use the model Certification in Lieu of an Affidavit in the PRISE, put a large X through paragraph 5. This paragraph says that you agree that the ALJ has to apply the Crowe factors. That is not true in a stay-put case.

A sample certification is included at the end of the manual and an explanation of one in the [Glossary](#) (p. 131).

5. What Do I Say At Oral Argument?

- Emphasize that you brought your request to enforce stay-put. Because of this, you are entitled to an automatic injunction.
- Tell the ALJ what program is stay-put. Provide evidence and case law supporting that conclusion.
- Point out that the school district has the burden to show that the stay-put or “status quo” should be changed.
- Focus on the stay-put and not on ultimate relief requested in your due process.
- Summarize the relief you request.
- Respond to arguments raised by the district. Explain why you believe they are not valid arguments.

Note that a party may immediately appeal a stay-put decision to court. This is different from other emergent relief cases.

I. Opposing Emergent Relief When A District Claims The Student Is Dangerous Or Substantially Likely To Injure Others

If a district has filed an expedited petition, New Jersey allows a district to also file an emergent relief request to change the placement even more quickly.

You should do two things right away.

First, you should check if the district filed an expedited due process case. The district cannot ask for emergent relief without also filing this expedited case.¹³⁵ The expedited case gives you the right to a hearing with witnesses before 45 days are up. This is true even if the district also asked for emergent relief.

Second, check to make sure you are available on the hearing date. Determine if you need more time to prepare a response. Try to be as flexible as you can, and once a date is set, make sure you show up on that date.

¹³⁵ 20 U.S.C. § 1415(k)(3)(B)(ii)(II).

State rules say OAL “must schedule an emergent relief hearing as soon as possible.” The hearing date can only be changed (adjourned) if there is “good cause.” But OAL must also follow federal law. Federal law says hearings must be set at a time and place that works well for the parent and child. Following this federal rule matters even more when a parent does not have a lawyer. Always put your requests in writing. If someone gives you an answer by phone or in person, write it down and send a follow-up message to confirm it.

If you truly cannot go on the scheduled date or time, email OAL right away to explain why. Ask them to pick a new date and time, and suggest some dates and times that work for you. Send a copy of the email to the district’s attorney and ask for their consent. Good reasons to reschedule include: you cannot get off work without more notice, you cannot find child care, you are traveling, or you are sick or in the hospital. You can also ask to delay the emergent relief hearing so you have time to find a lawyer or advocate.

If the district already removed your child from stay-put without a court order, say this in your email. What the district did is against the law. If the district has already removed the student, though, it is hard for the district to honestly claim it will be badly hurt by waiting a little longer for its emergent relief request.

If the ALJ says no to your request to reschedule, you still have a right to join by phone if you are fighting a request the district filed.¹³⁶ If you want to join by phone or video, tell the ALJ in writing and send a copy to the district’s attorney. Ask for the phone number or link you will need to call in on the day of the hearing.

You also have the right to file opposing papers. If you cannot go to court on the scheduled day, and there is not enough time to write your opposing papers, you can send another email to the judge. Stay calm and polite, but say you respectfully disagree with the decision not to reschedule. Explain that you need a day and time you can attend and enough time to prepare your papers. If the district already removed your child, mention this fact. Ask the judge to reconsider and give a short delay to one of the days and times you suggested. Point out that since you do not have a lawyer, no one will be there to speak for your child if the judge says no.

Do a quick review of the district’s papers: Did the district follow the rules for an emergent relief request?

- Did the district file for due process or an expedited petition?
- Does the district’s request say what temporary help it wants and the facts it says support that?
- Does the district’s request have one or more sworn statements containing the facts backing up its request?
- Does the person who wrote the sworn statement say they have personal knowledge of the facts they are claiming?
- If the individual gives an opinion, do they give their education, training and experience? Do they give the basis for their opinion?

Personal knowledge of what happened during a behavioral incident means the person saw or heard the behavior when it happened. Districts often have administrators or other people prepare

¹³⁶ N.J.A.C. 1:6A:12.1(d).

certifications. They were often not there when the events happened. They do not have personal knowledge. This matters a lot when someone describes a behavior incident used to remove your child from their stay-put. The document may also contain multiple levels of hearsay, which makes the document highly unreliable.

Districts often make a list of behaviors they say your child showed at school. This list might even cover more than one school year. You can strongly object to this list because you do not know who made it, why they made it, or when. This person who put the list together may not have been there when any of the incidents happened. It also may have been put together just to support the district's position in its emergent relief.

The four elements a district must prove at the Emergent Relief hearing by clear and convincing evidence:

1. The district has a settled legal right to change a student's stay-put when the student is substantially likely to injure self or others if not temporarily removed. During the removal, the district has a settled legal right to place the student in an appropriate IAES.
2. The district is likely to prevail at the expedited hearing on these settled legal claims.
3. The district will suffer irreparable harm if the student is not immediately removed for up to 45 calendar days.
4. The equities and public interest weigh in favor of the district.

To win emergent relief, the district must prove all four elements by "clear and convincing evidence."¹³⁷ This is evidence that gives an ALJ a firm conviction that the facts are highly probable.¹³⁸ This is a heavy burden.¹³⁹

1. Element 1: Is The School District Attempting To Remove Your Child Based On Invalid Legal Claims Rather Than The Settled Legal Claim Allowed Under 20 U.S.C. § 1415(k)(3)?

A district is allowed to change a student's placement for up to a maximum of 45 calendar days only if it proves two settled legal claims by clear and convincing evidence.

The two settled legal claims that a district must prove to change a student's placement up to a maximum of 45 calendar days are:

1. Keeping the child in their current placement is substantially likely to injure the child or others.

¹³⁷ [*Waste Management of New Jersey v. Union County Utilities Authority*](#), 399 N.J. Super. 508, 520 (App. Div. 2008).

¹³⁸ [*Colorado v. New Mexico*](#), 467 U.S. 310 (1984)

¹³⁹ [*Honig v. Doe*](#), 484 U.S. 305, 328 n.10 (1988); [*Olu-Cole v. E.L. Haynes Public Charter School*](#), 930 F.3d 519, 522 (D.C. Cir. 2018) (school has a heavy evidentiary burden to show that child should not stay-put in placement).

2. The new temporary placement the district wants (IAES) is appropriate.¹⁴⁰

Read the district's papers closely. What law does the district argue gives it the legal right to change your child's placement? Some districts claim the student is preventing them from educating other students. Or from providing the right educational atmosphere. Or from providing this student with an appropriate education. Or the student is disrupting the education of others. Some districts claim they need to remove the student to obtain more psychiatric data. Others claim the student must be removed while the district looks for a different placement. These are not settled legal claims under IDEA for temporarily changing a student's stay-put. Again, there are only two settled legal claims that allow an ALJ to temporarily remove a student. They are (1) The student is substantially likely to injure self or others and (2) the proposed IAES is appropriate for the child.

As for the second legal claim, some districts appear not to know that they must also prove that the IAES the district proposes is appropriate. If the district seems to not know it must also prove this settled legal claim, say so in your papers. Point out that the district must prove two settled legal claims, not just one.

2. Element 2: Has The District Shown By Clear And Convincing Evidence That It Is Likely To Win The Expedited Hearing?

- District did not provide clear and convincing evidence that if not removed, the student is substantially likely to injure self or others
 - Claiming student is disruptive, saying mean things, etc. does not show substantially likely to injure self or others

Check if the district is using these as proof that the student is substantially likely to injure self or others:

- The student is disrupting classes
- The student says mean things, curses, or insults other students
- The student is not getting an appropriate education
- The student broke or damaged school property
- The district says it cannot keep a good learning environment
- The student sprayed water on other students
- The student knocked over a desk or chair
- The district says the student is a "safety risk" or might "potentially" hurt someone

If the district uses any of these reasons, you can argue in your papers that the district is mixing up bad behavior with real physical harm. The law says the district must prove that without a short-term change, "the student is substantially likely to injure themselves or others." A district saying your child is disruptive, says mean things, does not follow rules, or breaks something is concerning

¹⁴⁰ 20 U.S.C. §1415(k)(3)(B)(ii); 34 C.F.R. 300.532(b)(2)(ii); N.J.A.C. 6A:14-2.7(n); N.J.A.C. 6A-14.2(e).

and should be addressed. But none of these reasons are enough, by themselves, to change your child's stay-put placement.¹⁴¹

a. No Expert Evidence Presented On The Substantial Injury Issue

New Jersey judges said the district needs an expert's opinion to prove a student is "substantially likely to hurt themselves or others." In one case, the district brought in an expert who had evaluated the student. She said the school was not giving him a FAPE. She also said that if she had to choose, she would rather he get home instruction while a new placement was found. But when asked the key question, "would continuing [the student] in school be substantially likely to result in injury to [the student] or others, she said she did not know and "could not predict the future." Because the district had no expert to back up its claim, the judge said no to the district's request, and the student stayed in his placement.¹⁴²

In another expedited decision, the ALJ said: "As the law disfavors home instruction, I CONCLUDE that consistent with this view of home instruction, the standard for relief under 20 U.S.C. § 1415(k)(1)(3)(A) is a stringent one that cannot be met unless supported by expert opinion."¹⁴³ In that case, the private school seeking removal had not provided any expert opinion that home instruction was appropriate.

b. Your Expert Evidence

Has a doctor or other professional recently said your child can go back to school? If so, ask them to sign a statement and attach the paper clearing your child to return. In the statement, they should list their education, experience, and training that qualifies them to say it is safe for your child to return. This is important for the ALJ to know.

If you cannot get a signed statement in time, mark the doctor's note as an Exhibit in your own statement. Explain that the school district asked for this assessment. State that you got this paper when the assessment was done. Also, tell the ALJ that you gave a copy to the district, and that the

¹⁴¹ [*Central Jersey College Prep. Charter School Board Of Education v. A.G. o/b/o T.L.*](#), OAL Dkt No. EDS 02379-2026, Agency Dkt. No. 2026-40426 (OAL Feb. 27, 2026) ("disruption of his own and neighboring classrooms with profanity, insults, and aggression has a negative impact on the educational environment of other students. That alone, however, is not enough to prevent [the student] from attending school"); [*Sterling High School District Board of Education v. J.L. o/b/o J.L.*](#), OAL Dkt No. EDS 1054-1011, Agency Dkt. No. 2023-35176 (OAL Dec. 2, 2022) (disruptions to the academic environment or threats of physical violence against classmates do not satisfy the high statutory burden required to remove a student); [*Clinton C. R-III Sch. Dist. v. C.J.K.*](#), 896 F. Supp. 948, 949 (W.D. Mo. 1995) ("no matter how disruptive or offensive the behavior of the child may be, and regardless of the effect of misbehavior on the school staff and the student body, there can be no change in placement...absent the substantial likelihood of personal injury").

¹⁴² [*Tenaflly Borough Board of Education v. A.M. and S.M. o/b/o I.M.*](#), OAL Dkt. No. EDS 01478-22, Agency Dkt. No. 2022-33021 (March 21, 2022).

¹⁴³ [*K.R. and J.W. o/b/o L.W. v. Franklin Township Board of Education and Y.A.L.E. School Southeast*](#), OAL Dkt. No. EDS 01940-22, Agency Dkt. No. 2022-33916 (May 2, 2022).

district still has not let your child return to school. Also point out that a federal rule 34 C.F.R. § 300.502(c)(2) says a judge can consider independent evaluations at the hearing.

c. Temporary Factors

It is always good to tell the judge if temporary things are making your child's behavior worse.

Example: The doctor changed your child's medicine. This caused a bad reaction with big outbursts. The doctor is now trying a different medicine. The doctor can explain what happened with the medicine change.

Ask the doctor to submit a certification. If that is not feasible, ask for a letter you can attach to your certification. The doctor should state their professional title and license type. Describe the timeline for the medication change. Describe how the medication impacted your child's behavior. Ask if the doctor can set out the expected time for the student to adjust to the new medication.

Example: Your child just moved from another school district and only has a temporary IEP while the new district does its evaluations. You know your child struggles with change and acts out more until they settle in and the district did not make reasonable efforts to minimize injury.

*Light v. Parkway C-2 School District*¹⁴⁴ is the key court case that sets the rules for what a district must prove to show a "substantial likelihood of injury." In this case, the student kept showing aggressive behavior. She kicked, hit, and bit her teacher several times a week. She also hit, kicked, and slapped other students, both disabled and not disabled. The court agreed she was substantially likely to hurt herself or others if she stayed in school. But the court also said the district must prove it tried reasonable ways to lower the risk of injury, like using extra supports and changes to help her. The court ruled for the district only after both things were proven.¹⁴⁵

Are there aids and services the district refused to provide despite your requests? This could be a request for a behavior plan. Or a request for a 1:1 aide or counseling? You can explain in your certification the supports that you requested and that the district refused to provide. Attach any documents proving this.

d. District Not Implementing IEP

You need to point out which parts of the IEP were not done at all, or not done regularly. Attach a copy of the IEP to your certification. If you have emails or other papers between you and the district about this problem, attach copies. If not, describe any conversations you had: who you talked to, about when, and what was said.

Example: The district is not giving your child the reading help listed in the IEP. You have noticed your child getting more upset since the help stopped. Describe how they showed this upset feeling.

¹⁴⁴ 41 F.3d 1223 (8th Cir. 1994).

¹⁴⁵ *West-Windsor Plainsboro Board of Education v. A.C. o/b/o Z.P.*, OAL DKT. No. 00659-22, Agency DKT. No. 2022-33827 (OAL Feb. 1, 2022) (denying removal because district had not exhausted its options to address behavioral needs); *Central Jersey College Prep Charter School Board of Education v. A.G. o/t/o T.L.*, OAL DKT. No. 02379-2026, Agency DKT. No. 2026-40426 (OAL February 27, 2026).

You told your case manager, who said the district was working on it. But the reading help is still not happening.

- **Example:** Your child's special education teacher is on maternity leave. A substitute without special education training is teaching the class. The substitute lets students do whatever they want, the class is loud, and children are misbehaving.
- **Example:** The district is not giving your child the one-on-one aide required in the IEP. Or the aide is not following the behavior plan.

e. District Using Outdated Data

Any harm must be about to happen soon. So the behavior used as the basis for changing your child's stay-put should be recent. If a student hit another student six weeks ago, but has not hit anyone since, that old incident does not show harm is about to happen.

f. District Did Not Provide Clear And Convincing Evidence That The IAES It Proposes Is Appropriate

An appropriate education consists of education that will meet the student's unique needs. The education must be supported by services that will allow the child to benefit from the instruction.¹⁴⁶ The IEP must be set up so the child will make progress appropriate in light of the child's circumstances.¹⁴⁷

New Jersey requires consultation with the parents to determine the appropriate location for home instruction. It does not have to be provided in the home. It can take place in the local library or another location. It can also occur at the local school in late afternoons.¹⁴⁸ Students with disabilities must receive a minimum of 10 hours of instruction per week. The instruction must be by a certified teacher on at least three separate days.¹⁴⁹ Ten hours is the minimum required per week.¹⁵⁰

Home instruction also conflicts with the priority IDEA places on educating students in the least restrictive environment. If your child's IEP requires related services, the student is entitled to receive the related services while on home instruction. Services could also include planned interaction with peers. Your child would likely need services to address the behaviors that led to their removal. You may ask that these and other services be provided to facilitate your child's return to school.

See Example 2 in "[Examples Of Problems Supporting Emergent Relief Request](#)" (p. 37).

¹⁴⁶ [Board of Education v. Rowley](#), 458 U.S. 176, 188-89 (1992).

¹⁴⁷ [Endrew F. ex rel Joseph F. v. Douglas County School District Re-1](#), 580 U.S. 386 (2017).

¹⁴⁸ N.J.A.C. 6A:14-4.8(a)(5).

¹⁴⁹ N.J.A.C. 6A:14-4.8 (a)(3) & (4).

¹⁵⁰ [A.S. v. Harrison Township Board of Education](#), 2016 WL 4414781 (D.N.J. Aug. 18, 2016).

3. Element 3: Has The School District Proven It Will Experience Irreparable Harm?

Some districts claim the student's threats, cursing and other rule-breaking are the irreparable harm needed to temporarily change a student's placement. You need to point out that this is not the kind of harm needed to remove a student. The irreparable harm must be an injury to the student or someone else. There must also be clear and convincing evidence that the injury is "substantially likely to occur" and "substantial, immediate and imminent."

Districts use words like "potentially cause injury," "risk of harm," or "safety risk," as the irreparable harm. In *Olu-Cole v. E.I. Haynes Public Charter School*,¹⁵¹ the court rejected the district's claim that a return to school "would raise an unacceptably significant potential of injury to other[s]." It held that the school district failed to show harm was "certain," "great," and "actual" as required. If a "safety risk," or "risk" to another were sufficient to change a student's stay-put, it would render the Supreme Court's decision in *Honig v. Doe*¹⁵² meaningless.

4. Element 4: Does Balancing The Equities Compel A Decision In The District's Favor?

The district must prove by clear and convincing evidence that the balance of fairness favors the school, not your child. Your job is to show the opposite. The judge must weigh the irreparable harm to your child against any irreparable harm to the district. See "Irreparable Harm" (regarding irreparable harm to students) (p. 39). In *Central Jersey College Prep Charter School Board of Education v. A.G. o/b/o T.L.*, OAL Dkt. No. 02379-2026, Agency Dkt. No. 2026-40426 (OAL February 27, 2026), the ALJ found that home instruction caused irreparable harm to the student. The ALJ held that there was no remedy "to restore the lost experience for the student."

There is a strong public interest against excluding students with disabilities who exhibit emotional and behavioral issues from school. Because of that, a court may withhold relief even if there was a substantial showing of irreparable injury to the district.

Sample Certifications are provided at the end of this guide and an explanation of them in the Glossary (p. 131).

J. Discovery In Special Education Matters

1. What Is Discovery And What Discovery Is Allowed?

Discovery is when both sides learn about each other's case before the hearing. In special education cases, only informal discovery is allowed. This means each side finds out what evidence the other side will use, so there are no surprises at the hearing.

Some types of discovery are NOT allowed in special education cases. These are interrogatories, depositions, and demands for admission. Interrogatories are written questions about facts that the other side answers in writing, under oath. If someone sends you interrogatories, tell the district's attorney that these are not allowed in special education cases.

¹⁵¹ 930 F.3d 519, 529 (D.C. Cir. 2019).

¹⁵² 484 U.S. 303, 309-10 (1988).

When you file your case – or when the district files against you – start thinking about evidence. Ask yourself: what documents do I need to prove my case, and which ones don't I have yet?

Neither side can ask for discovery until NJDOE sends the case to OAL for a hearing. After that, the parties can ask only informal questions. For example, you can ask if the district recorded an IEP meeting. If so, you can ask for a copy of the recording. You can also ask about the ages and sexes of the children in the proposed class. But no one can ask you about your legal theories or how you understand the law.

2. What Records Can You Request From The School District?

Send your written discovery requests to the district's attorney. Do NOT send the ALJ copies of your discovery requests or copies of documents you get from the district – unless the ALJ asks for them.

You can ask the school district for copies of all your child's school records, no matter where they are kept. You can also ask for other papers you think are related to your case, or that might lead to more proof. These might include nurse's records for your child. Or the teacher's grade book showing your child's grades for the relevant time period. Or logs showing when related services were provided to your child. Or incident reports involving your child. Any written procedures for preparing incident reports.

Your request can ask for papers that help prove your problem. It can also ask for papers the district thinks show there is no problem.

If you say your child is not making enough progress, first read your child's current IEP. Most IEPs have notes about the progress the district says your child is making. Ask the district for papers that back up this claim. Also ask for papers the district has that show your child is not making enough progress. You may also want to ask for all papers showing how your child is doing in math or reading. That could include test scores.

If you say the district did not give a required service, ask for logs or papers showing when the service was given. Do the same thing for any accommodations you think were missed.

3. What Discovery Can You Request In An IEE Case When The School District Has Filed?

Possible discovery in an IEE case filed by the district could include the following:

- Evaluation contracts the district entered into for independent evaluations with outside providers during the past 12 months, redacting any identifying information concerning a particular child. You might find the approved costs for outside district evaluations in minutes of Board meetings when it approves payments for evaluations. This will also show you which individuals and agencies have contracts with the school district.
- All board policies and procedures concerning IEEs as well as any other district IEE procedures. These may be on the Board or District's website.
- Documents concerning each assessment the district conducted as part of the evaluation you disagree with.

- Each evaluator’s curriculum vitae (CV) or résumé as well as any additional education, training or employment since the CV or résumé was prepared.
- Any completed questionnaires or documents referred to in the assessment report.
- You may ask for the protocols for each testing instrument used. The protocols will show the questions asked and your child’s response. The district may ask for a protective order for the protocols, limiting their use only for purposes of the hearing.
- Notes, emails, or reports of any observation of the student outside of the testing situation. If there are no notes, emails, or reports, ask whether the evaluator observed the student in a non-testing environment, in what setting(s), and for how long.
- Notes and emails of all communications between and among the evaluator and district staff or administrators concerning their assessment.
- If you were given a list of possible evaluators, ask who put the list together and their position. What criteria were used in putting names of possible evaluators on the list? When was it last updated? Is this the complete list of evaluators acceptable to the district? If not, ask the district to provide the full list.
- Ask if the district has contracted with any of the individuals on the list or the agency they currently work with to conduct assessments within the past 18 months.

You could also seek documents concerning the district’s cost caps.

- If the district has a board policy with cost caps, when was the cost cap for each type of assessment set?
- What criteria were used to determine the cost cap?
- Ask for all notes or documents used in setting or updating the cost caps.
- If there is no board policy, request copies of any documents setting out the cost caps the district is currently using.
- When and how were the cost caps set?

4. How Do You Respond To The District’s Request For Documents?

You must answer the request. You can do this in two ways. You can give the district the papers it asked for, or you can tell the district’s attorney you object – and explain why.

Objections you can raise:

- The document has nothing to do with the case, and it will not help find relevant evidence.
- The request asks for too much, or is just a “fishing expedition.” This means it is not looking for anything specific. Or finding the papers would take too much work.
- Attorney-Client Privilege: This covers private messages between you and your lawyer. It also covers messages between you and a non-lawyer advocate who helps you.
- Attorney Work Product Privilege: These are papers made by you or your lawyer because you thought there might be a legal case. This also covers papers made by your non-lawyer advocate.

- Privileged communications with medical providers: These are private talks with social workers, mental health providers, doctors, and psychologists.

A school district does not have an automatic right to see your child's private medical records. Medical records are generally privileged. Sharing a student's mental health or medical records can cause a lack of trust.

In a case called [*In the Matter of Kozlov*](#),¹⁵³ the New Jersey Supreme Court said there are three things that must all be true before someone can break through this privacy protection:

1. The other side really needs the evidence.
2. The evidence must matter to the case and relate to it directly.
3. There is no other, less invasive way to get the same information.

In a case called [*Kinsella v. Kinsella*](#),¹⁵⁴ the New Jersey Supreme Court said the psychologist-patient privilege protects a person's private thoughts and feelings. These are things a person only meant to share with their therapist, not the public. The court said this kind of private information should only be shared in very serious situations. One example is when there is separate evidence that a child might be in "clear and present danger." See also [*Correia v. Sherry*](#) (court denied access to deceased student's communication with school psychologist and social worker).¹⁵⁵

Sometimes a privilege can be *partly given up*. This happens when a person brings up a private matter as part of their case. A case called [*State v. Mauti*](#)¹⁵⁶ explains this rule. For example, you could say your child has a medical condition that needs a special accommodation. Then, the district may have a right to see your medical documents *about that condition*. The district can also ask for medical documents if you say a medical person told you your child needed a full-time nurse during the school day. Or if you ask for home instruction because the child's doctor said they needed home instruction due to a medical condition. If your child's social worker, psychiatrist, or psychologist is going to testify, the district may have a right to see *the parts* of the treatment records that the witness plans to talk about. The same rule applies if your child's doctor is going to testify.

The ALJ can make you provide privileged documents even if you object. If that happens, you can ask for a protective order. That is an order stating that the records can only be used during the hearing and appeals. The order may also say that the documents will not become a part of your child's school records. It may also say that the documents will only be shared with the district's attorney and district witnesses who need them for their testimony. Once the hearing is over, the witnesses will return all copies to the district's attorney.

¹⁵³ 79 N.J. 232 (1979).

¹⁵⁴ 150 N.J. 276, 295 (1997).

¹⁵⁵ 335 N.J. Super. 60 (Law Div. 2000).

¹⁵⁶ 208 N.J. 519 (2012).

5. When Must Discovery Be Completed?

Special education regulations say all discovery must be completed no later than five business days before the hearing.¹⁵⁷ You can ask the ALJ (the judge) to set a due date for both sides to answer discovery requests. Ask to get all the papers you requested from the district at least 12 days before the hearing starts. You need time to look over the papers and pick which ones you will use as evidence at the hearing. If there are discovery issues, send an email to the ALJ's assistant. Explain there are discovery issues and what they are. Copy the district's attorney on your email.

6. Can The School District Get Discovery About My Use Of Artificial Intelligence?

Many parents now use an artificial intelligence chat tool (ChatGPT, Claude, Gemini, or another) to help them make sense of records, organize facts, or draft documents. Nothing in the special education rules forbids this, and for a parent without a lawyer these tools can be genuinely useful. But they carry risks that are easy to miss, and the courts have only begun to sort them out.

Read the following before using AI.

a. An AI Tool Is Not Your Lawyer

This is the point many *pro se* parties most often get wrong. The attorney-client privilege protects what you tell a lawyer. It does not protect what you type into an AI tool, because the tool is not a lawyer and you have no attorney-client relationship with the company that runs it.¹⁵⁸

b. Do Not Count On Your AI Work Being Protected

There is a separate protection, called the work product doctrine, that covers material a party prepares in anticipation of litigation. Two federal courts have held that it reaches a self-represented party's AI work, and that using a public AI tool does not by itself give up the protection, because the tool is an instrument rather than an opposing person.¹⁵⁹ But this is unsettled law.

Another federal judge reached the opposite result, reasoning that the doctrine exists to protect a lawyer's thinking, and no New Jersey court has ruled on the question at all. Even the decisions that protected a party's AI material still required the party to disclose which tool was used.¹⁶⁰ Write as though what you type into AI might someday be read by the district's lawyer, because it might be.

¹⁵⁷ N.J.A.C. 1:6A-10.1.

¹⁵⁸ [*United States v. Heppner*](#), 820 F. Supp. 3d 292 (S.D.N.Y. 2026) (Rakoff, J.).

¹⁵⁹ [*Warner v. Gilbarco, Inc.*](#), 820 F. Supp. 3d 629 (2026); [*Morgan v. V2X, Inc.*](#), 2026 U.S. Dist. LEXIS 67939 (D. Colo. March 30, 2026) (“[a] *pro se* litigant is simultaneously the party and the advocate” and “should be afforded the same protections”).

¹⁶⁰ [*Morgan v. V2X, Inc.*](#), 2026 U.S. Dist. LEXIS 67939 (D. Colo. March 30, 2026).

c. Check Every Case And Citation Before You File Anything

AI tools sometimes invent case citations. They do it fluently and confidently, producing case names, courts, years, and quotations that look ordinary and do not exist. Courts across the country have sanctioned filers for submitting case names that are not real. Beyond any formal penalty, the practical damage is worse: a judge who finds one invented case in your brief will read everything else you wrote with suspicion, including the parts that are right.

The rule is simple, and there is no shortcut around it. Before you file anything, find and read every case you cite, using the free sources listed in “[Legal Research Resources](#)” (p. 111). If you cannot find the case, do not cite it. The same goes for quotations from a statute or regulation. Pull up the actual text and confirm the words are there.

VII. MOTIONS TO DECIDE THE CASE WITHOUT A HEARING

A. Motions To Dismiss

Neither IDEA nor the Uniform Procedural Rules for OAL provide for a Motion to Dismiss. In the instances when a district files a motion to dismiss, it will be decided under New Jersey Court Rule 4:6-2(e).

This rule requires that the motion to dismiss be based solely on the facts set out by the parent in their due process petition. No evidence or documents produced by the district should be considered in a motion to dismiss.¹⁶¹ In ruling on the motion, “all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted.”¹⁶² Dismissal is warranted only where facts are palpably insufficient to support a claim upon which relief may be granted.

Examples where ALJs have granted motions to dismiss:

- Failure to state a claim upon which relief can be granted: when a parent filed due process seeking to have her child’s failing grades removed from her transcript
- Pending due process petition dismissed after parents revoked consent for their child to receive special education services altogether
- Failure to attend a mutually agreeable date set for the Resolution Session
- When parent fails to appear for conferences, hearings or other scheduled dates (usually on more than one date)
- Repeated failures to comply with discovery requests

B. Responding To A Motion To Dismiss

In motions to dismiss like all other proceedings, school districts have the burden of proof and production.

When a district files a motion claiming the parent has failed to state a claim upon which relief can be granted, the motion to dismiss should be based solely on the parent’s due process petition and any attachments to it. Since all the facts set out by the parent are assumed to be true for the purposes of deciding the motion, there is no need for a certification by either party. In response, the parent needs to point out how, assuming their facts are true, their petition should not be dismissed as a matter of law. In [*Muniz v. United Hospital Medical Center Presbyterian Hospital*](#),¹⁶³ the court held that a complaint should not be dismissed where a cause of action is suggested by the facts and amending the complaint might result in a legal claim.

¹⁶¹ [*Rieder v. State of NJ Department of Transportation*](#), 221 N.J. Super. 547, 552 (App. Div. 1987) (inquiry is limited to “a consideration of the legal sufficiency of the alleged facts apparent on the fact of the challenged claim”).

¹⁶² [*Smith v. City of Newark*](#), 136 N.J. Super. 107, 112 (App. Div., 1975).

¹⁶³ 153 N.J. Super. 79, 82-83 (App. Div. 1977).

If the district refers in its papers to facts or documents outside of the four corners of the parent's petition, then the motion should be treated as a motion for summary decision. The parent needs to point this out through an email prior to their response or include it in their answering papers. This would require the district and parent to file certifications concerning the additional facts alleged by the district and pointing out disputes of fact.

Many motions to dismiss at OAL are for actions the parent failed to take, such as not appearing at conferences, responding to discovery requests or failure to appear for a resolution conference. If the parent has defenses or disputes the accuracy of facts asserted by the district, they can put their evidence in a certification and point out disputes of fact as well as of the law.

C. Summary Decision Motions

1. What Is Required When A Motion For Summary Decision Is Filed?

The district must show that there is no genuine dispute of material fact and that it is entitled to relief as a matter of law. OAL regulations say that a motion with summary decision "shall be served with briefs and with or without supporting affidavits." It must be filed no later than 30 days prior to the first scheduled hearing date or by such date as ordered by the ALJ.¹⁶⁴

Parents opposing the district's motion must respond in a certification setting forth specific facts showing that there is a genuine issue – a material fact that the parties do not agree on – that can only be determined by a hearing. A parent's response must be filed within 20 days of when they receive the motion. The district may file a reply no later than 10 days after that. The ALJ has 45 days from the date of the last permitted responsive filing to issue a decision.¹⁶⁵ The burden of proof and production is on the school district.¹⁶⁶

The ALJ must view all evidence and draw all reasonable inferences in the light most favorable to you (the non-moving party). An example of a reasonable inference would be that if there is snow on the ground, it has snowed. At the summary decision stage, the ALJ's function is not to weigh the evidence and determine the truth of the matter. Nor is it to determine who was more credible. That is an ALJ's role in a hearing. Rather, at the summary decision stage, the ALJ's role is to determine whether there is a genuine issue for a hearing.¹⁶⁷

2. Challenges To Summary Decision Motions

Below are possible arguments you might use when opposing a district's motion for summary decision. There may be other arguments not covered below or particular facts in your case that might warrant a different decision.

¹⁶⁴ N.J.A.C. 1:1-12.5(a).

¹⁶⁵ N.J.A.C. 1:1-12.5(c).

¹⁶⁶ N.J.S.A. 28A:46-1.1.

¹⁶⁷ [*Anderson v. Liberty Lobby, Inc.*](#), 477 U.S. 242, 250 (1986).

a. Summary Decision Denies A Parent's Right To Confront, Cross-Examine, And Compel The Attendance Of Witnesses

IDEA does not specifically allow summary decision. Instead, it says that all parents should be able to “present evidence and confront, cross-examine and compel attendance of witnesses” for a hearing.¹⁶⁸ The hearing must be consistent with 34 C.F.R. 300.507, 300.508. OAL regulations recognize that if one of its rules conflicts with these Federal requirements, “the Federal requirements shall apply.”¹⁶⁹

The federal Office of Special Education Programs (OSEP) was asked in 2022 whether using summary decision violated a parent's right to a hearing under IDEA. OSEP responded:

“To the extent any summary proceedings in a hearing on a due process complaint...limit, or conflict with, either party's rights, including the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, we believe such proceedings can be used only when both parties consent...”¹⁷⁰

In a recent decision, [*K.W. v. Ringwood Board of Education d/b/a Ringwood School District*](#),¹⁷¹ the parents argued their rights were violated by the ALJ deciding their petition through summary decision without their consent. The district court found that “a plain reading of the OSEP Policy Letter calls into question the use of a summary decision in the state IDEA administrative proceeding.” The court went on to state that it found “persuasive [the parent's] reliance on the April 25, 2022 OSEP Policy Letter.” It remanded the matter back to OAL for a new due process hearing.

Prior to the *K.W.* decision, school districts were routinely allowed to file motions for summary decisions in special education cases without first getting the parent's consent. So, even if you strongly object to use of the summary decision in your case, this argument standing alone may not be enough to defeat the school district's summary decision motion. We recommend that you also raise additional challenges.

b. Summary Decision Conflicts With The 45-Day Timeline

IDEA requires due process hearings to be decided within 45 calendar days, not including any extensions of time (adjournments) requested by a party and granted by the ALJ. In contrast, summary decision motions without any other adjournments could add a minimum of 75 calendar days to this timeline. This could be a persuasive argument, particularly if you point out that your petition only involves one issue that might be decided in a one or at most two-day hearing.

¹⁶⁸ 20 U.S.C. § 1415(h); 34 C.F.R. 300.512(a)(2).

¹⁶⁹ N.J.A.C. 1:6A-1.1(b).

¹⁷⁰ [Letter to Zirkel, 22-04](#) (OSEP April 15, 2022).

¹⁷¹ No 24-8293, 2026 U.S. Dist. LEXIS 133597 (D.N.J. June 16, 2026).

c. Summary Decision Is Premature Until Discovery Is Provided

If you have not requested any discovery yet or the district has not produced the requested discovery, you may argue that the summary decision motion is premature.¹⁷² Discovery is particularly important when the facts the district claims are important are based upon evidence only the district has. This is often what happens in special education matters.¹⁷³ You can ask that the ALJ make the district comply with your discovery requests before allowing it to file a summary decision motion.

d. Summary Decision Should Be Denied As A Matter Of Law Because The District's Factual Claims Or Documents Submitted With The School District's Brief Were Not Supported By Affidavits Or Certifications

Sometimes a school district files a motion that lists facts and documents and says they are not in dispute. Check where those facts appear. If they are only in the district's brief, and not in a certification or another sworn statement, the district has not met the standard for summary decision. You can point that out to the judge.

Important facts must be proved by sworn evidence. A brief is not evidence, and neither is what a lawyer says out loud at the argument.¹⁷⁴ Only competent evidential materials can be considered.¹⁷⁵ If documents are to be considered, they must also be identified and authenticated as true and correct copies in an affidavit or certification.¹⁷⁶

Material factual claims made in affidavits or certifications must be admissible in a hearing.¹⁷⁷ Statements that might otherwise be hearsay are admissible if not offered to prove the truth of the matter asserted.¹⁷⁸

Districts have both the burden of proof and the burden to go first (the burden of production) in all special education proceedings.¹⁷⁹ Requiring a parent to respond with an affidavit or certification setting out what the parent believes are disputed facts when the district has not submitted a proper certification improperly shifts the burdens of both proof and production to the parent.

If you argue that the district has not properly supported its factual claims in certifications, the district may try to correct its error by including the required certifications in its reply submission.

¹⁷² [*Alpert, Goldberg, Butler, Nortan & Weiss, P.C. v. Quinn*](#), 410 N.J. Super. 510, 538 (App. Div. 2009).

¹⁷³ [*Claypotch v. Heller, Inc.*](#), 360 N.J. Super. 472 (App. Div. May 30, 2023).

¹⁷⁴ [*Raday v. Board of Education of Manville*](#), 130 N.J. Super. 552, 556 (App. Div. 1974).

¹⁷⁵ [*Brill v. Guardian Life Insurance Company of America*](#), 142 N.J. 520, 523 (1995).

¹⁷⁶ [*Seller v. Schonfeld*](#), 270 N.J. Super. 424, 427 (App. Div. 1993).

¹⁷⁷ [*Wells Fargo Bank, N.A. v. Ford*](#), 418 N.J. Super. 592, 599 (App. Div. 2011); [*P.N. v. Greco*](#), 282 F. Supp. 2d 221, 235 (D.N.J. 2003); N.J. Ct. Rule 1:6-6.

¹⁷⁸ [*E.L.-Sioufi v. St. Peters University*](#), 382 N.J. Super. 145 (App. Div. 2005).

¹⁷⁹ N.J.S.A. 18A:46-1.1.

If the district does this, you may want to ask the ALJ for permission to provide what is called a sur-reply so you can respond.

e. Summary Decision Should Be Denied Because There Are Genuine Disputes Of Material Fact

Even if you raise one or more of the above arguments, you **MUST** always respond to a district's motion for summary decision by challenging the facts the district claims are undisputed. Material facts are what the law requires the district to prove to win a summary decision motion.

Example: Parents filed due process in May 2025 claiming the district had failed to provide their child with FAPE for the past four school years and asked for compensatory services for that period. The district filed for summary decision claiming that the parent's claim was limited by the statute of limitation to the two years between June 2023 and May 2025. See "[Time Limit \(Statute Of Limitations\) For Filing For Due Process Or Mediation](#)" (p. 6). The district is assuming that the parent's KOSHK date was June 2023. If you can dispute that June 2023 was your KOSHK date and can provide evidence that it was actually much later, then you may be able to defeat the district's motion for summary decision.

Let's suppose your KOSHK date was March 2024 because that is when you received an evaluation the district should have completed earlier showing a loss of academic skills. By seeing that information, you learned the district's actions had deprived your child of a FAPE. You will need to provide evidence substantiating this is your KOSHK date. This could include a copy of the evaluation report that was the first objective assessment conducted by the district in [number] years, contrasting this with report cards showing A's and B's or comments by teachers saying how well your child was doing in school.

f. Even Assuming There Is No Dispute Of Material Fact, The School District Must Still Show It Is Entitled To Summary Decision As A Matter Of Law

In some cases, you may agree with the district's assertions of fact. You believe, though, that there is a statute, regulation or case law that shows the district is not legally entitled to summary decision as a matter of law. OAL regulations require the moving party's motion for summary decision to be filed with a brief.¹⁸⁰ The district's brief should cite to statutes, regulations and case law that it believes shows that it is entitled to summary decision.

For information on how to obtain copies of statutes, regulations, and decisions, see "[Legal Research Resources](#)" (p. 111).

3. When The School District Files Summary Decision Claiming Your Petition Is Moot

A case is "moot" when the ALJ or court cannot grant you "effective relief." There are occasions when your petition does become moot. If you filed due process asking for a future private placement for your child and then moved to another state, then the district is likely to claim that your private placement claim is moot. If you asked for reimbursement, compensatory services or

¹⁸⁰ N.J.A.C. 1:1-12.5.

a private placement for past harm, then you can argue that your due process petition is not moot because the ALJ can still grant you relief.¹⁸¹

Districts sometimes claim your petition is moot because it agreed to provide the relief you requested. The parties are always encouraged to voluntarily resolve the dispute through mediation, a private settlement agreement or by amending the student's IEP to include how compensatory services would be provided and in what quantity. You have a right, though, to strongly object to the dismissal of your IDEA claim as moot based on an unwritten, unexecuted, unimplemented or unaccepted offer.

Example 1:

Parent filed for due process claiming that the district did not offer their child a FAPE and requested an out-of-district placement. The district sent a letter offering to place the child in a specific out-of-district school. Parents visited that school, did not believe it would offer a FAPE for their child and told the district they did not agree to place their child there. The district filed for summary decision, claiming parent's due process was moot because the district offered to provide the requested relief – an out-of-district placement.

Legal Arguments

- A settlement proposal that is not accepted cannot moot a case. In [*Campbell-Ewald Co. v. Gomez*](#),¹⁸² the U.S. Supreme Court held that an offer of settlement that is not accepted cannot moot a case.
- Burden of proof and production is on the district to prove that the placement it proposed would offer a FAPE. Merely naming a school does not satisfy the district's burden or entitle it to summary decision; absent agreement of the parent, it must prove its proposed placement offers a FAPE. A full hearing with testimony and cross-examination is required to determine whether the district's proposed placement is appropriate.

Disputed Material Fact

- Make it clear that you filed due process seeking an out-of-district placement that would provide your child with a FAPE. Dispute that the district's proposed placement offers a FAPE. Set out what you observed or learned about the district's proposed placement that led you to conclude it could not offer a FAPE for your child.

Example 2:

Parent asked for compensatory services. The district orally tells the parent that they will provide everything the parent requested. The district moves for summary decision, claiming that the parent's petition is moot because they provided the requested relief.

¹⁸¹ [*D.F. v. Collingwood Jersey City Board of Education*](#), 694 F.3d 488 (3d Cir. 2012) (special education case is not moot so long as the court can fashion some meaningful concrete relief for the student).

¹⁸² 577 U.S. 153 (2016).

Legal Arguments

- You asked in your petition for an order for compensatory services. All you have is an oral statement from the district, which is not “effective relief.” There is no agreement on the exact number of compensatory hours owed, or the qualifications of the provider. There is also no agreement on how the services will be provided, the timeline or schedule for delivery of the services.
- You have nothing to ensure that once your petition is dismissed, the district will provide all of the requested services.
- IDEA requires that a district provide prior written notice before it can make changes to your child’s classification, program or placement.¹⁸³ IDEA also requires that a district can only change a student’s classification, program or placement without an IEP meeting when the parent consents in writing to the proposed change.¹⁸⁴ Thus, a district’s oral statement as to what it will do is contrary to these IDEA requirements and will give you no legal security, no binding funding commitment, and no enforceable relief.

If you were inclined to accept the district’s offer if you had more information and it were binding and could be enforced, there are several options.

- After obtaining any additional information you need, the parties could agree to a consent order setting out the terms and ask the ALJ to order the parties to comply with those terms. In a [December 3, 2025 Broadcast Memo](#), DOE announced that ALJs would no longer enter orders approving a settlement agreement between the parties. This memo only applies, however, to settlement agreements and does not prevent an ALJ from issuing a consent order.
- The parties could agree to revise the student’s IEP or placement to include the agreed changes. Once you have the written IEP or placement and written notice, you have a means of enforcing the agreement as you can file for due process if the district does not comply.
- The parties could agree to enter into a formal, written settlement agreement or even ask for mediation.

4. When The School District Files Summary Decision Concerning Parent’s IEE Request

a. Step 1: Review Earlier Section And Possible Procedural Challenges

The section on Independent Educational Evaluation reviews what an IEE is and the school district’s responsibilities. It also covers how the legal standard differs depending on whether the district files for due process within 20 calendar days of the request or if the parent files after 20 days have elapsed. Review this section carefully as well as the above challenges to summary decision motions.

¹⁸³ 20 U.S.C. § 1415(b)(3), N.J.A.C. 6A:1402.3(f) through (h).

¹⁸⁴ 34 C.F.R. 300.324(a)(4).

b. Step 2: Frame Your Argument

When the district filed for due process within 20 calendar days: The school district will not be required to pay for the requested IEE unless the district's evaluation is not "appropriate." Thus, the ultimate disputed factual issue is whether the district's evaluation was "appropriate." If the district succeeds in persuading the ALJ there are no genuine disputes of fact as to the appropriateness of the district's evaluation, their summary decision will be granted. To prevent this from happening, parent must raise as many disputed facts as possible in their certification, using the list of "[Challenges A Parent May Raise In An IEE Due Process Proceeding](#)" (p. 11).

You must also emphasize that *all* special education cases in New Jersey place the burden of proof and production on the school district, regardless of who filed.¹⁸⁵ New Jersey has, in addition, codified a presumption that parents are entitled to an IEE upon request. N.J.A.C. 6A:14-2.5(c)(1). The regulation provides that "[s]uch independent evaluations shall be provided at no cost to the parent *unless* the school district initiates a due process hearing to show that its evaluation is appropriate." (emphasis supplied). Thus, in a summary decision motion, a school district must do more than simply make a conclusory statement that its evaluation was appropriate. It must set out the undisputed material facts that it claims show that its evaluation was appropriate.

When the school district never filed for due process or filed after 20 calendar days: Here, parents have a strong legal argument that the district should be barred from claiming its evaluation is appropriate. New Jersey regulations require a school district to either agree to an IEE or file for due process within 20 calendar days. N.J.A.C. 6A:14-2.5(c). There are multiple decisions holding that failure to file within 20 calendar days means the district can no longer claim its evaluation is appropriate and must provide an IEE. See "[Challenges A Parent May Raise In An IEE Due Process Proceeding](#)" (p. 11, n. 55). Your first argument in your answering papers should be that as a matter of law, the district lost its right to claim its evaluation is appropriate. So, the ALJ should deny its summary decision motion claiming its evaluation is appropriate.

c. Step 3: Respond To Other Arguments Raised By District In Its IEE Summary Decision Motion

District claims parent missed the statute of limitations because it did not file within two years of receiving the district's evaluation: If you request an IEE saying you disagree with a district evaluation conducted more than two years ago, some districts may file summary decision, arguing your claim is barred by the statute of limitations. The court in [D.S. v. Trumbull Board of Education](#)¹⁸⁶ rejected this argument. That case pointed out that the statute of limitations is when a parent must file for due process or be barred from raising the claim. A parent does not need to file for due process seeking an IEE until the district does not comply with its IEE legal obligations and either agree to an IEE at public expense or file for due process proving its evaluation is appropriate. Thus, as a matter of law the district's motion for summary decision based on statute of limitations should be dismissed.

¹⁸⁵ N.J.S.A. 28A:46-1.1.

¹⁸⁶ 975 F.3d 152 (2d Cir. 2020).

District claims that parent's IEE does not meet its cost criteria: The district may have also claimed in its summary decision motion that the parent's requested IEE exceeded its cost criteria. See "[Dispute District's Cost Criteria](#)" (p. 14)

Example: In response to a parent's request for a neuropsychological costing \$3,000, the district must do more in its summary decision than say \$900 is the maximum it will pay for a neuropsychological assessment. The burden of proof and production is on the district to prove that its cost criteria were properly established. There are multiple possible disputes of material facts including:

- The district's cost criteria are not set out in board policy. This can be established by including a copy of the board policy on IEEs in your papers.
- The district's maximum allowable cost is too low to allow a parent to choose from among qualified neuropsychologists in the area. In parent's effort to find evaluators to conduct the IEE, parent was unable to locate any neuropsychologist in private practice who would conduct an evaluation for \$900. N.J.A.C. 6A:14-2.5 (c)(2) provides that an IEE can: "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."
- In its cost criteria, the district is eliminating more than "unreasonably excessive fees." [FAQs on IEEs](#), No. 15. In determining what an "unnecessarily expensive" cost is a district must do more than say what another school district or a jointure commission would charge. It must also collect evidence as to what approved agencies and private individuals in the area charge for various types of assessments. You can reach out to approved agencies and private individuals and use this information to raise a dispute of fact as to whether the fee your proposed evaluator is asking is "unnecessarily expensive." This information is also something that can be obtained through discovery.
- The federal regulation also requires that any criteria a district imposes must be consistent with the criteria a district uses with respect to independent evaluations requested by a parent.¹⁸⁷ Contracts for outside evaluations must be approved by the board of education. Board minutes are often posted on the board of education's website. If you review the minutes for the preceding 12 months, you may find evidence showing the district has paid more than its cost cap for some independent evaluations.

District claims that parent's chosen evaluator does not have New Jersey license or certification: The district was unwilling to consider that your child's unique needs warranted out-of-state providers. Describe evidence showing this.

District claims that you are not entitled to an IEE because you consented to its evaluation, did not object when you received it or express any concerns when the evaluation was discussed at a meeting, and consented to an IEP based on the district's evaluation: As a rationale to avoid paying for an IEE, districts often argue that the parent did not express objections to any of the evaluators at the planning meeting. Or did not object to the evaluator's qualification. Or the parent signed consent for the evaluation. They may also argue that the parent did not express any concerns at the meeting held to discuss the evaluation report. Or after the evaluation was used

¹⁸⁷ 34 C.F.R. 300.502(e).

to develop a new IEP, the parent signed consent to the IEP without expressing disagreement. Even if all of these claims are true, they are not a legitimate basis to deny an IEE. IDEA encourages collaboration and you need to strongly object to the ALJ giving this argument any weight at all with respect to your request for an IEE.

Accepting these and other similar arguments would render the IEE regulation pointless. The federal regulation is clear that the only trigger required to entitle a parent to request an IEE is that the “parent disagree with an evaluation obtained by the public agency.”¹⁸⁸ It does not say that the parent must express their disagreement within a certain time period. It does not say that the parent must object to the evaluator’s qualification or the type of assessment at the evaluation planning meeting. Nor does it say that if the parent consents to an IEP based on a district’s evaluation, this can be used to later deny the parent an IEE.

It also puts the parent in the position of being trapped in a no-win situation. If the parent does not consent to a district evaluation, their child may get no special education or related services. At best, their child’s IEP will be based on outdated assessments. The same is true by consenting to an IEP. In *Lauren W. v. DeFlaminis*,¹⁸⁹ the Court held that reimbursement for an IEE may be warranted where a parent did not take a position with respect to the district’s evaluation or otherwise “fails to express disagreement.” In *Warren G. v. Cumberland County Sch. Dist.*,¹⁹⁰ the Court held that a parent does not have to express disagreement with an evaluation before obtaining their own.

The district is effectively claiming that a parent waives their right to an IEE whenever they consent to a district’s request to evaluate their child or consent to an IEP based on the district’s evaluation. Waiver of IDEA rights requires an affirmative and knowing agreement to give up the right.¹⁹¹

¹⁸⁸ 34 C.F.R. 300.502(b)(2).

¹⁸⁹ 480 F.3d 259, 275 (3d Cir. 2007).

¹⁹⁰ 190 F.3d 80, 87 (3d Cir. 1999).

¹⁹¹ *W.B. v. Matula*, 67 F.3d 484, 497-98 (3d Cir. 1995) (any waiver of claims arising out of IDEA must be knowing and voluntary); *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 250 (3d Cir. 1999) (rejected district’s argument that the parents’ failure to object to their child’s program and placements “created presumptively a free and appropriate education).

VIII. PREPARATION FOR DUE PROCESS HEARING OR EXPEDITED HEARING: WITNESSES AND EXHIBITS

ALJs rely upon exhibits and testimony to make findings at a hearing. The school district has the burden of proof in due process hearings. It also has the burden of production.¹⁹² This is true whether the parent or the school district filed the petition. The school district must prove its case by a preponderance of the evidence. Think of a scale representing the evidence from both parties. If the scale tips even slightly in favor of the parents, the school district has not met its burden.

The **burden of production** means the school district presents its evidence first. It must produce evidence to show that it followed the law.

A. Five-Day Exchange Rule

The ALJ typically issues a Prehearing Order after holding a telephone conference with the parties very soon after the Office of Special Education sends the case to the Office of Administrative Law. That Prehearing Order will include directions about what the parties must do prior to the hearing, including identifying witnesses and items to be entered as evidence. The order will also describe how the hearing will be conducted.

Five-Day Exchange Date: All required information must be received by the other party at least five business days before the first day of the hearing. If the hearing begins on June 25, 2026, do not count that day. Go back five business days to June 18, 2026. Your Five-Day Exchange must be delivered to the board attorney's office no later than June 18, 2026. In counting business days, do not count federal or state holidays.

The Five-Day Rule is set by federal and state requirements.¹⁹³ If you do not comply with the Five-Day Exchange Date, part or all of your exhibits and witnesses may be excluded. Knowing the rules will also enable you to object when the district does not fully comply.

- Either party can bar evidence that has not been disclosed to them. The evidence must be disclosed five business days before the hearing.¹⁹⁴
- This includes disclosing all evaluations completed by the Five-Day Exchange. The party must also disclose recommendations based on the evaluations that the party intends to use. If they do not, the hearing officer *may* bar the party from using the evaluation or recommendations at the hearing. The other party can consent to late disclosures.¹⁹⁵
- Each party must serve copies of all documents they want to use at the hearing. They must also provide names of the potential witnesses and summaries of their testimony at least five business days before the hearing.¹⁹⁶

¹⁹² N.J.S.A. 28A:46-1.1.

¹⁹³ 20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. § 512 (a)(3); N.J.A.C. 1:6A-10.1

¹⁹⁴ 34 C.F.R. 300.512(a)(3).

¹⁹⁵ 34 C.F.R. 300.512(b).

¹⁹⁶ N.J.A.C. 1:6A-10.1(b).

- Upon request, the ALJ *shall* exclude evidence not disclosed five business days before the hearing. The ALJ may allow the evidence if it could not have been disclosed within the five business days.¹⁹⁷ Let the ALJ and school's attorney know if you are waiting for an evaluation report that will be late.

Your witness list includes *potential* witnesses. Not everyone on the list has to testify. If you plan to testify, include your name and summary of your testimony.

Witness summaries give the other party an outline of what the witness will say so there are no surprises. If you plan to have a witness testify as an expert, say that in your witness summary. Include opinions or recommendations they will give. Also include a copy of their résumé or CV with your documents. If they have issued a written report about which they will testify, make sure a copy is included as an exhibit.

1. Sample Witness Summaries

Parent A.A. (father of B.A.) may be called to testify about B.A.'s strengths and needs; B.A.'s educational history; his interactions with personnel from the District; communications among Mr. and Mrs. A., District personnel, and third parties; the history of this matter; his observations of programming in the District; recommendations from B.A.'s treating providers; participation in meetings with District personnel; and such other matters that may be noted in the student records or hearing exhibits.

C.Y., Psy.D. may be called and qualified as an expert witness in pediatric neuropsychology to testify about facts and opinions related to B.A.'s unique needs and strengths, present levels of functional and academic performance, disability, and potential for growth; the appropriateness of evaluations conducted and IEPs developed by the District; her observations of B.A.'s programming; the contents of her report; the contents of any other report offered; opinions offered by any other witness; and such other matters that may be noted in the student records or hearing exhibits. She will make the following recommendations which are not included in her report: [set out recommendations]. She may also give the following opinions: [set opinions out].

You may want to include on your witness disclosure witnesses identified by the district. Any witness disclosed or called by the District to testify about the contents of any hearing exhibits; their communications and interactions with B.A.'s parents; their communications and interactions with each other or anyone else regarding B.A., his parent(s), his educational and therapeutic history, the District's evaluations of B.A., the District's proposed program for B.A., parents' requests for B.A.'s programming; the process of developing an IEP for B.A.; and such other matters as may be noted in the student records or hearing exhibits.

¹⁹⁷ N.J.A.C. 1:6A-10.1(c).

2. Reviewing District's Five-Day Exchange

- **Request More Specificity Before the Hearing Begins:** Do the district's exhibit list and summaries say which witnesses will testify as expert? If not, you can send an email to the school district's attorney and ask if the district plans to use any of its witnesses as experts. If so, ask the attorney to let you know immediately their names, their opinions or recommendations they intend to make, and the basis for them. Also ask that they provide you with a copy of any proposed expert's résumé or CV. If the résumé is not current, ask that updated experience be included in the expert's summary.
- Some witness summaries only make conclusory statements, such as "The witness will testify about the student's performance in their class." You can ask for more details about what the witness will say about the student's performance. If none is provided, you can object during the hearing if the testimony goes beyond the summary.
- **Objecting During the Hearing:** If the district's expert testifies about opinions or recommendations that were not in their witness summary, you can object. Go to the hearing with four copies of your email asking for more detail to include as an exhibit. You can say something like:
 - Your Honor, I object to this line of testimony. Under N.J.A.C. 1:6A-10.1(b) each party must provide summaries of testimony. I emailed the school district's attorney on [date] and asked if any of the witnesses on its list would testify as an expert and if so what opinions it would give. I also asked for copies of the witness's résumé or CV and any updated evidence on their experience. I heard nothing back. I move that they not be allowed to testify as an expert or to give any opinions. I also ask that they not be allowed to give their education, training, licenses and certification. They should only be allowed to testify as a fact witness within the limits of their witness summary.

B. Hearsay In Administrative Hearings

Hearsay is an assertion of fact made by someone who does not have personal knowledge of the fact. Hearsay evidence is admissible in a due process. Each ultimate finding of fact must, however, be supported by a "residuum of competent evidence."¹⁹⁸

Example: A Supervisor of Special Services testifies in a hearing. She says that Student A hit Student B on the head with a baseball bat. On cross-examination, the witness admits that she was not present when the incident occurred. She heard about it from the teacher who was present. The Supervisor's testimony is hearsay. This witness's testimony is not enough to prove that Student A hit Student B on the head with a baseball bat. Evidence by someone with personal knowledge must be introduced. This could be testimony by the individual who was present at the time of the incident. The further the testimony is from the actual event, the less weight should be given to it by the ALJ.

¹⁹⁸ N.J.A.C. 1:1-15.5.

Hearsay also exists in documents.

Example: The district produces a list of behaviors the student supposedly exhibited over the past twelve months. The district is using this list to show the student is substantially likely to injure self or others. Begin by claiming that the district must produce a witness who can lay the foundation for the document. The document could be multiple layers of hearsay.

Questions to ask: *For what purpose was the list compiled? Who compiled it? Where did they get the information for each behavior on the list. How close in time to each incident was the information prepared? Was the information for each incident provided by someone who observed the incident? If not, by whom and where did they get the information from?*

Depending on what the witness says, you could ask that the document be excluded because it consists of multiple layers of hearsay and lacks any reliability and is prejudicial.

C. Deciding Facts To Focus On, Exhibits And Witnesses To Prove Them

Keep in mind that the school district has the burden of proof. A parent's job is to show the district did not meet its burden of proof. Begin by reviewing the problem, facts and solutions in your due process petition. Assuming that the ALJ has sent out a pre-hearing order, review each issue and what the law requires. List the arguments the district raised during the resolution session and at pre-hearing conferences in response to your petition. Make a list of the facts you want to prove or will use to counter the district's arguments. Then decide the witnesses and/or documents you will use to establish each fact.

1. Deciding Whom To Call As Witnesses

- Lay persons
- Experts [need to provide résumé or curriculum vitae]
- Who will be your most important witnesses
- Parents have a right to have any independent report they have obtained included as evidence, even if the individual who prepared the report does not testify.¹⁹⁹
- With consent of the ALJ, witnesses can testify virtually.

2. Exhibits

a. Joint Exhibits

The ALJ will ask the parties to confer and agree to as many Joint Exhibits as possible. These documents will be referred to by the letter “J” and put in a separate binder (*e.g.*, J-1, J-2, etc). It makes sense to agree to Joint Exhibits because it helps to streamline the hearing. This includes **documents that form the history of the case** – signed Consents and past IEPs. It also includes *documents both parties intend to use*.

¹⁹⁹ 34 C.F.R. 300.502(c)(2).

i. What You Are Agreeing To By Marking A Joint Exhibit (Legal Meaning)

Authenticity: You agree the document is real, genuine, and exactly what it purports to be (for example, that it is the actual IEP from October 2025. It is not a made-up or incomplete document).

Admissibility: You agree that the ALJ can read and consider the document when making their final decision. You waive your right to object to the document being entered into evidence.

Agreeing to a Joint Exhibit **does NOT mean you agree with the truth or accuracy of what is written inside it.** You are not agreeing that the conclusions or opinions about your child are correct. You can cross-examine, and argue against the contents of the document.

Before agreeing to a Joint Exhibit, **you must review each page.** Ask the district to send you a digital copy of the document they want to include. Conduct a page-by-page comparison with your own personal files. Make sure there are no missing pages or attachments. Check for alterations or additions and make sure the date is correct. School districts handle massive volumes of paperwork. Errors happen.

ii. Instances When You Should NOT Agree To Joint Exhibits

As a *pro se* parent, you have the right to refuse to mark a document as a Joint Exhibit. The district may then try to enter it as their own exhibit. These would be marked as an “R” Exhibit for Respondent. You can then object to its admission as an Exhibit. You should **not** agree to a Joint Exhibit if:

- **You Question the Document’s Authenticity:** If a page is missing, a signature looks altered, or you believe the document was edited after the fact, do not agree to it. Request that the district prove its authenticity on the record.
- **It Violates the “Five-Day Rule”:** Both sides must disclose all evidence at least **five business days before the hearing.** If the district springs a surprise document on you past this deadline, **refuse** to make it a Joint Exhibit.
- **The Document is Highly Prejudicial or Irrelevant:** The district wants to introduce documents that are completely unrelated to your legal claims. This could be old disciplinary records from years ago meant solely to make your child look bad. Do not make it a Joint Exhibit. You can later formally object to the ALJ that the document is “irrelevant” or “highly prejudicial.”
- **Informal notes or lists of behaviors allegedly exhibited by your child:** If the district wants to submit informal, unverified notes, keep it out of the Joint Exhibit binder. Make the district put a witness on the stand to explain who prepared the document. How they obtained the alleged factual assertions, when, for what purpose, etc.

Generally, it is the school district’s responsibility to put the Joint Exhibit binder together. They should make copies for the ALJ, parent, and the witness.

b. Parent and District Exhibits

Each party will place documents they want to introduce that were not identified as Joint Exhibits in separate binders. Petitioner's exhibits will be called **P-1**, **P-2**, etc. Respondent's documents will be called **R-1**, **R-2**, etc. The Petitioner is whoever filed the due process petition.

i. Organizing Exhibits in the Parent Binder

- Put a sheet "Parent Exhibits" on the cover of the binder.
- It is best to organize exhibits in date order.
- Write the exhibit number on the first page of each exhibit, in the upper right hand corner.
- If the exhibit does not contain page numbers, write the page numbers at the bottom of each page.
- Exhibit tabs are not required, but it is easier to locate exhibits in a binder if they are separated by numbered exhibit tabs. Otherwise, separate each exhibit by writing the exhibit number on a blank sheet of paper.
- Prepare a Table of Contents for the binder. List the exhibit number, date of the exhibit and name of the document. Include a column at the left – "Admitted" – where you can write in the date the ALJ admits the exhibit. If the ALJ refuses to admit the exhibit, write "No" or an "X" and the date. Before the ALJ closes the record, you should review your list and make sure all your proposed exhibits were admitted or the ALJ refused to admit them.

Do NOT duplicate any of the Joint Exhibits in the Parent Binder. You do NOT want to have the same document with two different exhibit numbers.

Sample Table of Contents:

TABLE OF CONTENTS

No.	Date	Description	Admitted?
P-1	9.15.2025	IEP	✓ 7.10.2026
P-2	9.17.2025	Email from Parent to Case Manager	✓ 7.10.2026
P-3	9.19.2025	Email from Teacher to Parent	✗ 7.10.2026

Check the pre-hearing orders to find out if the ALJ wants the binders delivered to OAL prior to the hearing date. Follow the instructions on when to deliver the binder. If there is no order like that, on the first day of the hearing, you will give the parent's binder with any original documents to the ALJ. (Don't worry if you don't have originals – most exhibits in special education matters are

copies.) A second binder will go to the school district's attorney. The third binder will be available for the witness of either party to use during their testimony. The fourth copy is for your use.

D. Fact Witnesses

1. What A Fact Witness CAN Testify To

A fact witness is strictly a reporter of real-world events. A fact witness can only testify to matters based on direct, personal observation. This means things they personally saw, heard, did, or said. A fact witness can testify to:

- **Direct Observations:** *"I saw the student throw a book"* or *"I observed the student staring at the wall for twenty minutes."*
- **Actions Taken:** *"I gave the student a visual schedule every morning"* or *"I sent three emails to the principal regarding the behavior."*
- **Statements Made:** *"The teacher told me my child was failing math,"* or *"The student said they did not understand the assignment."*
- **Authenticating Documents:** *"This is the daily communication log I filled out and sent home"* or *"This is my response to what the teacher said on [date]."*

2. What Opinions A Fact Witness CAN Give

Opinions by fact witnesses are generally not allowed. A fact witness may give an opinion if it is a common-sense inference that a normal person would make.²⁰⁰ This is called a "lay opinion."

Permissible lay opinions include everyday assessments like:

- **Emotional State:** *"The student appeared highly anxious and frustrated when given the test."*
- **Physical State:** *"The student looked exhausted and kept laying their head on the desk."*
- **Basic Measurements:** A general sense of speed, distance, or time duration (*"The tantrum lasted for roughly 45 minutes"*).
- **Identity & Recognition:** Identifying a voice, handwriting, or person they know well.

3. What Opinions A Fact Witness CANNOT Give

If a school district witness is testifying only as a fact witness, **you must object** if they attempt to say:

- **No Clinical Interpretations:** *"The student became so anxious they ran out of the room."* (A fact witness can say the student ran out of the room. They cannot say that the student ran out of the room due to a medical diagnosis like anxiety).
- **No Assessment Results Interpretation:** *"The child's low score on the reading assessment means they have an auditory processing disorder."*

²⁰⁰ See N.J.A.C. 1:1-15.9.

- **No Broad Legal Opinions:** *“In my view, the IEP we provided is appropriate.”*

4. How to Object at Your Hearing

You should stand up and say:

“Objection, Your Honor. The witness is testifying as a fact witness. Under N.J.A.C. 1:1-15.9, a lay witness’s opinion is strictly limited to basic personal perceptions. The witness is now offering educational opinions that require qualification as an expert under N.J.R.E. 702. I move to strike that last statement.”

You can also point out that the district did not include this opinion in their Five-Day Exchange. This is another reason that the opinion should be stricken. Even if the ALJ does not strike the testimony, you will have preserved your objection for any appeal.

E. Treating Physicians

A treating physician occupies a unique legal gray area. They are treated as a hybrid witness. They can provide their actual medical diagnosis without being formally qualified as a retained expert. A treating doctor can testify about a patient’s diagnosis and treatment. They can also testify about causation and prognosis.²⁰¹ The law, however, places limits on what they can say.

1. What A Treating Physician CAN Say As A Fact/Lay Witness

A treating doctor can testify to their personal medical interactions with your child. N.J.R.E. 701. They can testify to:

- **The Diagnosis:** *“I examined the student and diagnosed them with ADHD.”*
- **The Symptoms:** *“The student exhibited severe executive functioning deficits. He also exhibited severe difficulties in focusing and was easily distracted.”*
- **The Treatment:** *“I prescribed medication. I also recommended a 1:1 para during academic instruction.”*
- **Medical Records:** They can review and explain their own clinical charts and office notes.

2. When They Cross The Line Into An “Expert Witness”

A treating physician cannot testify about matters **outside their own personal treatment of the child**. They are treated as an expert if they try to give opinions on:

- **The School District’s Program:** If the doctor is asked, *“Have you reviewed the school’s IEP, and is it appropriate?”* To answer the question about “appropriateness” requires expert educational analysis. They cannot answer it as a fact witness.
- **Reviewing Unrelated District Records:** *“Based on my review of 500 pages of school records, he needs a private placement.”* The treating physician will not be allowed to say this as a fact witness. The treating physician could testify about school documents he read in connection with his diagnosis. Or school records he used in making his recommendations.

²⁰¹ [*Del Vecchio v. Township of Bridgewater*](#), 224 N.J. 954 (2016).

3. How This Applies To Your OAL Special Education Hearing

The Five-Day Exchange Still Applies: A treating doctor does not need a formal expert report to testify as a fact witness.²⁰² You need, though, to give details about his testimony in the witness summary. **Portions of their medical records also need to be disclosed to the school's attorney.**

This does not mean that the entire medical file must be disclosed. You should only need to disclose those records relevant to what the doctor will be testifying about. Suppose the physician is testifying about an ADHD diagnosis, then the district would be entitled to the paperwork diagnosing the ADHD, treatment recommendations and letters detailing what accommodations the child needs in school.

F. Expert Witnesses

1. Qualifying A Witness As An Expert

a. Step 1: Timely Disclosure Of The Expert And Required Information

- **The Requirement:** The party must say the witness will testify as a witness, and include in the witness summary any opinions or recommendations the expert will give and the basis for them. The party must give the other party the expert's CV or résumé.
- **The Timeline:** These disclosures must be included in the **"Five-Day Exchange."**
- If this is not done, the other party can object and ask the ALJ to not allow the witness to testify.

b. Step 2: Calling The Witness And Describing Their Qualifications

At the hearing, the party will ask the witness to come forward.

- **Give Name and Swear In:** The witness will be asked their name and the ALJ will administer the oath.
- **Direct Examination on Qualifications:** The witness will be asked questions about their professional background. This includes their education, professional licenses, certifications, years of employment, and specialized training.
- **The Formal "Offer":** Once finished, the parent or district's attorney will say: "*Your Honor, we offer [Witness Name] as an expert in the field of [e.g., Special Education].*"

c. Step 3: Other Party's Opportunity For "Voir Dire" (To Ask Questions On Qualifications)

The ALJ will turn to the other party and ask if they have any questions about the witness's qualifications. This is called *voir dire*.

- **Goal:** Decide whether the witness has the expertise needed to give the opinions or make the recommendations set out in the Five-Day Exchange.

²⁰² *Id.* at 956.

- **Concerns to Raise:** A lack of specific certifications pertaining to the opinions. Or the witness's recommendations the witness intends to make. Or their limited experience with the child's precise disability. Or their limited interaction with the child themselves.

d. Step 4: Proving The Three-Prong Legal Standard

To legally qualify the witness, the ALJ must be satisfied that the witness meets the three requirements of N.J.R.E. 702:

- **Specialized Knowledge:** The ALJ needs an expert's help to understand the subject.
- **Reliability:** The scientific or educational methods the witness used to reach their opinions are generally accepted and reliable.
- **Sufficient Expertise:** The witness must have sufficient Skill, Knowledge, Experience, Education, or Training in the area they are giving opinions or making recommendations.

e. Step 5: The ALJ's Ruling

After *voir dire* questions are finished, a party can object to the witness being qualified as an expert. They must state their reason (e.g., *"The witness is a speech therapist but is being offered to give an expert opinion on psychological testing"*). The ALJ will then make a formal ruling. The ALJ may accept them fully as an expert. The ALJ may accept them with limitations (restricting what they can give opinions on). Or the ALJ will reject them as an expert. They would only be allowed to testify as a fact witness.

2. Sample *Voir Dire* of District's Expert Witness

The issue is whether the student is receiving appropriate special education instruction. The school district offered your child's case manager, who is a school psychologist, as an expert in "special education." The case manager will testify that the special education instruction is appropriate.

It is unlikely that you can disqualify her as an expert. You may, however, convince the ALJ to deny her expertise in the broader field of *Special Education*. Instead, limiting her to testify as an expert in school psychology and psychological evaluations. Special education encompasses instruction, accommodations, methodology, and curriculum. A school psychologist does not do this.

When the district moves to qualify the case manager as an expert in "Special Education," stand up and say: *"Your Honor, I request permission to conduct a brief voir dire regarding the witness's qualifications to testify as an expert in the general field of 'Special Education'."*

In your *voir dire*, use targeted, short questions. Do not argue with her answers; just get her admissions on the record for the judge.

- *"Your degree is in school psychology. You don't have a Master's or Doctorate in Special Education, correct?"*
- *"According to your CV, you are not certified by the State of New Jersey as a **Teacher of Students with Disabilities**?"*
- *"Your C.V. does not show that you have ever been employed as a classroom **Special Education Teacher**?"*

- “You have not personally implemented a reading or math academic curriculum in a classroom setting?”
- “Your daily job is not to design lesson plans for academic instruction? Nor is it your job to develop instructional methodology?”

Conclude by saying: “Your Honor, I respectfully request that this witness should not be qualified as an expert in ‘Special Education.’” If the ALJ agrees with you, the district may try to qualify her as a school psychologist. This should not mean that she can opine that the academic instruction is appropriate.

G. Subpoenas²⁰³

1. What Is A Subpoena And Where Do I Get One?

A subpoena is a legal document that orders a person to appear at the hearing and to testify. If you want a person to testify and he or she will not attend voluntarily, you must serve a subpoena on that person. You may use the OAL’s Subpoena form (https://www.nj.gov/oal/hearings/docs/subpoena_form.pdf) and follow the instructions available with it (<https://www.nj.gov/oal/hearings/instruct/>).

Either deliver the subpoena to the witness in person or by certified mail, return receipt requested. In either case, record the delivery so that there is proof that the subpoena was received by the person.

The subpoena should be delivered as far in advance of the hearing as possible so that the witness has time to get ready for the hearing. You must include a witness fee: \$2.00 a day if the witness lives in the county where the hearing will be held, and an additional \$2.00 for every thirty miles the witness must travel if the witness lives in another county. List any documents on the subpoena that you want the witness to bring to the hearing.

Note: The witness is required to bring the documents with them to the hearing. You can ask the witness to give you copies in advance so you can review them. It is up to the witness whether they want to do that.

If you need the testimony of a person who is an expert, they may ask you to pay an additional fee. The amount is set by the expert.

2. Can I Subpoena Someone Who Conducted An Evaluation For The School District?

Yes, you can subpoena someone who conducted an evaluation for the school district.

3. What If I Want To Subpoena A School District Employee Such As My Child’s Teacher?

If the evaluator or teacher is a school district employee, you do not have to subpoena them. You can ask that the school’s attorney bring them to the hearing the day you want to present their

²⁰³ N.J.A.C. 1:1-11 to -11.5.

testimony. You can ask an outside evaluator if they will appear voluntarily and, if they will not, you can subpoena them.

4. Can I Subpoena Someone On The District Witness List?

Yes, but if they are a school district employee, you can just ask that the school's attorney produce them for the hearing.

5. Do I Need To Notify The District When I Subpoena Someone?

Yes, you need to send a copy to the district's attorney.

6. What If The Person Who Is Subpoenaed Objects To Testifying Or I Object To Having Them Testify (e.g., My Child's Doctor Or Therapist)?

Sometimes a person you subpoena does not want to testify. Sometimes the district subpoenas someone you do not want to testify, like your child's doctor or therapist. Either way, the judge decides.

a. Asking The Judge To Cancel Or Change A Subpoena

A person who gets a subpoena can ask the judge to cancel (or "quash") it. So can you. This is called a motion to quash. You can also ask the judge to change the subpoena instead of canceling it. You can ask the judge to limit the topics. You can ask the judge to limit which records must be brought.

Put your request in writing. Say who was subpoenaed, what you want the judge to do, and why. Send a copy to the other side. Do this as soon as you learn about the subpoena. Do not wait for the hearing day.

The judge can cancel or change a subpoena for good cause. There is no list of what counts. Common reasons are that the person knows nothing about the facts in the case, that the subpoena asks for far more records than the case needs, or that the law protects the information as private.

b. Your Child's Doctor, Therapist, Or Counselor

What your child tells a doctor or a therapist during treatment is usually private. The law calls this a privilege. It covers doctors, psychologists, counselors, social workers, nurses, and other mental health providers. These privileges apply at OAL hearings too.

The privilege belongs to the patient, not to the provider. For a child, the parent usually holds it. If your child is 18 or older, it is usually your child's to give up, not yours.

So the district cannot get treatment records or testimony just by sending a subpoena. Many providers will say no unless you sign a release or a judge orders them to testify. That is not the provider being difficult. Federal health privacy law tells them to be careful.

c. When You May Give Up The Privilege

There is an important limit. If you make your child's health or mental health part of your case, you may give up the privilege on that subject. You cannot use a provider's opinion to help your case and then stop the district from asking that provider about it.

Say you ask the judge to order counseling, and you rely on a letter from the therapist. Expect the district to be allowed to question that therapist. But if your child sees a therapist about something that has nothing to do with the issues in your petition, you have a strong reason to keep it out.

If you are not sure, ask the judge to read the records in private first and then decide what the district may see. This is called *in camera* review.

d. Try To Work It Out First

Start by talking to the person who was subpoenaed. Ask what the problem is. Often it is the date, the travel, or how many records were asked for. Those problems are often fixed by agreement. If it is your subpoena, offer another date or ask for less. Put any agreement in writing and tell the judge.

e. If The Judge Says No

If the judge does not cancel the subpoena, the person has to appear. Ignoring a subpoena is serious. The other side can go to Superior Court of New Jersey to enforce it under the New Jersey Court Rules.

f. Watch The Deadlines

You must give the other side your evidence and a summary of what your witnesses will say at least five business days before the hearing. Try to settle any fight about a subpoena before that date. A judge can refuse to accept evidence that comes in too late.

7. What If The Person Just Refuses To Appear, Can The ALJ Enforce The Subpoena?

An ALJ can only enforce a subpoena against a party. If the person subpoenaed is not a party, you must bring a case in the Superior Court of New Jersey under the New Jersey Court Rules.²⁰⁴

H. Preparation Of Witnesses

You decide who your witnesses will be. Pick people who saw things for themselves. A witness tells the judge what they saw, what they did, or what they wrote. At the hearing, you ask your questions of your witnesses first. Then the school district's lawyer asks questions. The ALJ listens and the ALJ may ask questions too.

Getting a witness ready takes time. Start weeks before the hearing, not the night before.

²⁰⁴ N.J.A.C. 1:1-11.5.

1. Preparing Yourself To Testify

In most cases you will be a witness in your own case. You will not ask yourself questions. You will tell your story out loud instead. Ask the judge at the pre-hearing conference how they want you to do this.

To get ready:

- Write down the main points you want the judge to hear. Use short notes.
- Put your exhibits in order. For each one, be ready to say what it is and why it matters.
- Practice out loud. Say it to a friend, or say it to an empty room.
- Time yourself. Most stories take longer than you think.
- Stay with what you saw and heard. Save your arguments for the end of the case.

2. Preparing Another Person To Testify

You may meet with your witness before the hearing. You may show them the documents. You may tell them what you plan to ask. You may not tell them what to say. Telling a witness what to say is called coaching. It is not allowed, and it can hurt your case badly.

Meet with each witness at least once. In that meeting:

- Explain what the case is about and why you asked them to testify.
- Tell them what you plan to ask. Then ask those questions and listen to the answers.
- Show them any document they wrote or signed. Let them read it again.
- Tell them the district's lawyer will also ask questions.

Example: Parent hired a retired math teacher to work with their child on math homework. The hired teacher has met twice a week with the student for an hour per session for four weeks. She told the parent that the student cannot complete the math homework without her one-on-one assistance. She conducted an assessment of the math skills required for his homework at the first session. She recently conducted a second assessment of the same skills. She said the second assessment showed some progress on one skill. She told the parent she needs to give the student the same amount of one-on-one assistance. Without constant support, he cannot complete the homework.

Your goal is to help her confidently relay her factual testimony. Your role is not to pressure any witness to say anything other than the truth.

3. Key Testifying Ground Rules

- Proper Attire
- **Tell the Truth:** Always be honest.
- **It is Okay to Say You Don't Understand the Question:** The witness can say she does not understand the question and ask for it to be re-phrased.
- **Do Not Guess:** If she does not remember an assessment score or a specific session detail, she should clearly say, "*I do not recall.*" If she does not know something, she should say she does not know.
- **Pause for Objections:** If the school's attorney objects ("*Objection!*"), she must stop talking immediately. Point out that you may also object to the school attorney's questions on cross-examination, so briefly pause before answering. Wait for the ALJ to rule on the objection.
- **Limit Answers:** She should answer the specific question asked. She should not volunteer extra information.
- **Address the Judge:** Speak clearly. Look at the ALJ when answering questions to make sure the ALJ hears her testimony.
- **Do Not Be Argumentative or Exhibit Anger:** It is important to remain calm and professional. Becoming argumentative or exhibiting anger or hostility will reduce their credibility with the ALJ.

4. Preparing An Expert Witness

a. Establish Credentials

Go through the questions you will ask to begin direct examination. Ask her name, current role, and professional background. What relevant certifications or licenses does she have? What is her relevant experience, education and training? **Note:** This information should have been shared with the district in your Five-Day Exchange.

b. Prepare the Factual Testimony (Direct Examination)

Start with the Baseline: Ask the teacher to describe where the student started a month ago as to relevant math skills. Ask what support is needed for the student to complete his homework.

Review the Data: Go over her assessment notes together. On the stand, she should testify to the raw facts: *What dates did she assess him? What skills? How did she assess the skills? Did she use a particular assessment? If so, which one? What were the results?*

Highlight the Gains: Focus on the concrete fact of the progress in one skill.

Highlight the Continuing Need for Intensive Support: Focus on the concrete facts which show this need.

Ask Open-Ended Questions: You must ask open-ended, non-leading questions. *“Can you tell the judge what progress you observed during your tutoring sessions?”*

c. Conduct A Mock Cross-Examination

The school district’s attorney will try to challenge her data or credentials. Ask the witness questions she might be asked on cross:

- *“You do not have any formal training in special education?”*
- *“The assessments you used were not standardized?”*
- *“You lack the certifications needed to conduct standardized assessments.”*
- *“You have never spoken to the student’s math teacher.”*
- *“The student relies on you to help him complete his math homework two days a week.”*
- *“Are you aware that the student relies on his mother to help him complete his math homework the other three days a week?”*
- *“You can’t prove this progress was due to the one-on-one support you were providing?”*
- *“It is possible the progress was due to what his teacher in school has been doing in the past month?”*
- *“You don’t know what would happen if the student had to complete their math homework on their own.”*

Note: You can object to the two final bullets because they require the witness to speculate.

d. Organize The Exhibits

Make sure any documents she references were provided as part of the Five-Day Exchange.

5. The Week Before The Hearing

Call each witness a few days ahead and tell them:

- The date and the start time.
- Where to go, or how to join by video.
- How long you think they will be there.
- What to bring.
- How to get in touch with you if something happens the day of the hearing.

Witnesses often wait outside the hearing room until it is their turn. Tell them this so they are not surprised. Tell them to bring something to read.

6. Witness Checklist

Use one copy of this list for each witness.

Witness name	
Phone and email	
What this person saw or did	
Why the judge needs to hear it	
Documents this person wrote or signed	
Expert? If yes, is the résumé in evidence?	
Coming on their own, or subpoena needed?	
Date subpoena served	
On the witness list I filed	☐
Met with this witness	☐ Date: _____
Went over my questions	☐
Went over their documents	☐
Gave them the witness rules	☐
Talked about cross-examination	☐
Confirmed date, time, and place	☐
They know where to wait	☐

I. On The Hearing Day

- Arrive on time.
- When entering the hearing room, remove your hat and turn off all cell phones. If you must leave them on for emergencies, put them on vibrate.
- Bring your hearing notice with you; it contains your case information.

- Bring three copies of your Exhibit Binder to the hearing: give one to the ALJ, one to the district's attorney and have one for the witnesses to use when testifying. The ALJ and district's attorney will bring their binders to next hearing dates. You will have to bring the binder for witnesses and your Exhibit Binder to each hearing.
- Do not bring any food or beverages into the hearing room. You may bring bottled water. **If you need breaks for medical reasons to eat, let the ALJ know.**
- You should stop talking and you should stand when the ALJ enters the hearing room.
- When addressing the ALJ, speak directly to the ALJ and not to the other party. Address the ALJ as "Your Honor".
- You should not interrupt the opposing party or the ALJ while he or she is speaking. After the other party has finished speaking, you may request an opportunity from the ALJ to respond. An opportunity to respond is left to the ALJ's discretion. It is VERY IMPORTANT that only one person speak at a time. In most cases, a written transcript of each hearing day will be made. It is impossible to prepare an accurate transcript when more than one person speaks at a time.
- You may make an objection after the school's attorney has asked a question, even though that may interrupt the witness's answer. Make the objection short and wait for the ALJ to rule.
- Three Other Important Rules
 - Always listen to the ALJ
 - Be civil and courteous to everyone
 - If you have questions or are not sure of something, do not hesitate to ask questions of the ALJ. An important part of their role is to help all parties fully access and participate in the hearing process.

J. Opening Statements

You should prepare an opening statement to read at the beginning of the hearing. Opening statements are not testimony or evidence. They cannot be used by either side to prove the facts. An opening statement is an opportunity to tell your child's story. You want to help the ALJ understand the issue(s) better. For each issue, explain what facts you will prove in the hearing and how these facts show the law was violated. Go through the relief you are requesting. Emphasize that the school district has the burden of proof. It is the school district who must prove that it is providing your child with an appropriate education. You will show that it cannot meet this burden.

K. Presentation Of Exhibits And Testimony

Each party will be given the opportunity to present witnesses and documents. They will also be allowed to cross-examine the other party's witnesses. The school district will present its case first.

You should reach out to the board attorney before the first hearing day. Ask which witness they plan to put on the first day and in what order. Both parties generally exchange this information as a professional courtesy. When the district completes its case, the parent will present theirs.

Each witness who testifies will be placed under oath. If the person cannot take an oath for religious reasons, they will be asked to affirm their testimony is the truth. When the district or parent questions their witnesses, this is called direct examination.

Either party may ask that other witnesses be excluded from the hearing. This is called **sequestering the witness**. This is so the testifying witness does not influence the testimony of the other witnesses.

In administrative hearings, the rules of evidence are relaxed. Hearsay, a statement repeated by a witness but originally made by another person, is admissible. However, there must always be some competent evidence to establish an ultimate fact. An ALJ may limit presentation of evidence if it is repetitive or cumulative, meaning they believe there has already been testimony on that point.

Some ALJs include requirements in their pre-hearing orders for time limits on testimony. They may also say how they want testimony presented. Review these requirements carefully. If you are uncertain what they mean, send an email with your questions to the ALJ's assistant. You have the right to have adequate time to put on your witnesses. At the same time, it is important to move cases forward so cases can be timely decided.

1. District's Direct Examination Of Its Witnesses

Both parties must use open-ended questions in their direct examination. These questions usually start with Who, What, Where, When, Why, or How. Parties are not allowed to use leading questions.

The party presenting direct testimony cannot lead the witness (for example, the school's attorney cannot ask, *"You provided all the help to the child that you could, right?"*). Instead, they should ask, *"What help did you provide?"*).

2. Objections To Make To The District's Attorney's Direct Examination Questions

Parents have the right to object to the school district's direct examination of its witnesses. Keep in mind that these objections also may be used against the questions a parent asks their witnesses during direct examination.

Common and actionable objections to make during the district's direct examination include:

- **Leading Questions:** These are questions that suggest the answer. (e.g., *"Was John agitated during the math lesson?"*).
- **Lack of Foundation:** A witness begins testifying without establishing their expertise or direct knowledge or role with the child.
- **Non-Expert Opinions:** Unless the witness is qualified and testifying as an expert, they can only testify to facts they observed. They cannot speculate on motives or offer clinical diagnoses.
- **Beyond the Scope of Expertise:** An expert witness (for example, a speech therapist) can only testify within their specific field. You can object if they try to give opinions on areas outside their qualifications (a speech therapist cannot testify about psychological needs).

- **Irrelevant Evidence:** The district's questions must be relevant to the issues explicitly outlined in your or the district's due process petition.
- **Document not in Evidence:** You can object if the district attorney asks a witness to testify about a document that is not an exhibit.
- **Asked and Answered:** The district's attorney has already asked the exact same question, and the witness answered the question. Attorneys often repeat questions to emphasize a point that favors the school district or to try to get a witness to change or clarify a weak answer.

Example:

- **Attorney:** *"Did the student complete his homework reading assignment on Tuesday?"*
- **Teacher:** *"He turned in his homework reading assignment on Tuesday."*
- **Attorney (two minutes later):** *"So, just to be clear, he did finish the homework reading assignment on Tuesday, correct?"*
- **Your Objection:** *"Objection, Your Honor. Asked and answered."*
- **Counsel Testifying / Leading the Witness:** The district's attorney makes a statement instead of asking an open-ended question. On direct examination, the witness must provide the testimony, not the lawyer. This prevents the school's attorney from feeding answers to a nervous or unprepared school witness.

Example:

- **Attorney:** *"And when the student threw the pencil, it was because he was angry that you asked him to do math, right?"*
- **Your Objection:** *"Objection, Your Honor. Counsel is testifying." (Or: "Objection, leading the witness.")*
- **The Correct Format:** The attorney should have asked: *"What happened after you handed him the math worksheet?"*
- **Requires Speculation:** The question asks the witness to guess, assume, or read minds about something they did not personally observe or cannot scientifically prove. School staff often ask questions that require the witness to speculate about a child's internal motivations, what happens at home, or what another teacher was thinking.

Example:

- **Attorney:** *"Why do you think the student refused to do his homework at home?"*
- **Your Objection:** *"Objection, Your Honor. The question **requires speculation.**"*
- **Vague / Ambiguous / Confusing:** The attorney's question is poorly phrased or unclear. If a witness answers an ambiguous or confusing question, their answer might later be used by the ALJ to mean something completely different than what the witness thought they were answering.

Example:

- **Attorney:** *"How did he do during that period?"*

- **Your Objection:** “*Objection, Your Honor. The question is **ambiguous** as to what ‘period’ or ‘how he did’ refers to.*” (Does “period” mean a class period, a week, or a school year? Does “how he did” mean academically or behaviorally?)

3. Quick Tip On How To Make The Objection

Do not wait for the witness to finish answering. As soon as you hear a bad question, stand up (or speak up clearly if virtual) and say: “***Objection, Your Honor. [State the reason].***” Then stop and wait for the ALJ to rule.

4. Objecting To Answers Of The District’s Witnesses

When a school district’s witness is answering questions on direct examination, you must listen to both the question *and* the response. Sometimes a question is perfectly fine, but the answer is not.

Here are some objections a parent can make to a district witness’s **answers**:

a. Objection: Non-Responsive (Move To Strike)

- **What it means:** The witness did not actually answer the question asked. Instead, they dodged it.
- **Example:**
 - **District Lawyer asks:** “*Did the student meet his reading goal for the first marking period?*”
 - **Teacher answers:** “*Well, he is a very sweet boy, and he tries incredibly hard in class every single day.*”
 - **Your Objection:** “*Objection, Your Honor. The answer is **non-responsive**. I move to strike.*”

b. Objection: Narrative

- **What it means:** The witness is giving a long, continuous story or speech instead of answering specific, focused questions.
- **Example:**
 - **Teacher answers:** “*...and then in October he did this, and then in November his mom called me, and then in December I noticed his math skills were slipping, and then in January...*”
 - **Your Objection:** “*Objection, Your Honor. The witness is giving a **narrative**.*”

c. Objection: Speculation

- **What it means:** The witness is answering based on what they *think* happened, what they *assume* to be true, or what they imagine someone else felt.
- **Example:**
 - **Teacher answers:** “*The student didn’t pay attention in class because he probably didn’t go to bed early enough.*”

- **Your Objection:** “*Objection, Your Honor. The answer requires speculation.*”

d. Objection: Unqualified Opinion (Lay Witness Opinion)

- **What it means:** A regular school employee (like a general education teacher, principal, or aide) is giving a medical, psychological, or clinical opinion that only a qualified expert is allowed to make.
- **Example:**
 - **Classroom Aide answers:** “*In my opinion, the student’s behavior is entirely due to his ADHD, not because his IEP isn’t being followed.*”
 - **Your Objection:** “*Objection, Your Honor. This witness is not qualified as an expert to give a **clinical or psychological opinion.***”

e. Objection: Hearsay

- **What it means:** The witness is testifying about what *someone else* told them outside of the courtroom to prove that the statement is true.
- **Why make the objection:** You cannot cross-examine a person who is not in the room.
- **Example 1:**
 - **Case Manager answers:** “*The psychiatrist who evaluated the student told me that the student was substantially likely to injure self or others if his placement wasn’t changed.*”
 - **Your Objection:** “*Objection, Your Honor. That is **hearsay.***”
- **Example 2:**
 - **Case Manager answers:** “*The speech therapist told me that the student is making great progress and doesn’t need speech services anymore.*”
 - **Your Objection:** “*Objection, Your Honor. That is **hearsay.***”

f. Objection: Assumes Facts Not In Evidence

- **What it means:** The witness slips a “fact” into their answer that has not been proven or mentioned by a witness or in any exhibits.
- **Example:**
 - **Teacher answers:** “*After the student broke the school computer, we moved him to a different desk.*” (If there is no record or prior testimony that your child ever broke a computer).
 - **Your Objection:** “*Objection, Your Honor. The answer **assumes facts not in evidence.** There is no evidence a computer was broken.*”

5. How To Object To An Answer: The “Move To Strike”

When you object to a *question*, you do it before the witness speaks.

When you object to an *answer*, the bad information has already been spoken out loud. Therefore, your objection must include a request to erase it from the ALJ’s mind and the official record.

Note: ALJs sometimes say that the answer does not need to be stricken – they know the answer is improper. The problem is that unless stricken, the answer will remain in the record and may be used by the reviewing court.

6. Objections To Raise To Admission Of Either Party’s Exhibits

Introducing physical or digital evidence is called “moving exhibits into evidence.” Either party can object to the admission of the other party’s exhibits.

Note: By agreeing to Joint Exhibits, you have agreed that the document can be admitted as a Joint Exhibit.

The most common objections a parent can make to a district’s exhibits include:

a. Violation Of The “Five-Day Exchange”

- **What it means:** You can object if the district tries to introduce an “R” exhibit that it did not include in its Five-Day Exchange. You can ask that it be excluded. Or if you choose, you can waive the requirement.
- **Example:** The district wants to admit a document describing an observation of the student by the witness. This document was not given during the Five-Day Exchange.
- **Your Objection:** *“Objection, Your Honor. I object to Exhibit R-14 under the Five-Day Rule. The district did not disclose or provide this document to me five business days prior to this hearing.”*

b. Lack Of Authentication / No Foundation

- **What it means:** A piece of paper cannot just be handed to the ALJ. With the exception of Joint Exhibits, a witness must first identify it and verify what it is. This is called “laying a foundation.”
- **Example:** The district’s attorney tries to admit a printout of several text messages between two people. No witness has identified those messages or confirmed they sent or received them.
- **Your Objection:** *“Objection, Your Honor. The district has failed to lay a proper foundation, and this exhibit has not been authenticated. No witness has identified this document or verified its accuracy.”*

c. Hearsay (Within Documents)

- **What it means:** Hearsay is admissible in due process hearings. You can, however, object to documents containing statements purported to be made by people who are

not present at the hearing to be cross-examined. This is especially true if the school is using the document to prove the statements are a definitive fact.

- **Example:** The district tries to admit an observation report from the district's private consultant who observed your child. The consultant is not scheduled to testify, meaning you cannot cross-examine them about what they wrote.
- **Your Objection:** *"Objection, Your Honor. This exhibit contains inadmissible hearsay. The author of this email is not present to testify, depriving me of my right to cross-examine them."*

Note: Unlike the school district, parents have a legal right to have any independent reports they have obtained included as evidence. The individual does not need to testify.²⁰⁵

d. Irrelevant / Beyond The Scope Of The Petition

- **What it means:** Every piece of evidence must directly relate to the specific legal issues raised in the Due Process Petition. Evidence used to paint an unfavorable picture of your child, or to distract from the current dispute, are legally irrelevant.
- **Example:** The dispute is strictly about whether the high school physical therapy services in a 2025 IEP were appropriate. The district tries to admit discipline logs from when your child was in 2nd grade (years ago).
- **Your Objection:** *"Objection, Your Honor. This exhibit is irrelevant. It concerns a time period and issues completely outside the scope of the Due Process Petition currently before the court."*

e. Settlement Negotiations / Offers Of Compromise

- **What it means:** Communications, emails, or draft agreements made during mediation are strictly confidential and can never be used in a hearing. Settlement discussions are usually confidential and this arguably could include settlement discussions during a resolution session. The district cannot show these documents to the judge to make it look like you are being unreasonable. Nor can it use them to show you admitted to certain facts.
- **Example:** The district tries to introduce an email exchange from a settlement conference where they offered to give your child 20 hours of compensatory tutoring. You said it was a generous offer. The next day, you rejected the offer, saying you were told by a friend you should not settle for less than 50 hours.
- **Your Objection:** *"Objection, Your Honor. This exhibit directly details confidential settlement negotiations. It is entirely inadmissible."*

f. Altered, Incomplete, Or Redacted Documents

- **What it means:** The district must provide complete documents. If they submit an exhibit that is missing pages or lacks required signatures, you can object.

²⁰⁵ 34 C.F.R. 300.502(e)(2).

- **Example:** The district moves to admit an IEP document (Exhibit R-2), but pages 5 through 8 (the goals and objectives section) and the required signature page are missing.
- **Your Objection:** *“Objection, Your Honor. This exhibit is incomplete and missing pages. Presenting a partial document distorts the record.”*

g. Privileged Document

- **What it means:** Certain conversations and documents are legally protected to ensure privacy. Neither party can use these documents as evidence without the other party’s consent.
- Common types of privilege in special education hearings:
 - **Attorney/Advocate-Client Privilege:** Notes, emails, or advice between a parent and their advocate or attorney.
 - **Mediation Privilege:** Anything said or written during a formal mediation session.
 - **Therapist-Patient Privilege:** Private, clinical session notes from your child’s personal, outside therapist or their school social worker or psychologist.
- **Example 1:** You accidentally emailed the district’s attorney a copy of a private email exchange between you and your special education advocate discussing your hearing strategy. Instead of informing you when it received the email, the district’s attorney tries to introduce the email into evidence to show you are being difficult.
 - **Your Objection:** *“Objection, Your Honor. This document is protected by attorney-client privilege [or advocate privilege] and was never intended to be disclosed. I have not waived this privilege.”*
- **Example 2:** The district wants to use the school social worker’s notes of counseling sessions with the student.
 - **Your Objection:** *“Objection, Your Honor. This document is protected by the social worker privilege (N.J.R.E. 518) and should not be disclosed. I have not waived this privilege.”*

Note: If a parent is having their child’s therapist or school counselor testify, they will likely need to produce those portions of their notes or records that pertain to the facts or opinions they will testify about.

h. Objection: Unfairly Prejudicial / Inflammatory

- **What it means:** Evidence can be excluded if its usefulness in proving a relevant fact is outweighed by the danger of **unfair prejudice**, confusion of the issues, or misleading the judge.
- **Example 1 (Prejudicial to the Child):** The hearing is about whether your child needs a smaller classroom for their learning disability. The district tries to admit a police report where your child was caught shoplifting at a convenience store over the weekend.

- **Your Objection:** “*Objection, Your Honor. This document is **highly prejudicial and completely irrelevant** to my child’s academic placement. Its only purpose is to bias the court against my child.*”
- **Example 2 (Prejudicial to the Parent):** The district tries to admit a printout of your personal social media posts where you vent about a difficult day parenting your child.
 - **Your Objection:** “*Objection, Your Honor. This exhibit is **unfairly prejudicial** and serves no purpose other than to attack my character. It has nothing to do with the district’s failure to appropriately educate my child.*”

7. How And When To Make The Objection

The ALJ will usually address objections in one of four ways:

- **Before the hearing begins:** Raise your objection when you receive a copy of the document in the Five-Day Exchange. Send an email to the ALJ’s assistant with a copy to the district’s attorney, setting out your objection.
- **At the start of the hearing:** The ALJ may review the exhibit list and ask, “Does the parent have any objections to the district’s exhibits R-1 through R-20?”
- **During testimony:** The district’s lawyer will finish questioning a witness about a document and say, “*Your Honor, at this time I move Exhibit R-5 into evidence.*”
- **At the end of the hearing:** The ALJ will review the exhibit list and ask, “Does the parent have any objections to the district’s exhibits R-1 through R-20?”

You need to be prepared for the same process to be followed for the parent’s exhibits.

L. Cross-Examination Of District Witnesses

You will cross-examine each district witness right after the district’s attorney finishes questioning them. There are several areas to focus on:

- Impeach credibility of witness by showing bias
- Show inconsistent prior statements
- Show poor memory
- Show infrequent or no interaction with the student
- Bring out important evidence not brought out on direct that you know and can document this witness possesses.

You will use the evidence you collect in your cross-examination in your closing statement.

Effective cross-examination of school district staff requires short, leading questions that force a “yes” or “no” answer. The goal of cross-examination is not to argue with the witness, but to lock them into specific facts that help prove the issues in your case.

1. The 4 Golden Rules Of Cross-Examination

- **Ask Leading Questions:** Never ask questions that start with “Why,” “How,” or “Explain.” You are “testifying” through your questions; the witness should simply be confirming your statements.
- **One Fact Per Question:** Keep questions incredibly short. Do not lump multiple facts together. If you do, the witness may deny the whole statement based on a minor detail.
- **Try to Never Ask a Question You Don’t Know the Answer To:** Base every single question on a document in the exhibit binder. If the witness lies or hesitates, you must be ready to immediately point them to the exact page of the exhibit that proves your point.
- **Know when to Quit:** If you are not getting anywhere, which sometimes happens, stop.

2. Step-By-Step Structure For Your Questions

You should be able to prepare most of your questions in advance. Build a logical argument for the ALJ to follow. Establish the witness’s background and connection to your child. Establish the baseline rules or expectations. Then expose where the district failed to meet those expectations or rules.

a. Establish Credentials

Start by establishing who the witness is and relationship to your child.

- **Example:**
 - “You are my child’s speech-language pathologist, correct?”
 - “You have been providing services to my child since September 2024, correct?”

b. Establish The Rules And Standards (The “Set-Up”)

Get the witness to agree to a general educational standard, a legal requirement, or a specific goal written into the IEP.

- **Example:**
 - “Please look at Exhibit P-3, page 4. This is my child’s IEP, correct?”
 - “The IEP states Goal 1 for my child is [you read goal into the record], correct?”
 - “You prepared this speech goal, correct?”

c. Expose the Failure

Introduce the evidence that proves the district broke its own rules, missed deadlines, or ignored lack of progress.

- **Example:**
 - “Now turn to Exhibit P-12, page 1. You prepared this report?”
 - “This is your report about my child’s progress on Goal 1 as of the first marking period?”

- *“On Goal 1, you wrote that my child made ‘no progress,’ as of [date]?”*
- *“In fact, my child’s score on that skill dropped from 40% to 20%, correct?”*
- *“Now turn to page 2 of Exhibit P-12”*
- *“This is your report about my child’s progress on Goal 1 as of the second marking period?”*
- *“On Goal 1, you wrote that my child made ‘no progress’ as of the second marking period?”*
- *“My child’s score on that skill dropped again, correct? As of the second marking period, it was only 10%, correct?”*

M. How To Handle A Witness Who Evades The Question

District staff will often try to explain away their failures rather than giving a straight “yes” or “no.” If a witness starts giving a narrative answer, you must politely but firmly regain control of the questioning.

- **The Witness Says:** *“Well, we missed those sessions because the school had an assembly, and then we tried to make it up later but...”*
- **Your Response:** Interrupt gently and repeat the exact question. *“Thank you, but my question was: [repeat question] Is that statement correct, yes or no?”*
- **If they keep talking:** Turn to the ALJ and say, *“Your Honor, the question is a simple yes or no. I request that the witness be instructed to answer the question asked.”*

N. Example Cross-Examination Scripts By Topic

1. Topic A: Failure to Implement the IEP

- *“The IEP required a full-time 1-on-1 aide, correct?”*
- *“You were the classroom teacher during this time, correct?”*
- *“The 1-on-1 aide resigned on October 1st, correct?”*
- *“A replacement aide was not hired until November 15th, correct?”*

2. Topic B: Inappropriate Goals / Lack of Progress

- *“My child had the exact same reading goal in the 2023 IEP and the 2024 IEP, correct?”*
- *“In June 2024, my child had not mastered that goal, correct?”*
- *“Yet, the district did not change the reading intervention strategy at the next meeting, correct?”*
- *“My child’s reading scores remained stagnant for 12 straight months, correct?”*

O. Questions to Show Witness Bias or Professional Interest

Bias means the witness has a personal, professional, or financial reason to favor one party's position over the other. District attorneys frequently point out that parents are paying their experts or their treating doctors, implying if not actually saying, that the witnesses are biased to favor the parent's position.

District employees also have a bias to defend their own prior educational decisions or to protect the school's budget. The latter is particularly true for district administrators who often testify in administrative hearings. District personnel may also face professional pressure to support the district's position, such as a teacher who is coming up for tenure or is looking for promotion to an administrative position. In rare cases, a district witness may actually demonstrate personal bias against a student.

Districts usually use their own full-time employees as witnesses. Occasionally, they will contract with an outside expert. Questions to ask outside experts include whether the individual has prepared expert reports for the district in the past. If so, how many times? Have they testified on behalf of the district? If so, in what cases? Have they ever testified on behalf of a parent? Have they ever testified that the district was not providing an appropriate education? Does the agency they work for have a contract with the district to conduct evaluations? Do they have a personal relationship with the Director of Special Services or other district administrators?

Example 1: Questions to Ask:

- *"You are currently employed by the school district, correct?"*
- *"The district pays your annual salary?"*
- *"Your direct supervisor is the Director of Special Services?"*
- *"Your administrative performance review is completed by that supervisor?"*
- *"You are aware that the out-of-district placement I am requesting costs the district money, correct?"*
- *"If the district funds this placement, that money comes out of the special education budget your supervisor manages?"*

Example 2: Questions to Ask:

- *"You are a full-time employee of the school district, correct?"*
- *"The school district pays your salary, correct?"*
- *"As a case manager, you have a caseload of 30 students, correct?"*
- *"My child is one of these 30 students on your caseload?"*
- *"So you are responsible for managing the very IEP and program that is being challenged here today, correct?"*

P. Showing Prior Inconsistent Statements

If a witness states something at the hearing that contradicts what they wrote in an IEP, an email, a progress report, or an evaluation, you can use that document to impeach them.

The Strategy:

- **Commit:** Re-confirm their new, live testimony so they cannot back out later.
- **Credit:** Validate the prior written document (e.g., show it was written closer to the event when their memory was fresh).
- **Confront:** Read the old statement out loud and force them to admit the contradiction.

Questions to Ask:

- **Commit:** *“Today you testified that my child does not require a 1:1 aide to make educational progress, correct?”*
- **Credit:** *“Please look at what has been marked as Exhibit P-4. This is an email you wrote to me on October 12, correct? You wrote this email during the school year, while actively working with my child? You were being honest with me when you wrote it?”*
- **Confront:** *“Please look at paragraph two. It says: ‘Johnny is struggling to stay on task and absolutely needs a 1:1 aide to navigate the classroom.’ I read that accurately, correct? You wrote that on October 12, but today you are telling the ALJ he does not need one?”*

Q. Showing Poor Memory Or Lack Of Personal Knowledge

If a district administrator is testifying about your child’s daily behavior, the administrator rarely sees your child. You can use the infrequent contact to impeach their reliability. Alternatively, if a teacher has too many students to accurately remember your child’s specific tracking data, you can highlight that.

The Strategy: Expose that the witness is relying on guesswork, assumptions, or outdated recollections rather than real-time data or direct observation.

- Questions to Ask (For lack of personal knowledge):
 - *“You are the case manager, but you do not teach my child’s daily math class, correct?”*
 - *“In fact, you have only observed my child in the classroom twice this entire school year?”*
 - *“Those observations lasted only 20 minutes each?”*
 - *“So, your testimony about his daily classroom attention spans is based on what others told you, not your own eyes?”*
- Questions to Ask (For poor tracking/memory):
 - *“You teach 25 different special education students every single day, correct?”*
 - *“You do not keep a minute-by-minute log of every single child’s behavioral outbursts?”*
 - *“You did not write down the exact time of the incident on May 4th when it happened?”*
 - *“You are relying strictly on your memory of an event that occurred fourteen months ago?”*

R. Tips For The Hearing

- **Have your evidence organized:** If you are going to confront a witness with an inconsistent statement, have the specific page and paragraph numbers of the exhibit ready. Do not make the ALJ wait while you look through loose papers.
- **Do not argue:** Once the witness admits to the contradiction or the bias, stop. You have successfully scored your point. Save any commentary for your closing argument where you summarize why that witness should not be trusted.
- **Listen closely to Direct Examination:** Take notes when the school district's attorney is questioning the witness. If the witness says something completely different from the documents in your binder, draw a star next to it. That is your target for cross-examination.

S. Parent Conducting Direct Examination Of Their Witnesses

- **Know What You Are Seeking to Prove or Rebut:** You have subpoenaed your child's teacher to testify. You need to have specific goals as to what you are trying to prove or rebut through their testimony. Perhaps the teacher told you that she believed your child needed more support than she could provide. Then the focus of your direct examination would be to bring this out. Or your child is receiving passing grades and the district claims this shows he is receiving an appropriate education. The teacher has told you, though, that she bases her grades 40% on the student turning in their homework each day, 40% on classroom participation and 20% on effort. Then the focus of your direct examination will be to bring this out and show the grades do not mean the student is making academic progress.
- **Ask Open-Ended Questions:** Direct examination requires questions that start with "Who," "What," "Where," "When," "Why," or "How." Do not lead the witness (*e.g.*, do not say, "*You didn't help my child, right?*"; instead say, "*What help did you provide?*").
- **Control Your Emotions:** Do not show anger, dislike or frustration.
- **Use the "Lego" Method:** Build your case brick by brick.

1. Sample Direct Examination Of Parent Fact Witness

A teacher can testify about how the child performs in their classroom. They can testify how they complete progress reports, and what, if any, data they collect to show progress is "minimal" or "progressing appropriately." They can testify about the interventions or approaches they have tried. They can testify about what factors they use to determine grades. Sometimes this information is critical in raising questions as to the appropriateness of a program. It is important for an ALJ to know if a student is getting passing grades based solely on whether they complete their homework and participate in class, that failing quizzes and tests are not counted in a grade. Or that the student is allowed to "correct" tests or quizzes until they have a passing grade.

In this example below, assume the child's teacher has told you that they do not have the time to provide more individual support to the student. This is important factual information.

a. Phase 1: Establishing The Teacher's Role And Your Child's Baseline

Start with foundational questions. Confirm the teacher's certifications and their day-to-day contact with your child.

- *"Please state your name and current position."*
- *"What certifications or licenses do you have?"*
- *"How long have you been a certified teacher?"*
- *"What grade(s) and subjects do you currently teach?"*
- *"Is [child's name] a student in your class?"*
- *"What subjects do you currently teach [Child's Name]?"*
- *"How long have you been teaching those subjects to [Child's Name]?"*

b. Phase 2: Establishing The Specific Learning Disability And Lack Of Progress

- *"What are [Child's Name]'s current disabling conditions?"*
- *"Who prepared [child's name]'s report cards over the past 1 ½ years?"*
- *"What have [Child's Name]'s report card grades been in math over the past 1 ½ years?"*
- *"What have his report card grades been in reading during that same 1 ½ year period?"*
- *"Who prepares [child's name] progress reports in math and reading over the 1 ½ year period?"*
- *"What have [child's name] progress reports in math shown during that time period?"*
- *"What have [child's name] progress reports in reading shown during that time period?"*
- *"What, if any, specific data, do you have that shows my son's current grade level in reading? In math?"*

c. Phase 3: Highlighting The Conversation With The Teacher About Need For More Individual Attention

- *"What discussions, if any, have we had regarding the amount of individual attention my son needs in math and reading?"*
- *"What did you say to me during those discussions about his need for individual attention in math and reading?"*
- *"How does the size of your current class in reading impact the amount of individual time you can give to my son?"*

- “How does the size of your current class in math impact the amount of individual time you can give to my son?”

If the teacher says she does not recall or tries to downplay the significance of what she said, “*I don’t recall saying he needed more individual attention – I might have said, ‘it would be nice if I had more time to spend with him.’*” If you documented your conversations, you can use the documents to do what is called **refreshing her recollection**. Show the witness exhibits referring to the conversation(s) with her about the need for more individual attention. Ask the witness if this refreshes their recollection.

T. Hostile Witness In Your Case

If a witness you have subpoenaed to testify shows significant hostility to your direct questions, you can ask the ALJ to designate them as a hostile witness. This allows you to ask leading questions. Remain calm, neutral, and polite at all times. Responding with anger or hostility will only hurt your credibility.

U. Pro Se Parent’s Direct Testimony

How the *pro se* parent should present their direct testimony should be discussed with the ALJ at a pre-hearing conference. Someone, such as the other parent, could ask questions. Another option is for the parent to write out their direct testimony, including referring to exhibits supporting their testimony. The parent would then read their testimony into the record. The district’s objections could be made as the parent reads their testimony or refers to exhibits.

Direct testimony should focus on the problem(s), facts and proposed solutions raised in the due process petition. The parent can also counter arguments raised by the district in their case. The following is based on “[Example 1: IEP Not Appropriate](#)” (p. 20).

- **The Problem:** The district is not providing the supports and services my child needs to do well in school.
- **The Facts:** My child has an IEP but is still failing math and reading. He hates to go to school – each day it is very difficult to get him on the bus. He often calls me during the day, saying he is sick and needs to come home. He can’t do the assigned homework for any of his classes without me sitting next to him the entire time. I have brought this and other problems up in IEP meetings. I have sent emails and pointed the problems out in parent teacher conferences for the past 1 ½ years. No changes have been made to his IEP. His progress reports continue to show minimal to no progress. He has become increasingly anxious and sad about school.
- **The Solution:** The district needs to change his IEP and provide the supports and services he needs so he can make progress in his math and reading classes. I think at this point he also needs counseling. I am also asking for compensatory services for the past 1 ½ years, which I ask be put in a trust fund.

Here is a sample step-by-step structure for the written testimony for the prior problem. **Note:** Any documents you refer to must have been produced by you during the Five-Day Exchange, included as Joint Exhibits or used by the school district when it presented its case. Some of the exhibits you may refer to in your direct testimony will have already been used by the school district or were agreed to as Joint Exhibits. If a document has already been used by the district in their case or agreed to as a Joint Exhibit, use that Exhibit Number here.

1. Phase 1: Introduction And The Child's Profile

- **Narrative:** State the child's name, age, grade, and classification (e.g., Specific Learning Disability). Briefly state that despite having an IEP, the child is not receiving a FAPE.
- **Exhibits:** Refer to the IEPs covering the 1 ½ year period as exhibits here.
- **Drafting Sample:** "My child, [Name], is a [Age]-year-old student classified based on his Specific Learning Disability. I am introducing the current IEP dated [Date] as Exhibit P-1. I am introducing the previous IEP dated [Date] as Exhibit P-2. These two documents supposedly outline his needs for the past 1 ½ years, as I will testify, though, my child's needs are not being met."

2. Phase 2: Objective Evidence Of Failure (Math And Reading)

Address the core academic failure using the district's own data. This directly attacks the district's burden to prove "meaningful progress."

- **Narrative:** Detail the ongoing struggle with math and reading over the last 1.5 years. State clearly that the child is failing according to the district's own evidence.
- **Exhibits:** Introduce report cards, progress reports, and work samples. If you have expressed concerns to the district about the struggles with math and reading, introduce your emails, texts, etc. .
- **Drafting Sample:** "Over the past 1.5 years, [Name] has stagnated. I am introducing his report cards from last year and this year as Exhibit P-2, showing failing grades in math and reading. Furthermore, Exhibit P-3 contains his IEP progress reports from [Dates]. Here, the district's own markers show 'minimal to no progress' quarter after quarter."

3. Phase 3: School Avoidance

- **Narrative:** Describe the battle of getting your child on the bus and how often this is now a problem. Start with getting your child up, dressed, out of the house and on the bus. Describe what you observe. Also describe the difficulty of keeping him in school once he arrives, including the frequent phone calls from the student, nurse or main office. If school avoidance is something your child never demonstrated until they began failing math and reading, point this out in your narrative.
- **Exhibits:** Introduce attendance records, call logs, emails, text messages or logs of visits to nurse's office. Introduce any emails you have sent to the school district describing the difficulties you are having in getting your child out of the house and on the bus.
- **Drafting Sample:** "Until he began failing math and reading, my son loved going to school. He would even get up before his alarm went off, got dressed, ate breakfast and was out the door as soon as the bus arrived. He began showing resistance after he started getting failing grades in math and reading. Now it happens almost every day. It begins by him ignoring his alarm. When I come into his room, shut off the alarm and tell him he needs to get up, he complains that he isn't feeling well. When that doesn't work, he says he hates school and never wants to go back. When I keep insisting, he will finally get out of bed and start to get dressed. If I don't watch him, though, he will go back to

bed and pull the covers up over his head and we have to start over. It continues like this until he is finally on the bus. As it gets closer to time for the bus to arrive, he shows more resistance. Sometimes he cries. Or he will keep saying how much he hates school, hates his teacher, hates me for making him go to school. By the time he gets on the bus, I am exhausted. He is often sweating, his face is flushed, his fists are clenched as he goes out the door.

“He is a child who usually minds without a problem. He has certain privileges he loses when he doesn’t do what we say. I have found that losing privileges has had no impact, though, on getting him onto the school bus each morning. I have sent emails to my case manager about his school avoidance and also brought it up at [meeting dates]. Attached as Exhibit [No.] are copies of these emails. I have never been told about any changes made to his educational program in response to my emails.”

“My son’s school avoidance doesn’t stop once my son gets into school. I receive frequent texts from my son asking to come home. Copies of these texts are attached as Exhibit [No.]. I never pick him up unless the nurse says he is ill. I also receive frequent emails or texts from the nurse telling me about his visits to her office. He complains that he doesn’t feel well or wants to come home. I have attached as Exhibit [No.] copies of some of these emails or texts. There have been occasions when I have been called and told to take him home. Attached as Exhibit [No.] are copies of these emails/texts.”

4. Phase 4: Emotional Toll

Connect the academic failure to the child’s mental health and physical avoidance of school. This helps to show the IEP is not calculated to provide an appropriate education.

- **Narrative:** Describe your observations of your child’s school avoidance, physical symptoms he exhibits such as stomach aches, sleep problems, and sadness. Show how these can be linked to his failures in school. For example, you have observed that your son has trouble sleeping through the night during school days but not on weekends. Or you observe that your son frequently has a smile on his face during weekends but during week days, has a frown. You can also report what your son tells you – that he is sad, angry, anxious or frustrated because he is failing in school. For example, your child is fine on the weekend but as they get ready for bed Sunday night, they often complain they have a stomach ache. Or your son says he is never going to be able to read or do math.
- **Drafting Sample:** “I have observed that my child often complains of stomach aches Sunday night before the school week begins. Other times on Sunday nights or during the week, he has trouble sleeping, comes into our room at night. Once the school week starts, he rarely smiles. Instead, he often walks around with a frown on his face. Other times, he looks sad – the corners of his mouth are turned down, he looks down, slumps and walks slower. He is a different child in the summers or on the weekends – he often has a smile on his face, sleeps throughout the night, rarely waking up.”
- **Exhibit:** If you have doctor or therapist notes, school nurse notes or other school personnel describing their observations of school related anxiety, you can attach copies of these notes.

- **Respond to any claims made by the district that your son says he loves school, isn't sad or anxious:** The Director of Special Services claimed during her testimony that she saw my son in the hall two weeks ago and asked him how things were going. She testified that he said "Great – I love coming here." My son likes to please adults – particularly ones he doesn't know well. If someone asks him how things are going at school, he will always say things are great. Just look at the nurse's records, emails, all the documents I referred to earlier – these aren't about someone who loves school.

5. Phase 5: The Overwhelming Homework Burden

Show that the school is shifting the burden of education onto the parent, proving the curriculum or accommodations are inappropriate for the child's independent level.

- **Narrative:** Explain that the child cannot do a single assignment alone and requires hours of 1-on-1 parental intervention just to get through basic homework.
- **Exhibits:** Introduce samples of incomplete or heavily corrected homework, or a daily homework log kept by the parent.
- **Drafting Sample:** "The district is not educating my child; I am. [Name] cannot complete any assigned work independently. As shown in the homework samples attached as Exhibit [No.], every page requires my heavy modification and constant presence. According to Exhibit [No.], which is a daily homework log I kept for [amount of time], we spend an average of [amount of time] doing homework and preparing for exams or quizzes in math and reading."

When I brought this to the attention of my case manager, she told me not to help with his homework. My son wants to succeed in school and he believes he should do his homework. There were a few times when there just wasn't time to complete the homework. When this happened, he would get upset and say he had to complete his homework. I wrote a note each time to his teacher explaining why his homework wasn't done. He was still upset and said, "Mom – we have to do the homework."

I tried what the case manager suggested. This is what happened. I told him on [date] that I could not help him, he would have to figure it out on his own. He looked at me, his mouth dropped open and he began crying, not just a few tears but loud sobs. He said "I'll get in trouble if I don't turn in my homework tomorrow – the teacher will be angry and everyone in the class will know I didn't do it. It will be all your fault."

He was inconsolable at the fact I would not help him. I stayed firm and did not help him. He stayed at the table, trying but unable to finish anything. Finally, I told him he had to go to bed. I could hear him weeping even after I put him to bed. He was up frequently during the night. I told my case manager how he had responded – she didn't have any other suggestions. I can't fail him too so I've continued to spend hours with him on his homework."

6. Phase 6: Notice Given And District Inaction (The Paper Trail)

This is crucial. Here you are showing that the district knew the IEP was failing but chose to do nothing.

- **Narrative:** Chronologically list the IEP meetings, emails, and parent-teacher conferences where these issues were raised. State clearly that the district did not inform you it was making any changes. If the district made changes, show how the student is still failing despite these changes and still cannot independently complete his homework.
- **Exhibits:** Introduce copies of emails and written parental requests for IEP meetings/revisions.
- **Drafting Sample:** “The district cannot claim they were unaware of these failures. On [Date 1], [Date 2], and [Date 3], I sent emails to the case manager explicitly detailing the failing grades and school avoidance. These emails are compiled as Exhibit P-7. I raised these exact issues at the IEP meetings on [Dates], yet the district did not change the IEP. The IEP does not show that any services were added, increased or modified. That the manner of instruction, goals and objectives or accommodations were changed.”

7. Phase 7: Conclusion And Remedy Sought

End by explicitly stating what the child needs to receive a FAPE going forward and to make up for past harm.

- **Narrative:** Summarize that because the district failed its burden to provide a successful program and ignored 1.5 years of warnings, the court must intervene. State the exact remedy you are seeking going forward and to compensate for past harm (*e.g.*, a private placement or specific changes to the IEP in math and reading and specific tutoring or compensatory education for past failures to provide a FAPE).

8. Strategic Tips To Avoid Board Attorney Objections During Direct Examination

The school board attorney will likely try to interrupt the reading. To stop them from blocking the testimony, follow these rules:

- **Stick to Objective Knowledge:** A parent can only testify about what they saw, heard, felt, or did.
 - **Safe:** “My child cried every morning and told me his stomach hurt.”
 - **Objectionable (Medical opinion):** “My child has clinical depression caused by his teacher’s bad teaching methods.”
- **Do Not Speculate on Intent:** Do not guess why the school did not do something. Stick to the fact that they did not.
 - **Safe:** “The district did not change the IEP.”

- **Objectionable:** “The district didn’t change the IEP because they wanted to save money.” Or “the district is biased against my child.”
- **Refer to each exhibit by number and give the ALJ and district’s attorney time to locate it in their exhibit binder:** All exhibits should be pre-marked. The ALJ and the board attorney should have their own exhibit binders. When reading, say the exhibit number clearly and allow time so the ALJ and district attorney can turn to that exhibit in their binder.

V. Parent’s Preparation For Cross-Examination By The School District Attorney

- **If you do not understand the question:** Say you do not understand the question and could the attorney clarify what they are asking.
- **Let the question sink in and take the time you need to respond:** Do not be rushed by the board attorney to say something you do not mean.
- **Do not guess:** If you do not know the answer to a question, state clearly that you do not know. Guessing can be just as damaging as lying, especially if your guess is wrong and opposing counsel uses it to attack your credibility.
- **Do not volunteer information:** Answer *only* the specific question you are asked. Do not offer extra information, personal opinions, or narratives that were not requested. Talking too much or expanding on unasked topics often gives opposing counsel opportunities to find inconsistencies.
- **Look at the ALJ as you respond:** The ALJ is the most important person in the room.

W. District’s Cross-Examination Of Parent Witnesses

Districts often question parent witnesses about their knowledge or lack thereof on how the student functions on a daily basis in school. Or on their knowledge or lack thereof as to the details of the student’s school program. Or their lack of knowledge of the student’s current IEP. Parent witnesses are also questioned on their lack of interactions with school personnel. Parents should share relevant school records with their experts. All of these questions are intended to reduce the weight the ALJ will give their testimony.

To be prepared to testify, your expert witness should observe the student in the school setting and speak with relevant personnel. Have the expert document if the school district refuses or limits access to the program or to school personnel. Make sure the expert has reviewed the relevant IEPs and school records before testifying.

X. Pro Se Parent’s Objections To Cross-Examination Questions By The District’s Attorney

There may be instances where there are legitimate objections to the questions asked of a *pro se* parent by the District’s attorney. Examples could include if the attorney is asking for privileged or irrelevant information or is repeatedly asking the same question, hoping to get a different answer. This is called badgering the witness. It could also include questions that are not relevant to the issues before the ALJ. You can raise objections and the ALJ will decide whether you must answer the question or not.

Y. Closing Statement

Your closing statement must summarize the evidence presented. As a *pro se* parent, you should clearly structure your argument by covering:

- **The Specific Issue:** Define exactly what is being disputed (*e.g.*, denial of FAPE, improper placement, or failure to implement the student's IEP).
- **Burden of Proof Reminder:** Remind the Administrative Law Judge (ALJ) that under New Jersey special education law, the **school district** holds the burden of proof to show its IEP and services were appropriate.
- **Summary of Evidence:** Highlight the most vital documents and specific witness testimonies that support your desired outcome.
- **Why the District Failed:** Detail exactly how the district failed to meet its burden (*e.g.*, prove it was providing an appropriate program or had fully implemented the student's IEP or placed the student in the least restrictive environment).
- **Your Proposed Solution:** Clearly state what remedy you are requesting (*e.g.*, an Independent Educational Evaluation (IEE) at public expense, out-of-district placement, or compensatory education and in what amount and how it should be provided).

Z. Transcripts Of The Hearing

Parents are entitled to a free copy of the transcript of testimony at a hearing. To request a transcript, make your request directly to the Department of Education, Office of Special Education at osepdisputeresolution@doe.nj.gov or Baljit Kaur at baljit.kaur@doe.nj.gov. No form is required. Include the following information:

- Case Name
- OAL Docket Number (which begins with EDS)
- Agency Reference Number
- Dates for which you want a transcript
- Name of the ALJ
- Format of the hearing (virtual or in person)

Note that you do not have to wait until the whole hearing is over to request the transcript. If you have finished a hearing date on September 1 and you have another scheduled for September 8, you can ask for the first transcript at the end of the first hearing day.

You can request that the transcript be expedited if you need it to prepare for the next hearing day or to prepare a written closing by a certain deadline.

AA. Final Due Process Or Expedited Hearing Decision

After a hearing is held, a final decision will be issued by the ALJ. Either party can seek review of the decision by filing an original action in the United States District Court for the District of New Jersey or in the New Jersey Superior Court. The case must be filed within 90 days of the decision.²⁰⁶

If you lose and file an appeal, the stay-put will stay in place until the appeal is resolved. If, however, the ALJ grants the relief you requested, such as a change to the placement or services your child receives, the ALJ's decision is treated as an agreement between the State and you. It changes your child's stay-put.²⁰⁷

For example, if the ALJ orders the district to provide the speech and language therapy services you requested, an IEP containing speech and language services becomes your child's new stay-put. The district must provide the speech and language services while it appeals. Similarly, if the ALJ orders the district to place your child in the private placement you requested, this becomes your child's new stay-put. If no one appeals, the ALJ's decision must be implemented without delay.

²⁰⁶ 20 U.S.C. § 1415(i)(2)(B); N.J.A.C. 6A:14-2.7(v).

²⁰⁷ 34 C.F.R. §300.518(d); N.J.A.C. 6A:14-2.7(u)1; [School Community of Town of Burlington, Mass. v. Dep't of Educ. of Mass.](#), 471 U.S. 359, 372 (1985); [M.R. v. Ridley School District](#), 744 F.3d 112 (3d. Cir. 2014).

IX. LEGAL RESEARCH RESOURCES

A. OAL Decisions From 2018 To Present

Posted on NJDOE's website: <https://www.nj.gov/education/legal/specialed/>.

B. OAL Decisions Prior to 2018

Although the collection is not complete, some decisions are posted on NJDOE's website <https://www.nj.gov/education/legal/specialed/>.

For an OAL special education decision not posted there, [NJ State Library's \(NJSL\) Law Library](#) may be able to help, especially if you have the case name and/or docket number. **Email:** reflaw@njstatelib.org **Phone:** 609-278-2640 ext. 102.

C. Google Scholar

[Scholar.google.com](https://scholar.google.com) has federal and state published decisions, as well as the most recent unpublished decisions.

- Go to the website and click on "Case law."
- If you know the case name or citation – for example, "D.K. v. Abington School District" or 696 F.3d 233 – put that in.
- If the decision you are looking for has a "WL" or "LEXIS" cite, this means it is not published in a federal reporter. Try putting in the name of the decision. If it does not come up, you can try cortlistener.com.
- If the school district cited the decision you are looking for in their papers, ask the district's attorney for a copy.
- If you do not have a case name but want to research a particular subject:
 - Click "case law."
 - Click "Select Courts." A listing of state and federal courts will come up. Most special education decisions are decided by federal courts. Federal courts are divided into circuits. New Jersey is in the Third Circuit Court of Appeals. It is suggested that you begin your search by clicking on "Third Circuit," which will bring up all district court and Third Circuit Court of Appeal decisions. Click "Done" and you are ready to begin your search.
 - Put in your search term – for example, "Right to Independent Educational Evaluation" or "IDEA Stay-put provision"

You can also expand your search to all circuits. Keep in mind that a published decision in the Third Circuit is binding in New Jersey. This means that other New Jersey courts should follow the decision. Published decisions in other circuits are not binding, but their reasoning is often helpful.

D. Public Access To Court Electronic Records (PACER)

Federal court records are open to the public, and you do not need to be a lawyer to see them. Anyone can sign up. The website is called PACER, which stands for Public Access to Court Electronic Records. <https://pacer.uscourts.gov/>

What PACER Costs

Signing up is free, but reading papers can cost money. Even so, most people never pay anything.

Here is how the cost works:

- Each page costs 10 cents.²⁰⁸
- One paper never costs more than \$3.00, no matter how long it is. The same limit covers the docket.²⁰⁹
- The court adds up your charges every three months, and if the total is \$30 or less, it cancels them. You pay nothing.²¹⁰
- Thirty dollars is about 300 pages every three months, and most parents never come close to that.
- Written decisions by judges are always free.²¹¹

A court can decide that you do not have to pay, which is called a fee exemption. You ask the clerk of the court for it, and explain that you cannot afford the fees. Each court handles these requests its own way, so ask the clerk's office how to make one where your case is. The court decides one request at a time.²¹²

²⁰⁸ Judicial Conference of the United States, Electronic Public Access Fee Schedule ¶ 1 (eff. Jan. 1, 2020) (issued in accordance with 28 U.S.C. §§ 1913, 1914, 1926, 1930, 1932) (“\$0.10 per page, not to exceed the fee for thirty pages”).

²⁰⁹ Id. The \$3.00 ceiling is the fee for thirty pages. It applies to documents and to case-specific reports, including the docket report. It does “not apply to name search results, reports that are not case-specific, and transcripts of federal court proceedings.” [PACER, How much does it cost to access documents using PACER?](#) A parent who runs repeated party-name searches can therefore accrue charges without the per-document cap applying.

²¹⁰ Electronic Public Access Fee Schedule (“No fee is owed for electronic access to court data or audio files via PACER until an account holder accrues charges of more than \$30.00 in a quarterly billing cycle.”). PACER reports that roughly 75 percent of users owe no fee in a given quarter.

²¹¹ Electronic Public Access Fee Schedule (“No fee is charged for access to judicial opinions.”). Written opinions of more than 130 federal courts are also searchable at no cost through the Government Publishing Office, <https://www.govinfo.gov>.

²¹² Electronic Public Access Fee Schedule (courts “may” exempt “certain persons or classes of persons from payment of the user access fee,” listing “indigents” among the examples). An exemption is discretionary, must be granted by the court in which the records are sought, and is ordinarily limited in scope and for a specific amount of time. [PACER, Options to Access Records If You Cannot Afford PACER Fees](#).

How to Sign Up

- Go to pacer.uscourts.gov.
- Click Register for an Account.
- Choose Case Search Only, which is the account for people who want to read case records. The other choices are for people who file papers online.
- Fill in your name, address, and email. Pick a username and a password.
- You will be asked for a credit card, but you do not have to give one. A card is only charged if you go over \$30 in three months.
- If you skip the credit card, the court mails you a code to turn the account on, which takes about 7 to 10 business days. The court will not give you that code by phone, fax, or email, so plan for the wait.
- When your account works, sign in and click Find a Case.

How to Find a Case

- If you know the case number, type it in. That is the fastest way and it costs the least.
- If you do not know the case number, choose the right court first and then search by the last name of one of the parties. Federal cases from New Jersey are in the District of New Jersey.²¹³
- The first screen you see is the docket. The docket is a numbered list of every paper filed in the case, with the date each one was filed.
- Click a number on that list to open the paper.

In Practice

- Sign up before you need it, because the mailed code takes up to two weeks.
- Look at the page count and the price on the screen before you click. Long papers cost more.
- Save every paper you open to your own computer, so you never pay for it twice.
- Save the free copies that come by email the day they arrive.
- Keep a simple list of what you downloaded and when. It helps you find things later.

If the fees are a problem, ask the clerk about a fee exemption before you run up a bill.

E. Third Circuit Court Of Appeals Decisions In The Last 30 Days

<https://www.ca3.uscourts.gov/search-opinions>

²¹³ A civil action seeking review of a due process decision under the Individuals with Disabilities Education Act is brought in the district court. 20 U.S.C. § 1415(i)(2)(A). For New Jersey that is the United States District Court for the District of New Jersey. Name searches are billed per page of results and are not subject to the \$3.00 cap.

F. Special Education Laws And Regulations

- [Federal Special Education Statutes](#)
- [Federal Special Education Regulations](#)
- [New Jersey State Special Education Regulations](#)
- [OAL Special Education Regulations](#)

G. Federal Resources

U.S. Department of Education (OSEP) Written Guidance

- [Policy Letters and Policy Support Documents](#)
- [The Center for Appropriate Dispute Resolution in Special Education](#)
- [https://cadreworks.org/A-Parent's Guide to Using AI for Advocacy in Special Education \(May 2026\)](https://cadreworks.org/A-Parent's-Guide-to-Using-AI-for-Advocacy-in-Special-Education-(May-2026))
- [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions \(OSEP, July 19, 2022\)](#)

H. New Jersey State Resources

- [Free and Low Cost Legal and Advocacy Services \(2024\)](#)
- [Parent Rights in Special Education \(PRISE\) \(2026\)](#)
- [Notice of Changes to Procedures for Mediation and Due Process Hearing Requests \(Feb. 19, 2025\)](#)
- [Student Records Guidance](#)
- **People to Contact:** [Office of Special Education Family Support Specialist](#); NJDOE Office of Special Education Ombudsman, specedombudsman@doe.nj.gov

I. Other Resources

- [Disability Rights New Jersey, Navigating Your Rights to Special Education in New Jersey: A Self-Advocacy Guide](#)
- [Council of Parent Attorneys and Advocates \(COPAA\) Guidelines for Choosing an Attorney](#)
- [Council of Parent Attorneys and Advocates \(COPAA\) Guidelines for Choosing an Advocate](#)

X. PREPARING A LETTER BRIEF

A. Step 1: Format The Top Of The Letter

- Put your name, address, and phone number at the very top
- Address it to the specific ALJ assigned to your case
- Caption of the case: Your initials on behalf of [student's initials] v. [name of board of education]
- The case numbers: write both the OAL Docket Number and the Agency Docket Number

B. Step 2: Write an introduction

State who you are and why you are writing this letter brief.

- Identify yourself as the parent acting *pro se*
- State what you are asking the ALJ to do
 - **Example:** “This letter brief is submitted in support of my request for an out-of-district placement” or, if you are opposing the district’s application:
 - **Example:** “This letter brief is submitted in opposition to the school district’s request for an out-of-district placement.”

C. Step 3: Tell The Story (Statement Of Facts)

Explain the background and facts in date order. Only include facts that relate to the current dispute.

- Be clear and calm.
- **Use your proof:** Every time you state a fact, name a document that proves it. Or refer to **claims** made in your certification or others you have provided. You may also find that you can use documents or certifications provided by the district to establish facts.
 - **Examples:** “The student failed third-grade reading (Parent’s Exhibit A, page 3)” or “The district canceled speech therapy sessions (District’s Exhibit B).”

D. Step 4: Explain The Law (Legal Argument)

Here is where you show how the facts violate the law.

- **Cite the main laws** pertaining to the dispute: Use the federal statute and regulations and New Jersey regulations. Refer to relevant case law.
- **Connect the dots:** Explain how the school broke the law based on your facts.
- **Example:** “Under N.J.A.C. 6A:14-3.7, an IEP must include measurable goals. The school district broke this rule because the goals in Exhibit C do not include any way to measure progress.”

E. Step 5: Ask For Help (Conclusion And Remedy)

Tell the ALJ exactly what you want them to order. Be very specific.

- List your demands:
- **Example:**
 - Provide 40 hours of compensatory services by a licensed or certified speech language therapist to be selected by me and paid an hourly fee of [specify amount] by the district. Compensatory services are to be provided outside of the student's regular school day and at a time and date chosen by the parent.
 - Change the student's placement to an appropriate out-of-district school with a driving time each way of no more than 45 minutes by bus or van.
 - Pay for an IEE consisting of [list each assessment] using the following evaluators and up to this fee [name each evaluator and maximum fee].

F. Step 6: Review, Sign, And Send (Service)

- **Sign the brief:** Write "Respectfully submitted," and sign your name.
- **Serve the other party:** You must send a copy to the school district's attorney
- **Proof of Service:** Add a short note stating how and when you sent the copy to the lawyer (for example by email or certified mail)

XI. SAMPLE CERTIFICATIONS

A. Instructions For All Certifications

You may use the model “Certification in Lieu of Affidavit” that is included in the PRISE. Paragraph 5 of the model certification asks you to agree that you understand that to grant emergent relief, the ALJ must determine that *Crowe* factors (a) through (d) exist. **Note:** This paragraph does not apply when you file to enforce your child’s stay-put, so you should put a large X through paragraph 5 of the model form.

A certification is a sworn statement, and in New Jersey can replace a notarized affidavit but only if it contains the following specific language required by New Jersey Court Rule 1:4-4(b):

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Note: The model certification in the 2026 PRISE omits the Issue involving disciplinary action. New Jersey regulations still allow a parent to file for emergent relief on disciplinary actions. If you are filing for emergent relief concerning a disciplinary issue and using the model form, add that issue to your certification.

In a legal certification, you attach documents that support your assertions in the certification to the back of the document. Each document is called an **Exhibit**. You label them in order, using letters (Exhibit A, Exhibit B, Exhibit C). Take a blank sheet of paper. In large letters, print at the top “Exhibit A” to make it easier for the ALJ to find each exhibit. Put the sheet of paper at the front of the document.

B. Sample Certification 1: Emergent Relief In Cases Not Involving Stay-Put

Based on problem and facts in “[Example 2: Failure To Implement IEP](#)” (p. 21).

Step 1: The Caption (Header) At The Top Of The Page

State of New Jersey

Office of Administrative Law

Agency Ref. No:

OAL Docket No:

[your initials] on behalf of [your child’s initials] v. [name of school district]

Step 2: Title Of The Document [Put In Bold]

[your initials] Certification in Support of My Request For Emergent Relief

Step 3: The Introductory Section

Identify who you are, your relationship to the student and your personal knowledge of the case. If you are bringing the request for Emergency Relief, state when you filed due process.

1. I, [initials], of full age, certify as follows.

2. I am the mother/father of [initials of student] who is a 9th-grade student in [name of school district]. My child is eligible for special education and related services.
3. I have personal knowledge of the facts in this matter.

Step 4: When To File For Emergent Relief

If you are bringing the request for emergent relief, state when you filed for due process, which issues apply and that you provided required information and sent a copy to the district.

4. I filed for due process in this matter on [date when you filed]
5. I understand that pursuant to regulations of the Department of Education (N.J.A.C. 6A:14-2.7(r)) and the Office of Administrative Law (N.J.A.C. 1:6A-12.1), I am entitled to Emergent Relief because the matter involves one or more of the following issues: (Check all that apply)
 - Issues involving a break in the delivery of services;
 - Issues involving disciplinary action, including manifestation determination, and determination of interim alternate educational settings;
 - Issues concerning placement pending the outcome of due process proceedings or expedited hearing;
 - Issues involving or participating in graduation ceremonies.
6. I have completed the Request for Emergent Relief and provided the New Jersey Department of Education with the relevant information required on the Request for Emergent Relief.
7. I have provided a completed and signed copy of my request for Emergent Relief to the Respondent [name of school district].

Step 5: Factual Basis And Evidence Supporting Parent's Request For Emergent Relief

This is the most critical section. You must list clear, numbered points showing the facts and documents supporting your request for Emergent Relief (or opposing the school district's request).

If you refer to documents, say what the document is, identify it as an Exhibit, write on a blank sheet of paper, Exhibit A, etc., put the page identifying the Exhibit in front of the Exhibit, and attach a copy to your certification.

8. On September 6, 2025, my son entered the 9th grade with an agreed-upon IEP.
9. Per this IEP, my son is supposed to be educated in a general education class throughout the day. He receives support by a special education teacher in Algebra 1 and Language Arts. This support is 3 hours a day, 5 days a week. He also has Social Studies, Biology, Physical Education, Art and Music classes. He has Study Skills with a Special Education Teacher.
10. His IEP says he is to receive counseling 2 times a week for 30 minutes per session. He has a weekly social skills group. I have attached as **Exhibit A** a

true and correct copy of his IEP. This was the IEP in place until the district put my son on home instruction.

11. The District put my son on home instruction four weeks ago. The home instruction has been very inconsistent.
12. I have attached as **Exhibit B** copies of the home instruction logs signed by the district's instructors. These logs prove that my son received only 10 hours of academic instruction in week one. He received zero (0) hours of instruction in week two. He received a total of only 10 hours in weeks three and four combined.
13. **Exhibit B** also shows that most of this minimal instruction was in Algebra 1 and Language Arts. Exhibit B shows that my son received one hour total in Biology and the same in Social Studies. He received zero instruction or participation in Physical Education, Art, Music, or Study Skills.
14. The teachers for Algebra 1 and Language Arts are not certified special education teachers. I know this because I asked the two teachers and they told me they were not certified in special education.
15. The District has also not provided other required services. He has received zero counseling sessions and zero social skills groups.
16. In an effort to deal with my son's extreme isolation, I contacted my son's case manager [name]. I told her I would transport my son to the school building to attend his counseling sessions, his social skills group, and his chorus class. The case manager said it wasn't possible. When I asked "why," she told me that students on home instruction are not allowed to enter the school building for any reason. Attached as **Exhibit C** is the email chain between myself and the Case Manager dated [insert dates of emails]. I was told in these emails that the district has a blanket policy against allowing students on home instruction to enter the building for any reason.
17. The incident that led the district to put my son on home instruction was a panic attack he had during a fire drill. I was told that he crouched in the corner of his class, refusing to leave the room. It was a drill, not a real fire. So he posed no safety risk to himself or others.
18. The district knows that my son suffers from severe anxiety. Reports describing his severe anxiety are on pages 7-9 in the IEP attached as **Exhibit A**.
19. Schools are supposed to meet a student's individualized needs. It is my understanding that they can't have blanket rules applying to all students without regard to their unique needs. My son has never been a discipline problem. He is well behaved. He needs counseling and social skills group – that is why they are in his IEP. The district is withholding the exact services it agrees that he needs to learn how to manage his anxiety and cope with school triggers. He also needs interaction with peers and chorus is a class he particularly likes and does well in. There is no reason that a blanket rule should be used to stop him from entering the building and getting these services.

20. I have seen my son show even more anxiety since he has been on home instruction. To provide him with some relief, I enrolled him in a private physical activity. Attached as **Exhibit D** is a document describing the program and its cost.
21. Home instruction is a highly isolating experience. This with the lack of counseling, social skills group and no interaction with peers is causing immediate, irreparable emotional harm to my son's well-being. This is in addition to the irreparable harm caused by the lack of any special education instruction and no instruction in multiple subjects.

Step 6: What You Want The ALJ To Do

State clearly what you want the ALJ to do.

22. I request that the ALJ order the District to immediately return my son to his in-school placement until he can be placed in an appropriate out-of-district placement. In the alternative, the district should be ordered to provide a home instruction program that provides a minimum of three hours each week in instruction in Algebra 1 and Language Arts with a special education certified teacher. The district should provide one hour a week in Study Skills with a certified special education teacher and one hour each per week in Social Studies and Biology with a certified teacher.
23. In addition, the district should be directed to allow my son to receive counseling two times a week with his regular counselor, attend the weekly social skills group and attend chorus. The district should be ordered to reimburse me for the \$75.00 I paid to register my son in a physical activity.

Step 7: The Mandatory Closing Certification (The "Sworn Element")

In New Jersey, a certification can replace a notarized affidavit. You must, however, use the following exact statutory language required by New Jersey Court Rule 1:4-4(b):

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Step 8: Signature

Leave space at the bottom right for the date and your signature. Be sure to date and sign the certification. It is not a valid certification unless you include the above paragraph and sign and date the certification.

Dated _____. Signature _____

[Printed Initials, *Pro Se* Parent]

C. Sample Certification 2: Opposing School District's Emergent Relief

Step 1: The Caption (Header) At The Top Of The Page

[Name of school district] v. [your initials] on behalf of [your child's initials]

Step 2: Title Of The Document [Put In Bold]

[your initials] Certification in Opposition to the [name of school district's] Request for Emergent Relief

Step 3: The Introductory Section

Identify who you are, your relationship to the student and your personal knowledge of the case. If you are bringing the request for Emergency Relief, state when you filed due process.

1. I, [initials], of full age, certify as follows.
2. I am the mother/father of [initials of student] who is a 9th-grade student in [name of school district]. My child is eligible for special education and related services.
3. I have personal knowledge of the facts in this matter.

Step 4: Procedural Challenges To Raise Against School District's Request For Emergent Relief

Some school districts do not follow the rule set out in N.J.A.C. 1:6A-12.1 for filing an emergent relief request. This could include that the district did not file a due process or expedited petition supporting their emergent relief. Or that the district did not file the required certification. That the individual filing the certification did not claim to have personal knowledge of the facts alleged in their certification. Or an expert failed to give his/her specialized education, training, or experience. Sometimes the individual does not use required language at the end of certification swearing to the truth of what they said. A document without that required language (which is set out in "Certifications" in the [Glossary](#) (p. 131)) is not a valid certification. If you are opposing the district's Emergent Relief request, point out what the district did wrong.

4. I am filing this certification in opposition to the District's Emergent Relief request.
5. I reviewed the District's Emergent Relief request. It does not contain even one supporting certification or sworn statement to verify any of its claims. Instead, it relies exclusively on factual assertions made in its legal brief. It is my understanding that the law requires certifications based on personal knowledge. It is also my understanding that assertions of facts in a brief are not evidence.

See "[Sample Certification 1: Emergent Relief In Cases Not Involving Stay-Put](#)" (p. 117) for steps five through 8.

D. Sample Certification 3: Enforcing Stay-Put

Step 1: The Caption (Header) At The Top Of The Page

State of New Jersey

Office of Administrative Law

Agency Ref. No:

OAL Docket No:

[your initials] on behalf of [your child's initials] v. [name of school district]

Step 2: Title Of The Document [Put In Bold]

[your initials] Certification in Support of Parent's Emergent Relief To Enforce Stay-Put

Step 3: The Introductory Section

Identify who you are, your relationship to the student and your personal knowledge of the case. State when you filed due process.

6. I, [initials], of full age, certify as follows.
7. I am the mother/father of [initials of student] who is a 9th-grade student eligible for special education and related services within the [name of school district].
8. I have personal knowledge of the facts in this matter.
9. I filed for due process in this matter on [give date of when you filed].
10. I understand that pursuant to regulations of the Department of Education (N.J.A.C. 6A:14-2.7(r)) and the Office of Administrative Law (N.J.A.C. 1:6A-12.1), I am entitled to Emergent Relief because the contested matter involves one or more of the following issues: (Check all that apply)
 - Issues involving a break in the delivery of services
 - Issues involving disciplinary action, including manifestation determination, and determination of interim alternate educational settings
 - Issues concerning placement pending the outcome of due process proceedings or expedited hearing
 - Issues involving or participating in graduation ceremonies
11. I have completed the Request for Emergent Relief and provided the New Jersey Department of Education with the relevant information required on the Request for Emergent Relief.
12. I have provided a completed and signed copy of my request for Emergent Relief to the Respondent [name of school district].

Step 4: Make It Clear You Are Filing To Enforce Stay-Put And Are Entitled To An Automatic Injunction

13. I am filing this emergent relief to enforce my child's stay-put. I am asking that my emergent relief be decided under the stay-put provision contained in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7 (u), which entitle my child to an automatic injunction.

Step 5: Factual Basis And Evidence Supporting Parent's Request For Emergent Relief

Based on Example 2 in "[Examples Of Problems Supporting Emergent Relief Request](#)" (p. 37).

If you refer to documents, say what the document is, identify it as an Exhibit, write on a blank sheet of paper, Exhibit A, etc., put the page identifying the Exhibit in front of the Exhibit, and attach a copy to your certification.

14. I filed for due process on [date] objecting to the district's proposed IEP, which would remove my child from their placement in [name of private school] and place him in a self-contained class in my district starting in September.
15. On the day I filed due process my child was attending the [name of private school].
16. Attached as **Exhibit A** is a true and correct copy of the IEP placing him in the [name of private school].
17. On [insert date], I received a telephone call from [insert name] at the private school. They told me they had not heard back from the district as to whether the district would continue to pay for my child's placement there. They said they needed to know soon whether my child would be returning. Otherwise, they might not have an opening in September.
18. I reached out to [name and title of person at the district]. They told me that I did not file within 15 days of receiving written notice of the new IEP so I lost the right to stay-put.
19. After getting off the phone, I sent an email to [name and title] confirming our conversation.
20. Attached as **Exhibit B** is a true and correct copy of my confirming email.
21. It is my understanding that an IEP must be operational or in effect in order to be the stay-put IEP. *Drinker v. Colonia School District*, 78 F.3d 859, 867-68 (3d Cir. 1996).
22. The district's new proposed IEP was not supposed to start until September and I filed due process on [date] – well before the September start date.
23. It is also my understanding that the federal government has said that there is no 15-day time limit on a parent's right to invoke the stay-put.
24. Attached as **Exhibit C** is a true and correct copy of a Broadcast Memo titled "Revised Procedures for Determining a Student's Status During a Special Education Due Process Hearing," which New Jersey sent out about the 15-day time limit.

Step 6: What You Want The ALJ To Do

State clearly what you want the ALJ to do.

25. I request that the school district be ordered to continue to pay for my child's placement in the private school during the due process and any appeals. The district should also be ordered to immediately notify the private school in writing, with a copy to me, that the district will continue to pay for placement in [name private school]. The district will continue to pay until the due process hearing is decided and any appeals are concluded.

Step 7: The Mandatory Closing Certification (The “Sworn Element”)

In New Jersey, a certification can replace a notarized affidavit as a sworn statement. You must, however, use the exact statutory language below as required by New Jersey Court Rule 1:4-4(b) and is in “Certifications” in the [Glossary](#) (p. 131).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Step 8: Signature

Leave space at the bottom right for the date and your signature. Be sure to date and sign the certification. It is not a valid certification unless you include the above paragraph and sign and date the certification.

Dated _____ Signature _____

[Printed Initials, *Pro Se* Parent

E. Sample Certification 4: Opposing District’s Emergent Relief Claiming Student Is Dangerous Or “Substantially Likely To Injure Self Or Others”

Step 1: The Caption (Header) At The Top Of The Page

State of New Jersey

Office of Administrative Law

Agency Ref. No:

OAL Docket No:

[School District] v. [your initials] on behalf of [your child’s initials]

Step 2: Title Of The Document [Put In Bold]

[your initials] Certification in Opposition to [name of school district’s] Request for Emergent Relief Claiming the Student is Dangerous or Substantially Likely to Injure Self or Others

Step 3: The Introductory Section

Identify who you are, your relationship to the student and your personal knowledge of the case.

1. I, [initials], of full age, certify as follows.
2. I am the mother/father of [initials of student] who is a student eligible for special education and related services within the [name of school district].
3. I have personal knowledge of the facts in this matter.

Step 4: District Did Not Follow N.J.A.C. 1:6A-12.1 In Its Request For Emergent Relief

Use this section if the district did not follow the rule set out in N.J.A.C. 1:6A-12.1 for filing an emergent relief request. Perhaps the district did not file a due process or expedited petition supporting their emergent relief request. Or the district did not file the required certification. Or

the individual filing the certification did not claim to have personal knowledge of the facts alleged in their certification. Or an expert failed to give his/her specialized education, training, or experience. Sometimes the individual does not use the required language at the end of their certification to make it a sworn statement of the truth of what they said. A document without that language is not a valid certification. See [Glossary](#) (p. 131). I reviewed the District's Request for Emergent Relief and its Certification by [\[name of individual\]](#). There is no indication in its papers that the school district filed the required expedited petition. If it had, I should have received a copy and I have not.

4. [\[name of individual\]](#) who filed the certification does not claim that she has personal knowledge of anything she says in the certification.
5. She also claims that home instruction would be "appropriate" for my child. She does not specify her qualifications for making this opinion, such as her experience, training or education or knowledge of my child. All she says is that she is the Supervisor of Special Education. She also does not give the reasons she believes home instruction is appropriate.

Step 5: Substantive Challenges And Evidence Supporting Parent's Opposition To School District's Claim That Their Child Is Substantially Likely To Injure Self Or Others

This is the most critical section. You must list clear, numbered points showing the facts and documents supporting your opposition to the school district's request.

If you refer to documents, say what the document is, identify it as an Exhibit, write on a blank sheet of paper, Exhibit A, etc., put the page identifying the Exhibit in front of the Exhibit, and attach a copy to your certification.

How you can oppose a school district's petition to remove your child is discussed in the section "[Opposing Emergent Relief When A District Claims The Student Is Dangerous Or Substantially Likely To Injure Others](#)" (p. 48). Refer back to this section as you prepare your certification.

To win its emergent relief application, the district MUST prove all four elements by clear and convincing evidence. In your certification, you need only refer to elements for which you can argue the district's evidence is too weak to be clear and convincing. It will help the ALJ to follow your arguments opposing the request for Emergency Relief if you add headings for the required elements you believe the district has failed to prove with strong enough evidence.

The School District is trying to remove my child based on invalid legal claims not allowed under 20 U.S.C. § 1415(k)(3) (Element 1)

6. It is my understanding that the law allows the district to remove my child temporarily only if it proves (1) my child is substantially likely to injure self or others if not removed; and (2) the IAES the district proposes is appropriate.
7. In its papers, the district claims it needs to remove my child because they are interfering with the education of the other students. They want to remove him while they look for another placement.
8. The district also says it wants to remove my child because they are disruptive, calling out in class, using profanity, heckling other students, spraying water

on students, being insubordinate, or destroying school property. [*Note*: only use examples the district uses in its papers.]

9. I do not agree that he should be doing any of these things.
10. It is my understanding, though, that these kinds of behaviors do not give the district a legal right to change my child's stay-put and remove them from school.
11. It is my understanding that the law requires the district to prove that unless my child's stay-put is changed, he will be substantially likely to injure self or others. 20 U.S.C. § 1415(k)(3).
12. It is also my understanding that the law requires the district to put my child in an appropriate IAES.
13. In its papers, the district says it will provide home instruction during the 45 days. Nowhere, however, does it appear to recognize that its IAES must be appropriate.

The school district has failed to provide clear and convincing evidence that my child is substantially likely to injure self or others (Element 2)

To show a likelihood of success at the conclusion of an expedited hearing, the district must prove by clear and convincing evidence that (1) student is substantially likely to injure self or others and (2) its IAES is appropriate. If the district proves only one, their request should be denied.

These are arguments you might raise about whether the student is substantially likely to injure:

- No expert certifications saying the student is substantially likely to injure self or others if not removed
- Temporary factors making behavior worse
- Claiming student is disruptive does not show student is substantially likely to injure self or others
- Recent psychiatric or mental health clearances or other evidence provided by you show he is safe to return to school
- School district did not make reasonable efforts to minimize any injury to self or others
- School district was not fully implementing the student's IEP when the behaviors occurred
- School district is relying on behavioral data that is not recent

Bring up only these or other arguments that apply to the facts in your case.

Go through each argument in order, laying out the evidence that supports that argument. Identify and attach any documents supporting that argument before moving on to the next one. Then move on to the next argument.

You identify a document by explaining what it is – “this is an email I received from [name] who is the [role in district] on [specify date] in response to my telephone call on [date]. It is attached as Exhibit [next alphabet letter].”

The school district has failed to provide clear and convincing evidence that its proposed IAES is appropriate (Element 2)

In most Emergency Relief requests to remove a student, the district says no more than it will provide home instruction. Begin by pointing out how little the district says as to what the home instruction will even consist of. If the district does not provide a certification in which the individual gives an opinion that the home instruction is appropriate, point out that the district fails to provide the required expert opinion that home instruction would be appropriate.

Review the arguments at “[District Did Not Provide Clear And Convincing Evidence That The IAES It Proposes Is Appropriate](#)” (p. 54). *See also* “[Examples Of Problems Supporting Emergent Relief Request](#)” (in particular Example 2 concerning home instruction) (p. 37); “[Sample Certification 1: Emergent Relief In Cases Not Involving Stay-Put](#)” (which addresses inadequate home instruction) (p. 117).

Review your child’s IEP and attach a copy showing what the district decided your child needed to receive an appropriate education in district. Use the services and accommodations set out in the IEP to come up with your recommendation as to what your child would require for home instruction to come even close to being an appropriate IAES.

The school district has failed to prove it will experience irreparable harm if its Emergency Relief request is not granted (Element 3)

The irreparable harm to the district is the substantial likelihood of an injury to the student or others. As discussed on [pages 50-53](#) and the decisions cited in footnote 141, a district’s references to disruption, profanity, property damage, etc. are not irreparable harm. The harm in an Emergency Relief request must be “immediate and imminent.” Refer to claims of “risk,” “potential harm,” and such in the district’s papers. Point out that these do not constitute irreparable harm. Harm is an injury. Harm must also be “substantially likely.” Something that happened in the past but was never repeated is unlikely to mean that harm is “substantially likely” to recur. As you go through the district’s papers, you need to point out why the district’s claims do not show irreparable harm. If you have counter evidence, including any documents, attach those.

You could go into the irreparable harm to your child here, or put it under Element 4 below.

The school district has failed to prove that the equities and public interest weigh in favor of the district (Element 4)

The district must show by clear and convincing evidence that the balance of fairness favors the school, not your child. Here is where you emphasize the harm your child will experience. You can also point out there is a strong public interest against excluding students with disabilities who exhibit emotional and behavioral issues from school.

Step 6: What You Want the ALJ to Do

State clearly what you want the ALJ to do.

14. I request that the ALJ deny the school district’s motion for emergent relief and order the District to immediately return my son to his in-school placement and provide the following services.
15. In the alternative, even if the judge decides my son’s placement needs to be changed because he is substantially likely to injure self or others, the district

has failed to prove that its IAES is appropriate. I ask that the district be required to provide [hours of instruction per week], which must include [spell out what instruction, related services, instruction by certified special education teachers for name classes]. In addition, the district should be directed to allow my son to [interact with peers, behavioral services, etc.].

16. [if the district unilaterally without a judge's order removed your child, ask here that the number of days your child was kept out of school without an order be deducted from the 45 calendar day maximum allowed for an IAES.]

Step 7: The Mandatory Closing Certification (The "Sworn Element")

In New Jersey, a certification can replace a notarized affidavit. You must, however, use the exact language below required by New Jersey Court Rule 1:4-4(b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Step 8: Signature

Leave space at the bottom right for the date and your signature. Be sure to date and sign the certification. It is not a valid certification unless you include the above language and sign and date the certification.

Dated _____ Signature _____

[Printed Initials, *Pro Se* Parent]

F. Sample Certification 5: Certification For Summary Decision

Step 1: The Caption (Header) At The Top Of The Page

State of New Jersey

Office of Administrative Law

Agency Ref. No:

OAL Docket No:

[your initials] on behalf of [your child's initials] v. [name of school district]

Step 2: Title Of The Document [Put In Bold]

[your initials] Certification in Opposition to the [name of district] Motion for Summary Decision

Step 3: The Introductory Section

Identify who you are, your relationship to the student and your personal knowledge of the case.

1. I, [initials], of full age, certify as follows.
2. I am the mother/father of [initials of student] who is a 9th-grade student in [name of school district]. My child is eligible for special education and related services.

3. I make this certification in opposition to the [name of school district] Motion for Summary Decision.
4. I have personal knowledge of the facts in this matter and am competent to testify to these matters at a hearing.

Step 4: Procedural Challenges You Can Raise (Core Objections)

Use this section to point out arguments you want to raise such as summary decision would take away your legal right to a hearing. Or you need discovery before the motion can be decided.

5. I have reviewed the District's Motion for Summary Decision.
6. The District's motion contains no supporting affidavits, certifications, or sworn statements with competent evidence supporting its claims.
7. The District relies on factual assertions contained only in its legal brief. A brief is not competent evidence.

Step 5: Specific Disputed Material Facts

This is the most critical section. You must list clear points showing the disputes of material (meaning important or significant) fact. Do not use emotional language. Stick to concrete facts and the evidence.

If you refer to documents, say what the document is, identify it as an Exhibit, write on a blank sheet of paper, Exhibit A, etc., put the page identifying the Exhibit in front of the Exhibit, and attach a copy to your certification.

8. A genuine dispute of material fact exists as to whether the District's proposed IEP provides my child with a free appropriate public education (FAPE).
9. I also dispute the District's claims that my child made meaningful academic progress. I dispute this because **[Example: my child's independent reading scores dropped from a Level C to a Level D over the last six months]**.
10. I have attached as **Exhibit A** a true and correct copy of the document showing my child's independent reading scores as of [date]. I was given this document at the [date] IEP meeting.
11. The District says that its proposed reduction of speech therapy is appropriate. I dispute this because **[Example: my child's speech-language progress reports for this school year show that she made limited progress and did not achieve any of the goals]**.
12. I have attached as Exhibit B a true and correct copy of this year's speech-language progress reports which were mailed to me by the district.
13. The District's proposed classroom placement is not the Least Restrictive Environment (LRE) because **[Example: it completely removes my child from all general education peers. My child can be appropriately educated with non-disabled peers. During the last school year, she succeeded in a general education class [name of class] which was co-taught by special education and general education teachers.]**

14. I have attached as Exhibit C a copy of the report card received from the District which shows that my child successfully completed this class.

Step 6: What You Want the ALJ to Do

State clearly what you want the ALJ to do. First address the procedural deficiencies.

15. I respectfully ask that the District's summary decision motion be denied for all the reasons set out above. As I have shown above, there are deep factual disputes which require a full evidentiary hearing and testimony.

Step 7: The Mandatory Closing Certification (The "Sworn Element")

In New Jersey, a certification can replace a notarized affidavit. You must, however, use the exact language below required by New Jersey Court Rule 1:4-4(b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Step 8: Signature

Leave space at the bottom right for the date and your signature. Be sure to date and sign the certification. It is not a valid certification unless you include the above language and sign and date the certification.

Dated _____ Signature _____

[*Printed Initials, Pro Se Parent*]

XII. GLOSSARY

Administrative Law Judge (ALJ): The person who conducts the hearing and makes the decisions in the due process or expedited due process hearing.

Admissibility: When evidence proposed by either party is accepted by the ALJ. If admitted, the ALJ will consider the evidence in making the final decision.

Appropriate Relief: The **changes** an ALJ or court can order at the conclusion of a due process hearing to resolve the dispute. What is “appropriate relief” is determined on a case-by-case basis.

Authenticity: A document is real, genuine, and what it purports to be. **For example**, it is the actual IEP from October 2025 (or an accurate copy). It is not a made-up or incomplete version. An authentic document might have facts that are not true in the document but still be an accurate copy. Agreeing that the document is authentic does not mean you are agreeing that the facts are true or, in the case of an IEP, that the IEP is appropriate.

Automatic Injunction: A request for emergent relief to enforce a child’s stay-put is treated as an automatic injunction, meaning a judge must order the district to return the student to his or her last placement. A parent needs only to show what their child’s stay-put is and that the district is trying to or has changed it. A parent does not have to show that their child will suffer irreparable harm if the stay-put is not enforced. The parent also does not have to show that the balance of equities and public interests support enforcing the stay-put.

Balancing the Equities and Interests of the Parties: The fourth factor a party must prove when filing for emergent relief. Here, the ALJ weighs the fairness and hardship to each party if the request is granted or denied. “Interests of the parties” concerns both the direct interest of a party as well as the public interest concerning the issue.

Burden of Production: In New Jersey, the school district also has the *burden of production* in all due process and expedited hearings. N.J.S.A. 18A:46-1.1. The school district must provide its evidence first. In its first presentation, the school district must provide enough admissible evidence so the ALJ can find in the school district’s favor on each essential element of their case or defense.

Burden of Proof: In New Jersey, the school district has the *burden of proof* in all due process and expedited hearings. The school district has the burden of proof regardless of whether it or the parent files the petition. N.J.S.A. 18A:46-1.1. This means that it is the school district’s responsibility to prove its case. For example, a parent files for due process, claiming their child is not receiving an appropriate education. The burden is on the school district to prove that the child is receiving an appropriate education. If the evidence presented at the hearing is completely equal on both sides, the school district loses the case.

Business Days: Includes only Monday through Friday. Business days do not include Saturday, Sunday or official federal and state holidays.

Calendar Days: Consecutive days on a calendar, including all days of the week, weekends and state and federal official holidays.

Certification in Lieu of an Affidavit: A certification is accepted as a sworn statement of fact. This replaces a traditional notarized affidavit, and it carries the same legal force under N.J. Court Rule 1:4-4(b). It must include this statement: “*I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*” The person making the certification must sign and date it.

Clear and Convincing Evidence: The admissible evidence in a case firmly convinces the ALJ that a party’s factual contentions are highly probable. Clear and convincing evidence is the standard of proof required in an Emergent Relief case.

Closing Statement or Argument: Final statement made by each party at the end of a hearing. It can be either oral or written.

Comparable Placement: A student is not entitled to the stay-put when they move to New Jersey from another state or move to another school district within New Jersey. Instead, the student is entitled to a comparable placement. This means the same or similar to the IEP and school placement the student had in the other state or school district. Factors to consider include the services, accommodations, class and school’s student-teacher ratio. Other factors include the number of classified students and qualifications of the teachers.²¹⁴

Compensatory Education or Compensatory Services: Services intended to put the student where they would have been if the district had followed the law.

Competent Evidence: Evidence that tends to prove a material fact in the case. It must also be reliable and not rely on speculation. Finally, it must be admissible under the relevant court rules. For example, evidence used in emergent relief must be based on “personal knowledge.”²¹⁵

Cross Examination: When one party questions the other side’s witnesses during a hearing. Cross-examination can be used to show bias or inconsistent prior statements. Sometimes it is used to show infrequent or no interaction with the student or poor memory. It can also be used to bring out important evidence not brought out on direct examination.

Crowe Factors: The requirements for emergent relief in New Jersey are sometimes referred to as the “Crowe Factors” after a case called [*Crowe v. DiGioia*](#), 90 N.J. 126, 132-35 (1982). Not all emergent relief requests must meet the *Crowe* factors; specifically, those factors do not apply to enforcing stay-put.

Dangerous: New Jersey regulations say that an ALJ may order the temporary removal of a student if the ALJ finds the student is “dangerous.”²¹⁶ Federal regulations were revised in 2004 to remove the word “dangerous,” finding it led to confusion. Since 2004, the federal regulations have said an ALJ can only allow the temporary removal of a student who is substantially likely to injure self or others and when the proposed Interim Alternative Educational Setting is appropriate.²¹⁷

²¹⁴ [*West Orange Board of Education v. B.R.*](#), 2022 U.S. Dist. LEXIS 130271, 2022 W.L. 2903341 (D. N. J. 2022).

²¹⁵ N.J.A.C. 1:6A-12.1(a).

²¹⁶ N.J.A.C. 6A:14-2.7(n).

²¹⁷ 34 C.F.R. 300.532(a) & (b).

Declassification: When a school district decides a student no longer meets the eligibility criteria for special education. A parent may also decide to no longer allow their child to receive special education services.

Direct Examination: When a party questions their own witness. Generally, direct examination requires open-ended questions that start with “Who, What, Where, When, Why or How.” A party is generally not allowed to use leading questions unless the ALJ finds the witness is “hostile.”

Direct Testimony by *Pro Se* Parent: There are several options for how a *pro se* parent will present their direct testimony. These include the parent writing out their testimony, someone other than the parent asking questions, the parent posing questions to themselves and then answering them or giving a narrative response. Options should be discussed with the ALJ at a pre-hearing conference.

Discovery: When the parties request and exchange information and documentation about the case with one another. Interrogatories, depositions and demands for admission are not allowed in discovery in special education matters in New Jersey.

Dismissed With or Without Prejudice: If a case is dismissed “without prejudice,” a party can file a new request for a hearing on the same issue. If a case is dismissed “with prejudice,” a party cannot file a new request for a hearing on the same issue for that time period. For example, a parent’s claim that their child was denied an appropriate education for the 2023-2024 school year is dismissed with prejudice. The parent cannot file a new due process raising that same claim for the 2023-2024 school year, but could file a due process petition raising claims about later school years.

Due Process Hearing: A hearing with exhibits and testimony by witnesses about a child’s special education needs. Parents or school districts may file a due process petition on disagreements about the identification, evaluation, reevaluation, classification, educational placement or the provision of a free appropriate public education in the least restrictive environment.

Emergent Relief: New Jersey allows a party to ask for a temporary emergency order on a specific issue in their due process or expedited due process petitions. Emergent relief is limited to four kinds of issues: break in the delivery of services; involving a disciplinary action; placement while the petitions are decided; or involving graduation. N.J.A.C. 6A:14-2.7(r).

***Ex Parte* Communications:** Communications between the ALJ and one of the parties when the other party is not present. Oral or written *ex parte* communications are not allowed. Both parties must be either physically present or on the telephone. Similarly, the other party must be copied on all written correspondence to the ALJ.

Expedited Due Process Hearing: A due process hearing with a quicker timeline and which limits the issues to those related to discipline. Concerns raised by the parent could include the district’s manifestation determination, the Interim Alternative Educational Setting (IAES) offered by the district or whether one of the special circumstances applies. Districts can claim that without a temporary change to the student’s stay-put, the student is substantially likely to injure self or others and that the district’s IAES is appropriate.

Expert Witness: An individual with special knowledge, skill, experience or training that the ALJ decides is sufficient to consider them an expert. Their testimony must be able to assist the ALJ in understanding the evidence or determining a fact in issue. Their opinions must be within the scope of their special knowledge, skill, experience or training.

Failure to Appear: When a party does not attend a scheduled conference, oral argument or hearing day.

Five-Day Exchange Rule: Each party must provide the opposing party with copies of exhibits and lists of witnesses. They must also provide any evaluations they intend to use in the hearing. They must provide a summary of each witness's testimony. They must say if the witness will testify as an expert and what opinions and recommendations the witness will make. All of this information must be provided to the other party at least five business days before the hearing begins. Either party can ask the ALJ to bar evidence that has not been disclosed to them five business days before the hearing begins. The ALJ may allow late evidence only if it could not have been disclosed within the five business days.

Free Appropriate Public Education (FAPE): The education standard to which all eligible children with disabilities are entitled. What constitutes a FAPE is set out in two United States Supreme Court decisions. [*Board of Education v. Rowley*](#)²¹⁸ and [*Endrew F. ex rel. Joseph F. v. Douglas County School District Re-1*](#).²¹⁹

Good Cause: Two state OAL special education regulations require “good cause.” Neither regulation says what “good cause” is. OAL regulations do state that the Federal special education regulations control when OAL rules conflict with Federal regulations.²²⁰ The first OAL rule says that the date for oral argument on an emergent relief request can only be adjourned for “good cause.”²²¹ This regulation must be interpreted to be consistent with Federal regulations, which require that **hearings and oral arguments be scheduled at a time reasonably convenient for the parent.**²²² OAL's second use of “good cause,” limits an ALJ to ordering a school district to pay for an independent evaluation in connection with a due process petition only when the ALJ finds “good cause.”²²³ This must be interpreted to be consistent with Federal and state special education regulations that do not limit an ALJ to ordering an independent evaluation only when the ALJ finds “good cause.”²²⁴

Hearsay: Testimony by someone who does not have personal knowledge of the fact offered in an administrative or court hearing to prove the truth of the matter asserted. The statement can be spoken words, written words or even assertive gestures. Hearsay is admissible in a due process or expedited due process. Each ultimate finding of fact must, however, be supported by a *residuum of competent evidence*.²²⁵ When admitted, hearsay evidence is given whatever weight the ALJ believes is appropriate. Factors to consider are the nature, character and scope of the evidence, the circumstances of its creation and production, and its reliability.

²¹⁸ 458 U.S. 176 (1992).

²¹⁹ 580 U.S. 386 (2017).

²²⁰ N.J.A.C. 1:6A-1.1(b).

²²¹ N.J.A.C. 1:6A-12.1(d).

²²² 34 C.F.R. 300.515(d).

²²³ N.J.A.C. 1:6A-14.4(a).

²²⁴ 34 C.F.R. 300.502(d); N.J.A.C. 6A:14-2.5(c)7.

²²⁵ N.J.A.C. 1:1-15.5. See definition of “residuum of competent evidence” below.

Home Instruction: A special education placement where instruction is offered in the home or another agreed-to setting. Home instruction is considered one of the most restrictive options under federal and state law. In New Jersey, a written record of home instruction, including dates and times during which it is provided, must be kept by the district. The teacher must be certified as a teacher of students with disabilities or for the subject or level in which instruction is given. Instruction must be provided for at least ten hours per week. Instruction shall be done in at least three visits on at least three separate days. The parent shall be consulted in determining the appropriate location for the home instruction. The location shall take into consideration the student's disability and unique circumstances. The district shall consider whether the student is truant if a parent repeatedly fails to make the student available for scheduled instruction.²²⁶

Hour-for-Hour Approach: Courts in New Jersey use this approach in deciding how much compensatory education a student should receive. It means that the student receives one hour of compensatory education for each hour the district failed to provide services it was supposed to provide.

Independent Education Evaluation (IEE): A parent who disagrees with the district's evaluation may request an IEE to be paid for by the district. A parent may also pay for an IEE **and** not ask the school district to pay for it. The school district must consider any IEEs provided by the parent. The district is not, however, required to accept the IEE's findings or recommendations. An IEE must be included as evidence in a hearing, even if the evaluator does not testify. 34 C.F.R. 300.502(c)(2). An ALJ may also order a school district to pay for an IEE in connection with a due process petition.

Individualized Education Plan (IEP): The written document that acts as the "roadmap" for a child with a disability's education. It outlines the specialized instruction, services, and accommodations the student needs to receive a Free Appropriate Public Education (FAPE). It also establishes the goals for measuring the student's progress. The IEP is developed by a team, including parents and educators.

Individuals with Disabilities Education Act (IDEA): The Federal law that requires states and school districts to offer a Free Appropriate Public Education (FAPE) to eligible children with disabilities.

Informal removal: This is an unlawful action taken by school personnel that excludes the child for part or all of the school day. The exclusion may also be for an indefinite period of time. Informal removals include when an administrator shortens the student's school day. It also includes when an administrator tells a parent their child cannot return until they get a mental health clearance. These are called informal removals because the school district does not suspend the child. Nor does the district follow one of the Federal rules that allows temporary removals. Informal removals are subject to all of IDEA's requirements, including the student's right to stay-put.

Insufficiency Challenge: At the request of the other party, the ALJ may dismiss a due process petition that does not have all the required information as "insufficient." The party can re-file after adding the missing information.²²⁷

²²⁶ N.J.A.C. 6A:14-4.8.

²²⁷ 34 C.F.R. 300.508(b); N.J.A.C. 6A:14-2.7(f).

Interim alternative educational setting (IAES): This is an appropriate setting in which the child is placed for up to 45 calendar days. An IAES must allow the student to continue to participate in the general education curriculum. The student must be able to progress toward meeting the goals set out in the IEP. If appropriate, the setting must include provision of a Functional Behavioral Assessment (FBA), and behavioral intervention services. It should also include modifications to address the behavior violation so that it does not recur.

Irreparable Harm: One of the four required prongs in an Emergent Relief request. Some harm can be fixed later. If a school owes you money, a judge can order the school to pay you. The problem gets fixed, even if it takes a year. Other harm cannot be fixed later. Once it happens, it stays. That kind of harm is called irreparable harm. “Irreparable” means it cannot be repaired. If you ask a judge to act right away, you usually have to show that waiting will cause harm that cannot be undone. Winning later will not be enough to make it right. Courts have found that students suffer irreparable harm when left with no education or with an inappropriate one. Courts have also found that students suffer irreparable harm when denied interactions with peers and the daily structure offered by a school.

Issues: Turning the problem and facts in a parent’s due process petition into the legal issues based on special education law. For example, the parent described the problem as a failure to provide speech therapy three times a week when the therapist was out sick for two months. The legal issue is did the district fail to implement the student’s IEP from [date to date]? If so, is the student entitled to relief such as compensatory education?

Joint Exhibits: When the parties agree to accept documents as “Joint Exhibits” in a hearing. By doing this, each party is agreeing that the document is authentic – *i.e.*, it is real, genuine and what it appears to be. Each party is also agreeing that they will not object to the ALJ using the document when making their final decision.

Knew Or Should Have Known (KOSHK) Date: Parents have two years to file a claim from the date they knew or should have known (KOSHK) about the actions their claim is about. There are two narrow exceptions. The first is when the school district lied and told the parent the problem was fixed when it was not. The second exception is when the school district held back information that the law says the district must give the parent. Required information includes not giving prior written notice. It also includes not giving the parent the Parent’s Rights in Special Education (PRISE) at the required times, and not giving copies of evaluations. The parent must show that had they received the correct information, they would have filed sooner.

Lay Witness: A lay witness is someone who is not testifying as an expert. A lay witness can give an opinion only if it is a common-sense inference that a person without special training can make.

Least Restrictive Environment (LRE): This refers to the mandate that students with disabilities should learn in the same environment as those without disabilities. This must occur to the maximum extent possible.

Legal Right is Well-Settled: One of the four prongs needed to win Emergent Relief. It means the legal rule raised in the request for Emergent Relief is well established and there is no doubt about its validity.

Likelihood of Success: Another required prong in order to win a request for Emergent Relief. It means that the party who brought the request for Emergent Relief is likely to win at the end of their due process or expedited hearing.

Long-Term Disciplinary Removal: Means suspension of a student with a disability for more than a total of ten school days in a school year.

Manifestation determination review: When the IEP team decides whether the student's behavior was caused by, or had a direct and substantial relationship to, the child's disability. It also includes whether the behavior in question was the direct result of the district's failure to implement the student's IEP. This failure could include not implementing a behavioral intervention plan required by the IEP. The district must allow the student to return to school if it is determined that any of these factors exist. If none of these factors exist, the district may discipline the child just as it would a child without a disability. The meeting to make a manifestation determination must take place within ten school days of a decision to change the student's placement because of a violation of the code of student conduct.

Material Fact: Any piece of information that has a direct impact on the outcome of the case. A fact is material if changing or removing it could change the ALJ's final decision on how the law applies. Material facts should be the focus during a Motion for Summary Decision. If the school district and the parents disagree on a *material* fact, the ALJ must hold a hearing.

Material Ultimate Fact: This is a legal-factual determination. It is arrived at by combining multiple individual material facts with the requirements of the law. For example, "The school district failed to provide a Free Appropriate Public Education (FAPE)." Or "The student's behavior was a manifestation of their disability." Think of individual material facts as the building blocks and the ultimate material fact as the final verdict:

1. Material Fact A: The student has a documented diagnosis of ADHD.
2. Material Fact B: The student became overwhelmed by loud noises and threw a chair.
3. Material Fact C: The school suspended the student for 12 days without holding a meeting.
4. Ultimate Material Facts: The school district failed to conduct a timely Manifestation Determination. The student's behavior was/was not a manifestation of their ADHD disability.

Mediation: A voluntary, confidential process to resolve special education disputes. When parents file for Mediation Only, they will be assigned to a trained, neutral third-party mediator. Once a party files for due process or an expedited petition, the mediator will be an ALJ.

Move to Strike: Request to delete a witness's answer. May be used when the witness does not answer the question asked. Instead, they dodged it, changed the subject, or used it as an opportunity to give a prepared response that helps their party's position.

Non-Lawyer Advocate: An individual with knowledge of the difficulties that children with disabilities face. They may, with approval of the ALJ, assist a *pro se* parent in putting on their case.

On-the-Record: Statements made on the record are recorded, usually by audio recording, and the ALJ notifies the participants that they are on-the-record. The recording may be transcribed into print word-for-word. Unlike informal conversations held "off the record," "on the record" statements become part of the official legal file that the ALJ and higher courts review.

Opening Statement or Argument: Made by each party at the beginning of a hearing. It is the opportunity for a parent to tell their child’s story and help the ALJ understand the issues they are raising. This includes explaining the facts that they will prove and how these facts show the district violated the law. It should also include explaining the relief they are requesting.

Oral Arguments: Means the opportunity for both sides to speak directly to the ALJ. In an oral argument, each party highlights evidence supporting their position. They explain their legal points and convince the ALJ to rule in their favor. The ALJ may interrupt to ask specific questions to clarify the legal arguments and facts of the case.

OSE: New Jersey’s Office of Special Education is responsible for ensuring school districts comply with IDEA requirements. Its responsibilities include ensuring that OAL complies with IDEA requirements.

Parent: IDEA defines “parent” to include more than just the biological or adoptive parent of a child. It can also include a foster parent, guardian, surrogate parent or someone acting in the place of a biological or adoptive parent.

Parental Rights in Special Education (PRISE): IDEA requires NJDOE to inform parents of the state and federal laws affecting the provision of special education. NJDOE must also help parents understand their rights and those of their child. The most recent version of [PRISE](#) was published in July 2026 and currently is available only in English.

Personal Knowledge: Every emergent relief request **shall** be supported by a certification. The certification must be prepared by someone who has **personal knowledge** of the facts in it. This is information that the person observed or experienced through their own senses (such as seeing, hearing, or doing). Personal knowledge is not something the individual heard second-hand from someone else. An individual who gives an expert opinion must set out their qualifications for giving that opinion and the basis for their opinion.²²⁸

Petitioner v. Respondent: A Petitioner is the party who files a due process or expedited petition. The other party is referred to as the Respondent.

Post-hearing Submissions: Once the ALJ closes the hearing record, the parties cannot submit additional exhibits or evidence without consent of the ALJ. In some cases, the parties may ask to submit written closing briefs.

Pre-hearing Conference: A meeting between the ALJ and the parties. The conference may be in-person, by telephone or virtually. All pre-hearing conferences with *pro se* parents must be recorded. The parent is entitled to a copy of the recording upon request.

Pre-hearing Order: The ALJ may issue an order following a pre-hearing conference. The order may summarize decisions made by the ALJ during the conference. Concerns regarding the pre-hearing order should be immediately brought to the attention of the ALJ, with a copy to the board attorney.

²²⁸ N.J.A.C. 1:6A-12.1(a).

Prejudicial Evidence: An ALJ may refuse to admit evidence that they believe is unfairly “prejudicial.” Evidence is legally unfairly “prejudicial” if it may sway the ALJ based on emotion rather than objective facts. This could also consist of introducing personal, negative information about a party that has nothing to do with the issues in the hearing. Unfairly prejudicial evidence may also be confusing or distract from the core legal disagreements. Or the amount of time it would take to introduce it outweighs its actual usefulness to the case.

Preponderance of the Evidence: The district has the burden of proof in all due process and expedited hearing special education cases. It must show that it meets this burden by a preponderance of the evidence. Think of a scale representing the evidence from the parent on one side and the evidence from the district on the other. If the scale tips in favor of the parent or is equally balanced, the school district has not met its burden.

Prior Written Notice: The school district must give written notice 15 calendar days before it implements a change. The school district may implement the change after 15 calendar days, unless the parent has filed for mediation, due process or expedited due process. The district may implement the proposed action sooner if the parent gives written consent.

Privilege: Communications between a party and their attorney are “privileged.” Communications between a non-lawyer advocate and the parent are also “privileged.” This means that with rare exceptions, they are not subject to disclosure in a hearing. Communications between an individual and their therapist, medical doctor and spouse are also privileged. A privilege may be partially waived when a party makes privileged information an issue in a case. For example, if a parent asks their child’s therapist to testify, the district will likely be allowed to see the parts of the therapist’s records that pertain to their testimony.

Pro Se: Latin, “for oneself.” A *Pro Se* litigant is one who represents himself/herself at a hearing.

Procedural Rights: These rights are to ensure parents have an informed and meaningful role in their child’s education. NJDOE must set out all of a parent’s state and Federal procedural rights in its PRISE.

Psychiatric Clearance: This is also referred to as a mental health clearance. Sometimes, school districts tell a parent their child cannot return to school until they get a mental health clearance. After examining the student, the psychiatrist, psychologist or other mental health professional states in writing that the student does not currently present a substantial or imminent risk of harm to themselves or others. The student is cleared to return to the school setting and to resume normal academic and extracurricular activities. A school district cannot require the parent of a student with a disability to pay for a mental health clearance. Removing a student for a mental health clearance is a type of “informal removal.” It is subject to IDEA’s requirements, including the student’s right to stay-put.

Reimbursement: Refers to the repayment of money spent by parents for educational services, therapies, or placement. This can be “appropriate relief” when a district fails to provide the services it should have provided in the first instance.

Residuum of Competent Evidence: Hearsay is allowed in a due process or expedited hearing *if* there is a “residuum of competent evidence” supporting each ultimate material fact. Competent evidence is direct evidence based on personal knowledge. It could include eyewitness testimony or physical evidence.²²⁹ An ALJ cannot rely upon hearsay that does not have competent evidence corroborating the testimony.

Résumé/Curriculum Vitae (CV): Document that lists a person’s education, training, work experience, and qualifications. If a party has an expert witness, they should include a copy of the witness’s résumé or CV in their Five-Day Exchange and their Exhibit Book.

Resolution Session: Required meeting between a parent and school district personnel after a parent files for due process or an expedited due process. The purpose of the meeting is to give the school district a chance to resolve the dispute before the due process petition is sent to OAL for a hearing. Instead of a resolution session, the parties may agree to participate in mediation. If a parent refuses to attend the resolution session, and the district would not agree to mediation, the ALJ may dismiss their petition.

School Day: Means any day, including a partial day, that children are in attendance at school for instructional purposes. *School day* has the same meaning for all children in school, including children with and without disabilities.²³⁰

Sequestering a Witness: This is when a witness is not allowed in the hearing room until the witness has testified. This is so a testifying witness does not influence the testimony of the other witnesses. In a special education hearing, the parent also has the right to decide whether to close a hearing to anyone other than those required to be present.

Serious Bodily Injury: A school district may remove a student for up to 45 calendar days who has caused a “*serious bodily injury*” to another person in school. What “serious bodily injury” means is defined under 18 U.S.C. 1365(h)(3); 34 C.F.R. § 300.530(i)(3). This definition cannot be altered by States or local school boards. See [IDEA: Questions and Answers on Discipline Procedures](#), Question B-3, page 10.

Short-Term Disciplinary Removal: Means the removal of a child from their educational placement for 10 consecutive school days or less.²³¹

Special Circumstances: A school district is allowed to remove a student for up to 45 calendar days for violations pertaining to weapons, drugs or serious bodily injury.²³²

Statute of Limitations: This is the two-year time limit within which a parent must file their claim for due process. It begins on the day the parent knew or should have known (KOSHK) about the action their claim is about.

²²⁹ [Weston v. State](#), 60 N.J. 36 (1972); [Ruroede v. Borough of Hasbrouck Heights](#), 214 N.J. 338 (2013).

²³⁰ 34 C.F.R. § 300.11(c).

²³¹ 34 C.F.R. § 300.530(b).

²³² 34 C.F.R. § 300.530(g).

Stay-Put: A school district cannot change the current educational placement of a child with a disability while a due process, mediation or expedited due process takes place or until any appeals are completed. This is called the “stay-put.” The only exception is when the parent and school district agree to change the student’s current educational placement. The stay-put does not apply when a student moves to New Jersey from another state or changes school districts inside New Jersey. *See* “Comparable Placement” above.

Student Records: These include all student-related information kept by a school district for someone else to review. Student records include a student’s health history, academic performance and attendance, special education records, staff observations, ratings, testing, discipline and general correspondence.²³³

Subpoena: A legal document that orders a person to appear at the hearing and testify. The subpoena can also include a request to bring listed documents with the witness to the hearing. If an individual does not want to appear, they must ask the ALJ to “quash” the subpoena. A party may obtain a copy of the subpoena from OAL, complete it and serve it upon the individual per the instructions on the form.

Then-Current Educational Placement: A child’s stay-put placement in which they are entitled to remain while a due process proceeding and any appeals take place.

Transcript: A transcript of an administrative hearing is an official, word-for-word written record of everything said during a formal meeting or legal-style proceeding held by a government agency. This is the official record that will be used in any appeal and is free to a parent upon request.

Voir Dire: *Voir Dire* is an opportunity for a party to ask questions about the qualifications of the other party’s proposed expert witness.

Waive: In special education matters, parents are sometimes asked to waive or give up some of their rights or those of their child as a condition of resolving a dispute. Waivers must be knowing, voluntary, informed and in writing. It is important to make sure you understand what you are giving up when agreeing to waive one or more rights.

Weapon: It has the meaning in [18 U.S.C. 930\(g\)\(2\)](#) – and is, “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, [but] does not include a pocket knife with a blade of less than 2½ inches in length.”

²³³ N.J.A.C. 6A:32-2.1.