



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

**FINAL DECISION**

**DENYING EMERGENT RELIEF**

OAL DKT. NO. EDS 04121-25

AGENCY DKT. NO. 2025-38766

**A.P. AND R.P. ON BEHALF OF O.P.,**

Petitioners,

v.

**CENTRAL REGIONAL BOARD OF  
EDUCATION,**

Respondent.

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**Sharyn J. Gallatin**, Esq., to petitioners, (Freeman Law Offices, LLC, attorneys)

**John B. Comegno, II.**, Esq. and **Mark G. Toscano**, Esq. for respondent  
(Comegno Law Group, P.C., attorneys)

Record Closed: March 13, 2025

Decided: March 14, 2025

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

**STATEMENT OF THE CASE**

Petitioners request single ride, curb-to-curb transportation in the shortest time possible to and from O.P.'s placement at New Road. Transportation services are mandated under the student's Individualized Education Program (IEP) and have been provided by the Central Regional School District Board of Education (Board or District)

for Extended School Year (ESY) during the summer of 2024 and for the current 2024-2025 school year.

### **PROCEDURAL HISTORY**

On March 5, 2025, petitioners filed a request for emergency relief with the New Jersey Department of Education, Office of Special Education Programs (OSEP), which transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

On March 13, 2025, I held oral argument and closed the record.

### **FINDINGS OF FACT**

Based on the certifications and documents submitted, I **FIND** the following as **FACT** for purposes of this motion only:

O.P. is sixteen years old. Her current educational placement for tenth grade is at the New Road School of Somerset (New Road). O.P. is eligible for special education and related services under the classification category of Multiple Disabilities. Her diagnoses include Autism Spectrum Disorder and Phelan-McDermid Syndrome. Due to her complicated medical condition and severe anxiety, in seventh grade O.P. was hospitalized after becoming catatonic. She could not walk, talk, or eat, and lost thirty pounds. Fortunately, she recovered but remains at risk of relapsing when under extreme stress and anxiety.

New Road is located approximately sixty-five miles from petitioners' residence. Travel time to and from New Road ranges between one hour and ten minutes to over two hours. Petitioners have indicated their desire for O.P. to remain at New Road, despite its distance.

Petitioners provided the District with a letter from O.P.'s treating neurologist, Madeline Chadehumbe, M.D., FAAN, dated July 30, 2024, wherein Dr. Chadehumbe opined that it was "crucial for [O.B.'s] well-being that her daily commute does not exceed 70 minutes each way." (McCauley Certification<sup>1</sup> – Exhibit C.) On August 2, 2024, petitioners provided the District with a letter from O.P.'s developmental behavioral pediatrician, Neelam K. Sell, M.D, who agreed that O.P. required less time commuting to reduce her stress. (McCauley Certification – Exhibit D.)

In response to the medical notes, the District's supervisor of special services, Colleen McCauley advised the parents that it would be impossible to guarantee a seventy minute bus ride for O.P. to New Road. (McCauley Certification – Exhibit E.) However, to gain additional information, the District contacted the Monmouth-Ocean Educational Services Commission (MOESC), the provider who handles this transportation route. MOESC confirmed that the current bus route was the shortest route. MOESC also confirmed that the route did not change when the new student was added. Petitioners' primary concern is this second stop. Petitioners claim that having this additional stop on O.P.'s bus route added forty minutes to her commute. Ibid. To address petitioners' concerns, the District offered them a contract wherein they would be responsible for driving O.P. to and from school for reimbursed costs. They also offered to convene an IEP meeting to consider closer appropriate placements. Ibid. The parties continued to exchange emails about O.P.'s commute time and other problems with the bus service. (McCauley Certification – Exhibit G.)

An IEP meeting was held on September 24, 2024. (McCauley Certification – Exhibit A.) Petitioners rejected the proposed IEP "solely because of Transportation." (McCauley Certification – Exhibit I.)

On October 8, 2024, the principal of New Road, Dr. Tom Coleman, informed the District that O.P. misses homeroom time because of her late arrival and this impacts her day and deprives her of social and emotional learning time. (McCauley Certification – Exhibit J.)

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<sup>1</sup> Certification of Colleen McCauley, Supervisor of Special Services, submitted in support of respondent's opposition to petitioners' request for emergent relief.

In a letter, dated October 21, 2024, O.P.'s psychiatrist, Alex Kolevzon, M.D., recommended that O.P. "be the last student picked up on the bus and first student to be dropped off." His recommendation was based on his "understanding" that O.P.'s commute and late arrival "has caused a significant increase in [O.P.'s] anxiety." (McCauley Certification – Exhibit N.)

By letter, dated October 24, 2024, O.P.'s pediatrician, Mary Pipan, M.D., also recommended that O.P. "be the last one on the school bus and the first one dropped off." She also mentioned in her letter that she had been advised by O.P.'s parents that O.P. is enjoying her new school and thriving. (McCauley's Certification – Exhibit O.)

Petitioners filed a complaint on November 19, 2024, with the Office of School Bus Safety (OSBS) regarding their daughter's transportation route to school. (McCauley Certification – Exhibit P.) After an investigation of petitioners' concerns, OSBS advised them that there are no statutes, rules, or regulations which set a maximum time or distance that a student can be transported on a bus to school. OSBS also determined that it could not mandate the District to alter O.B.'s current transportation route. (McCauley Certification – Exhibit P.)

In her Certification, A.P. claimed that the "extended travel time, late arrival at school, and inconsistent schedule" is causing increased stress for her daughter and making the morning a struggle to get her daughter on the bus each morning. (Supplemental Certification of A.P. in Support of Petitioners' Application for Emergent Relief.)

O.P. continues to attend New Road. Petitioners are demanding private transportation so that O.P.'s commute time is not increased by additional stops to pick up other students.

## **LEGAL ANALYSIS AND CONCLUSION**

Petitioners' argument focused on O.P.'s medical condition and the potential impact of her relapsing into a catatonic state due to extreme stress and anxiety caused by spending over four hours a day in a van to get to and from school.

Respondent argued that petitioners' motion must fail because the District is providing O.P. a free and appropriate public education (FAPE). Given the reality of a sixty-five mile commute on the busy roadways of New Jersey, the District cannot guarantee the time of O.P.'s commute to and from school. Despite this long commute, petitioners have not connected O.P.'s length of time on the bus to an interruption in services or an inability to access her education. The District is responsible for providing O.P. with curb to curb transportation to her out of district placement and such service has been consistently provided. Moreover, the District has no control over whether MOESC adds additional students to the bus transportation route. The District contends that it has made every effort to ensure that the best route is available, however, it cannot control conditions on the route that impact on traffic and commute time.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982) and are codified at N.J.A.C. 6A:3-1.6. The petitioner bears the burden of proving:

1. that the petitioner will suffer irreparable harm if the requested relief is not granted;
2. the existence of a settled legal right underlying the petitioner's claim;
3. that the petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. that when the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent.

The moving party must satisfy all four prongs of this standard to establish an entitlement to emergent relief.

### **Irreparable Harm**

In Crowe, the Supreme Court found that irreparable harm is that which “cannot be redressed adequately by monetary damages.” 90 N.J. at 132–33. Indeed, the purpose of emergent relief is to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Id. at 132 (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (E. & A. 1854).) In this case, petitioners argued that travelling approximately one hour and forty minutes to go to and from school is too long for O.P., due to her fragile medical condition. O.P.’s treating neurologist opined, without data or medical certainty, that O.P. should commute no more than seventy miles each way. (McCauley Certification, Exhibit C.) Petitioners argued that the severity of the potential harm, a catatonic state, from undue stress attributable to her long commute satisfies the definition of irreparable harm. Petitioners maintain that medical documentation supports their claim that O.P.’s commute is causing increased anxiety, leading to irreparable harm. This commute is not ideal for any student, especially a medically fragile student. However, under the facts herein, respondent presented the more persuasive argument, given the known distance from petitioners’ residence to the school. The medical notes written by O.P.’s treating physicians were well intended but because they lacked a factual basis or a reasonable degree of medical certainty, the documents constituted net opinions. Common sense dictates that this commute is too long and missing homeroom is not a good start to a student’s day. Petitioners contend that private transportation will enable O.P. to safely remain at New Roads. They have not provided support for this position. Moreover, they have not shown how respondent’s refusal to grant their demand for private transportation services has caused irreparable damage. Therefore, I **CONCLUDE** that petitioners have not met their burden of proof under the first prong.

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

Regarding the second and third prongs of the standard for emergency relief, the parties agree that O.P. has a settled legal right to a FAPE. However, the question herein is whether FAPE can only be provided to O.P. by a single student transportation bus route. The District has responded appropriately to petitioners' concerns. They investigated the bus route and the bus company in response to petitioners' complaints. There are no statutes or regulations which set a limit on how long a student can ride a bus to her preferred school.

Therefore, I **CONCLUDE** that this legal right is not settled and petitioners have failed to demonstrate a likelihood of prevailing on the merits under prongs two and three.

### **Balance of Equities**

Petitioners contend that the current bus ride is causing O.P. to medically regress. O.P. is showing signs of anxiety about getting on the bus in the morning. To date, there has been no evidence of school avoidance or any other school related issues. I am not questioning petitioners' love, concern, and fear for their daughter. I also trust that petitioners' motivation is to make it possible for their daughter to remain in a school that she loves. Here, petitioners are asking for more than a FAPE. There are different ways this situation can be resolved that does not involve the special treatment petitioners are requesting. Thus, I also **CONCLUDE** that on balance the equities favor respondent.

For the reasons set forth above, I **CONCLUDE** that the petitioners have not met the standards for emergency relief.

### **ORDER**

I hereby **ORDER** that the petitioner's request for emergent relief seeking private curb to curb transportation to and from school is **DENIED**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parent, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C. § 1415(f)(1)(B)(i). If the parents or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.



March 14, 2025

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat



## **APPENDIX**

### **EXHIBITS**

#### **For petitioner:**

Certification of A.P. in Support of Application for Emergent Relief

Exhibit A – IEP

Exhibit B – Letter, dated September 30, 2024, from Dr. Coleman, principal of New Roads

Exhibit C – Dr. Kolevzon's letter, dated October 21, 2024

Exhibit D – Dr. Chadehumbe's letter, dated October 22, 2024

Exhibit E – Dr. Pipan's letter dated October 24, 2024

Exhibit F – Letter from the OSBS, dated January 22, 2025

Supplemental Certification of A.P. In Support of Application for Emergent Relief

Exhibits A through E – text messages with bus driver

#### **For respondent:**

Certification of Colleen McCauley in Support of Respondent's Opposition to Petitioners' Request for Emergent Relief

Exhibit A – IEP, dated September 24, 2024

Exhibit B – GoogleMaps data

Exhibit C – Letter from Dr. Chadehumbe, dated July 30, 2024

Exhibit D - Letter from Dr. Sell, dated August 2, 2024

Exhibit D – Letter from Dr. Kolevzon, dated September 23, 2024 (not Attached)

Exhibit E - Emails between McCauley and A.P.

Exhibit F - Email dated September 6, 2024, from MOESC

Exhibit G - Email regarding medical letters

Exhibit H – Email from Charlene Rutledge, LCSW

Exhibit I - Email rejecting IEP due to transportation

Exhibit J - Email from Dr. Coleman, Principal of New Roads

Exhibit K – Email response from McCauley

Exhibit L - Email, dated October 10, 2024, enclosing proposed parental

transportation contract

- Exhibit M – Email explaining that O.P. cannot join Toms River bus route
- Exhibit N - Letter, dated October 21, 2024, from Dr. Kolevzon
- Exhibit O - Letter, dated October 24, 2024, from Dr. Pipan
- Exhibit P - Letter, dated January 22, 2025, from OSBS
- Exhibit Q – Driver's Log from February 19, 2025 – March 6, 2025
- Exhibit R – Email, dated March 11, 2025, from Donna Alwill, Assistant Superintendent of Transportation at the MOESC regarding petitioners contacts and complaints