



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 11891-25

AGENCY DKT. NO. 2026-39431

K.P. ON BEHALF OF A.P.,

Petitioner,

v.

SCHOOL DISTRICT OF THE

CHATHAMS BOARD OF

EDUCATION,

Respondent.

K.P., petitioner, pro se

Arsen Zartarian, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC,
attorneys)

Record Closed: July 11, 2025

Decided: July 14, 2025

BEFORE **R. TALI EPSTEIN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On July 3, 2025, petitioner K.P. (“petitioner”), on behalf of her minor son, A.P., filed a pro se petition for due process challenging the appropriateness of A.P.’s current

placement at the Benway School, an out-of-district placement that A.P.'s father and custodial parent consented to as an amendment to A.P.'s Individualized Education Program ("IEP"). In petitioner's application for emergent relief, filed with her due process petition, she seeks the immediate withdrawal of A.P. from the Benway placement and to reinstate the last 'agreed-upon' placement. Petitioner also seeks to compel respondent to immediately convene a manifestation determination review ("MDR").

Respondent School District of the Chathams Board of Education (the "District") opposes the application, asserting that petitioner fails to meet the criteria for emergent relief under N.J.A.C. 1:6A-12.1 and that there is no legal right to an MDR under the circumstances.

On July 7, 2025, the Office of Special Education ("OSE") transmitted the emergent application to the Office of Administrative Law for a determination as a contested matter. The underlying due process remains at the OSE until the end of the fifteen-day resolution period.

On July 9, 2025, I conducted a telephonic prehearing conference with the parties during which petitioner articulated that the emergency relief she sought was the immediate removal of A.P. from Benway and to compel the District to undertake an MDR.

The District submitted its written opposition to petitioner's emergency application on July 10, 2025. The Tribunal also received a July 10, 2025 letter from A.P.'s father and custodial parent, which was read into the record. On July 11, 2025, petitioner submitted a written response to the District's opposition papers. Petitioner's response was not received by the Tribunal until after the hearing. Petitioner did not advise the District or the Tribunal of the submission at the time of the hearing. Nevertheless, the Tribunal has considered the submission, and it is part of the record.

On Friday, July 11, 2025, I conducted the hearing and closed the record.

FINDINGS OF FACT

Based on the oral arguments and documents presented by the parties, I **FIND** the following as **FACT** for purposes of this application only:

1. A.P. is a rising eleventh grade student enrolled in the District.
2. A.P. is a classified student who is eligible for special education services under the category of autism.
3. Petitioner is the natural mother of A.P.
4. M.P. is the natural father of A.P.
5. Petitioner and M.P. are in the process of divorcing, and M.P. is A.P.'s custodial parent.
6. Pursuant to the Final Decision by Mathew J. Miller, ALJ, dated April 30, 2025, it was ordered that A.P.'s IEP be modified to change his educational placement to home instruction pending an appropriate out-of-district ("OOD") placement.¹ Judge Miller's order further provided that "once [A.P.'s] out-of-district placement is finalized that that placement will be the stay-put placement." Id. at 5. Petitioner was also ordered to consent and cooperate with the District in the OOD placement of her son.
7. In accordance with Judge Miller's order, and with M.P.'s consent, the District initiated OOD placement planning.
8. The District provided petitioner with notice of its actions and copies of all student records that it sent to potential placements.
9. The Newmark School ("Newmark") rejected A.P., as the Executive Director of that school explained to the District that the student cohort and course curriculum at Newmark did not align with A.P.'s needs.
10. The Benway School ("Benway") accepted A.P.
11. On June 26, 2025, M.P. signed a written consent that A.P.'s IEP be modified to include Benway as A.P.'s placement.
12. A.P. commenced attendance at Benway's extended school year ("ESY") program on July 7, 2025.

¹ A copy of the Final Decision issued by Judge Miller is attached as Ex. A to the Certification of Counsel, dated July 10, 2025.

LEGAL ANALYSIS AND CONCLUSIONS

This case arises under the Individuals with Disabilities Education Act (“IDEA”). 20 U.S.C. §§ 1400 to 1482. One purpose of the IDEA is to ensure that all children with disabilities have available to them a Free Appropriate Public Education (“FAPE”), which includes special education and related services designed to meet their unique needs. 20 U.S.C. §§ 1400(d)(1)(A), 1401(9).

In New Jersey, the State Board of Education has promulgated rules following the standards outlined in the IDEA. N.J.A.C. 6A:14-1.1(b)(1); N.J.A.C. 6A:14-1.1 to -10.2.

Under N.J.A.C. 6A:14-2.7(r)(1), a party may request emergent relief in the context of an education action for the following issues:

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

Based on petitioner’s allegations, this case ostensibly involves issues concerning placement pending the outcome of the underlying due process proceedings. While petitioner also seeks a manifestation determination, as discussed below, there is no issue involving disciplinary action that would invoke a right to request this emergent relief.

Under N.J.A.C. 1:6A-12.1(e), an ALJ may order emergency relief pending a decision in the case, if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

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

Petitioner party carries the burden of proof and must satisfy all four requirements. Crowe v. De Gioia, 90 N.J. 126 (1982). Petitioner must also prove each of the requirements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Here, petitioner cannot meet any of the requirements of N.J.A.C. 1:6A-12.1(e), and her application must be denied as a matter of law.

Turning first to petitioner's request that A.P. be immediately removed from Benway's ESY program, she seeks to invoke the 'stay put' protection under 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u). The 'stay put' protection, however, is designed to prevent the District from making a unilateral change to a student's educational placement. It ensures that the status quo is maintained during the course of proceedings when there is a dispute over a *proposed* placement. It has no application here where A.P.'s custodial parent and the District agreed to the change in A.P.'s educational placement. A.P.'s father provided written consent to amend A.P.'s IEP to reflect Benway as his educational placement. The District acted accordingly with the legal consent of A.P.'s custodial parent and in accordance with Judge Miller's order. Petitioner's assertion that the District High School is A.P.'s 'stay-put' placement is incorrect. As ordered in the Final Decision by Judge Miller, dated April 30, 2025, A.P.'s IEP was amended to provide "home instruction" as the educational placement *until* an appropriate OOD placement was finalized.

After initiating placement planning in accordance with Judge Miller's directive, Benway was the only OOD school that accepted A.P. A.P. began attending Benway *after* the District received the consent of his father and custodial parent, and Benway is now

the operative placement. Petitioner's underlying due process challenge will be decided in due course following a plenary hearing, but on the record before this Tribunal it is by no means clear that the applicant has a reasonable probability of ultimately prevailing on the merits.

Moreover, there is no evidence in the record, much less "clear[] and convincing[]" evidence, that A.P. will suffer irreparable harm if he continues attending Benway. To the contrary, the "most recent update" from Benway as reported by M.P. is that A.P. had a "very good day," is doing well at Benway, and is "very happy to be back at school, in-person again." Not only has petitioner failed to satisfy the first prong of the Crowe analysis, the equities favor respondent in that the District was complying with Judge Miller's directive by securing A.P.'s placement at an OOD school and did so with the consent of A.P.'s custodial parent.

While failure to demonstrate a single element of the Crowe analysis is fatal to petitioner's request for emergent relief, in this case petitioner is unable to establish that she meets any of the elements that would support an order that A.P. be immediately prevented from continuing his attendance at Benway in its ESY program.

Petitioner's demand that the District undertake an MDR on an emergent basis also fails as a matter of law. Petitioner claims that A.P.'s behavior during an intake interview justifies the emergent relief she seeks. Petitioner is wrong. Under 34 C.F.R § 300.530(e), an MDR must be conducted when a district changes the placement of a disabled child "because of a violation of a code of student conduct." Likewise, N.J.A.C. 6A:14-2.8 only triggers an MDR when discipline is imposed. In this case, petitioner is not claiming that any discipline was imposed by the District or that the placement at Benway was a disciplinary removal. Accordingly, her request for emergent relief is not cognizable under N.J.A.C. 6A:14-2.7(r), which addresses the request for an MDR on an emergent basis only when issues involving disciplinary action are involved. Put simply, there is no legal authority to support petitioner's demand that the District undertake an MDR under the circumstances she presented, much less an entitlement to this relief on an emergent basis.

Accordingly, I **CONCLUDE** that petitioner has not met her burden of proof and is not entitled to emergent relief under N.J.A.C. 1:6A-12.1(e).

ORDER

Based on the foregoing, I **ORDER** that petitioner's request for emergent relief is **DENIED**.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. As the parent requested a due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).

July 14, 2025

DATE



R. TALI EPSTEIN, ALJ

Date Received at Agency

July 14, 2025

Date Mailed to Parties:
cc

July 14, 2025

APPENDIX

Exhibits

For Petitioner:

Application for Emergent Relief, with supporting motion papers and Certification of K.P, dated July 3, 2025.

Reply to Respondent's Opposition to Motion for Emergency Relief, submitted July 11, 2025

For Respondent:

Letter Memorandum in Opposition to Petitioner's Motion for Emergency Relief, dated July 10, 2025

Certification of Counsel, dated July 10, attaching Exhibit A

Certification of Blair Rosenthal, PhD., dated July 9, 2025, attaching Exhibit A

Other:

Letter from M.P. sent to ALJ on July 10, 2025.