State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
EMERGENT RELIEF
OAL DKT. NO. EDS 14697-25
AGENCY DKT. NO. 2026-39664

J.P. AND A.H. ON BEHALF OF S.P.,
Petitioners,
v.

SOUTH ORANGE -MAPLEWOOD BOARD OF EDUCATION,
Respondent.

Joan Thomas, Esq., for petitioners (Sussan Greenwald & Wesler, attorneys)

Athina Cornell, Esq., for respondents (Methfessel & Werbel P.C., attorneys)

Record Closed: September 4, 2025 Decided: September 17, 2025

BEFORE **WILLIAM COURTNEY**, ALJ:

STATEMENT OF THE CASE

On August 21, 2025, petitioners J.P. and A.H. on behalf of their minor child S.P., filed this application for emergency relief seeking an order placing S.P. at Deron School

pending the resolution of a due process petition simultaneously filed. Respondent South Orange - Maplewood Board of Education ("District") seeks denial of the requested emergent relief on substantive and procedural grounds. The District maintains the "stay put" provisions of N.J.A.C. 6A:14-2.7(u) and 20 U.S.C.§1415(j) which requires S.P. to remain in her current educational placement which they contend is in the District's Emotional Regulation Impairment ("ERI") program at Marshall Elementary School ("Marshall"). Petitioner disputes that S.P.'s current educational placement is the ERI program at Marshall and maintains the stay put placement is the Devon school. Petitioner's application for Emergency Relief was heard, and the record was closed, on September 4, 2025.

After full consideration of the evidence presented and for the reasons set forth below, **I CONCLUDE** that petitioners' application for emergency relief placing S.P. at the Devon school while the underlying due process petition is resolved must be granted.

FINDINGS OF FACT

I have reviewed the September 1, 2025 Certification of Christina Punturieri, Supervisor of Special Education for the District and the 8/21/2025 Certification of Parent authored by S.P.'s mother and I **FIND** the following representations contained therein as **FACT**:

1. S.P. is a rising fifth grader who resides within the District who was found eligible in 2018 for Special Education and Related Services based upon the classification category of Autism.
2. At an IEP meeting convened on December 17, 2024, an IEP was developed which placed S.P. in the Special Class Mild/Moderate Learning or Language Disabilities (LLD) program together with related services for the remainder of the 2024-2025 school year. The IEP also noted that the IEP team has agreed to explore alternative placement options, as S.P. has presented with

limited availability when attending school.

3. Upon the recommendation of the District, and with the petitioner's consent, the District sent S.P.'s records to the Deron School of New Jersey ("Deron").

4. As a result of S.P.'s increasing anxiety and decreasing self-esteem, in December of 2024 they explored, and eventually unilaterally placed[1] S.P. at The Stepping Forward Counseling Center, LLC located in Chatham, New Jersey ("Stepping Forward"), without notice to the District.

5. In response to outreach from Stepping forward, the District began home instruction services for S.P.

6. Petitioners and the District stayed engaged concerning S.P. after her placement at Stepping Forward and discussed transitioning S.P. into the Emotional Regulation Impairment (ERI) setting in district for the 2025-2026 school year as well as the potential of placing S.P. in an out-of-district program.

7. At some point in either April or May of 2025[2], S.P. began attending the in-district ERI program at the Marshall Elementary School on a half day basis.

8. On May 30, 2025, S.P. visited the District's ERI program for grades 3rd – 5th grades at the Seth Boyden Elementary School.[3]

9. While S.P. was attending the in-district ERI program on a half day basis, the district agreed to support Petitioner's continued exploration of an out-of-district placement.

10. There was a June 13, 2025, IEP prepared for S.P. to address the 25-26

[1] I cannot determine from the parties certifications when exactly S.P. was placed at Stepping Forward but it appears to have been sometime in late December 2024 or early January of 2025.

[2] The Parent's Certification indicates that S.P. began attending the District's ERI program in "late May of 2025" while Ms. Punturieri's Certification indicates she began attending "effective April 25, 2025" The Parent's Certification also indicates that the ERI program at the Marshall Elementary school "consisted of children in the 1st and 2nd grades."

[3] No explanation was given as to why S.P. was attending and ERI program for 2nd and 3rd grade students when she was in 4th grade.

school year. That IEP indicated that S.P. "will be offered placement in the [district's] ERI 3-5 program, while OOD options continue to be explored over the summer". (June13, 2025 IEP at p. 30).

11. Other factors that were considered relevant to the proposed actions taken in the June 2026 IEP included S.P.'s continuation in the Stepping Forward Extended School Year ("ESY") program, and that S.P.'s placement at Deron was being explored in July of 2025. (June 13, 2025 IEP at p. 31).

12. The Special alerts section on the first page of June 13 IEP notes that the IEP team continues to explore OOD options for SY 25-26 and that an intake has been offered at Deron for July 25.

13. The school in which S.P. was to be placed in SY 25-26 was listed on the first page of her June 13, 2025, IEP as "To Be Determined".

14. The District's representative, Dr. Micheal Zarabi accompanied S.P.'s father on a visit to Deron that took place on July 24, 2025. (Application at Exhibit F)

15. On July 25, S.P.'s Case Manager, Carolyn Murray, followed up with petitioners concerning the tour of Deron, she wanted to know what petitioners' thoughts were and further advised that she could help coordinate "next steps". Id.

16. Petitioners advised the District of their nearly 100% certainty that Deron was the right fit for S.P. and of their eagerness to discuss next steps. Id.

17. On February 28, 2025, Yolanda Sanchez, on behalf of the District, advised petitioners that S.P. had been accepted at Deron and asked whether they would accept S.P.'s placement at Deron. (Parent's Cert. at ¶ 14).

18. Petitioners informed Ms. Sanchez that they did accept S.P.'s placement at Deron and Ms. Sanchez responded that she would start the process of working with Deron. She also indicated that she would keep the petitioners updated. Id.

19. On July 31, 2025, the Supervisor of Special Services for the District authored an email to petitioners which stated:

> I wanted to touch base with you regarding S.P.'s placement for the 25-26 school year.
>
> I know that [S.P.] was accepted into Deron, however, the district believes that her needs can be met in our ERI classroom at Seth Boyden with Mr. Wojjcio. I know part of your concern is that we do not currently have an ERI program in our Middle Schools for the 26-27 school year, however, our Assistant Superintendent has assured me that this program will be a high priority to expand allowing S.P. to remain in the district.

LEGAL ANALYSIS AND CONCLUSION

In this case, it is unnecessary for me to consider whether the criteria set forth in Crowe v. Di Gioa, 90 N.J. 126 (1982) have been satisfied in granting emergent relief. When the emergent-relief request effectively seeks a "stay-put" preventing the school district from making a change in placement from an agreed-upon IEP, the proper standard for relief is the "stay-put" provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)).

In the December 17, 2025, IEP, although the team recommended that S.P. continue with her LLD programing for the remainder of SY 25-26, the team agreed to explore out of district placement options because S.P. had presented with limited availability when attending school. (12/17/24 IEP at p. 31).

The undisputed facts in this case indicate that since at least January of this year, the District supported S.P.'s out-of-district placement into Deron. At that time, the

petitioners had already followed through with their intentions[4] to place S.P. into a therapeutic program at Stepping Forward as opposed to returning her to the LLD program within the district. Indeed, it was S.P.'s Case Manager who recommended on 1/3/25 that the parties "explore Devron in Union" as a possible out of district placement for S.P. Parent's Cert. at ¶10. It was at the Districts' urging that petitioners, on 1/10/25, authorized the release of S.P.'s records to Deron, as well as other state approved schools the petitioners desired to explore, so that the district could set up "intakes for placement". Id.

I recognize that while the out-of- district placements were being considered from January 2025 forward, the petitioners did agree to have S.P. attend an ERI program offered by the district for an undetermined number of weeks on a part-time trial basis. While the District maintains that the teacher of the ERI noted improvements in S.P.'s behaviors, the petitioners believe the ERI classroom was not appropriate for their daughter. Petitioners note that the ERI classroom S.P. Attended was for 1st and 2nd grades while their daughter is a rising 5th grader. They also contend that S.P.'s significant deficits in cognitive functioning, social skills and emotional regulation as recognized in the 12/17/24 IEP add to the inappropriateness of S.P.'s placement into an ERI program. On the record before me, I **FIND** there is insufficient evidence that an ERI classroom would be an appropriate placement for S.P. I also **FIND** that S.P.'s brief exposure to the ERI classroom on a part time trial basis did not constitute a placement into the District's ERI program.

At the IEP meeting convened on 6/13/25 (after S.P.'s trial participation in an ERI classroom), petitioners indicated that they were continuing S.P. at Stepping Forward for ESY 2025. Punturieri Cert. at ¶ 9. In the 6/13/25 IEP S.P.'s school placement was listed as "to be determined" not the Seth Boyden Middle School where the proposed SY 25-26 ERI 3-5 program is scheduled will take place. I **FIND** this "to be determined" designation

[4] The 12/17/24 IEP notes at p. 31 that "Parent reported that [SP.] will start a therapeutic program at Stepping Forward in January. They are requesting for her to continue at this placement instead of returning to the LLD program. Parents reported a regression and want her to get therapeutic supports.

proves beyond any reasonable doubt that there was no decision in the 6/13/25 IEP to place S.P. into the Seth Boyden Middles School ERI program for SY 25-26.

What the District said about the ERI program at the Seth Boyden Middle School was that "S.P. will be offered placement in the ERI 3-5 program, while OOD options continue to be explored over the summer" (6/13/25 IEP at p.30 [emphasis added]). I **FIND** that the language utilized in the IEP reveals the intent of the District to offer S.P. placement into the ERI program at Seth Boyden school in the event S.P. was not accepted at an appropriate out-of-district placement. This interpretation of the party's intent is also supported by the fact that the 6/13/25 IEP specifically notes that a factor relevant to the proposed action taken was S.P.'s exploration of Deron scheduled to take place in July. Id at 31.

District's representative, Dr. Micheal Zarabi accompanied S.P.'s father when he followed through on the intake process during a visit to Deron that took place on July 24, 2025. The intake was successful and when asked by the District on July 28, 2025, if petitioners were accepting Deron's offer of placement to S.P. they said that they did accept the placement. (Parent's Cert. at ¶ 14).

I **FIND** that the offer and acceptance on 7/28/25 of S.P.'s application to Deron satisfied the condition contained in the 6/13/25 IEP and established Deron as S.P.'s out-of-district placement for SY 25-26. Accordingly, when the Supervisor of Special Services for the District advised the petitioners on 7/31/25 that "the district believes that [S.P.'s] needs can be met in our ERI classroom at Seth Boyden", I **FIND** that her actions were a unilateral attempt on the part of the District to modify the terms of the 6/13/25 IEP and prevent an out-of-district placement that the District itself suggested, supported and encouraged and that both parties had already agreed was appropriate and had already accepted.

When the emergent-relief request effectively seeks a "stay-put" preventing the school district from making a change in placement from an agreed-upon IEP, the proper

standard for relief is the "stay-put" provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)).

I agree with the parties, that this matter is controlled by 20 U.S.C. 1415(j), otherwise known as the "stay put" provision of the IDEA. The statute states in pertinent part:

> . . . 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 . . .

Because the agreed to out-of-district placement was offered and accepted prior to the district's unilateral decision to disregard the 6/13/25 IEP, I **FIND** the Deron school to be S.P.'s placement for purposes of a stay put determination.

When a school district proposes a change in the placement of a student, it must provide notice to the parent or guardian, who may in turn request mediation or a due process hearing to resolve any resulting disagreements. N.J.A.C. 6A:14-2.3, 2.6 and 2.7. Once a parent timely requests mediation or due process, the proposed action by the school district cannot be implemented pending the outcome. The "stay put" provision of the IDEA, 20 U.S.C. 1415(j), and its New Jersey counterparts, N.J.A.C. 6A:14-2.6(d) and 2.7(u), are invoked, and unless the parties agree, no change shall be made to the student's classification, program or placement.

The "stay put" provisions of law operate as an automatic preliminary injunction. IDEA's "stay put" requirement evinces Congress' policy choice that handicapped children stay in their current educational placement until the dispute over their placement is resolved, and that once a court determines the current placement, petitioners are entitled to an order "without satisfaction of the usual prerequisites to injunctive relief." Drinker by

Drinker v. Colonial School Dist., 78 F.3d 859, 864-65 (3d Cir. 1996).

The facts presented in this case clearly reveal that the parties have worked collaboratively since January of 2025 to find an appropriate out-of-district placement for S.P. On 7/28/25, after 7 months of searching, S.P. was offered and accepted placement at Deron, one of the schools first suggested by the District in January. The District's abrupt change of mind on 7/31/25 does not nullify the placement decision made in in the 7/13/25 IEP and solidified by the acceptance of Deron's offer on 7/28/25.

In this case, it is unnecessary for me to consider whether the criteria set forth in Crowe v. Di Gioa, 90 N.J. 126 (1982) have been satisfied in granting emergent relief. However, even if the Crowe Factors were to be considered, the facts are such that injunctive relief should be granted pending resolution of the pending due process petition.

The primary types of hearings under the Individuals with Disabilities Education act ("IDEA") are regular and expedited hearings. The default term "regular" refers to most hearings under the IDEA, with the limited exception for those specifically and expressly reserved for an "expedited" timeline.

Among the special procedures applicable to due process and expedited due process proceedings is also a limitation on the scope of matters which may be addressed through requests for emergent relief. N.J.A.C. 6A:14-2.7(r). In special education due process hearings, [e]mergent relief shall only be requested 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.

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

An emergent relief application must set forth the specific relief sought and the specific circumstances which the applicant contends justifies the relief sought. N.J.A.C. 1:6A-12.1(a).

I **FIND** that that petitioner's application for emergent relief involves issues concerning placement pending the outcome of due process proceedings and that emergent relief is therefore justified.

To obtain emergent relief in a special education dispute, the moving party must demonstrate 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.

[N.J.A.C. 1:6A-12.1(e); see also N.J.A.C. 6A:14-2.7(s).]

This rule mirrors the standard for injunctive relief established by the New Jersey Supreme Court in its seminal case of Crowe v. DeGioia, 90 N.J. 126, 132-35 (1982). Under such standards, the moving party has the burden to prove all of the factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012); Waste Management of New Jersey v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008).

For the reasons set forth below, **I FIND**, Petitioners meet the required criteria by clear and convincing evidence and that their Request for Emergent Relief must be granted.

IRREPARABLE HARM

Petitioners argue that if S.P.'s procedural rights not be protected at this time, she may lose a chance to participate in the only appropriate educational program that has accepted her. If the opportunity is lost, S.P. will be without an appropriate educational placement. Each day that she is without a program places her in danger of developmental regression and permanent loss of skill which should not be considered monetarily compensable.

I agree with petitioners that the deprivation of an appropriate program is an irreparable loss. Pursuant to the IDEA, a procedural violation committed during the formulation of a child's IEP is actionable if:

1) it impedes the child's right to a free, appropriate public education;
2) significantly impedes the parents' opportunity to participate in the decision-making process or in the IEP formulation process; or
3) causes a deprivation of benefits. Winkelman ex. Rel Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2001 (2007) (citing 20 U.S.C. § 1415(f)(3)(E)(i) & (ii)); *see also* N.J.A.C. 6A:14-2.7(k). The District has

violated Petitioners' rights by abruptly failing to implement the very program it had proposed and thus failing to have in place an appropriate program for S.P. at the start of the school year.

Given that it has taken 7 months to find an out-of-district that meets S.P. needs and is currently willing to accept her, I **FIND** that irreparable harm will occur if S.P. is not permitted to attend Deron while her underlying due process petition is being resolved.

S.P. HAS A SETTLED LEGAL RIGHT

S.P. has a right to a free, appropriate public education under 20 U.S.C. § 1400. Any school district which receives federal assistance is required to provide a disabled child with a free and appropriate public education. 20 U.S.C. § 1412(1). In order to receive FAPE, S.P. requires a program in an environment tailored to her specific needs. The right of a student who is eligible for special education and related services to receive a free appropriate public education is well settled. It follows that Petitioner meets this requirement. S.B. on behalf of J.B., v. Hanover Park Regional High School District Board of Education, EDS 01696-10.

As the appropriateness of the District program is in question, during the pendency of any proceedings conducted pursuant to 20 U.S.C. § 1415, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then- current educational placement. 20 U.S.C. § 1415Q). I agree with petitioners that even while Deron had not yet accepted S.P. at the time the 6/13/25 IEP was written, an out of district placement was clearly anticipated with the school listed as "to be determined." The purpose of this safeguard is to maintain the status quo for the benefit of the child. In the instant matter, an out of district school is the "status quo" and the stay put placement. No new IEP was issued after the June 13th IEP.

PETITIONERS SHOW A LIKELIHOOD OF SUCCESS

Under the law, it is clear that a District cannot change a student's placement during the pendency of a Due Process Hearing. N.J.A.C. 6A:14-2.7(u) specifically states:

> Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law.

There is no question that the District, in accordance with the 6/13/25 IEP continued to search for and eventually found and accepted and appropriate out-of-district placement for S.P. at Deron by July 28,2025. The District argues that the petitioners likelihood of success on the merits is negatively impacted due to the fact that they do not have a right of an out of district placement, they do not have the right to unilaterally decided placement issues. Those arguments, however, fail to recognize the fact that over the course of the past 7 months, the District has repeatedly acknowledged that an out-of-district placement was appropriate; the District suggested, encouraged, and supported S.P.'s placement at Deron; and the District relayed Deron's offer and solicited the petitioner's acceptance. They also designated the school in the 6/13/25 IEP as "to be determined" so that "OOD options" could continue to be explored. After consideration of all of the evidence and arguments provided, I **FIND** that petitioners have a reasonable probability of success on the merits of their claim.

THE BALANCE OF THE EQUITIES FAVORS PETITIONERS

I agree with petitioner's position that should the requested relief be granted, the District will be ordered to pay the cost of tuition at the Deron School, a cost it was already preparing to pay. There is no dispute as to S.P.'s need for the specialized programming and supports that are offered at Deron. The District is statutorily

required under both federal and state law to provide an appropriate program for S.P. This is no great burden to the District.

On the other hand, should Petitioner's relief be denied, S.P.'s placement at the Deron School will likely be lost. Thus, S.P. will not have an appropriate placement that can support all her needs for the upcoming 2025-2026 school year. S.P. would therefore be at risk of being denied her right to receive free, appropriate public education. Given the amount of time and effort already expended by the parties to locate a school that is capable and willing to provide the services that S.P. requires, the risk of losing that placement tips the equity scale in petitioner's favor.

ORDER

It is hereby **ORDERED** that:

1. Petitioner's Application for Emergent Relief is **GRANTED**.
2. The District is directed to immediately make all reasonable efforts to secure S.P.'s placement at Deron School in Union, New Jersey; and
3. The District is responsible to assume all costs relating to S.P.'s placement at Deron School.

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

September 17, 2025 _____

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

WJC/db

List of Moving Papers

For Petitioner:

Application for Emergent Relief, with Brief and Exhibits

August 21,2025 Certification of Parent

For Respondent:

Letter Brief in Opposition to Motion for Emergent Relief

September 1, 2025 Certification of Christina Punturieri