



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF

OAL DKT. NO. EDS 15347-25

AGENCY DKT. NO. 2026-39667

C.J. ON BEHALF OF C.H.,

Petitioner,

v.

**MANALAPAN-ENGLISHTOWN BOARD
OF EDUCATION, MONMOUTH COUNTY,**

Respondent.

C.J. on behalf of C.H., petitioner, pro se

Douglas Silvestro, Esq., for respondent (The Busch Law Group, LLC, attorneys)

BEFORE **TRICIA M. CALIGUIRE, ALJ:**

STATEMENT OF THE CASE

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482, and 34 C.F.R. §§ 300.500 et seq. (2025). By request for emergent relief, petitioner C.J. on behalf of C.H. seeks transportation of C.H. by yellow school bus pending the outcome of due process proceedings. Respondent Manalapan-Englishtown Board of Education, Monmouth County (Board), opposes this request on the grounds that petitioner has not satisfied the requirements for obtaining emergent relief.

PROCEDURAL HISTORY

On August 21, 2025, petitioner filed a complaint for a due process hearing with the New Jersey Department of Education (DOE), Office of Special Education (OSE), where it remains until the end of the resolution period. On September 3, 2025, petitioner filed a request for emergent relief, which was transmitted by the OSE the same day to the Office of Administrative Law (OAL) for an emergent relief hearing.

On September 8, 2025, the parties participated in a prehearing conference. On September 10 and 11, 2025, the parties filed briefs, and on September 15, 2025, the parties appeared at the OAL for oral argument on emergent relief.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute and form the basis for this decision. Accordingly, I **FIND** as **FACTS**:

C.H. is a resident of the Manalapan-Englishtown School District (District). He is a five-year-old male who is eligible for special education and related services under the classification of autism. During the 2024-2025 school year, C.H. attended the preschool disabled program.

During the 2024–2025 school year, C.H. was provided with the related service of door-to-door transportation and a bus aide. Respondent provided transportation via school bus.

For the 2025-2026 school year, C.H. attends The Shore Center, an out-of-district placement.¹

¹ The parties stated that C.H.'s placement is the subject of the underlying due process complaint.

C.H.'s current individualized education program (IEP), dated May 15, 2025, provides for transportation as a related service, twice daily, with a "bus aide." P-1 at 1, 34. There is no information in the IEP regarding the mode of transportation.

Petitioner submitted the "Student Bus Information Card" for C.H., dated March 13, 2025.² It states,

[C.H.] should sit in an aisle seat near the front of the bus where he can be viewed by the camera if needed. A staff member will escort him to the bus and stay with him until he is buckled into his seat.

[The school bus driver and/or aide should be familiar with C.H.'s] communication delay and [use of] an AAC device to communicate[.]

[P-2.]

On or about August 13, 2025, petitioner provided a letter to respondent from C.H.'s pediatric neurologist, Dr. Savitra Bandari, to support her request for transportation by school bus for the 2025-2026 school year. On August 26, 2025, a representative of the District sent a letter to Dr. Bandari, requesting additional information and the same day, Dr. Bandari responded by letter, in which she stated, in pertinent part:³

While the bus does not have to be a 16 passenger school bus, if that is the smallest that you have in stock, then that will work.

A minivan does not meet the same safety requirements as a yellow school bus [which] must comply with more stringent Federal Motor Vehicle Safety Standards[.]

Minivans are not designed to protect children.

The drivers for school bus [sic] have to have a Commercial Driver's License (CDL) with school bus endorsement, which requires completing and Entry-Level Driving Training, plus having to pass written and road tests. The minivan and its

² At the hearing, petitioner stated that this card was reissued in May 2025, and the requirement of an aisle seat was changed. Neither party provided the updated card.

³ One week prior to the emergent hearing, I directed petitioner to submit a certification from Dr. Bandari in support of the claims she made in her August 26, 2025, letter. No certification was submitted. The earlier letters were not provided.

drivers are not part of the school bus drivers team, so they do not have met [sic] these safety requirements like the Yellow school bus drivers.

For both Safety reasons and sensory sensitivity, of patient, the school transportation requirements still need to be a yellow school bus.

[P-3.]

Dr. Bandari provided no support for the conclusions in her letter and did not provide a curriculum vitae or proof of her alleged expertise in school bus safety. Further, she did not describe C.H.'s "sensory sensitivity," which she stated requires him to be transported in a school bus rather than a minivan.

By undated letter, submitted by petitioner on September 11, 2025, C.H.'s private board-certified behavioral analyst stated that C.H.'s "maladaptive behaviors" are triggered by "loud, unpredictable noises, proximity such as tight spaces, and sudden changes in routine," which are found in a minivan, "where space is limited, seating is more crowded, and transitions are often unpredictable." P-4.

By a second undated letter, also submitted by petitioner on September 11, 2025, C.H.'s occupational therapist (OT) described his "sensory processing difficulties" as sensitivity to "loud noises, auditory stimuli, and the close proximity of peers," all of which would be found in a minivan, and therefore "would likely lead to [C.H.] becoming dysregulated," and thereby risking his safety and that of others "in close proximity and require increased time to remedy in preparation for the school day." P-5.

The Board secured transportation for C.H. for the 2025-2026 school year by contract through the Monmouth-Ocean Educational Services Commission and subject to all standard bid and contract requirements of the DOE. The driver assigned to the van provided for C.H. possesses a legally valid CDL, and both the driver and the transportation aide assigned to C.H.'s vehicle successfully went through the DOE criminal history background check process. The vehicle is equipped with all standard safety equipment, including appropriate safety/seat belts, including a five-point harness for C.H., GPS tracking, DOE-mandated labeling identifying the vehicle as a school vehicle, and a

camera. There was no information introduced to support that the vehicle provided for C.H. is unsafe.

To date, C.H. has not been transported to school by minivan; his mother is driving him with the assistance of her father, C.H.'s grandfather. Petitioner stated that respondent has provided transportation for the 2025–2026 school year, but that respondent will not provide the form of transportation that is safest for C.H.

By certification, the Board's OT stated that (1) C.H. would ride alone in the minivan, meaning there are no peers in close proximity; and (2) during the previous school year, "C.H. would often be dysregulated prior to and upon his arrival to school when transported by a school bus[.]" Certification of Andrea Doumar (September 11, 2025), ¶¶ 7, 8.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.A.C. 1:6A-12.1(a) provides that the affected parent may apply in writing for emergent relief. An emergent relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein.⁴ Emergent relief shall only be requested for specific issues, including a break in the delivery of services and/or placement pending the outcome of due process proceedings. N.J.A.C. 6A:14-2.7(r).

Here, petitioner initiated an emergent proceeding to obtain a specific mode of transportation for her son for his ride to and from school. While there is no dispute that the District is obligated to provide round-trip transportation to C.H., with an aide, there is no evidence that the District ever guaranteed that C.H. would be transported by a yellow school bus. Most important is that the District did not refuse to provide transportation, but continued to send a minivan to petitioner's home for C.H. This service only stopped when the petitioner refused to permit its use for C.H. Therefore, I **CONCLUDE** that petitioner

⁴ As stated above, though directed to submit an affidavit to support her request for emergent relief, petitioner did not do so.

has not established that the issue in this matter concerns a break in the delivery of services.

If, however, a reviewing court were to conclude that petitioner has stated a claim for emergent relief, the following inquiry would be required.

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

1. that C.H. 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 party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and
4. when the equities and the interests of the parties are balanced, C.H. will suffer greater harm than the respondent.

[Crowe, 90 N.J. at 132–34.]

Irreparable Harm

To obtain emergent relief, petitioner must demonstrate more than a risk of irreparable harm to C.H. Petitioner must make a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.” Cont'l Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980) (citations omitted).

Petitioner contends that irreparable harm is established because respondent is denying C.H. “necessary related services” in the form of transportation by yellow school

bus. Pet'r's Reply in Support of Request for Emergent Relief (Email to K. Lee, September 10, 2025), at 1.

Respondent argues that "transportation is currently being provided by the Board for C.H. in conformance with his IEP and all requisite State standards and rules [and] petitioner has simply refused to accept the transportation." Ltr. Br. of Resp't Opposing Emergent Relief (September 9, 2025) (Resp't's Br.), at 7.

Petitioner's argument fails for two reasons. First, C.H.'s IEP does not provide for a specific mode of transportation, and there is no evidence that in assigning C.H. to a minivan, respondent ignored the recommendations of experts. The letter from C.H.'s neurologist is insufficient to establish that C.H. requires transportation via yellow school bus, much less to establish that irreparable harm will come to him should he travel to and from school in a minivan. As respondent notes, Dr. Bandari is not an expert in bus safety and has made statements that are simply not true.⁵ Significantly, Dr. Bandari states that a bus designed to carry sixteen passengers would suffice, but the other professionals submitted letters for petitioner raising concerns about other students being near C.H. without explaining how a sixteen-passenger bus, filled with up to fifteen other children and adults, is preferable to a six- to eight-passenger minivan carrying only the driver, C.H., and his aide.⁶

Second, by refusing to permit her son to ride in a minivan accompanied by an aide, petitioner created the "emergency" and therefore cannot avail herself of emergent relief. See McKenzie v. Corzine, 396 N.J. Super. 405, 414–15 (App. Div. 2007) (fear of imminent irreparable injury not merited because plaintiff's delay in bringing action to challenge ballot measure created the emergency); J.H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 205 (Ch. Div. 1998) ("Self-inflicted hardship should not be considered or, at best, should be given very little weight in determining whether the injunction should issue.").

⁵ For example, Dr. Bandari states that the minivan drivers are not CDL-certified and lack training, and that minivans "are not designed to protect children."

⁶ Here, I note that petitioner admitted to driving C.H. to school in a sport-utility vehicle (SUV), which she concedes is smaller than a school bus and so not well-suited to his needs. Petitioner complained that because she also drives her older children to and from school, she must pick C.H. up forty minutes before the end of the school day, rather than permit him to ride home in a minivan.

I **CONCLUDE** that the petitioner has not met the burden of establishing that C.H. will experience irreparable harm if he rides in a minivan to and from school.

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

The second consideration is whether the legal right underlying petitioner's claim is settled, N.J.A.C. 6A:3-1.6(b)(2), and then third, petitioner must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. It is well-settled that the IDEA requires a school district to provide a free appropriate public education to all children with disabilities and determined to be eligible for special education. 20 U.S.C. § 1412(a)(1)(A). Transportation is a related service provided "to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2025).

Petitioner has not cited federal or state law giving a parent the right to dictate the specific form of transportation the District must use. As stated above, petitioner may have evidence of C.H.'s medical condition that she intends to introduce at the hearing but has not yet done so.⁷ Though petitioner described the behaviors C.H. exhibits when in his family SUV, and dysregulation she anticipates should he ride to school in a minivan, respondent submitted a certification that C.H. experienced such dysregulation when traveling on a yellow school bus. Petitioner has not demonstrated a likelihood of prevailing on the merits of her claim.

For the above reasons, I **CONCLUDE** that petitioner meets the second prong but not the third prong of the emergent relief standard.

Balance of Equities and Interests

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief to petitioner. Petitioner argues that C.H.

⁷ Undated letters, as opposed to certifications, are hearsay and admissible in an administrative proceeding, but are insufficient to establish a fact in dispute without direct, competent evidence. See N.J.A.C. 1:1-15.5.

will suffer greater harm if emergent relief is not granted, such harm being risk to his immediate safety and medical stability. As stated above, there is no evidence that a minivan is less safe than a yellow school bus, nor is there competent evidence that traveling in a minivan makes it more likely that C.H. will act inappropriately than he would on a yellow school bus.

Respondent argues that it “would suffer significant undue harm in the form of increased financial costs and expenditure of staff resources . . . if it is required to arrange, obtain, and fund last-minute, alternative transportation services for C.H., which costs would not be recoverable by the Board against Petitioner should the Board prevail in the underlying due process hearing.” Resp’t’s Br. at 9. In contrast, should petitioner not obtain emergent relief, the Board will continue to provide the transportation described in C.H.’s IEP.

I **CONCLUDE** that respondent would suffer greater harm if the requested relief was granted. I **CONCLUDE** that petitioner’s request for emergent relief does not satisfy the applicable requirements.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner’s application for emergent relief seeking an order requiring the Board to transport C.H. to and from his educational placement using a yellow school bus while the due process proceeding is pending is hereby **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 believes that this order is not being fully implemented, then the parent 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 16, 2025

DATE

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/kl

APPENDIX

Exhibits

For Petitioner:

- P-1 IEP for C.H., dated May 15, 2025
- P-2 Student Bus Information Card, dated March 13, 2025
- P-3 Letter of Dr. Savitra Bandari, dated August 26, 2025
- P-4 Letter of Kacy Morozoff, MA, BCBA, LBA-NJ, not dated
- P-5 Letter of Samantha Powell, MS, OTR/l, not dated

For Respondent:

Certification of Andrea Doumar, OT, dated September 11, 2025