State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF
OAL DKT. NO. EDS 15089-25
AGENCY DKT. NO. 2026-39694

A.D. & L.D. ON BEHALF OF S.D.,
Petitioner,
v.
FREEHOLD REGIONAL
BOARD OF EDUCATION,
Respondent.

Jessica Weinberg, Esq., for petitioners (Manes & Weinberg, LLC, attorneys)

Jacob K. Mintun, Esq., for respondent (Comegno Law Group, P.C., attorneys)

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioners A.D. and L.D., on behalf of their minor child, S.D., seek an order granting emergent relief under N.J.A.C. 1:6A-12.1(a), N.J.A.C. 6A:14-2.7(l), and 20 U.S.C. § 1415(k)(2) and request an order to implement the stay-put program as prescribed in S.D.'s last-agreed-upon individualized education program (IEP) and for S.D. to attend a mild/moderate learning and/or language disabilities (LLD) program at Marlboro

High School or Colts Neck High School pending the outcome of the due process proceedings. Respondent, Freehold Regional High School District Board of Education (the District), opposes petitioners' request for emergent relief and argues that the operative stay-put placement was a mild-moderate LLD program that cannot be projected into the high school**.**

PROCEDURAL HISTORY

On August 29, 2025, the New Jersey Department of Education received petitioners' request for emergent relief. That matter was transmitted to the Office of Administrative Law, where it was filed on August 29, 2025. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1.1 through N.J.A.C. 1:6A-18.5. The respondent submitted a response in opposition to the request for emergent relief, which was received on September 8, 2025. Petitioners submitted a reply that was received on September 8, 2025. Oral argument on the motion was held on September 8, 2025, and the record was closed on that date.

FACTUAL DISCUSSION

A summary of the pertinent evidence presented is as follows, and I **FIND** the following **FACTS**:

At the filing of the petition, S.D. was a rising ninth-grade student deemed eligible for special education and related services under the classification of Communication Impairment. S.D. attended Marlboro Middle School from sixth grade through eighth grade. While there, he was in hybrid of multiple disabilities and mild/moderate Learning or Language Disabilities (LLD) special class for all his core subjects under the classification category of Communication Impaired. (Petitioners' Brief in Support of Emergent Relief.) The 2025–2026 school year began on September 4, 2025. Currently, S.D. is attending Freehold High School in the Severe (LLD) program.

On February 6, 2025, the petitioners received an email from S.D.'s case manager with the subject matter, "High School Programming." It stated that S.D. is "slated to go to

Freehold Boro High School LLD. If you have any questions or concerns, please contact Freehold Boro High School CST." (See Petitioners' Brief at Exhibit F.) Petitioners reached out to Dr. Howland regarding the LLD program and were told that placement in the LLD program was determined by the high school team based on his standardized assessment scores, observations, work samples, and review of his record.

On March 24, 2025, the petitioners met with the Marlboro School child study team (CST). The ninth-grade placement was determined to be mild/moderate language or learning disability within the Freehold Regional High School District. (Petitioners' Brief at 7.) Petitioners were concerned that Dr. Howland was interpreting the LLD program for S.D. as severe and not the less restrictive mild/moderate program that he has been in for several years and is proposed in the March 2025 IEP. On June 2, 2025, the parents attended a reevaluation eligibility determination/IEP meeting. The Draft IEP that was created as a result of this meeting listed the school placement as Freehold Regional School District (District) and the proposed special education programs for math, writing, science and social studies as mild/moderate LLD. (Petitioners' Brief at Exhibit O.) Petitioners argue that there were never any discussions regarding alternate programs at any other available high schools and no one from the CST at Freehold High School (FHS) or from the District was there to discuss S.D.'s high school placement. (Petitioners' Brief at 13.) A final IEP dated June 2, 2025, was sent to the petitioners, but the only difference from the draft was that the school was now listed as FHS. Petitioners argue that the respondent unilaterally placed S.D. in a severe LLD class in violation of the IEP that has mild/moderate LLD classes.

Respondent contends that S.D. first became a student to the District on July 1, 2025. Respondent agrees that the stay-put provision is triggered in this matter and it is not necessary for consideration of the four-prong standard for emergent relief in accordance with Crowe v. De Gioia, 90 N.J. 126 (1982). (Respondent's Brief at 2.) Respondent argues that petitioners' claim of a stay-put program is a middle school program provided by Marlboro, which S.D. as an incoming ninth grader cannot remain in. (Ibid.) The respondent states that the placement is broadly an LLD program "as the CST team recommended LLD as the special education programming." (Ibid.)

The respondent argues that the District is required to provide a comparable program to the last agreed-upon placement subject to the provisions of a transfer student under N.J.A.C. 6A:14-4.1(g). Respondent argues that there is no such program as a mild/moderate LLD program. The District has a Mild LLD program, which is at Marlboro High School; a Moderate LLD program, located at Colts Neck High School; and a Severe LLD setting at Freehold High School. (Respondent's Brief at 7.) According to respondent, it would be impossible for the District to provide a mild/moderate program or two programs at the same time. (Ibid.) The District contends that S.D. is an intrastate transfer student and as such, based on their analysis with the use of scores and S.D.'s profile, they concluded that the student belongs in the Severe LLD class at FHS. S.D.'s cumulative folder was sent to Freehold High School, which has the severe LLD program, and as such respondent argues that S.D.'s guidance counselor knew that he would be attending the severe LLD program. (Dr. Jessica Howland's Certif. at paragraph 16.) However, the letter sent by the guidance counselor is dated "June, 2025" with no signature. (See Respondent's Brief at Exhibit C.)

According to respondent, there are different profiles or criteria required for placement in Freehold Regional High School District's Severe LLD program, the Moderate LLD Program, and the Mild LLD program. Dr. Howland states that the Severe LLD program is the "most appropriate and comparable program in accordance with S.D.'s 2025 scores and profile." (Dr. Howland's Certification at 29.)

In petitioners' Reply to respondent's opposition, they reiterate that the IEP requires S.D. to be placed in a Mild/Moderate LLD program and not a Severe LLD program, which is in violation of N.J.A.C. 6A:14-3.7. Petitioners stated that they were never made aware that FHS does not have a Mild/Moderate LLD program and that respondent should have located a Mild/Moderate program out of district. The petitioners, however, are willing to have S.D. attend the Moderate LLD program at Colts Neck High School.

Petitioners disagree with the District that S.D. is a transfer student requiring a comparable program because according to Dr. Howland, students in the District transition from lower school districts, including Marlboro, on July 1 of each year. (See Dr. Howland's Cert. at 3.) Moreover, if S.D. is a transfer student, petitioners argue that respondent

violated its legal obligation because it did not consult with the student's parents and failed to develop and implement a new IEP within thirty days of S.D.'s enrollment on July 1, 2025, pursuant to N.J.A.C. 6A:14-4.1.

DISCUSSION AND CONCLUSIONS OF LAW

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.

Emergent relief shall only be requested for specific issues, namely: i) issues involving a break in the delivery of services; ii) issues involving disciplinary action, including alternate educational settings; iii) issues concerning placement pending the outcome of due process proceedings; and iv) issues involving graduation. N.J.A.C. 6A:14-2.7(r). Here, petitioners have requested emergent relief, requesting that I invoke the stay-put provision contained in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u), otherwise S.D. will be without a proper placement. Therefore, I **CONCLUDE** that petitioners have established that the issue in this matter concerns placement pending the outcome of the due process proceeding.

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

1. that the party seeking emergent relief 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, the party seeking emergent relief will suffer greater harm than the respondent.
>
> [Crowe, 90 N.J. at 132-34.]

The petitioners must establish all the above requirements in order to warrant relief in their favor and must prove each of these Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008); D.I. & S.I. ex rel. T.I. v. Monroe Twp. Bd. of Educ., 2017 N.J. AGEN LEXIS 814, 7.

The petitioners here contend that they are invoking the "stay-put" provision to require the District to abide by the June 2, 2025, IEP placing S.D. in a mild/moderate LLD program. Since the mild/moderate program does not exist at FHS, petitioners argue that they are amenable to placement in the moderate LLD program at Colts Neck High School. The petitioners further request that, if the program at Colts Neck High School has no room, they be allowed to seek an out-of-district placement at a school that has mild/moderate LLD classes along with round-trip transportation and an extended school year program. Respondent agrees that the stay-put provision also applies.

With a "stay-put" claim, the petitioners are seeking an automatic statutory injunction against any effort to change S.D.'s program at the time the provision is invoked. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996). N.J.A.C. 6A:14-2.7(u) provides:

> 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 . . . between the district board of education and the parents for the remainder of any court proceedings.
>
> [Emphasis added.]

The "stay-put" provision acts as an automatic preliminary injunction, the overarching purpose of which is to prevent a school district from unilaterally changing a disabled student's placement or program. See Drinker, 78 F.3d at 864. In terms of the applicable standard of review, the emergent relief factors set forth in N.J.A.C. 6A:14-2.7(r)-(s), N.J.A.C. 1:6A-12.1, and Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), are generally inapplicable to enforce the "stay-put" provision. As stated in Pardini v. Allegheny Intermediate Unit, 420 F.3d 181, 188 (3d Cir. 2005), "Congress has already balanced the competing harms as well as the competing equities."

In Drinker, the court explained:

> The [IDEA] substitutes an absolute rule in favor of the status quo for the court's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a . . . balance of hardships.
>
> [78 F.3d at 864 (citations and internal quotations marks omitted).]

In other words, in cases where the "stay-put" provision applies, injunctive relief is available without the traditional showing of irreparable harm. Ringwood Bd. of Educ. v. K.H.J. ex rel. K.F.J., 469 F. Supp. 2d 267 (D.N.J. 2006). Under those circumstances, it becomes the duty of the court to ascertain and enforce the "then current educational placement" of the handicapped student. Drinker, 78 F.3d at 865. "[T]he dispositive factor in deciding a child's 'current educational placement' should be the Individualized Education Program . . . actually functioning when the 'stay put' is invoked." Id. at 867 (quoting Woods v. N.J. Dep't of Educ., No. 93-5123, 20 Indiv. Disabilities Educ. L. Rep. (LRP Publications) 439, 440, 3d Cir. Sept. 17, 1993). "And where . . . the disputes arises before any IEP has been implemented, the 'current educational placement' will be the operative placement under which the child is actually receiving instruction at the time the dispute arises." Thomas v. Cincinnati Bd. of Educ., 918 F.2d 618, 625–26 (6th Cir. 1990).

Here, both parties agree that the stay-put provision is applicable, therefore, I need not address the four prongs in Crowe. The last-agreed-upon and operative IEP is dated

June 2, 2025. This IEP sets forth the summary of the special education programs and related services. It states:

> Special Class Mild/Moderate Learning or Language Disabilities: Math
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> Special Class Mild/Moderate Learning or Language Disabilities: English
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> Special Class Mild/Moderate Learning or Language Disabilities: Writing
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> Special Class Mild/Moderate Learning or Language Disabilities: Science
>
> Special Class Mild/Moderate Learning or Language Disabilities: Social Studies
>
> (Petitioners Exhibit O.)

Nowhere in the operative IEP does it say Severe LLD. Petitioners argue that the respondent unilaterally placed S.D. in the Severe LLD class at Freehold High School. I agree.

Respondent argues that there is no Mild/Moderate LLD program in the District. They have a Mild program at Marlboro; a Moderate LLD program at Colts Neck High School; and a Severe LLD program at FHS. Respondent argues that based on S.D.'s profile and scores, the Severe LLD program is appropriate. Thus, S.D. was placed at FHS in the Severe LLD program. I **CONCLUDE** that this is contrary to June 2, 2025, IEP, which specifically states Mild/Moderate LLD program.

Respondent argues that the District correctly treated S.D. as a transfer student and provided comparable services until a new IEP is adopted or developed. Petitioners argue that it is "inconceivable" that S.D. is a transfer student and cites to the decision in C.O. v. Norwood Borough Board of Education and Northern Valley Regional Board of Education, OAL Dkt. No. EDS 08419-22, Final Decision, Emergent Relief (January 30, 2023), where Judge Celentano found as follows:

> The Third Circuit Court of Appeals has consistently, and most recently in Y.B. ex rel. S.B. v. Howell Twp. Bd. of Educ., 4 F.4th 196 (2021), held that "the 'stay-put' provision does not apply when a student voluntarily transfers districts within a state, and the new school district can satisfy the IDEA by complying with the intrastate transfer provision [at N.J.A.C. 6A:14-4.1(g)(1)]." According to the Third Circuit, the purpose of the stay-put rule – "implementing 'a type of "automatic preliminary injunction" preventing local educational authorities from unilaterally changing a student's existing educational program'" – "is not implicated . . . when a parent unilaterally acts to change a student's school district." Id. at 200 (quoting M.R., 744 F.3d at 118; Michael C. ex rel. Stephen C. v. Radnor Twp. Sch. Dist., 202 F.3d 642, 650 (3d Cir. 2000)). Instead, "[w]hen a student voluntarily transfers to a new district, 'the status quo no longer exists,'" and "[i]n such situations, the parents of the student must accept the consequences of their decision to transfer districts." Ibid (quoting Ms. S. v. Vashon Island Sch. Dist., 337 F.3d 1115, 1133 (9th Cir. 2003)).
>
> The problem with Northern Valley's position is that C.O. and his parents did not "voluntarily transfer" from Norwood to Northern Valley. To the contrary, C.O. and his parents have, at all relevant times, lived in Norwood. It is by operation of the legal arrangement between Norwood and Northern Valley that C.O.'s "school district of residence" changed from Norwood to Northern Valley for the ninth grade.[1] In this sense, the "move" from the Norwood school district to the Northern Valley school district is "involuntary;" indeed they did not 'decide' to transfer districts. Thus, Northern Valley's argument that C.O. is an "intrastate transfer" student within the meaning of N.J.A.C. 6A:14-4.1(g)(1) is untenable because C.O.'s parents did not "voluntarily transfer" or "unilaterally" move their residence from one district to another.
>
> [Ibid.]

Similarly here, S.D. attended the K–8 district. They have lived in the district and did not voluntarily transfer or move from one district to another. Furthermore, as petitioners pointed out, Dr. Howland had an articulation meeting with the Marlboro CST

[1] Neither Norwood nor Northern Valley fully addressed or explained the legal relationship or arrangement under which Norwood, a K-8 district, sends its students to Northern Valley, a regional high school district. Their relationship presumably arises under N.J.S.A. 18A:13-1 to -81, which govern regional school districts. In any event, the parties do not dispute C.O.'s right to attend a Northern Valley high school as a resident of Norwood.

in January 2025 discussing S.D.—such meeting would not occur in a typical transfer situation. I agree.

Moreover, under N.J.A.C. 6A:14-4.1:

> g) When a student with a disability transfers from one New Jersey school district to another, or from an out-of-State school district to a New Jersey school district, the child study team of the school district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:
>
> 1. For a student who transfers from one New Jersey school district to another New Jersey school district, the IEP shall be implemented as written if the parents and district board of education agree. If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.
>
> 2. If the student transfers from an out-of-State school district, the appropriate district board of education staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.
>
> 3. The appropriate district board of education staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The school district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.

Here, the respondent's argument fails if it considered S.D. as a transfer student. The FHS CST did not meet with the parents at any time. In June 2025, at the re-evaluation meeting, no one showed up from the District even though they were made aware that S.D. would be a student in the District since February 2025. Dr. Howland, in her certification, stated that S.D. became a student of the District on July 1, 2025. Pursuant to N.J.A.C. 6A:14-4.1, respondent had thirty days to develop an IEP, "If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student." This clearly was not done here. I therefore **CONCLUDE** that the respondent unilaterally placed S.D. in a Severe LLD program in violation of N.J.A.C. 6A:14-4.1 and that S.D. is not an intrastate transfer student.

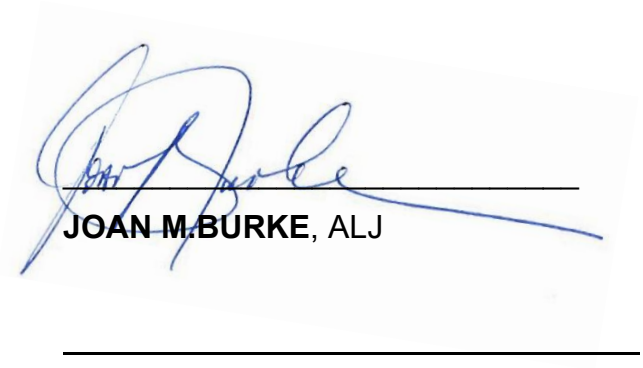
Our courts recognize compensatory education as a remedy under the IDEA, which should be awarded for the time period during which the school district knew or should have known of the inappropriateness of the IEP, allowing a reasonable time for the district to rectify the problem. M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996). Compensatory education requires school districts to "belatedly pay expenses that [they] should have paid all along." Id. at 395 (citation omitted). I **CONCLUDE** in the present controversy that the matter was not fully addressed and should be part of the underlying due process hearing.

ORDER

Accordingly, I **ORDER** that the petitioners' application for emergent relief is **GRANTED**. The Freehold Regional High School District Board of Education is hereby directed to immediately transfer S.D. into the Colts Neck High School Moderate LLD program until the underlying due process petition is adjudicated.

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 parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). If the parent 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.



September 9, 2025

JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JMB/sw/sb/jm

APPENDIX

Exhibits

For petitioners

P-1 Petitioners' submission accompanying the emergent appeal with Exhibits A-Y; AA-BB

P-2 Reply Brief, dated September 8, 2025

For respondent

R-1 Respondent's September 4, 2025, Brief in Opposition to the Application for Emergent Relief with Certification of Dr. Jessica Howland, with Exhibits A through C