State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
EMERGENT RELIEF
OAL DKT. NO. EDS 15764-25
AGENCY DKT.NO. 2026-39696

M.W. ON BEHALF OF M.W.,
Petitioners,
v.
LAKELAND REGIONAL
BOARD OF EDUCATION,
Respondent.

Jamie Epstein, Esq., for petitioners M.W. on behalf of M.W.

Jessica Kleen, Esq., for respondent (Machado Law Group)

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

BEFORE: **DANIELLE PASQUALE** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, M.W., on behalf of M.W., filed an application for emergent relief asserting that the District needs to hold an immediate IEP meeting pending the resolution of the underlying due process which has yet to be transmitted to the OAL. They are also filing an underlying due process complaint Due Process Petition on under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 to 1482, alleging that Lakeland

(Respondent or District) deprived M.W. of a free and appropriate public education (FAPE) due to a break of services because the BOE failed to hold an IEP meeting for 25-26 school year in a timely fashion after the Final Decision authored by Judge Daniel Brown, ALJ, where he found there was no denial of FAPE. Emergent Relief is the only transmitted action to date and the only one for me to decide. To that end, I reviewed the file, the brief in support of the emergent application and opposition to same, the Certification of Petitioner MW, and all corresponding exhibits. I also held an initial settlement conference on the Emergent application on September 12, 2025, and heard oral argument on September 17, 2025. [1]

STATEMENT OF FACTS

M.W. is a 12th grade student who is eligible for special education and related services under the classification Other Health Impaired ("OHI") under the IDEA and state implementing regulations. He is fully included in general education supported classes and receives no related services. The District is the local educational agency responsible for his education. For the past several years, his Individualized Education Program ("IEP") was implemented for 9th and 10th grades placing M.W. at Lakeland Regional H.S. ("Lakeland"). Thereafter, no additional IEP was agreed upon due to on-going litigation at the OAL. As a result, the 2020 IEP became the "stay-put" placement for the 23/24 school year. As of the time of this oral argument, there is an operative IEP in place, and for all other relevant time frames, and the District has attempted to complete IEP meetings on August 26 and September 9th respectively and are in the process of attempting to schedule a final meeting this Friday, September 19 or Monday September 22nd for which petitioner did not respond.

The District argues there is no credible evidence or legal basis to grant emergent relief because Petitioner's request for emergent relief does not meet the required standards and is moot. As noted above, Lakeland has been attempting to hold an annual

[1] After the emergent filing, Mr. Epstein filed a Motion to Disqualify Ms. Kleen as an attorney for the District. After reading the motion papers and opposition to same, I denied the motion for the reasons stated on the record. While that may be an issue for certain factual issues during the underlying Due Process hearing, those factual issues were irrelevant to the Emergent application which was the only matter I have jurisdiction over.

review IEP meeting for many months prior to the due process hearing decided by Judge Daniel Brown, ALJ. (See Exhibit 3 of District's Opposition to the Motion to Disqualify. Petitioner requested the initial delay of the meeting until after a decision was rendered in that pending due process matter being handled by Judge Brown. Subsequently, an IEP meeting was held on August 26 and on September 9, 2025, and thus Petitioner's request for this emergent relief is moot. In fact, the District was unable to complete the IEP with mom on September 9, 2025 and is offering this Friday, September 19 or next Monday, September 22, 2025 with no response from petitioner. Counsel for Petitioner did not deny that and had no response when I asked if he had reason to believe that was not the truth. Moreover, the request fails to meet the required standards for emergent relief. A petition for emergent relief may be requested for issues concerning placement pending the outcome of due process proceedings. N.J.A.C. 6A:14-2.7(r). That is not an issue in this matter, as M.W. has an IEP in effect, the 8/2 and Petitioner is not claiming otherwise

As these facts are largely undisputed by Petitioner and are clearly supported by the existence of the current IEP, the IEP proceedings started September 9, 2025 and supported by the previously stipulated facts and exhibits as memorialized in Judge Brown's final decision dated July 28, 2025, as such, I **FIND** them as **FACT** in this matter.

LEGAL ANALYSIS

In accordance with N.J.A.C. 1:1-12.6, emergency relief may be granted "where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case . . . ." My determination in this matter is further governed by the standard for emergent relief set forth by our Supreme Court in Crowe v. DeGioia, 102 N.J. 50 (1986), as follows:

> The judge may order emergency relief … 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 success 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 relief is not granted.

ANALYSIS AND CONCLUSIONS

The issue before me is based on the largely undisputed facts and procedural history before me and whether the criteria for the granting of emergency relief have been met for me to order that an IEP meeting be convened immediately. The applicable regulation incorporates the well-established standard for injunctive relief set forth in Crowe v. DeGioia, 90 N.J. 126 (1982) above. [N.J.A.C. 6A:3-1.6]

With respect to the first prong, I **FIND** that petitioner will not suffer irreparable harm if the requested relief is not granted. No such harm has been identified here on the Petitioner's behalf. No facts or case law are present to support any irreparable harm. In fact, I **FIND** that the Petitioner's failed to respond and collaborate with the District multiple times in failing to consent to evaluations and failing to attend an IEP meeting until recently. As recently as today's oral argument, counsel for Petitioner had no appetite to schedule a date to finish the IEP meeting. The case law is clear that the harm must be both substantial and immediate. No such harm exists here as there is an operative IEP in place as a result of Petitioner finally attending and collaborating with the development of another IEP. See Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). As the District correctly argues, in the special education context, irreparable harm is generally substantiated when there is a substantial risk of physical injury to the child, or others, or when there is a significant interruption in or termination or educational services. M.H. v. Milltown Board of Education, 2004 N.J. AGEN LEXIS 677 (OAL Dkt. No. EDS 8411-03).

The threshold standard for irreparable harm in the area of education is showing that once something is lost, it cannot be regained. M.L. o/b/o S.L. v. Bd. of Educ. of the Twp. of Ewing, EDU 4949-09, Emergent Relief (June 15, 2009). Since money damages

are not available in education cases, and compensatory education is the only relief available, the analysis to be used is that if compensatory education, provided at a later date, cannot remedy the situation, then the harm is irreparable. Howell Twp Bd. of Educ. v. A.I. and J.I. o/b/o S.I., EDU 5433-12, Emergent Relief (May 2, 2012).

I have reviewed the second and third prong together because the merits and rights are intertwined here. Petitioners have a very high burden on this application with respect to proving these prongs. Petitioner has offered no facts or evidence to show that the lack of an operational IEP at the time of this emergent and thus cannot prove a denial of FAPE for this reason especially when there is a documented refusal by the parent to respond to the District to obtain evaluations or ultimately collaborate in attending an IEP meeting. To that end, I **FIND** that Petitioner's rights are not settled in this matter and thus, there is no likelihood of success on the merits.

On the last prong, I **FIND** that there is no irreparable harm to M.W. The Petitioner did not consent to evaluations and refused to schedule an IEP meeting after many attempts, and that when the equities and interests of the parties are balanced Petitioner will NOT suffer greater harm than Respondent should the requested relief be denied.

In balancing these interests, I **CONCLUDE** that petitioner has not satisfied her burden of proof on the Crowe convening another IEP meeting pending the resolution of the due process hearing, as laid out in her emergent application and that they weigh heavily in favor of denying the relief sought herein, as the IEP issue is now moot.

After hearing the oral arguments of petitioner and respondent and considering all documents submitted, I **CONCLUDE**, that the petitioner's motion for emergent relief is **DENIED**.

This decision resolves the application raised for emergency relief only as upon information and belief there is not yet an underlying due process complaint. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2). 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 Policy and Dispute Resolution.

September 17, 2025
DATE

DANIELLE PASQUALE, ALJ

Date Received at Agency: September 17, 2025

Date Mailed to Parties: September 17, 2025

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