State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER
DENYING EMERGENT RELIEF
OAL DKT. NO. EDS 16347-25
AGENCY DKT. NO. 2026-39773

N.E. ON BEHALF OF H.E.,
Petitioner,
v.
TEANECK TOWNSHIP
BOARD OF EDUCATION,
Respondent.

N.E., petitioner, appearing pro se

Margaret Miller, Esq., for respondent (Weiner Law Group, attorneys)

Record Closed: September 25, 2025 Decided: September 26, 2025

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

Petitioner seeks emergent relief directing the respondent, Teaneck Township Board of Education (Board or District) to provide an appropriate education for his minor son, including educational services at Bonnie Brae, a private school approved to educate students with disabilities, where H.E. resides for continuing substance abusage

and has a 504 Plan that does not specify why such a placement is necessary to address his ADHD disability. Is petitioner entitled to emergent relief? No. The petitioner must satisfy all four criteria for emergent relief as required by Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982).

PROCEDURAL HISTORY

On September 19, 2025, the petitioner filed a request for emergent relief with the New Jersey Department of Education, Office of Special Education (OSE). The OSE transmitted the emergent request to the Office of Administrative Law (OAL) for a hearing as an emergent contested matter. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-23. An oral argument on the emergent request was heard on September 25, 2025, via Zoom due to the petitioner's presence outside the state, and the record was closed.

On September 25, 2025, counsel for Bonnie Brae submitted correspondence and documentation, which this tribunal does not consider, as Bonnie Brae is not a party to this litigation and did not seek to intervene.

On the same date, H.E.'s stepfather, M.A., also appeared on the Zoom through notice by H.E., but he is not named in the petition as a party on behalf of H.E. H.E.'s father is not the custodial parent; he was unable to supply the New Jersey Superior Court's order regarding H.E.'s initial placement at Bonnie Brae. M.A. supplied this order, dated June 4, 2024.

FACTUAL DISCUSSION AND FINDINGS

Based on the documentary evidence presented by the parties in support of and in opposition to the motion, and based on the arguments presented during oral arguments, I **FIND** the following as **FACT** for purposes of this application only:

The petitioner is the parent of H.E., a seventeen-year-old student who attended school in the District before his arrest. An order of the New Jersey Superior Court, dated June 4, 2024, placed him at Bonnie Brae. The order advises that following

H.E.'s arrest and placement at the juvenile detention center, the Sheriff's department would transport him to Bonnie Brae, noting he had substance abuse and mental health issues, which led to aggressive and runaway behavior. The order does not direct Bonnie Brae to provide educational services. The District only received a copy of this order on the date of the oral argument.

Soon after, the District received notification of H.E.'s placement at Bonnie Brae. At that time, H.E. was a general education student and had no eligibility classification for special education and related services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 to 1419. As such, H.E. did not have an individual educational program ("IEP"). Instead, H.E. had a 504 Plan for a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) while attending the District's schools under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794 (Pub. L. 93-112. Title V, §504, as amended). The 504 Plan provided limited accommodations for H.E.'s ADHD diagnosis, which included preferential seating, extended time for assignments and assessments, clarification of instructions, and access to FORUM counselors, as well as weekly check-ins with school counselors.

H.E.'s medical insurance pays for the residential and therapeutic portion of his services at Bonnie Brae. Bonnie Brae requested that Teaneck, the then-local education agency (LEA), pay for his educational program. In June 2024, Bonnie Brae requested that the Board execute a letter of intent committing to payment of $78,850 for tuition or $87,740 for tuition plus extended school year (ESY) services for H.E. for the 2024-25 school year. The 504 Plan did not include ESY. In doing so, Bonnie Brae provided the District with the New Jersey-mandated tuition contract, as outlined in N.J.A.C. 6A:23A-18.5(a), for private schools serving students with disabilities.

On August 5, 2024, the Board advised Bonnie Brae that it would not provide a letter of intent as the District did not classify H.E. as eligible for special education and related services. The District received only an interim New Jersey Superior Court order dated April 18, 2024, from his parents that did not indicate a placement at Bonnie Brae.

On August 6, 2024, H.E.'s custodial parent, D.A., requested that the District's Child Study Team (CST) evaluate H.E. for special education services. In September, the parents registered H.E. in Bernards Township, the school district where Bonnie Brae is located, and he was to attend Ridge High School for the upcoming school year. The District asserts that Bernards Township was the local school district responsible for educating H.E. upon registration, and the District was legally responsible for paying the per-pupil cost associated with H.E.'s attendance at Ridge High School.

Following an eligibility meeting conducted on November 4, 2024, the District advised H.E.'s parents that it had determined that H.E. was ineligible to receive special education services. The District reviewed records from Bonnie Brae, the District, and Ridge High School. The District also observed H.E. at Ridge High School. The District advised that it considered classifications of emotional regulation impairment, other health impairment, and specific learning disability, but declined to find eligibility in those areas. Specifically, H.E. was regularly using and abusing substances that majorly impacted his functioning, and he engaged in such behaviors when educational issues, such as excessive absences and tardiness, were first present. Although he had a long-standing diagnosis of ADHD, his 504 plan provided accommodations that allowed him to achieve adequate improvement through eighth grade when H.E.'s unfortunate substance abuse began, and absences accumulated. The District maintained that H.E. was polite, respectful, and academically capable. H.E.'s parents did not challenge that determination.

Immediately following the CST evaluation, Bonnie Brae advised the District that H.E. was receiving educational services at Bonnie Brae. Bonnie Brae mistakenly stated that it received a 504 Plan on November 4, 2024, from Teaneck, but Bernards Township created the 504 Plan, noting Bonnie Brae as its educational location. Indeed, the District did not consent to that placement, the 504 Plan update, or was involved in the process of H.E.'s educational placement at Bonnie Brae last year or this year. Like Bonnie Brae, Bernards Township is not a party in this case.

Ridge High School expressed that H.E.'s substance abuse and other behaviors

were escalating, and they are unable to meet his needs. He continued to skip classes and only completed minimal work. This situation led to the updated November 4, 2024, 504 Plan, which includes similar accommodations to the 504 Plan created by the District, but fails to state why Bonnie Brae was necessary or was an appropriate accommodation. H.E. attended Bonnie Brae with "some bumps in the road" until June 2025, or the end of the school year. H.E.'s intended release from Bonnie Brae in June 2025, and when he completes his current program, is to be under his father's care, who resides in Teaneck, New Jersey. However, H.E. soon relapsed with substance abuse, and he returned to Bonnie Brae, where he currently resides. The District was unaware of his June 2025 discharge or readmission until N.E. filed this application. Bonnie Brae is not presently providing educational services and did not receive payment for educational services from the District for the 2024-25 school year. Notably, the 504 Plan created by Bernards Township will expire on November 5, 2025.

Still, the District has not received updated documentation concerning H.E.'s current condition, medical or otherwise. H.E. did not earn significant course credits towards graduation while at Bonnie Brae, and H.E. still needs more than one hundred credits to graduate. Thus, the District maintains that H.E. should return to Bernards Township for general education with accommodations that are consistent with his 504 Plan.

The District also remains willing to provide online instruction to H.E. in many subjects with the availability of online live assistance, if necessary, pending the due process petition. Such a program would proceed at H.E.’s pace, meaning that he would progress to higher levels only when completing the coursework. However, it maintains that it is not responsible for tuition at Bonnie Brae and that H.E.'s educational placement under a 504 Plan at Bonnie Brae was always improper. N.E. has concerns about the appropriateness of online instruction for H.E. but offers no specific basis for these concerns. Certainly, H.E. has not attempted this platform. N.E. and D.A., the custodial parent, would need to consent to the provision of online instruction at Bonnie Brae.

LEGAL ANALYSIS AND CONCLUSIONS

Emergent relief can only be requested for the following educational issues under N.J.A.C. 6A:14-2.7(r):

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.

The petitioner seeks an order requiring the District to provide H.E. with appropriate educational services to meet his needs, given the lack of those services since school began in September and the District's unwillingness to pay for academic services at Bonnie Brae. Still, the petitioner does not elaborate on what program beyond Bonnie Brae would suffice. Regardless, analyzing the application in the most favorable light to the petitioner, I **CONCLUDE** that the issues concern a break in the delivery of services, and in part, placement pending the outcome of due process proceedings.

In essence, the petitioner asserts that the District should continue the previous placement, like "stay put" protections afforded to students with IEPs, which can prevent a school district from making changes to the student's program or placement pending a due process hearing. N.J.A.C. 6A:14-2.6(d)(10); N.J.A.C. 6A:14-2.7(u); see also 20 U.S.C. § 1415(j). Notably, the IDEA's "stay-put" provision acts as an automatic preliminary injunction. It protects the status quo of a child's educational placement while a parent challenges a proposed change to, or elimination of, services." Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (discussing 20 U.S.C. § 1415(j), the federal analog to New Jersey's stay-put provision N.J.A.C 6A:14-2.7(u)). C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 71-72 (3d Cir. 2010).

However, "stay put" provisions under the IDEA do not apply to students with 504 Plans, and the District did not suggest or consent to the educational placement at Bonnie Brae. Thus, I **CONCLUDE** that no preliminary injunction is available to the petitioner through "stay put.".

Instead, the petitioner must satisfy all four criteria for emergent relief as required by Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), codified in N.J.A.C. 6A:31.6(b), and set forth in N.J.A.C. 6A:14-2.7(s).

Under N.J.A.C. 6A:3-1.6, an ALJ may order emergency relief pending decision in the case, if the judge determines from the proofs presented 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.
>
> [Ibid.]

To be successful, an applicant must "clearly and convincingly" satisfy all four requirements. Crowe, 90 N.J. at 132-34; C.A. o/b/o M.A. v. Holmdel Twp. Bd. of Educ., No.: EDS 04497-23, 2023 N.J. AGEN LEXIS 520 at *18-20 (July 26, 2023) (quoting Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008)).

Irreparable Harm

Irreparable harm is defined as harm "'that cannot be redressed adequately by monetary damages.'" C.A., 2023 N.J. AGEN LEXIS 520 at *21 (quoting Crowe, 90 N.J. at 132-33). Indeed, 'the threshold standard for irreparable harm in the area of education is showing that once something is lost, it cannot be regained." Ibid. (citing M.L. o/b/o

S.L. v. Bd. of Educ. of the Twp. of Ewing, No.: EDU 4949-09, Emergent Relief (June 15, 2009)). Further, the petitioner must demonstrate more than a risk of irreparable harm; he 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." Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980).

The petitioner does not clearly address the emergent relief criteria in his application. However, H.E. is not currently receiving any educational services. Irreparable harm may occur "when there is a significant interruption or termination of educational services." C.B. o/b/o C.B. v. Jackson Twp. Bd. of Educ., EDS 4153-09, 2009 N.J. AGEN LEXIS 592 (September 9, 2009). Indeed, the Board does not dispute that H.E. may suffer harm if he continues not to attend any schooling. However, the Board maintains that a general education setting, like Ridge High School, can implement H.E.'s 504 Plan and is offering to provide online instruction while the due process petition is pending. In other words, though harm may occur absent any education services, this tribunal need not grant the requested relief to prevent that harm. The petition notes that H.E.'s current placement at Bonnie Brae occurred solely to address his relapse and return to drug usage, making no mention of his ADHD or other potential disabilities. Whether the petitioner believes other issues are present for H.E., the petitioner or his son's custodial parent, D.A., supplied no documentation to support different areas of disability or concerns unrelated to H.E.'s drug use.

Regardless, if an administrative law judge determines that H.E. lost any educational services based on the District's failures to provide an appropriate education, the court could award compensatory education to H.E. for H.E.'s benefit. This fact obviates a finding of irreparable harm because, "[b]y definition compensatory education is a method of making up lost ground." B.R. o/b/o R.R. v. Egg Harbor Twp. Bd. of Educ., No.: EDS 2091-02, 2002 N.J. AGEN LEXIS1256, *10 (Apr. 5, 2002).

Thus, I **CONCLUDE** that the petitioner has not adequately demonstrated that H.E. will suffer irreparable harm if the relief requested is not granted.

Settled Legal Right

Federal regulations implementing Section 504 mandate that schools provide a "free appropriate public education [FAPE]" to students with disabilities. 34 C.F.R. § 104.33(a) (2018). To meet the [FAPE] requirement under Section 504, schools must provide, at no cost, regular or special education and related aids and services designed to meet the needs of the student. 34 C.F.R. §§ 104.33(b), (c). Yet, the [FAPE] requirement slightly differs from the IDEA in that the measure of whether the education conferred under Section 504 is sufficient is that it must meet the student's needs "as adequately" as the needs of a non-disabled student[,] §§ 104.33(b), (c). Educational programming must also comply with the procedural obligations outlined in the regulations. § 104.33(b)(1)(ii).

Moreover, qualified students with disabilities must receive the same educational opportunities as other students within the district's jurisdiction. Every school district is obligated to provide a FAPE to qualified disabled students *in the regular education environment*. 34 C.F.R. § 104.34 (a) (emphasis added).. A school district must place a student with a disability *in the regular education environment* with other non-handicapped students unless that disabled student's education cannot be achieved satisfactorily, even with support aids and services. Ibid. (emphasis added).

The petitioner makes several claims, but none are well-settled in his favor. Although there has been a break in the delivery of services, this does not preclude the petitioner from enrolling H.E. in Bernards Township as the local school district. Indeed, H.E. could attend school and return to Bonnie Brae, as he had before. Although the petitioner suggests disciplinary action occurred at Ridge High School, the basis for such discipline is unclear, and neither Bernard Township nor the petitioner disclosed such discipline to the District. Ridge High School can accommodate H.E.'s ADHD, the only supported diagnosis presented to the District, consistent with their current 504 Plan and obligation to educate H.E. in the regular school environment, absent a showing that support aids, accommodations, and services are insufficient to address his disability.

Significantly, H.E.'s continuing drug use does not entitle him to accommodations under a 504 Plan. Indeed, the United States Department of Education website, in an article entitled Frequently Asked Questions: Section 504, affirms that current illegal users of drugs *are excluded from protection under Section 504*..[1] Indeed, H.E.'s drug usage does not constitute a physical or mental impairment that substantially limits any major life activity consistent with Section 504. SeeJ.M. v. Freehold Twp. Bd. of Educ., 95 N.J.A.R.2d (EDS) 133 (N.J. Adm. Mar. 17, 1995).

Further, to prevail on a Section 504 claim alleging the denial of a FAPE, a claimant must show that: (1) they are disabled as defined under the statutes; (2) they are otherwise qualified to participate in the program at issue; and (3) they were precluded from participating in a program or receiving a service or benefit because of their disability. Chambers v. Sch. Dist. of Phila. Bd. of Educ., 587 F.3d 176, 189 (3d Cir. 2009). Undeniably, the District provided a 504 Plan to address H.E.'s disability of ADHD, supporting that he is disabled. However, disputes exist as his qualification for the program at issue and whether he was precluded from attending because of his disability.

Thus, I **CONCLUDE** that the petitioner has not demonstrated that his petition is based upon settled legal rights against the District.

Likelihood of Success on the Merits

Prong two is often tied to the third prong under Crowe. The propriety of placing H.E. at Bonnie Brae with a diagnosis of ADHD accommodated through a 504, a far more restrictive environment than a general education setting, remains questionable. H.E.'s initial educational placement by Bernard's Township under a 504 Plan at Bonnie Brae, without any disability classification, occurred without the knowledge and consent of the District, as was the case with this year's placement after H.E. relapsed. Ridge High School could have discussed other modifications to support H.E. further. Instead, Bernard's Township updated the 504 Plan to place him at Bonnie Brae, absent a clear

[1] See https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination]frequently-asked-questions-section504-free-appropriate-public-education-fape#illegal-users-drugs, Question 15.

need for H.E. to be there to receive the accommodations noted in the 504 Plan or in consultation with the District. To be sure, H.E.'s illegal drug use does not constitute a disability under Section 504. The parents did not challenge the District's determination not to classify H.E. as eligible for special education services under the IDEA or provide additional documentation for the District's consideration to suggest such a need or that the accommodations in the 504 Plan are insufficient to address his known disability. Thus, whether the District is responsible for payment of education services at Bonnie Brae beyond a "cost-per-pupil" reimbursement, which they are willing to pay, remains unclear under these circumstances.

Therefore, I **CONCLUDE** that the petitioner has not sufficiently demonstrated his likelihood of prevailing on his underlying petition.

Balancing of the Equities

Given the unsettled factual and legal questions and the apparent absence of necessary parties in this case, the equities balance in favor of conducting a complete due process hearing on the merits to determine what constitutes the District's obligations to H.E. Both parties have an interest in ensuring that H.E. receives an appropriate education in the least restrictive environment. However, the propriety of continuing H.E.'s placement at a private school at a cost of nearly $80,000 a school year, despite being a general education student, is questionable. Furthermore, if legal questions remain, they can only be adequately addressed through a full and fair hearing on the merits. Thus, I **CONCLUDE** that the petitioner has failed to establish that H.E. will suffer greater harm if the requested relief is not granted.

Therefore, **I CONCLUDE** that the petitioner has not satisfied the standard for emergent relief and that this tribunal must DENY his request. Nothing in this order prevents the parties from exploring alternative educational services at Bonnie Brae. For example, other outpatient options that might be covered, in part, by insurance with greater educational opportunities could require less contribution from the District in covering educational costs, more in line with the District's cost of educating a student with a 504 Plan and the accommodations necessary to address his disability, e.g., the

cost per pupil.

ORDER

Based on my factual findings and conclusions of law, I hereby **ORDER** that the petitioner's request for emergent relief seeking an order requiring the District to continue the educational placement at Bonnie Brae or develop an appropriate program, absent any updated information about H.E.'s current condition, pending resolution of the due process proceeding, 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. 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 26, 2025

DATE

NANCI G. STOKES, ALJ

Date Received at Agency September 26, 2025

Date Mailed to Parties: September 26, 2025

NGS/ljb