



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

ON EMERGENT RELIEF

OAL DKT. NO. EDS 17322-25

AGENCY DKT. NO. 2026-39825

**MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

S.B. ON BEHALF OF M.B.,

Respondent.

Jared S. Schure, Esq., for petitioner (Methfessel & Werbel, attorneys)

S.B. on behalf of M.B., respondent, pro se

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

STATEMENT OF THE CASE

Middletown Board of Education (petitioner or District) by way of due process petition brings an action for emergent relief against S.B. on behalf of M.B. (respondent), seeking an order for home instruction for the student, pending an appropriate interim alternative educational setting, for no more than forty-five days.

PROCEDURAL HISTORY

The District filed a request for emergent relief and a due process hearing on October 6, 2025, at the State Office of Special Education (OSE). On October 6, 2025, the OSE transmitted both matters to the Office of Administrative Law (OAL) as a contested case, seeking emergent relief for the District and the due process request on behalf of the District. The hearing was scheduled for October 15, 2025; however, the respondent stated she had not received the due process petition and requested an attorney. The petitioner consented to a seven-day adjournment. The parties presented oral argument on the emergent relief application on October 22, 2025, utilizing the Zoom platform. Respondent argues that she received the documents for the hearing on Tuesday, October 21, 2025, and she was not properly served. The petitioner has provided appropriate documentation to confirm that respondent was served appropriately. (See Process Service, attached here as P-1.)

FACTUAL DISCUSSION

The following facts are not in dispute; therefore, I **FIND** the following as **FACT**:

Petitioner

M.B. is a six-year-old kindergarten student attending New Monmouth Elementary School (New Monmouth). S.B. is the mother and guardian of M.B. The student resides with her parent in Middletown, New Jersey. The student is currently classified under the category of autism and is receiving special education and related services. M.B. was placed in a self-contained autism classroom at New Monmouth with a 1:1 paraprofessional.

Between September 9, 2025, and September 30, 2025, M.B. has been involved in numerous incidents of aggression towards staff and students. The following incidents occurred:

- On September 9, 2025, staff physically restrained M.B. after she ran into a bathroom and attempted to hit her head on the floor. (Grenger Certif. at ¶9.)
- On September 15, 2025, staff physically restrained her on three occasions: first, she attempted to elope from the classroom, flopped herself onto the floor, banged her head, and tried to kick staff; second, she climbed on furniture, ran in the classroom, and hit another student in his back; and third, she tried to elope into a field. Later that day she was heard screaming “Mommy, I don’t want to go to school,” “Mommy, he punched me in the stomach,” “Mommy, I’m sorry,” and “I can’t breathe.” (Grenger Certif. at ¶10.)
- On September 17, 2025, staff had to physically restrain M.B. five times: first, she fell on the floor, attempted to bang her head on the tile floor, and kicked and hit her teacher and paraprofessional; second, she dumped all the trash out of the trash bins, flipped over all of the tables and chairs in the classroom, and ran to another student and screamed “I hate you” and bit the student’s chest; third, she kicked, punched, and spit at staff; fourth, she engaged in self-injurious behaviors; and fifth, she ran through the classroom, hid under a table, attempted to bang her head, bit her hand, bit staff, and kicked staff. (Grenger Certif. at ¶11.)
- On September 19, 2025, M.B. engaged in property destruction, biting herself, biting staff, and banging her head. (Grenger Certif. at ¶12.)
- On September 22, 2025, M.B. slept the entire school day. (Grenger Certif. at ¶13.)
- On September 24, 2025, M.B. sat under a table and screamed “Don’t touch me”; eloped from the classroom; attempted to bite, push, and kick staff members; dug her fingernails into herself; attempted to pull her braids out;

screamed “My ears are itchy”; attempted to bite her hands and feet; and sat on a mat, took off her pants and underwear, and urinated on the mat. (Grenger Certif. at ¶14.)

- On September 24, 2025, M.B. hit and kicked a board-certified behavior analyst (BCBA) in the head. The BCBA is out from work with a concussion. (Grenger Certif. at ¶16.)
- On September 25, 2025, M.B. bit her classroom teacher, breaking the skin. The teacher was forced to miss work on September 26 and 29. (Grenger Certif. at ¶17.)
- On September 26, 2025, M.B. exposed another BCBA to her body fluids. The BCBA has been out of school since then due to stress and awaiting test results for exposure to pathogens. (Grenger Certif. at ¶18.)

On September 26, 2025, the District proposed an interim home-instruction individualized education program (IEP). This would allow M.B. to continue to receive special education, but do so in an environment where she would not endanger herself or others. (Grenger Certif. at ¶20.)

The District posits that given M.B.’s extreme behaviors and emotional instability, the District’s child study team strongly suspects that M.B. may be suffering from a psychiatric illness. The District would like to conduct a psychiatric evaluation. (Pet’r’s Br. at 6.)

On September 30, the District director of special education, Jennifer Grenger, emailed a consent form for a psychiatric evaluation to S.B. (Ibid.) There has been no response. Grenger also sent release forms to permit the IEP team to send M.B.’s records to CPC High School and the Educational Academy for an out-of-district placement that could educate students with M.B.’s behavioral and academic profile. (Id. at 7.)

With this application seeking emergent relief, the District seeks to:

(1) place M.B. on interim home instruction pending identification of and enrollment in an appropriate out-of-district placement; (2) permit the District to conduct a psychiatric evaluation of M.B. and (3) permit the District to send M.B.'s records to CPC High Point School, The Education Academy, and any other schools the school-based members of the IEP team deem appropriate and compel respondent to cooperate with the intake process.

[Pet'r's Br. at 7–8.]

Respondent

The parent contends that she has no opposition to M.B. obtaining a psychiatric evaluation. She, however, opposes out-of-district placement. She argues that she has no transportation and worries how to go on tour of any out-of-district school. S.B. said that she is not able to read, and that has created issues for her and with getting appropriate services for her children. Because S.B. is unable to read, having her children attend school is paramount. S.B. requests a new case manager. S.B. argues that no one talks to her from the District. S.B. said she calls the school her daughter attends, but no one returns her call.

DISCUSSION AND CONCLUSIONS OF LAW

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district, or public agency 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, and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to 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.

Here, the District seeks an order to immediately place the student in an alternative placement of home instruction pending an appropriate interim alternative educational setting for no more than forty-five days. Therefore, I **CONCLUDE** that the issue involves determination of an interim alternate educational setting.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6(b):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying 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.

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

Here, irreparable harm is established because of the foreseeable risk of injury and danger to others given that M.B., not in one instance but in many, engaged in aggressive behavior such as hitting, slapping, banging her head on the floor, biting staff members with sufficient force to break the skin, and causing a Board Certified Behavior Analyst (BCBA) to

sustain a concussion resulting in extended leave from work. This behavior cannot be tolerated. Based upon the foregoing, I **CONCLUDE** that the District has met its burden of establishing irreparable harm.

A board of education is entitled to seek an order changing the placement when maintaining the current placement of a student is substantially likely to result in injury to the child or to others. 20 U.S.C. § 1415(k)(3)(A). Additionally, a board of education may apply for emergent relief under N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(r). Accordingly, I **CONCLUDE** that the District has met its burden that the legal right of its claim is settled.

The third prong of the test for emergent relief requires that petitioner has a likelihood of success on the merits. Petitioner argues that the District has made significant efforts to minimize the risk of harm and maintain a safe environment, but the efforts were not successful. Petitioner, as a matter of law, must address M.B.'s behavior and her disability in developing an appropriate IEP. The only avenue available is to evaluate M.B. and determine an appropriate placement. The safest alternative at the moment is home instruction. In this regard, I **CONCLUDE** that the petitioner is likely to prevail on the merits.

The final requirement for relief entails a balancing of interests between the parties. Petitioner asserts that if M.B. remains at New Monmouth, it is substantially likely that an injury will occur. It is undisputed that M.B. has engaged in disruptive behavior; she has kicked, slapped, bit, and punched staff members with staff members having injuries that required medical attention; and one teacher has obtained a concussion, which fit within the definition of serious bodily injury. Here, both the petitioner and respondent will suffer irreparable harm if the requested relief is not granted. If granted, M.B. will receive an education via home instruction pending evaluation. This is the least restrictive environment. M.B. needs to have evaluations done and a proper placement made according to her needs. The petitioner, if the requested relief is not granted, will be unable to ensure the safety of its students and staff, and unable to ensure the ability of its students, particularly the classmates of M.B., to receive an appropriate education in a safe environment. I **CONCLUDE** that the petitioner has met this prong.

N.J.A.C. 6A:14-2.7(n) provides: “To remove a student with a disability when district board of education personnel maintain that it is dangerous for the student to be in the current placement and the parent and district board of education cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days [. . .]” The OAL has previously granted emergent relief in similar circumstances. See Gloucester City Bd. of Educ. v. A.H. and K.S. ex rel. G.H., 2015 N.J. AGEN LEXIS 570, Wayne Twp. Bd. of Educ. v. G.G. and S.W. ex rel. G.G., 2017 N.J. AGEN LEXIS 359, and Washington Twp. Bd. of Educ. v. H.M. ex rel. R.M., 2019 N.J. AGEN LEXIS 706.

Based upon the foregoing, I **CONCLUDE** that petitioner’s request for emergent relief should be granted.

ORDER

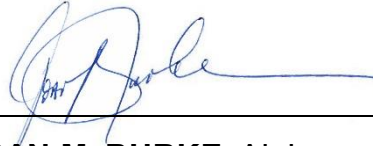
It is hereby **ORDERED** that petitioner’s request for emergent relief is **GRANTED**. **IT IS FURTHER ORDERED** that M.B. be placed in the appropriate interim alternative education setting of home instruction for forty-five calendar days because M.B.’s current placement is substantially likely to result in injury to M.B. or others. Since the parent, S.B., has no objection to a psychiatric evaluation of M.B., **IT IS FURTHER ORDERED** and the respondent has **AGREED** to allow the District to conduct a psychiatric evaluation of M.B. It is also **ORDERED** that the respondent is compelled to enable the District to obtain releases and/or exchange M.B.’s student records and cooperate with the intake process. The District should be mindful of another mode of communication because S.B. stated on the record that she is unable to read.

This order on application for emergency relief shall remain in effect until issuance of the decision on the merits in this matter. The parties will be notified of the scheduled hearing dates. 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.

October 23, 2025

DATE



JOAN M. BURKE, ALJ

Date Mailed to Agency:

Date Mailed to Parties:

JMB/sa/jm

APPENDIX

Exhibits

For petitioner:

District's Petition and Brief with Certification, dated October 6, 2025

For respondent:

None