



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 19005-25

AGENCY DKT. NO. 2026-39969

S.S. AND H.A. ON BEHALF OF I.S.,

Petitioners,

v.

ELIZABETH CITY BOARD OF EDUCATION,

Respondent,

AND ECLC,

Intervenor.

Michael Inzelbuch, Esq., for petitioners

Richard Flaum, Esq., for respondent (DiFrancesco, Bateman, Kunzman, Davis,
Lehrer & Flaum, attorneys)

Peter Petrou, Esq., Intervenor, appearing pursuant to N.J.A.C 1:1-16

Record Closed¹: November 13, 2025

Decided: November 14, 2025

¹ This matter is final with record closed only as to the Application for Emergent Relief. The due process petition remains at the OSE.

BEFORE **AURELIO VINCITORE**, ALJ:

STATEMENT OF THE CASE

On November 3, 2025, S.S. and H.A., petitioners were informed that their son, I.S., was being terminated immediately from further attendance at the out-of-district (OOD) placement secured through his Individualized Education Program (IEP). Petitioners simultaneously filed for emergent relief and a due process petition since I.S. has been without a placement or services under the IEP since the termination. Is the child entitled to emergent relief? Yes. A student's current educational placement is the IEP in place when the 'stay-put' is invoked. Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996).

PROCEDURAL HISTORY

On November 3, 2025, ECLC, an OOD private school secured through I.S.'s IEP with respondent, Elizabeth Board of Education (EBOE), informed petitioners that I.S. was immediately being terminated from his placement at the school. On November 4, 2025, Petitioners filed an emergent relief request in the form of seeking a temporary order for stay put and the continuation of placement at ECLC and request for a due process hearing. On November 5, 2025, the Department of Education, Office of Special Education (OSE), received the emergent relief and due process petitions. The due process petition is currently in the thirty-day resolution process. OSE transmitted the application to the OAL on the same day where it was filed as an emergent contested case.

On November 12, 2025, I received a Motion to Intervene by ECLC. On November 13, 2025, I granted ECLC's Motion to Intervene and heard oral argument from counsel for all parties.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motion for emergent relief, I **FIND** the following as **FACT**:

I.S. is a non-verbal, fifteen-year-old student attending ECLC and is eligible for special education services under the classification of “multiple disabilities”, in part, because of “moderate intellectual disability” and “other health impairment”. ECLC is a private school for students with disabilities. I.S. has been a student at ECLC’s Chatham Campus since October 2023 under an IEP developed with EBOE. I.S. has several important supports made available to him during the school day. This includes a 1:1 personal nurse who assists with nourishment through a feeding tube and a personal aide during the school day; an occupational therapist; a speech therapist; and a registered behavioral therapist.

Petitioners and ECLC have had some disagreements over the services provided to I.S. These disagreements culminated in a November 3, 2025, letter informing petitioners that I.S. was terminated from his placement at ECLC. Since that time, I.S. has been out of a school setting. Shortly after being informed, EBOE set up an IEP meeting on November 14, 2025, to discuss future placement.

CONCLUSIONS OF LAW

Petitioners, through this emergent application, seeks an order to return I.S. to ECLC while awaiting the adjudication of a due process hearing petition.

In special education matters, emergent relief shall only be requested for the following issues:

- 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.

[N.J.A.C. 6A:14-2.7(r)(1)]

Here, the petitioners seek emergent relief relating to I.S.'s placement pending the outcome of the underlying due process proceeding.

Both federal and New Jersey regulations establish procedural safeguards to prevent the arbitrary change of a student's placement absent notice and consent. 20 U.S.C. § 1415(j); N.J.A.C. 6A:14-2.7(u). Here, petitioners sought to prevent the unilateral termination of placement under the current IEP by timely filing for a due process hearing. Ibid. Once a timely request for due process hearing is filed, stay-put acts as a preliminary injunction that maintains or freezes the status quo under 20 U.S.C. § 1415 (e)(3). Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996). Moreover, "a parent may invoke stay-put when the school proposes a change to the child's then-current educational placement." C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 72 (3d Circuit 2010). The student then remains in the then-current educational placement until the due process petition and related proceedings are resolved.

Respondent contends that it has no authority to stop the termination of placement decision by a private school and that petitioners cannot meet the standard for obtaining

emergent relief as set forth in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). However, as stated above, a Crowe analysis does not apply when petitioners are seeking a stay put order following the timely filing of a request for a due process hearing. Additionally, P.N. v. Greco, 282 F. Supp.2d 221, demonstrates that a school district and a private school in New Jersey can both be held subject to the procedural safeguards under the Individuals with Disabilities Educational Act (IDEA). 20 U.S.C. § 1400, et seq. Greco held that approved private schools that receive disabled students must enter into contract with the school district provided by the State. In that standard agreement, private schools agree to provide services as described in the child's IEP in accordance with the applicable federal law, New Jersey statutes, and rules and regulations and agrees to operate in accordance with same. Id. at 234.

From that standard agreement between the sending school district and the receiving private school both parties are obligated to operate in accordance with N.J.A.C. 6A:14-7.7, which regulates termination or withdrawal by a receiving school. Under N.J.A.C. 6A:14-7.7 (a)(1) an IEP meeting must be scheduled within 10 days of any proposed change in placement status and the district board of education must provide written notice to the parents under N.J.A.C. 6A:14-2.3. Any proposed termination of placement must be in accordance with the provisions of the contract between the receiving school and the district board of education. This means that both the sending school district and the receiving private school are subject to the requirements of the IDEA. As Greco details, "one reason for the notice periods in a change of placement, is to enable parents to take advantage of IDEA's stay-put provision contained in the section of the IDEA governing procedural safeguards and due process hearings." Id. at 235

Here, ECLC sent notice that they were terminating the placement of I.S., effective immediately, on November 3, 2025. EBOE appears to have found out that day about the receiving school's decision and sought to schedule a new IEP meeting, which they set for November 14, 2025. However, neither ECLC, nor EBOE provided petitioners with advanced notice of this change in placement before it was implemented. Instead,

petitioners are left without a placement for I.S. and immediately filed a request for emergent relief under stay put and a due process hearing application on November 4, 2025. This is precisely the scenario that Greco persuasively guides this court to avoid under circumstances that were very similar.

As such, I **CONCLUDE** that I.S. is entitled to stay-put in his current agreed-to educational placement, which is ECLC under the IEP in place at the time of the termination letter sent by ECLC on November 3, 2025, until the underlying due process petition is resolved.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner's application for emergent relief is **GRANTED** and I.S. shall be returned to school, and he shall receive educational services under current IEP pending the outcome of the due process petition.

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).

November 14, 2025

A handwritten signature in blue ink, reading "Aurelio Vincitore", is positioned above a horizontal line.

DATE

AURELIO VINCITORE, ALJ

Date Received at Agency:

11/14/25

Date Mailed to Parties:

11/14/25

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