



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING
EMERGENT RELIEF TO
RESPONDENT

OAL DKT. NO. EDS 14603-25

AGENCY DKT. NO. 2026-39609

G.J. AND T.J. ON BEHALF OF W.J.,

Petitioners,

v.

**CINNAMINSON TOWNSHIP BOARD
OF EDUCATION,**

Respondent.

Sarah E. Zuba, Esq., for petitioners (Reisman Gran Zuba LLP, attorneys)

Danielle Pantaleo, Esq., for respondent (The Busch Law Group LLC)

BEFORE **MICHAEL R. STANZIONE**, ALJ:

STATEMENT OF THE CASE

Respondent Cinnaminson Township Board of Education (Board) filed a petition for emergent relief to change W.J.'s placement on a temporary basis pending the outcome of the underlying due-process case. Petitioners G.J. and T.J. on behalf of their child W.J. filed a cross-motion for emergent relief asking for an independent functional behavioral assessment (FBA) and for the Board to engage an independent agency to provide a

registered behavior technician. Is the Board eligible for emergent relief? Yes. The Board has satisfied all four prongs of the required standard. Crowe v. De Gioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b). Is W.J. eligible for emergent relief? No. The petitioners must show that they will suffer irreparable harm to receive emergent relief. Crowe v. De Gioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

PROCEDURAL HISTORY

The petitioners filed an underlying due-process petition at the Office of Special Education on or about July 28, 2025. On December 3, 2025, the matter was transmitted to the Office of Administrative Law, where it was filed as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4. Telephone conferences were held on December 5, 2025, and January 21, 2026. A due-process hearing was agreed to and scheduled for March 23, 2026, and March 26, 2026.

Respondent requested emergent relief on February 5, 2026. Oral argument on the emergent-relief petition was scheduled for February 9, 2026. Petitioners submitted an objection to the emergent petition and a cross-motion for emergent relief on February 9, 2026. During oral argument the parties both requested that the record remain open until the end of the day on February 10, 2026. The record was closed on February 10, 2026.

FINDINGS OF FACT

Based on the arguments the parties submitted and my assessment of their credibility, together with the documents the parties submitted and my evaluation of their sufficiency, I **FIND** the following as **FACT**:

1. W.J. is nine years old. His birthday is November 20, 2016. He is currently in the second grade. Certification of Darlene Llewellyn (Llewellyn Cert.).

2. W.J. is eligible for special education as a student with a disability under the classification category of multiply disabled. Ibid.
3. W.J. is diagnosed with trisomy-21 (Down syndrome) and had his thyroid removed in the summer of 2025, rendering him hypothyroid. He uses both speech and an augmentative and alternative communication (AAC) device due to some articulation and language needs.
4. On June 2, 2025, an individualized education program (IEP) meeting was held. Ibid.
5. The child study team (CST) proposed a program and placement in the pull-out resource (POR) replacement classroom for language arts and math and in-class resource (ICR) classroom for writing, science, and social studies with a one-to-one paraprofessional throughout the school day.
6. The June 2, 2025, IEP also proposed the following related services:
 - a. Individual physical therapy three times a month for twenty-five minutes;
 - b. Group physical therapy three times a month for twenty-five minutes;
 - c. Individual occupational therapy three times a month for thirty minutes;
 - d. Group occupational therapy three times a month for thirty minutes;
 - e. Individual speech and language therapy nine times a month for five minutes;
 - f. Group speech and language therapy six times a month for twenty-five minutes; and
 - g. Group social skills three times a month for thirty minutes.
7. The June 2, 2025, IEP also proposed an extended school year (ESY) in the in-class supplementary instruction–integrated curriculum with the following services:
 - a. Group occupational therapy one time a week for thirty minutes;

- b. Group physical therapy one time a week for twenty-five minutes;
 - c. Group speech and language therapy one time a week for twenty-five minutes;
 - d. A one-to-one aide.

8. W.J.'s parents did not agree or consent to the June 2, 2025, IEP.

9. W.J. has been a member of a general education classroom where he has spent his full educational day, other than related services, for full school years. His IEPs all include narrative and quantitative reports of progress in all areas—academic, social, communicative, and behavioral.

10. W.J.'s IEP provides for supplementary aids and services, including a one-to-one aide, individualized instruction and modified curriculum and assessments, and whole group, small group, and one-on-one instruction, giving him access to an essentialized version of the general education curriculum.

11. W.J.'s parents believe that W.J. should remain in the general education ICR program and placement for the remainder of the 2025–2026 school year.

12. W.J.'s documented behaviors include physical contact, disruptive behavior, and insubordination.

13. Since the beginning of the 2025–2026 school year the following incidents have been documented:
 - a. On September 12, 2025, W.J. hit another student with a plastic tennis racket on her arm and head. Exhibit C.

 - b. On December 3, 2025, W.J. refused to follow a teacher's direction and got angry and pushed his desk over, hitting a classmate's arm and causing injury. Exhibit D and Llewellyn Cert.

- c. On January 8, 2026, W.J. ran from his aide, threw papers, removed shoes and glasses, and hit his aide and teacher. Continued behaviors during specials included rolling on the floor, kicking objects, and yelling. He was removed from the classroom to the hallway, where he completely disrobed. Exhibit E.
- d. On January 9, 2026, W.J. pushed another student and hit his aide, ran and pushed items off students' desks, and threw objects, directed at staff or students. The classroom was evacuated for the safety of W.J. and others. Llewellyn Cert. and Exhibit F.
- e. On January 13, 2026, W.J. rolled away on the ground from his aide, and attempted to run towards the woods and road. He refused to put shoes on and threw his glasses, climbed on furniture, and kicked/hit staff. He laid on the floor of a classroom kicking peers' backpacks and refused to join the class or complete work. Llewellyn Cert. and Exhibit G.
- f. On January 14, 2026, W.J. verbally refused to participate, lying on the floor and removing his shoes and throwing them at students sitting at their desks. He removed his glasses and began swinging them at his aide. The classroom was evacuated for the safety of W.J. and others. W.J.'s behaviors continued to be aggressive, including repeatedly kicking and running and hitting his aide. He threw various materials in the classroom, including headphones, folders, books, and his school-issued Chromebook. Llewellyn Cert. and Exhibit H.
- g. On January 15, 2026, W.J. verbally refused to participate in class, threw items directed at other students in the classroom, hit, kicked, and punched his aide and teacher. The classroom was evacuated for the safety of W.J. and others. Llewellyn Cert. and Exhibit I.

- h. On January 20, 2026, W.J. dropped to the floor and threw glasses at his peers. While verbally refusing to participate in class, W.J. removed his shoes and attempted to throw them toward his classmates, while successfully throwing a shoe at his teacher's face. W.J. attempted to elope and became non-compliant by hitting, punching, and yelling at his one-to-one aide. W.J. attempted to touch the fire alarm and continued elopement behaviors, where he ran through the hallway doors and opened the door to the outside, attempting to exit the building. During his several attempts to elope, W.J. continued hitting, punching, yelling, and throwing papers from a desk. He also attempted to grab a fire extinguisher. Once he returned to his classroom he continued to hit, kick, punch, and yell, attempting to pull items off the walls and knock over chairs. He attempted to throw a laptop, and successfully threw his "talker," papers, and fidgets. The classroom was evacuated for the safety of W.J. and others. While in the classroom without other students, W.J. began to completely disrobe and threw his clothes and glasses across the room. Despite multiple prompts, W.J. refused to dress. The school office was notified and W.J.'s parent was called to pick him up from school. Llewellyn Cert. and Exhibit J.
- i. On January 21, 2026, W.J. threw his glasses and a peer's glasses case off his desk and across the classroom. W.J. attempted to grab candy off the teacher's table and began to yell and hit and kick his one-to-one aide. He removed his shoes, glasses, and clothes. After he calmed, he began to try to elope and hit his aide in the face, knocking her glasses off. W.J. began to push his feet and legs against the wall in the classroom. While his classroom peers continued with the teacher's lesson, W.J. began to take off his shoes, glasses, and socks. He then quickly removed his shirt, pants, and underwear. The classroom was immediately evacuated for the safety, dignity, and privacy of W.J. and others. Llewellyn Cert. and Exhibit K.

- j. On January 22, 2026, W.J.'s behaviors included throwing his headphones on the floor, lying on the floor, and yelling loudly while removing his glasses and throwing them across the classroom. He removed his shoes and attempted to throw them. He removed his hoodie while he began to hit, kick, and grab his aide and teacher. He removed his socks and then completely disrobed, throwing his clothing in the teacher's face. The classroom was immediately evacuated for the safety, dignity, and privacy of W.J. and others. W.J.'s father, G.J., called on the phone and attempted to obtain W.J.'s compliance with putting his clothes back on. Since this was unsuccessful, G.J. came to the school to take W.J. home. Llewellyn Cert. and Exhibit L.

- k. On January 23, 2026, W.J.'s behaviors included flopping on the floor and crawling on the ground. After he calmed, he began to kick, yell, and throw his glasses, shoes, and socks. After lunch, while leaving the cafeteria, he pushed two students out of his way. Once he returned to the classroom he kicked over a structure of another student's blocks and stepped on the blocks. W.J. then put his arm around another student's neck and used his other hand to pull her hair. He continued to throw his glasses, take off his shoes, throw bags stored in the room, push chairs around, and knock over a trash can. W.J. then took hand sanitizer and began squirting it on the table and attempted to use the room's phone. He climbed on the table and laid flat on his stomach. W.J. continued to throw his glasses at his peers and yell at them, while taking off his shoes. Llewellyn Cert. and Exhibit M.

- l. On January 29, 2026, W.J.'s behaviors included rolling on the floor and pushing his talker off the desk. He attempted to elope, began hitting, kicking, screaming, and punching his one-to-one aide, and touched an electrical socket with his fingers. Throughout the day he continued to punch and kick his teacher and aide. W.J. was removed from the classroom instruction and guided to the principal's office, where he took off his clothes and completely disrobed. He redressed but continued to

yell, punch, and kick. W.J. refused to eat lunch with his class. He stood on a chair, yelled in his aide's face, and tried to climb the table. He pulled the assistant principal's hair. Llewellyn Cert. and Exhibit N.

14. On January 21, 2026, an FBA review meeting was held with W.J.'s parents to discuss the FBA report prepared by Ms. Zimecki, board certified behavior analyst (BCBA). During the meeting, the "stay put" behavior intervention plan (BIP) was discussed to include the target behavior as maintaining appropriate social interactions. The "stay put" BIP focuses on proactive strategies such as identifying triggers, proximity of peers, proximity of adults, modeling and prompting assertive language to advocate for self, and/or seeking adult assistance to resolve peer conflict. A token-board motivation system, with an exchange of preferred rewards, is used to reward appropriate social interactions and positive classroom behavior. The intervention includes allowing a safe space in the classroom when W.J. is visibly upset, blocking his movement around the classroom, and giving him time to calm down on his own. Adults facilitate conversation between the student and his peers to resolve conflict.

15. During the January 21, 2026, FBA review meeting proposed changes to the BIP were also discussed, including the following:
 - a. The target behavior is refusal divided into two levels: Level one—ignoring adult direction, swiping materials, verbal statements of refusal, leaving his seat. Level two—screaming, crying, throwing items, leaving the classroom without permission, and forceful contact with others.

 - b. The intervention includes a check-in/check-out procedure in which the students meet with an adult to review behavioral expectations. At the end of each interval the adult provides feedback and provides reinforcement. At the end of the day, there is a final review of the day's scoring, progress, and feedback. There is also a proposed home/school reinforcement component based on the day's scoring. Preventive

strategies include offering choices, positive praise, encouragement, teaching non-verbal cues for breaks, and using behavior momentum for challenging tasks. If target behavior occurs, provide minimal verbal attention and allow processing time before repeating instruction. Restorative practices should also be used to repair relationships, focusing on understanding the impact of behavior rather than punishment.

16. At the January 21, 2026, meeting, the District requested to continue collecting data, as the original data for the FBA was collected in October and November 2025. Since the return after winter break, W.J.'s behavior has significantly escalated. It was not until almost two weeks later, on February 2, 2026, that petitioners signed consent for the District to continue to collect data.
17. Respondent in its petition for emergent relief seeks an order authorizing the move of W.J. from his general education ICR setting to the multiply disabled (MD) setting pending the outcome of the due-process proceeding.
18. In response to respondent's petition for emergent relief, petitioners submitted their own petition for emergent relief to obtain skilled, dedicated behavior support. Petitioners request an order denying respondent's motion and requiring the Board to maintain W.J.'s current placement, an independent FBA, and for the Board to engage an independent agency to provide a registered behavior technician (RBT) for W.J. all day and a dedicated BCBA to supervise the RBT and monitor the implementation and modification of the behavior plan.

CONCLUSIONS OF LAW

The standards for granting emergent relief are outlined in Crowe v. De Gioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioners bear the burden of proving all four prongs of the Crowe test stated below:

1. Petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. Petitioner 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 petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

The moving party must satisfy all four requirements. Crowe v. De Gioia, 90 N.J. 126 (1982). The moving party must also prove each requirement "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Both parties have addressed the requirements outlined under N.J.A.C. 6A:3-1.6(b).

1. Irreparable Harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is

afforded for a full and deliberate investigation of the case.” Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)).

“Irreparable harm is shown when money damages [can not] adequately compensate plaintiff’s injuries.” Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). “More than a risk of irreparable harm must be demonstrated.” Cont’l Grp., Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980). “The requisite for injunctive relief has been characterized as 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 the common law.” Ibid. (citations omitted).

Here, with respect to the first prong, the Board has demonstrated through its testimony and submissions that it will suffer irreparable harm if the requested relief is not granted. Due to the escalation of the severity and the occurrence of the documented behaviors of W.J. in his current placement, there is risk of injury to W.J. himself, his classmates, aides, and support staff.

Accordingly, I **CONCLUDE** that respondent has met its burden of proof with respect to this prong.

With respect to the first prong, the petitioners have failed to demonstrate through their testimony and submissions that they will suffer irreparable harm if the additional supports are not implemented prior to the due-process hearing that is currently scheduled.

Accordingly, I **CONCLUDE** that petitioners have failed to meet their burden of proof with respect to this prong. Because petitioners did not prove the irreparable-harm factor, as it pertains to their petition, and all four factors are required for relief, I **CONCLUDE** that petitioners are not entitled to emergent relief under N.J.A.C. 6A:3-1.6(b).

2. Settled Legal Right

Emergent relief is available for issues concerning placement pending the outcome of due-process proceedings. N.J.A.C. 6A:14-2.7(r).

Here, the District is requesting a change in W.J.'s placement pending the outcome of the due-process proceedings in this matter.

The question of whether a change in a child's educational routine is a "change in placement" is a fact-specific one. In determining whether a given modification in a child's school day should be considered a "change in educational placement," the focus is on the "importance of the particular modification involved." De Leon v. Susquehanna Cmty. Sch. Dist., 747 F.2d 149, 153 (3d Cir. 1984) (citations omitted). Rather than a hearing for every minor violation, however, the DeLeon court provided that "[t]he touchstone in interpreting section 1415 has to be whether the decision is likely to affect in some significant way the child's learning experience." Ibid.

Here, the District's proposed temporary change in placement is likely to have a positive effect on W.J.'s educational routine and learning experience. The services available in the proposed setting will offer W.J. more behavioral support than is available to him in his current setting. The proposed temporary setting for W.J. due to his increasingly aggressive and impulsive behaviors is appropriate until the conclusion of the underlying due-process proceeding.

Therefore, I **CONCLUDE** that respondent has met its burden of proof with respect to this prong.

3. Likelihood of Prevailing on the Merits

Under this emergent-relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "involves a prediction of the probable outcome of the case' based on each party's initial

proofs, usually limited to documents.” Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

The evidence presented at oral argument from both parties shows that W.J. is not in the best placement. Both petitioners and respondent through oral argument articulated that the current placement is not working for W.J. While both parties agree that a change to the current placement must be made, they differ on how to achieve what is best for W.J. Since all parties agree that changes must be made, there is a reasonable probability that respondent will have ultimate success on the merits.

Therefore, I **CONCLUDE** that respondent has met its burden of proof with respect to this prong.

4. **Balancing the Equities**

The fourth and final emergent-relief standard involves “the relative hardship to the parties in granting or denying relief.” Crowe, 90 N.J. at 134 (citing Isolantite, Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

Here, in balancing the equities, the petitioners have shown that should W.J. continue in his current placement, his escalating aggressive and impulsive behaviors will continue. It is not only W.J. that is affected by these behaviors but his classmates, teachers, and support staff. Petitioners’ request for emergent relief requested an order for increased services and support. Those requests may be accomplished through the proposed setting. In balancing the equities, if emergent relief is not granted, it is the respondent who will suffer the greater harm.

Therefore, I **CONCLUDE** that respondent has met its burden of proof with respect to the final prong.

ORDER

I **ORDER** that petitioners' application for emergent relief on behalf of W.J. is hereby **DENIED**.

I **ORDER** that respondent's application for emergent relief is hereby **GRANTED**. Pending the outcome of the due-process proceedings in this matter, the Board is authorized to move W.J. from the general education ICR setting to the MD setting.

February 11, 2026 _____

DATE


MICHAEL R. STANZIONE, ALJ

Date Mailed to Parties: _____

MRS/cb

APPENDIX

Witnesses

For petitioners

None

For respondent

None

Exhibits

For petitioners

Petitioners' response to respondent's emergent relief petition and cross-motion for Emergent Relief; Certification of G.J.; petitioners' motion to strike respondent's petition for emergent relief (Exhibit A)

For respondent

Petition for Emergent Relief; Certification of Darlene Llewellyn; Exhibits R-A through R-N; District's reply brief in support of Petition for Emergent Relief