



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 03097-26

AGENCY DKT. NO. 2026-40519

A.F. ON BEHALF OF A.F.

Petitioner,

v.

BAYONNE CITY BOARD OF EDUCATION,

Respondent.

A.F. on behalf of A.F., *pro se*

Robin S. Ballard, Esq. respondent, Bayonne City Board of Education, (Schenck,
Price Smith & King, LLP, attorneys)

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, A.F., on behalf of A.F., (student) alleges in his underlying due process petition that respondent, Bayonne City Board of Education (Board/District) denied the student a Free Appropriate Public Education (FAPE) when it wrongfully denied his request for an initial evaluation to determine whether the student is eligible for special education. Petitioner has filed a post-transmittal emergent application with the Office of Administrative Law (OAL) seeking to prevent the student's graduation. The Board opposes the application.

PROCEDURAL HISTORY

On or about January 22, 2026, Petitioner filed a Mediation Request on a form created by the Indiana Department of Education (“Mediation Request”), with the New Jersey Department of Education, Office of Special Education (OSE). The Mediation Request asserts the following:

- The District is in violation of its “Child Find Mandate” by refusing a trauma-informed evaluation for Emotional Regulation impairment despite actual knowledge of exploitation. Furthermore, the District using falsified computer generated passing grades to hide the student’s academic and emotional decline effectively masking her need for protective services.
- Proposed Resolution: District must fund an Independent Educational Evaluation (IEE) conducted by an outside trauma-certified specialist.
- Immediate Human Audit of all grades [sic] entries for the 2022-2026 (9th-12th grade) school years to correct computer discrepancies.
- Provision of supportive measures under Title IX to address the hostile environment [sic] created by the exploitation.

On February 20, 2026, Mediation was held, which was unsuccessful in resolving this dispute. On said date, Petitioner then converted the Mediation Request to a Petition for Due Process (due process petition).

On or about February 27, 2026, the Board filed its Answer to the due process petition. The Board admitted information concerning the student’s age, attendance at Bayonne High School, and it considered Petitioner’s request for the student to be evaluated by the Board’s Child Study Team (CST), which determined that the student there was no reason to suspect the student might have a disabling condition requiring special education. The Board denied the remaining allegations contained in the due process petition.

On March 23, 2026, the OSE transmitted this matter to the OAL for a due process hearing.

On April 1, 2026, a status conference was held, at which time the Board requested leave to file a motion for summary decision. A motion schedule was established.

On May 29, 2025, Petitioner submitted an Emergency Application for Emergent Relief/Motion to Enforce Stay-Put, which was filed on May 30, 2026. On May 31, 2026, Petitioner submitted a pleading entitled “Renewed Motion for Emergent Relief.” (collectively referred to as emergent relief application), which was filed on June 1, 2026.¹

On June 3, 2026, a status conference was held to address Petitioner’s emergent relief application, and it was determined that on June 10, 2026, the District would file its opposition to Petitioner’s request for emergent relief made on May 28, 2026, and “renewed” on May 31, 2026, and Petitioner would file a reply, if any, on June 12, 2026.

On June 10, 2026, the Board filed its opposition to the emergent relief application, and on June 11, 2026, Petitioner filed his reply thereto.

Questions Presented

- (1) Does stay put apply to prevent graduation when a student has not yet been identified as needing special education?
- (2) Should emergent relief be granted in this matter?

Brief Answers

- (1) No. Stay put preserves an existing educational placement; it does not create a special education placement for a general education student who has not been

¹ Petitioner filed the underlying emergent relief application post-transmittal of the underlying due process petition, and during the time the Board had filed its motion for summary decision, Petitioner filed his opposition to the motion, and cross-motion for summary decision, and the Board filed its opposition to the cross-motion, and the filing of each parties reply. This decision concerns Petitioner’s filing for emergent relief only.

evaluated, classified, found eligible, or provided an IEP. The student's current placement is her general education program, and if she has met the State and District graduation requirements, stay put does not prevent her graduation.

- (2) No. Based on the standards set forth in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s), Petitioner has not established that he is entitled to emergent relief.

FACTUAL FININGS

After a review of the moving papers submitted in connection with the underlying application for emergent relief, including the due process petition filed herein, I **FIND** the following as **FACT**.

The student was born July 5, 2008. She attends Bayonne High School, in the school district of Bayonne City, and is in the 12th grade. The student is a general education student and is not classified for special education. She currently meets the State graduation criteria and is on track to graduate on June 25, 2026.

Sometime during the 2025-2026, school year Petitioner requested the Board conduct an IEE of the student. On January 6, 2026, during the student's last year of high school, Petitioner sought an initial evaluation of the student claiming that the student has "emotional regulation impairment."² (the Board's Apr. 24, 2026, Br. p. 2; Petition; Evaluation Plan).

² The Custody Order from the New Jersey Superior Court dated October 25, 2023, states: (1) Joint Legal custody is shared between Petitioner [Father], Mother, and Maternal Grandmother; (2) Residential custody is shared between Maternal Grandmother and Mother; and (3) Petitioner [Father] has modified parenting time. Without any other orders, clarification, or arguments to the contrary from the Board or intervening parties, the within Order treats Petitioner as if he maintains the right to make educational decisions for the student. A parent, like Petitioner, who does not maintain physical custody, and who has clear limitations to educational access and decisions, while maintaining legal custody does not have the right to consent to an evaluation, and therefore, may provide standing complications in a child-find claim. See A.M. obo M.Z. v. Weehawken Township Bd. of Educ., EDS 12765-23, Final Decision (Apr. 17, 2024), <https://njlaw.rutgers.edu/OAL/>. This does not appear to be the case here.

Petitioner based his referral on discrepancies between the student's course grades and standardized test scores, including her SAT scores and district assessments, as well as changes in her attendance and academic performance. On January 22, 2026, the Board's CST met, discussed, and denied the request. (Evaluation Plan). In coming to its determination, the CST considered the student's high school transcripts, current report card, input from a teacher knowledgeable of her work, testing and attendance records, and parental input. (Evaluation Plan). The team ultimately found that there was no reason to suspect that the student may have a disability requiring special education services.

Petitioner disagrees with the Board CST's decision, arguing the data he identified gave the Board reasonable suspicion of a disability, triggering its obligation to conduct an initial evaluation, and its failure to do so denied the student of a FAPE.

LEGAL DISCUSSION AND CONCLUSIONS

Stay put functions as an automatic preliminary injunction which provides that a child remains in his or her current educational placement "during the pendency of any administrative or judicial proceeding regarding a due process complaint." 34 C.F.R. § 300.518(a); N.J.A.C. 6A:14-2.7(u). Essentially, the purpose of stay put is to maintain the status quo until the IDEA proceedings are finalized. See Ringwood Bd. of Educ. v. K.H.J., 469 F. Supp. 2d 267, 270-71 (D.N.J. 2006).

While the IDEA does not define "current educational placement," the Third Circuit standard is that "the dispositive factor in deciding a child's 'current educational placement' should be the [IEP] ... actually functioning when the 'stay put' is invoked." *Id.* at 867 (citing the unpublished Woods o/b/o T.W. v. New Jersey Dep't of Educ., Docket No. 93-5123, 20 IDELR 439, 440 (3d Cir. Sept. 17, 1993)); see also Susquenita Sch. Dist. v. Raelee S. by Heidi S. & Byron S., 96 F.3d 78, 83 (3d Cir. 1996) (restating the standard that the terms of the IEP are dispositive of the student's "current educational placement"); But see Gary Magnum, et al. v. Renton School District, No. 10-1607RAJ, 2011 U.S. Dist. LEXIS 8887* (W.D. Wash. Jan. 27, 2011) (holding an IEP is not required for stay put protections). Thus, stay put generally preserves the special education placement and services already being provided while a dispute over those services is pending.

Typically, the graduation of a child who is receiving special education under an IEP is seen as a change of placement. “No change in placement seems quite so serious nor as worthy of parental involvement and procedural protections as the termination of placement in special education programs.” L.C. and F.C. obo L.C. v. Watching Hills Reg. Bd. of Educ., EDS 05613-23, Final Decision (Nov. 9, 2023), <https://njlaw.rutgers.edu/OAL/> (quoting Stock v. Massachusetts Hosp. Sch., 392 Mass. 205, 454 (1984), cert. denied 474 U.S. 844 (1985)). As such, the stay put provision typically applies when there is a due process challenge to a special education student’s graduation.

When a district refuses to maintain a student’s stay-put placement, the parent may seek an order enforcing stay-put. Requests for stay put, however, are not evaluated under the same standard as other special education emergent relief under N.J.A.C. 6A:14-2.7. When assessing the procedural safeguards required under 20 U.S.C. § 1415:

the [stay put] statute substitutes an absolute rule in favor of the status quo for the court’s discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of hardships. [Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (quoting Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982).]

“Once a court ascertains the student’s current educational placement, the movants are entitled to an order without satisfaction of the usual prerequisite to injunctive relief.” Id. (quoting Woods v. New Jersey Dep’t of Educ., No. 93-5123, 20 Indiv. Disabilities Educ. L. Rep. (LRP Publications 439, 440 (3d Cir. Sept. 17, 1993)).

The threshold question is whether the student has a current educational placement protected by stay put. I **CONCLUDE** that because the student is a general education student without an IEP, she does not have a special education placement for stay put to preserve, and thus does not qualify for stay put protections. Since stay put does not apply, the emergent application seeking to halt the student’s graduation must be evaluated under the regulatory special education emergent relief standard.

Under N.J.A.C. 1:6A-12.1(a) the affected party to a special education matter “may apply in writing for emergency relief pending a settlement or decision on the matter.” The application must: (1) set forth the specific relief sought and under the specific circumstances which the applicant contends justifies under (e) below the relief sought; (2) support its application with an affidavit of the facts contained therein. Id. If the applicant has an expert’s opinion, then the affiant must specify the expert’s qualifications. Id.

If the transmittal of the underlying due process matter has already been transmitted to the OAL, then the application for emergency relief must be made with the OAL, with a copy to the opposing party. See 1:6A-12.1(c); See also N.J.A.C. 6A:14-2.7(s). To be successful on the emergent application, the applicant must prove:

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.

[N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(s); See also Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982).]

All four prongs of this test must be met in order to justify granting emergent relief. E.C. o/b/o minor child E.C. v. Sterling High Sch. Bd. of Educ., EDS 04186-10, decision on application for emergency relief, (May 4, 2010) <https://njlaw.rutgers.edu/OAL/>. Here, for the reasons set forth below, I **CONCLUDE** Petitioner has not satisfied the requirements for emergent relief.

1. Irreparable harm has not been established.

Petitioner's proofs fail to demonstrate that the student will suffer irreparable harm if emergent relief is not granted. On this point, Father argues that the matter will be "moot" once the student graduates, since there will be no available remedy. A controversy is moot when it is no longer justiciable because the question has become academic or hypothetical, effective relief cannot be granted, or there is no concrete adversity of interest. See Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Generally, moot issues are improper for judicial review. Id. (citing Oxford v. N.J. State Bd. of Ed., 68 N.J. 301, 303-304 (1975); In re Geraghty, 68 N.J. 209, 212-213 (1975); Sente v. Clifton Mayor and Mun. Coun., 66 N.J. 204, 206 (1974)).

The issue of mootness extends to administrative tribunals, and if the relief sought is no longer available, then the case should be dismissed. See West Morris Reg. Bd. of Educ. V. A.M. and K.M. obo A.M., EDS 07418-05, Final Decision (Nov. 20, 2005), <https://njlaw.rutgers.edu/OAL/>. Where compensatory education is at issue, the claim is insulated from a mootness challenge. See San Dieguito Union High Sch. Dist. V. Jeffrey Guray-Jacobs, No. 04-cv-1330 DMS (POR), 2005 U.S. Dist. LEXIS 52124* (S.D. Cal. Oct. 27, 2005) (citing Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993); Capistrano Unified Sch. Dist. V. Wartenberg, 59 F.3d 884, 890 (9th Cir. 1995); Maine Sch. Administrative Dist. No. 35 v. Mr. and Mrs. R., 32 F.3d 9, 17-18 (1st Cir. 2003)).

If the Petitioner is successful in his due process petition, he may be entitled to compensatory education. Because there is an available remedy in this matter, graduation alone would not moot Petitioner's FAPE claim. As a result, I **CONCLUDE** that Petitioner fails to establish that, without immediate relief, the student will suffer irreparable harm.

2. The child find obligations underlying Petitioner's claim are settled.

It is evident that Petitioner misconstrues the second prong, arguing that the student has a legal entitlement to FAPE, and therefore her legal right is settled. (Petitioners Brief (Br) May 31, 2026). The IDEA's child find requirements are well settled. Under the law, participating states have a responsibility to identify, locate, and evaluate children who are in need of special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 CFR § 300.111(a)(i); N.J.A.C. 6A:14-3.3. When suspected, either a parent of a child, state

agency, or local educational agency may request an initial evaluation of a child to determine eligibility. See 20 USC §1414(a)(1)(B); 34 CFR §300.301(b); N.J.A.C. 6A:14-3.3(d)(1). If the school district's CST does not suspect a disability, it must provide written notice with an explanation of denial, which may be challenged by requesting a due process hearing. See id.; 34 CFR §§ 300.503(a) and (b); N.J.A.C. 6A:14-3.3(e). As such, the law regarding Petitioner's underlying FAPE claim is settled. Notwithstanding the same, I **CONCLUDE** that because Petitioner has failed to establish the remaining requirements for emergent relief, the application should be denied.

3. Petitioner has failed to establish a likelihood of success on the merits.

Petitioner's proofs fail to demonstrate the requisite likelihood of success on the merits. Petitioner argues that the student is entitled to an IEE and also qualifies for special education under the classification of "emotional regulation impairment." However, without an initial evaluation to challenge, the student is not entitled to a publicly funded IEE. Under N.J.A.C. 6A:14-2.5(c), parents are entitled to an independent evaluation at the district board of education's expense, however, this is predicated upon the completion of an initial evaluation or reevaluation. E.P. obo L.P. v. Newton Town Bd. of Educ., 2024 N.J. AGEN LEXIS 672* at *10 (July 23, 2024); See also Hamilton Township Bd. of Educ. v. K.H. obo V.H., EDU 06533-16, Final Decision (Aug. 1, 2016), <https://njlaw.rutgers.edu/OAL/> (holding that because school district never performed an initial evaluation, petitioner was not entitled to IEE); 34 C.F.R. § 300.502(b); N.J.A.C. 6A:14-2.5(c).

Additionally, Petitioner has not established how the Board failed its child find obligations. Petitioner fails to articulate or identify facts that would have given the Board reason to suspect that the student may have a disability requiring special education, including emotional regulation impairment. For example, Petitioner has not shown any significant changes in the student's coursework grades, which have mostly remained stable or improved, supporting the Board's analysis that the student has an average to above-average mastery of the curriculum.

While Petitioner has expressed his concerns to the Board regarding the student's attendance, he is unable to demonstrate how this may have negatively affected or

impacted the student's educational performance. For example, the student's attendance record between high school grade years 9 and 12 may have declined, Petitioner admits the student's attendance record did not impact her educational performance in grades 9 and 10 and has not shown any relationship between her decreased attendance record and an impact on her educational performance. (Petitioner Opposition (Opp.) Br. Ex. D-J).

Additionally, Petitioner has not provided any information as to how or why the student's absences and tardies increased, and whether they were the result of a disability, or at the direction of a parent. Petitioner therefore has not identified any facts that call the Board CST's academic assessment into dispute. Nor has Petitioner identified any facts suggesting social, emotional, or behavioral concerns that would have given the Board reason to suspect the student may have a disability requiring special education. Petitioner originally alleged that the Board knew about "trauma" affecting the student, but he does not identify any facts related to the trauma, or explain how it affected her academic, social, or behavioral functioning in school. (See, due process petition). Even so, Petitioner has not presented any facts that establish the school was or reasonably should have been aware of such a condition.

Petitioner's grade-inflation allegations, standing alone, do not present special education claims. Under N.J.A.C. 6A:14-2.7, the OAL may hear matters "when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action." See J.L. and B.L. obo B.L. v. Cherry Hill Bd. of Educ., OAL Dkt. No. EDS 06949-16, Final Decision (Sept. 19, 2016).

For the reasons discussed herein, I **CONCLUDE** that Petitioner has not proven the likelihood of success on the merits of his case.

4. The balance of equities does not favor preventing the student's graduation.

Lastly, Petitioner's proofs fail to establish that, balancing the equities and interests of the parties, the student will suffer greater harm than the Board if she is allowed to

graduate. As explained herein, the student's graduation does not eliminate all available remedies for Petitioner. The student is an in-district, seventeen-year-old, second-semester twelfth grade, general education student who does not have an IEP. She is on track to graduate in June 2026 and attend college.³

There are several decisions holding that refusing to permit a student to graduate does not result in irreparable harm. However, refusing to allow a student to graduate who is otherwise eligible to do so, may amount to "irreparable harm." C.G. Obo C.G. V. Maple Shade Twp. Bd. Of Educ., OAL Dkt. No. EDS 4460-05, Final Decision (June 22, 2005), <https://njlaw.rutgers.edu/OAL>. Beyond Petitioner's argument that graduation would eliminate any remedy, I **CONCLUDE** that Petitioner has failed to show that the student would suffer harm if she graduates. On the contrary, prohibiting a student from graduating who otherwise is qualified to graduate may impose hardships on the student, including possibly delaying any matriculation into post-graduation jobs or college.

Having determined that the student does not qualify for stay put protection, and evaluate this emergent application under the emergent relief standards set forth in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s), I **CONCLUDE** that Petitioner has not satisfied the requirements for emergent relief, and I **CONCLUDE** Petitioner's application for emergent relief is **DENIED**.

ORDER DENYING EMERGENCY RELIEF

It is **ORDERED** that Petitioner's application for emergent relief is **DENIED**.

³ During the pre-hearing phone conference on June 3, 2026, the Board notified the tribunal that the student has applied and was accepted into college. However, which college is unknown, even by Petitioner.

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).

June 22, 2026

DATE

Julio Morejon

JULIO C. MOREJON, ALJ

Date Received at Agency:

June 22, 2026

Date Sent to Parties:

June 22, 2026

Ir