



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 05191-26

AGENCY DKT. NO. 2026-40689

A.B. AND D.B. ON BEHALF OF O.B.,

Petitioners,

v.

WATCHUNG HILLS REGIONAL BOARD

OF EDUCATION,

Respondent.

A.M. and D.B., petitioners, pro se

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

BEFORE **SAMANTHA L. PRICE, ALJ:**

STATEMENT OF THE CASE

On May 15, 2026, Petitioners, A.B. and D.B., filed a request for emergent relief to change O.B.'s placement from intermittent home instruction to an out-of-district therapeutic program arguing that the current placement exacerbates O.B.'s anxiety and depression. However, no proof exists that this is true. Are petitioners entitled to emergent relief? No. In order to prevail on a request for emergent relief, there must be a showing

that petitioners will suffer irreparable harm if the requested relief is not granted, among other factors. N.J.A.C. 6A:3-1.6(b).

PROCEDURAL HISTORY

On March 27, 2026, petitioners filed a request for a due process hearing against respondent, the Watchung Hills Regional Board of Education, with the New Jersey Department of Education, Office of Special Education (OSE), requesting placement in an appropriate educational program, a reevaluation of the district's decision to use pass-fail grading for home instruction courses, an extended school year program, and implementation of O.B.'s Individualized Education Program (IEP) with fidelity. On April 28, 2026, upon conclusion of the thirty-day resolution period, OSE transmitted the case to the Office of Administrative Law (OAL) 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 -18.5.

On May 5, 2026, the parties participated in a prehearing conference and hearing dates were scheduled for June 5, 2026, and June 12, 2026.

On May 15, 2026, petitioners filed a motion for emergent relief requesting immediate placement of O.B. in an out-of-district therapeutic placement for the summer pending resolution of the underlying due process petition. On May 19, 2026, the parties participated in a conference call, at which time a briefing schedule was set and an oral argument date scheduled. On May 20, 2026, the Watchung Hills Regional Board of Education submitted opposition to petitioners' request for emergent relief.

On May 21, 2026, I held oral argument and closed the record.

FINDINGS OF FACT

Based on the papers the parties submitted in support of an and in opposition to the motion for emergent relief, including the certifications of A.B. and Laura D'Amato, Director

of Special Services, as well as the arguments the parties made at oral argument, I **FIND** the following as **FACTS**:

Petitioners are residents of Millington, New Jersey, served by the Long Hill Township School District, a constituent district of the Watchung Hills Regional Board of Education. The Watchung Hills Regional Board of Education is a regional school district serving students in grades nine through twelve.

O.B. is diagnosed with dyslexia, dysgraphia, dyscalculia, generalized anxiety, and Attention-Deficit Hyperactivity Disorder. She is eligible for special education and related services under the eligibility classification of Specific Learning Disability. On February 11, 2025, while O.B. was in eighth grade at Long Hill Township School District, an IEP meeting was held placing O.B. in ninth grade at Watchung Hills Regional High School for the 2025-2026 school year.

On December 10, 2025, petitioners requested that O.B. be placed on home instruction due to O.B.'s increased absences. On December 19, 2025, D'Amato informed petitioners that the Watchung Hills Regional Board of Education denied their request for home instruction as O.B.'s absences did not meet the district's threshold for the number of cumulative absences required.

On January 5, 2026, petitioners made a second request for home instruction, which was approved by the Watchung Hills Regional Board of Education on January 13, 2026. In the approval, the Watchung Hills Regional Board of Education agreed to provide O.B. a half-day in-person schedule and two hours of home instruction per week in specific subject areas. The district also developed a return-to-school transition plan to enable O.B. to return to a full-time in-person setting, including the provision of virtual therapeutic support services through the Rutgers L.I.G.H.T. program, referral to PerformCare, and district collaboration with O.B.'s treating physician to develop a plan for her return to school.

On February 2, 2026, O.B. was enrolled in an outpatient program at Embark Behavioral Health to address concerns related to her anxiety. While O.B. attended this

partial care program, she exclusively received home instruction.

On February 9, 2026, an annual review IEP meeting was held during which the parties agreed to continue O.B.'s placement in an in-class resource setting with accommodations and modifications for the remainder of the school year and the 2026-2027 school year. The educational program set forth in the February 9, 2026 IEP remained largely unchanged from the program developed for O.B. in the February 11, 2025 IEP. The annual review IEP did not address O.B.'s interim placement on home instruction or the additional therapeutic supports included in the return-to-school transition plan. At that time, Petitioners requested an extension of the partial-day home instruction schedule, which was approved by the Watchung Hills Regional Board of Education through March 13, 2026.

On March 13, 2026, upon completion of the partial care program, O.B. returned to in-person instruction at Watchung Hills Regional High School on a full-time basis. However, due to O.B.'s increasing struggles with anxiety and school refusal, the Watchung Hills Regional Board of Education again approved intermittent home instruction on March 26, 2026, to continue through the conclusion of the school year. The intermittent home instruction plan dated March 26, 2026 included the following interventions: continued support through the Rutgers L.I.G.H.T. Program, an abbreviated school day starting at 10:30 a.m., an adjusted schedule to ensure a lighter academic course load in the morning, an additional study hall period, ongoing collaboration with O.B.'s CMO case manager, and pass-fail grading to focus on essential assignments. O.B.'s IEP was never revised to reflect O.B.'s change in placement to intermittent home instruction or the additional supports being offered by the district.

The day following O.B.'s return to the intermittent home instruction placement, petitioners filed a petition for due process challenging the use of a pass-fail grading system for her core content subjects, requesting her IEP be implemented with fidelity, and requesting an extended summer program.

Based on O.B.'s attendance records from the initiation of the intermittent home instruction plan on March 26, 2026, through April 30, 2026, O.B. attended school in

person, under a tardy with pass option, ten of the total twenty days school was in session. During this time, O.B. was on home instruction nine days, and one day was marked absent. However, since May 1, 2026, O.B. has exclusively received home instruction, although on an inconsistent basis.

On May 8, 2026, O.B. was evaluated by her treating psychiatrist, Dr. Merritt Hubsher. Hubsher recommended an immediate placement in a therapeutic school environment to support O.B.'s mental health diagnoses and her unique learning profile. Specifically, Dr. Merritt recommended a program with smaller class sizes and therapeutic appointments during the school day two to three times per week.

The parties held an IEP meeting on May 20, 2026, to review O.B.'s program, but as of the time of oral argument, there was no agreed-upon change in placement for O.B.

CONCLUSIONS OF LAW

Motion for Emergent Relief

Petitioners filed a motion for emergent relief requesting immediate placement of O.B. in an out-of-district therapeutic placement for the remainder of the school year and during the summer. Petitioners' argue that O.B.'s psychiatric functioning is worsening because she is unable to participate in the district's educational program. Petitioners specify that O.B.'s inability to participate in the program has increased her anxiety and depression.

Under N.J.A.C. 6A:14-2.7(r), 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.

In her certification and at oral argument, A.B. states and argues that she believes there is a break in the delivery of services since O.B. is unable to access any instruction either in person or through home instruction and requests an order changing placement pending the final resolution of the due process petition.

Since A.B. raises an issue involving a break in the delivery of services as well as an issue concerning placement pending the outcome of a due process proceeding, I **CONCLUDE** that this application is appropriate to be heard on an emergent basis under N.J.A.C. 6A:14-2.7(r)(i) and (iii).

Stay-Put

To determine whether a change in placement pending the outcome of the proceedings is necessary, we must evaluate O.B.'s current educational placement. The stay-put provision under the IDEA states that, "during the pendency of any proceedings conducted pursuant to this section, unless ... the local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child." 20 U.S.C. § 1415(j). The then-current placement is the operative placement actually functioning at the time of the filing for the due process hearing. Drinker v. Colonial School Dist., 78 F.3d 859 (3d Cir. 1996).

Here, the last agreed-upon IEP is the one dated February 9, 2026. The parties, however, agreed to change O.B.'s placement to intermittent home instruction with an abbreviated school day beginning on January 13, 2026, and again on March 26, 2026. Accordingly, although not reflected in an IEP, O.B.'s operative placement that was functioning at the time this controversy arose is intermittent home instruction. Therefore, I **CONCLUDE** that intermittent home instruction with the abbreviated school day is the stay-put placement for the purpose of these proceedings.

Merits of the Motion

Petitioners are requesting emergent relief from intermittent home instruction due to O.B.'s alleged deteriorating mental and emotional health and are seeking an immediate in-school therapeutic placement for the summer months.

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), as follows:

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 petitioners bear the burden of satisfying all four prongs of this test for the relief requested to be ordered on emergent basis. Crowe v. DeGioia, 90 N.J. at 132–134.

Irreparable Harm

Harm is irreparable when no adequate remedy exists in law or in equity, including when the remedy cannot be redressed adequately by monetary damages. Crowe, 90 N.J. at 132-133.

Petitioners argue that irreparable harm exists because they believe that O.B.'s anxiety and depression worsened during the 2025-2026 school year. In addition, O.B.'s treating physician, Hubsher, opined that O.B.'s anxiety and depression worsened during her period of home instruction, which impacts her daily functioning. Hubsher's opinion, however, is conclusory. Similarly, petitioners have not demonstrated that O.B. will be able

to attend a new in-school program out-of-district or how O.B. is suffering irreparable harm by remaining in the current intermittent home instruction placement. Any suggestion of harm at this juncture is purely speculative.

Therefore, I **CONCLUDE** that petitioners have not demonstrated that O.B. will suffer irreparable harm by remaining in her current educational placement during the pendency of the proceedings on the underlying due process petition.

Legal Right is Settled and Likelihood of Success on the Merits

Under the second and third prongs, there is no well-settled legal right for petitioners' claim that would disregard "stay-put" protections and unilaterally alter the terms of O.B.'s current educational placement prior to a hearing on the merits.

To compel a district to pay the costs to educate a student in an out-of-district placement, there must first be a determination that the district did not make available a free and appropriate public education (FAPE). N.J.A.C. 6A:14-2.10. In addition, the out-of-district placement proposed by the parent must also be appropriate. Although petitioners may establish at the due process hearing that the district did not provide O.B. with a FAPE, ordering an out-of-district placement at this stage of the proceedings is premature.

Accordingly, I **CONCLUDE** that O.B. must remain in her educational placement pending the due process petition, as is her settled legal right.

Equities and Interests of the Parties

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting or denying the requested relief. Although petitioners believe that O.B. attending an in-school setting as soon as possible is in O.B.'s best interests, that is not the litmus. Settled law and the collaborative intent of the IEP process require that the determination of an out-of-district placement at public expense be addressed at an IEP meeting or through a full hearing on the merits. Allowing petitioners to bypass

these processes by seeking a change in placement on emergent relief would cause greater harm to the district.

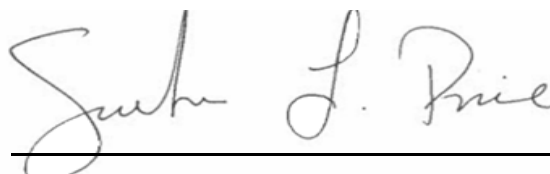
Accordingly, I **CONCLUDE** that petitioners have not demonstrated that the equities are in their favor and the motion for emergent relief must be denied.

ORDER

I **ORDER** that petitioners' motion for emergent relief is **DENIED**.

May 26, 2026

DATE

A handwritten signature in cursive script, reading "Samantha L. Price", is written over a horizontal line.

SAMANTHA L. PRICE, ALJ

Date Received at Agency:

Date Mailed to Parties:

SLP/oni

APPENDIX

EXHIBITS

For petitioner

Certification of A.B., May 15, 2026

P-1 2025-2026 Attendance Monthly Reports, September 2025, November 2025, December 2025, January 2026, February 2026, March 2026, April 2026, May 2026

P-2 Email chain between A.B. and Watchung Hills regarding request for home instruction, December 18, 2025

P-3 Letter from Kathleen Cuddihy, MD, December 20, 2025

P-4 Notification Approving Home Instruction and Home Instruction Transition Plan, January 12, 2026

P-5 Email from A.B. to Michelle Pigott, January 27, 2026

P-6 Annual Review IEP from the Long Hill Township School District, February 11, 2025; Annual Review IEP from Watchung Hills, February 9, 2026

P-7 Notification Approving Home Instruction, March 26, 2026

P-8 Email chain between A.B. and Nicole Kelly, dated April 15, 2026

P-9 Email chain between A.B. and Nicole Kelly, May 11, 2026

P-10 Letter from Merritt Hubsher, MD, May 11, 2026

For respondent

Certification of Laura D'Amato, Director of Special Services, May 20, 2026