



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON EMERGENT RELIEF

OAL DKT. NO. EDS 06488-26

AGENCY DKT. NO. 2026-40850

G.R. ON BEHALF OF J.T.,

Petitioner,

v.

ATLANTIC CITY BOARD OF EDUCATION,

Respondent.

John Swift, Esq., for petitioner (Swift Law Firm LLC, attorneys)

Tracy L. Riley, Esq., for respondent (Law Offices of Riley & Riley LLC, attorneys)

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Petitioner parent G.R. seeks emergent relief, pending resolution of her underlying due process petition. The emergent relief sought on behalf of the minor student, J.T., is to compel respondent, the Atlantic City Board of Education (the District), to immediately implement a 1:1 aide for J.T.; require the District to immediately provide documented logs of the implementation and use of an assistive augmentative communication device by J.T., with demonstration of appropriate staff training; require the District to immediately complete an independent evaluation of a functional behavior assessment (FBA); and to immediately issue referrals to out-of-district placement locations for their assessment of

J.T. for potential acceptance and placement for the next academic school year. The District opposes the emergent requests.

At issue is whether petitioner is entitled to the emergent relief sought. Petitioner is not entitled to a change in J.T.'s programming from a shared aide to a 1:1 aide on an emergent basis, as petitioner has not demonstrated by clear and convincing evidence all conditions necessary to warrant such emergent relief. The other topics are not issues to be decided through an emergent application. All requested emergent relief is denied, and petitioner will pursue such issues through her pending underlying due process petition.

PROCEDURAL HISTORY

On April 23, 2026, a due process petition and request for emergent relief were submitted on behalf of petitioner to the New Jersey Department of Education, Office of Special Education. The emergent relief request was transmitted to the Office of Administrative Law (OAL), where it was filed on April 23, 2026, to be heard as a contested emergent case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Oral argument on the emergent relief request was scheduled for May 7, 2026.

A telephonic conference was conducted on April 30, 2026, by the undersigned Administrative Law Judge with the attorneys for the parties. They were directed to submit written documentation in support of their respective positions, including the individualized education program (IEP) at issue, in advance of the scheduled emergent oral argument, if the parties did not resolve the emergent issues. Each party timely submitted their documentation. Oral argument was conducted in person at the OAL, Atlantic City location, on May 7, 2026.

FINDINGS OF FACT

Based upon the documentation submitted and the parties' oral arguments, I **FIND** as **FACT** the following:

J.T. is a student in the Atlantic City School District and soon to be fourteen years old. He is in eighth grade and progressing as anticipated to high school for the next academic school year. J.T. is classified with autism spectrum disorder. He has an IEP, with the last implemented IEP being dated March 19, 2025. (Ex A, Dr. Lakecia Hyman certification.) J.T.'s placement and programming for March 19, 2025, through March 18, 2026, is in a special education classroom, self-contained special autism class. (Ex A at 14, Hyman cert.) The IEP specifies that J.T. shall have a "Shared Aide: Group" for the school day. (Ex A at 1, Hyman cert.) The IEP indicates in the supplementary aids and services section that J.T. shall have "Shared Aide 2:1" for general and special education. (Ex A at 10, Hyman cert.) "Shared aide" is also listed as a related service for J.T. (Ex A at 15, Hyman cert.)

Petitioner highlights that listed in the IEP under the strengths of the student, which was entered in the IEP as of 2024, includes the statement "[J.] does best with one-to-one instruction that is individualized[.]" (Ex A at 3, Hyman cert.) Contained within the Present Levels of Academic Achievement and Functional Performance (PLAAFP) section of the IEP are statements regarding J.T.'s social, emotional, and behavioral attributes. It is noted that "[b]ehaviorally [J.T.] demonstrates inappropriate behavior of touching himself in the chest area. Aggressions towards other staff or students has decreased substantially." (Ex A at 5, Hyman cert.)

It is further noted as of 2025, in the social, emotional, and behavioral section of the March 19, 2025, IEP:

[J.T.] requires one-to-one support throughout the entire day to address a range of behavioral and sensory challenges that impact his ability to effectively engage in classroom activities and maintain personal safety. His difficulty in focusing and remaining seated poses significant barriers to academic participation, as he frequently exhibits behaviors such as jumping and running, particularly during academic tasks. Additionally, [J.T.] demonstrates self-injurious behaviors, such as forcefully hitting his hands together and the desk, which escalate when he becomes overstimulated from electronic devices. When he is overstimulated [J.T.] will also cry very loudly and jump around. His challenges with personal space and boundary awareness, evidenced by his persistent

attempts to hug others tightly without regard to their comfort, further underscore the need for close supervision and intervention. Moreover, [J.T.'s] noncompliant behavior and difficulty with transitions require constant prompts and physical redirection to ensure his cooperation and prevent potential harm. Although he demonstrates independence in certain tasks, such as using the bathroom, [J.T.'s] tendency to engage in inappropriate behaviors, such as playing with water instead of washing his hands, necessitates ongoing support and guidance. [J.T.] does not understand personal space. He is constantly trying to hug people in the hallway and classroom (usually females). When he tries to hug he will grasp on tightly and refuse to let go. The hug will continue to get tighter and tighter until he is pried off. It usually takes more than one person to get him off of a person he is hugging/touching. He is constantly repeating, asking and attempting to hug/touch people during the school day. Therefore, one-to-one support is essential to address [J.T.'s] complex needs, facilitate his participation in the school environment, and promote his social and academic development effectively.

[Ex A at 5–6, Hyman cert.]

The March 19, 2025, IEP specified that J.T. would have access to an augmentative communicator device for general and special education. (Ex A at 10, Hyman cert.)

A letter dated October 6, 2025, was sent by the parent to J.T.'s case worker, indicating that the parent was formally objecting to the IEP of March 19, 2025. (Ex C, Hyman cert.) No explanation was provided as to why G.R. had not objected in a timely manner when the IEP was developed as of March 19, 2025. In response to the objections raised by the parent, the District conducted a reevaluation planning meeting on November 10, 2025. Petitioner parent, G.R., was present with her advocate, Dr. R. Mark Harris. (Ex E, Hyman cert.) A "Reevaluation Planning—Additional Assessment Warranted" letter was issued from the District staff to the parent, identifying three evaluations to be conducted. (Ex F, Hyman cert.) The evaluations were for occupational therapy, speech/language, and a vocational evaluation. (Ex F at 1, Hyman cert.) The parent signed the consent form for the proposed evaluations. (Ex F at 2, Hyman cert.) There is no indication in the letter or consent form that an FBA was requested by the parent at the time of the November 10, 2025, reevaluation meeting. The three proposed evaluations

were completed apparently sometime in January 2026, or the beginning of 2026. The last FBA of J.T. was completed in April 2022. Petitioner asserts, through the declaration of her expert, Dr. R. Mark Harris, that the FBA is stale and a new evaluation must be completed immediately.

On March 9, 2026, an IEP meeting was held with the District representatives and parent G.R. with her advocate, Dr. Harris. (Ex G, Hyman cert.) The proposed March 9, 2026, IEP indicates that J.T. will continue to have a shared aide. (Ex G at 1, 17, 21, and 22, Hyman cert.) Dr. Hyman has certified that J.T.'s current classroom roster lists a total of five students in the classroom with the classification of autism. (Hyman cert., ¶ 17.) Dr. Hyman certified that there are four staff members present in J.T.'s classroom. There is a special education teacher, two paraprofessionals, and a registered behavior technician (RBT). (Hyman cert., ¶ 17.)

The proposed IEP reiterates that J.T. will have access to an augmentative communicator for general and special education. (Ex G at 17, Hyman cert.) G.R. expressed concern about J.T.'s communication skills at the IEP meeting and wanted him to learn how to use his communication device. (Ex G at 4, Hyman cert.) J.T. has been utilizing his augmentative assistive communication device, according to a notation in the proposed IEP of March 9, 2026. (Ex G at 6, Hyman cert.)

On March 30, 2026, parent G.R. toured the Atlantic City High School with Dr. Harris. On April 13, 2026, they toured the Atlantic County Special Services School (ACSSS). Dr. Harris has certified in his declaration statement that during the November 11, 2025, reevaluation meeting, the Supervisor of Student Services "explicitly committed to 'floating' [J.T.]'s educational profile and initiating formal referrals" to specialized out-of-district programs, such as ACSSS. (Dr. R. Mark Harris Declaration paragraph 4.) Dr. Harris alleges that a representative at ACSSS advised him that ACSSS had not received a referral or intake inquiry from the Atlantic City School District for J.T. At oral argument, the District's attorney explained that the District would schedule a meeting with the parent after the tours to determine if the student's records would be sent to prospective out-of-district placements. The District's attorney indicated that a meeting is scheduled with the parent and her advocate and District staff for May 11, 2026.

The proposed IEP from the March 9, 2026, meeting was mailed to the parent on April 17, 2026. Petitioner has rejected same by having her due process petition and emergent relief request filed on April 23, 2026. The due process petition alleges that the District has engaged in systemic, substantive, and procedural violations of the Individuals with Disabilities Education Act (IDEA), resulting in an ongoing denial of a free appropriate public education (FAPE).

The due process petition asserts that a FAPE was denied due to the school having failed to provide an assistive technology device; having denied necessary support of a 1:1 aide; having discharged occupational therapy services; and having failed to place the student in an appropriately challenging classroom. The emergent relief request seeks the immediate provision and comprehensive training of staff for the augmentative device; immediate placement of a 1:1 aide for J.T.; and immediate completion of an FBA.

Petitioner updated her emergent relief request, indicating that the District must immediately provide logs of documented proof that the communication device is being used by J.T. and documentation that the staff has been trained in the use of the device. It was also asserted at oral argument that petitioner seeks the immediate provision of J.T.'s educational profile to out-of-district programs.

DISCUSSION AND LEGAL CONCLUSIONS

The Federal Individuals with Disabilities Education Act (IDEA) was enacted to improve education for disabled students. 20 U.S.C. § 1400, et seq. One of the purposes of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]” 20 U.S.C. § 1400(d)(1)(A). The responsibility to deliver appropriate services rests with the local public school district. N.J.A.C. 6A:14-1.1(d); 20 U.S.C. § 1400(c)(6).

The primary method of ensuring the delivery of a FAPE is through an IEP. 20 U.S.C. §1414(d)(1)(A). An IEP outlines the student's present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child's progress. 20 U.S.C. §1414(d)(1)(A)(i); C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 65 (3d Cir. 2010).

The IEP is meant to be developed, reviewed, and revised for the individual needs of the child. 20 U.S.C. §1414(d)(1)(A). An IEP must provide meaningful access to education and confer some educational benefits upon the child. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 192 (1982). To meet its obligation to deliver FAPE, a school district must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 399 (2017).

If a due process petition regarding a disputed issue of FAPE has been filed seeking a hearing, and the parent(s) or guardian(s) or the school district wishes to apply for emergency relief, they may do so. N.J.A.C. 1:6A-12.1(a). An application for emergency relief must set forth in writing the specific relief sought and the specific circumstances the applicant believes justifies such relief. Ibid.

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, petitioner parent must first demonstrate that she is entitled to consideration of her emergent relief requests. The request to immediately implement the use of an augmentative assistive device on its face appears to be an asserted break in the delivery of services. However, the documentation and argument presented confirms that J.T. does have an assistive device for communication throughout the school day and is successfully utilizing it. The issue is thus moot as presented on an emergent basis. Petitioner's updated argument demands that the District provide documentation or logs demonstrating when J.T. is using the device and documented proof of the staff having been trained. Such demands are not emergent relief requests, as they do not fall within the issues that may be presented on an emergent basis. N.J.A.C. 6A:14-2.7(r)(1). I **CONCLUDE** that any emergent relief requests related to the implementation or use of an augmentative assistive device are **DENIED**.

The issue of the demand for an immediate FBA to be completed is also not an emergent relief request issue. N.J.A.C. 6A:14-2.7(r)(1). The first written request for an FBA by the parent appears in her due process petition of April 23, 2026. This is not a break in the delivery of services, a disciplinary action, a placement issue pending the outcome of the due process petition, nor a graduation issue. The due process petition is still in the resolution period. The parties are certainly encouraged to communicate and address this demand for an FBA so if it is agreed to be done, it is completed as quickly as possible. I **CONCLUDE** that the request for immediate completion of an FBA is not an emergent relief request and thus is **DENIED**.

The issue raised during oral argument that referral information and the student's educational profile shall immediately be sent to prospective out-of-district placements is also not an emergent relief request. N.J.A.C. 6A:14-2.7(r)(1). This issue is raised in the due process petition as being demonstrative of the District's "material misrepresentation" and "bad faith obstruction" since the District's director of Special Services allegedly advised during the reevaluation meeting of November 11, 2025, that the District would "float" J.T.'s educational profile to specialized out-of-district placements. This is not a break-in-services issue, disciplinary issue, placement-pending-due-process issue, nor graduation issue. I **CONCLUDE** that the request to order the immediate delivery of the student's educational profile to prospective out-of-district placements is **DENIED**, as this

is not an emergent relief request.

Petitioner's primary issue raised for seeking emergent relief is for the immediate implementation of a 1:1 aide for J.T. Although petitioner asserts this is a break in the delivery of services and concerns J.T.'s placement pending the outcome of the due process proceedings, the last implemented IEP is the IEP of March 19, 2025, which specifies J.T. has a shared aide, as a 2:1 ratio. The ratio of students to adult staff in J.T.'s self-contained classroom is 5:4, having five students in the classroom with a special education teacher, two aides, and an RBT. This satisfies the IEP requirement for a shared aide. I **CONCLUDE** there has been no demonstrated break in the delivery of services with the provision of a shared aide 2:1, as stated in the last implemented IEP.

Petitioner asserts that it is for the safety of J.T. that a 1:1 aide should be immediately put into practice. This could pass muster as a permitted emergent relief request, concerning the safety of J.T.'s placement pending the outcome of the due process proceedings. N.J.A.C. 6A:14-2.7(r)(1)(iii).

An emergent relief request assessment is done in accordance with the New Jersey administrative code, which has codified the four well-settled conditions to be met, as originally set forth in Crowe v. DiGioia, 90 N.J. 126 (1982). Emergent relief may be granted if the judge determines from the proofs that:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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. 6A:14-2.7(s)(1).]

Petitioner must demonstrate all four factors by clear and convincing evidence to prevail on her request. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012); McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007).

Regarding the first factor, the term irreparable harm has been described as “substantial injury to a material degree coupled with the inadequacy of money damages.” Judice’s Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citing Tully v. Mott Supermarkets, Inc., 337 F. Supp. 834, 850 (D.N.J. 1972)). Petitioner must demonstrate irreparable harm, and not just the risk of such harm. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). Emergent relief cannot be granted “merely to allay the fears and apprehensions or to soothe the anxieties of the parties.” Ibid.

Petitioner contends that irreparable harm is occurring to J.T. because he is known to engage in self-injurious behavior (SIB). It is alleged that J.T. has come home from school with bruises, due to the failure of the District to provide a 1:1 aide. J.T.’s SIB is known to the District and is described in detail in the last implemented IEP of March 19, 2025. The IEP emphasizes that J.T. requires one-to-one support “throughout the entire day to address a range of behavioral and sensory challenges” and to “maintain personal safety.” (Ex A, Hyman cert.) J.T. engages in SIB when overstimulated by banging his hands on the desk. (Ex A, Hyman cert.) Despite such a direct acknowledgement and assessment of J.T.’s needs for one-to-one support, the IEP specifies that J.T. has a shared aide 2:1.

Petitioner did not contest the IEP of March 19, 2025. It was not until October 2025 that petitioner raised objections to the implemented IEP. Dr. Harris has certified in his declaration that J.T.’s placement lacks 1:1 safety supervision, which is “resulting in continued” SIB. (Dr. Harris declaration.) The parent observed bruising on one occasion when J.T. came home from school, which indeed raises concern for J.T.’s safety. Certainly if J.T. is left to his own devices without any type of supervision, he could seriously injure himself with his SIB. If serious injuries were occurring, it would be irreparable harm. Actual irreparable harm must be demonstrated, not just the risk of such harm.

J.T. is in an academic setting with a five-student-to-four-adult-staff-member ratio, with one of the adult staff members being an RBT. The parent only once, sometime in the fall of 2025, noticed bruising, as has been raised in this emergent application. The process of reevaluation was initiated. There have been no further self-injury issues raised, but for the vague assertion that the lack of a 1:1 aide has resulted in continued SIB. I **CONCLUDE** that irreparable harm has not been demonstrated by petitioner. This is not to minimize the parent's concern for the safety and well being of her child, which is rightfully a concern and being addressed diligently by the parent through due process.

Petitioner must demonstrate all four Crowe factors. Having determined that irreparable harm has not been demonstrated, the inquiry may end. However, for completeness, the other factors are considered.

Petitioner must demonstrate that the legal right underlying her claim is settled and that she is likely to prevail on the merits. Petitioner's request for a 1:1 aide would be a change to the last implemented IEP. It is settled law that J.T. has a legal right to a FAPE in the least restrictive environment. If petitioner demonstrates through the hearing process that the most appropriate, least restrictive environment for J.T. to receive a FAPE is with a 1:1 aide, then she may prevail on the merits of this claim.

The emergent relief application process affords a method for petitioner to present claims involving the placement of her student pending the outcome. Petitioner is seeking a change in the programming from shared aide to 1:1 aide. This is a disputed claim. The District asserts that it is in compliance with the IEP by providing a shared aide to J.T. During the pendency of a due process complaint, the student involved in the complaint must remain in their current educational placement, commonly referred to as "stay put" unless the District and parents of the child agree otherwise. 34 C.F.R. 300.518(a) (2026). Here, the governing IEP is from March 19, 2025. The likelihood of petitioner prevailing on changing the shared aide provision to a 1:1 aide cannot be determined at this junction and would be speculative. Although the legal right to a change in placement that will accomplish FAPE in a least restrictive environment is settled law, the likelihood of success cannot be weighed in this summary proceeding. Without clear demonstration of

all prongs of Crowe to warrant emergent relief, petitioner is not left without recourse. Petitioner has a pending due process petition and can pursue her claims, and her request to change the aide designation through a due process hearing if not resolved. I **CONCLUDE** that the law is settled that a FAPE must be provided in the least restrictive environment, but the likelihood of success on the merits of changing the aide programming cannot be determined at this premature stage. This claim must be vetted through the due process procedure.

The final condition to be satisfied for emergent relief is the balancing of hardships. Petitioner parent asserts that her student is at great risk of harm without a 1:1 aide due to his self-injurious behavior. The District asserts that it is in compliance with the IEP by providing a shared aide, and there are more than sufficient assistance and aides available for J.T. in his classroom, including an RBT. It is recognized that there would be an additional cost to the District to implement a 1:1 aide. In terms of balancing such hardships, I **CONCLUDE** that the scales are seen to be in equipoise.

Petitioner has not demonstrated the four prongs of Crowe by clear and convincing evidence. I thus **CONCLUDE** that the requested emergent relief to immediately change J.T.'s programming from shared aide to 1:1 aide is **DENIED**. Thus, I **CONCLUDE** that any emergent relief sought in this application is **DENIED**.

ORDER

It is **ORDERED** that the petitioner parent's emergent relief requests are **DENIED**.

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).

May 8, 2026

DATE

A handwritten signature in black ink, appearing to read 'E. B. Frick', written over a horizontal line.

ELAINE B. FRICK, ALJ

Date Received at Agency

Date Mailed to Parties:

EBF/dc

APPENDIX OF SUBMISSIONS

- Request for Emergent Relief submitted by petitioner on April 23, 2026: Request for emergent relief signed by G.R. on April 20, 2026, with Certification in Lieu of Affidavit Seeking Emergent Relief by G.R., signed April 20, 2026
- Submission for petitioner on April 29, 2026: Declaration of Dr. R. Mark Harris, Sr., Ed.D., signed April 29, 2026
- District's opposition to emergent relief documentation submitted May 4, 2026: Letter Brief; Certification of Dr. Lakecia Hyman, signed May 4, 2026, with attached Exhibits A through H
- Petitioner's reply and further support of her emergent relief request, submitted May 5, 2026: Letter Brief; Updated Expert Declaration of Dr. R. Mark Harris, Sr., undated; Reply Certification of Dr. R. Mark Harris, Sr., Ed.D., signed May 5, 2026