



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER ON**  
**EMERGENT RELIEF**

**H.B. AND M.B. ON BEHALF OF H.B.,**

Petitioners,

v.

**CLEMENTON BORO**

**BOARD OF EDUCATION,**

Respondent.

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OAL DKT. NO. EDS 06641-26

AGENCY DKT. NO. 2026-40873

**CLEMENTON BORO**

**BOARD OF EDUCATION,**

Petitioner,

v.

**H.B. AND M.B. ON BEHALF OF H.B.,**

Respondents.

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OAL DKT. NO. EDS 06895-26

AGENCY DKT. NO. 2026-40902

**H.B., pro se**

**Emily E. Strawbridge**, Esq., for Clementon Board of Education (Parker McCay,  
P.A., attorneys)

BEFORE **GAURI SHIRALI SHAH**, ALJ:

### **STATEMENT OF THE CASE**

The school district placed a general education student with behavioral issues on home instruction pending a psychiatric evaluation and thereafter referred him to the child study team (CST) to evaluate eligibility for special education. The parents seek to return the student to school; the school seeks to keep the student at home pending CST evaluation. Must the student be returned to school? No. If a request is made for evaluation while a child is subject to disciplinary action, then pending the result of the evaluation the child shall remain in the educational placement determined by the school. 20 U.S.C. §1415(k)(5)(D)(ii); N.J.A.C. 6A:14-3.3(f).

### **PROCEDURAL HISTORY**

On Friday, January 30, 2026, general education kindergarten student H.B., known as L.B. at school, was sent home early from his Clementon Boro District school (Clementon or “the District”). On Monday, February 2, 2026, Clementon advised the parents, H.B. and M.B., that due to escalating behavior issues that affected safety, L.B. would not be able to return to school pending a psychiatric exam and would receive homebound instruction. Thereafter, on February 4, 2026, the school referred L.B. to the CST to assess eligibility for special education and related services under the Individuals with Disabilities Education Act (IDEA). On February 10, 2026, the CST held the identification meeting and concluded that L.B. should be evaluated for a suspected disability. On February 27, 2026, the parents consented to the evaluations, including a psychiatric evaluation. The March 30, 2026, psychiatrist report recommended that L.B. remain on homebound instruction pending the CST evaluations.

On April 27, 2026, the parents filed a due process petition and request for emergent relief with the Department of Education, Office of Special Education (OSE). The OSE received the due process petition and request for emergent relief on April 27, 2026. The OSE transmitted the emergent application to the Office of Administrative Law (OAL) on April 28, 2026, where it was filed as an emergent contested case. The emergent application sought to have L.B. immediately returned to school.

The District timely filed an Answer to the parents' due process petition, and this petition is currently pending a thirty-day resolution period.

On April 29, 2026, I held a telephonic conference with the parties. At the conference, Clementon's counsel advised that they would be filing a cross-petition for due process and emergent relief.

On April 30, 2026, Clementon filed a cross-petition for due process and emergent relief with the OSE. On May 1, 2026, the OSE transmitted both the due process petition and the request for emergent relief to the OAL, where they were filed that same day as a contested case and an emergent contested case, respectively. Clementon's emergent application sought to keep L.B. on homebound instruction pending the CST eligibility and initial individual education program (IEP) meeting and further sought an order to compel the parents to attend the meeting.

On May 4, 2024, I heard oral argument from all parties and accepted all remaining submissions from the parties, including an addendum to the psychiatrist's report. As the emergent cases were heard together and arise out of the same underlying incident and actions, I am rendering one Final Decision to address both emergent cases.

### **FINDINGS OF FACT**

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

L.B. is a six-year-old who was a general education student enrolled in kindergarten in the Clementon School District for the 2025–2026 school year. On December 1, 2025, the District and the parents met and agreed to a plan to help L.B. with some behavior

issues he was experiencing in the classroom. A-1 to A-3;<sup>1</sup> R-1. Up to January 20, 2026, the plan seemed to make slow progress in regulating L.B.'s behavior.

As part of the plan, the District collected data on L.B.'s target behaviors from December 8, 2025, through January 13, 2026. The target behaviors included aggression towards peers and staff, including any instance of hitting, kicking, or pushing another person or objects towards individuals with or without injury. R-2. The data sheets include the number of instances that L.B. engaged in the target behavior on any given day. Additional charts showed the duration of the behavior in terms of time. The handwritten comments on the data sheet also describe the behaviors on any given day and include hitting, kissing, or pretending to kiss/bite other students, cursing, running around the classroom, and screaming. Ibid.

The data sheet reflects escalating behavior: on December 8, 2025, L.B. had two occurrences of target behavior while on January 13, 2026, he had more than twenty-five reported occurrences throughout the day. R-2.

On January 29, 2026, after six occurrences of the target behavior, L.B. was sent home early at 2:20 p.m. R-2. On Friday, January 30, 2026, L.B. was sent home after a lunchroom incident. Ibid. The incident involved him climbing and jumping off tables and the stage while students were lining up. R-3. Multiple school staff members were required to deescalate L.B.'s behavior.

On January 30, 2026, Clementon tried to reach parent H.B. via telephone three times. G-4. The transcribed voicemail of the last call made at approximately 4:20 p.m. reflects that the District sought to change a meeting scheduled for Wednesday, February 4, 2026, to Monday, February 2, 2026.

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<sup>1</sup> Petitioner H.B. produced a large tranche of exhibits that are labelled starting with A and going to H, with numbered sub-categories including A-1, and so on. However, some exhibits are not consecutively numbered. Additionally, exhibits from I to T were linked to H.B.'s person Google drive and thus were not accessible.

On February 2, 3, and 4, 2026, H.B. attempted to return L.B. to school. H-1, H-2. In a letter dated February 2, 2026, the District made it clear that, for safety reasons, L.B. would not be permitted back to school until he underwent a psychiatric evaluation and received clearance to return. R-4. Although the letter speaks about safety and not a disciplinary action, such as suspension, the result to L.B. is the same: removal from school. However, the District concedes that a suspension of a general education student, which L.B. was at time of removal, would entitle the student to a measure of due process in a hearing before the Board of Education and the superintendent. No such opportunity was afforded to L.B.

On February 5, 2026, the District advised H.B. that it was referring L.B. to the CST to identify and evaluate L.B. for a suspected disability, which would support his eligibility for special education and related services. The District sent a meeting invite for a CST identification meeting scheduled for February 10, 2026, that the parents could attend via videoconference. The parents made clear their objection to the CST identification meeting and did not attend. E-1, E-2.

On February 10, 2026, the CST found that L.B. was a student with a suspected disability and recommended that evaluations to assess his eligibility for special education and an IEP be conducted. R-5. The CST recommended an educational evaluation, a social history evaluation, a speech and language evaluation, and a psychiatric evaluation.

Initially, the parents objected to any evaluations, then on February 12, 2026, they consented to some evaluations, but not the social history or psychiatric evaluations. R-7. On February 27, 2026, the parents provided consent to all the evaluations. R-8.

However, on March 11, 2026, H.B. sought to obtain an independent psychiatric evaluation at public expense from the District but was advised by the District that when initial eligibility is considered the District must conduct the evaluations first. R-10.

The psychiatric evaluation was scheduled by the parents for March 30, 2026, with James L. Hewitt, M.D., of Hewitt Psychiatric. Dr. Hewitt authored a report that same day that recommended that "At this point the importance of safety and the unpredictability of

L.B.'s behavior required that he remain on homebound instruction until the child study assessment is completed." R-11. Dr. Hewitt diagnosed L.B. with disruptive mood dysregulation disorder and adjustment disorder with disturbance of emotions and conduct. Ibid. Dr. Hewitt's report references potential neurodevelopmental issues based on some of L.B.'s observed and reported behavior, but he does not make any recommendations on following up on these issues.

On May 4, 2026, at the request of L.B., Dr. Hewitt issued an addendum to his report, which he noted was done at the behest of parent H.B. The report stated in clear terms that it was Dr. Hewitt's "independent opinion" that for safety reasons L.B. should be kept on homebound instruction pending the CST meeting, because he needed an IEP so that "the school district can accommodate his disability and safely educate." R-13.

Based on Dr. Hewitt's report, the District has maintained L.B. on homebound instruction. However, because the parents have refused to allow any instruction by the District while L.B. is homebound, he has received none. On February 2, 2026, the District first reached out to the parents to schedule home instruction. C-2. As of April 23, 2026, the parents still refused to accept home instruction. R-12. Of note, during the time that L.B. was attending school, the District offered a one-to-one aide for L.B., ostensibly to help manage his dysregulation and behaviors, and to ensure safety. The parents rejected this offer.

The District also offered participation in the Castle program for L.B., but the parents also refused participation. The Castle program is a therapeutic behavioral program that lasts from four to eight weeks, based on Castle's assessment, with the goal of preparing the child for a return to in-person school. During the Castle program, the student receives homebound instruction. Certainly, the Castle program could have been completed in the time that L.B. has currently been out of school.

The CST evaluations were completed and forwarded to the parents on April 29, 2026. At present, the District seeks to schedule a CST eligibility and initial IEP meeting with the parents for either May 8, 2026, or May 11, 2026, as the parents prefer. As of May 4, 2026, the parents had not chosen a date to participate in the CST meeting.

### **CONCLUSIONS OF LAW**

The parents, through their emergent application, seek an Order to allow the return of L.B. to in-person school in the District to continue his education through a general education lens. The District, through its cross-petition for emergent relief, seeks to keep L.B. on homebound instruction pending the CST meeting to determine eligibility under the IDEA and develop an initial IEP based on the same. The District also seeks an Order requiring the parents to participate in the CST meetings.

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).]

The District argues that none of these issues apply to L.B.'s situation since L.B. was not removed for disciplinary reasons, and there was no change in placement. Additionally, the District argues that any break in the delivery of services was caused by the parents' refusal to allow the homebound educational instruction offered almost immediately by the District. While I agree that any break in services was solely caused by the parents' refusal, the other arguments are without merit.

Here, L.B. was removed from school as a general education student. Within a few days of his removal, the District sought to have him evaluated as a student with a suspected disability. In New Jersey, a child with a suspected disability is afforded the

same protections as one determined to be disabled after full evaluations. N.J.A.C. 6A:14-3.3(f). Thus, as early as February 10, 2026, when the CST identified L.B. as a student with a suspected disability, the protections of the IDEA and New Jersey regulations governing special education became applicable to L.B. 20 U.S.C. §1415; N.J.A.C. 6A:14-1 et seq.

Under N.J.A.C. 6A:14-2.8(c), any removal of a student with a disability from his current placement for greater than ten days constitutes a change in placement. While the District argues that L.B.'s removal was for "safety" and not a suspension, the result is the same. The removal was based on L.B.'s behavior. Indeed, the Supreme Court, in the seminal case Honig v. Doe, 484 U.S. 305, 323–26 (1988), warned against exactly the action undertaken here, as it excludes children with disabilities from school participation indefinitely under the guise of safety. The Honig Court further noted that such conduct by a school district also violates the student's right to a free appropriate public education required under the IDEA. Honig, 484 U.S. at 309–10. Thus, I **CONCLUDE** that the removal of L.B. from school on January 30, 2026, was both a disciplinary action by the District and a change of placement under N.J.A.C. 6A:14-2.7(r)(1), requiring that I consider the parents' emergent application.

Turning to the relief sought in both emergent applications, it is necessary to address the length of time that L.B. has been out of school for disciplinary reasons and his current homebound-instruction placement. The IDEA also provides protections for children like L.B. who are not yet eligible for special education and related services but have engaged in conduct described as violating a school code of conduct. 20 U.S.C. §1415(k). When, as here, if the request for an evaluation for disability occurs during the time during which the child is subject to disciplinary measures, pending the results of the evaluation the child should remain in the educational placement determined by the school district. 20 U.S.C. §1415(k)(5)(ii). New Jersey regulations recognize and follow these IDEA requirements but specifically mandate that no child should be removed from school for more than forty-five days. N.J.A.C. 6A:14-2.8(d). Should the school district seek to extend the removal time, it is required to file an expedited due process petition and have an administrative law judge (ALJ), if appropriate, grant that extension based on the information provided to support it by the school district.

Of course, this begs the question as to when the forty-five days start to accrue for L.B., since he was a general education student at the time of his January 30, 2026, removal from school. Do the forty-five days start on February 10, 2026, the date that the CST identified L.B. as a student with a potential disability, or do we consider February 27, 2026, when the parents finally consented to the evaluations? In either of these scenarios, the forty-five days have long passed. Or do the forty-five days start when Dr. Hewitt diagnosed L.B. with a disability under which he may have eligibility for special education services? Under this scenario, the forty-five days are fast approaching, as is the CST meeting that determines L.B.'s eligibility.

Under N.J.A.C. 1:6A-12.1(e), an ALJ may order emergency relief pending issuance of the decision in the case if the judge determines from the proofs that:

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.

To be successful, an applicant must satisfy all four requirements. Crowe v. DeGioia, 90 N.J. 126 (1982). Here, petitioners have not established irreparable harm of L.B.'s homebound instruction where they themselves have contributed to the lack of education by rejecting the instruction offered by the District. Additionally, based on the data sheets that describe L.B.'s behavior towards other students and staff—including hitting and throwing objects—the parents cannot meet the burden of establishing that when the equities and interests of the parties are balanced, they will suffer more. Thus, I **CONCLUDE** that the parents have not met the requirements necessary to prevail on emergent relief under the Crowe standard. Turning to the District's emergent application, it is evident that if L.B. is immediately returned to school without evaluating his disability—

and whether an IEP and special education, related services, or other supports are necessary—he will likely revert to the behavior that resulted in his removal. This would result in irreparable harm to the students and staff who must endure the behavior and potentially affect educational access to those affected students. Educational access is for all, and thus this tilts the balance of the equities to the District. Additionally, the legal right to the District’s claim of removal is well settled under both the IDEA and the New Jersey regulations, with the caveat that it is limited to forty-five days. 20 U.S.C. §1415 (k)(5)(ii); N.J.A.C. 6A:14-2.8(d). Additionally, the District has provided the report of a medical expert, Dr. Hewitt, who opines that L.B., for safety reasons, should be kept on homebound instruction pending the outcome of the CST evaluations and recommends that an IEP be created for L.B. to assist with and accommodate his disability. Petitioners have not provided any medical or other opinions, save their own, that L.B. should be immediately returned to school. With the report of Dr. Hewitt, the District has a likelihood of success of its underlying claim. Thus, I **CONCLUDE** that the District has met all four of the criteria necessary for emergent relief under Crowe, 90 N.J. 126.

However, the relief granted to the District under the emergent application is limited also by the report of Dr. Hewitt, meaning that L.B. shall only remain on homebound instruction pending the CST meeting for eligibility and IEP development scheduled to occur in the next two weeks of May 2026. I **CONCLUDE** that should the District seek to extend home instruction further, the requirements of N.J.A.C. 6A:14-2.7(n) would apply, and an Order from an ALJ would be required.

Lastly, the participation of the parents in the CST meeting and in the education of their son is necessary for his educational success. Had the parents agreed to a one-to-one aide or agreed to the Castle program, both of which might have helped with L.B.’s documented behavioral issues, which are not simply “high-energy six-year-old issues,” the parties may not have needed to proceed on these emergent applications.

### **ORDER**

For the reasons stated above, I hereby **ORDER** that the parents’ application for emergent relief seeking a return to school of student L.B. is hereby **DENIED**. I **FURTHER**

**ORDER** that the District's application for emergent relief is partially **GRANTED** as follows: L.B. shall stay in his current placement of homebound instruction only pending the results of the initial CST eligibility and IEP meeting to be scheduled for May 8 or May 11, 2026; after that time, the District shall require an Order from an ALJ to keep L.B. out of school. Additionally, I **ORDER** the parents to participate in the May 2026 initial CST eligibility and IEP meeting.

This order on application for emergency relief shall remain 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. The parties will be notified of the hearing dates.

May 5, 2026

DATE

  
GAURI SHIRALI SHAH, ALJ

Date Received at Agency:

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Date emailed to Parties:

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GSS/nn

## APPENDIX

### Exhibits

#### For H.B and M.B.:

|                                |                                                                                                                          |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Exhibits A-1–A-5               | Emails regarding December 1, 2025, behavior plan and summary                                                             |
| Exhibits B-1–B-5               | Voicemail transcript from January 30, 2026, phone call and summary                                                       |
| Exhibit C-1, C2                | Email offering homebound instruction and summary                                                                         |
| Exhibit D1–D-3                 | Email exchange regarding psychiatric evaluation requirement                                                              |
| Exhibits E-1, E-2,<br>subparts | Emails from parents to district and summary of same                                                                      |
| Exhibits F-1–F-4               | Emails from District regarding attendance                                                                                |
| Exhibits G-1–G-22<br>(no G-20) | Emails regarding psychiatric assessment and CST meeting,<br>objections to same, parents' telephone log and index of same |
| Exhibits H-1, H-2,<br>subparts | Transcripts of recordings of parents attempt to enter school on<br>February 2 and 3, 2026                                |

#### For Clementon Board of Education:

|     |                                                                                |
|-----|--------------------------------------------------------------------------------|
| R-1 | Email from District to parents regarding behavior plan, dated December 1, 2025 |
| R-2 | Behavior plan target behavior data sheets and charts                           |
| R-3 | Summary of January 30, 2026, incident                                          |
| R-4 | Letter from District to Parents, dated February 2, 2026                        |
| R-5 | Letter from parent to District regarding CST meeting, dated February 10, 2026  |
| R-6 | Letter from District regarding proposed evaluations, dated February 10, 2026   |
| R-7 | Parental consent for some evaluations, dated February 12, 2026                 |
| R-8 | Parental consent for all evaluations, dated February 27, 2026                  |

- R-9 Email from District regarding Dr. Hewitt appointment
- R-10 Letter from District to parents regarding IEE, dated March 12, 2026
- R-11 Dr. Hewitt's Psychiatric Assessment dated March 30, 2026
- R-12 Letter from parents to District, dated April 23, 2026