



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMENDED

ORDER ON GRANTING

EMERGENCY RELIEF

OAL DKT. NO. EDS 08498-26

AGENCY DKT. NO. 2026-41127

**CLEMENTON BOROUGH BOARD
OF EDUCATION,**

Petitioner,

v.

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

Susan S. Hodges, Esq., for petitioner (Parker McCay, P.A., attorneys)

H.B. and M.B., respondents, pro se

BEFORE **ADVIA KNIGHT FOSTER**, ALJ:

STATEMENT OF THE CASE

During the 2025-26 school year, H.B. exhibited escalating behavior, including but not limited to throwing himself to the ground and pushing and grabbing other students and staff, and on May 27, 2026, he was placed on home instruction. It is substantially likely that he will injure himself or others if he returns to school. Must H.B. be returned to his stay-put placement? No. If a student's current placement is substantially likely to

result in injury to himself or others, stay-put is not available. Honig v. Doe, 484 U.S. 305, 328 (1988); 20 U.S.C. § 1415(k)(3)(A).

PROCEDURAL HISTORY

On April 27, 2026, the parents, H.B. and M.B., 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 case was docketed under OAL docket number EDS 06441-26. The emergent application sought to have L.B. immediately returned to school.

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. The case was docketed under OAL docket number EDS 06895-26. Clementon's emergent application sought to keep H.B. on homebound instruction pending the Child Study Team (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, 2026 the Honorable Gauri Shirali Shah heard oral argument on both cases and on May 5, 2026, issued one decision for both cases denying the parents' emergent petition and partially granting the district's emergent petition for H.B. to remain in home instruction pending the results of the CST eligibility and IEP meeting scheduled for May 8 or May 11, 2026, and compelling the parents to attend the CST meeting.

On May 27, 2026, petitioner, Clementon Borough Board of Education (District) placed H.B. on home instruction due to escalating and unsafe behaviors. On May 28, 2026, petitioner filed a request for emergency relief with the Office of Special Education (OSE). The OSE transmitted the case to the Office of Administrative Law 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. On June 4, 2026, I held oral argument and closed the record.

FINDINGS OF FACT

Based on the arguments the parties made at oral argument, together with the documents the parties submitted in support of and in opposition to the application for emergency relief, I **FIND** the following as **FACT** for purposes of this motion only:

H.B. is a six-year-old enrolled as a general education kindergarten student. (Ex. A.)

During the 2025-26 school year, H.B. exhibited escalating behaviors in school, including hitting, throwing objects, screaming, throwing himself on the ground, pushing and grabbing other students and staff, inappropriate touching of other students, engaging in play conversation using words like kill or dead, and failing to follow direction by staff.

On December 1, 2025, the District sent a confirming email to M.B. regarding behavioral support and interventions, including noise-cancelling headphone when H.B. is overstimulated, individualized point systems to reduce stigma, timed breaks, providing appropriate behavioral distractions like puzzles and mazes, the option to draw his feelings if he does not want to speak, reinforcing “big kid talk” at home, and offering reassurance when H.B. is feeling anxious. (Ex. A.)

On December 8, 2025, the District implemented a behavior chart composed of target behaviors: citing instances of aggression toward peers or staff, such as of hitting, kicking, pushing another person or objects toward individuals with or without injury and physical aggression that included an observable timeframe of behavior that interrupted the learning environment. (Id.)

Between December 8, 2025, and January 30, 2026, there were many instances of aggression and physical disruption, the most occurring on December 10, 2025, and on

January 13, 2026, at seventeen and nineteen instances respectively. On January 8, 2026, H.B. hit several students and screamed in their faces while on the playground and threw himself on the floor during Physical Education. On January 13, 2026, H.B. hit a staff member, Mrs. Pettet. On January 30, 2026, H.B. climbed on and jumped off tables in the lunchroom. (Id.)

Also, during that timeframe, there was a significant time when H.B.'s behavior interrupted the learning environment with the longest timeframes on December 9, 2025, for sixty-eight minutes, and ninety-seven minutes on January 13, 2026. (Id.)

On February 2, 2026, H.B. was placed on home instruction due to his escalating behavior and for concern that he posed a safety risk to himself, his peers, and staff. On February 2, 2026, the District reached out to the parents to schedule home instruction and gave them the option of a live instructor or Educere online assignments, and they refused both options.

On February 10, 2026, H.B. was referred to the CST and the following evaluations were proposed: (1) Educational, (2) Psychological, (3) Speech and Language, (4) Social History, (5) Psychiatric evaluation and clearance. (Ex. B.)

On February 27, 2026, the District received the signed consent form for evaluation from M.B. (Ex. C.)

On March 30, 2026, Dr. Hewitt, the psychiatrist, issued a report to the District and mailed the report to the parents on April 14, 2026, and emailed it on April 15, 2026. Dr. Hewitt noted that H.B. does not have rapid cycling mood changes but rather emotional reactivity when things are not to his liking. He also stated H.B. has academic potential but his behavior represents safety issues for himself, other students, and staff. (Ex. C.)

The remaining evaluations occurred on April 23, 2026, and April 24, 2026, and they were mailed to the parents on April 29, 2026.

On May 8, 2026, the District held an Eligibility Conference and IEP meeting. (Ex. E.)

H.B. was found eligible for special education and related services under the classification of Emotional Regulation Impairment (ERI) and was placed in the general education setting with a 1:1 aide. The IEP also includes a full behavior intervention plan developed by the District's Board-Certified Behavior Analyst (BCBA). Some of the interventions included frequent adult check-ins and proactive emotional support, visual supports, explicit modeling of expected behaviors, access to a designated calm-down space, positive reinforcement for appropriate behavior, break activities, a visual stop and go proximity plan, and advance notice and support during transitions. The parental involvement included home reinforcement strategies, family input of relevant changes, and daily communication while transitioning back into the classroom environment. The IEP defined elopement as leaving a work area/room, running from staff, and attempting to open outside doors. (Ex. F.)

On May 11, 2026, H.B. returned to school. The parties entered into a settlement agreement, and the absences from February 2, 2026, to May 11, 2026, were converted to home instruction since the parents represented that they had instructed H.B. during that time. (Ex. O.)

On May 14, 2026, H.B. exhibited escalating and unsafe behavior including climbing on tables, standing and jumping on the windowsill, throwing classroom books and writing utensils, and overturning chairs, resulting in the classroom being cleared. De-escalation techniques were implemented without success. H.B. dropped to the floor, whining and rolling on the ground. He then eloped from the classroom and ran through the building. (Ex. G.)

On May 14, 2026, school staff met with H.B. to review the behavior during the day and interventions that were used and discussed difficulties during transitions throughout the day. The staff recommended the use of structured scheduling and predictable routines during weekends and non-school hours to support consistency across settings. (Id.)

On May 15, 2026, H.B. signed the Consent to Implement the IEP form.

On May 18, 2026, H.B. engaged in escalating behavior, including crawling under tables, walking around the class, and eloping during a transition to the sensory room/gym. H.B. was redirected. While in the sensory room, H.B. threw cones, jumped from bleachers, and attempted to access supply closets. The staff continued de-escalation support. (Ex. H.)

Later that same day, H.B. eloped from gym class, attempted to open several classroom doors, and attempted to elope from the building and was redirected back to the gym. While in the gym, he climbed on tables and benches and jumped from them. He also climbed stairs and attempted to exit through the backstage area, and he ultimately had to be picked up early from school. (Id.)

On May 20, 2026, during recess, H.B. engaged in escalating behaviors including climbing over the fence, climbing on the top playground equipment despite multiple staff redirections and kicking, shoving, and hitting other children, resulting in the children being ushered back inside the building for safety. Ten children had to be evaluated by the school nurse. The District called H.B.'s parents and asked them to pick him up early from school. (Ex. I.)

On May 20, 2026, the District sent a notice to H.B. and M.B. to convene an emergency IEP meeting to discuss supports, interventions, and safety planning, and offered May 21, 2026, or May 22, 2026, as options. (Id.)

On May 21, 2026, H.B. spit towards a student and hit another in the face with his lunchbox while lining up to return inside from recess. The District called his father to pick up H.B. early from school. To support de-escalation, H.B. remained on the playground with staff supervision, but H.B.'s behavior continued to escalate when trying to transition him into the building. The staff offered supports including offering choices, redirection to preferred activities, and verbal reasoning, with all being unsuccessful. (Ex. J.)

On May 22, 2026, the parents attended an emergency IEP meeting, and the IEP team suggested several options to address H.B.'s escalating behavior, including a temporary partial day schedule and participation in a behavior stabilization program. The parents rejected these proposals. (Ex. K.)

On May 26, 2026, H.B.'s assigned 1:1 aide became ill and had to leave. Another 1:1 aide was assigned immediately, but when staff attempted to introduce the aide, H.B. rolled on the floor and was redirected to a staff member's office to de-escalate, where he stayed for ninety minutes, during which time he climbed on furniture, kicked, rolled on the ground, and attempted to open drawers. Staff continued supervision, redirection, and support. H.B. also asked to speak to his mother. Following the call, H.B.'s behavior continued to escalate. While transitioning back to class, H.B. attempted to elope from the school building. (Ex. L.)

On May 27, 2026, corresponded with the parents via email regarding the incidents on May 26, 2026, and confirmed that H.B. received support throughout the entire school day and that the District called the parents and introduced them to the staff member who would be supporting H.B. for the remainder of the day. The District also reviewed the supports used, including allowing H.B. an opportunity to take a break with a peer either in the classroom or in the hallway, but he declined. He was also given visual supports to encourage functional communication and self-regulation. (Ex. M.)

On May 27, 2026, the District notified the parents that H.B. would be placed on home instruction due to escalating behaviors and that the District cannot presently maintain H.B. safely in the current school placement without substantial risk of harm to himself, other students, and/or staff. (Id.)

On June 2, 2026, the District reached out to the parents to schedule home instruction via Educere to run until the end of June, which will make up for the days missed. (O)

CONCLUSIONS OF LAW

The standards for emergent relief are set forth in Crowe v. De Gioia, 90 N.J. 126, 132–34 (1982), and are codified in the New Jersey Administrative Code for Education, N.J.A.C. 6A:3-1.6. They are also set forth in the rules of the Special Education Program. N.J.A.C. 1:6A-12.1. Under those special rules, the judge 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 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.

[N.J.A.C. 1:6A-12.1(e).]

Irreparable Harm

“Irreparable harm” is defined as the type of harm that “cannot be redressed adequately by monetary damages.” Crowe, 90 N.J. at 132–33. 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.” Id. at 132 (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (E. & A. 1854)). The irreparable-harm standard contemplates that the harm be both substantial and immediate. Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity, or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132–33.

In this case, the District argues that it meets the standard for emergent relief because H.B.'s behavior disrupts the learning environment such that it deprives him and other students of a free appropriate public education (FAPE). The District also argues that H.B.'s behavior poses a threat to the safety of the other students, staff, and himself as demonstrated by his escalating aggressive and physical behaviors for the 2025-26 school year. I agree with these arguments. H.B.'s demonstrations of physical aggression—including but not limited to throwing objects, throwing himself to the floor, jumping off bleachers and playground equipment, climbing on the playground equipment and causing injury to ten other students, hitting a staff member, hitting a student in the head with his lunchbox, eloping, and spitting towards another student—are disruptive to the learning environment, concerning, and alarming. In two instances, his peers had to either clear the classroom or the playground to ensure their safety. H.B.'s behavior shows a clear threat to the safety to himself, other students, and staff. Therefore, I **CONCLUDE** that sending H.B. back to school will likely cause irreparable harm to the District and other students and that the District has met its burden of showing this legal requirement.

In this case, H.B. and M.B. argue that their son is suffering irreparable harm because the District unilaterally changed H.B.'s placement to home instruction and is not receiving special education and related services. The remedy for such deprivation, however, is compensatory education for any services missed. That is not irreparable. Therefore, I **CONCLUDE** that H.B. and M.B. have not shown irreparable harm.

The Legal Right is Settled, and the Likelihood of Prevailing on the Merits

On May 27, 2026, the District placed H.B. on home instruction because it was concerned that he posed a danger to himself and others. His parents objected to the placement, seeking a return to district and implementation of interventions and supports in the May 8, 2026, IEP. The stay-put provision under the Individuals with Disabilities Education Act (IDEA) is well settled and provides an automatic preliminary injunction, preventing a school district from changing placement from the last-agreed-upon IEP during the pendency of a petition challenging a proposed IEP. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996). The “stay-put” provision acts as an automatic preliminary injunction, the overarching purpose of which is to prevent a school

district from unilaterally changing a disabled student's placement or program. Ibid. The provision provides that during the pendency of any proceedings under this section, unless the parents or guardian otherwise agree, the child must remain in the then current educational placement. See 20 U.S.C. § 1415(j). In Drinker, the court explained that the IDEA "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 . . . balance of hardships." Drinker, 78 F.3d at 864 (citations omitted).

There are three exceptions to the stay-put provision. The first is if the parties agree to a different placement; otherwise, "the child shall remain in the then-current educational placement of the child." 20 U.S.C. § 1415(j). The second exception arises under disciplinary infractions involving drugs, weapons, or serious bodily injury, regardless of whether it's a manifestation of their disability. 20 U.S.C. § 1415 (k)(1)(G). The third arises by order of a judge for an alternative educational placement upon request for an expedited hearing. N.J.A.C. 6A:14-2.7(n). The third exception is relevant when a district removes a student with disabilities from school based on its belief that "it is dangerous for the student to be in the current placement" but "cannot agree to an appropriate placement" with the parent. Ibid.

A school district seeking to remove an assertedly dangerous disabled child from his or her current educational placement must show that maintaining the child in that placement is substantially likely to result in injury either to himself or herself or to others. Honig, 484 U.S. at 328.

It is well settled in New Jersey that a safe and civil environment in school is necessary for students to learn free from disruptive and violent behavior that threatens the welfare of students and school personnel. Moreover, the District has a legal responsibility to provide H.B. and his classmates with a FAPE, which necessarily includes an appropriate placement.

In this case, the District was concerned that maintaining H.B. in his then-current placement would substantially likely result in injury to himself or others. His pattern of oppositional, defiant, and physically aggressive behavior toward staff, other students, and

school property showed an escalation. The District sought to reduce the risk of injury to H.B. and others by communicating behavior updates and coordination of behavior supports and interventions with his parents, instituting its maximum behavioral supports, interventions, and a behavior intervention plan as more fully set forth in the May 8, 2026 IEP by the BCBA, and using prior supports and interventions, including using headphones to reduce distractions, implementing individualized point systems to reduce stigma, providing timed breaks, providing appropriate behavioral distractions like puzzles and mazes, and permitting him to draw his feelings.

His behavior disrupted the learning environment for other students and impeded his learning and the District's ability to offer a FAPE. The District has an obligation to provide a safe and secure learning environment for all its students to receive an appropriate education. Maintaining the current placement will likely result in injury to H.B., his peers, and staff. Given my discussion of the law and the substantiated concern for the safety of the students, I **CONCLUDE** that the legal rights are well settled and that the District has a likelihood of success on the merits of the case for placement of H.B. in an interim alternative educational setting for forty-five days.

Balance of Equities

When balancing the safety and welfare of the staff and students against the hardship on H.B., I **CONCLUDE** that the welfare of the students and staff outweighs the interest of H.B.

ORDER

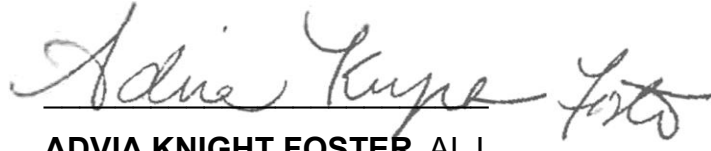
Given my findings of fact and conclusions of law, I **ORDER** that petitioner's application for emergency relief is **GRANTED** and that H.B. will remain on home instruction pending placement in an appropriate interim alternative educational setting for not more than 45 days.

This order on application for emergency relief remains in effect until July 20, 2026, or a final decision is issued on the merits of the case, whichever is sooner. 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.

June 5, 2026

DATE


ADVIA KNIGHT FOSTER, ALJ

AKF/tc

APPENDIX

Witnesses

For petitioner:

None

For respondents:

None

Exhibits

For petitioner:

Brief in support of emergency relief dated May 27, 2026

Certification of Megan Gifford dated May 27, 2026

Ex. A email dated December 1, 2025, summarizing added supports and interventions and aggression/physical disruption charts from December 8, 2025, to January 30, 2026

Ex. B notice to evaluate and classify H.B. dated February 10, 2026

Ex. C Consent for initial evaluation dated February 27, 2026

Ex. D Dr. James Hewitt's psychiatric assessment dated March 30, 2026

Ex. E Sign-in sheet for May 8, 2026, IEP meeting

Ex. F May 8, 2026, IEP

Ex. G May 14, 2026, incident report and room clear out

Ex. H May 18, 2026, incident report

Ex. I May 20, 2026, incident report

Ex. J May 21, 2026, incident report

Ex. K May 22, 2026, incident report

Ex. L May 26, 2026, incident report

Ex. M Daily report of H.B.'s afternoon and support staff availability dated May 27, 2026

Ex. N Notice dated May 27, 2026, to place H.B. on home instruction

Ex. O email dated June 2, 2026

For respondents:

- R-1 Four-Element Cross-Reference sheet
- R-2 Supplemental emergency submission
- R-3 Supplemental Parent certification in support of emergency relief dated
June 4, 2026
- R-4 Timeline
- R-5 email dated June 4, 2026, regarding supplemental certification
- R-6 email dated June 1, 2026
- R-7 email dated June 2, 2026
- R-8 Respondents' supplemental pre-hearing submission
- S-11 email dated May 27, 2026, about H.B.'s Registered Behavior Technician
- S-12 email dated May 27, 2026, about positive behavior on May 26, 2026