



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

DENYING EMERGENT RELIEF

OAL DKT. NO. EDS 09565-26

AGENCY DKT. NO. 2026-41262

L.B. AND J.B. ON BEHALF OF K.B.,

Petitioners,

v.

EAST BRUNSWICK TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq. for petitioners, attorney

Mark A. Wenczel, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs, LLC,
attorneys)

Record Closed: June 25, 2026

Decided: June 26, 2026

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By a request for emergent relief, petitioners L.B. and J.B. on behalf of K.B., seek a temporary order for reinstatement to the regular classroom environment pending the resolution of their due process petition. Petitioners also seek an order implementing a

504 Plan based on the District's own child study team (CST) evaluations and individualized education program (IEP) until the 504 team can meet and update any necessary accommodations. Respondent East Brunswick Township Board of Education (East Brunswick or the District) opposes the request to immediately return K.B. until he receives appropriate psychiatric clearance because his conduct has caused a school safety issue. The District also submits that petitioners have not met the prongs for emergent relief. The District proposes that a 504-planning meeting be rescheduled in order to implement a 504-Plan.

Based on the record and oral argument, on June 12, 2026, petitioners filed a complaint for due process and a request for emergent relief with the Office of Special Education Programs (OSEP). This matter was transmitted to the Office of Administrative Law (OAL) on June 12, 2026 for an emergent relief hearing.

Petitioners' Request for Emergent Relief contained a legal brief and exhibits, including a certification of petitioner L.B. as parent and legal guardian of K.B.¹ Respondent submitted a brief and exhibits in opposition to petitioners' application for emergent relief with certification of Danielle Blalock, District Supervisor of Student Services, who certified she has direct knowledge of K.B.'s disciplinary history.

Oral argument on emergent relief was held on June 25, 2026, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute and form the basis for the decision below. Accordingly, I **FIND** the following as **FACTS**:

K.B. is an eleven-year-old minor child. In 2021, the Board determined K.B. has disabilities, including ADHD, that interfere with his learning, and K.B. has been previously qualified for special education-related services. K.B. is not currently classified for special

¹ It was represented that L.B. and J.B. are divorced and have joint legal custody of K.B. J.B. did not provide a certification and did not attend the oral argument.

education services or supported by a 504-Plan. The District documented that K.B. has behavioral, sensory, and executive function deficits that affect his learning. For his sixth-grade year, K.B. has been out of school for 60 out of 180 days.

As a student in the East Brunswick Township School District, K.B. attended Hammarskjold Upper Elementary School. Danielle Blalock is the District Supervisor of Student Services and the Homeless Liaison. She is responsible for overseeing and coordinating student support services throughout the District. Her duties include supervising programs and personnel that provide academic, behavioral, social-emotional, health, and attendance-related supports to students; coordinating interventions and student assistance initiatives; ensuring compliance with applicable federal and state laws and regulations; and collaborating with school administrators, counselors, social workers, and outside agencies. Supervisor Blalock supervises K.B.'s support services. K.B.'s disciplinary log indicates that he has been disciplined twenty-one times between October 23, 2024, and April 28, 2026, for incidents wherein he was the alleged offender. These disciplinary events include physical assaults with other students, sexual statements, and even a report made by parent L.B. about behavior in the home that required the District to contact the Department of Children and Families, Child Protection and Permanency division. K.B.'s conduct incidents also warranted an evaluation by the Threat Assessment Team. (See Certification of Danielle Blalock and related Exhibits A–E.)

The record indicates that the District has attempted to evaluate and qualify K.B. for special education services, but petitioners refused the implementation of special education services. In response to K.B.'s behavioral and educational concerns, the District sought parental consent to conduct evaluations to determine whether K.B. required special education and related services. Despite what the District describes as its repeated efforts, consent was not provided.

An intervention and referral service meeting was conducted on January 30, 2026, to respond to K.B.'s escalating behaviors that caused his suspension from school. The District psychiatrist Dr. Rajeswari Muthuswamy evaluated K.B., which included an interview with both K.B. and J.B. for approximately forty-five to sixty minutes. (See District Exhibits R–S.) Dr. Muthuswamy diagnosed K.B. with Conduct Disorder and

recommended ongoing therapeutic services prior to K.B.'s return to school. Dr. Muthuswamy recommended that K.B. "begin and consistently participate in therapeutic services *prior to resuming academic activities* in order to address his behavioral, emotional, and trauma-related concerns." (*Ibid.*) Dr. Muthuswamy also recommended a psychosexual evaluation.

The record reflects that on March 18, 2026, K.B.'s first day back at school after he was cleared, he was found accessing inappropriate material that contained profanity and was sexual in nature on his District-issued Chromebook. (*See* Exhibit A at 5.) On March 25, 2026, the CST contacted L.B. to schedule an Initial Evaluation Planning meeting with the CST upon receiving a referral concerning his recent behavioral incidents. L.B. informed the District that she would be unavailable and instructed staff to contact J.B. J.B. advised the District that both parents were in agreement that they did not want K.B. to be evaluated by the CST or to receive special education services. L.B. then followed up with an email to Ms. Anderson, the Case Manager, stating:

I want to make it clear that I do not consent to any special education testing. I do not consent to any Child Study Team testing. I do not consent to any evaluations in school for my son, [K.B.], under any circumstances. My decision is final and not subject to change.

[Exhibit K.]

On May 28, 2026, J.B. and L.B. requested information regarding a 504 Plan. (*See* Exhibit BB.) The District emailed them the 504 packet to start the referral process, and a meeting was scheduled for June 15, 2026. (*See* Exhibit CC.) On June 12, 2026, L.B. emailed the District and informed her that she wanted to postpone the 504-eligibility meeting. (*Ibid.*) The District's request for clarification went unanswered. This Emergent Petition for Relief was then filed on June 12, 2026.

Petitioners assert that the District conducts "pervasive hyper surveillance" over K.B. when he is attending school. For example, when K.B. returned to school after being "locked out of school" by the District, the District oversaw K.B.'s use of a Chromebook. As a result of its content, the District did not allow K.B. to use the Chromebook and instead

provided him with paper and pens. On another occasion, K.B. was forced to remain in the principal's office for 102 minutes after K.B. was involved in an "incident" during the school day that the District claimed was inappropriate. Petitioners also claim that they were not provided with the school psychiatrist report and that the District did not properly update the petitioners. Petitioners also assert that the psychiatric report they obtained from an outside provider and provided to the District was sufficient and should have been relied upon to return K.B. to school.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent may apply in writing for emergent relief. An emergent relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein. Emergent relief shall only be requested for specific issues, including a break in the delivery of services and/or placement pending the outcome of due process proceedings. N.J.A.C. 6A:14-2.7(r). Here, K.B.'s application is based on placement pending the outcome of a due process hearing, specifically, the District's failure to implement a 504 Plan and claims under the Child Find provision in the Individuals with Disabilities Education Act (IDEA). Petitioners have initiated due process proceedings to challenge K.B.'s return to school with sufficient supports.

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. Petitioners bear the burden of proving:

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.

[N.J.A.C. 6A:3-1.6.]

Irreparable Harm

To obtain emergent relief, petitioners must demonstrate more than a risk of irreparable harm to K.B.; they must make a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.” Cont’l. Group, Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (3d Cir 1980).

Here, petitioners argue that K.B. has been “totally isolated from his peers and regular classroom instruction” for thirty-one consecutive school days during this “current stretch” and fifty days overall this year demonstrating a “break in the delivery of services.” This has caused “irreversible educational and psychological regression” and cannot be adequately remedied by a future award of compensatory hours or retroactive relief.

The District argues notwithstanding its actions of removing K.B. from the school setting, granting emergent relief would not accomplish its stated purpose of returning K.B. to his regular educational placement during the current school year since the school year concluded. Furthermore, the District has been willing to provide home instruction, but petitioners have thwarted those efforts

In light of the above, I **CONCLUDE** that school is not in session, and therefore any return to school at this time is moot. Furthermore, the parents have not yet agreed to the appropriate supports for ensuring K.B.’s successful return to school. Accordingly, petitioners have not met the burden of establishing that K.B. will experience irreparable harm.

The Legal Right Is Settled

The second consideration is whether the legal right underlying petitioners' claim is settled. N.J.A.C. 6A:3-1.6(b)(2). Petitioners assert that a district is prohibited from changing a disabled student's placement or restricting their access to regular education classrooms as a punitive mechanism for behavior that manifests from an underlying disability. 34 C.F.R. 104.35; 34 C.F.R. 104.36 (2025). The District contends that it met this requirement; and K.B. has been offered a 504-planning meeting and special education services, that petitioners denied.

Based upon the record, I **CONCLUDE** petitioners do not meet the second prong of the emergent relief standard.

Likelihood of Prevailing on The Merits

Petitioners state their request to return K.B. to school has "zero legal defense" especially since K.B. "was explicitly noted by his parents not to pose an immediate danger to himself or others."

The District submits that K.B. has already posed an immediate danger to himself and others and has violated District policies with respect to conduct at school and cannot be returned to school at this time.

Moreover, petitioners' request to return K.B. with a 504 Plan based upon the District's previous evaluations and draft IEPs is inconsistent with the first steps necessary to conduct a 504- Plan meeting.

Based upon the record, I **CONCLUDE** petitioners do not meet the third prong of the emergent relief standard.

The Petitioner Will Suffer Greater Harm Than the Respondent

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief to K.B. Petitioners argue that K.B. will suffer greater harm if emergent relief is not granted, such harm being “severe regression without a routine-based program designed around his unique disabilities.” (Br. in Support of Pet’rs Request for Emergent Relief.) Respondent claims it is prepared to reschedule a 504 meeting to establish a 504 Plan and has offered petitioners with special education services. These efforts were called off by petitioners.

I **CONCLUDE** that based upon the record, the District would suffer greater harm if the requested relief was granted.

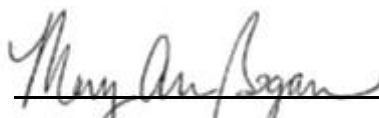
ORDER

I **CONCLUDE** that petitioners’ request for emergent relief to return K.B. to school does not satisfy the applicable requirements and is hereby **DENIED**. I further **ORDER** that petitioners’ request to order the implementation of a 504 Plan based on the District’s own child study team (CST) evaluations and individualized education program (IEP), be **MODIFIED** and I **ORDER** that petitioners and respondent immediately convene a 504-planning meeting while the due process proceeding is pending.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C. § 1415(f)(1)(B)(i). If the parents or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

June 26, 2026

DATE


MARY ANN BOGAN, ALJ

Date Received at Agency:

Date emailed to Parties:

MAB/nn