



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 10215-26

AGENCY DKT. NO. 2026-41302

M.S. ON BEHALF OF T.S.,

Petitioner,

v.

MONTCLAIR TOWN BOARD OF EDUCATION,

Respondent.

George M. Holland, Esq., for petitioner, M.S. on behalf of T.S. (Law Offices of George M. Holland, Esq., attorneys)

Eric I. Bueide, Esq. for respondent, Montclair Town, Board of Education, (Schenck, Price Smith & King, LLP, attorneys)

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, M.S. on behalf of her minor child, T.S. (student), seek an Order Granting Emergent Relief, pursuant to N.J.A.C. 1:6A-12.1(a), N.J.A.C. 6A:14-2.7(l) and 20 U.S.C. § 1415(k)(2) applying the doctrine of stay put and ordering the respondent, Montclair Town, Board of Education (Board or respondent), to continue the student's placement at the Charles H. Bullock School (CHB) for school year 2026-2027, under an initial Individualized Education Program (IEP) dated January 12, 2026 (January IEP).

PROCEDURAL HISTORY

On or about June 16, 2026, the New Jersey Department of Education, Office of Special Education (OSE) received petitioner's due process petition and the within Request for Emergent Relief (Emergent Relief) pending the resolution of the due process petition. The underlying matter was transmitted to the Office of Administrative Law, (OAL) where it was filed on June 23, 2026. (N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through 18.5).

Petitioner's Emergent Relief states the following reasons:

This application for emergent relief is being filed strictly to invoke the student's federal and state right to an automatic Stay-Put protection order under N. J.A.C. 6A:14-2.3(h).

THE EMERGENT FACTS:

The districts 15-day implementation window for a contested, unsingable doc is June 2, 2026, IEP expires tomorrow, Wednesday, June 17, 2026. emergent relief is required immediately to freeze this timeline. If not frozen, student will be denied FAPE & removed from Least Restrictive Placement

Describe how this problem could be resolved.

District calculated 3 hour timeline where formal counsel declined mediation and then released June 2 IEP with no signature line after June 1 state complaint was filed. Immediate intervention is required to remain current general education status quo while separate ongoing State Complaint investigation finishes reviewing February IEP compliance failures. The temporary order must mandate the student remain in current general placement status quo for upcoming school year. This ensures the ongoing state complaint investigation filed June 1 can continue running without interference or a premature, un-collaborative placement change in the interim.

A Zoom remote hearing was scheduled for June 30, 2026, at 1:30PM. A status conference was held on June 26, 2026.

Prior to the status conference on June 26, 2026, petitioner submitted a document entitled "Evidence Submission", containing a copy of the following documents in support of her application for Emergent Relief:

- Emergent Relief, Affidavit in Support of Request for Emergency Relief;
- Notice of Voluntary Withdrawal of Substantive Claims without Prejudice;
- Master Timeline, and
- Petitioner's Evidentiary Exhibits P-1, *Last Implemented Legal Placement & Parental Addendum*, Exhibit P-2: *District's Proposed Unilateral Change in Placement June 2, 2026, Proposed IEP (Self-Contained LLD Classroom)*, Exhibit P-2A, *Genesis Student Information Systems Records*, and Exhibit P-3, *Timely Written Rejection of Consent*.

Prior to the status conference on June 26, 2026, the Board submitted its opposition to the Emergent Relief, along with a Certification of Dr. Shivoyne Trim, and accompanying exhibits containing the January IEP programing pages.

At the status conference the Board was instructed to submit a reply to petitioner's Evidence Submission, on June 29, 2026, which they did. The Board was also instructed to produce a member of the Board's Child Study Team to testify on June 30, 2026, to discuss the implementation of the January IEP, which they did.

Subsequent to the status conference and before the hearing, petitioner submitted a document containing ten pages of email between the Board and petitioner and also entitled "Supplemental Evidence", consisting of three pages, without attachments, and a document entitled "Evidence Submission", consisting of eight pages, without attachments.

Petitioner was initially *pro se* at the time she filed her due process petition and Emergent Relief. Petitioner then retained legal representation regarding the Emergent Relief, and on June 29, 2026, George Holland, Esq., (Mr. Holland), submitted a letter of representation. On June 30, 2026, prior to the commencement of the hearing, Mr. Holland submitted a letter brief in support of petitioner's application for Emergent Relief, along with exhibits. Because Mr. Holland's pleadings were submitted without leave of the tribunal and the consent of the Board, the same were rejected.¹

¹ At the time Mr. Holland submitted petitioner's reply pleadings, I rejected the same as I interpreted the same as seeking injunctive emergent relief under Crowe and not stay put relief. Mr. Holland clarified at the hearing that petitioner was not seeking injunctive emergent relief but was reasserting her request for emergent stay put relief. The Board objected to the late filing as they argued that the same contained

The hearing regarding the Emergent Relief was held on June 30, 2026. Petitioner testified, and Board presented Samantha Goland (Goland), School Psychologist and the case manager during the 2025-2026 school year to testify.

FINDINGS OF FACT

After a review of the pleadings and exhibit documents filed by petitioner and the Board, I **FIND** the following as **FACT**.

The student is a six-year-old student in the District. He is eligible for special education and related services under the classification of Communication Impairment. On or about October 17, 2025, the student enrolled in kindergarten at the District's CHB school after previously attending a private, parochial school. The student did not have an IEP at the time of his enrollment in the District. The student was referred to CHB's Child Study Team (CST) on or about October 23, 2025.

Following an initial identification and evaluation planning meeting on or about October 31, 2025, the CST determined that the evaluations were warranted, and Petitioner consented to the evaluations. Upon completion of the above evaluations, the CST convened an initial eligibility determination meeting on or about January 12, 2026, at which time the CST determined the student was eligible for special education and related services.

After multiple follow-up meetings at which petitioner provided feedback on a draft IEP a proposed initial IEP dated January 12, 2026, (January IEP) was sent to petitioner on or about February 2, 2026.

additional legal arguments not contained in the initial Emergent Relief. Said objection was granted. Mr. Holland would argue the points contained in petitioner's letter brief.

The January IEP was based on the date of the initial eligibility determination, of January 12, 2026, and provided the following relevant programming and related services (Trim Cert. ¶ 9, Exhibit A):

- For the remainder of the 2025-2026 school year: in-class resource for core academic subjects at CHB.
- For extended school year (ESY) 2026, special class for mild/moderate learning or language disabilities (the LLD classroom) for core academic subjects at Nishuane School (Nishuane) in the District.
- For the 2026-2027 school year: the LLD classroom for core academic subjects at Nishuane.
- A one-to-one aide
- Speech-language therapy
- Occupational therapy (OT)
- Physical therapy (PT).

Petitioner would go on to sign the consent to implement the initial January IEP, but attached a document titled “Response to IEP” (Petitioner’s Evidence Submission, Exhibit P-1). The Response to IEP provided a history of how the parents decided to enroll the student in the Montclair school district and the parents methodology and rationale throughout the initial special education evaluation process and implementation of the students program and placement. Id.

The Response to IEP also contained the following statement regarding accepting the January IEP:

We are accepting this IEP to ensure TJ [student] has access to the services and accommodations as soon as possible. However, we do not accept or agree with placing him in a restrictive environment at any point of time, as recommended in this draft of the IEP. Below, I've listed rationale on why we would not be able to transfer T.J. [student] into the restrictive class environment being recommended with placement at Nishuane Elementary School.

[emphasis provided]

Id.

On February 17, 2026, Goland emailed petitioner acknowledging receipt of petitioner's Response to IEP, indicating "disagreement with the [student's] planned placement in a self-contained program beginning September 2026. (Board's Supplemental Exhibit). Goland's email provided:

I also wanted to note that the district acknowledges receipt of your written statement attached to the signed IEP indicating disagreement with TJ's (the student's) planned placement in a self-contained program beginning September 2026.

You (the parent) provided consent for implementation of the IEP as written, which documents that TJ (the student) will remain in the ICR/inclusion setting for the remainder of the current school year and that the CST recommends a self-contained program beginning September 2026 based on TJ's (the student's) cognitive, academic, social-emotional, and adaptive functioning needs.

Prior to the start of the 2026–2027 school year, the CST will reconvene to review updated progress data and determine the continued appropriateness of placement in the least restrictive environment You (the parent) may request an IEP meeting at any time to further discuss placement.

[emphasis provided]

Id.

On or about May 29, 2026, the Board's CST met with petitioner for an annual review IEP meeting regarding placement and programming for the 2026-2027 school year. Following the annual review the Districted issued a proposed IEP dated May 29, 2026, (May IEP), maintaining the same programming and related services provided in T.S.'s initial IEP dated January 12, 2026. (Tim Cert. ¶ 11, Exhibit B). Specifically, in-class resource at CHB for academic subjects for the remainder of the 2025-2026 school year; followed by the LLD classroom at Nishuane School, beginning with ESY 2026 and continuing into the 2026-2027 school year. May IEP also provided a one-to-one aide, speech therapy, occupational therapy, and physical therapy.

Following the filing of petitioner's Emergent Relief and due process petition, petitioner advised the District that she does not intend to send the student to the 2026 ESY programming set forth in his January IEP.

ADDITIONAL FINDINGS

The following testimony was provided at the emergent hearing on June 30, 2026, which I **FIND** as **FACT** herein:

Samantha Goland

Goland is the school psychologist and case manager at CHB school and was the student's case manager during the 2025-2026 school year. Goland testified that she was directly involved with the development of the January IEP, including her communications with petitioner in person and through emails between January 28, 2026, and February 17, 2026. Goland testified that she and petitioner discussed in detail the programming recommended by the CST for the student for both the remainder of the 2025-2026 school year and the start of the 2026-2027 school year, including touring Nishuane school.

Goland testified that the CST "acknowledged" petitioner's concerns as detailed in her statement contained in the Response to IEP, with respect to the recommended programming; and the legal implications of petitioner's consent to the IEP. Goland stated that the CST did not consider petitioner's statements in the Response to IEP as part of the IEP.

Finally, Goland testified that the January IEP reflected that the CST would "revisit" the student's placement for the 2026-2027 school year in the LLD classroom for core academic subjects at Nishuane. Goland affirmed that the CST was "open" to reconsidering the placement at Nishuane at the conclusion of the student's 2025-2026 school year and that it eventually determined at the May 29, 2026, annual review to proceed with the LLD placement as contained in the January IEP. Goland testified that "reconsider" meant not a "blank canvass", but an agreement to reconvene and look at the student's progress and make sure that the recommendation of the LLD at Nishuane was

appropriate as it was made in January 2026, and the school year would not commence until September 2026.

M.S.

M.S. testified that while did she did sign the January IEP, she was not in agreement with the placement of the student in an LLD program at Nishuane for the 2026-2027 school year. M.S. stated that she was in agreement with all aspects of the January IEP except for the LLD placement. M.S. stated that the LLD program at Nishuane was not the least restrictive placement for the student. M.S. signed the IEP consent line because there was only “one” consent line, and she understood that if she did not consent to the January IEP the student would not receive any services or accommodations.

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), emergency 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.

I **CONCLUDE** that in this case, it is unnecessary for me to consider whether the criteria set forth in Crowe v. De Gioia, 90 N.J. 126 (1982) have been satisfied in granting emergent relief. Instead, when the emergent relief request effectively seeks a “stay-put” preventing the school district from making a change in placement from an agreed-upon IEP, the proper standard for relief is the “stay-put” provision under the Individuals with

Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)) (stay-put “functions, in essence, as an automatic preliminary injunction”). The stay-put provision provides in relevant part that “during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational 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) [emphasis supplied].

The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child remain in his or her current educational placement “during the pendency of any administrative or judicial proceeding regarding a due process complaint.” 34 C.F.R. § 300.518(a) (2016); N.J.A.C. 6A:14-2.7(u). When a district refuses to maintain a student’s stay-put placement, the parent may seek an order enforcing stay-put. Requests for stay put, however, are not evaluated under the same standard as other special education emergent relief under N.J.A.C. 6A:14-2.7.

The stay-put provision functions as an automatic preliminary injunction which dispenses with the need for a court to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits, and removes the court’s discretion regarding whether an injunction should be ordered. Drinker, 78 F.3d 859. Its purpose is to maintain the status quo for the child while the dispute over the IEP remains unresolved. Ringwood Bd. of Educ. v. K.H.J., 469 F.Supp.2d 267, 270–71 (D.N.J. 2006).

As the term “current educational placement” is not defined within the IDEA, the Third Circuit standard is that “the dispositive factor in deciding a child’s ‘current educational placement’ should be the [IEP] . . . actually functioning when the ‘stay put’ is invoked.” Drinker, 78 F.3d at 867 (citing the unpublished Woodsex rel. T.W. v. N.J. Dep’t of Educ., No. 93-5123, 20 IDELR 439, 440 (3d Cir. Sept. 17, 1993)); see also Susquenita Sch. Dist. v. Raelee S. by Heidi S. & Byron S., 96 F.3d 78, 83 (3d Cir. 1996) (restating the standard that the terms of the IEP are dispositive of the student’s “current educational placement”). The Third Circuit stressed that the stay-put provision of the IDEA assures stability and consistency in the student’s education by preserving the status quo of the

student's current educational placement until the proceedings under the IDEA are finalized. Drinker, 78 F.3d 859.

Furthermore, the Third Circuit explained that the stay-put provision reflects Congress' clear intention to "strip schools of the unilateral authority that they had traditionally employed to exclude [classified] students, particularly emotionally disturbed students, from school." Id. at 864 (citing Honig v. Doe, 484 U.S. 305, 323, 108 S. Ct. 592, 604, 98 L. Ed. 2d 686, 707 (1988)); School Comm. v. Dep't of Educ., 471 U.S. 359, 373, 105 S. Ct. 1996, 2004, 85 L. Ed. 2d 385, 397 (1985)). Therefore, once a court determines the current educational placement, the petitioners are entitled to a stay-put order without having to satisfy the four prongs for emergent relief. Drinker, 78 F.3d at 864 ("Once a court ascertains the student's current educational placement, the movants are entitled to an order without satisfaction of the usual prerequisites to injunctive relief").

In the present matter, the petitioner filed an emergent petition regarding the District's proposed placement of T.S. in an LLD program at Nishuane despite having signed the January IEP, and by way of the emergent application, invoked "stay put." The petitioner acknowledge that the January IEP is the last agreed upon IEP but contends that she gave "partial consent" to the January IEP as to the proposed programs and services, with the sole exception being the District placing T.S. in an LLD program at Nishuane in the upcoming 2026-2027 school year.

Here, it is uncontroverted that the "then-current" educational placement for T.S. at the time of this emergent action is the January IEP that was developed for him in. The May IEP is a continuation of the January IEP. Although petitioner concedes that she signed the January IEP, she avers that because she had communicated to the District her disagreement with the student's placement in the LLD program at Nishuane in school year 2026-2027, she did not consent to the January IEP's LLD placement at Nishuane. Petitioner argues that in essence the District was seeking to make a change in placement when it created the May IEP, which is in opposition to the last agreed upon January IEP. I disagree.

As to petitioner's argument that she provided a partial consent to the January IEP,

34 C.F.R. 300.9, regarding the definition of consent in special education and 34 C.F.R. 300.300, regarding parent consent for an initial evaluation, does not provide or allow for a parent to give “partial consent” to an initial IEP. 34 C.F.R. 300.300(b)(4), provides:

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

- (i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;
- (ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
- (iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- (iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

[emphasis provided]

The cited IDEA regulations above do not allow or provide for a parent to give either partial consent or partial rejection of an initial IEP. As a result, I **CONCLUDE** that petitioner’s claim that she did not fully consent to the January IEP and instead her consent was “conditional” because she disagreed with the proposed LLD placement at Nishuane is not supported by the IDEA and its implementing regulations, and will not be considered herein.

Similarly, petitioner’s claim that the District is attempting to enforce a unilateral change in placement is unfounded, as a comparison of the January IEP and May IEP indicates that the District’s proposed May IEP was a continuation of the educational

programming from T.S.'s initial IEP, which petitioner provided her signed consent to implement. Instead, it is petitioner who seeks to change the stay-put placement by having T.S. continue indefinitely to receive in-class resource programming at CHB.

The IDEA stay put law and regulations allow for only two exceptions where it is the school district, rather than the parents, seeking to change the operative placement during the litigation. The first is where the parents agree with the change of placement. 20 U.S.C. § 1415(j). The second exception arises under the disciplinary provisions of IDEA, 20 U.S.C. § 1415(k). Clearly, neither exception applies here, and no party argued otherwise. Where, as here, neither exception applies, the language of the stay put provision is "unequivocal." Honig, 484 U.S. at 323. It functions as an "automatic preliminary injunction," substituting "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 fair ground for litigation and a balance of hardships." Drinker, 78 F.3d at 864 (quoting Zvi D., 694 F.2d at 906). [Id. at *32–33 (citations omitted)].

For the reasons stated herein, I **CONCLUDE** that there is no question in this matter that the last agreed to placement for T.S. is reflected in the January 12, 2026, IEP, which includes his placement in the LLD classroom at Nishuane, for the 2026-2027 school year, notwithstanding petitioner's claim of partial consent or partial rejection.

As such, after hearing the arguments of petitioner and the District and considering all documents submitted, I **CONCLUDE**, in accordance with the standards set forth in Drinker v. Colonial School District, that the petitioner's application for emergent relief is **DENIED**.

ORDER DENYING EMERGENCY RELIEF

It is **ORDERED** that petitioner's application for emergent relief is **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).

July 9, 2026

DATE

Julio Morejon

JULIO C. MOREJON, ALJ

Date Received at Agency:

July 9, 2026

Date Sent to Parties:

July 9, 2026

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APPENDIX

Witnesses

For petitioner:

M.S.

For respondent:

Samantha Goland

Exhibits

For petitioner:

Evidence Submission

Supplemental Evidence, 3 pages

Supplemental Evidence, 8 pages

For respondent

Letter brief in opposition

Letter brief responding

Certification of Dr. Shivoyne Trim, with attachments

Supplemental Exhibits