



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION
FOR EMERGENT RELIEF
(CONSOLIDATED)

M.B. and R.B. ON BEHALF OF B.B.,

Petitioner,

v

WASHINGTON TOWNSHIP

BOARD OF EDUCATION,

Respondent.

AND

WASHINGTON TOWNSHIP

BOARD OF EDUCATION,

Petitioner,

v

M.B. and R.B. ON .BEHALF OF B.B.,

Respondent.

OAL DKT. NO. EDS 09846-26

AGENCY DKT. NO. 2026-41263

OAL DKT. NO. EDS 13439-26

AGENCY DKT. NO. 2027-41646

Michael Buonocore, Esq., for petitioners-respondents M.B. and R.B. on behalf of B.B.
(Lynch Law Firm, P.C., attorneys)

Robin S. Ballard, Esq., for respondent-petitioner Washington Township Board of
Education (Schenk, Price, Smith & King, LLP, attorneys)

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

In EDS 09846-26, M.B. and R.B. (“petitioners”) bring an action challenging B.B.’s 2026–2027 individualized education program (IEP) and placement by the Washington Township Board of Education (“respondent” or “district”) in kindergarten and seek an individualized placement and program for B.B. for the 2026–2027 school year. The parents also seek an independent educational evaluation (IEE) of B.B. Respondent filed a due process petition, EDS 13439-26, challenging the need for an IEE.

PROCEDURAL HISTORY

On July 9, 2026, petitioners filed a request for due process seeking appropriate placement and programs, IEEs, and other appropriate relief (EDS 09846-26). Respondent denied B.B.’s request for the IEEs and filed an answer and counterclaim for due process that was transmitted to the Office of Administrative Law (OAL) and filed on August 13, 2026 (EDS 13439-26).

I held a telephone conference with the parties on August 19, 2026, and one of the issues discussed was the consolidation of the above cases. The parties agreed that pursuant to N.J.A.C. 1:1-17.1, the two cases will be consolidated.

Due to the cases being transmitted close to the start of the 2026–2027 school year, petitioners were permitted to file a motion for emergent relief seeking a stay-put order keeping B.B. in preschool.

Petitioners and respondent filed legal memoranda stating their respective positions and oral argument was conducted on August 28, 2026, after which I closed the motion record.

FACTUAL DISCUSSION

The underlying facts are derived from the oral argument, the testimony, and the contents of the petitions and briefs. I **FIND** as **FACT**:

B.B. was born on September 7, 2021, and is now four years and eleven months old. He has been diagnosed with autism. He is enrolled in the Washington Township School District.

During the 2025–2026 school year, B.B. was eligible for special education and related services under the classification of autism. In the 2025–2026 school year, B.B.’s IEP provided for him to be educated through a half-day preschool integrated program for 150 minutes per day, with speech therapy twice a week for 30 minutes in a small group, occupational therapy six times a month for 30 minutes in a small group, physical therapy twice a week for 30 minutes individual, and consultation by a board-certified behavior analyst twice a month for 30 minutes. (Ex. I.)

The IEP developed for him on May 4, 2026, (the proposed IEP) provides for him to receive in-class resource instruction for reading and math for a total of 150 minutes a day with speech therapy six times a month for 30 minutes in a small group, occupational therapy six times a month for 30 minutes in a small group, physical therapy twice a week in a small group, a monthly applied behavior analysis consult for 30 minutes, and support from a classroom aide during social studies and science. (Ex. II.) As he will attain the age of five prior to October 1, 2026, pursuant to Board policy 5112 he will be a kindergarten student in the 2026–2027 school year. (Ex. III.)

The district rejected the request to extend B.B.’s preschool placement because the child study team (CST) believes that the current evaluation data supports that B.B. demonstrates a readiness for kindergarten, and that he can be appropriately educated in a less restrictive, age-appropriate kindergarten setting with support. The IEP noted that B.B.’s educational evaluation shows skills in the low-average to average range, with emerging literacy and math abilities and good listening comprehension, and that speech and language skills indicate age-appropriate articulation and overall language skills,

which are all suggestive that B.B. can access classroom instruction. B.B.'s teachers' reports and classroom observations reflect that he participates in group-instruction, follows routines, engages with peers, and demonstrates age-appropriate behavior, independence, and social functioning within the classroom setting. (Ex. II.)

Petitioners did not agree to the proposed IEP because they believe that B.B. requires another year of preschool to help him develop the skills he needs to maximize his ability to function in kindergarten. On May 4, 2026, they requested that B.B. be retained in preschool for the 2026–2027 school year.

Petitioners maintain:

There is an immense structural gap between a 2.5-hour, play-based integrated preschool classroom utilizing the Tools of the Mind curriculum and the proposed full-day elementary placement. The peer group changes from younger preschool children to older school-age children, the curriculum shifts from foundational readiness to formal elementary standards, and the daily duration doubles. In sharp contrast to preschool, the proposed full-day elementary placement is partitioned into separate, rigorous instructional tracks demanding 90 minutes of daily English Language Arts instruction and 60 minutes of daily Mathematics instruction within an In-Class Resource (ICR) framework. A child cannot remain in a 2.5-hour play-based program while sitting in a classroom governed by a full-day, multi-hour elementary curriculum divided into separate academic blocks. If the District places [B.B.] in its proposed full-day elementary placement, they will force an autistic child with a 40- to 44-month physical and visual-spatial profile to navigate a substantially more demanding elementary instructional schedule.

In the proposed IEP the CST found that B.B.'s overall low-average functioning alone did not necessitate a more restrictive environment in light of his documented progress and ability to function successfully in an integrated setting, and that his weaknesses can be adequately addressed with services such as occupational and physical therapy and in-class resource support for English-language and math. (Ex. II.)

LEGAL ANALYSIS AND CONCLUSION

The questions presented here, whether petitioners are entitled to a stay-put placement and to emergent relief, both require an analysis of whether the district has proposed a change of placement. Petitioners argue that promotion to kindergarten constitutes a change in placement, while respondents contend that a grade-level promotion does not constitute a change in placement.

“Stay Put”

The Individuals with Disabilities Education Act (IDEA) contains procedural safeguards intended to guarantee that parents are entitled to an “impartial due process hearing” before a local educational agency if they object to the decisions of the local school regarding the education of their disabled child. 20 U.S.C. § 1415(c)(2). The Act provides, “[D]uring the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child.” 20 U.S.C. § 1415(j). 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. “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.” Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996).

The IDEA regulation and New Jersey Administrative Code reinforce that a child must 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) (2026). N.J.A.C. 6A:14-2.7(u) provides, “Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student’s classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or

as provided in 20 U.S.C. § 1415(k)(4) as amended and supplemented.”¹ See also N.J.A.C. 6A:14-2.6(d)(10) (concerning changes in placement pending mediation). As such, a “stay-put” placement applies when a special education student’s placement is challenged.

Emergent Relief

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, only the third category, change in placement, is at issue. The petitioners argue that the district’s attempt to circumvent stay-put by altering B.B.’s entire environment from a preschool setting to a kindergarten setting is a per se violation of pendency laws. For the reasons stated below, I do not accept this argument.

This case is akin to E.H. and J.O. ex rel. O.O. v. Burlington City Board of Education, EDS 07853-23, Decision on Emergent Relief (August 29, 2023), <https://njlaw.rutgers.edu/OAL/index.php>, which directly addresses the issue of whether a student may claim entitlement to remain in preschool through stay put after attaining age

¹ 20 U.S.C. § 1415(k) addresses two exceptions: when the parents agree with the change of placement, pursuant to 20 U.S.C. § 1415(j), or pursuant to the disciplinary provisions of IDEA. See R.S. & M.S. v. Somerville Bd. of Educ., No. 10-4215 (MLC), 2011 U.S. Dist. LEXIS 748, *32–33 (D.N.J. Jan. 4, 2011). N.J.A.C. 6A:14-2.7(m) addresses disputes concerning whether a student’s behavior was a manifestation of his disability or decisions regarding placement pursuant to U.S.C. § 1415(k).

five. In that case, O.O.'s parents filed for emergent relief seeking reinstatement of their child in a preschool program as a "stay-put" placement. Similar to petitioners here, the parents in that case argued that the student's evaluations showed he had not "maxed out" in preschool on his social-emotional development, and they believed such skills were necessary for him to succeed in kindergarten. Also, like petitioners here, O.O.'s parents further argued that the student's promotion to kindergarten, which was more academically oriented than preschool, constituted a change in placement. The administrative law judge (ALJ) denied O.O.'s parents' emergent relief request in that case, holding that promotion to kindergarten does not, on its own, constitute a change in placement, absent evidence that the student's promotion to the specific kindergarten classroom offered by the school district (as opposed to conclusory evidence about kindergarten in general) would have a "substantial, detrimental impact" on the student's education. The ALJ rejected as speculative the parents' claims that, because O.O. had not "maxed out in pre-K4 on his ability to socially and emotionally develop," another year in preschool "may help him" further develop those skills.

An ALJ reached a similar conclusion in D.D. v. Edison Township Board of Education, 95 N.J.A.R.2d (EDS) 271. In that case, D.D.'s parents sought emergent relief to prevent his promotion from third to fourth grade, arguing that the promotion was premature for the student and would negatively impact him. The ALJ denied the emergent-relief request, explicitly rejecting the notion that stay put can be utilized to prevent the promotion of a student to the next grade level while a due process petition is pending. The ALJ first noted that the parents argued, "where promotion, itself, is the issue in the dispute, the status quo must be maintained." The ALJ rejected this argument as fatally flawed: "What is the status quo?" the ALJ wrote. "Carried to its extreme, the status quo could mean the same classroom, the same desk and the same teacher. Of course, such a restrictive view is simplistic. It is the educational goals in D.D.'s [IEP] that are paramount, and here I find that . . . promotion is consistent with [the student's] program. Thus, the status quo is grade four."

Here, petitioners maintain that there will be a change of placement because B.B. is leaving what they describe as a 2.5-hour play-based preschool for a full-day kindergarten curriculum, for which they believe their son is not ready. They maintain that

moving to a longer day is a material change to his program. In support of this position, they cite to the same test scores and assessments that are contained in the proposed IEP. The CST determined that B.B.'s overall low-average functioning alone did not necessitate a more restrictive environment in light of his documented progress and ability to function successfully in an integrated setting, and that his weaknesses will be adequately addressed with services such as occupational and physical therapy and in-class resource support for English-language and math.

Petitioners have expressed with obvious sincerity in their concern for their child and their belief that he requires additional time in preschool before he can be able to access his kindergarten education. However, claiming broadly that B.B. is not ready for a full-day, multi-hour elementary curriculum divided into separate academic blocks is insufficient. Petitioners did not cite specific aspects of the kindergarten curriculum, program, or structure that would cause B.B. to be denied the fundamental aspects of his education upon which they focus. It should be noted that "promotion and retention are matters within [a school district's] discretion and the courts give substantial deference to school boards on these issues." See R.L. & D.L. ex rel. E.L. v. Holmdel Township Bd., EDS 8811-09, Decision on Emergent Relief (September 2, 2009), <https://njlaw.rutgers.edu/OAL/index.php>.

At this stage in the proceedings there is an absence of evidence to establish that promotion to kindergarten will have a detrimental impact on B.B.'s education. Moreover, the CST clearly documented its reasoning for promoting B.B. in the proposed IEP. For these reasons, I **CONCLUDE** that promotion to kindergarten does not, on its own, constitute a change in placement. Accordingly, pursuant to 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u), a "stay-put" placement is not warranted. For the same reasons, pursuant to N.J.A.C. 6A:14-2.7(r)(1), emergent relief is not warranted.

Had a change of placement been at issue, the emergent petition would be reviewed in accordance with N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), which provide that emergent relief may be granted if the judge determines from the proofs that the following conditions have been established:

- 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.

[See also Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982), codified at N.J.A.C. 6A:3-1.6(b).]

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34. 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. Id. at 132–33; Nabel v. Bd. of Educ. of Hazlet, EDU 08026-09, Decision on Application for Emergent Relief (June 24, 2009), <https://njlaw.rutgers.edu/courts/index.php>. Petitioners offered the broad statement that forcing an autistic child with severe transition difficulties and processing delays into a highly structured, full-day kindergarten environment before he is functionally ready will cause immediate academic and behavioral shutdown. As discussed above, there is sufficient evidence tending to show that the special education and related services to be provided to B.B. in the kindergarten classroom are appropriate and that B.B. will be able to access his education. For these reasons, I **CONCLUDE** that petitioners have not demonstrated that B.B. will suffer irreparable harm. Further, the IDEA contemplates compensatory damage when there has been a finding that a FAPE was not provided.

With respect to the likelihood of success on the merits, petitioners assert that the district's own evaluations document B.B.'s weaknesses, low-average processing speeds, and motor delays, thus they are "highly likely to establish that a play-based preschool program remains his least restrictive, appropriate environment." This claim is speculative. Moreover, the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v.

Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 403 (2017). The “educational program ‘must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.’” Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012)). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “*de minimis*” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), *cert. den. sub. nom.*, Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989). The IDEA thus does not require that the district maximize B.B.’s potential or provide him the best education possible. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). The district will have satisfied the requirements of law by providing him with personalized instruction and sufficient support services “as are necessary to permit [him] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009)² (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982)).

“And while parents often play a role in the development of an IEP, they do not have a right to compel a school district to provide a specific program or employ specific methodology in educating a student.” E.E. v. Ridgefield Park Bd. of Educ., 2020 U.S. Dist. LEXIS 102249, *8 (June 11, 2020) (quoting Ridley Sch. Dist., 680 F.3d at 269, 278). School districts’ determinations are subject to deference. The “IDEA does not ‘invite the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Damarcus S. v. Dist. of Columbia, 190 F.Supp. 3d 35, 56 (D.C. Cir. 2016), (quoting Rowley, 458 U.S. at 206); *see also* E.E. v. Ridgefield Park Bd. of Educ., 856 Fed. Appx. 367, *7 (3d Cir. 2021); R.L. and D.L. ex rel. E.L. v. Holmdel Twp. Bd. of Educ., EDS 08811-09, Decision on Emergent Relief (September 2, 2009), <https://njlaw.rutgers.edu/courts/index.php> (“[p]romotion and retention are matters within the Board’s discretion and the courts give substantial deference to school boards on these

² Unpublished decisions are not precedential. They are cited here because they provide relevant guidance.

issues"). Without substantive evidence supporting the contention that the specific kindergarten class offered by the district will not offer B.B. personalized instruction and sufficient support services as are necessary to permit him to benefit in a meaningful way from the instruction, I am unable to conclude that petitioners have demonstrated a likelihood of success on the merits.

Having found that petitioners failed to satisfy the criteria required for emergent relief, I **CONCLUDE** that they have failed to meet their burden for an order directing the emergent relief they seek.

ORDER

I **ORDER** that petitioners' motion for emergent relief be and hereby is **DENIED** and that petitioners' motion to compel discovery is also **DENIED** but without prejudice.

I further **ORDER** that a pre-hearing conference will be held on October 23, 2026, at 3:30 p.m., and the hearing will be held on October 29, 2026, starting at 10:00 a.m. at the Office of Administrative Law in Mercerville, N.J.

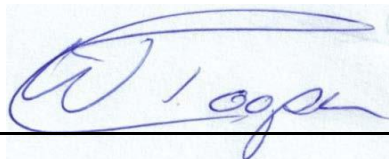
August 31, 2026

DATE

Date Received at Agency

Date Mailed to Parties:

WTC/am



WILLIAM T. COOPER III, ALJ

APPENDIX

Witnesses

For petitioners

None

For respondent

None

Exhibits

For petitioners

- A. Washington Township Schools Comprehensive Child Study Report (dated 4/21/2026)
- B. Eligibility Conference Report – Re-Evaluation (dated 5/4/2026)
- C. Individualized Education Program – Re-Evaluation proposed for 2026–2027 (dated 5/4/2026)
- D. District Prior Written Notice/Response letter from Denise Scairpon, Ed.D. (dated 5/6/2026)
- E. Petitioners' Formal Request for Mediation/Dispute Resolution (filed 5/7/2026)
- F. B.B.'s Operative 2025–2026 Initial Preschool IEP (implemented 9/2/2025)
- G. Email chain between Michael T. Buonocore, Esq., and Robin S. Ballard, Esq., regarding Agency No. 2026-41263 (dated 7/6/2026)

For respondent

- I. B.B.'s 2025–2026 IEP
- II. B.B.'s proposed IEP (2026–2027)
- III. Washington Twp. BOE policy no. 5112