



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

**FINAL DECISION ON**  
**EMERGENT RELIEF**

OAL DKT. NO. EDS 14407-24

AGENCY DKT. NO. 2025-38244

**BURLINGTON TOWNSHIP BOARD  
OF EDUCATION,**

Petitioner,

v.

**E.B. ON BEHALF OF J.B.,**

Respondent.

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**Emily E. Strawbridge**, Esq., for petitioner (Parker McCay, P.A., attorneys)

**Amelia Carolla**, Esq., for respondent (Reisman, Carolla, Gran & Zuba, LLP,  
attorneys)

Record Closed: October 17, 2024

Decided: October 18, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ:

**STATEMENT OF THE CASE**

The Burlington Township Board of Education (District) brings an action for emergent relief against E.B. on behalf of J.B. (respondent) seeking an order to immediately place the student in an alternative placement of home instruction pending

the outcome of due process proceedings regarding the appropriate program for the student, alleging that the student's behavior poses a danger to herself, staff, and other students. The respondent opposes the emergent relief requested and contends that J.B. should be in school, not on home instruction, based on the stay-put of J.B.'s last agreed-upon individualized education program (IEP).

The transmittal also includes a request for due process for an order to compel parental consent to release records to an alternate placement. However, during the oral argument, the District advised that the petitioner consented to release records. J.B.'s records had been sent to two out-of-district placements.

### **PROCEDURAL HISTORY**

The District filed a Verified Petition for Due Process and Request for Emergent Relief with the Office of Special Education Programs of the New Jersey Department of Education (OSEP) on October 11, 2024. The emergent relief sought, as well as the underlying due process claim, is to compel the immediate placement of the minor student according to an IEP dated October 3, 2024.

The emergent matter was transmitted by the OSEP to the Office of Administrative Law, (OAL), where it was filed on October 11, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. On October 15, 2024, the respondent filed a cross-motion for emergent relief in the form of an order for "stay put" instead of the temporary home instruction deemed necessary by the District. The parties presented oral argument on the emergent relief application on October 17, 2024, and the record closed.

### **DISCUSSION AND FINDINGS OF FACT**

Based on the submissions of the parties, including the certifications of Christopher Giannotti, Assistant Superintendent for Special Education, and of respondent E.B., and arguments of counsel, I **FIND** the following statements as **FACTS**:

Petitioner operates a public school system established according to the New Jersey education laws and provides programs and services for students with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482. Respondent E.B. is the parent of J.B., an eleventh-grade special education student. J.B. is eligible for special education and related services under the classification of Emotional Regulation Impairment. J.B. is also diagnosed with attention deficit disorder, autism, disruptive mood regulation, and post-traumatic stress disorder. She attended Burlington Township High School (BTHS) in the Burlington Township Public School District for the second half of the 2022–2023 school year, the 2023–2024 school year, and the 2024–2025 school year.

During the 2024–2025 school year, J.B. has been involved in two incidents. On September 26, 2024, J.B. had an outburst during her geometry class, where she:

[b]egan yelling that she did not want to be in this class any more. She was saying that she would fail and wanted to be withdrawn from the room. She seemed to calm down after a few minutes, although we did not know what prompted the outburst. A few minutes later, however, she began yelling again. This time, she was yelling about everyone in the class having her and wanting her dead. These comments were peppered with expletives. We tried to calm her down, which only made her yell and curse more. We called Ms. Ramos, who came down. [J.B.] refused to go with her. Mr. Russell came and was able to get her to go into the hall and talk to him. We are honestly not sure what they discussed. As I'm sure you can imagine, the incident was very disruptive to the class.

[P-1, Exhibit C.]

J.B. explained to E.B. that she became upset and was “triggered because others were bullying her in school, including students saying that ‘if everyone told the truth, you wouldn’t have any friends.’ And that students pick on her because she is disabled.” (R-1, Certif. of E.B.)

On October 1, 2024, J.B. began having an outburst in class. J.B. then:

[c]ontinued to escalate in the hallway despite efforts from SRO, Admins and CST to have her come to the office to regroup. She used profanity and made comments about hurting herself – she asked the SRO to shoot her in the head, asked staff to throw her in a ditch. De-escalation was not working. J.B. indicated that she [sic] if she were to pretend to have a weapon, then would she be a threat, and would the SRO shoot her in the head then. Father was called to come and get J.B. At that time, J. B. agreed to come to the CST office, where she made several statements regarding not wanting to be alive. She ripped part of the wall in the hallway and kicked the lockers. She admitted that she wrote a suicide note and once her father came to school, she showed him the note.

[P-1, Exhibit D.]

On the same day, J.B. was evaluated by a Burlington County Screening & Crisis Intervention Program employee, who did not recommend taking J.B. to crisis intervention because the employee did not feel J.B. intended to hurt herself. J.B. also visited her therapist, Stefanie Gaudio, LCSW, MSW. At that time, J.B. told her parents and therapist that she wanted treatment. J.B.'s parents took her to Jefferson Hospital, where she stayed for six days, receiving counseling and medication adjustment. The District was not contacted by any treating professional from Jefferson Hospital or asked to provide information concerning the incident giving rise to J.B.'s hospitalization.

In the meantime, on October 3, 2024, the Child Study Team (CST) held an IEP meeting to assess progress and review or revise J.B.'s IEP due to her significant escalation of behaviors during school.

The CST recommended that J.B. be placed in home instruction pending an out-of-district placement. The CST's recommendation was premised upon the increasing behavior and BTHS's lack of a program to support J.B.'s emotional and behavioral needs. The CST explained that J.B. requires a program with a therapeutic component to help support her while she is working towards developing healthy coping strategies. During the meeting, both parents agreed that the next logical step for J.B. would be home instruction, but E.B. was unsure about out-of-district placement.

On October 8, 2024, J.B. was released from Jefferson Hospital, with a brief letter stating, “[J.B.] may return to school at this time. Please allow extra time for the completion of any missed assignments.” (R-1, Exhibit C). Respondent also provided:

1. Richard A. Reuter, M.D.'s letter stating, “[J.B.] is followed by my practice. She is psychologically cleared to return to her public-school program. She is not a threat to herself or others. It is medically and psychologically necessary for her to return to school.”
2. Stefanie Gaudio, LCSW, MSW's letter stating in pertinent part, “[a]t this time, [J.B.] presents with no safety concerns, for herself and her others, that prevented her from participating in everyday school tasks, activities, and responsibilities. [J.B.] has access to her safety plan at all times and is aware of strategies to use if she feels distressed.”

[R-1, Exhibit E, F.]

With this application seeking emergent relief, the District contends that J.B.'s conduct has caused a substantial disruption of the educational environment for J.B. and her peers and has created a safety risk. Given J.B.'s unpredictable and disruptive behaviors, the District is extremely concerned about the safety and emotional and educational well-being of J.B. and the other students. The District believes that J.B.'s unpredictable and disruptive behaviors severely compromise her safety, education, and well-being, as well as that of others at the school. Further, the district does not have a program to address J.B.'s needs, and it is working with E.B. to find an appropriate placement.

The respondent contends that J.B. is entitled to the stay-put placement at BTHS. J.B. also contends that she is not a threat to herself or others at BTHS, although she admits she does have emotional disabilities and needs supplemental supports and services. The respondent relies on the three letters from the medical professionals. Furthermore, the respondent argues that J.B. is entitled to “stay put” protection during the pendency of the due process hearing.

## **DISCUSSION AND CONCLUSION OF LAW**

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district, or public agency 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 and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- 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.

Here, the District seeks an order to immediately place the student in an alternative placement of home instruction for the safety of J.B., other students, and staff at BTHS pending the outcome of the due process proceedings regarding the appropriate program for J.B. Therefore, I **CONCLUDE** it has been established that the issue involves a determination of an interim alternate educational setting and placement pending the outcome of due process proceedings.

The stay-put provision under the IDEA 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 School 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. See Drinker, 78 F.3d at 864.

There are two 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 the disciplinary provisions of IDEA, 20 U.S.C. § 1415(k).

It is undisputed that "in-school" education and related services are the appropriate stay-put placement. However, the District is seeking emergency relief from the stay-put placement due to the asserted health and safety risk posed to J.B., the other students, teachers, and staff, if J.B. were to return to the classroom after her most recent incident on October 1, 2024, pending the outcome of the underlying due process petition seeking out of district placement to address the student's needs.

The standards for emergent relief are set forth in Crowe v. De Gioia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6(b):

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.

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

Generally, irreparable harm may be shown when there is a substantial risk of physical injury to the child or others, or when there is a significant interruption or termination of educational services. Ocean Twp. Bd. of Educ. v. J.E. and T.B. o/b/o J.E., 2004 N.J. AGEN LEXIS 115, Initial Decision (Feb. 23, 2004). It is settled in New Jersey that a safe and civil environment in the school is necessary for students to learn, and disruptive or violent behaviors disrupt a school's ability to educate its students in a safe environment. N.J.S.A. 18A:37-13; see also Elizabeth Bd. of Educ. v. T.D. o/b/o E.D., 2015 N.J. AGEN LEXIS 160, Initial Decision (Mar. 27, 2015) (granting a school district's application for emergent relief placing the student in an out-of-district setting when the student was unable to conform to school rules and conduct herself in a manner that is necessary for her to access an education, when the student was unable to act in a manner that does not significantly disrupt the operations of the school and impact other students' ability to access education, and when the student's discipline record and behavior negatively impact the safety, security and well-being of other students, staff and school property.)

Furthermore, a board of education may demonstrate irreparable harm by demonstrating that the child is disrupting the education of other students. West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.D., 1995 N.J. AGEN LEXIS 226, Initial Decision (Apr. 11, 1995). "The fellow students' and the school staff's right to a reasonably safe and productive environment is also a factor to be considered in deciding upon appropriate placement of the classified student." Id. at \*4 (citing U.S. Const. amend. XIV, §1). The child's classmates "deserve a safe environment without harassment and physical aggression." Howell Twp. Bd. of Educ. v. J.D. and T.D. o/b/o A.D., 2011 N.J. AGEN LEXIS 125, Initial Decision (Mar. 17, 2011). In more recent years, the court determined an unsafe environment based on two incidents: a student's overreaction and obsessive interactions with some other students at the school and the student breaking a desk, giving rise to the need to restrain the student by a security guard and the assistant principal. Sparta Twp. Bd. of Educ. v. R.M. and V.M. o/b/o C.M., 2020 N.J. AGEN LEXIS 458, Initial Decision (Feb. 21, 2020) (granting a school district's application for emergent relief under these circumstances.)



Irreparable harm is also established when a child disrupts his or her education. See West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.D., 1995 N.J. AGEN LEXIS 226, Initial Decision (Apr. 11, 1995) (granting a school district's application for emergent relief changing the placement of a child whose poor academic performance and behavior disrupted the child's education.) Such disruption may delay the delivery of appropriate educational services and, consequently, academic regression. See Howell Twp. Bd. of Educ. v. A.I. and J.I. o/b/o S.I., 2012 N.J. AGEN LEXIS 207, Initial Decision (May 2, 2012) (granting a school district's application for emergent relief changing the placement pending the outcome of a due process petition of a child whose inappropriate placement would result in academic regression.)

Due to J.B.'s unpredictable and disruptive behaviors, irreparable harm is established because of the foreseeable risk of injury and danger to J.B. and other students and staff. J.B. herself admitted that her triggers are other students bullying and picking on her because of her disabilities. Putting her in an environment with known triggers could potentially cause more harm to J.B.

Further, J.B. is also at risk, as she has exhibited self-injurious behavior, such as asking the school resource officer to shoot her in the head, asking if she had a fake weapon, that the school resource officer would shoot her, and even writing a suicide note. The facts demonstrate that J.B.'s conduct is unpredictable. Her continued behavior needs to be addressed, and an IEP developed to address them. The District must maintain the safety of its students and staff and ensure an atmosphere conducive to learning for its students. J.B.'s continued attendance at BTHS will significantly diminish the District's ability to provide the same.

Irreparable harm is also established because J.B. substantially disrupts other students' education and the educational environment. The facts show that J.B.'s conduct significantly impacts the educational setting. Her outbursts disrupt her education and the education of other students during classes.

Finally, irreparable harm is established because the District is prevented from meeting its legal obligation to provide J.B. with a Free Appropriate Public Education

(FAPE) because placement at the BTHS is no longer appropriate. Knowing that the District cannot offer J.B. a FAPE, it is forced to propose an alternative appropriate placement for her, which it has done by recommending home instruction placement.

Based upon the foregoing, I **CONCLUDE** that the District has met its burden of establishing irreparable harm

A board of education is entitled to a change of placement of a student with a disability to an interim alternative placement when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement. N.J.A.C. 6A:14-2.7(n); N.J.A.C. 6A:14-2.8(f). In addition, a board of education is entitled to seek an order to change the placement when maintaining a student's current placement, which is substantially likely to result in injury to the child or others. 20 U.S.C. § 1415(k)(3)(A). Furthermore, a board of education may apply for emergent relief according to N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(r).

As applied here, the District has shown a settled legal right to bring this application for emergent relief seeking a change of J.B.'s placement from the BTHS to a home instruction interim alternative placement. Accordingly, I **CONCLUDE** that the District has met its burden that the legal right of their claim is settled.

Furthermore, I **CONCLUDE** that the District has shown a likelihood of prevailing on the merits that J.B.'s placement must be immediately changed to a home instruction interim alternative placement due to the substantial risk of danger to J.B. and others, J.B.'s disruption of her education and the education of other students, and the District's inability to deliver a FAPE to J.B. in the current placement. As described above, J.B.'s conduct is disruptive to the educational environment and endangers her safety and the safety of other students. Maintaining a placement for J.B. at the BTHS will likely result in injury to her or to others in the school setting.

The District's request to change J.B.'s placement on an interim basis pending the due process hearing is more than reasonable, given the circumstances of this situation. While J.B.'s behavior has not escalated to physical aggression yet, her unpredictability

and emotional condition can quickly turn into physical aggression, especially if put in an environment that is admittedly a trigger for her emotional outbursts.

The risk of harm is too significant to consider J.B. returning to BTHS at this time. The District has an obligation to take seriously J.B.'s conduct and threats and to ensure a safe educational environment for her and other students. Moreover, it is unfair and a disservice to the other students at the BTHS to force them to come to school where they fear their safety may be compromised.

Having considered the equities and interests of the parties, I **CONCLUDE** that the scales are tipped in favor of the District to demonstrate that it will suffer greater harm than the respondent if J.B. were permitted to remain in school during the pendency of the underlying due process action. Certainly, this does not make light of the challenges posed to the student by being placed on home instruction and the hardship the parents face in such circumstances.

Based upon the above conclusions that the District has satisfied the requirements to be granted emergent relief, I must **CONCLUDE** that the District shall be granted the emergent relief sought to alternatively place the student on home instruction during the pendency of the due process petition. I **CONCLUDE** that the District has demonstrated, by a preponderance of the evidence, that the risk of harm to J.B. and other students is too great to allow J.B. to remain in school.

The District must provide in-person and home instruction by a special education teacher and shall provide J.B.'s related services to in-person professionals. I **CONCLUDE** that such services shall be arranged, without haste, to address J.B.'s academic needs, pending the outcome of the underlying due process petition.

### **ORDER**

It is **ORDERED** that the District's emergent relief request to place J.B. on home instruction during the pendency of the underlying due process petition is **GRANTED**. It is further **ORDERED** that in-person home instruction shall begin immediately with a

special education teacher, and related services shall be provided in person by an appropriate professional. It is **FURTHER ORDERED** that the respondent's cross-motion for emergent relief as to stay put 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).

October 18, 2024 \_\_\_\_\_

DATE

  
\_\_\_\_\_

**NICOLE T. MINUTOLI, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

NTM/dw

**APPENDIX**

**Witnesses**

**For petitioner:**

Christopher Giannotti

**For respondent:**

None

**Exhibits**

**For petitioner:**

P-1 Petitioner's petition and brief with supporting documents, dated October 10, 2024

**For respondent:**

R-1 Respondent's cross-motion for emergent relief and opposition brief, dated October 15, 2024