State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF
OAL DKT. NO. EDS 03796-26
AGENCY DKT. NO. 2026-40571

E.R. ON BEHALF OF E.R.,
Petitioner,
v.
OCEAN TOWNSHIP BOARD
OF EDUCATION,
Respondent.

Regina Ann Smith, Esq., for petitioner (Santomassimo Davis, LLP, attorneys)

Daniel R. Roberts, Esq., for respondent (Kenney, Gross, Kovats & Parton, attorneys)

Record Closed: March 13, 2026 Decided: March 16, 2026

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

E.R. on behalf E.R. (petitioner) brings an action for emergent relief against Ocean Township Board of Education (respondent, District), seeking a temporary order to return the student to the last agreed-upon placement at Ocean Township High School pending

the resolution of the expedited due process petition. Petitioner further argues that E.R. as of the date of the hearing has been out of the class for more than forty-five days; specifically 122 days. Respondent opposes the emergent relief and states that the matter has been settled and all petitioner needs to do is to obtain a mental health clearance from the District's psychiatrist, Dr. Rajeswari Muthuswamy.

PROCEDURAL HISTORY

Petitioner filed a request for emergent relief on March 5, 2026, along with a petition for expedited due process. On March 5, 2026, the Office of Special Education (OSE) transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for petitioner while stating that the underlying expedited due process petition would remain at the OSE until the end of the fifteen-day resolution period.

The emergent matter was scheduled for oral argument on March 13, 2026. The proceeding was conducted via the Zoom platform, and the record closed then.

Petitioner's request for emergent relief with Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief was submitted and considered for this proceeding. A letter brief on behalf of the District, dated March 12, 2026, in opposition to Emergent Relief was also submitted and considered.

FACTUAL DISCUSSION AND FINDINGS

Based upon the submissions of the parties, and the arguments presented on March 13, 2026, I **FIND** the following as **FACT**:

1. E.R. is currently eighteen years old and is a student at Ocean Township High School (Ocean).

2. E.R. is eligible for special education and related services under the classification of "Other Health Impairment." E.R. is diagnosed with attention deficit hyperactivity disorder.

3. On November 11, 2025, E.R. had a verbal argument with another student, which turned into a physical argument, which led to property destruction and physical aggression against the staff.

4. On November 12, 2025, E.R. was suspended for ten days and the matter was referred to law enforcement.

5. A Manifestation Determination Review meeting was held on November 24, 2025. Respondent concluded that the behavior and code of conduct violation was not a manifestation of E.R.'s disability. The individualized education program (IEP) generated at this meeting changed E.R.'s placement from Ocean Township High School pull-out placement classes to home instruction, pending a long-term suspension hearing.

6. The November 24, 2025, IEP expired on January 23, 2026. Petitioner was not notified that the ten-day extension would be extended to an indefinite extension.

7. On December 11, 2025, petitioner was notified that a disciplinary hearing would be held on January 6, 2026. The disciplinary hearing was completed on the scheduled date.

8. On January 9, 2026, the superintendent issued a decision concluding that:

> E.R. violated the Board Policies and Code of Student Conduct provisions noted . . . by assaulting/fighting another student and further by striking Security Guard Michael Pembleton. Based on that . . . E.R. shall be placed in an Alternative Educational Placement for the period of one year, following which she may request to return to Ocean Township High School.
>
> [P-3.]

9. On January 28, 2026, petitioner filed a petition for expedited due process. The matter was transmitted to the OAL, and a hearing was scheduled for February 19, 2026. Due to inclement weather the matter was rescheduled to February 26, 2026.

10. There was a stipulation or an agreement between the parties in Judge Mary Ann Bogan's chamber. However, it was not in writing, nor was it placed on the record.

11. Based on the discussion in Judge Bogan's chamber, petitioner withdrew the due process petition.

12. A mental clearance was scheduled by respondent with the District's psychiatrist, Dr. Muthuswamy, on March 3, 2026. Petitioner attended, but there is a dispute as to what occurred. However, there was no examination done by Dr. Muthuswamy.

13. In order for petitioner to return to school, the respondent requires she obtain mental health clearance.

ARGUMENTS OF THE PARTIES

Petitioner argues that the main issue for this Emergent Relief is the return of the student to the last agreed-upon IEP, which was done on March 27, 2025. Petitioner argues that pursuant to N.J.A.C. 6A:14-2.8(d), neither the Board of Education nor the superintendent has the authority to suspend a student with disabilities for more than forty-five calendar days.

This matter stems from a prior due process petition filed under OAL Docket No. EDS 01719-26, where the parties had a discussion that resulted in a stipulation of withdrawal. Petitioner sets forth the proposed stipulation as follows:

> On February 26, 2026, Petitioner agreed to withdraw the petition without prejudice with the following stipulations:
>
> a. Respondent scheduled and secured a **mental health clearance** appointment with Dr. Muth[u]swamy on March 3, 2026;
>
> b. Respondent will return [E.R.] to Ocean Township High School pending that clearance;
>
> c. Respondent will reduce [E.R.]'s suspension length to 45 days, and
>
> d. Respondent will schedule an IEP meeting to discuss adding the counseling services and social emotional goal back into the IEP.
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> [Petitioner's Brief at 6, 7.]

Petitioner further argues that E.R. did go to Dr. Muthuswamy for a mental health clearance but Dr. Muthuswamy wanted to do a "safety evaluation," which exceeds the requirement in the Department of Education's Mental Health Guidance and respondent's board policies. Petitioner argues that on February 27, 2026, E.R. was evaluated for mental fitness by Monmouth Medical Center, and respondent failed to accept this evaluation. (See R-1, Exhibit B.) Petitioner argues that respondent has maintained a disciplinary removal, which exceeds the lawful forty-five-calendar-day limit.

Respondent argues that this matter was settled. According to respondent, the only reason why petitioner is not in school is based on a failure to have the mental health clearance conducted by Dr. Muthuswamy. Respondent stated that this matter was settled in the previous case that was handled by Judge Bogan. Respondent emphasized that the condition that must be satisfied before E.R. can return to school is to have mental health clearance. Respondent further argues that at the disciplinary hearing on November 12, 2025, E.R.'s father testified that E.R. was in a "blind rage" and therefore a mental health clearance must be obtained so that she is not a danger to herself or others. Respondent represented to the tribunal that the matter was settled and a resolution was reached, which was not reduced to writing or placed on the record. The parties agreed, however, that E.R. would obtain a psychiatric clearance to return from District psychiatrist Dr. Rajeswari Muthuswamy. (Respondent's Brief at 2.)

Respondent argues that petitioner has signed three consecutive revised IEPs accepting home instruction as her current placement. It must be noted that at no time did the District file a due process petition for dangerousness.

LEGAL ANALYSIS AND CONCLUSION

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.

In his Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief, petitioner indicated that he believes he is entitled to emergent relief on issues involving a break in the delivery of services (i); and issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings (ii).

Therefore, I **CONCLUDE** that petitioner has established that the issue in this matter concerns a current and potential break in the delivery of services and issues concerning disciplinary action.

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(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;
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> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
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> 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.
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> [N.J.A.C. 6A:3-1.6(b).]

The petitioner must establish all the above requirements in order to warrant relief in their favor and must prove each of these Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008); D.I. and S.I. ex rel. T.I. v. Monroe Twp. Bd. of Educ., 2017 N.J. AGEN LEXIS 814 at *7 (October 25, 2017).

With regard to the first required prong, "irreparable harm" is defined as the type of harm "that cannot be redressed adequately by monetary damages." Crowe, 90 N.J. at 133. In addition, the irreparable harm standard contemplates that the harm be both substantial and immediate. Subcarrier Communications v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). However, pecuniary damages may sometimes be inadequate because of the nature of the injury or of the right affected. Crowe, 90 N.J. at 133. For example, in Crowe the Court determined neither an unwarranted eviction nor reduction to poverty could be compensated adequately by monetary damages awarded after a distant hearing. Ibid. The threshold standard for irreparable harm in the area of education shows that once something is lost, it cannot be regained. M.L. ex rel. S.L. v. Ewing Twp. Bd. of

Educ., EDU 04949-09, Initial Decision (June 15, 2009) https://njlaw.rutgers.edu/OAL/index.php. Since money damages are not available in education cases, and compensatory education is the only relief available, the analysis to be used is that if compensatory education, provided at a later date, cannot remedy the situation, then the harm is irreparable. Howell Twp. Bd. of Educ. v. A.I. and J.I. ex rel. S.I., 2012 N.J. AGEN LEXIS 207 (May 2, 2012).

Here E.R. has been kept out of school for over 122 days at the time of this hearing. Petitioner argues E.R. is not receiving her full in-school program and is only limited to home instruction. She is not receiving counseling support, peer interaction, and structured instruction, which constitutes irreparable harm. I agree. I **CONCLUDE** therefore that petitioner has satisfied the irreparable harm standard under Crowe.

Petitioner must also demonstrate that the legal right underlying his claim is settled, and he must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. Petitioner argues that there is express limitation on a board's authority to remove a child to an interim alternative educational setting for more than forty-five days. N.J.A.C. 6A:14-2.8(d) states:

> Disciplinary action initiated by a district board of education that involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year, or expulsion of a student with a disability shall be in accordance with 20 U.S.C. § 1415(k). (See N.J.A.C. 6A:14 Appendix A.) However, removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. § 1415(k) shall be for a period of no more than 45 calendar days.

Petitioner relies on M.V. ex rel. N.W. v. Great Oaks Legacy Charter School Board of Education, EDS 02991-25, Final Decision (February 28, 2025) https://njlaw.rutgers.edu/OAL/index.php, where a student eligible for special education under the classification of other health impairment brought thirty-seven bullets, including thirty hollow point bullets, to school. Id. at 2. The school held a disciplinary hearing, and it was determined that N.W.'s behavior was neither caused by nor had a direct and substantial relationship to his disability. Id. at 3. The school sought to impose a long-term removal far beyond the forty-five-day limit. The ALJ concluded that "A student with

a disability cannot be suspended for more than forty-five days. If the district wanted to suspend N.W. for the remainder of the school year, it must file for an expedited due process hearing before the expiration of the forty-five days, which it did not do." Id. at 7. The District Court affirmed the ALJ's position by reiterating N.J.A.C. 6A:14-2.8(d) expressly provides that even if a school disciplines a student with a disability according to 20 U.S.C. section 1415(k), it may not remove a student to an interim alternative educational setting for more than forty-five days. Great Oaks Legacy Charter School v. M.V. ex rel. N.W. (February 19, 2026) at 12.

Petitioner further argues:

> Respondent attempted to convert a time limited disciplinary removal into a prolonged exclusion without invoking the lawful mechanism required to extend such removal for a code of conduct violation. The resulting placement, imposed for an entire year, and far exceeding forty-five calendar days, mirrors the improper extension rejected in Great Oaks because it exceeds the authority granted N.J.A.C. 6A:14-2.8(d) and N.J.A.C. 6A:16-7.3(g).
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> [Petitioner's Brief at 22.]

I agree. Accordingly, I **CONCLUDE** that petitioner has satisfied the second and third prongs.

The final requirement for relief entails a balancing of interests between the parties. Petitioner asserts that E.R. has already missed over one hundred days of appropriate in-school programming and with each additional day of exclusion, the academic gap widens and increases the risk of regression. Respondent argues that petitioner walked out of Dr. Muthuswamy's office and created self-inflicted harm. It further argues that it would be immensely harmful and patently inequitable to the District to allow E.R. to sidestep the settlement in this matter, particularly when students' safety is at issue. Respondent relies upon what it states is a settlement, which was never reduced to writing or placed on the record. Furthermore, respondent has not set forth any authority that mandates clearance by a psychiatrist is necessary before a child can return to school. I am not convinced by respondent's argument. Keeping E.R. at home, the most restrictive environment, will

indeed cause her harm in the loss of opportunities to interact with her non-disabled peers, which is the goal of providing a free and appropriate education. Thus, I **CONCLUDE** petitioner has shown that on balance E.R. will suffer greater harm than respondent.

ORDER

It is **ORDERED** that in accordance with the reasons set forth above, petitioner's application for emergent relief is **GRANTED**. The Ocean Township Board of Education is hereby directed to immediately return E.R. to the last agreed-upon placement at Ocean Township High School until the underlying due process petition is adjudicated.

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 parent 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).

March 16, 2026

JOAN M. BURKE, ALJ

Date Received at Agency:

Date Mailed to Parties:

JMB/sa/nn

APPENDIX

Exhibits

For Petitioner:

Petitioner's submission accompanying the Emergent Application

P-1 New Jersey's Office of Special Education 2025 Guidance on Discipline Requirements for Students with Disabilities

P-2 E.R. Individualized Education Program, March 27, 2025

P-3 Initial Discipline Hearing Notice, December 11, 2025; Discipline Hearing Summary, January 9, 2026

P-4 Letter from Physical Education Teacher and Wrestling Coach

P-5 Township of Ocean BOE policies numbers: 5610, 5612, 5600

P-6 E.R.'s Mental Health Clearance Letter, February 27, 2026

P-7 New Jersey's Office of Special Education 2023 Guidance Regarding the Use of Psychiatric Clearances for Students with Disabilities

For Respondent:

R-1 Respondent's Brief in Opposition to the Application for Emergent Relief with Exhibits A through B, all of which were considered with this emergent application.