State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
EMERGENT RELIEF
OAL DKT. NO. EDS 05037-26
AGENCY DKT. NO. 2026-40696

T.W. AND J.W. ON BEHALF OF I.W.,
Petitioners,
v.
MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,
Respondent.

T.W., parent pro se, for petitioners, pursuant to N.J.A.C. 1:1-5.4(a)(7)

David B. Rubin, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: April 7, 2026 Decided: April 7, 2026

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

Petitioners, T.W. and J.W., on behalf of their son, I.W., filed a petition for emergent relief against respondent, the Morris School District Board of Education, seeking an order immediately returning their son, I.W., to the Morris School District high school as set forth in his last agreed-upon individualized education program (IEP), dated January 14, 2026,

as the stay-put placement pending the expedited due process hearing. Respondent opposes this application and argues that the stay-put placement is home instruction and petitioners have not demonstrated that they are entitled to emergent relief.

PROCEDURAL HISTORY

Petitioners filed both an expedited due process petition and a petition for emergent relief with the Office of Special Education (OSE) on March 27, 2026. The emergent petition seeks a temporary order for return to placement at Morristown High School and stay put pending the resolution of the expediated due process. The expedited due process petition seeks return to the Morristown High School as stay put and compensatory education.

The emergent petition alone was transmitted to the Office of Administrative Law (OAL) on March 30, 2026, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13, while the underlying expedited due process petition remained at the OSE. The expedited due process case is scheduled for mediation at the request of the parties on April 10, 2026.

The parties presented oral argument on the emergent-relief application on April 6, 2026. The record closed on April 7, 2026, after receipt of fully executed documents.

Petitioners' Request for Emergent Relief, with an annexed table of contents of Combined Exhibits A–K for Emergent Relief, were submitted and considered for this application.

Respondent's April 2, 2026, letter brief of David B. Rubin, Esq., in opposition to petitioners' application for emergent relief, with certification of Dr. Diana Pinto-Gomez along with emails, exhibits, and reports, were also considered in this application.

FACTUAL DISCUSSION

I.W. is an eleventh-grade student who is classified with other health impairment autism spectrum disorder, attention deficit hyperactivity disorder, obsessive compulsive disorder, Tourette syndrome, generalized anxiety disorder, and socialization alteration. During the first semester of his junior year in high school, the District conducted a re-evaluation planning meeting and agreed to conduct psychological and educational evaluations. There was no psychiatric evaluation proposed at that time, as the District did not see a need for one then. In December 2025, I.W. was disciplined for conduct related to inappropriate drawings on the bleacher stairs in the gymnasium. A ten-day suspension was issued. While I.W. was serving the suspension, the District agreed with the parents' request to return the student to school before the ten-day suspension was fully served. The District requested the parents' consent to a psychiatric evaluation in addition to other evaluations agreed to at the re-evaluation planning meeting. After the school's winter break the parents and the District continued with email exchanges and I.W. remained eligible for special education and related services under the disability category "other health impaired." An updated consent form to conduct a psychiatric examination was provided to the parents. Thereafter, on January 21, 2026, the District discovered that the Canvas account of the administrator involved in I.W.'s suspension from school last December had been hacked and grade reports from 2024 were downloaded. A police report revealed that the IT department found a match on a user account of I.W. at the same time period that the hacking incident took place. Thereafter, on January 22, 2026, I.W. was admitted to Saint Clare's Health Children's Crisis Intervention Unit due to suicidal ideation, and I.W. resided there until January 30, 2026. Upon discharge a post-treatment program at High Focus was recommended.

On February 19, 2026, the District informed the parents that they wanted a psychiatric evaluation conducted before I.W. could return to the District school. Initially the parents refused to consent and pointed to the medical professionals, including the psychiatrists at Saint Clare's and High Focus, who could provide information pertaining to the status of I.W.'s mental health. After a consensus between the parties could not be reached, the District attorney wrote to the parents saying:

> Based on the emerging pattern of threatening and dangerous behavior by I.W. the District feels, with good reason, that it needs a comprehensive picture of his mental and emotional condition to determine whether his current classification, program and placement are appropriate. Although the District is satisfied there are legitimate grounds to impose discipline it prefers to approach the matter from a therapeutic standpoint.
>
> To that end, if we are unable to secure your consent for the psychiatric assessment the District has requested, we will be left with no alternative but to file a petition for due process hearing with the Department of Education, accompanied by an application for emergent relief . . . with the reasons why the District feels this assessment is necessary.

In an email on February 20, I.W.'s mother wrote in response:

> [W]e recognize the seriousness of this incident and the concerns regarding I.W. This appears to be an incident of dysregulation, possible impulsive retaliation, although I.W. continues to maintain it was not, executive function breakdown, and possible emotional rigidity, all of which are related to his ADS and ADHD . . . . In light of the seriousness of the hacking incident and I.W.'s involvement, irrespective of whether he actually was the person who hacked into the system, which we contend he was not, we agree that an assessment is appropriate to ensure school safety.

The District confirmed its understanding in an email thereafter dated February 23: "we're in agreement to move forward with the psychiatric assessment as soon as the district can schedule it with home instruction in the meantime, as soon as we get that set up?"

Later that day, I.W.'s mother responded "yes" with further details about I.W.'s scheduled daytime intensive outpatient therapy.

Eventually the parents signed a consent form agreeing to the psychiatric evaluation, and the evaluation was assigned to Dr. Eric J. Bartky, a child and adolescent psychiatrist. An Authorization for Health and Student Records (Authorization) was also signed by the parents on February 27, 2026. This Authorization was effective for ninety days or until the evaluation was completed. On March 17, 2026, the District received

what it described as a "provisional report" from Dr. Bartky requesting personality testing so that he could be better able to recommend the most appropriate school placement for I.W., with home instruction recommended in the meantime. Dr. Bartky wrote, "the biggest question is whether the incident that led to I.W.'s school suspension was with intent to break into the school data base and access private information." Dr. Bartky referred to a "lengthy history of disruptive behavior and poor impulse and poor judgment," which he concluded had occurred based on records he had received.[1]

Later that same day, I.W.'s mother revoked consent to any further testing and demanded I.W.'s immediate reinstatement to the high school, challenging the school's action as inconsistent with its commitment to evaluate I.W. for placement in order to ensure proper supports while he is in school .

Thereafter, the District and the parents engaged in several email exchanges regarding the District's willingness to have I.W. placed at a therapeutic school and the District's agreement to explore an out-of-district placement in another public school district.

The parents argue that home schooling I.W. while he was evaluated by the school psychiatrist is not stay put, but rather a temporary agreement that the parents revoked once the scope of the agreement changed when it was determined that Dr. Bartky was investigating the hacking incident and looked to conduct personality assessments. This would also extend the time in which I.W. would be on home instruction. The parents continue to urge that the medical providers, including their psychiatrists at Saint Clare's and High Focus, could provide information pertaining to the status of I.W.'s mental health. The parents also provided the discharge summary report prepared by the High Focus Treatment Center adolescent clinician and associate director stating that "at the time of discharge for High Focus Centers I.W. is not a risk to himself or others." After being discharged from High Focus, I.W. transitioned to NōvaMind Wellness to continue

[1] The record does not include the records referred to by Dr. Bartky. According to the District's legal brief, and certification of Dr. Diana Pinto-Gomez, the Assistant Superintendent of Pupil Services, the child study team did not find it necessary to conduct a psychiatric evaluation at its initial re-evaluation meeting.

afternoon intensive outpatient programing. The parents also point out that home instruction is not reflected in I.W.'s current IEP.

The District argues that the District and the parents agreed to change the stay-put placement when they agreed to home instruction while I.W. underwent a psychiatric evaluation. The District pointed out that this agreement was made in lieu of the District filing a due process petition for I.W.'s removal for dangerousness and points to the Authorization signed by the parents to demonstrate that since the Authorization was effective for ninety days or until the evaluation is completed, the District could also take the same amount of time.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board, or public agency may apply in writing for emergency relief. An emergency 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 this case, petitioners assert that there is an issue concerning placement pending the outcome of the due process proceedings and therefore, this is an appropriate application for emergent relief. Petitioners contend that I.W. should be immediately returned to Morristown High School. The District argues that the parents consented to home instruction and that is I.W.'s stay-put placement pending the expedited due process proceeding, and further argues that petitioners do not meet the standards for emergent relief. I **CONCLUDE** that this matter involves the issue of placement pending the outcome of a due process proceeding, which requires emergent relief, pursuant to N.J.A.C. 6A:14-2.7(r)(iii).

The "stay-put" provision under the Individuals with Disabilities Education Act (IDEA) provides an automatic preliminary injunction, preventing a school district from making a change in placement from the last-agreed-upon IEP during the pendency of a petition challenging a proposed IEP. 20 U.S.C. § 1400, et seq.; Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996); D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982). The purpose of "stay put" 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).

Pursuant to the New Jersey Administrative Code, no changes are to be made to a child's classification, program, or placement unless emergency relief is granted. Specifically, 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 at 20 U.S.C. § 1415(k)4.

The District argues that the parents already agreed to a change in placement and therefore I.W.'s stay put is home instruction. Although the parents consented to home instruction during the psychiatric evaluation, this temporary change is not reflected in his IEP which provides him with placement in the general education class with supports at

the high school and is inconsistent with N.J.A.C. 6A:14-4.2 (5), which states [p]lacement is based on his or her IEP. Moreover, the parents revoked this temporary agreement when the scope of the agreement was changed, and the school psychiatrist requested additional assessments further extending I.W.'s home instruction. Furthermore, the petitioners provided psychiatric reports from his current inpatient stay stating that I.W. was not a danger to himself or others.[2] The District states it would have been forced to bring an action to remove him for dangerousness had this agreement to educate I.W. at home not been made. However, even if the District had brought such an action and were successful, it could only keep him removed for forty-five days before returning him to school.[3]

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). The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child shall 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).

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, applicable here, arises under the disciplinary provisions of the IDEA, 20 U.S.C. § 1415(k).

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. These standards for emergent relief require irreparable harm if the requested relief is not granted; a settled legal right underlying a

[2] Using the District's time frame set forth in the Authorization and its position that it provides an implicit ninety-day agreement or more to conduct the examination and keep I.W. on home instruction, the authorization also contains a provision allowing the authorizer to revoke the agreement.

[3] Forty-five days has passed since February 19, 2026, when the District refused to return I.W. to the District and informed the petitioners that I.W. could not return to school unless he was examined by the school-assigned psychiatrist.

petitioner's claim; a likelihood that the petitioner will prevail on the merits of the underlying claim; and a determination that 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. Petitioners bear the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

As far as the first factor set forth in Crowe, here it is the student, I.W., who is subject to irreparable harm, for remaining on home instruction, because he is not receiving services other than basic academic instruction. I.W. is not receiving support services and is not receiving an education among his peers. There is no other remedy in law or equity, or monetary damages, to restore this lost experience for the student.

I.W. has been removed from his classroom and peers for too long and is in need of academic and social-skills instruction in school due to his disability. He has not been found by any of the mental-health providers to be a danger to himself or others. If the District wishes, it could buttress I.W.'s support upon his return to school, or even assign a one-on-one aide to assist him.

The District has an obligation to provide I.W. with FAPE in the least restrictive environment. The IDEA's mainstreaming requirement requiring education in the "least restrictive environment" at 20 U.S.C. § 1412(a)(5)(A) mandates that

> [t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The least restrictive environment in this case is I.W.'s home district, the Morris School District in the high school. The District has an obligation to provide appropriate behavioral supports if necessary and return I.W. to school to be educated in the least restrictive environment.

Therefore, as far as the second and third factors set forth in Crowe, petitioners have a settled legal right and a likelihood of success on the merits. I.W. has the right to be educated in the least restrictive environment. His removal from the regular education environment can only occur when the nature or severity of his disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The District has the burden of proof on this issue at the expedited due process hearing.

The fourth factor set forth in Crowe requires a balancing of the equities and a determination of whether the petitioners will suffer greater harm than the respondent will suffer if the relief requested is not granted. I **CONCLUDE** that in balancing the equities, petitioners would suffer greater harm than the respondent would suffer. I.W. is an eleventh-grade disabled student who requires a return to in-classroom education and peer interactions after a period of deprivation. There has been no indication that I.W. is a danger to himself or others or that he should be removed for dangerousness.

Therefore, for all of the foregoing reasons, I **CONCLUDE** that petitioners have demonstrated entitlement to the emergent relief requested, since they have satisfied all four prongs of the test, and that the stay-put placement for I.W. pending the expedited due process hearing shall be Morristown High School pursuant to the January 14, 2026, IEP, unless the parties both agree to a change in placement.

ORDER

It is **ORDERED** that the petitioners' application for emergent relief is **GRANTED**. It is further **ORDERED** that the IEP team shall meet within three days of the date of this Decision to develop a transition plan for I.W.'s return to school.

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.A. § 1415(f)(1)(B)(i). If the parent 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.

April 7, 2026
DATE

Mary Ann Bogan, ALJ

Date Received at Agency: April 7, 2026

Date Mailed to Parties:

MAB/gd

APPENDIX

WITNESSES

For petitioners

None

For respondent

None

EXHIBITS

For petitioner

Tab A School psychiatric evaluation dated March 4, 2026.

Tab B I.W. Treatment center discharge report dated March 13, 2026

Tab C I.W. current treatment letter dated March 16, 2026

Tab D I.W.'s Treatment summary for neurofeedback therapy

Tab E Demand for return to school email exchanges (3-17-3-27-2026)

Tab F January 22, 2026 investigation report

Tab G I.W. updated evaluations for IEP

Tab H I.W.'s current IEP dated January 14, 2026

Tab I Email exchanges between parent and District December incident

Tab J Email exchange between parents and school psychologist Stephen Fedeck

Tab K I.W.'s current transcript from MHS

For respondent

- Letter Brief from David B. Rubin, Esq., dated April 2, 2026, in Opposition to Petitioners' Application for Emergent Relief
- Certification of Dr. Diana Pinto-Gomez with exhibits