



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

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 04497-23

AGENCY DKT. NO. 2023-35753

**C.A. ON BEHALF OF M.A.,**

Petitioner,

v.

**HOLMDEL TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

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**Laura A. Siclari**, Esq., for petitioner (Santomassimo Davis, LLP, attorneys)

**Robin S. Ballard**, Esq., for respondent (Schenck Price, Smith & King, LLP, attorneys)

Record Closed: July 25, 2023

Decided: July 26, 2023

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

**STATEMENT OF THE CASE**

C.A. on behalf M.A. (petitioner), brings an action for emergent relief against Holmdel Township Regional Board of Education (respondent, District), seeking an order as follows:

1. Directing respondent to comply with the stay-put provisions of the Individuals with Disabilities Education Act (IDEA) pursuant to 20 U.S.C. Section 1415(j) and N.J.A.C. 6A:14 et seq.;
2. Directing respondent to resume providing M.A. with home instruction for purposes of stay-put until the due process issues are resolved and for the respondent to continue to pay for the requested home instruction;
3. Respondent to provide M.A. for courses taken while on home instruction during the 2022–2023 school year and permit him to advance to the next grade at the conclusion of the school year;
4. Determination that the respondent's discontinuance of home instruction as of April 20, 2023, is inappropriate under the operative IEP;
5. A determination that continued home instruction is appropriate for M.A.;
6. Respondent to create an IEP within thirty days of the entry of an order that calls for M.A.'s continued placement in home instruction for so long as this placement remains appropriate;
7. Respondent to continue the direct funding of the full cost of home instruction, including any related services provided in conjunction with the program, for as long as the placement remains appropriate;
8. Petitioner reserves the right to seek reimbursement for all attorneys' fees, expert fees and court costs associated with the filing of this action; and
9. Any other relief the Court deems equitable and just.

[Petitioner's Notice for Emergent Relief at 1–2.]

## **PROCEDURAL HISTORY**

The petitioner filed a request for a due process hearing on April 20, 2023. The District filed a sufficiency challenge on April 27, 2023. The OAL determined the petition was sufficient. On May 22, 2023, the Office of Special Education (OSE) transmitted the matter to the Office of Administrative Law (OAL) as a contested case. A settlement conference was conducted on May 30, 2023, without resolution. A pre-hearing conference was scheduled for July 11, 2023. On June 12, 2023, I received petitioner's emergent relief request. A phone conference was conducted with the parties on June 12, 2023, to discuss the issues. The parties agreed to inform this tribunal whether an agreement was reached or whether a hearing would be necessary. The petitioner informed the tribunal on June 13, 2023, that an agreement could not be reached, and the matter would proceed to a hearing.

The emergent matter was scheduled for oral argument on June 26, 2023. The proceeding was conducted via telephone 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 were submitted and considered for this proceeding. A letter brief on behalf of the District, dated June 21, 2023, was also submitted and considered.

On June 27, 2023, I issued an Order for Emergent Relief. Subsequently a status conference was held on July 11, 2023, regarding the underlying due process matter. At that status conference it was brought to the attention of the tribunal that the Order for Emergent Relief resolved the issue of the due process petition. The petitioner at that time requested that the Order be amended to recite the language that all issues were resolved. I requested that the petitioner prepare a letter brief as to what had occurred and her request. Another status conference was scheduled for July 25, 2023. The parties submitted letter briefs. At the status conference, both sides presented their position as stated in their briefs.

In reviewing the petition that was sent over from OSE there appeared to have been a transmission error. The nature of the case was listed as: "Petitioner obo student seeks to continue home instruction for the remainder of the 2023-2024 school year". See transmittal from the OSE. In speaking with petitioner, that was in error. This was corroborated by the petitioner's "Request for Due Process Hearing", where it states "Provide a description of how this problem could be resolved." Ibid. The petitioner's response was "This problem can be resolved by allowing M to complete this year on Home Instruction." Ibid.

Petitioner therefore request an Amended Order, showing that the issues have been resolved. The respondent posits that the appropriate way to address this issue is for the petitioner to withdraw the underlying due process matter or alternatively, respondent files a motion for mootness.

### **FACTUAL DISCUSSION AND FINDINGS**

Based upon the submissions of the parties, and the arguments presented on June 26, 2023, I **FIND** the following as **FACT**:

1. M.A. is currently sixteen years old and is a sophomore at Holmdel High School (Holmdel).
2. M.A. is eligible for special education and related services under the classification of "Emotional Regulation Impairment." M.A. is diagnosed with hypermobile Ethers-Danlos syndrome (hEDS), major depressive disorder, chronic bartonella infection, postural orthostatic tachycardia syndrome, mast cell activation syndrome and dysautonomia.
3. On December 21, 2022, the IEP team held a meeting and M.A.'s IEP was adjusted for placement on "Home Instruction."

4. On February 6, 2023, there was an amendment to the IEP without a meeting. The placement category was listed as Home Instruction. (Respondent's Brief, Exhibit 2.)
5. On March 6, 2023, there was an "Assess Progress Review and Revise of the IEP." (Respondent Brief, Exhibit 3.) The placement category was identified as "Home Instruction." Ibid. Respondent stated that this was an error.
6. Starting on or about December 21, 2022, M.A. started to receive home instruction.
7. On February 7, 2023, Valeria Dworkowitz, a Doctor of Nursing Practice (DNP), sent a letter stating M.A. was experiencing varying levels of anxiety ranging from mild to high during his discontinuation schedule of the medication Cymbalta. She recommended he returned to school on February 27, 2023.
8. On February 10, 2023, M.A.'s treating physician, Dr. Tamara Odell, DO, sent a letter to the District requesting that based on the treatment M.A. was receiving that he be placed on home-bound instruction immediately through April 11, 2023.
9. On March 20, 2023, Dr. Elad Tennen, wrote a letter advocating for home instruction for approximately thirty days as M.A. was being worked up for severe lower extremity pain in the setting of chronic Bartonellosis.
10. The District, sometime in April 2023, informed M.A. that his home instruction expired as of April 20, 2023, and he was expected to return to school on April 21, 2023.
11. On April 24, 2023, Dr. Odell wrote a letter to the District informing of his collaboration with Dr. Elad Tennen, sports medicine/orthopedics who found

ongoing ankle pain that was related to nondisplaced fibular fracture found on an MRI associated with bone marrow edema. Dr. Odell requested that M.A. be referred for home-bound instruction immediately to run through June 24, 2023.

12. On May 4, 2023, Dawn Gerdes, APN, wrote a note that M.A. has been under the care of pediatric urology for urinary frequency and urgency and believed that it would be in M.A.'s best interest if he could finish out the school year on home instruction. This letter was not signed.
13. On May 8, 2023, Dr. Odell wrote to the District informing them that M.A. has been under his medical care for management of hEDS, mast cell activation syndrome and an active Bartonellosis infection. Appropriate management of Bartonellosis can take six months or more for resolution. Dr. Odell stated that M.A. is unable to attend school due to his medical issues and asked that he be referred for home-bound instruction starting immediately to run through June 24, 2023.
14. The school physician did not verify that M.A. required home instruction for medical reasons.

### **ARGUMENTS OF THE PARTIES**

Petitioner argues that the petitioner was diagnosed with major depression and anxiety disorder sometime in 2021. Over the past two years since then, he has had difficulty attending school because of a urine bladder issue wherein he becomes fixated on going to the bathroom and unable to focus on his education. Petitioner argues that M.A. was without any educational services from April 20, 2023, until the end of the school year on or about June 19, 2023. Petitioner argues that to frame this matter as a medical home instruction issue as the respondent does is incorrect because the issue here is that the District fails its Child Find obligation under the Individuals with Disability Education Act.

Petitioner argues that M.A. was missing class due to chronic absenteeism and sometime in December 2022, M.A.'s mother wrote the school coupled with a letter from M.A.'s treating physician, dated December 15, 2022. Dr. Odell's letter stated that M.A. meets the diagnosis criteria for hEDS, which is a genetic connective tissue disorder. On December 21, 2022, the IEP team met, reviewed and revised M.A.'s IEP. The placement was changed to home instruction. In February there was an amended IEP which states the placement category "Home Instruction" but under the summary of special education programs and related services, it stated In-Class Resource for English, math, foreign language, social studies and science. Similarly, an amended IEP was done on March 6, 2023, which states placement category as "Home Instruction" but under the Summary-Special Education Programs and Related Services, it states, "In-class Resource for English, Math and Science." See Respondent's Brief, at Exhibit 3.

Petitioner argues that M.A.'s proper placement is home instruction. Petitioner admits that the March IEP is the last agreed upon IEP. However petitioner admitted that the District informed her 'home instruction' written as the placement was in error. While petitioner acknowledged that she was told that this was a typographical error, it is the petitioner's belief that the last agreed upon IEP, where a meeting was convened with the IEP team, was in December 2022 and at that time the agreed upon placement was home instruction.

Petitioner contends that when looking at the matter, it should not be viewed in a vacuum. Although petitioner's IEP was changed to allow him to attend a school dance and a school play, he was not able to go back to school. In March after the IEP was created, he made an attempt to go back to school but was unable to. He was extended home instruction until April 20, 2023. Petitioner also argues that they have submitted between February 2023 and April 7, 2023, from M.A.'s medical team, six letters, all of which show the overall medical issues that confronts him, and each letter puts the District on notice that there were co-occurring mental health and physical symptoms preventing him from accessing in-person education.

Petitioner argues that stay-put should apply when you look at the totality of the circumstance and, therefore, there would not be a need for evaluation of the Crowe v.

DeGoia standard. M.A., for most of his school year, has been on home instruction. However, there was a break in service and not having school for two months has resulted in irreparable harm if he is not allowed to rectify it this summer as he was notified by the District that he has failed nearly every class. Petitioner argues that he will have to repeat the whole school year when he only missed two months of the fourth marking period.

Petitioner also offers three options on how this matter should be resolved. First, since M.A. passed the first three marking periods, the District could modify the attendance policy and pass M.A. for the year; the second option would be to provide M.A. the opportunity through home instruction to make up his missing assignments over the summer and the third option is giving modified final exams only in the units M.A. missed from the fourth marking period. (Petitioner's June 26, 2023 Brief at 5.)

Respondent argues that there is a fundamental misunderstanding of the process. Petitioner was out of school for medical reasons and was on medical based home instruction. Respondent argues that there was a request made on February 3, 2023, to amend M.A.'s IEP without a meeting. The petitioner signed off on it. It required that M.A. would stop home instruction and participate in a school event on February 3, 2023, and return to school on Monday, February 6, 2023. Based on Dr. Odell's letter, dated February 10, 2023, and a letter, dated February 7, 2023, from M.A.'s psychiatric, an advanced practice nurse, - discussing levels of anxiety that he would experience with the discontinuation of a medicine, he was granted home instruction. His last IEP was done on March 6, 2023. In that IEP respondent argues, that based on a letter, dated March 20, 2023, from his psychiatric APN he was given home instructions until April 20, 2023. Respondent states that M.A. was expected to return to school on April 21, 2023. Respondent argues that the letters from Dr. Odell, dated April 24, 2023, and May 8, 2023, did not satisfy the requirements under N.J.A.C 6A:16-10.1. The District doctor did not verify what medical condition M.A. had which prevented him from attending school. Respondent states that the District had reached out to Dr. Tennen, who at the time, told them he was no longer taking care of M.A.

Respondent argues that the stay-put provision of IDEA prevents the very relief being sought by the petitioner. The March 6, 2023, IEP was the last one agreed upon



which calls for placement in class at Holmdel High School. Respondent noted that there was a mistake on this IEP, placement of “Home Instruction,” was placed in error, as almost everything written in the IEP had to do with in class learning. Respondent argues that M.A. does not require home instruction and specifically on an emergent basis because the school year has ended. In addition, petitioner is seeking to change his placement to home instruction which can only be done through a plenary hearing on the underlying due process matter. Respondent argues that the petitioner fails to meet the requirements of prongs two and three in that M.A. failed to show legal entitlement to home instruction when school has concluded for the year, and he is not eligible for extended school year services. Respondent also argues that if petitioner was to be granted relief in this matter harm would come to the District. The respondent further posits that if emergent relief was granted it would “increase the number of emergent relief applications filed seeking orders for interim placements of students in the location or program preferred by parents, both in and out of this and other districts.” See Respondent’s Brief at 9.

### **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 her Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief, petitioner indicated that she believes she is entitled to emergent relief on issues involving a break in the delivery of services (i); and issues concerning placement pending the outcome of due process proceedings (iii).

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 placement pending proceedings.

The petitioner here contends that she is invoking the “stay-put” provision to require the Board to provide home instruction to M.A. through the end of the school year. Since the school year has ended, to provide him over the summer to allow him to complete the fourth marking period of his sophomore year. With a “stay-put” claim, the petitioner is seeking an automatic statutory injunction against any effort to change M.A.’s program at the time the provision is invoked. Drinker by Drinker v. Colonial School Dist., 78 F.3d 859, 864 (3d Cir. 1996). Pursuant to N.J.A.C. 6A:14-2.7(u):

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 between the district board of education and the parents for the remainder of any court proceedings. [Emphasis added.]

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. In terms of the applicable standard of review, the emergent relief factors set forth in N.J.A.C. 6A:14-

2.7(r)-(s), N.J.A.C. 1:6A-12.1, and Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982), are generally inapplicable to enforce the “stay-put” provision. As stated in Pardini v. Allegheny Intermediate Unit, 429 F.3d 181, 188 (3d Cir. 2005), “Congress has already balanced the competing harms as well as the competing equities.”

In Drinker, the court explained:

The [IDEA] substitutes 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 . . . balance of hardships.

[78 F.3d at 864 (citations and internal quotations marks omitted).]

In other words, in cases where the “stay-put” provision applies, injunctive relief is available without the traditional showing of irreparable harm. Ringwood Bd. Of Educ. v. K.H.J. o/b/o K.F.J., 469 F. Supp. 2d 267 (D.N.J. 2006). Under those circumstances, it becomes the duty of the court to ascertain and enforce the “then-current educational placement” of the handicapped student. Drinker, 78 F.3d at 865. “[T]he dispositive factor in deciding a child’s ‘current educational placement’ should be the individualized education program . . . actually functioning when the ‘stay put’ is invoked.” Id. at 867, quoting Woods v. N.J. Dept. of Ed., No. 93-5123, 20 Indiv. Disabilities Educ. L. Rep. (LRP Publications) 439, 440, 3<sup>rd</sup> Cir. September 17, 1993.

Here, the last agreed upon and operative IEP is dated March 6, 2023. There is an issue with the placement that was written on this IEP as it states, “Home Instruction.” However, under Summary-Special Education Programs and Related Services paragraph, it states:

In class Resource for English, from 2/06/2023 – 06/06/2023  
3x4 day cycle 56 min.

In-class Resource: Math — from 2/06/2023 – 06/06/2023 3x4  
day cycle 56 min.

In-class Resource: Science from 2/06/2023 – 06/06/2023 3x4 day cycle 56 min.

Petitioner believes stay-put should apply because the petitioner was on home instruction for the majority of the school year and was the last placement M.A. was on the day before the petitioner filed for due process on April 20, 2023. The petitioner contends that any deviation represents a violation of stay-put. However, the operative IEP when stay-put was invoked was the March 6, 2023, IEP. There was no other IEP. On page fifteen of the March 6, 2023, IEP, it stated:

M returned today from home instruction. M returned on a ½ day schedule whereby he will be schedule for Algebra 2, English, Chemistry, and US History in the morning. M will be permitted to leave 3 days a week @10:18 and 1 day a week@10:45 am. . . .

[See Respondent’s Brief, Exhibit 3.]

Thus, I **CONCLUDE** that the petitioner has no stay-put rights in a program not contained in his last agreed-to IEP.

The petitioner argues even if stay-put is found inapplicable, the petitioner is entitled to emergent relief under the traditional equitable standards set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6. The petitioner bears the burden of proving:

1. that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted;
2. the existence of a settled legal right underlying the petitioner’s claim;
3. that the party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and
4. when the equities and the interests of the parties are balanced, the party seeking emergent relief will suffer greater harm than the respondent.

[Crowe, 90 N.J. at 132–34.]

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. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J. Agen LEXIS 814, 7 (OAL Dkt No. EDS 10816-17, October 25, 2017).

Respondent argues that this case falls under N.J.A.C. 6A:16-10.1 which provides:

- a) The district board of education shall provide instructional services to an enrolled student, whether a general education student in kindergarten through grade 12 or special education student age three to 21, when the student is confined to the home or another out-of-school setting due to a temporary or chronic health condition or a need for treatment that precludes participation in their usual education setting, whether general education or special education.
  1. To request home instruction due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written determination from the student's physician documenting the projected need for confinement at the student's residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.
    - i. The school district shall forward the written determination to the school physician, who shall verify the need for home instruction. The school physician may contact the student's physician to secure additional information concerning the student's diagnosis or need for treatment, and shall either verify the need for home instruction or shall provide to the district board of education reasons for denial.
  2. The school district shall notify the parent concerning the school physician's verification or reasons for denial within five school days after receipt of the written determination by the student's physician.

3. The school district shall provide instructional services within five school days after receipt of the school physician's verification or, if verification is made prior to the student's confinement, during the first week of the student's confinement to the home or out-of-school setting.

[N.J.A.C. 6A:16-10.1.]

Petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34. Petitioner can establish that irreparable harm will be sustained if the relief requested is not granted. Based on chronic absenteeism, petitioner's IEP was changed in December 2022 to home instruction. Since that time, there were two IEP amendments. These amendments were done on February 6, 2023, and March 6, 2023. However, while the IEPs were changed, the petitioner remained on home instruction because of medical issues. M.A.'s medical team consisted of his treating physician, Dr. Odell, his psychiatrist APN and Dr. Elad Tennen, a sports medicine/orthopedics. The school doctor accepted the medical team's letters and reason up until March 20, 2023. In subsequent letters written by Dr. Odell on April 24, 2023, and May 8, 2023, the school doctor denied the request for home bound instruction. It is not clear from the record if the school doctor specified a reason as required by N.J.A.C. 6A:16-10.1; respondent only stated in its brief that the school physician denied the request for home instruction, as he was unable to verify the need for same. While he is not required to call the treating physician, I am not sure how he made this determination given M.A.'s specific medical conditions that exist according to Dr. Odell.

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 132–33. In addition, the irreparable harm standard contemplates that the harm be both substantial and immediate. Subcarrier Communications v. Day, 229 N.J. Super. 634, 638 (App. Div. 1977). However, pecuniary damages may sometimes be inadequate because of the nature of the injury, or 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 is

showing that once something is lost, it cannot be regained. M.L. o/b/o S.L. v. BOE of the Township of Ewing, EDU 4949-09, Emergent Relief (June 15, 2009). 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 Township Board of Education v. A.I. and J.I. o/b/o S.I., EDU 5433-12, Emergent Relief (May 2, 2012). By only that as he was not able to verify the need for same.

Here if emergent relief is denied, petitioner would either send M.A. to school despite two written letters from M.A.'s physician that says that he should be in home-bound instruction or keep him at home where as in this matter he did not receive educational services. A child who is suffering from a physical or mental illness and is deemed medically to be kept out of school may potentially and irreparably suffer harm if compelled to attend school. To attend school (let alone potentially visit harm upon others in the school setting) is self-evident and requires no further analysis. See Y.T. o/b/o L.R. v. Bd. of Education Township of Willingboro, EDU 17758-15. The question then becomes, if the child is not receiving educational services can the lost educational services be regained. Ibid. I **CONCLUDE** therefore that the petitioner has satisfied the irreparable harm standard under Crowe.

The petitioner must also demonstrate that the legal right underlying her claim is settled and she must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. The District's responsibilities under the IDEA to provide M.A. with a FAPE are well-defined in state and federal law. 20 USA § 1415(5)(B); N.J.A.C. 6A:14-4.2 M.A. has an ongoing medical issue. This was noted in approximately seven letters, specifically three from his treating physician. In the letter, dated April 24, 2023, in the final paragraph, Dr. Odell states:

As M's mobility is compromised secondary to pain, I would ask that he be referred for home bound instruction starting immediately to run through June 24<sup>th</sup>. I have a follow-up appointment scheduled with M and will be in close contact with Dr. Tennen. Should anything change prior to June 24,

2023, I will be in touch. Should you have any questions, please feel free to contact my office.

And in his letter, dated May 8, 2023, again Dr. Odell stated, "M is unable to attend school due to his medical issues and I would ask that he be referred for home bound instruction starting immediately to run through June 24<sup>th</sup>." Petitioner argues that these letters do not meet the criteria under N.J.A.C. 6A:16-10.1., more specifically, the letters provides no explanation as to how M.A.'s medical condition could have prevented his attendance at Holmdel High school. I am not convinced as the letters are similar to the letter written by Dr. Odell on December 15, 2022, and does satisfy N.J.A.C. 6A:16-10.1. Accordingly, I **CONCLUDE** that the petitioner has satisfied the second and third prongs.

Finally, as to the fourth prong of the standard for emergent relief, having considered the equities and the interests of the parties, I **CONCLUDE** that the balance weighs in favor of the petitioner. Requiring a child suffering from physical or mental illness to attend school when they are not medically cleared to do so could lead to harms visited upon that student or individuals around them in the school setting.

Based on the foregoing, I **CONCLUDE** that the petitioner has demonstrated sufficiently that emergent relief is appropriate in this matter. Petitioner's request is **GRANTED**.

Based on the above, and the subsequent briefs received in this matter after June 27, 2023, I agree that the Order issued on June 27, 2023, resolved all the issues in this case, a conclusion that the respondent has also determined as pointed out in their letter brief, dated July 20, 2023. The respondent has recommended that the tribunal decline the petitioner's request for an amended Order or in the alternative, grant the respondent a dismissal for mootness. I shall do neither. The June 27, 2023, Order on Emergent Relief is therefore corrected to reflect that all the issues raised in the due process petition are resolved.



**ORDER**

Having **CONCLUDED** that petitioner is entitled to the requested emergent relief and that the petitioner's request for emergency relief is **GRANTED**, it is **ORDERED** that respondent provide M.A. with home instruction during the pendency of the underlying due process matter for a period not to exceed sixty days as Dr. Odell had requested April 24, 2023, to June 24, 2023. This should allow M.A. to complete the last two months of the fourth marking period.

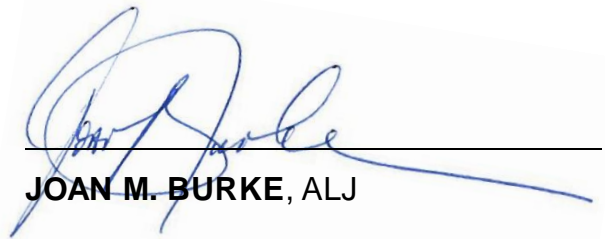
The parties are reminded of the provisions of N.J.A.C. 6A:16-10(c)4 which states:

For a student with disabilities, the home instruction shall be consistent with the student's individualized education plan (IEP) to the extent appropriate and shall meet the New Jersey Student Learning Standards. When the provision of home instruction will exceed 30 consecutive school days in a school year, the IEP team shall convene a meeting to review and, if appropriate, revise the student's IEP.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2). 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.

July 26, 2023

DATE



**JOAN M. BURKE, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JMB/jm

**APPENDIX**

**WITNESSES**

**For petitioner**

Counsel for Petitioner

**For Respondent**

Counsel for District

**EXHIBITS**

**For Petitioner**

P-1 Petitioner's submission accompanying the Emergent Application

P-2 Petitioner's Brief with Exhibits, dated June 26, 2023

Letter Brief dated July 18, 2023

Letter Brief dated July 21, 2023

**For Respondent**

R-1 Respondent's Brief in Opposition to the Application for Emergent Relief with Exhibits 1 through 3, all of which were considered with this emergent application, June 21, 2023

Letter Brief dated July 20, 2023

Letter Brief dated July 25, 2023