



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

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 10370-23

AGY REF NO. 2024-36617

**E.W. ON BEHALF OF A.P.,**

Petitioner,

v.

**FRANKLIN TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Andrew I. Metzger**, Esq., for petitioner (Sussan, Greenwald & Wesler, attorneys)

**Cameron R. Morgan**, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs, LLC, attorneys)

Record Closed: October 30, 2023

Decided: October 31, 2023

BEFORE **DEAN J. BUONO**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

The motion for emergent relief seeking an Order directing the District to allow A.P. to return to her educational program at the Lakeview School immediately so that

she will not have her right to a free, appropriate public education denied during the pendency of this dispute. The District does not agree.

Petitioner filed a due process petition and motion for emergent relief with the Office of Special Education (OSE) in the New Jersey Department of Education (DOE). The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed and heard on October 27, 2023. However, respondent appeared only via telephone and submitted no documents in support of their position. I proffered that both parties be allowed to submit written submissions by the close of business on October 30, 2023. They agreed and the record closed.

### **FACTUAL BACKGROUND**

#### **Petitioner**

A.P. is a four-year-old student eligible for special education and related services based upon the classification category, Preschool Child with a Disability.

A.P. has an extensive medical history and subsequent disabilities including diagnoses of Hypoxic Ischemic Encephalopathy, Microcephaly, Muscle Weakness, Order Disorders of Psychological Development, Order Specific Disorders of Muscle, Specific Developmental Disorder of Motor Function, Dysphagia—Oral Phase, Dysphagia Unspecified, Bilateral Astigmatism, Infantile Spasms, and Failure to Thrive. A.P. takes seizure medication daily, wears glasses to improve visual acuity, and has a PRN to give her a critical prescription. She is fed via bottle which needs to be fed to her by someone other than herself. A.P. is non-verbal and non-ambulatory, requiring assistance in all areas of self-care. She cannot sit, stand, or walk without assistance. As such, A.P. requires constant care and medical intervention.

For the 2022–2023 School Year, A.P. was enrolled in a Full-Day Preschool 3 Years Old Program while residing in Bridgewater-Raritan Regional School District. The Bridgewater-Raritan Regional School District placed A.P. at the Lakeview School, an

out-of-district special education school in Edison, New Jersey as they believed this was the proper placement to offer A.P. a free, appropriate public education.

At the Lakeview School, A.P. was able to see her neurologist, gastroenterologist, nutritionist, physiatrists, and rehab technicians at the school clinics while in attendance. The access to these doctors while at school has provided A.P. the opportunity to make meaningful progress medically, academically, and functionally. She does not have to miss academics in order to see her doctors. Further, all clinicians at the Lakeview School work together along with teachers and other service providers, to create a comprehensive program that she requires.

The nutritionist and gastroenterologist at the Lakeview School provide the medical care needed for A.P. so that she has avoided the need for a GI tube and is maintaining her ability to eat while at school. Further, the physiatrist at the Lakeview School provided the medical care needed for A.P. such that she has avoided the need for surgery to correct her hip dysplasia and instead has focused on stretching and hip mobility.

At the Lakeview School, A.P. was in a classroom with a teacher to student ratio of 3:1 or smaller with students grouped by similar cognitive abilities. This small classroom ratio offered A.P. the ability to obtain the support needed to make meaningful progress. Furthermore, A.P.'s IEP developed by Bridgewater on May 22, 2023, placed her at the Lakeview School for the 2023–2024 school year in the Full-Day Preschool 4 Years Old Program.

Lakeview provides numerous services, programming, instruction, and support that are not available in the District's proposed IEP, rendering the District's program a non-comparable program. Lakeview provides eight full-time and three per diem Registered Nurses trained in emergency seizure and medical treatments. The school has three crash carts as well as oxygen, suction machinery, and defibrillators.

Lakeview provides specialized equipment and modifications for A.P. including but not limited to beanbag chairs, stroller, a Rifton Activity Chair with a five-point chest harness, head rest, trunk lateral, seat belt, foot support and tray.

Lakeview's IEP provides hydrotherapy physical therapy (PT) sessions in addition to her two weekly PT sessions. They occur on a six–eight-week period interval and then A.P. is placed on a rotation schedule. Lakeview provides A.P. with three yearly consultations from a multidisciplinary team of doctors. The doctors are available for emergency consultations with staff as needed. Lakeview needed to conduct emergency consultations with A.P.'s doctors. Due to the medical consultations that are part of A.P.'s program, she has fortunately avoided the need to be fed by g-tube and as well as hip dysplasia surgery.

At this IEP meeting, A.P.'s teacher reported that A.P. requires maximum assistance to participate in tasks and additional time to process information. She further opined A.P. needs differentiated instruction with a multi-sensory approach and small group activities in order to provide her with the appropriate learning experience. Lakeview School offers a 3:1 teacher to student ratio, or smaller, in order to provide A.P. with the instruction she requires to make meaningful educational progress.

In September 2023, A.P.'s mother notified Bridgewater-Raritan Regional School District that they would be relocating to the Franklin Township School District. Franklin Township School District contacted the Lakeview School on September 22, 2023, unilaterally notifying them that A.P. would no longer be attending. Petitioner had not moved to Franklin Township at that time. This mistake caused A.P. to miss school from September 25 to September 27. Since September 29, 2023, no educational programming or benefit has been provided to A.P.

An IEP meeting was held on September 26, 2023, with the Franklin Township Child Study Team (CST) in order to develop a proposed program for A.P. At this IEP meeting, the CST notified petitioner that the District would be recommending placement in their preschool disabilities program in the public school and refused to abide by A.P.'s last agreed upon IEP.

On September 29, 2023, respondent observed A.P. at the Lakeview School. That same day, Franklin terminated the placement. Then, on October 1, 2023, A.P.'s family officially moved from the Bridgewater-Raritan Regional School District to the Franklin Township School District. As a result of this move, Bridgewater-Raritan Regional School District no longer maintained responsibility for providing A.P. with a free, appropriate public education.

Petitioner alleges that Franklin Township disregarded A.P.'s IEP from Bridgewater-Raritan Regional School District and refused to continue her placement at the Lakeview School. In the interim, A.P. remains without an educational program. A.P. is a student with disabilities and is entitled to receive a free, appropriate public education by law. Due to unilaterally withdrawing A.P. from Lakeview, she was unable to obtain her medical equipment (Bathing seat, stander, wheelchair and activity positioning chair) she was expected to receive this month via the Rehab Tech Clinical and school therapist.

They further claim that the District Child Study Team did not conduct any evaluations of their own before unilaterally discontinuing A.P.'s stay put placement at the Lakeview School. The District's proposed IEP does not contain any goals and objectives. IEP goals and objectives detail what a student is expected to work on and achieve within a one-year period. The District has failed to act in accordance with its legal obligations under *20 U.S.C.A. § 1400 et. seq.* and *N.J.A.C. 6A:14 et. seq.*

Petitioner claims that should immediate relief not be granted, A.P. will continue to be deprived of her educational program from her previously agreed-upon IEP and suffer irreparable harm. That is to include academic instruction and related services to which she is entitled by law as a student classified eligible to receive special education and related services. Requiring that A.P. attend a program in the public school during the pendency of the underlying due process proceeding—despite her stay put IEP—is inappropriate, not permitted by law, and deprives her of her right to F.A.P.E.

## **Respondent**

Respondent argues that there is no loss of FAPE as the program offered at Elizabeth Avenue School is comparable to the Lakeview School and A.P. should attend there but E.W. refused to visit the program.

On April 29, 2022, A.P. was found eligible for special education and related services by the Bridgewater-Raritan child study team, under the classification category of “Preschool Child with a Disability.” Id. at ¶14. Through an initial IEP dated May 3, 2022, A.P. was placed at the Lakeview School for the 2022-2023 school year by Bridgewater-Raritan’s child study team. Id. at ¶15. Lakeview School is a private, approved out-of-district placement for the education of pupils with disabilities located in Edison, New Jersey. Id. at ¶16.

On May 22, 2023, the parent and the Bridgewater-Raritan child study team convened an annual review IEP meeting, through which Bridgewater-Raritan issued an IEP (the Bridgewater IEP) that proposed placement for A.P. at the Lakeview School for the 2023–2024 school year during her P4 year of preschool, in a full-day preschool disabilities program, with related services of individual speech/language therapy two (2) times per week for thirty minutes, individual physical therapy two (2) times per week for thirty minutes, individual occupational therapy two (2) times per week for thirty minutes, and individual Commission for the Blind services four (4) times per year for thirty minutes, together with various adaptive equipment and program modifications, accommodations, and supports, including a seizure action plan and an allergy action plan. See Bridgewater IEP. In addition to the above program supports, the Bridgewater IEP also states the following regarding “hydrotherapy services,” which it makes clear is an additional service beyond those services determined necessary in the IEP and which every student at the school who is physically cleared for such services is offered:

Lakeview School offers hydrotherapy as a modality of treatment if students are cleared by the school’s physiatrist. [A.P.] has been cleared for this type of service. [A.P.] will participate in this program this school year. She will participate in hydrotherapy over a 6–8-week period. She will

then be placed into a rotation schedule as this is an **additional service** that is offered to **all students** in the school if they are medically cleared. When [A.P.] is in the pool, her aquatic sessions will be in addition to her recommended land (PT) sessions dependent on schedules.

On or about September 18, 2023, E.W., A.P.'s mother, registered her for school in Franklin Township with a lease agreement for a home in Franklin that she signed over the Summer. Due to A.P. registering in the District in mid-September 2023 after the parent indicated she would shortly be moving from Bridgewater-Raritan to Franklin, the District has not yet had the opportunity to have its own child study team evaluate or work with A.P. and has relied upon the statement of her program set forth in the most recent Bridgewater IEP as required by applicable case law and state regulations under these circumstances in which a student transfers from another district in-State. See N.J.A.C. 6A:14-4.1(g).

On September 26, 2023, the parent and the Franklin Township child study team convened an IEP meeting for the purposes of reviewing A.P.'s IEP from Bridgewater-Raritan and her previous evaluations and proposing a program and placement for the 2023–2024 school year that would provide services comparable to those provided in the Bridgewater IEP, in accordance with the law. See Dr. Sofield Certif. at ¶25; Green Certif. at ¶25. The IEP team determined that A.P.'s educational program and related services could appropriately be implemented in a specialized in-District program which is the self-contained Medically Supported Preschool Disabilities Program (MSPD Program) housed within Elizabeth Avenue School (EAS), one of several elementary schools in the District, which houses this program for the District's population of medically fragile students. Id. at ¶26.

Therefore, on September 26, 2023, the District child study team issued an IEP (the "Franklin IEP") providing for A.P. to attend school in the 2023–2024 school year in the Medically Supported Preschool Disabilities Program at Elizabeth Avenue School, her local neighborhood school, which is a full-day, self-contained special education program specifically designed for students with very significant medical needs, including students whose medical needs are so severe, they require constant care and on-site

nursing services. See Franklin IEP, dated September 26, 2023, Ex. 4 to Dr. Sofield Certif.; Dr. Sofield Certif. at ¶27. In addition to placement in a comparable self-contained program for medically fragile students, the District's September 26, 2023, IEP also provided A.P. with **the very same** related services and accommodations, modifications, and supports she received under the Bridgewater IEP, including but not limited to: individual speech/language therapy two (2) times per week for thirty minutes, individual physical therapy two (2) times per week for thirty minutes, individual occupational therapy two (2) times per week for thirty minutes, and individual Commission for the Blind services four (4) times per year for thirty minutes, together with various adaptive equipment and program modifications, accommodations, and supports, as well as the ability to implement the same seizure action plan and allergy action plan through the certified nursing staff on-site. Id. at ¶29.

The IEP team determined that the MSPD Program at EAS is both educationally and medically appropriate to meet A.P.'s needs, and that it also represents the least restrictive environment (LRE) in which her program can be effectively implemented. Id. at ¶30. The program and services offered through the Franklin IEP are appropriate for A.P., and are sufficient to meet her unique educational needs, based on the IEP having been developed to provide services comparable to those provided to her under the Bridgewater IEP, as required by law, until the District can reevaluate A.P. and develop a further IEP for her. Id. at ¶31.

In fact, the District was able to satisfy its obligations under the IDEA, as noted above in Bryam and N.J.A.C. 6A:14-4.1(g), by providing A.P. with an IEP not only reasonably calculated to provide her with "comparable services" to those she received under the Bridgewater IEP, but nearly the **same services** or even more individualized services. For example, the MSPD Program at EAS is supported by certified nursing staff, with at least two (2) certified nurses on-site, including clinical nursing and the head nurse for the entire District. See Dr. Sofield Certif. at ¶¶32-33; Green Certif. at ¶¶32-33. According to the Petition (see ¶13) and the NJDOE website summary for each approved school, at the Lakeview School, A.P. would be in a classroom with a low student/staff ratio of 3:1. Yet, the student/staff ratio A.P. would enjoy at the in-District program at Elizabeth Avenue School actually enjoys an even lower staff/student ratio



than that. See Dr. Sofield Certif. at ¶34; Green Certif. at ¶34. More specifically, the self-contained MSPD classroom at EAS has approximately a 2:1 student/staff ratio, with only eight (8) students divided into two sections of four (4) students each, and aides and nursing staff in the program in addition to the certified special education teachers. Id. at ¶35. The program serves students who all have significant levels of medical needs, but it also provides opportunities for exposure to typical peers through specials, depending on whether it is a regular or adaptive special, as well as other potential opportunities. Id. at ¶36.

The students in the program eat lunch together in the classroom, with the staff, aides, and nurses servicing the program, rather than being overwhelmed in a large cafeteria environment, which can otherwise be a concern to many parents of very young children with significant medical needs. See Dr. Sofield Certif. at ¶37; Green Certif. at ¶37. Many accommodations can and are put in place, depending on student need, with some being utilized simply as best practices, such as arranging for the medically fragile students in the program to move to their different locations during transition times either five minutes before or after the normal passing time, to avoid peak times of transitions by students in the hallways. Id. at ¶38.

They claim EAS has completed or is nearing completion of a full Adaptive Playground, completely ramped and 100% wheelchair accessible, with all activities similarly wheelchair accessible. It has motion swings for wheelchairs, musical instruments that are accessible from wheelchairs, and an array of other adaptive and accessible activities. Id. at ¶39. At the elementary level, there are adaptive specials utilizing adaptive materials, modified curriculum, smaller classrooms, and additional supports. Id. at ¶40. The program also has a multitude of adaptive equipment, including but not limited to Rifton activity chairs, Kidkarts, spio vests, binks, splints, tomato chairs, slings, and any other adaptive equipment necessary to implement the services that our medically fragile students in the program may need. Id. at ¶41. To the extent any piece of equipment is not already in stock at the program, it can easily be ordered for A.P.'s use. Ibid.

They claim that the MSPD program is not new, but rather continues to be refined and enhanced each school year. For 2023–2024, this will be the fifth (5th) year the MSPD Program has been operating in the District, and the second (2nd) year the program has been housed at EAS. See Dr. Sofield Certif. at ¶42; Green Certif. at ¶42. Before the last two (2) years, the MSPD Program was housed for the three (3) school years prior to that within the Early Childhood Learning Development Center (ECDC) at Franklin Park School, another local elementary school in the District, prior to becoming established at EAS. Ibid. This is the first (1st) year construction of the Adaptive Playground on-site at EAS will be completed, which is not far from the regular playground, and, as noted above, is fully ramped and 100% wheelchair accessible.

They claim the District has numerous occupational therapists, speech/language therapists, and physical therapists on-staff, all appropriately licensed, certified, and highly qualified. Id. at ¶43. As noted, there are also several certified school nurses, as well as clinical nursing staff, available to serve A.P.’s needs and those of the other students in the program. Id. at ¶44.

Finally, they claim that in accordance with the case law and applicable regulation on intrastate transfers, the Franklin IEP also mirrors and incorporates the same present levels and goals/objectives as the Bridgewater IEP, which, in turn, had been developed by Lakeview School and incorporated therein. See Dr. Sofield Certif. at ¶45. Under the law, given the transition between districts, this is the proper course until Franklin’s child study team has an opportunity to fully reevaluate A.P., if it deems necessary, and revise the existing goals/objectives if appropriate. Ibid.

They argue that the program and services offered through the Franklin IEP are appropriate for A.P., and are sufficient to meet her unique educational needs, based on the IEP having been developed to provide services comparable to those provided to A.P. under the Bridgewater IEP, as required by law, until the District can reevaluate A.P. and develop a further IEP for her. In fact, the District was able to provide A.P. with an IEP not only reasonably calculated to provide her with “comparable services” to those she received under the Bridgewater IEP, but nearly the same services. They claim the District has fulfilled its obligation under IDEA to provide A.P. with a program of

comparable services to what she received in her previous school district prior to transferring from Bridgewater-Raritan to Franklin Township. However, I disagree because their factual recitation requires more than mere speculation on comparability, but an in-depth analysis of the programs through Due Process.

### **LEGAL ANALYSIS AND CONCLUSION**

Initially, it must be determined if the petitioner is entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7(r)1:

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate education settings;
- iii. Issues concerning placement pending outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

As the present matter concerns the issues of a break in services and placement pending the outcome of due process proceedings, the petitioner is certainly entitled to seek emergent relief.

Here, in this case, it is unnecessary for me to consider whether the criteria set forth in Crowe v. Di Gioa, 90 N.J. 126 (1982) have been satisfied in granting emergent relief. When the emergent-relief request effectively seeks a “stay put” preventing the school district from making a change in placement from an agreed-upon IEP, the proper standard for relief is the “stay put” provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982))

(stay put “functions, in essence, as an automatic preliminary injunction”). 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.A. § 1415(j).

The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child 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) (2016); N.J.A.C. 6A:14-2.7(u). The stay put provision functions as an automatic preliminary injunction which dispenses with the need for a court to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits and removes the court’s discretion regarding whether an injunction should be ordered. Drinker, 78 F.3d 859. Its purpose 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).

In the present matter, the petitioner filed an emergent petition regarding the student’s last agreed upon placement in the IEP, and by way of the emergent application, invoked “stay put.” The petitioner contends that the current educational placement is the last agreed-upon placement of the student as set forth in the IEP. However, there seems to be some confusion by the parties about the rules and the law.

The term “current educational placement” is not defined within the IDEA, the Third Circuit standard is that “the dispositive factor in deciding a child’s ‘current educational placement’ should be the [IEP] . . . actually functioning when the ‘stay put’ is invoked.” Drinker, 78 F.3d at 867 (citing the unpublished Woods ex rel. T.W. v. N.J. Dep’t of Educ., No. 93-5123, 20 IDELR 439, 440 (3d Cir. Sept. 17, 1993)); see also Susquenita Sch. Dist. v. Raelee S. by Heidi S. & Byron S., 96 F.3d 78, 83 (3d Cir. 1996) (restating the standard that the terms of the IEP are dispositive of the student’s “current educational placement”). The Third Circuit stressed that the stay put provision of the IDEA assures stability and consistency in the student’s education by preserving the

status quo of the student's current educational placement until the proceedings under the IDEA are finalized. Drinker, 78 F.3d 859.

Furthermore, the Third Circuit explained that the stay put provision reflects Congress' clear intention to "strip schools of the unilateral authority that they had traditionally employed to exclude [classified] students, particularly emotionally disturbed students, from school." Id. at 864 (citing Honig v. Doe, 484 U.S. 305, 323, 108 S. Ct. 592, 604, 98 L. Ed. 2d 686, 707 (1988)); School Comm. v. Dep't of Educ., 471 U.S. 359, 373, 105 S. Ct. 1996, 2004, 85 L. Ed. 2d 385, 397 (1985). Therefore, once a court determines the current educational placement, the petitioner is entitled to a stay put order without having to satisfy the four prongs for emergent relief. Drinker, 78 F.3d at 864 ("Once a court ascertains the student's current educational placement, the movants are entitled to an order without satisfaction of the usual prerequisites to injunctive relief").

The placement in effect when the request for due process was made—the last uncontroverted placement—is dispositive for the status quo or stay put. Here, it is uncontroverted that the "then-current" educational placement for student A.P. at the time of this emergent action is the IEP. Respondent is correct in that petitioner erroneously claims that stay put is invoked at the proposed placement that student A.P. did not yet attend at the time this dispute arose. As set forth herein, stay put is invoked at student A.P.'s "then-current educational placement" at the time the dispute arose, Lakeview, while Franklin BOE avails itself of its legal right to challenge Lakeview's proposed private school placement for student A.P. under N.J.S.A. 18A:36A-11(b) and N.J.A.C. 6A:23A-15.4. Under the IDEA, a child is entitled to remain in his or her "then-current educational placement" during the pendency of IDEA due process proceedings. 20 U.S.C. § 1415(j). "This provision, known as the IDEA's 'stay-put rule,' serves 'in essence, as an automatic preliminary injunction,' . . . reflecting Congress' conclusion that a child with a disability is best served by maintaining her educational status quo until the disagreement over her IEP is resolved." M.R. v. Ridley Sch. Dist., 744 F.3d 112, 118 (3d Cir. 2014) (quoting Pardini v. Allegheny Intermediate Unit, 420 F.3d 181, 190 (3d Cir. 2005); Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996)), cert. denied, 135 S. Ct. 2309, 191 L. Ed. 2d 977 (2015). Parties moving for an

order to maintain a child's educational placement while an IEP dispute is pending "are entitled to an order without satisfaction of the usual prerequisites to injunctive relief." Drinker, 78 F.3d at 864. I refuse to remove a child from a stable placement with the hope that a move is comparable. The basis of stay put is to preserve these fragile children's educational setting.

Respondent incorrectly argues emergent relief should be denied due to a move by the petitioner. I disagree, again, the basis of the stay put provision is to preserve these fragile children's educational setting. They also claim that petitioner fails to meet the burden of proof pursuant to Crowe v. DeGioia.

The New Jersey Supreme Court set forth a four-prong test for determining whether an applicant is entitled to emergent relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1).

The four factors (the Factors), include:

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 moving party bears the burden of proving each of the Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

A review of the four factors is in order.

**Factor One.** The petitioner will suffer irreparable harm if the requested relief is not granted. A.P. is not just at risk for losing time in her educational program, she is currently without any educational programming whatsoever. She has been removed from her program based on change in residency despite a valid IEP in effect. Petitioner did their due diligence and contacted the Franklin Township Board of Education prior to their move in order to notify them of A.P.'s placement. Despite this, the District is requiring that A.P. attend the in-district setting with an incomplete IEP. Placing A.P. in the proposed in-district setting is highly inappropriate and risky to this four-year-old child who has extensive medical and functional needs. On its face, the District's IEP lacks many of the critical therapies and supports that A.P.'s program at Lakeview is appropriate. Although it is argued that the District's proposed program is not comparable to Lakeview. The District's IEP fails to incorporate numerous specific goals, supports, modifications, accommodations, and related services contained in the Bridgewater/Lakeview IEP. This includes, but is not limited to: hydrotherapy services, a literature and sensory-based instruction curriculum, transdisciplinary approach, on site staff to facilitate adaptive seating/furniture needs who are on site daily, and consultations from a team of doctors including a gastroenterologist and physiatrist, including for emergency situations. Not to mention the Bridgewater/Lakeview IEP provides numerous IEP goals. The District's IEP does not contain any of the above, rendering it a non-comparable program. In the interim, AP is being deprived of any comparable and appropriate educational program. It cannot be stated any more strongly that A.P. is a four-year-old, medically fragile, young girl and entitled to receive a free, appropriate public education. A.P. is suffering irreparable harm from the District's deprivation of her stay put placement because she is not being educated at all.

**Factor Two.** The legal right underlying the petitioner's claim is well settled. A.P. has a right to a free, appropriate public education under 20 U.S.C.A. § 1400. But the issue here is not the comparability of the services, it's the fact that no services are being currently rendered. Any school district that receives federal assistance is required to provide a disabled child with a free and appropriate public education. 20 U.S.C.A. § 1412 (1). In order to receive a FAPE, A.P. must have access to her educational programming which includes all aspects of her medical needs. The right of a student who is eligible for special education and related services to receive a free appropriate public

education is well settled. S.B. on behalf of J.B. v. Hanover Park Regional High School District Board of Education, EDS01696-10. I also agree with the petitioner pointing out the reasoning in In F.D. o/b/o F/D. v. Hillsborough Board of Education, OAL DKT. NO. EDS226-05 (2006), which is on point.

**Factor Three.** Petitioner has a likelihood of prevailing on the merits of the underlying claim. The Respondent acknowledged that A.P. should be placed in a program that is comparable to the Lakeview program yet has determined that an out-of-district placement is not warranted, without having evaluated A.P. nor creating any IEP goals. The only consideration is that respondent claims the Elizabeth Avenue School, as coined by them, is “comparable.” That is not what the existing facts provide.

Petitioner is correct that in T.O. et al v. Summit City Board of Education, 2015 WL 4548780, the Court upheld the ALJ’s finding that the District had failed to give careful consideration to the recommendations of the parents and of the child’s outside professionals. Here, they claim the District violated N.J.A.C. 6A:14-2.5(c)(4) by failing to consider the input of the parents, Bridgewater District, as well as Lakeview. It has asserted that its program is comparable but is missing many comparable services. I agree that assuming every assumption in favor of the District’s position, at best, the District’s program requires further review before ordering that the medically fragile A.P., a student with very significant medical and developmental needs, be placed in it. It is absolutely correct that in the interim, the status quo of A.P.’s education should be maintained. In this regard, petitioner is likely to prevail on the merits.

**Factor Four.** 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 will not be granted. Here, the petitioner is suffering irreparable harm if the requested relief is not granted because she is not only not receiving FAPE, but she is not receiving any education at all. She needs to have access to the last agreed upon IEP to properly evaluate it. Which is at Lakeview. I refuse to let another day pass that this young lady is not educated.



Based upon the foregoing, **I CONCLUDE** that petitioner's request for emergent relief be **GRANTED**.

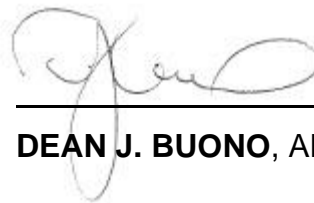
**ORDER**

It is hereby **ORDERED** that the petitioner's request for emergent relief is **GRANTED**. **IT IS FURTHER ORDERED** that A.P. be placed and educated at Lakeview. **IT IS FURTHER ORDERED** that the parent is compelled to examine the District's proposed placement.

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.

October 31, 2023 \_\_\_\_\_

Date



\_\_\_\_\_

**DEAN J. BUONO, ALJ**

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

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

DJB/cb

**APPENDIX**

**List of Moving Papers and Exhibits**

**For petitioner**

Exhibits A through D

**For respondent**

Exhibits 1 through 4