



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

**FINAL DECISION DENYING**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 11824-24

AGENCY DKT. NO. 2025-38086

**A.C. and M.S. ON BEHALF OF G.S.,**

Petitioners,

v.

**BARNEGAT TOWNSHIP BOARD  
OF EDUCATION, OCEAN COUNTY**

Respondent.

---

**A.C. and M.S. on behalf of G.S., pro se**

**Jessika Kleen, Esq.,** for respondent (Machado Law Group, attorneys)

Record Closed: September 3, 2024

Decided: September 4, 2024

BEFORE **DEIRDRE HARTMAN-ZOHLMAN, ALJ:**

**STATEMENT OF THE CASE**

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 to 1484(a) and 34 C.F.R. § 300.500. By a request for emergent relief, petitioner A.C. and M.S., on behalf of G.S., seeks the placement of G.S. in pre-K at Lillian M. Dunfee School, where he attended from September 2023 through June 2024, pending

the outcome of expedited due-process proceedings. Respondent Barnegat Township Board of Education, Ocean County (Board or District) opposes this request on the grounds that petitioner has not satisfied the requirements for obtaining emergent relief.

### **PROCEDURAL HISTORY**

On August 27, 2024, petitioner filed a complaint for an emergent application and underlying due-process petition with the New Jersey Department of Education (DOE), Office of Special Education. The DOE transmitted the emergent relief request to the Office of Administrative Law (OAL), where it was filed on August 28, 2024, to be heard as an emergent contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The District submitted a letter brief in opposition to the emergent request on September 3, 2024. Oral argument on emergent relief, including sworn testimony, was held on September 3, 2024, and the record was closed.

### **FACTUAL DISCUSSION AND FINDINGS**

The following facts are not in dispute and form the basis for the below decision. Accordingly, I **FIND** as **FACTS**:

1. G.S. is a five-year-old boy whose date of birth is February 8, 2019.
2. G.S. has been diagnosed with autism spectrum disorder, attention deficit hyperactivity disorder, and mixed receptive and expressive language disorder.
3. G.S. was initially found eligible for special education and related services on August 10, 2023, under the classification of preschool child with a disability. An initial individualized education program (IEP) was developed on August 10, 2023. (Resp't's Exhibit A.)

4. On September 19, 2023, G.S.'s IEP was amended without a meeting at the petitioner's request. (Resp't's Exhibit B.)
5. During the 2023–2024 school year, G.S. had 7.5 excused absences and 42 unexcused absences. (Resp't's Exhibit C.)
6. The District conducted a reevaluation of G.S. in 2024. At that time, G.S. underwent: an April 29, 2024, Social History Assessment; a May 8, 2024, Speech and Language Evaluation; and a May 9, 2024, Functional Psychological Evaluation. (Resp't's Exhibit D.)
7. A reevaluation eligibility determination and IEP meeting was held on May 20, 2024. It was determined that G.S. remained eligible for special education and related services under the classification of communication impairment, and an IEP was developed. (Resp't's Exhibit D.)
8. On May 31, 2024, petitioner filed a Request for Mediation with the New Jersey Department of Education, Office of Special Education, seeking grade-level retention. A mediation conference was held on July 23, 2024. The parties were not able to reach an agreement, and the petitioner did not convert its mediation request to a due process petition at that time.
9. On August 28, 2024, petitioner attended the District's kindergarten orientation for the 2024–2025 school year.

### **LEGAL ANALYSIS AND CONCLUSIONS**

N.J.A.C. 1:6A-12.1(a) provides that the affected parent 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. Pursuant to N.J.A.C. 6A:3-1.6(b), a request for emergent relief must be supported by a letter memorandum or brief that

addresses the standard under Crowe v. DeGioia, 90 N.J. 126 (1982) (Crowe). Respondent asserts that petitioner has not provided a letter memorandum or brief, and, therefore, the application must be denied. I disagree. While a formal letter memorandum or brief was not submitted, petitioner submitted a signed “certification in lieu of affidavit or notarized statement.”

N.J.A.C. 6A:14-2.7(r)(1) provides that a request for emergent relief is only permitted for the following issues: 1) a break in delivery of services; 2) disciplinary actions; 3) placement pending the outcome of due process proceedings; and 4) graduation or participation in graduation ceremonies. Respondent asserts that petitioner has failed to allege any fact supporting a finding that the contested issues involved any of the above. Here, there was no break in delivery of services, no disciplinary actions and no assertion of an issue regarding graduation or participation in graduation ceremonies. The only potential issue here is placement pending the outcome of due process proceedings. However, this issue, whether grade level promotion constitutes a change in placement, has previously been decided. E.H. and J.O. on behalf of O.O. v. Burlington City Bd. of Educ., OAL DKT. No. EDS 07853-23, found that grade-level promotion to kindergarten does not on its own constitute a change in placement. Therefore, I **CONCLUDE** that petitioner has not established that the issue in this matter concerns the placement of G.S. pending the outcome of due process proceedings, or any issue permissible for emergent relief, and the application must be denied.

Had a change of placement been at issue, the emergent application standards for relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982) and are codified at N.J.A.C. 6A:3-16. The petitioner bears the burden of proving all four prongs:

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.]

### **Irreparable Harm**

To obtain emergent relief, petitioner must demonstrate more than a risk of irreparable harm to G.S. Petitioner must make a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.” Cont’l. Grp., Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (D.N.J. 1980).

Petitioner has failed to show that the special education and related services that will be provided to G.S. in the kindergarten classroom will cause irreparable harm. The IEP proposed for G.S. for the 2024–2025 school year will continue to provide him with the opportunity to socialize with same-age peers and work toward his individualized goals. Further, the multiple disabilities kindergarten classroom will continue to allow for individualized instruction to meet G.S.’s needs. (Exhibit D)

In light of the above, I **CONCLUDE** that the petitioner has not met the burden of establishing that G.S. will experience irreparable harm.

### **The Legal Right is Settled and Likelihood of Prevailing on the Merits**

The second consideration is whether the legal right underlying petitioner’s claim is settled, N.J.A.C. 6A:3-1.6(b)(2), and then third, petitioner must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133.

Again, petitioner has failed to show that the legal right underlying the claim is settled in petitioner’s favor or that they have a likelihood of prevailing on the merits. Grade-level promotion to kindergarten does not on its own constitute a change in

placement, and the IEP is for a multiple disabilities kindergarten classroom to allow for individualized instruction to meet G.S.'s needs.

For the above reasons, I **CONCLUDE** petitioner does not meet their burden of proof as to the second and third prongs of the emergent relief standard.

### **Balance of Equities and Interests**

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief to G.S. Petitioner has failed to articulate what if any harm G.S. will suffer if emergent relief is not granted. Although the parents of G.S. want him to remain in pre-K and feel it is in G.S.'s best interest, there was no evidence presented that G.S.'s IEP is for a multiple disabilities kindergarten classroom to allow for individualized instruction to meet his needs would result in a greater hardship to G.S. if emergent relief was not granted. As such, I **CONCLUDE** that petitioner did not meet its burden of proof under the fourth prong of the emergent relief standard.

I **CONCLUDE** that petitioner's request for emergent relief does not satisfy the applicable requirements for emergent relief. Accordingly, I **ORDER** that the request for emergent relief be **DENIED**.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. Since the parents

requested the due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).

September 4, 2024

DATE



**DEIRDRE HARTMAN-ZOHLMAN, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

DHZ/kd/jm

## **APPENDIX**

### **Witnesses**

#### **For petitioner:**

A.C., mother of G.S.

M.S., father of G.S.

J.S., aunt of G.S.

#### **For respondent:**

Daniel Gundersen, Director of Student Services

### **Briefs/Exhibits**

#### **For petitioner:**

Certification in lieu of affidavit or notarized statement of petitioner seeking emergent relief, dated August 27, 2024

#### **For respondent:**

Letter brief in response to petition for emergent relief, dated September 3, 2024

Exhibit A IEP, dated August 10, 2023

Exhibit B IEP, dated September 19, 2023

Exhibit C Attendance Summary

Exhibit D Proposed IEP, dated May 20, 2024