



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

**FINAL DECISION DENYING**  
**EMERGENCY RELIEF**

OAL DKT. NO. EDS 03665-26

AGENCY DKT. NO. 2026-40559

**N.S. ON BEHALF OF N.S.,**

Petitioner,

v.

**CHERRY HILL TOWNSHIP BOARD  
OF EDUCATION, CAMDEN COUNTY,**

Respondent.

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**N.S.**, petitioner/parent, pro se

**Eric Harrison**, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: March 12, 2026

Decided: March 13, 2026

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, N.S., (Ms. S), on behalf of her son N.S., (N),<sup>1</sup> filed a petition for emergent relief seeking a temporary order for an immediate out of district therapeutic placement pending the resolution of due process. Respondent, Cherry Hill Township Board of

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<sup>1</sup> Petitioner N.S. and her son have the same initials. For the sake of clarity, I will refer to the parent as Ms. S and to the student as N.

Education (Board), opposes this request on the grounds that petitioners have not satisfied the requirements for obtaining emergent relief and N will continue to be educated pursuant to his Individualized Education Program (IEP), dated October 9, 2025, pending resolution of the underlying due process petition. (Exhibit A.)

To prevail, the petitioner must satisfy the four standards for emergent relief codified at N.J.A.C. 6A:3-1.6. The standards for emergent relief require irreparable harm if the relief is not granted; a settled legal right underlying a petitioner's claim; a likelihood that petitioner will prevail on the merits of the underlying claim; and a balancing of the equities and interests that petitioner will suffer greater harm than respondent. The standards that must be met under the regulation are intentionally difficult, which the petitioner has not met.

### **PROCEDURAL HISTORY**

On March 4, 2026, petitioner filed a request for emergent relief pending resolution of due process. The emergent matter was transmitted by the Office of Special Education (OSE) to the Office of Administrative Law, (OAL), as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. The matter was scheduled for oral argument on March 12, 2026.

On March 11, 2024, respondent submitted a letter brief in opposition to the emergent request and a Certification of Caitlin Mallory, Director of Special Education, with Exhibits: Exhibit A – Individualized Education Program (IEP), dated October 9, 2025; Exhibit B – IEP, dated June 26, 2024; Exhibit C – Final Decision Approving Settlement, dated June 11, 2025; Exhibit D – attendance at meeting dated October 9, 2025; Exhibit E – Settlement Agreement and Release; and F – Out-of-School Suspension letter, dated March 3, 2026.

Oral argument occurred on March 12, 2026, and the record closed.

## **ARGUMENTS OF THE PARTIES**

### **For Petitioner:**

Ms. S has lost confidence in the Cherry Hill School District's (District) ability to meet her son's needs. Despite being aware that N's behaviors are a manifestation of his disability, the District recently suspended him for two days for physical aggression, inappropriate behavior, profanity, and obscene language. (Exhibit F.) Ms. S believes that suspensions should not be used for behaviors caused by N's disability. She expressed concern with how far he must travel on the bus and how this negatively impacts N's behavior. She questioned why N was given lunch detentions. She also learned that the District has used restraints, which are very detrimental to her son, given the trauma he has experienced. She believes the discipline used against her son to be punitive and inappropriate given the nature of her son's disabilities.

She expressed concerns with the lack of continuity with N's one-to-one aide, and his recent behavior of head banging. Ms. S expressed her frustration with the District Administration's failure to listen to her concerns and the concerns of N's teacher. Although N's behavior is impeding his ability to learn, no adjustments are being made to help him. N cannot read or write his last name. Ms. S stated that the Child Study Team (CST) is not listening to her about N's need for a therapeutic placement and failed to consider the two psychiatric recommendations she provided. She mentioned her concern about the District's failure to provide the speech services in N's IEP because the speech therapist resigned and has not been replaced. In closing Ms. S stated that she knows an Applied Behavior Analysis (ABA) program would be successful because he currently attends such a program after school, with much success.

### **For Respondent**

Respondent is not disputing or interfering with petitioner's right to challenge N's IEP. The objection here is that petitioner has not satisfied the four prongs needed to place a student in an interim alternate education setting, pending resolution of an

underlying due process petition. In addition, because there has been no break in educational services caused by an appropriate two-day suspension, there is no basis for emergent relief.

The Child Study Team supports the placement and programing in the Emotional Regulation Impairment (ERI) program set forth in N's current IEP. One of the philosophies of the program is to teach a student, especially by second grade, that they must be accountable for their behavior. To promote this goal, the students learn that there are consequences for bad behavior. The CST maintains that the program for N was appropriate when offered, and they remain confident in the programing and services being offered.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Petitioner filed for emergent relief because of her concern that N is being inappropriately disciplined and not making progress under his current IEP. Respondent contends that petitioner's claims do not fall within one of the permissible emergent relief categories.

Under N.J.A.C. 6A:14-2.7(r)(1), emergent relief shall only be requested for the following issues:

- 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.

Petitioner made two arguments to support her right to emergent relief. First, under (i), she claimed there was a break in services when her son was suspended for two days. Second, under (ii), she claimed that the District imposed discipline for behaviors that were manifestations of her son's disability.

Under N.J.A.C. 6A:14-2.8(a), district board of education officials may impose the following as a form of discipline for students receiving special education:

Order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as the procedures for nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).

Herein, on March 3, 2026, Principal Burgess sent a letter to Ms. S informing her about the two-day suspension. (Exhibit F.)

While Ms. S's application was based upon her concerns with disciplinary measures being imposed, she did not present any evidence whether such discipline was inconsistent with the Behavior Intervention Plan (BIP) proposed in the IEP. (Exhibit A.) Moreover, as respondent's action complied with the regulation, the two-day suspension does not support a claim for a break in services or alternate educational placement. While I am sympathetic to Ms. S's concerns, they do not constitute a break in services or any other grounds for emergent relief.

For these reasons, I **CONCLUDE** that petitioner has not established entitlement to relief under N.J.A.C. 6A:14-2.7(r)1.

Finally, it is noted that this application for relief likewise fails under a traditional emergent relief application analysis of the following factors:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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.

See also Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132-133. In this matter, there is nothing to suggest that N is suffering irreparable harm by remaining in his current program and placement. Any suggestion of harm at this juncture is purely speculative.

Under the second and third prongs, there is no well-settled legal right for petitioner's claim that would disregard "stay-put" protections and unilaterally alter the terms of an IEP. School districts' determinations are reviewed with deference. The "IDEA does not 'invite the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'" Damarcus S. v. District of Columbia, 190 F.Supp. 3d 35, 56 (D.C. Cir. 2016), (quoting Rowley, 458 U.S. at 206); see also E.E. v. Ridgefield Park Bd. of Educ., 856 Fed. Appx. 367, \*7 (3d Cir. 2021). N is currently attending school and receiving services under an IEP dated October 9, 2025. (Exhibit A.) The stay-put provision under the Individuals with Disabilities Education Act (IDEA) provides an automatic preliminary injunction, preventing a school district from changing placement from the last agreed-upon IEP during the pendency of a petition challenging a proposed IEP. Drinker by Drinker v. Colonial School Dist., 78 F.3d 859, 864 (3d Cir. 1996).

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 arises under the disciplinary provisions of IDEA, 20 U.S.C. § 1415(k), which have no bearing on this matter. Pending an agreement, N shall remain in his educational placement pending the due process petition, as his settled legal right.

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting or denying the requested relief. Although Ms. S. was well-intentioned, her action herein ran contrary to the collaborative intent which is fundamental to a successful CST, of which Ms. S is a member. The equities support that the issues raised herein be addressed at an IEP meeting or full hearing on the merits.

I **CONCLUDE** that petitioners’ request for emergent relief does not satisfy any of the four prongs required 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).



March 13, 2025 \_\_\_\_\_

DATE

\_\_\_\_\_  
**KATHLEEN M. CALEMMO, ALJ**

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

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

KMC/tat \_\_\_\_\_

**APPENDIX**

**EXHIBITS**

**For petitioner:**

None

**For respondent:**

Certification of Caitlin Mallory: Exhibit A – Individualized Education Program (IEP), dated October 9, 2025; Exhibit B – IEP, dated June 26, 2024; Exhibit C – Final Decision Approving Settlement, dated June 11, 2025; Exhibit D – attendance at meeting, dated October 9, 2025; Exhibit E – Settlement Agreement and Release; and F – Out-of-School Suspension letter, dated March 3, 2026.