



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENT RELIEF

OAL DKT. NO. EDS 11785-25

AGENCY DKT. NO. 2026-39413

G.J. ON BEHALF OF Z.F.,

Petitioner,

v.

**MONROE TOWNSHIP BOARD
OF EDUCATION,**

Respondent.

G.J. on behalf of Z.F., petitioner, pro se

Richard P. Coe, Esq., for respondent (Weir, Greenblatt, Pierce, LLP, attorneys)

BEFORE **SARAH G. CROWLEY, ALJ**

STATEMENT OF THE CASE

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1401 to 1482 and C.F.R. §§300.500 (2025). By a request for emergent relief, petitioner G.J. on behalf of Z.F. seeks the immediate placement of Z.F. in the Extended School Year (ESY) program. Respondent Monroe Township Board of Education, Gloucester County (district) opposes this request on the grounds that it does not have sufficient data to determine if Z.F. would benefit or regress without ESY.

PROCEDURAL HISTORY

On July 2, 2025, petitioner filed a complaint for an expedited due process hearing with the New Jersey Department of Education, Office of Special Education, which was transmitted to the Office of Administrative Law (OAL) on the same day. In accordance with N.J.A.C. 6A:14-2.7(o), the expedited hearing was scheduled for July 9, 2025, and oral argument on emergent relief was held, and the record closed at that time.

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. Z.F. is a three-year, eight-month-old male who was born at twenty-six weeks at two pounds six ounces. He was born addicted to drugs due to his biological mother's use of heroin and crack during pregnancy. He was placed with the petitioner as a foster child, and she later adopted him.
2. Z.F. was in a head start preschool program until he experienced difficulty due to escalating behaviors likely associated with his disability. He was referred to the district child study team in October of 2024.
3. The initial referral to the district child study team was received on October 18, 2024, and an additional request was received in January 2025. The child study team conducted its evaluations, and Z.F. was found eligible for preschool services on April 29, 2025, under the classification of preschool disabled.
4. He was home with his mother and in no program until he started this program in the district on May 5, 2025. He was in the program for approximately six weeks until school let out for the summer.

5. In response to the emergent request for ESY for Z.F., the respondent provides a short certification from counsel which advises that since “Z.F. just began the program, the child study team does not have enough data to make a decision regarding the need for summer programming.”
6. The IEP dated April 29, 2025, states that a decision on eligibility for Extended School Year is “deferred pending review.”
7. The district has provided no information regarding this pending review or any analysis which was completed regarding whether ESY is appropriate or necessary for Z.F. or the potential for regression.

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 information provided by a person with personal knowledge of the facts contained in the application. Emergent relief shall only be requested for specific issues, including a break in the delivery of services and/or placement pending the outcome of due-process proceedings. N.J.A.C. 6A:14-2.7(r). The within matter related to a break in services for Z.F. over the summer.

Although ESY is not mandated for every disabled child, an analysis of whether it is necessary in order to provide a free and appropriate public education under the IDEA is required. See *Battle v. Pennsylvania*, 629 F. 2d 269 (3rd Cir. 1980), cert. denied, 452 U.S. 968 (1981). In that case the court held that “inflexible application of a 180-day maximum prevents the proper formation of appropriate educational goals for individual members of the plaintiff class of disabled children.” Id. at 281. The Act requires a district evaluate if a continuous educational experience is required for each child in order to provide a free and appropriate public education. The district had not completed such an evaluation.

The issue becomes is it appropriate for a district to say it does not have enough information or data to determine if ESY is necessary to provide FAPE to this child. The school year recently ended, and the ESY program started this week. The district has declined to place Z.F. in ESY because they claim to need more data. The referral for an evaluation for Z.F. occurred in October with a follow-up referral in January 2025. The child study team conducted evaluations and approximately six months later found Z.F. eligible for preschool services on April 29, 2025, under the classification preschool disabled. He was placed in a preschool program until May 5, 2025, after being home for approximately six months. He had not been in any program since the referral came in October due to his removal from a prior preschool program. Z.F.'s IEP states that the ESY determination is "deferred pending review." The district provided no update as to this review which has been pending since April 29, 2025. The only update provided by way of a certification from counsel was that "they do not have enough data to make this determination." There has been no allegation that there has been anything but full cooperation by G.J. in providing documentation and making Z.F. available for evaluations.

The standards for emergent relief are set forth in Crowe v. De Gioia, 90 N.J. 126 (1982) (Crowe), and are codified at N.J.A.C. 6A:3-1.6. The petitioner bears the burden of proving:

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.

[N.J.A.C. 6A:3-1.6(b).]

Irreparable Harm

To obtain emergent relief, petitioner must demonstrate a risk of irreparable harm to Z.F. 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 the common law.” Cont’l. Group, Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (3d Cir. 1980). The irreparable harm in this case is clear—Z.F. has been out of any placement since October 2024. The district completed an evaluation and found Z.F. eligible for preschool special education services. However, he was not placed in a program until May 5, 2025. The potential for regression after finally being deemed eligible for special education services is significant. Not only has he not been deemed eligible, but there was also no analysis of the potential for regression completed. Accordingly, I find that the potential for irreparable harm absent the requested relief has been demonstrated.

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. It is well-settled that the IDEA requires a school district to provide a free appropriate public education to all children with disabilities and determined to be eligible for special education services. 20 U.S.C. §1412(a)(1)(A).

It is well settled that a free and appropriate education is required for all students with disabilities under the IDEA. It is also well settled that an analysis of whether ESY is necessary to provide FAPE is required. There is no need to recite the factors to be considered, since the district did not consider any of them and did no such analysis. In this case, the district has argued that the child study team does not have sufficient data to make such a determination since Z.F. has only been in the program for six weeks. However, the district spent six months completing the evaluations, and Z.F. was not placed in a program in the interim. In addition, the IEP states that the ESY determination

is being “deferred pending review.” The risk of regression in special education students is significant, and lack of data is not a sufficient basis to deny services.

For the above reasons, and in the absence of any analysis by the district, I **CONCLUDE** petitioner has met 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 Z.F. This prong requires balancing the harm that Z.F. will suffer if emergent relief is not granted. The harm to Z.F. in being denied ESY is significant regression in a program placement that just began six weeks ago.

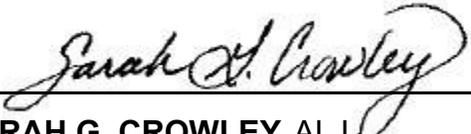
I **CONCLUDE** that the petitioner would suffer greater harm if the requested relief was not granted. I **CONCLUDE** that the petitioner’s request for emergent relief is granted.

ORDER

For the reasons stated above, I hereby **ORDER** that the petitioner’s application for emergent relief seeking the immediate placement of Z.F. in the district ESY program is hereby **GRANTED**.

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).

July 10, 2025 _____
DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SGC/onl/gd