



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF

OAL DKT. NO. EDS 08798-26

AGENCY DKT. NO. 2026-41152

L.T. ON BEHALF OF E.Y.,

Petitioner,

v.

**DEPTFORD TOWNSHIP BOARD
OF EDUCATION, GLOUCESTER COUNTY**

Respondent.

R. Mark Harris, Sr., non-attorney representative, for petitioner pursuant to
N.J.A.C. 1:1-5.4(a)(7) and N.J.A.C. 1:6A-5.1(b).

Geoffrey N. Stark, Esq., for respondent (Capehart & Scatchard, attorneys)

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

STATEMENT OF THE CASE

Petitioner, L.T., on behalf of her son E.Y., filed a petition for emergent relief seeking a school-based Extended School Year (ESY) placement utilizing an accredited, certified Tier 3 Wilson/Orton Gillingham instructor. The petitioner disagrees with the two options proposed by the Deptford Township School District's (District) Child Study Team (CST) for an ESY program for 2026, for E.Y. ESY is scheduled to start on June 29, 2026.

Respondent, Deptford Township Board of Education (Board), submits that the request does not satisfy the requisite factors justifying emergent relief.

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 June 1, 2026, petitioner filed a request for emergent relief and due process with the Office of Special Education (OSE). On the same day, OSE transmitted the emergent relief matter to the Office of Administrative Law (OAL) under N.J.S.A. 52:14B-1 to -15, for an emergent relief hearing. The underlying due process remained at the OSE until the end of the 30-day resolution period.

The emergent matter was scheduled for oral argument for June 8, 2026.

On June 4, 2026, respondent filed a motion to disqualify the non-attorney representative, Dr. Harris, from representing petitioners. Dr. Harris had not submitted the requisite notice of appearance application under N.J.A.C. 1:1-5.4(a)(7). I allowed Dr. Harris additional time to submit his application, which was received on June 8, 2026, by 10:00 a.m. Respondent objected to Dr. Harris' expertise. I entered an order, dated June 8, 2026, accepting Dr. Harris' certification and allowing his representation of petitioner as a non-attorney representative.

Prior to the scheduled prehearing telephone conference on June 5, 2026, petitioner and respondent filed their respective briefs in support and opposition to the petition for emergent relief. After the telephone conference, petitioner submitted a letter from Kristen M. Drexler, PMHNP-BC, APN. Ms. Drexler stated that she is a licensed

Psychiatric Advanced Practice Nurse/Board-Certified Psychiatric Mental Health Nurse Practitioner. She further stated that E.Y. is a pediatric patient under her direct clinical care. Respondent objected to this late submission, which was submitted on Sunday, June 7, 2026. Respondent had no prior notice of petitioner's intention to submit an expert report. The letter was not in the form of an affidavit, the author did not provide her curriculum vitae, and the author did not reference any data. There was no indication that Ms. Drexler provided her concerns to the CST for review before they made their recommendations for the 2026 ESY program. Therefore, I did not accept the letter from the APN as an expert report for consideration for this emergent relief.

On June 8, 2026, the parties appeared at the OAL for oral argument on emergent relief, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

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

E.Y. was determined eligible for special education and related services on February 21, 2024. E.Y. is a ten-year old student, who is placed in a general education, In-Class Resource (ICR) setting with additional services, including Tier 2 literacy services.

After the Individualized Education Program (IEP) meeting for the 2026-2027 school year, the District offered two placement proposals for ESY 2026. The first proposal was for independent tutoring through home instruction hours to provide one-to-one instruction. Petitioner rejected the proposal because she felt it was too restrictive. The second proposal was through a program offered by a neighboring school district, Mantua Township, for a summer program including students in grades four through six. E.Y. will be entering fifth grade in September 2026. Petitioner requested verification that the instructor would be certified in Tier 3 multisensory reading, such as Wilson or Orton-Gillingham. The District does not agree that E.Y. requires Tier 3 literacy services. L.T. also demanded an on-site safety and clinical compatibility visit to the Mantua facility prior to implementation.

A Functional Behavior Assessment (FBA) was initiated by L.T., “due to ongoing behavioral concerns reported in the school setting over time.” (FBA, annexed to petitioner’s request for emergent relief.) The FBA, dated May 26, 2026, was prepared by the District’s Board-Certified Behavior Analyst (BCBA), Amy Ashenfelter. Ibid. Ms. Ashenfelter made recommendations for the classroom in her report but did not recommend the implementation of a Behavior Intervention Plan (BIP). She determined that a BIP was not warranted based on the data collected. Ibid.

ARGUMENTS OF THE PARTIES

For Petitioner:

L.T. believes that the District’s program has failed her son by not addressing his severe dyslexia. She argued that the District acknowledged in the Draft IEP that the “achievement gap has continued to widen because the current program in which [E.Y.] is placed does not meet his educational needs.” (IEP, page 21.) L.T. acknowledged that she rejected the District’s recommendation to place her son in its LD program because she does not support the District’s use of Foundations as an appropriate reading program. She expressed that the placement would cause regression. She further believes that the District’s current programing is causing severe anxiety to E.Y. and contributing to his behaviors and feelings of low self-esteem. L.T. further stated that E.Y. is vulnerable and she cannot support placing him in the Mantua program without knowing that the program will meet her son’s needs. She believes his needs can only be met by a Tier 3 level of literacy support.

For Respondent

Respondent argued that E.Y. is making progress under the Tier 2 literacy interventions and believes such interventions in an appropriate LD classroom would result in additional progress. Because the District does not have a summer program to meet E.Y.’s needs, it offered an individual tutoring ESY program to accommodate L.T.’s request for intensive one-to-one instruction. However, when L.T. rejected that ESY option, the

District found an appropriate summer program in Mantua. The District did not deny the parent the opportunity to visit Mantua but explained that it would be of no use during the regular school year. There are no safety concerns from the District about E.Y. attending the Mantua program. The District remains willing to provide L.T. with information about the program and answer any questions. The Mantua summer program is not a Tier 3 literacy program because the District does not agree that such support is required. While the District is not disputing or interfering with petitioner's right to challenge E.Y.'s proposed IEP or her disagreement with programming, an emergent application is not the appropriate remedy for this dispute which requires a plenary hearing on the merits.

Moreover, the FBA presented an entirely different portrait of E.Y., than described in the petition. The report recommended classroom strategies, but the BCBA noted no behaviors that warranted the implementation of a BIP. The extreme anxiety and academic frustration were not noted by the BCBA in the evaluation.

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. Emergent relief shall only be requested for specific issues, including concerns regarding placement pending the outcome of due process proceedings. N.J.A.C. 6A:14-2.7(r).

Here, petitioner initiated an emergent proceeding to obtain a specific literacy program. Petitioner wants her son to receive an ESY placement utilizing an accredited, certified Tier 3 Wilson/Orton Gillingham instructor. While there is no dispute that the District is obligated to provide an appropriate ESY program for the summer of 2026, there is nothing to suggest that the District is preventing E.Y. from attending ESY. Petitioner's contention that the District's proposals are not appropriate does not equate to a denial of services. While I am sympathetic to L.T.'s concerns and belief that E.Y. needs a Tier 3 literacy service, she has not advanced an entitlement to relief under N.J.A.C. 6A:14-2.7(r).

Therefore, I **CONCLUDE** that petitioner has not established a valid concern regarding placement pending the outcome of a due process proceeding.

Finally, it is noted that this application for relief likewise fails under a traditional emergent relief application analysis, where petitioner bears the burden of satisfying the following four prongs:

- 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.

Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982), codified at N.J.A.C. 6A:3-1.6(b).

Irreparable Harm

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. To obtain emergent relief, petitioner must demonstrate more than a risk of irreparable harm to E.Y. 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 Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980) (citations omitted).

Petitioner contends that irreparable harm is established because the District's program caused her son to fall further behind. In her view, continuation of the same will only widen the achievement gap. However, there is no support for petitioner's position

that a Tier 3 literacy instructor would prevent catastrophic reading regression. Just as there is nothing to suggest that E.Y. will suffer irreparable harm by continuing to receive Tier 2 literacy services, while due process is pending. If it is later determined that the District denied E.Y. a free appropriate public education (FAPE), the remedy would be compensatory education. I **CONCLUDE** that the petitioner has not met the burden of establishing that E.Y. will experience irreparable harm if he does not receive Tier 3 literacy services during ESY.

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

The second prong is whether the legal right underlying petitioner's claim is settled and if so, whether under the third prong, petitioner can establish a reasonable probability of success on the merits. Crowe, 90 N.J. at 133.

I have no doubt that petitioner strongly believes that her son needs a Wilson/Orton-Gillingham certified instructor to succeed and make progress in an area where he is struggling. However, school district 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).

ESY services are "special education and related services that are provided to a student with a disability beyond the normal school year in accordance with the student's IEP at no cost to the parent." N.J.A.C. 6A:14-1.3. The general legal rights are not in dispute. The District is responsible for providing free, appropriate special education and related services to E.Y. N.J.A.C. 6A:14-1.1. The District must ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the student. N.J.A.C. 6A:14-2.3. Here, the claim goes beyond these well settled legal rights. Petitioner is requesting a specific ESY program to be taught by a certified Tier 3 instructor and has provided no legal support for this claim other than the general legal rights that are not in dispute.

In addition, petitioner has not provided any evidence that E.Y. needs a Tier 3 level of literacy instruction. There is no indication based on the current data that this instruction is warranted.

For the above reasons, I **CONCLUDE** that petitioner does not meet the second and third prongs of the emergent relief standards.

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 petitioner. Petitioner argues that E.Y. will suffer greater harm if emergent relief is not granted because he will fall further behind in his academic abilities, which correlates to his emotional well-being. As stated above, there is no evidence that any harm suffered could not be adequately addressed through compensatory education.

Respondent argued that granting such relief would upend the generally accepted principles by requiring the District to fund an implement petitioner's "preferred" program without a resolution on its merits. This disagreement over a proposed IEP must be addressed in the normal course and not through the emergent process. I agree.

Thus, I **CONCLUDE** that respondent would suffer greater harm if the requested relief was granted. I **CONCLUDE** that petitioners' request for emergent relief does not satisfy any of the four prongs required for emergent relief.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner's application for emergent relief seeking an order requiring the Board to provide a specific ESY program utilizing an accredited, certified Tier 3 Wilson/Orton Gillingham Instructor is hereby **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 believes that this order is not being fully implemented, then the parent 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).



June 10, 2026

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

APPENDIX

EXHIBITS

For petitioner:

FBA

Draft IEP, dated April 17, 2026, page 21

For respondent:

None