



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENCY RELIEF

OAL DKT. NO. EDS 11363-26

AGENCY DKT. NO. 2027-41490

L.Q. ON BEHALF OF C.M.,

Petitioner,

v.

**PATERSON CITY BOARD
OF EDUCATION**

Respondent.

Erin A. Berman, Esq, for petitioner (Northeast New Jersey Legal Services,
attorneys)

Boris Zaydel, Esq., for respondent

BEFORE **KELLY J. KIRK**, ALJ:

On or about July 13, 2026, L.Q. (Mom) on behalf of C.M., filed a Request for Emergent Relief and due process petition against respondent, Paterson City Board of Education (Board or District), seeking placement out-of-district at Stepping Stones. The Office of Special Education (OSE) of the Department of Education (Department) transmitted the Request for Emergent Relief to the Office of Administrative Law (OAL), where it was filed on July 14, 2026.

The Request for Emergent Relief included a Certification in Lieu of Affidavit or Notorized (sic) Statement of L.Q., signed July 10, 2026, and a letter brief, dated July 10, 2026. On July 20, 2026, the Board filed opposition to the petitioner's Request for Emergent Relief, consisting of a letter brief, and Certification of Cheryl Coy (Coy Cert.). Oral argument was held on July 23, 2026, and the record closed.

The CERTIFICATION IN LIEU OF AFFIDAVIT OR NOTORIZED [sic] STATEMENT OF PETITIONER SEEKING EMERGENT RELIEF (Certification) reflects that petitioner believes she is entitled to emergent relief because of “issues involving a break in the delivery of services” and “issues concerning placement pending the outcome of due process proceedings.”

The Request for Emergent Relief describes the nature of the emergent issues and any related facts as follows:

C.M. is a four-year old student eligible for special education and related services, until recently placed at an appropriate special education school, Stepping Stones. When C.M. moved from her previous school district, Harrison, to her current school district, Paterson Public Schools (the “District”) the District terminated C.M.’s placement and failed to offer any special education program, let alone a comparable program as required by N.J.A.C. 6A:14-4.1(g).

See attached letter for further details.

[See Request for Emergent Relief.]

The Request for Emergent Relief describes how the problem could be resolved as follows:

Because the District admits it cannot offer a comparable program, C.M. should be placed at Stepping Stones.

See attached letter for further details.

[See Request for Emergent Relief.]

It is noted that the only “affidavit” submitted in connection with the Request for Emergent Relief was the form Certification. Petitioner’s counsel argues that because the Request for Emergent Relief states “See attached letter for further details” that counsel’s letter brief is an affidavit. This is unpersuasive because, on its face, the letter brief states, “Please accept this letter, in lieu of a formal brief, in support of the Request for Emergent Relief.” Further, while the Certification states “I certify that the foregoing statements made by me are true,” the letter brief is signed by counsel and contains legal argument in addition to alleged facts. That said, the “Facts” alleged in the letter brief are as follows:

C.M. is diagnosed with Autism Spectrum Disorder (“ASD”), Down Syndrome and Global Developmental Delay. C.M.’s Harrison IEP includes an Extended School Year (“ESY”), a Multiple Disabilities program for the 2026-2027 school year, a 1:1 aide, individual speech therapy 2x weekly, group speech therapy 1x weekly, individual occupation therapy (“OT”) 1x weekly, group OT 1x weekly, individual physical therapy (“PT”) 1x weekly, group PT 2x weekly, transportation with an attendant and booster seat and specialized feeding services.

C.M. registered in the District on June 24, 2026. The District told the Parent to bring her documents and her daughter to the District’s offices the next day, which she did. The Parent gave the District a copy of C.M.’s Harrison IEP at that appointment. The District informed the Parent that they would review the IEP and call her to confirm the placement.

On June 29, the District’s Director of Special Education, Candice Vargas, called the Parent. The Director informed the Parent that C.M. would attend an in-district ESY program, but

the District would not be able to provide any transportation for at least two weeks. Nevertheless, the Director claimed the District could offer a comparable program. The Parent raised concerns about the proposed program and requested continued placement at Stepping Stones. The Director stated that the District could only consider an out-of-district placement after C.M. “tried” the District’s program for 30 days, which did not include any days of ESY. The Director stated that C.M. would attend a different in-district school in September, but could not confirm which school. The Director explained that she would not have a case manager until she began school.

On July 7, Northeast New Jersey Legal Services (“NNJLS”) contacted the District’s counsel on behalf of C.M., requested to expedite transportation, permit the Parent to observe the proposed comparable program, and provide clarification on the comparability of the programs.

On July 8, the Parent called the Director to request to observe the ESY program. The Director said she needs to check if C.M. “is on the list,” and would call her back. Later that afternoon, the Director told the Parent that the District cannot offer C.M. any ESY program, after all. The Director admitted the District cannot provide the 1:1 aide required by C.M.’s Harrison IEP. The Director suggested that C.M. could continue to attend Stepping Stones at Harrison’s expense. The Parent explained that because she now lives in Paterson, Harrison is not financially or legally responsible. The Director reiterated that C.M. needs to “try” the unidentified in-district program in September, and someone would call her in a few weeks with more information.

On July 9, the District’s counsel responded to NNJLS, “[d]on’t have a copy of her transfer-in IEP in our system yet, I guess we’re waiting on those docs from Harrison still. Has mom spoken to anyone from our SPED dept or provided her Harrison IEP to anyone?” NNJLS provided another copy of the Harrison IEP, but noted that the District, not the Parent, is required to get information from the previous district. N.J.A.C. 6A:14-4.1(g)(3). NNJLS questioned how the District could claim to offer a comparable in-district program without reviewing the Harrison IEP. NNJLS informed counsel that the District notified the Parent that no ESY program was available, and again requested information about the proposed program in September.

The Coy Cert. certifies, in pertinent part, the following:

1. I am the Assistant Superintendent for Special Education and Services for Paterson Public Schools ("the District"). In that capacity I oversee the District's Department of Special Education, including its Director of Special Education, Candice Vargas, and I am responsible for the administration of special education programs, related services, and student records throughout the District. I make this Certification in opposition to Petitioner's Request for Emergent Relief based upon my personal knowledge, my review of District records maintained in the ordinary course of business, and my supervisory responsibility for the events described below.

2. C.M. ("the Student") registered in the District on June 24, 2026. On June 25, 2026, the Parent hand-delivered a copy of the Student's IEP from the Harrison school district ("the Harrison IEP") to the District's Department of Special Education.

3. The District's child study team reviewed the Harrison IEP on or about June 29, 2026 and identified a comparable in-district program for the Student at the District's Dale Avenue Elementary School.

4. The Dale Avenue program is a self-contained Multiple Disabilities program serving students in kindergarten through grade five, grouped into K-2 and 3-5 cohorts. Within each cohort, students are placed in Level 1, Level 2, or Level 3 classes according to level of functioning, with Level 1 serving students with the most significant needs. Class size is capped at eight students in Level 1, ten in Level 2, and twelve in Level 3, and every student in the program is classified as eligible for special education and related services. Each class is staffed by a certified special education teacher and an instructional assistant, supplemented by personal aides as required by each student's IEP. The curriculum is Direct Instruction, delivered together with Applied Behavior Analysis ("ABA") services. Based upon the child study team's review of the Harrison IEP, the Student would be placed in the Level 1 K-2 class, a class of no more than eight students taught by a certified special education teacher with an instructional assistant, in addition to the Student's own 1:1 aide. The Dale Avenue program provides each service, at each frequency,

set forth in the Harrison IEP: individual speech therapy two times weekly and group speech therapy one time weekly; individual occupational therapy one time weekly and group occupational therapy one time weekly; individual physical therapy one time weekly and group physical therapy two times weekly; specialized feeding services delivered in accordance with the student's medical needs as documented by the Student's treating medical provider, and the District will incorporate any updated documentation the Parent provides into the Student's feeding protocol; a 1:1 aide; and transportation with an attendant safety restraints.

5. A 1:1 aide will be assigned effective the Student's first day of attendance. The District may assign one of its employees or an aide assigned by its staffing agency.

6. The District operates an Extended School Year ("ESY") program at School 27 and Martin Luther King, Jr. School from July 6, 2026 through July 31, 2026, 8:30 AM – 1:30 PM, Monday through Thursday. A seat in that program is available to the Student, but the parent so far has not agreed to send the student.

7. On June 29, 2026, Director Vargas spoke with the Parent by telephone regarding the Student's program. District records reflect that the Parent initially declined ESY services and thereafter requested ESY on July 9, 2026, conditioned upon observing the ESY program first.

8. The Student's IEP requires specialized transportation with an aide and appropriate safety restraints. Because the District provides student transportation through contracted private carriers, once the Parent agrees to the Student's participation in ESY and use of District provided transportation, the District must submit a transportation request to the carrier. The carrier must then revise its routes and conduct a dry run before service can begin. This process may take approximately one to two weeks.

9. The staff member who received the Harrison IEP from the Parent on June 25, 2026 was thereafter out of the office on a scheduled summer vacation and had not yet uploaded the document to EdPlan, the District's electronic special education records system, at the time of counsel's inquiries of July 7 through July 9, 2026. Yet the document was reviewed and shared with the Special Education Director for next steps.

The delay in uploading the document to EdPlan did not affect the child study team's receipt or review of the Harrison IEP.

10. I have reviewed Petitioner's account of the July 8, 2026 telephone call between Director Vargas and the Parent. The statement that the District could not offer the Student any ESY program or could not provide the 1:1 aide required by the Harrison IEP was false. As set forth above, an ESY seat is available to the Student and the 1:1 aide is provided for in the Dale Avenue program.

11. The District has offered the Parent an opportunity to observe the Dale Avenue program in September, at the beginning of the 2026–2027 school year.

12. The District has offered the Parent an opportunity to observe the ESY program at School 27 on July 21, 2026.

13. The District will schedule an IEP meeting to review the Harrison IEP with the Parent and to adopt or revise the Student's IEP in accordance with N.J.A.C. 6A:14-4.1(g) and take consent for additional assessments as needed.

As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. N.J.A.C. 1:6A-12.1(a). An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justifies under N.J.A.C. 1:6A-12.1(e) the relief sought. Ibid. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications. Ibid.

Either party may apply, in writing, for a temporary order of emergent relief as a part of a request for a due process hearing or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. N.J.A.C. 6A:14-2.7(r). The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. Ibid. Emergent relief may be requested only for: (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. Ibid.

Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the State Director of the Office of Special Education Programs, with a copy to the other party. N.J.A.C. 1:6A-12.1(b). See also N.J.A.C. 6A:14-2.7(s). The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in N.J.A.C. 1:6A-12.1(a) and which set forth on the face of the application and affidavits circumstances which comply with the standards set forth in N.J.A.C. 6A:14-2.7(r). Ibid. Emergency relief applications which fail to comply with the procedural requirements, or which do not comply with the standards set forth in N.J.A.C. 6A:14-2.7(r) are processed by the Department in accordance with N.J.A.C. 1:6A-9.1. The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. N.J.A.C. 1:6A-12.1(d). At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. N.J.A.C. 1:6A-12.1(e).

Pursuant to N.J.A.C. 6A:14-2.7(s)(1), emergent relief may be requested according to N.J.A.C. 1:6A-12.1 and may be granted if the administrative law judge determines from the proofs that: (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 success on the merits of the underlying claim; and (iv) when the equities and interest 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. De Gioia, 90 N.J. 126 (1982); N.J.A.C. 1:6A-12.1(e). In order to prevail on an application for emergent relief, the applicant must meet all four prongs.

Each district board of education must provide educational programs and related services for students with disabilities required by the IEPs of students for whom the district board of education is responsible. N.J.A.C. 6A:14-4.1(a). When a student with a disability transfers from one New Jersey school district to another, or from an out-of-State school district to a New Jersey school district, the child study team of the school district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:

1. For a student who transfers from one New Jersey school district to another New Jersey school district, the IEP shall be implemented as written if the parents and district board of education agree. If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.
2. If the student transfers from an out-of-State school district, the appropriate district board of education staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.
3. The appropriate district board of education staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The school district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.

N.J.A.C. 6A:14-4.1(g).

Prior to the implementation of the IEP, the district board of education shall provide the parent with the opportunity to observe the proposed educational placement, including

the general education setting, special class programs, and out-of-district placements in a program operated by another district board of education or a private school placement. N.J.A.C. 6A:14-4.1(k).

Although petitioner's counsel argues that the request for emergent relief is limited to ESY, the filed form Request for Emergent Relief does not specify that emergent relief is limited to ESY. The Request for Emergent Relief contains no information about the Stepping Stones ESY program for purposes of comparability, and states only that no program was offered by the District, which is contrary to the Coy Cert., which states that the District has an ESY program available to C.M. Mom observed the ESY program on July 21, 2026. The "Preliminary Statement" in the letter brief states:

C.M. is a four-year old student eligible for special education and related services, placed at an appropriate special education school, Stepping Stones, until June 2026. When C.M. moved from her previous school district, Harrison, to her current school district, Paterson Public Schools ("the District"), the District terminated C.M.'s placement and failed to offer any special education program, let alone a comparable program as required by N.J.A.C. 6A:14-4.1(g). Because the District admits it cannot offer a comparable program, C.M. should be placed at Stepping Stones.

The Request for Emergent Relief does not reflect that the emergent out-of-district placement is only for ESY, as the Certification cites both "issues involving a break in the delivery of services" and "issues concerning placement pending the outcome of due process proceedings," and the due process petition also involves the 2026–2027 school year and seeks placement at Stepping Stones. Additionally, the letter brief asserts that the Director "stated that C.M. would attend a different in-district school in September, but could not confirm which school," and that petitioner's counsel "requested information about the proposed program in September."

It is not disputed that C.M. moved from Harrison, New Jersey, to Paterson, New Jersey, and was enrolled in the District on June 24, 2026, and a copy of her Harrison IEP

was provided to the District on June 25, 2026. The law requires that the Paterson child study team conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented. The law further requires that C.M.'s IEP be implemented as written "if the parents and district board of education agree," and if they do not agree to implement the current IEP—as is the case here—then the District must conduct all necessary assessments develop and implement a new IEP within 30 days. The parties had a discussion on June 29, 2026, but the Coy Cert. and the facts alleged in petitioner's letter brief differ as to that discussion and subsequent discussions. The letter brief reflects that "the Director claimed the District could offer a comparable program" but would not be able to provide transportation for at least two weeks, that Mom "raised concerns about the proposed program and requested continued placement at Stepping Stones," and that the "District could only consider an out-of-district placement after C.M. 'tried' the District's program for 30 days, which did not include any days of ESY." However, the Coy Cert. states that "the Parent initially declined ESY services and thereafter requested ESY on July 9, 2026, conditioned upon observing the ESY program first." The Coy Cert. states that the District "operates an Extended School Year ("ESY") program at School 27 and Martin Luther King, Jr. School from July 6, 2026 through July 31, 2026, 8:30 AM – 1:30 PM, Monday through Thursday" and that "[a] seat in that program is available to the Student, but the parent so far has not agreed to send the student."

Petitioner relies upon W. Orange Bd. of Educ. v. B.R., 2022 U.S. Dist. LEXIS 130271 (2022), but said case is distinguishable in that the administrative law judge (ALJ) found that the proposed IEPs were not comparable—based upon differences in class size (eight versus twenty students) and student population that more than double (236 versus 500), but there was no documentation or affidavit from Stepping Stones staff detailing its ESY program filed with the Request for Emergent Relief. Further, the ALJ had IEPs to compare, which is not the case here as the time has not yet expired for the District to develop and implement a new IEP.

Additionally, irreparable harm is harm that cannot adequately be redressed by monetary damages. Crowe, supra, 90 N.J. at 132-33. Emergent relief should not be ordered except when necessary to prevent substantial, immediate and irreparable harm. Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Petitioner's brief alleges "C.M., is suffering irreparable harm by being denied any educational program," and that "[i]rreparable harm has been demonstrated when "there is a significant interruption or termination of educational services." Here, there is a dispute as to the timeline of what occurred since C.M. was registered in Paterson on June 24, 2026, including whether Mom initially declined ESY. The Harrison IEP provides for ESY and the District offered ESY. The District's ESY program ends on July 31, 2026—which leaves six days—and while no affidavit attaching the Harrison IEP was filed with the Request for Emergent Relief, petitioner's counsel argued that the Stepping Stones ESY is a couple weeks longer—which would result in approximately sixteen days of ESY, assuming arguendo that C.M. could start immediately. Given the circumstances, including the lack of certified Stepping Stones information in the record, the factual dispute about what has transpired since the June 24, 2026 registration—including the District's certification that Mom initially declined ESY but then requested ESY a day prior to signing the Request for Emergent Relief—I **CONCLUDE** that the record is insufficient to establish that the District's ESY program is not comparable warranting an emergent out-of-district placement that would impact placement not only for ESY but pending the due process hearing on a matter where the student has not been enrolled in the District for even thirty days. Even accepting that there may be a difference in the duration of the ESY programs, that is insufficient to establish that the District's ESY program is not comparable.

As stated, C.M. was only enrolled in the District on June 24, 2026, and time has not even expired for the District to propose and implement a new IEP based upon assessments. While petitioner may believe that there is no in-District placement that is appropriate and that C.M. should only be placed at Stepping Stones, in view of N.J.A.C. 6A:14-4.1(g) and the absence of a new IEP yet, I **CONCLUDE** the parent has failed to establish that the legal right to an out-of-district placement at Stepping Stones is well-

settled or a likelihood of success on the merits at this time. Further, there is no evidence of irreparable harm, in that an emergent placement now will result in at most approximately sixteen days of ESY and compensatory education is available as a remedy when determined appropriate.

In order to prevail on an application for emergent relief, a petitioner must meet all four conjunctive prongs set forth in Crowe. Since petitioner has failed to do so, I **CONCLUDE** that the request for emergent relief should be denied. The facts should be fully developed at an evidentiary hearing, which will afford an opportunity to assess the credibility of any witnesses and weigh the testimony and evidence presented.

ORDER

It is hereby **ORDERED** that the petitioner's request for emergent relief is **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).

July 23, 2026

DATE


KELLY J. KIRK, ALJ

Date Received at Agency:

Date Sent to Parties:

/db