101-25E
OAL Dkt. No. 04088-25
Agency Dkt. No. 58-3/25

New Jersey Commissioner of Education

Final Decision on Emergent Relief

S.S., on behalf of minor child, T.S.,

Petitioner,

v.

Board of Education of the Borough of Bellmawr, Camden County,

Respondent.

The record of this emergent matter and the Order Granting Emergent Relief of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has demonstrated entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C*. 6A:3-1.6.

Accordingly, the petitioner's application for emergent relief is granted. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: March 21, 2025
Date of Mailing: March 21, 2025

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING
EMERGENT RELIEF
OAL DKT. NO. EDU 04088-25
AGENCY DKT. NO. 58-3/25

S.S. ON BEHALF OF T.S.,
Petitioner,
v.
BOARD OF EDUCATION OF
THE BOROUGH OF BELLMAWR,
Respondent.

Kyle Anthony Adams, Esq., for petitioner (Montgomery Law, PLLC, attorneys)

John B. Comegno, II, Esq., for respondent (The Comegno Law Group, P.C., attorneys)

Record Closed: March 18, 2025 Decided: March 19, 2025

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioner S.S., on behalf of T.S., filed a petition for due process to challenge the decision of respondent, the Board of Education of the Borough of Bellmawr (Board), to remove T.S. from school on the grounds that T.S. allegedly exhibited warning signs of

suicide and has not been cleared to return to school by a medical professional in compliance with Board Policy 5350. In this emergent proceeding, petitioner seeks an order finding that the Board's action has denied T.S. a free appropriate public education (FAPE), in violation of the New Jersey Constitution, and compelling respondent to return T.S. to in-person instruction in the Bellmawr Public School District (District).

PROCEDURAL HISTORY

On March 3, 2025, petitioner filed a petition of appeal and a request for emergent relief with the New Jersey Department of Education, Office of Controversies and Disputes. On March 4, 2025, the motion for emergent relief and the due-process petition were transmitted to the Office of Administrative Law (OAL), pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -23.

On March 17, 2025, the parties appeared for oral argument on the motion for emergent relief. On March 18, 2025, the parties made supplemental filings, and the record closed.

FACTUAL DISCUSSION

Based on the arguments of counsel and documents filed by the parties, including the certifications of District Superintendent Danielle Sochor, S.S., and Kyle Anthony Adams, petitioner's counsel, the following statements are undisputed, and therefore, I **FIND** as **FACTS**:

T.S. is a fourteen-year-old, eighth-grade male student at Bell Oaks Middle School (BMS). Outside of school, he participates in mixed martial arts, and as result, he experiences minor injuries to his hands (knuckles) and muscle pain, for which he visits the school nurse for bandages and over-the-counter pain relievers. On or about January 15, 2025, T.S. received medical attention from Nurse Marie Lewis. She reported calling T.S.'s mother, M.M.N., to recommend further treatment. T.S. was not in school on January 16, 2025; Lewis called M.M.N. to check on him.

T.S. returned to school on January 17, 2025, with a box of chocolates purchased by M.M.N. as a thank-you gift for Lewis. Lewis reported that the box was not wrapped in cellophane but wrapped with two paper bands. T.S. checked back that same day to ask if Lewis had eaten any chocolates; she had had one. She left the box in school over the long holiday weekend.

On January 22, 2025, Lewis shared the chocolates with other students. The same day, T.S. checked again as to whether Lewis had eaten the candy and wanted to know the names of the other students. Lewis threw the box away on January 24, 2025; there is no evidence that any person who ingested the chocolates suffered food poisoning as a result.

On or about February 4, 2025, T.S. visited the nurses' office for bandages and spoke to Lewis. According to Lewis, T.S. made the following statements:

> I'm quiet.
> I'm dead inside.
> I was bullied when I was younger.
> I used to imagine picking up a pencil and jabbing it into the necks of some of these kids.
> I'm violent.
> I'm just like my mother.[1]

On February 14, 2025, after attending an in-school presentation on school safety, Lewis reported the above to BMS Principal Anthony Farinelli. That same day, Farinelli made a crisis referral of T.S. to Oaks Integrated Care (Oaks), a mental health treatment facility, as authorized by Board Policy 5350, Student Suicide Prevention. Board Policy 5350 provides in pertinent part:

> The Board directs all school district staff to be alert to a student who exhibits warning signs of self-destruction or who threatens or attempts suicide.
>
> The principal shall immediately contact the parent(s) of the student exhibiting warning signs of suicide to inform the parent(s) the student will be referred to the Child Study Team

[1] There is no evidence that M.M.N. is violent.

> or a Suicide Intervention Team, appointed by the Superintendent or designee, for a preliminary assessment. Following the preliminary assessment, the principal or designee shall meet with the parent(s) to review the assessment [and] the parent(s) may be required to obtain medical or psychiatric services for the student.
>
> In the event the student is required to obtain medical or psychiatric services, the parent(s) will be required to submit to the Superintendent a written medical clearance from a licensed medical professional, selected by the parent(s) and approved by the Superintendent, indicating the student has received medical services, does not present a risk to themselves or others, and is cleared to return to school.
>
> [Certification of Danielle Sochor (March 10, 2025) (Sochor Cert.), Ex. C.]

After an evaluation at Oaks, T.S. was cleared to return to school the same day, February 14, 2025. Sochor Cert., Ex. D. According to Sochor, a reentry meeting with petitioner was scheduled for the next school day, February 18, 2025, at 8:30 a.m. Sochor Cert, ¶ 17.

On February 16, 2025, Lewis sent Farinelli a second report regarding her interactions with T.S., this time adding the information regarding the candy he gave her. Lewis alleged that T.S. and M.M.N. are "very dangerous people," while conceding that she had no proof. Sochor Cert., Ex. D. Sochor and Farinelli contacted the Bellmawr Chief of Police, who sent Officer Cpl. Kevin Lokaj to the S. home. Neither party produced a police report[2]; the parties describe the conclusions reached by the police differently.

At the February 18, 2025, reentry meeting, respondent informed petitioner that T.S. would be required to undergo supplemental screening at Oaks before he could return to school. Sochor Cert., ¶ 23. Following evaluation at Oaks on February 18, 2025, T.S. was cleared to return to school. Sochor Cert., Ex. H.

[2] By affidavit, petitioner's counsel stated that he requested this report (No. 2025-001706, DOI 2/17/25), but the police department cannot provide it in a timely manner. Attorney's Affidavit by Kyle Anthony Adams, Esq. (undated, submitted March 18, 2025).

In the evening of February 18, 2025, T.S. was taken to the emergency room (ER) of Jefferson Health[3], Cherry Hill, New Jersey, for a "mental health problem." Pet'r Motion for Emergent Relief (March 3, 2025) (Pet'r Motion), Ex. F. After evaluation by the ER doctor and a psychiatric consultation, T.S. was discharged on February 19, 2025, with instructions to follow up with his family doctor in one to two days. The discharge instructions include a statement describing suicidal ideation and prevention and a diagnosis of adjustment disorder. Id. at 3. There is no statement in the discharge papers regarding whether or not T.S. was safe to return to school.

In the written summary by the attending ER doctor, written on February 20, 2025, the doctor stated that on arrival, T.S. denied any suicidal or homicidal ideation, tested negative for all symptoms and any foreign substances or medication, appeared to be normal physically, and exhibited normal behavior. Pet'r Motion, Ex. G. It appears that the ER staff spoke with Dr. Scheinthal and Derrick Vann at Oaks, and that the decision on discharge would be made at Oaks after their evaluation. Id. at 4. Based on other evidence presented, including Sochor's certification, Oaks made its evaluation, clearing T.S. to return to school before he went to the ER. At oral argument, respondent stated, however, that the ER discharge papers were requested by respondent and never provided by petitioner.[4]

On February 19, 2025, following the issuance by Oaks of a form allegedly clearing T.S. to return to school (Sochor Cert., Ex. H), the Oaks staff member who signed the form, Derrick Vann, contacted the BMS nurse's office, asking to speak with Lewis. Vann allegedly told another BMS nurse that he believed (contrary to the form he signed) that T.S. presented a danger to Lewis; these statements were sufficient for Sochor to contact Vann herself. Sochor Cert., ¶¶ 32–36. One week later, Sochor confirmed the subsequent conversation in a letter to Vann. Sochor Cert., Ex. J. In this letter, Sochor states, in pertinent part, "we understand that Oaks discharged T.S. and provided a document approving his return to school[.]" Ibid. Respondent contends that this same document was insufficient to serve as approval by a medical practitioner of T.S.'s return to school.

[3] In its brief, respondent refers to this facility as Kennedy Hospital.

[4] At oral argument, counsel stated that he was unable to obtain the discharge papers, but they were forwarded to my chambers by email the next day, March 18, 2025, and marked as "Ex. G."

On or about February 27, 2025, respondent began to provide T.S. with homebound instruction through Educere. Sochor Cert., Ex. M.

On March 9, 2025, petitioner retained Dr. John G. Wilson, III, M.D., a psychiatrist, to conduct an independent psychiatric risk assessment of T.S. Dr. Wilson's report, dated March 13, 2025, was sent to respondent. Pet'r Motion, Ex. D. In conducting his assessment, Dr. Wilson reviewed medical records of T.S. and all the documents referenced above, conducted interviews with S.S., M.M.N., and Sochor, and met with T.S. In his report, Dr. Wilson concluded, in pertinent part:

> [T.S.'s] history of suicide attempts in 2022 [after being the victim of bullying in school] stands out as the only significant historical risk factor. Following his diagnosis of adjustment disorder in 2022, he received treatment and has not experienced suicidal ideation or attempted suicide in the past two years. Other historical factors do not indicate an elevated risk of violence. He has no history of childhood trauma or early caregiver disruptions. Additionally, he has demonstrated high academic achievement and has no associations with delinquent peers. While he participates in structured martial arts—an activity some may perceive as violent—he has never exhibited violent behavior outside of a controlled environment. The previous allegation of poisoning remains unsubstantiated and should not be considered as a valid risk factor.
>
> Currently, no social or clinical risk factors are present. He does not experience poor parental management, lack of social support, or community disorganization (i.e., living in a high-crime neighborhood). He has no history of substance use or substance use disorder. While he has a past diagnosis of adjustment disorder, it has resolved with treatment, and he is not experiencing any current mental health symptoms that would meet current criteria for psychiatric diagnosis.
>
> Despite some historical risk factors, [T.S.] exhibits numerous protective factors that mitigate potential concerns. He is actively engaged in prosocial activities, including volunteering and martial arts. He is engaged in psychotherapy and has insight into his previous psychiatric symptoms. He also benefits from strong family support and a strong commitment to academic achievement.

> Considering all factors, [T.S.'s] previous history of suicidal ideation is the only notable risk factor. However, his current stability and protective factors suggest no significant risk elevation that would justify continued out-of-school placement. Therefore, I recommend that [T.S.] return to school immediately and continue working with his therapist to address any anxiety or distress caused by his unwarranted exclusion from the school environment. [T.S.] should be immediately reintegrated into school and the school should immediately begin steps to assure that his learning has not been impacted by his exclusion.
>
> [Pet'r Motion, Ex. E. at 14.]

In an interview with Dr. Wilson, Sochor allegedly stated that the only reason T.S. had not yet been re-admitted to school was because Oaks failed to properly fill out the crisis referral form. Id. at 12. Dr. Wilson made a similar mistake. See Supplemental Certification of Sochor (March 17, 2025), Ex. A; Pet'r Motion, Ex. D (email from Dr. Wilson to counsel admitting his mistake on the original crisis referral form and providing a corrected form). Therefore, despite the strong language in Dr. Wilson's report that T.S. was cleared to return to school, respondent—as stressed by counsel during oral argument—refused to accept Dr. Wilson's recommendations because of the mistake he made on the form. There is no evidence that respondent made any attempt to reconcile the form with the conclusions in Dr. Wilson's report.

LEGAL ANALYSIS AND CONCLUSIONS

When the subject matter of a controversy is an action by a board of education, the petitioner may file "a separate motion for emergent relief . . . pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). Here, S.S. has initiated due-process proceedings challenging respondent's decision to deny T.S. reentry to BMS on the grounds that petitioner has failed to provide adequate medical clearance, as required by Board Policy 5350.

The standards for granting emergent relief are outlined in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving that:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying the 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 the 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, S.S. must demonstrate more than a risk of irreparable harm should T.S. remain on home instruction. In an educational setting, "irreparable harm may be shown when there is a substantial risk of physical injury to the child or others, or when there is a significant interruption or termination of educational services." Ocean Twp. Bd. of Educ. v. J.E. and T.B. ex rel. J.E., 2004 N.J. AGEN LEXIS 115, at *8 (February 23, 2004).

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as 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.'" Ibid. (citations omitted); K.C. and S.C. ex rel. minor child, K.C. v. Bd. of Educ. of the

Borough of Englewood Cliffs, Bergen Cnty., 2011 N.J. AGEN LEXIS 100 (Mar. 2, 2011), adopted, Commissioner Decision, 2011 N.J. AGEN LEXIS 593 (Mar. 18, 2011) (student's inability to attend school during the remainder of the school year constituted irreparable harm).

Here, petitioner argues that "[c]ontinuing to confine T.S. to home without in-person instruction[5] results in his continued isolation, exclusion from his education, and the opportunity to meaningfully engage with peers to further his academic and social education. T.S. continues to suffer the emotional harm of being removed from his routine and school setting based on false and unreliable accusations. Moreover, the damage he is enduring is irreparable." Pet'r's Motion at 4. Respondent, however, argues that T.S. is not being disciplined, but has been removed from school for his own safety, is receiving homebound instruction and therefore, the interruption in educational services has ended. Further, the only reason that T.S. remains at home is because his parents have not submitted a form that complies with Board Policy 5350. A compliant form must be in writing, signed by a licensed medical professional, stating the student has received medical services, does not present a risk to himself or others, and is cleared to return to school.

Oaks used the same forms each time they evaluated T.S.; the form sent to Dr. Wilson by respondent conforms more closely to the above policy. However, respondent initially agreed to accept T.S. back in school after receipt of the form dated February 14, 2025, strong evidence that the Oaks form has been found acceptable. The only difference in the two forms from Oaks is that one box is not checked on the later form, dated February 19, 2025, and that box is a statement attributed to petitioner. The same Oaks clinician, Vann, signed both forms (until he disavowed his second signature by telephone, but never in writing). Counsel for both parties had Dr. Wilson's report three days before oral argument. Petitioner's counsel apparently did not read the form that accompanied Dr. Wilson's report, or they might have asked him to correct it sooner, and respondent's counsel did not bother to ask about the inconsistency between his written conclusions and an errant check mark on the form.

[5] There is no dispute that homebound instruction has begun.

Now that Dr. Wilson's error has been rectified, there is no reason for respondent to continue to claim it does not have adequate medical support for the decision to return T.S. to school. As Dr. Wilson noted, T.S. is a good student and has worked with a psychotherapist to control and overcome his anxiety. T.S. is isolated at home and the instruction he receives there is not the same as that which he receives at school. Further, this isolation and the potential social stigma resulting from hearsay allegations regarding T.S.'s conduct and character may exacerbate his anxiety.

Accordingly, I **CONCLUDE** that the petitioner has met the burden of proving irreparable harm will result if T.S. is not returned to BMS.

Settled Legal Right and the Likelihood of Success 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.

Petitioner contends that T.S. is not receiving the FAPE guaranteed to him by the New Jersey Constitution. Respondent counters that while the right to a FAPE is settled, so too is the right of a school district to require specific medical and/or psychiatric clearances of students who by their behavior have raised concern for the safety of themselves and others. Resp't Br. at 11 (citations omitted).

While I agree with respondent that Board Policy 5350 is lawful and necessary, it is not necessary to conduct a plenary hearing now that Dr. Wilson, a psychiatrist, has conducted a thorough evaluation of T.S., including his psychiatric and educational record, and has concluded to a reasonable degree of medical certainty that T.S. does not pose a risk to the safety of himself or others and is cleared to return to school. This is the information for which respondent, by certification and through counsel, has said it has been waiting.

Petitioner has demonstrated the likelihood of success on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary

showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Accordingly, I **CONCLUDE** that though Board Policy 5350 is a lawful and necessary exercise of the Board's discretion and authority, its decision to deny reentry to school to T.S. now that a medical professional has complied with the requirements of that policy would be arbitrary, capricious, and unreasonable, and a denial of FAPE.

Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

T.S. will be harmed if he cannot return to school, academically, socially, and most significantly, emotionally. Additionally, for the reasons described above, if the report of Dr. Wilson and the second form he submitted are not enough to satisfy Board Policy 5350, petitioner will likely be at a loss to determine what would satisfy that policy. As respondent concludes, "the only request the Board has made of Petitioners is for them to provide a sufficient psychiatric clearance that abides by the requirements of Board Policy 5350 to ensure [T.S.] is safe to return to school." Resp't Br. at 13. Since petitioners have now done just that, I **CONCLUDE** that T.S. will suffer greater harm should emergent relief be denied.

Based upon the above, I **CONCLUDE** that the petitioner has met the requirements outlined in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief.

ORDER

For the reasons stated above, I hereby **ORDER** that the petitioner's application for emergent relief is hereby **GRANTED.** No other issues remain between the parties once the emergent relief matter is resolved.

This order on application for emergency relief may be adopted, modified or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

March 19, 2025
DATE

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/kl/sg