



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

EMERGENT RELIEF

OAL DKT. NO. EDS 03576-22

AGENCY DKT. NO. 2022-34249

**HADDON TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

J.C. ON BEHALF OF J.C.¹,

Respondent.

Robert A. Muccilli, Esquire, for petitioner, Haddon Township Board of Education
(Capehart & Scatchard, attorneys)

Mitchell S. Moskovitz, Esquire, for respondent, J.C. on behalf of J.C., (South
Jersey Legal Services, Inc., attorneys)

BEFORE **JEFFREY R. WILSON**, ALJ:

STATEMENT OF THE CASE

The Haddon Township Board of Education (petitioner/District) brings an action for emergent relief against J.C. on behalf of J.C.J. (respondent), seeking an order to immediately place the student in an alternative placement of home instruction for

¹ J.C., the minor student, shall be referred to as J.C.J. to distinguish parties with the same initials.

dangerousness pending completion of a re-evaluation, along with an order to compel parental consent for reevaluations.

The respondent opposes the emergent relief requested for the student's placement in an alternative placement of home instruction for the remainder of the 2021-2022 school year. However, the respondent does consent to the student's evaluations in the following areas: 1) educational assessment; 2) psychological assessment; 3) speech assessment and; 4) functional behavior assessment.

PROCEDURAL HISTORY

Petitioner filed a request for emergent relief and a due process hearing on May 5, 2022, at the State Office of Special Education (OSE). On the same date, OSE transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for the petitioner. The parties presented oral argument on the emergent relief application on May 10, 2022, utilizing the Zoom platform.

FACTUAL DISCUSSION

The facts of this case are not in dispute therefore, I **FIND** the following as **FACT**:

J.C.J. is a sixteen-year-old student with disabilities. She is eligible for special education and related services based on the "specific learning disability" educational disability category. J.C. is her parent.

For the 2021-2022 school year, J.C.J.'s program and placement are situated in the Haddon Township High School. In summary, the program consists of: pull out resource for Algebra 2, English, Financial Literacy / American Government; Special Class Program for Introduction to Physical Science; counseling; a one-to-one aide; and a behavior intervention plan.

As described below, there have been several aggressive, unpredictable, and disruptive conduct incidents during the 2021-2022 school year. Some of these include inappropriate contact of a sexual nature:

Date	Incident
10/08/2021	J.C.J. engaged in cursing at other students when they got near her
10/16/2021	J.C.J. became increasingly agitated and aggressive during a field hockey game. Specifically, she was running around the turf and punching other students
11/09/2021	J.C.J. inappropriately touched another student's leg while on the bus ride home from a soccer game
01/31/2022	J.C.J. aggressively approached another student and engaged in a physical altercation
02/23/2022	At dismissal, J.C.J. loudly said f***you to another student
02/28/2022	J.C.J. was in the lower gym lobby with four players from the Collingswood's basketball team and pulled down the shorts of one of the players
03/15/2022	During physical education class J.C.J. smacked several students on the butt and after class made sexually explicit comments to and about other students
03/25/2022	J.C.J. commented, "If someone gets run over by a car, I would laugh." Another student felt as though the comment was directed at her and got upset. When J.C.J. was told that the other student was upset, she said "What the hell? If she is upset, I don't give a f***ing s**t. I am going to punch her."
04/06/2022	J.C.J. believed students were talking about her. She punched and hit one of them. She followed the student and continued to swing at and push him
04/07/2022	J.C.J. grabbed a female student's breast while in the attendance office

On April 8, 2022, J.C.J. was most recently suspended from school for inappropriate behavior on April 6, and 7, 2022. The dates of suspension were: April 8, April 11-14, April 25-29, 2022, and May 2-5, 2022.

The District scheduled a manifestation determination and IEP meeting for April 13, 2022, but J.C. was unable to attend. Consequently, the meeting was rescheduled for April 27, 2022. This time J.C. said that she could not go forward with the meeting without her legal counsel present. The meeting was again rescheduled to May 2, 2022. A manifestation determination meeting was held on May 2, 2022. The determination was that J.C.-J.'s conduct was not a manifestation of her disability.

Evaluation planning meetings were held on February 4, 2022, and March 30, 2022. The District proposed completion of an evaluation which includes educational, psychological, psychiatric, speech and functional behavior assessments. The assessments were proposed for the purposes of completing J.C.J.'s triennial evaluation and obtaining information necessary to develop an appropriate educational program and placement. Prior to today, the parent had not provided her consent for the evaluation assessments.

An Individual Evaluation Plan (IEP) meeting was convened on May 2, 2022. At that time, the District proposed home instruction as the placement for the remainder of the 2021-22 school year. The District's rationale for the proposed change in placement is that an increase in inappropriate behavior has occurred despite provision of increased support, that these behaviors are significant (i.e., fighting, inappropriate student contact and threat to another student), and that the behavior has disrupted the school environment and created safety concerns for J.C.J. and other students. Due to the nature of these incidents, the team determined that home instruction should occur until evaluations can be completed which provide information necessary to develop an appropriate educational program and placement. The District's position is that home instruction, provided in an interim alternative educational placement, will meet J.C.J.'s academic needs. The parent rejected the proposed change in placement.

The District contends that J.C.J.'s conduct has caused substantial disruption of the educational environment and has created a safety risk on multiple occasions as indicated above. The District is extremely concerned about safety and the emotional and educational well-being of J.C.J. and the other students given J.C.J.'s aggressive, unpredictable and disruptive behaviors. In addition, the District argues it cannot maintain a placement for J.C.J. at the Haddon Township High School at this time based on the recent highly concerning events. The District believes that J.C.J.'s aggressive, unpredictable and disruptive behaviors severely compromise the safety, education and well-being of her and others at the High School.

The respondent disputes some of the alleged behavioral incidents detailed by the District and argues that J.C.J. is not dangerous and is no longer under suspension and should be returned to her prior placement. The respondent contends that if the current IEP's behavioral plan is properly administered, J.C.J. would be monitored appropriately. Home instruction is the most restrictive environment for this student and is not meeting her educational needs.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district, or public agency 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 and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- 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.

Here, the petitioner seeks an order to immediately place the student in an alternative placement of home instruction for dangerousness pending completion of a reevaluation, along with an order to compel parental consent for reevaluations. Therefore, I **CONCLUDE** it has been established the issue involves a determination of an

interim alternate educational setting and placement pending the outcome of due process proceedings.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6(b):

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.

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

“Generally, 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. o/b/o J.E., OAL Dkt. No. EDS 592-04, Agency Dkt. No. 2004 8606, 2004 N.J. AGEN LEXIS 115, at *8 (Feb. 23, 2004) (emphasis added). It is settled in New Jersey that a safe and civil environment in school is necessary for students to learn, and disruptive or violent behaviors are conducts that disrupts a school's ability to educate its students in a safe environment. N.J.S.A. 18A:37-13; see also, Elizabeth Bd. of Educ., Agency Dkt. No. 2015 22392, 2015 N.J. AGEN LEXIS 160 (Mar. 27, 2015) (granting a school district's application for emergent relief placing the student in an out-of-district setting when the student was unable to conform to school rules and conduct herself in a manner that is necessary for her to access an education, when the student was unable to act in a manner that does not significantly disrupt the operations of the school and impact other student's ability to access an education, and when the student's discipline record and behavior negatively impact the safety, security and well-being of other students, staff and school property.)

Furthermore, a board of education may demonstrate irreparable harm by demonstrating that the child is disrupting the education of other students. West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.D., OAL Dkt. No. EDS 3483-95, Agency Dkt. No. 95-6739E, 1995 N.J. AGEN LEXIS 226, at *4 (Apr. 11, 1995). "The fellow students' and the school staff's right to a reasonably safe and productive environment is also a factor to be considered in deciding upon appropriate placement of the classified student." Id. (citing U.S. Const. amend. XIV, §1). The child's classmates "deserve a safe environment without harassment and physical aggression." Howell Twp. Bd. of Educ. v. J.D. and T.D. o/b/o A.D., OAL Dkt. No. EDS 02772-11, Agency Dkt. No. 2011 16935, 2011 N.J. AGEN LEXIS 125 (Mar. 17, 2011.) Recently, the court determined an unsafe environment based on two incidents: a student's overreaction and obsessive interactions with some other students at the school and the student breaking a desk giving rise to the need to restrain the student by a security guard and the assistant principal. Sparta Twp. Bd. of Educ. v. R.M. and V.M. o/b/o C.M., OAL Dkt. No. EDS 01975-20, Agency Dkt. No. 2020-31239, 2020 N.J. AGEN LEXIS 458 (Feb. 21, 2020) (granting a school district's application for emergent relief under these circumstances.)

Irreparable harm is also established when a child is disrupting his or her own education. See West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.D., OAL Dkt. No. EDS 3483-95, Agency Dkt. No. 95-6739E, 1995 N.J. AGEN LEXIS 226 (Apr. 11, 1995) (granting a school district's application for emergent relief changing the placement of a child whose poor academic performance and behavior disrupted the child's own education.) Such disruption may result in a delay in the delivery of appropriate educational services and, consequently, academic regression. See Howell Twp. Bd. of Educ. v. A.I. and J.I. o/b/o S.I., OAL Dkt. No. EDS 5433-12, Agency Dkt. No. 2012 18283, 2012 N.J. AGEN LEXIS 207 (May 2, 2012) (granting a school district's application for emergent relief changing the placement pending the outcome of a due process petition of a child whose inappropriate placement would result in academic regression.)

In addition, the expense of education to compensate for such regression also constitutes irreparable harm to a school district. Id. A board of education also shows irreparable harm by demonstrating that it is prevented from meeting its obligation to

provide a free appropriate public education because a child's placement is inappropriate. Haddonfield Borough Bd. of Educ. v. S.J.B. o/b/o J.B., OAL Dkt. No. EDS 2441-04, Agency Dkt. No. 2004 8817, 2004 N.J. AGEN LEXIS 645 (May 20, 2004.)

Irreparable harm is established because of the foreseeable risk of injury and danger to others given that J.C.J., not in one instance but in many, engaged in cursing, using profanity, punching other students, inappropriately touching a student's leg, inappropriately grabbing a student's breast, inappropriately smacking students on the butt, and inappropriately pulling down a student's gym shorts. Physical assault cannot be tolerated. There is a serious risk of harm to other students and their emotional wellbeing when a student engages in physical aggression, especially inappropriate physical contact of a sexual nature. Other students have the right to be free of inappropriate physical conduct and inappropriate contact of a sexual nature. The facts demonstrate that J.C.J.'s conduct is unpredictable.

Irreparable harm is also established because J.C.J. is substantially disrupting the education of other students and the educational environment. The facts show that J.C.J.'s conduct has a significant impact on the educational setting. Her education and the education of other students is disrupted by cursing and repeated expression of profanity in the in the school setting.

Finally, irreparable harm is established because the District is prevented from meeting its legal obligation to provide a Free Appropriate Public Education ("FAPE") to J.C.J. because placement at the Haddon Township High School is no longer appropriate. Knowing that the District cannot offer J.C.J. a FAPE, the District is forced to propose an alternative appropriate placement for her, which it has done by recommending home instruction placement for the remainder of the 2021-2022 school year.

Based upon the forgoing, I **CONCLUDE** that the petitioner has met its burden of establishing irreparable harm

A board of education is entitled to a change of placement of a student with a disability to an interim alternative placement when school personnel maintain that it is

dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement. N.J.A.C. 6A:14-2.7(n); N.J.A.C. 6A:14-2.8(f). In addition, a board of education is entitled to seek an order changing the placement when maintaining the current placement of a student is substantially likely to result in injury to the child or to others. 20 U.S.C. 1415(k)(3)(A). Furthermore, a board of education may apply for emergent relief pursuant to N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(r).

As applied here, the Board has shown a settled legal right to bring this application for emergent relief seeking a change of J.C.J.'s placement from the Haddon Township High School to a home instruction interim alternative placement for the remainder of the 2021-2022 school year. Accordingly, I **CONCLUDE** that the petitioner has met its burden that the legal right of their claim is settled.

Furthermore, I **CONCLUDE** that the District has shown a likelihood of prevailing on the merits that J.C.J.'s placement must be immediately changed to a home instruction interim alternative placement for the remainder of the 2021-2022 school year due to the substantial risk of danger to J.C.J. and others, J.C.J.'s disruption of her own education and the education of other students, and the District's inability to deliver a FAPE to J.C.J. in the current placement. As described in detail above, J.C.J.'s conduct is disruptive of the educational environment and endangers her safety and the safety of other students. Maintaining a placement for J.C.J. at the Haddon Township High School is likely to result in injury to her and to others in the school setting.

The District's request to change J.C.J.'s placement on an interim basis is more than reasonable given the circumstances of this situation. The District is simply recommending an interim placement that would better address J.C.J.'s behavioral and therapeutic needs with the genuine hope that her unpredictable and aggressive behaviors will be more under control so that she may focus on her academic performance and make meaningful educational progress.

The risk of harm is too great to consider J.C.J. returning to Haddon High School at this time, given that she has physically aggressed on several occasions. The District has an obligation to take seriously J.C.J.'s conduct to ensure a safe educational environment

for her and other students. Moreover, it is unfair and a disservice to the other students at the High School to force them to come to school where they are fearful that their safety may be compromised.

Therefore, I **CONCLUDE** that when the equities and interests of the parties are balanced, the District will suffer greater harm than the respondent will suffer, if the requested relief is not granted.

ORDER

Having concluded that the petitioner has satisfied all of the requirements for emergent relief, it is hereby **ORDERED** that the petitioner's request for emergent relief is **GRANTED**, and it is **ORDERED** that J.C.J. shall be immediately placed in an alternative placement of home instruction for dangerousness for the remainder of the 2021-2022 school year.

Finally, it is **ORDERED** that J.C. shall fully cooperate with all efforts, requests and requirements in providing releases, scheduling and securing J.C.J.'s attendance at all evaluations/assessments.

This order on application for emergency relief shall remain in effect until issuance of the decision in the matter. A telephone prehearing conference is scheduled in this matter on **May 24, 2022 at 10:00 a.m.** Notices will be sent to the parties under separate cover. If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.



May 10, 2022
DATE

JEFFREY R. WILSON, ALJ

CC: Clerk – OAL/TRENTON

JRW/tat

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

P-1 Petitioner's petition and brief with supporting documents, dated May 4, 2022

For Respondent:

None