



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER ON**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 04668-23

AGENCY DKT. NO. 2023-35940

**EGG HARBOR TOWNSHIP BOARD  
OF EDUCATION,**

Petitioner,

v.

**M.C. ON BEHALF OF D.C.,**

Respondent.

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**Amy Houck-Elco**, Esq., for petitioner (Cooper Levenson, attorneys)

**M.C.**, respondent, pro se

BEFORE **JOAN M. BURKE**, ALJ:

**STATEMENT OF THE CASE**

The Egg Harbor Township Board of Education (petitioner/District) brings an action for emergent relief against M.C. (respondent), seeking an order to immediately place the student in an alternative placement of home instruction for the remainder of the year for arrangements to be made for the student to pick up his diploma after the last day of school because his behavior has escalated to the point where he has suicidal and homicidal

ideations in school. The petitioner also seeks an amendment to D.C.'s IEP to reflect a change of placement to home instruction without a formal meeting.

### **PROCEDURAL HISTORY**

The District filed a request for emergent relief and a due process hearing on May 27, 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 District. The parties presented oral argument on the emergent relief application on June 7, 2023, utilizing the Zoom platform.

### **FACTUAL DISCUSSION**

D.C. is a seventeen-and-a-half-year-old senior attending Egg Harbor Township High School (High School). M.C. is the mother and guardian of D.C. The student resides with his mother in Egg Harbor Township, New Jersey. The student is currently classified under the category Emotional Regulated Impairment (ERI).

Petitioner alleged that on May 2, 2023, M.C. advised that his mother said he was suicidal and threatened to call Crisis Intervention. Subsequently a chain of events occurred that same day as follows:

- Prior to 7:30 a.m. D.C. was observed by the school psychologist Mrs. Roy sitting in the office of the BCBA, Ms. Fenton, who was not in the office. (Carugno Certif. at paragraph 4.)
- Mrs. Roy spoke with D.C at approximately 7:55 a.m. He told her he wanted to go home and that he hated school. He, at the time, attempted several times to text and call his mother because he wanted to go home. (Carugno Certif. at paragraph 5.)
- He became agitated and left the office and went outside the school for less than a minute and returned at the request of Mrs. Roy who had followed him. Ibid.

- M.C. called the Child Study Team office and spoke with Mrs. Roy. She told Mrs. Roy that D.C. was calling and texting her to pick him up and she was not going to pick him up. (Carugno Certif. at paragraph 6.)
- Mrs. Roy tried to get D.C. to deescalate. Ibid.
- At 8:20 a.m. Ms. Fenton arrived and asked D.C. why he was so upset. He said that his mother thinks he has issues and she was the one who created those issues. During this time M.C. called the office and D.C. took the phone from Mrs. Roy and made threatening statements to his mother to include: "Kill yourself you fucking dumb bitch before I kill you." (Carugno Certif. at paragraph 7.)
- At some point D.C. hung up the phone from M.C. and started to break things and left the building. (Carugno Certif. at paragraph 8.)
- M.C. was informed that D.C. was extremely escalated, he was cursing and breaking things. If D.C. was unable to deescalate that mobile crisis would be called, to which M.C. responded, "do what you have to." (Carugno Certif. at paragraph 8.) D.C. remained escalated and cursed at Ms. Fenton and kicked her desk. Ibid.
- At 9:05 a.m. a school social worker, Mrs. Nelsen-McDonald, attempted to meet with D.C. to complete a screening. D.C. refused and the District called mobile crisis. (Carugno Certif. at paragraph 9.)
- At 10:50 a.m., Mrs. Roy and Ms. Fontana tried to engage D.C. about the statement he made about his mother. D.C. responded by saying "are you fuckin serious, you're screening me?" (Carugno Certif. at paragraph 10.)
- D.C. left the office, and while doing so he pushed a door into a security guard. He was subsequently taken to Psychiatric Intervention Program (PIP) located in Atlantic City, via ambulance. Ibid.
- M.C. went to the hospital and removed D.C. against medical advice. Ibid.
- M.C. was told pursuant to Policy 5350 Student Suicide Prevention, before D.C. could return to school, he would need a medical clearance. (Carugno Certif. at paragraph 11.)

The Division of Child Protection & Permanency was contacted. Petitioner alleges that on the same date, because of D.C.'s behavior the District was actively planning to go into lockdown. The high school has 2,380 students and 250 employees. The District felt that because of D.C.'s erratic actions it caused a disruption to all of the student and staff.

On May 4, 2023, the respondent provided medical documentation, but the school physician was not satisfied because it did not comply with the provisions of Policy 5350.<sup>1</sup>

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<sup>1</sup> The Board of Education recognizes that depression and self-destruction are problems of increasing severity among students. Students under severe stress cannot benefit fully from the educational program and may pose a threat to themselves or others.

The Board directs all school district staff members to be alert to a student who exhibits warning signs of self-destruction or who threatens or attempts suicide. Any such warning signs or the report of such warning signs from another student or staff member shall be taken with the utmost seriousness and reported immediately to the Principal or designee.

The student will be referred to the Mental Health Intervention Team or a Suicide Intervention Team, appointed by the Superintendent or designee, for a preliminary assessment. Upon completion of the preliminary assessment, the Principal or designee shall immediately contact the parent(s) of the student exhibiting warning signs of suicide and meet with the parent(s) to review the assessment. Based on the preliminary assessment, the parent(s) may be required to obtain medical or psychiatric services for the student. In the event the parent objects to the recommendation or indicates an unwillingness to cooperate in the best interests of the student, the Principal or designee will contact the New Jersey Department of Children and Families, Division of Child Protection and Permanency to request intervention on the student's behalf.

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. The written medical clearance may be reviewed by a Board of Education healthcare professional before the student is permitted to return to school. The parent(s) shall be required to authorize their healthcare professional(s) to release relevant medical information to the school district's healthcare professional, if requested.

Any school district staff member, volunteer, or intern with reasonable cause to suspect or believe that a student has attempted or completed suicide, shall immediately report the information to the Principal or designee or their immediate supervisor who will immediately report it to the Superintendent or designee. The Superintendent or designee shall promptly report it online to the New Jersey Department of Children and Families, or as otherwise required by the Department of Children and Families in accordance with N.J.S.A. 30:9A-24. In accordance with N.J.S.A. 30:9A-24i, any person who reports an attempted or completed suicide shall have immunity from any civil or criminal liability on account of the report, unless the person has acted in bad faith or with malicious purpose. In accordance with the provisions of N.J.S.A. 18A:6-111 and 18A:6-112, as part of the required professional development for teachers as outlined in N.J.A.C. 6A:9C-3 et seq., every teaching staff member must complete at least two hours of instruction in suicide prevention, to be provided by a licensed health care professional with training and experience in mental health issues, in each professional development period. The instruction in suicide prevention shall include information on the relationship between the risk of suicide and incidents of harassment, intimidation, and bullying and information on reducing the risk of suicide in students who are members of communities identified as having members at high risk of suicide.

The Superintendent shall prepare and disseminate guidelines to assist school district staff members in recognizing the warning signs of a student who may be contemplating suicide, to respond to a threat or attempted suicide, and to prevent contagion when a student commits suicide.

Respondent was notified that additional documentation was needed. On May 18, 2023, the respondent provided another medical note from InSite Health. The school physician had questions and requested a note from D.C.'s primary care physician. The petitioner also argues that even if the physician had cleared D.C. to return to school, the CST would decide if D.C.'s current placement is appropriate. Subsequently, the CST decided that the high school was not the appropriate placement for D.C. and home placement was necessary for the last few days of class. At the date of this writing there were ten more school days left in the school year. The last day of school is June 21, 2023.

On May 19, 2023, the CST held a manifestation meeting since D.C. had missed more than ten days of school. The CST determined that the incident that occurred on May 2, 2023, was a manifestation of D.C.'s disability of emotional regulation impairment. The CST also on May 19, 2023, drafted an IEP, placing D.C. on home instruction for the remainder of the school year. The respondent did not agree with home instruction and filed an emergent relief which was set to be heard on May 22, 2023. The respondent subsequently withdrew at the hearing.

The petitioner states that D.C. has enough credits to graduate from school at this time so he will not be harmed. Provision would be made for him to pick up his diploma at the end of the school year. The District has offered home instruction and has provided him with a laptop, mobile hotspot because he has poor internet connection, written work and assigned a psychology teacher to do virtual instruction. D.C. however, has not cooperated and has not signed into the program.

The petitioner also referenced D.C.'s recent neuropsychological evaluation on February 16, 2023, and his recent psychiatric evaluation on March 8, 2023. The District argues that D.C. continues to become violent towards staff and cause safety and welfare issues and that the other students at the school are at risk due to D.C.'s homicidal behaviors and threats.

The parent contends that there are no emergent issues at this time because he is not a danger to himself, or the school and he is not suicidal. The parent argues that she was never notified that D.C. had left the building and went outside. M.C. denies telling

anyone at the school that she was not picking up D.C. on the date of the incident. M.C. said that 'flight' is D.C.'s trauma response. She requested a crisis plan in place but was denied by the school. M.C. said that on May 2, 2023, D.C. had left his bookbag at home. He got upset and called her to pick him up, but she told him to go to the BCBA's office as that is his safe space.

M.C. admitted to talking to Mrs. Roy at 8:22 a.m. and asked for the crisis plan. She spoke to Mrs. Mulligan at 8:55 a.m. and also requested the crisis plan. Neither of them knew what the crisis plan was. She texted Ms. Fenton at 8:56 a.m. (R-1 at Exhibit 2.) M.C. insisted at no time did she speak with Ms. Fenton. M.C. was also adamant that if she had received a call that D.C. was going to PIP, she would have risked a speeding ticket to get to the school to pick him up. Earlier when she spoke with D.C. she told him that she was not going to pick him up because he will be out of school in a few months and away at college and she wanted him to exercise some independence. M.C. said she was not contacted until 11:56 a.m. by Mrs. Mulligan and Jackie Groenen who informed her that D.C. was taken by ambulance to the PIP in Atlantic City.

M.C. contends that the District did not follow D.C.'s IEP, specifically the "Formal Discipline" paragraph, which states:

Historically when discipline is given (i.e., detentions or suspensions) D.C. is very reactive and is not able to recover for the rest of the day. Discipline should be given at the end of the day. If the incident requires a suspension and cannot wait until the end of the day Ms. C, when possible, should be contacted first and D.C. should be told about suspension at the end of the day with a case management.

[R-1 at Exhibit 2.]

According to M.C., when D.C. is told about PIP or crisis intervention, he knows the police are coming and this triggers his flight response. He will then run out of the building. According to M.C., this occurred at the time of the incident, but when he was running, he was met by seven police officers who tackled him to the ground. He sustained head and shoulder injuries, his cell phone broke, he was searched and handcuffed and taken to the

PIP. M.C. stated that she submitted clearance notes from medical providers, but they all were rejected by the District's physician. The first note she submitted was from a licensed New Jersey psychiatric screener. According to M.C. a licensed psychiatric screener's evaluation is signed off by a licensed psychiatrist.<sup>2</sup> This is done in each county and designated by the New Jersey Department of Human Services Division of Mental Health and Addiction Services. (R-1 at Exhibit 4.)

The second medical note she submitted was in the form of a psychiatric evaluation. This evaluation was done on May 18, 2023. This was done by a psychiatric nurse practitioner. In her clearance note she stated "I have performed a psychiatric evaluation on 5/18/23 with D.C. At this time, and between the dates of 5/2/23 and today, D is denying suicidal or homicidal ideation. I have determined that he is cleared to return to school". . . (See R-1 Exhibit 4B.) The third medical note was from Cape Regional Medical Center wherein he was diagnosed with oppositional defiant disorder (ODD). Which "is a mental disorder that affects children. Children with this disorder have a pattern of being angry, not willing to obey". (R-1 at Exhibit 4C.). The fourth clearance note is from D.C.'s new treating physician Dr. Parikh. Dr. Parikh states "I am his main care physician, and during my medical examination, I discovered that he is healthy and free of physical illnesses, as well as has no suicidal or homicidal ideations. Mr. C. is medically cleared to return to school and poses no risk to himself or others." (R-1, at Exhibit 4D.) According to M.C. the District is requesting release from the child's pediatrician, but the pediatrician refused to give a clearance because she is not licensed in psychiatry.

M.C. disagrees with having D.C. on home instruction. According to his IEP he cannot learn through virtual instruction. He has difficulty following multiple steps to access digital documents recalling password and assignment completion. On June 1, 2023, a package of work, laptop and a Wi-Fi box was dropped off at the home from the teacher assigned to D.C. M.C. spoke with the teacher who told her that she did not have access to D.C.'s IEP. M.C. contends that a teacher not familiar with her son's IEP would not be able to teach him appropriately. In addition, the virtual learning plan calls for D.C.

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<sup>2</sup> The note from the screener states, "I have screened D and found that he is not a danger to himself, others, or property. Our on-call psychiatrist agrees that he does not meet criteria for inpatient treatment. D can return to school on 5/4/23." (R-1 at Exhibit 4A.)

to receive ten hours per week. Virtual learning would occur seven days a week (Sunday through Saturday). (R-1, at Exhibit 6.)

M.C. submitted a complaint violation on March 23, 2023. (R-1 at Exhibit 7.) It was completed on May 18, 2023, and consisted of a corrective action plan for non-compliance by the District. *Id.* at 13. M.C. said that D.C. has a part-time job in the community and reiterates that D.C. is not a risk to himself or others. He is a bright student and has a 3.0 GPA. He is on his way to college, but because he is not at school, his grades may have dropped. According to his progress reports he has Fs in his current classes. M.C. contends that the home instruction format is not an appropriate placement for D.C. Finally, M.C. contends that her son is the one suffering irreparable harm as he has missed his prom and if he is to remain out of school, he will also miss his graduation.

D.C. spoke and admitted that he left his bag and did not have his books to do any schoolwork. He called his mother to pick him up, but she did not want to. He said he did curse at his mother but did not say he would kill her or himself. He has no suicidal ideation. He just wants to return to school to finish his term. He is unable to work in virtual learning because he has a hard time following the instructions. He has not been able to complete most of his schoolwork because he has no instruction on how to complete it.

### **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 District seeks an order to immediately place the student in an alternative placement of home instruction for the remainder of the year. The petitioner also seeks an amendment to D.C.'s IEP to have it reflect change of placement to home instruction without a formal meeting. Therefore, I **CONCLUDE** that the issue involves a determination of an interim alternate educational setting 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" Ibid. (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.) 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.)

Here, irreparable harm is not established. It is disputed that he cursed at his BCBA, Ms. Fenton. It is not disputed that he cursed at his mother. However, it is disputed that D.C. threatened to kill her or himself. The District argues that D.C. was having suicidal and homicidal ideations in school resulted in the outburst causing physical damage to school property and injured a security guard. While his outburst did occur, there is no evidence of suicidal or homicidal ideations. The District conducted a manifestation hearing and determined that the incident on May 2, 2023, was a manifestation of D.C.'s disability. Based on this determination by the CST, D.C. would have returned to school. However, the District further required him to submit medical clearance. The parent submitted four clearance notes from medical professionals. Three of whom are psychiatric professionals and the other is a treating physician. The District requires that his pediatric physician grant him medical clearance. According to the parent, the pediatrician refuses to do so because she is not a psychiatric doctor. Moreover, D.C. will be eighteen years old on June 9, 2023. His parent took him to Dr. Parikh who found that he had no suicidal or homicidal issues. Not only Dr. Parikh, but three other medical providers said he was cleared to return to school. Based upon the forgoing, I **CONCLUDE** that the District has not met its burden of establishing irreparable harm.

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). Additionally, 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). Accordingly, I **CONCLUDE** that the District has met its burden that the legal right of their claim is settled.

The third prong of the test for emergent relief requires that petitioner has a likelihood of success on the merits. The petitioner argues that D.C.'s behavior and erratic actions causes disruptions to all of the students and staff. Yet the record shows the incident occurred with members of the CST, who was working with D.C. to deescalate him. When the mention of PIP or crisis or discipline is said to D.C. he reacts. The staff did not follow or know of a crisis plan. They did not follow the IEP, because if they did, they would have known that his reaction to discipline or PIP is to flee. Indeed, the

manifestation team determined that what occurred was as a result of his disability. This should be sufficient. The District said that D.C. is an ongoing danger to the students and staff. However, the facts presented to date do not definitively show that such is the case and thus, I **CONCLUDE** that the District has not met the third prong of the test.

The final requirement for relief entails a balancing of the interests between the parties. The petitioner asserts that if D.C. returns to the high school there is a worry for the safety of the students and staff at the high school. The District stated they were unable to control D.C. in a controlled atmosphere, and if he returned to school and attends graduation on a football field with some six hundred students, they would not be able to control him. It is undisputed that D.C. engaged in disruptive behavior; he fled outside the school once for less than a minute and was talked back in. The second time police officers stopped him before he could flee. There was no injury that required medical attention or fit within the definition of serious bodily injury. On June 9, 2023, he will be eighteen years old. He has worked hard for four years, and the culmination of his hard work ends with going to the prom and walking with his twin sister at graduation. Keeping him at home, the most restrictive environment, until the end of the school year will indeed cause him harm in the loss of opportunities to interact with his non-disabled peers which is the goal of providing a free and appropriate education. The impact of not being allowed to attend his high school graduation will leave an indelible scar on him, that could place him in a more fragile position. Thus, I **CONCLUDE** the District has not yet shown that on balance it will suffer greater harm than the respondent.

### **ORDER**

It is **ORDERED** that the petitioner's application for emergent relief is **DENIED**.

This Order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties have been notified of the scheduled hearing date. 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.

June 8, 2023

DATE

  
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**JOAN M. BURKE, ALJ**

Date Mailed to Parties:

June 8, 2023

JMB/jm

c: Clerk OAL-T