



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

**FINAL DECISION**

**GRANTING EMERGENT RELIEF**

OAL DKT. NO. EDS 01321-23

AGENCY DKT. NO. 2023-35442

**K.M. ON BEHALF OF V.M.,**

Petitioner,

v.

**EGG HARBOR CITY**

**BOARD OF EDUCATION,**

Respondent.

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**Jeff Cox**, Parent Advocate, for petitioner pursuant to N.J.A.C. 1:1-5.4(a)(7)

**Ronald W. Shali**, Esq., for respondent

Record Closed: February 15, 2023

Decided: February 15, 2023

BEFORE **SARAH G. CROWLEY**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, K.M., on behalf of her daughter, V.M., filed a request for emergent relief seeking an order directing the respondent Egg Harbor City Board of Education (District or respondent), to place the petitioner back in school with appropriate supports consistent with her last agreed upon Individual Education Plan (IEP). There is a

pending due process complaint addressing the services that the petitioner was not receiving, and the pending out-of-district placement issues.

### **PROCEDURAL HISTORY**

On or about February 9, 2023, petitioner filed a request for emergent relief and a due process petition with the New Jersey Department of Education, Office of Special Education (OSE). The OSE transmitted the emergent request to the Office of Administrative Law (OAL), for hearing as an emergent contested matter. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-23. Oral argument on the emergent request was heard on February 15, 2023, via Zoom remote video platform and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

The record before me consists of the two-page Office of Special Education Request for Emergent Relief. The undersigned received no other papers in support of the application or in opposition to the request for relief. Based on the documents and the representations from counsel on the record before me today, I **FIND** the following as **FACT**:

1. V.M. is currently nine years old, and in the fourth grade in the Egg Harbor City School District.
2. V.M. has been deemed eligible for Special Education Services and the last agreed upon IEP places her in district with supports.
3. V.M. was escorted out of school on January 6, 2023, and has received no home instruction since then. The reasons for this action are unclear and there was no procedural due process provided in connection with the unilateral decision by the District to remove the student from school.

4. V.M. has not received any home instruction and an out-of-district placement has not been agreed upon by the parties. The only instruction that was offered was after 3:00 pm when she has other therapeutic and behavior services provided.
5. A due process petition had been filed relating to the need for additional services in district or to explore out-of-district placement.

During the Zoom argument on the record, the parties agreed through their representatives that the child would return to school consistent with the last agreed upon IEP which was “stay put” in this case. The parties also agreed that they would continue to explore out-of-district placements and address additional supports in the pending due process proceeding. The district also agreed that any truancy action would be ceased consistent with the return of V.M. to school.

### **LEGAL ANALYSIS**

In special education matters, emergent relief shall only be requested for the following issues:

- 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.

[N.J.A.C. 6A:14-2.7(r)(1).]

Here, the petitioner sought emergent relief due to the break in services for V.P. and to seek a return of V.M. to school consistent with last agreed upon IEP. Accordingly, I **CONCLUDE** that the petitioner has met the requirements for emergent

relief consistent with the provisions of N.J.A.C. 6A:14-2.7(r)(1) and under Crowe v. De Gioia, 90 N.J. 126, 132–35 (1982). The specifics of these requirements were not argued, nor is a detailed analysis provided by the undersigned, as the parties agreed to immediately place the child back in district, consistent with the last agreed upon IEP. I make no determination as to a “prevailing party,” as the District was in good faith trying to work with the family who initially requested an out-of-district placement.


**ORDER**

I hereby **ORDER** that the petitioner’s request for emergent relief seeking an order directing the District to place the child back in school in the District is **GRANTED**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parent, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C. § 1415(f)(1)(B)(i). 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 Policy and Dispute Resolution.

February 15, 2023 \_\_\_\_\_

DATE

  
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SARAH G. CROWLEY, ALJ

Date Received at Agency

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Date Mailed to Parties:

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SGC/nn