



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 01710-23

AGY REF NO. 2023-35518

**JACKSON TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

A.C. AND C.R. ON BEHALF OF S.C.,

Respondents.

Andrew W. Li, Esq. and Curtis D'Costa, Esq., for petitioner (Comegno Law
Group, attorneys)

A.C. and C.R., respondents, pro se

Record Closed: March 7, 2023

Decided: March 8, 2023

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners filed a due process petition and motion for emergent relief with the Office of Special Education (OSE) in the New Jersey Department of Education (DOE).

The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on March 1, 2023.

The motion for emergent relief seeks an order that would place the student with a disability in an interim alternative placement for not more than forty-five calendar days because it is extremely dangerous for the student to be in his current placement, as the student poses a danger to himself. The Board and the parents did not agree to an appropriate placement therefore the request for emergent relief was heard on March 7, 2023. A.C. who is the father appeared at the hearing but C.R. who is the mother of S.C. did not appear.

FACTUAL BACKGROUND

Petitioner

A.C. is the father and C.R. is the mother of S.C. who is a three-year-old preschool student (D.O.B. 12/05/2019) who receives special education and related services under the classification of "Preschool Child with a Disability." This is articulated in the February 21, 2023, IEP attached to the application and incorporated as Exhibit "1." Petitioner argues that S.C. demonstrates frequent self-injurious behaviors (SIB) at school that place S.C. at extreme risk of permanent, irreversible brain damage. From February 1 to February 16, 2023, alone, S.C. demonstrated nearly 1,000 documented instances of SIB at school. Specifically, S.C. forcefully and unpredictably batters his own head against furniture, the ground, and walls. This behavior is laid out in the aggression data summary attached to the petition as Exhibit "2." During this two-week period, S.C. injured several staff members who were attempting to safely intervene in S.C.'s SIB, including a paraprofessional, S.C.'s case manager, and S.C.'s teacher. No fewer than three staff members have sustained concussions requiring urgent medical care. That information is set forth in the staff injury reports attached hereto and incorporated herein as Exhibit "3."

On February 21, 2023, the District's Child Study Team ("CST") and S.C.'s parents convened an emergency IEP meeting to propose that S.C. be placed on home

instruction pending an out-of-district placement to address S.C.'s needs. Further, the CST recommended that S.C. receive immediate care at an in-patient medical facility. At the meeting, the parents did not oppose the District's proposed course of action. See Exhibit "1." However, on the morning of February 24, 2023, the parents attempted to drop off S.C. at school. District officials reiterated to the parents that it was too dangerous for S.C. to attend school in person at this time. The same Friday afternoon, C.R. called District officials stating that she plans on bringing S.C. to school next week and that she and S.C.'s father do not agree to home instruction pending an out-of-district placement. Phone call documentation was attached to the petition as Exhibit "4."

The following Monday, February 27, 2023, C.R. again tried to bring S.C. to school and reiterated her disagreement with the District regarding whether S.C. should receive home instruction in an interim alternative educational setting. C.R. sent a letter that was attached to the petition as Exhibit "5."

To ensure that S.C. receives the appropriate care and an appropriate placement, the District has sought parents' consent to exchange S.C.'s student records and protected health information ("PHI") with agencies and individuals. However, the parents have not provided their consent. The PHI forms are petitioner's Exhibit "6."

Respondents

Respondent, A.C. claims that S.C. received a neurological exam but was unaware if they could "fix the problem" of hitting. "The district doesn't even want him to go to school to have a regular education." "We don't believe he can sit in front of a computer." S.C. doesn't believe that home education is appropriate. "They did all these evaluations and determined that he can sit in a classroom." However, A.C. agreed to sign the forms for release and talk to Dr. Taylor, Director of Special Services and Ms. Stano, the BCBA.

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioner is entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7(r)1:

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate education settings;
- iii. Issues concerning placement pending outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

As the present matter concerns the issues of a break in services, discipline and placement pending the outcome of due process proceedings, petitioner is certainly entitled to seek emergent relief.

The New Jersey Supreme Court has set forth a four-prong test for determining whether an applicant is entitled to emergent relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1).

The four factors ("the Factors"), include:

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 moving party bears the burden of proving each of the Crowe elements “clearly and convincingly.” Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

A review of the four factors is in order.

Factor One. The petitioner will suffer irreparable harm if the requested relief is not granted. Staff are also at risk. S.C. is also at risk, as the child has exhibited self-injurious behavior. The continued behaviors need to be addressed, and an IEP developed to address them. Petitioner is required to maintain the safety of its students and staff, and to ensure an atmosphere conducive to learning for its students. S.C.’s continued attendance in school will greatly diminish petitioner’s ability to provide the same.

Factor Two. The legal right underlying petitioner’s claim is settled. Petitioner is responsible for maintaining a safe school for its students and staff. N.J.A.C. 6A:14-2.8(f) authorizes the removal of a student when the student caused a serious bodily injury under 20 U.S.C. §1415(k). N.J.S.A. 18A:37-13 states in pertinent part “. . . a safe and civil environment in school is necessary for students to learn and achieve high academic standards; harassment, intimidation or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student’s ability to learn and a school’s ability to educate its students in a safe environment . . .”

Factor Three. Petitioner has a likelihood of prevailing on the merits of the underlying claim. Petitioner must address S.C.’s behavior and his disability in developing an appropriate IEP. The only avenue available is to evaluate S.C. and determine an appropriate placement. In this regard, petitioner is likely to prevail on the merits.

Factor Four. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondents will suffer if the requested relief will not be granted. Here, both the petitioner and respondent will suffer irreparable harm if the requested relief is not granted because, if granted, S.C. will continue to receive an education via home instruction pending evaluation. This is the least restrictive environment. He needs to have evaluations done and a proper placement made according to his needs. The petitioner, if not granted, will be unable to ensure the safety of its students and staff, and the ability of its students, particularly the classmates of S.C., from receiving an appropriate education in a safe and civil environment.

N.J.A.C. § 6A:14-2.7(n) provides: “To remove a student with a disability when district board of education personnel maintain that it is dangerous for the student to be in the current placement and the parent and district board of education cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days [. . .]” The OAL has previously granted emergent relief in similar circumstances. See Gloucester City Bd. of Educ., OAL DKT. NO. EDS 09165-15 (2015), Wayne Twp. Bd. of Educ. v. G.G. and S.W. ex.rel. G.G., OAL DKT. NO. EDS 05519-17 (2017), and Washington Twp. Bd. of Educ. v. H.M. ex.rel., OAL DKT NO. EDS 08328-19 (2019).

Based upon the foregoing, **I CONCLUDE** that petitioner’s request for emergent relief be **GRANTED**.

ORDER

It is hereby **ORDERED** that petitioner’s request for emergent relief is **GRANTED**. **IT IS FURTHER ORDERED** that S.C. be placed in an appropriate interim alternative education setting (IAES) of home instruction for forty-five calendar days because S.C.’s current placement is substantially likely to result in injury to S.C. or others. **IT IS FURTHER ORDERED** that the parents are compelled to enable the District to obtain,

release, and/or exchange S.C.'s student records and protected health information ("PHI") with the agencies or individuals named on the forms in Exhibit "6."

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The parties will be notified of the scheduled hearing dates. 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.

March 8, 2023

Date



DEAN J. BUONO, ALJ

Date Received at Agency

Date Mailed to Parties:

DJB/cb

APPENDIX

List of Moving Papers and Exhibits

For petitioner

Due Process Petition

Brief in Support of Application for Emergent Relief

Certification of Dr. Teresa Herrero-Taylor

Exhibits 1 through 6

For respondents

None