



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

**FINAL DECISION**

**DENYING EMERGENT RELIEF**

OAL DKT. NO. EDS 01678-25

AGENCY DKT. NO. 2025-38352

**M.F. AND M.F. ON BEHALF OF C.F.,**

Petitioners,

v.

**WEST ORANGE TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

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**M.F. and M.F.**, petitioners, appearing pro se

**Jared S. Schure**, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: March 26, 2025

Decided April 2, 2025

BEFORE **ANDREW M. BARON**, ALJ:

**STATEMENT OF THE CASE**

Petitioners, on behalf of their minor child, M.F., seek an Order Granting Emergent Relief, pursuant to N.J.A.C. 1:6A-12.1(a), N.J.A.C. 6A:14-2.7(l) and 20 U.S.C. § 1415(k)(2) seeking an alternate out-of-district placement of their choosing.

The district contends among other things that petitioners have refused to sign waivers allowing the sending of this student's records to several known schools that may be appropriate for the student's multiple challenges.

### **PROCEDURAL HISTORY**

This matter was previously filed and assigned to me with hearing dates presently scheduled for May 12, 13 and 25, 2025, the first two of which are subject to a Federal District court case in which Mr. Schure is attorney of record. On or about March 18, 2025, petitioners directly filed an application for emergent relief seeking among other things an interim alternate placement, since the prior agreed upon placement resulted in their child's termination from the program. Oral argument was held on March 26, 2025 following which petitioners' were told verbally that their emergent application was being denied but the written decision would be delayed due to an ongoing weeklong EDS hearing

### **LEGAL ANALYSIS, CONCLUSIONS AND ORDER**

N.J.A.C. 1:6A-12.1(a) provides that the affected parent 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.

Emergent relief shall only be requested for specific issues, namely i) issues involving a break in the delivery of services; ii) issues involving disciplinary action, including alternate educational settings; and iii) issues concerning placement pending the outcome of due process proceedings.

Here, petitioners contend they are entitled to emergent relief seeking an immediate placement in an appropriate severe behavior program.

They further contend that their son, C.F. has been without appropriate educational services since November 2024 and without related services since July 2024 resulting in

regression and worsening self-injury that threatens his safety and developmental progress.

Yet, by their own admission during argument, they voluntarily withdrew C.F. from a previously agreed upon placement due to their concerns about proper staffing that could meet C.F.'s needs, and when presented with a waiver to send out his records to additional schools to find an alternate placement, they refused because they were of the belief that those alternate schools would not be appropriate for C.F.

While that may well be the case, **I CONCLUDE** school officials and their counsel that seem to be making a good faith effort at least for now to find an alternate placement are prevented from carrying out their duties without the necessary waiver.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6. The petitioners bear the burden of proving:

1. that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted;
2. the existence of a settled legal right underlying the petitioner's claim;
3. that the party seeking emergent relief 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 party seeking emergent relief will suffer greater harm than the respondent.

[Crowe, 90 N.J. at 132-34.]

The petitioner must establish all the above requirements in order to warrant relief in their favor and must prove each of these Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008); D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J. Agen LEXIS 814, 7 (OAL Dkt. No. EDS 10816-17, October 25, 2017).

The petitioners here also contend that some form of compensatory education is also appropriate, since C.F. has missed so much time without appropriate education and services.

That request is more appropriate for the full due process hearing after testimony is taken from all of the parties involved, but in a limited hearing like this, the request is premature,

Despite my concern about C.F.'s current situation, I am left with the legal obligation to determine whether or not petitioner on behalf of C.F. is entitled to emergent relief under the four prongs of Crowe. **I CONCLUDE** that petitioner is unable to meet all four criteria and on that basis, **I FURTHER CONCLUDE** while C.F. is still entitled to FAPE, I cannot **CONCLUDE** that a forced placement, even on a short term basis, is in anyone's best interests, especially C.F. and that the most prudent course of action at the present time, is a consolidated and expedited effort by both sides to place him in another program as long as the parents are willing to sign the necessary waivers even if they don't think certain schools can meet his needs.

With the unilateral withdrawal and removal from the previously agreed upon program, petitioners are unable to meet all of the four prongs of Crowe. As to the second prong, petitioner may also demonstrate during the full hearing on the merits that a settled area of law may have been violated, under FAPE, IDEA and "stay put." Unlike in other cases, we do not have a district that is simply taking away a service or modifying a service which is contrary to a student's IEP. Here, the parents felt, for the child's safety, that the agreed upon placement could not handle their son's needs, and so they removed him. I need to learn more about this decision during the course of a plenary hearing.

Therefore, as to prong three of Crowe, **I AM UNABLE TO CONCLUDE** is the likelihood of success on the merits in petitioner's favor, given the allegations of multiple incidents of injuries incurred. With regard to prong four of Crowe, whether the equities balance in favor of petitioner over that of West Orange, **I AM ALSO UNABLE TO REACH THIS CONCLUSION**, in C.F.'s favor as well. at least until testimony can be taken during a full plenary hearing.

Though FAPE remains a paramount right belonging to petitioner and C.F., **I AM UNABLE TO CONCLUDE AT THIS TIME** that petitioner is able to meet all four prongs of Crowe, and I am therefore obligated to deny petitioner's application for emergent relief.

**ORDER**

Accordingly, I **ORDER** that the petitioner's application for emergent relief is **DENIED**. Once the parents sign the necessary waivers, West Orange is hereby **ORDERED** to **immediately** continue its search, on behalf of C.F. on an expedited basis for a more appropriate and suitable day or residential program where C.F. can receive the FAPE education he is entitled together with the appropriate safety measures. Once such a program is identified, the parties shall meet and agree to a new IEP prior to the underlying due process petition is adjudicated.

This order on application for emergency relief shall remain in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. The in-person hearing dates have been scheduled for May 12, 13 and 21, 2025 at 9:30 AM.

April 2, 2025

DATE

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**ANDREW M. BARON, ALJ**

Date Received at Agency:

April 2, 2025

Date E-Mailed to Parties:

April 2, 2025

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