



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

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 00773-25

AGENCY DKT. NO. 2025-38429

**K.P. ON BEHALF OF A.P.,**

Petitioner,

v.

**SCHOOL DISTRICT OF THE CHATHAMS**

**BOARD OF EDUCATION,**

Respondents.

---

**K.P., on behalf of A.P.,** petitioner, pro se

**Frances L. Febres, Esq.,** for respondent (Cleary, Giacobbe, Alfieri, Jacobs,  
L.L.C., attorneys)

Record Closed: April 29, 2025

Decided: April 30, 2025

BEFORE **MATTHEW G. MILLER, ALJ:**

**STATEMENT OF THE CASE**

Petitioner K.P., on behalf of minor child, A.P. filed a pro se petition for due process in this matter on or about September 27, 2024, seeking five separate types of relief. The specifics of the petition are detailed below.

## **PROCEDURAL HISTORY**

The petition was received by the Office of Special Education (OSE) on or about December 9, 2024 as one for emergent relief. However, since the petitioner did not seek a temporary order, it was transformed into a regular due process petition. After an unsuccessful mediation proceeding on January 8, 2025, it was transmitted to the Office of Administrative Law (OAL), where it was filed on January 13, 2025 as a contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1.

A settlement conference was held on January 17, 2025 with the Hon. Evelyn J. Marose, ALJ. The conference was unsuccessful, and the case was subsequently assigned to the undersigned for a due process hearing. Following an initial conference on February 3, 2025, the matter was rescheduled for February 10, 2025. During that proceeding, it was agreed that this matter was potentially ripe for a Motion for Summary Decision, a briefing schedule was set and the hearing date was adjourned until April 16, 2025.

Respondent's Motion for Summary Decision was filed on February 28, 2025. Originally, petitioner's opposition to the Motion was received on March 17, 2025. However, the documents that were received were deficient and a barely acceptable version of same was finally supplied on April 11, 2025. Respondent supplied a Reply Brief on April 17, 2025.

Please note that there were two other due process petitions involving A.P. in the OAL for which a Final Decision was just rendered on March 20, 2025. This issue will be examined in detail below.

Further, this matter has taken on a life of its own, including the filing of an emergent petition by respondent on March 27, 2025 to remove A.P. to an Alternate Interim Educational Setting ("AIES"). That hearing, which was the subject of a pre-hearing conference on April 2, 2025, was then scheduled for April 11, 2025. At that time, given it was agreed between the parties that an IEP meeting would occur during the week of April 14, 2025. This would facilitate A.P.'s return to school which the District had agreed would

take place by no later than April 25, 2025. However, while an IEP meeting involving A.P. and his father M.P. (with whom he resides) did occur on April 21, K.P. refused to attend and further failed to attend another scheduled meeting the following day.

### **THIS PROCEEDING**

The respondent has filed for emergent relief “to place A.P. on home instruction pending an out-of-district placement”. More specifically, it is seeking an order to:

1. Send records and applications to therapeutic out-of-district programs that will also address A.P.’s autism;
2. Place A.P. on home instruction pending his placement in an appropriate out of district placement pursuant to N.J.A.C. 6A:14-2.7(r)(ii) and (iii), and;
3. Place A.P. in the out-of-district placement once accepted into a program.

### **CERTIFICATIONS**

In support of the petition, Chatham supplied three Certifications from staff members.

#### **Dr. Emily Sortino**

Dr. Sortino is the District Assistant Superintendent and oversees the Special Education Department. She started her narrative of the situation beginning when A.P. reported to his 1:1 paraprofessional on September 24, 2024 that he had assaulted K.P. two days earlier. He immediately met with two mental health professionals who determined that A.P. was not a risk to himself or others and returned to class. However, during math class, he became distraught, screamed at his teacher and verbally disclosed that he was struggling with his emotions.

As a result of this outburst, Dr. Sortino mandated a psychiatric clearance and had K.P. retrieve A.P. from school. A September 25, 2024 evaluation determined that A.P. was not cleared to return to school and recommended that he be evaluated for a Partial

Care/Intensive Outpatient Program. This is consistent with District Policy 5141.6 (Suicide Prevention). He was placed on home instruction and remained there through March 7, 2025.

On January 13, 2025, another psychiatric clearance exam resulted in no change in status. On January 17, 2025, Dr. Sherie Novotny, A.P.'s psychologist, authored a letter to the District detailing his behavior and her recommendations. She noted that A.P. was continuing to struggle with behavior and emotion regulation and recommended an out-of-district therapeutic placement. Given his diagnosis of autism, partial programs would not be of benefit to him.

Nonetheless, on March 6, 2025, Dr. Novotny cleared A.P. to return to school with a transitional plan, including a shortened school day and support from the counseling office. Following separate meetings with M.P. and A.P. on March 6<sup>th</sup>, a re-entry meeting was held. However, on March 11, 2025, another incident occurred, which is described as follows:

Despite implementing the recommendation for a shortened day, and providing staff resources for A.P., on March 11, 2025, A.P. was redirected by the teacher from a Dungeons and Dragons website to his history work. A.P. became angry at the redirection, stood up, yelled at the teacher, and attempted to flip the table. A.P. then picked up his Chromebook as if he was going to throw it but did not after the teacher looked at him. The teacher was injured in the process of escaping from behind her desk in order to protect herself and the other students. A.P. then ran into the hallway and into the bathroom, with his paraprofessional following him. A.P. screamed three (3) times; a science teacher and a school security officer reported to the bathroom due to concern. When he returned to the classroom and saw Jessica Cohen, the BCBA who oversees his behavioral intervention plan, he bit the top of his hand.

R-2 at ¶ 16.

While no discipline was imposed, A.P. was once again placed on home instruction “due to concern over his ability to safely participate in the in-district program, as there were concerns over harm that could occur to himself and/or others.”

Dr. Sortino went on to note that the District simply does not have an educational program that is appropriate for A.P., given his unique combination of average academic ability, but also his autism and inability to regulate his behavior in any setting, regardless of the presence of his 1:1 aide.

Dr. Sortino further noted the video record of the April 16, 2025 IEP meeting with A.P. and M.P., where A.P. behaviors were “concerning” and included “screaming at the top of his lungs, aggressively speaking with staff members, and punching the computer screen”.

During the IEP meeting on April 16, 2025, I emphasized to A.P. that the District’s priority is to help A.P. do the best he can, and there might be a different school/program that might help him work through some emotions that he is feeling. After I expressed this, A.P. muted his microphone and screamed uncontrollably, which could be heard through A.P.’s father’s computer. When he unmuted himself, he screamed “I’m fine” into the camera. I continued and stated that I have a list of schools to which I want to send his records. I told A.P. that I understand that he is having really big feelings. A.P. then interrupted me and said, “No you don’t. Have you ever tried to kill yourself? Have you? Answer me.” “If the answer is no, you can never understand.” I explained that A.P. is not ready to return to Chatham High School right now. I also explained that he will be participating in the intake meetings with the out of district schools and he will be able to provide input in his placement. After the meeting had ended, A.P. punched the computer screen and screamed uncontrollably.

R-2 at ¶ 19.

Finally, she noted that while M.P. has provided consent to send records to various out-of-district placements, K.P. has refused to.

**Melissa Quiceno**

Ms. Quiceno has been the Learning Disabilities Teacher Consultant at Chatham High School since 2015 and is a member of the Child Study Team and is A.P.'s case manager.

She noted that A.P. had transferred to Chatham from the Manville School District on March 1, 2022 when he was in 7<sup>th</sup> grade. She traced his issues back to a November 23, 2023 email in which he threatened self-harm and which required a psychiatric clearance for him to return to school. He was cleared to return to school on December 1. Then, on February 15, 2024, the District's internet screener flagged searches performed by A.P. involving suicidal thoughts. He was cleared to return to school on February 27, 2024 followed a re-entry meeting the previous day.

On May 20, 2024, A.P. threatened to stab a teacher with a pencil and he was again referred out for psychiatric clearance. He was cleared to return to school on June 11, 2024, but remained in a partial hospitalization program/intensive outpatient level of care. He was transitioned back into the ESY program (thrice weekly from June 24 through July 8 and then full-time).

The next incident occurred on July 19, 2024 in which he threatened violence to himself and others and he was again referred for psychiatric clearance. He was cleared to return on July 26, 2024.

On January 23, 2025, an IEP meeting was held to discuss Dr. Novotny's recommendation for out-of-district placement, but they were unable to proceed with that recommendation due to the pending due process complaints. Another IEP/eligibility meeting was held on February 19, 2025 in which the same recommendations were made, but, once again due to "stay put", no changes could be made.

Ms. Quiceno then related, as did Dr. Sortino, the March 11, 2025 incident. An MDR meeting was held on March 21, 2025. It was determined that the incident was not a manifestation of A.P.'s disability since his Behavior Intervention Plan pertains to inappropriate vocalizations and the use of functional communications and not the outburst which occurred. More specifically;

Based on a review of that information, it was determined that: (i) A.P.'s March 11, 2025 conduct was not caused by A.P.'s disability; (ii) the conduct did not have a direct or substantial relationship to A.P.'s disability of Autism or ADHD, which are the disabilities that qualify him for special education and which his IEP is designed to address based upon the evaluation reports and school data that the district possesses, and (iii) the conduct was not the direct result of the school's failure to implement A.P.'s IEP.

R-3 at ¶28.

Ms. Quiceno also noted that the District had requested a psychiatric evaluation on December 6, 2024, but the parents had not consented to same and that A.P.'s IEP cannot change due to K.P.'s refusal to waive "stay put".

She then reiterated Dr. Sortino's conclusions regarding Chatham's inability to offer an appropriate educational program for A.P. and the concerning behavior during the IEP meeting.

Finally, she noted that A.P. is residing full-time with M.P. and that K.P. does not have "first-hand, daily knowledge regarding A.P.'s status and needs."

#### **Dr. Jacqueline Calle-Andrade**

Dr. Calle-Andrade has been the school psychologist at Chatham High School since 2005. Upon entry to the District in March, 2022, two suicide risk assessments were conducted. However, A.P.'s behavior improved to end the 2021-22 school year and the 2022-23 was unremarkable. However, following marital strife in October 2023, A.P.'s behavior began to deteriorate and he began demonstrating behavior indicative of mental health concerns.

She recounted the disturbing November, 2023 email to staff members in which he threatened self-harm and he was sent for psychiatric clearance. Much of this Certification mirrors that of Ms. Quiceno.

The Certification then skipped ahead until March 7, 2025, when a re-entry meeting was held to allow A.P. to return to school on March 10. He was to have a shortened school day and multiple supports, including a 1-1 paraprofessional. On March 11, having been redirected from a Dungeons & Dragons website to begin working on a history assignment, A.P. became angry, yelled at the teacher, attempted to flip his table and threatened to (but did not) throw his Chromebook at the teacher. In attempting to avoid the anticipated toss, the teacher, who was recovering from surgery, was seriously injured.

A.P. then ran into the hallway, into the bathroom and screamed. He was confronted by his paraprofessional and the school security officer. He returned to his classroom, saw his BCBA (Jessica Cohen) and bit his hand.

Dr. Calle-Andrade certified that “(r)egardless of the manifestation determination, A.P.’s placement within the District remains inappropriate and his continued presence in the in-district program places his and others’ physical and emotional well-being at risk.”

She continued that an out-of-district placement in an educationally appropriate setting is the only way forward with A.P. (R-2.)

### **The Video**

Having lived with this case on a practically daily basis since the initial conference on February 3, 2025, I assumed that I had received an accurate portrayal of A.P. and his family dynamic. However, nothing really prepared me for the ZOOM recording of the April 16, 2025 IEP meeting which was attended by A.P., his father M.P., Dr. Sortino, Ms. Quiceno, Ms. Cohen, Dr. Calle-Andrade and others. The old adage is that “a picture is worth a thousand words.” In this case, it is a video.

The IEP meeting is fifteen minutes long and is profoundly disturbing. It paints a portrait of a sixteen-year-old young man who is unquestionably intelligent, but who also demonstrates unmissable signs of his autism spectrum disorder, lacks any evidence of emotional maturity, but who also and most importantly, is explosively uncontrollable.



As has been mentioned in the records, his behavior towards the staff is totally inappropriate and he shows a lack of any true insight into his behavior. While there were multiple occasions on the video that demonstrated these issues, there were three events in particular which were most illustrative.

First, after turning his camera and microphone off and screaming at the top of his lungs at the suggestion of an out-of-district placement, Dr. Sortino empathized with him that she knew that he was very upset. His yelled response, while pointing his finger, “Answer me, have you ever tried to kill yourself? If the answer is no, then you can never understand.” The second was near the very end of the video, when he screamed “Get me back” and, finally, at the very end when he literally screamed at the top of his lungs and punched his computer screen.

The only thing potentially more disturbing than the video is profound lack of insight demonstrated by K.P. when asked about it.

### **THE CURRENT DUE PROCESS PETITION**

#### **K.P. o/b/o A.P. v. The School District of the Chathams (EDS 00773-2025)** **(December 9, 2024)**

The current petition provided the following “description of the nature of the problem and any facts related to the problem”;

- **MDR Challenge:** I am requesting that the MDR findings be amended to reflect a comprehensive review of A.P.’s disabilities and behaviors.
- **IEE and Neuropsychological Evaluation:** An independent evaluation, including a neuropsychological component, to address the inadequacies in the current IEP.
- **Eligibility Determination/IEP request denial:** Reinstatement of A.P. to appropriate placement that supports his academic, behavioral, and disability related needs and this can only be achieved by evaluating all aspects of suspected disability. (A.P.) is very intelligent and works very hard to keep up with his grades and to achieve his academic goals in the LRE

that provides FAPE, without discrimination. Eligibility IEP meeting must take place in a timely manner. The evaluations were completed October 9, 2024.

- **Compensatory Education:** Services to make up for gaps in A.P.'s education due to the district's failure to implement the IEP.
- **Facilitated IEP Meeting:** A facilitated IEP meeting with Dr. Amanda Philips to ensure a program that fully addresses A.P.'s needs.

In the section, "Provide a description of how this problem could be resolved", K.P. wrote;

**1. Amendment to MDR Findings**

A thorough review of A.P.'s cumulative behavioral patterns and education needs should be conducted to ensure that the MDR accurately reflects the impact of his disabilities and behavior. This review should consider A.P.'s history, known triggers, and how his disabilities influence his behavior.

**2. Independent Educational Evaluation (IEE)**

I am requesting an IEE to include a neuropsychological component. This evaluation will provide critical recommendations for A.P.'s IEP, Behavior Intervention Plan (BIP), and appropriate educational placement.

**3. Eligibility Determination/IEP request denial**

IDEA requires schools to evaluate and determine a child's eligibility for special education services when appropriate. Filing for due process does not absolve the district of this obligation. Eligibility decisions are distinct from IEP updates and do not inherently conflict with "stay put".

The district must ensure that A.P.'s IEP is fully implemented and any gaps in services for the duration A.P. has been eligible for Special Education, the School District of the Chathams are addressed.

**4. Reinstatement of Appropriate Educations Placement**

I request that A.P. be reinstated to his school-based placement that aligns with his IEP and provides necessary autism-specific interventions and supports, including Applied Behavior Analysis (ABA) therapy if necessary during instruction.

**5. Compensatory Education**

A.P. should receive compensatory education to address any gaps in his education caused by the inappropriate removal from school and the failure to implement his IEP effectively.

**6. Facilitate IEP Meeting**

I respectfully request that the Court order a facilitated IEP meeting, including the participation of autism expert Dr. Amanda Philips from the New Jersey Department of Education's Office of Special Education. Her expertise will be crucial in developing a program that fully meets A.P.'s needs and adheres to IDEA's requirements.

**THE PRIOR DUE PROCESS PETITIONS**

**K.P. o/b/o A.P. v. The School District of the Chathams (EDS 13507-2024)**  
**The School District of the Chathams v. K.P. o/b/o A.P. (EDS 13508-2024)**  
**(September 27, 2024)**

The petition filed by K.P. on July 22, 2024<sup>1</sup> provided the following "description of the nature of the problem and any facts related to the problem":

I am requesting mediation regarding a change in placement, autism specific evaluations for my son, and a stay of the IEP to ensure his behavioral needs are addressed effectively.

As to how the problem could be resolved, A.P. wrote:

FBA and evaluations should be conducted to address (A.P.'s) behaviors comprehensively. They may consider conducting an FBA at the PHP. FBA should be completed in a timely manner as the district has seen behaviors within a long period.

---

<sup>1</sup> The petition was originally filed as a request for mediation on June 6, 2024.

Sensory factors/autism and add focus in seeking behaviors that are triggering and frustrating to A.P. should be addressed. He should not be punished for behaviors triggered by sensory overload, communication issues due to autism, or hearing sensitivities.

Stay the IEP to the version prior to hospitalization program when (A.P.) was no longer allowed in school. In the meanwhile, conduct evaluations to support behavioral health specific to autism, support Sensory and Occupational Therapy OT, Speech Therapy ST, Physical Therapy PT needs.

(A.P.) is a very smart and sweet individual. His unique needs impact his ability to learn inclusively at school. He needs the appropriate support and accommodations as a child with autism in high school.

The District filed a counter-petition on July 31, 2024 requesting the following;

During the mediation held on July 22, 2024, petitioner requested an independent neuropsychological evaluation. The District is denying this request as A.P. has just underwent a re-evaluation and is awaiting petitioner's consent to proceed with the OT and PT evaluations. The reports from those evaluations have yet to be completed and provided to the parent. As such, the petitioner has not had the opportunity to review those reports and assess whether they lack pertinent information or to even question the results. No basis for the request was provided by the petitioner other than because she thinks it will result in additional information about A.P. Yet, when asked for the specific information she is seeking from the neuropsychological evaluation, she could not identify anything.

The District finds that its re-evaluation assessed A.P. in areas that would be assessed through a neuropsychological evaluation. The District's re-evaluation was conducted by qualified, experienced child study team members who are experts in their respective fields. Further, the District's re-evaluation included reliable, valid and normed assessments. In addition to the CST's evaluation, A.P. has been treated by clinicians at the partial hospitalization program who can opine as to his mental health status, clarify of thought and functioning. Thus, a neuropsychological evaluation is not needed to assess A.P. in areas of his disability or suspected disability.

Based upon the foregoing, the School District of the Chathams Board of Education respectfully requests a finding

that petitioner is not entitled to an independent educational evaluation at public expense and further finding that the Board's re-evaluation and proposed evaluations are appropriate and for such other and further relief as the Administrative Law Judge deems just and proper.

On March 20, 2025, the Hon. Thomas R. Betancourt, A.L.J. issued a Final Decision in these matters. (P-5.) In the decision, he determined:

- a. A.P.'s current IEP is from March 4, 2024 (as amended on May 31, 2024).
- b. At all times, the District has complied with A.P.'s IEP.
- c. The District could not comply with A.P.'s IEP while he was hospitalized.
- d. A.P.'s IEP "was not changed and remained in place".
- e. An FBA evaluation was conducted on June 14, 2024 and multiple other evaluations had also been performed; additional evaluations "are not warranted".
- f. The current IEP is the "stay put" placement for A.P.

### **INITIAL FINDINGS OF UNDISPUTED FACT**

The following **FACTS** of the case are not in dispute:

1. K.P. is mother of A.P.
2. A.P. was born on December 9, 2008 and is currently a seventeen-year-old 10<sup>th</sup> grader enrolled at Chatham High School in the School District of the Chathams ("Chatham" or "District").
3. K.P. and A.P.'s father M.P. are currently in the process of divorcing and have an active dissolution case in Morris County Superior Court. K.P. is currently *pro se* in that action.
4. A.P. resides full-time with M.P.

3. A.P. is classified as eligible for Special Education and related services under the category “autism”.
4. A.P. was first found eligible for Special Education services on November 1, 2018.
5. A.P. enrolled in the District having transferred from the Manville Public School District on March 1, 2022, while he was in 7<sup>th</sup> grade.
7. An Individualized Education Program (IEP) meeting took place on March 4, 2024 and A.P. was once again found to be eligible for Special Education Services.
8. The March 4, 2024 IEP (as amended on May 31, 2024) is the controlling IEP for A.P.
7. K.P. filed her first due process request on July 22, 2024.
8. The District filed a cross-petition on July 31, 2024.
9. The July 2024 petitions were consolidated by the Hon. Thomas Betancourt by Order dated October 8, 2024.
10. Given the pending due process complaints, A.P.’s status is “stay-put” as an in-district student in Chatham.
11. Despite the “stay-put” status, an eligibility meeting took place at petitioner’s request on February 19, 2025. The parties agree that the result of the meeting is that when stay-put is lifted or waived, A.P. will remain eligible for services under the classification “autism”.
12. On November 29, 2023, A.P. sent an email to his Special Education and biology teacher in which he threatened to harm himself. The teacher forwarded the email to A.P.’s counselor and two school psychologists, one of which was Dr. Jacqueline Calle-Andrade.
13. Dr. Calle-Andrade completed a Suicide Risk Assessment Form that day and determined that A.P. was at risk. She completed a School Clearance Assessment Referral Form and indicated that A.P. required a high-risk evaluation.

14. Petitioner was notified that A.P. would require a psychiatric examination and clearance to return to school. This is in accordance with Board Policy 5141.6, Suicide Prevention.

15. On November 30, 2023, A.P. was cleared to return to school by St. Clare's Behavioral Health.

16. On February 15, 2024, A.P. was flagged through educational software used to monitor student web browsing, etc., concerning searches regarding drug sertraline and why antidepressants cause suicidal thoughts. The student assistant counselor, Heather Flaherty, conducted a Suicide Risk Assessment, and referred A.P. for psychiatric evaluations.

17. A discharge screening was done by Rutgers University Behavioral Health Care on February 16, 2024.

18. On February 26, 2024, staff held a re-entry meeting and completed a Re-Entry Form. A.P. was cleared to return to school on February 27, 2024.

19. On March 4, 2024, an IEP meeting was held to address the two risk assessments, update the Behavioral Intervention Plan (BIP) remove property destruction and add the use of functional communication. The March 4, 2024 IEP did not modify A.P.'s class placement.

20. A.P. threatened to stab a teacher with a pencil on May 20, 2024. Aime Schwartz, the school Psychologist, conducted a suicide risk assessment and determined a risk existed. A.P. was referred to GenPsych Adolescent Program.

21. On the same date GenPsych completed a school clearance evaluation. A.P. was not cleared to return to school. GenPsych recommended that A.P. complete a Full Columbia Suicide Risk Assessment and a General Risk Assessment.

22. At Petitioner's request, the IEP team met to review and assess A.P.'s progress and program on May 31, 2024. Petitioner requested an Autism Specific GenPsych where his IEP can be implemented. Petitioner was advised at the meeting that the District is not affiliated with GenPsych and that the IEP could not be implemented at the hospitalization program.

23. Students enrolled at GenPsych are offered instruction through Silvergate Prep. The IEP is unable to be provided through Silvergate or GenPsych.

24. The March 4, 2024 IEP remains in place. The May 31, 2024 IEP was amended to add updated information on A.P.'s status. The programming in the IEP was not changed. No changes have been made since the May 31, 2024 IEP meeting.

25. A.P. received the following evaluations, which the Child Study Team (CST) originally proposed: educational, psychological, physical therapy, speech and language, occupational therapy which included a sensory profile, along with an FBA.

26. Petitioner requested a neuropsychological evaluation, which was found to be unnecessary as it would be a duplication of evaluation services. An Independent Psychological Evaluation was also deemed a duplication of evaluation services.

27. A.P. was also examined by clinicians at GenPsych.

28. A.P. was cleared to return to school on June 11, 2024. On June 13, 2024 the District completed a Re-entry form.

29. A.P. returned to receive the same programming set forth in the March 4, 2024, which continues to be the IEP for A.P.

30. On September 24, 2024, A.P. was referred for psychiatric clearance after reporting that he had physically assaulted his mother, screamed at his teacher and had searched terms reflecting concerns about his own mental health.

31. A.P. was not disciplined as a result of the events of September 24, 2024.

32. Requiring psychiatric clearance is considered an "informal removal". Since A.P. is a Special Education student, the District is mandated to hold a Manifestation Determination Review ("MDR") meeting. N.J.A.C. 6A:14-28, N.J.A.C. 6A:16-7.2, N.J.A.C. 6A:16-7.10.

33. The MDR concluded that A.P.'s actions were not a manifestation of his disability and while he was not disciplined, he was barred from school pending



psychiatric clearance. That MDR determination was signed by both K.P. and A.P.'s father.

34. This due process petition was filed on December 9, 2024.

35. Under circumstances that remain unclear, A.P. returned to school on January 8, 2025 and was also present on January 9. He was absent on January 10 and left school early on January 13.

36. At or about this time, A.P. apparently expressed suicidal ideation and was walked to the Chatham Police Department by his father and was then hospitalized at Morristown Memorial Hospital. K.P. has very limited information concerning this episode.

37. A.P.'s return to school was again made subject to psychiatric clearance.

38. By letter dated January 16, 2025, A.P.'s psychiatrist opined that he was unable to return to school and recommended that he be placed in an out-of-district educational setting.

39. Despite petitioner's ongoing insistence for "stay-put", an eligibility meeting was held on February 19, 2025. Respondent determined that "if stay put is lifted or if petitioner agrees to waive same", A.P. would remain eligible for benefits under the classification "autism".

40. It was not until March 4, 2025 that A.P. was psychiatrically cleared to return to school by Sherie Novotny, M.D. effective March 10, 2025. She wrote that:

(A.P.) should be provided with a transitional plan that includes a shortened school day and support from the counseling office. He should be allowed to take space in the counselor's office if he starts to become dysregulated.

(R-1E.)

41. A transition meeting was held on Friday, March 7, 2025 and A.P. returned to Chatham High School on March 10, 2025. Unfortunately, before school on March 11, 2025, another incident occurred. Upon being told to close his computer and close a Dungeons & Dragons website, A.P. yelled at the teacher, attempted

to flip over a table and threatened to throw his laptop. During this episode, his teacher opened a surgical scar and moved some post-surgical hardware, causing her pain that was “rather excruciating”. (R-1F.)

42. A.P. then sprinted out of the classroom into a bathroom, screamed and upon returning to the classroom and seeing his BCBA, bit himself on the hand.

43. On March 21, 2025, the District held a Manifest Determination Review which found that this incident was not a manifestation of A.P.’s learning disability. While he was not formally disciplined for the incident, he was placed, once again in an Interim Alternative Educational Setting (“IAES”) (home instruction). (R-2L.)

44. Following the filing of the first Emergent Application, a pre-hearing conference was held on April 11, 2025. During that conference, the District agreed to hold an IEP meeting including M.P., K.P., A.P. and the entire IEP team. It also agreed to provide K.P. with a written agenda of the meeting. K.P. agreed to attend the meeting. It was also conceded by the District that April 25, 2025 was the last possible day that A.P. could return to school in the absence of an agreement that the current IAES should be maintained. In other words, even if the District prevailed on the Emergent Application, it conceded that A.P. would be eligible to return to school by no later than April 25, 2025.

45. The IEP meeting was scheduled to take place on April 16, 2025. However, K.P. refused to attend, arguing that additional evaluations needed to be performed and that the conclusions of the MDRs needed to be amended.

46. However, in the interim, an IEP meeting was held (and is described above), which included the entire CST, save for K.P. At that time, M.P. agreed to sign authorization forms so as to permit the District to send A.P.’s records to out-of-district therapeutic schools.

47. At this point, the ONLY person objecting to A.P.’s out-of-district placement is the non-custodial parent, K.P.

48. In total, A.P. has been present for in-person instruction for a total of eleven school days during the 2024-25 school year. (R-2E.)

### **EMERGENT APPLICATION**

#### **Respondent's Position**

The District argues that it has met the burden of proof for Emergent Relief under the standard enunciated in Crowe v. DeGioia, 90 N.J. 126 (1982).

It argues that given A.P.'s circumstances, the District will suffer irreparable harm if the request for cooperation in an out-of-district placement with an immediate change of placement to home instruction is not accomplished. It further argues that it is well-settled that in situations such as this, the Court had the power to order such a change in placement and that it is likely to prevail on the underlying claim. Finally, it is argued that it is clear that the District will suffer great harm from a denial of the petition than will A.P.

#### **Petitioner's Position**

Unfortunately, K.P.'s opposition papers are very difficult to understand, as she attempts to relitigate the entirety of A.P.'s education since he entered the District in 2022.

Her papers include broad references to Special Education Law, much of which is accurate and most of which is literally irrelevant to the relief sought by the District in this Emergent Relief request.

Ultimately, she argues that stay-put should apply and that despite the District's position that it is incapable of providing FAPE to A.P., her own expressed disdain for how the District has treated him, the opinions of A.P.'s psychiatrist, the District personnel and A.P.'s father that an out-of-district placement is the only appropriate way to end his utterly disastrous 2024-25 school year, A.P. should return to in-classroom attendance at Chatham High School.

Ultimately, she misstates the applicable law, misinterprets the District's position, misstates the facts and fails to note that many (albeit, not all) of the procedural issues she complains of are of her own doing.

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for Emergency Relief. An applicant for Emergency Relief must set forth in their application the specific relief sought and the specific circumstances they contend justify the relief sought. N.J.A.C. 1:6A-12.1(a).

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.

As of the date of the Emergent Application, the District has admitted that it simply cannot provide FAPE to A.P. In essence, it argues that his psychiatric condition, combined with his ASD, leaves it with no academic program that can meet his needs. Even when he has been psychiatrically cleared and has returned to school, he is simply unable to regulate his behavior and I **FIND** as a fact that he is incapable of attending in-person classes at this time. His behavior is uncontrollable and he is clearly a danger to himself and others. His behavior has deteriorated and there are no indications, at all, that it will improve in his current educational setting.

It is clear that K.P.'s stubborn failure to cooperate with the District will cause a break in services, since, given his current condition, he will not be receiving FAPE. Further, to a degree, this issue also concerns A.P.'s placement pending the outcome of the underlying due process proceeding (although that proceeding does not raise issues of his proper placement). Based on the above, I **CONCLUDE** that this matter involves the issue of a break in services, which could require Emergent Relief pursuant to N.J.A.C. 6A:14-2.7(r)1.

Emergent relief may be granted pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), if the judge determines from the proofs that the following conditions have been established:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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.

N.J.S.A. 6A:14-2.7(s). See also, Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

Here, the District bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. First, it must demonstrate irreparable harm will occur if K.P. does not assist in and cooperate with the placement of A.P. in an educational program that is able to provide him with FAPE. Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132-133; Nabel v Bd. of Educ. of Hazlet, 2009 N.J. Agen. LEXIS 1172 (June 24, 2009).

Here, I **FIND** the (in)actions of K.P. will cause A.P. irreparable harm because without her assistance and cooperation, A.P. will not, without question, receive the

educational services that his IEP has found to be necessary for the District to meet its requirements under the IDEA to provide him FAPE. 34 CFR § 300.17. Without K.P.'s cooperation, there is every possibility that A.P. will continue the rinse and repeat cycle of in-person setting, followed by removal. Even with a one-to-one aide, he has been uncontrollable, causing constant disruption to the District and the entire educational process and being a danger to himself and others. There is no other remedy in law or equity, or monetary damages, to compensate either the student or the District.

As noted in Pemberton Township Bd. of Educ. v. C.M. and J.M. obo B.M., 2019 N.J. Agen. LEXIS 200 (April 11, 2019), "(t)he impasse...places the District in the untenable (position) of being prevented from meeting its clear obligations under State and Federal law to provide...FAPE." Id. at \*11. See also, Haddonfield Borough Bd. of Educ. v. S.J.B. obo J.B., 2004 N.J. Agen. LEXIS 645 (May 20, 2004). I therefore **CONCLUDE** that irreparable harm will occur if K.P. is not compelled to cooperate with the District in the determination and implementation of A.P.'s out-of-district placement.

Second, the District must demonstrate that it has a settled legal right to the relief requested. Here, it is the particulars of the District's argument that are very, very important. Regardless of the findings of the MDR (or the broader question of the specifics and legalities of A.P.'s current *de facto* placement on home instruction), right now, the District is arguing that it is incapable of providing A.P. with FAPE and that his presence at Chatham High School not only is counter-productive to his own well-being, but also present a danger to his fellow students and staff members (in addition to himself) to the point where he is literally incapable of attending.

While the MDR found that A.P.'s most recent episode was not a manifestation of his disability (whether K.P. or I find that to be persuasive or not)<sup>2</sup>, he was found to have violated the Chatham High School Code of Conduct. However, this was clearly not a disciplinary removal, but, as was noted in the MDR, was rather due to the District's "extreme concern with A.P.'s ongoing mental health and emotional regulation issues, as it pertains to the clearance from his private psychiatrist to return to school without any

---

<sup>2</sup> There is some very technical reasoning as to why this determination is made. I do not need to pass judgment on this MDR in order to make this ruling.

additional information or recommendations". (R-2L.) His removal was based on psychiatric clearance.

What published case law often does not address and what lawmakers/regulators fail to fully comprehend, is that cases like this are often dynamic. Something may be appropriate one day, but for any multitude of reasons, may not be appropriate the next day. However, as noted in the District's brief, two New Jersey cases address a similar situation, with West Windsor Plainsboro Regional School District Bd. of Educ. v. J.D., 1995 N.J. Agen. LEXIS 226 (Apr. 11, 1995) being the more illustrative. There, the poor behavior of a Special Education student escalated throughout the school year and the District "determined that (his) presence in the school system presents a probability of harm to other students and school staff" and that his current IEP and placement was inappropriate. Id. at \*4. The District requested that he be placed on home instruction and that he "should be placed out-of-district with a strong behavioral modification program". Ibid. The court agreed, ruling that:

The standards for the granting of emergency relief in special education cases are set forth in N.J.A.C. 1:6A-12.1(e) and, consistent with its standards, I CONCLUDE as follows: The BOE has a reasonable probability of ultimately prevailing on the merits. If the relief requested is not granted, there is a substantial probability that serious physical harm will be suffered by one of J.D.'s fellow students, a member of the school staff and/or J.D. If the relief requested is not granted, it is probable that J.D. will continue to disrupt and preclude his own education. The relief requested is narrowly defined to prevent the above- noted harm from occurring and will not cause unreasonable expense and substantial inconvenience. That is to say, I GRANT the BOE's request (motion for) emergent relief.

Id. at 4-5.

The judge then ordered the following:

I ORDER the following: (1) J.D. will continue to receive home instruction and he will make a good faith effort in this regard. (2) The school system (C.S.T.) will seek out-of-district placement of J.D. for the remainder of the 1994-95 school year and, in this regard, J.D.'s records may be forwarded to the above- noted schools and J.D. will cooperate in this regard by submitting to interviews, etc., as may be necessary for

evaluation for such placement. (3) This case will be returned to the Department of Education for a conference pursuant to N.J.A.C. 1:6A-4.2.

Id. at \*5-\*6.

The decision in D.P. and F.P. o/b/o A.P. v. Piscataway Twp. Bd. of Educ., 2003 N.J. Agen. LEXIS 1617 (Mar. 12, 2003) also supports the conclusion that escalating, disruptive misbehavior can warrant a change in placement;

Escalating misconduct may warrant home instruction pending an out-of-district placement for behavioral modification. West Windsor v. J.D., 95 N.J.A.R 2d (EDS) 146. The emergency implementation of a home-schooling plan can provide a satisfactory interim education for a disabled student during the pendency of mediation process. M.F. v. Toms River Regional Board of Education, 96 N.J.A.R 2d (EDS) 67. Home instruction pending out-of-district placement may be an appropriate remedy for a disruptive emotionally disturbed student, Tinton Falls v. K.C., 95 N.J.A.R 2d (EDS) 96. Under these circumstances, I FIND that I cannot order that A.P. be readmitted to Piscataway High School. I FIND that the only relief I am presently able to grant in this matter is to order the school district to continue its compliance with the aforesaid requirements of the IDEA and its implementing regulations by either continuing to provide home instruction or by placing A.P. in an IAEP pending the outcome of the reevaluations and the determination of an appropriate IEP, program and placement.

Id. at \*15 - \*16.

Given the lack of specific case law cited by the K.P. (as opposed to her generalized citations to “stay-put” and IDEA cases), I **FIND** that the District has a settled legal right to petition for a change in placement.

To satisfy the third prong of the Crowe test, the District must prove that it is likely to prevail on the merits of the underlying claim and I **FIND** that it is clear that it will. In reviewing the briefs, this is another area where the law is misstated and/or misunderstood, albeit this time by both parties. This prong concerns with the emergent aspect of the District’s request for K.P. to cooperate with A.P.’s potential out-of-district



placement and not, a. the underlying due process claim, or; b. all of the other disputes between the parties. In other words, this a “case within a case” prong.

As noted, K.P. has expressed a litany of complaints about how A.P. has been treated by the District. And, frankly, some of those complaints may have merit. However, the disjointed and convoluted manner in which she has attempted to express/address those complaints has led to a procedural quagmire which she will have great difficulty extricating herself from. Combined with the fact that A.P.’s custodial parent has been largely a passive observer of this chaos, we are now at a point where it is imperative that something be done to avert an educational disaster.

That being said, I **FIND** that the District has proven that it is likely to prevail on the merits of its claim that A.P.’s IEP must be changed to reflect that only an out-of-district placement can provide him with FAPE. As noted, A.P.’s custodial parent has already agreed to this placement (and has signed the appropriate paperwork to facilitate the change), but A.P.’s psychiatrist, who K.P. described as “outstanding”, has also been recommending for months that he be placed in an out-of-district setting. Obviously, the District has been suggesting this for months as well, and as was explained by counsel, is now compelled to file this Emergent Petition given the January and in particular, the March incidents.

K.P., who I am certain cares for her son and only wants the best for him, engaged in a bout of circular reasoning during oral argument that bordered on the non-sensical and her Opposition Brief is replete with statements such as “any forced removal would not only violate procedural protections, but would also cause direct emotional injury and undermine his educational stability”. K.P. Brief at 15. Yet, even now, with a final opportunity for A.P. to return to in-person instruction, not only did K.P. knowingly undermine that possibility by refusing to attend an IEP meeting, but A.P. literally could not regulate his emotions in any sense of the word during the IEP meeting attended by his father.

Very simply, I **FIND** that the District has demonstrated that due to his regressing psychiatric state and repeated failures to assimilate back to in-person instruction, that it

is, at this time, unable to provide FAPE to A.P. and that the only way that it can be provided is for him to continue on home instruction for a short a period of time as possible until an appropriate out-of-district placement can be found that will address A.P.'s educational and emotional needs. Given the above, I **FIND** that there is little doubt that the District will prevail on this issue.

Finally, for the fourth prong of the Crowe test, the District must demonstrate that a balancing of the equities favors its position. Frankly, a balancing of the equities for all parties favors the District. If the District were not to prevail on its request, the negative consequences for both it and A.P. will far, far outweigh any theoretical positive consequences.

While K.P. alleges that "(g)reater harm clearly falls on A.P. through academic and emotional regression", that position simply ignores the reality of the situation. At the moment, A.P.'s academic and emotional situation cannot get much worse. He is literally incapable of attending in-person instruction and even the most optimistic attempts of his psychiatrist to clear him to return to same were woefully misjudged. I cannot emphasize enough how disturbing that IEP video was. This is a young man in active crisis and while K.P. notes that she, "(t)hankfully...preserved the stay-put protections that kept A.P.'s IEP classification under autism intact", that focus on procedural protections has been an overwhelmingly net negative to the educational and emotional well-being of her son.

While I understand that A.P. wants to return to Chatham High School, if this Emergent Application is not approved, the negative consequences to both him and the District will be overwhelming. This is a young man who needs to be in a placement that provides him with in-person instruction that could properly serve his unique academic, emotional, psychiatric and medical needs. All adult stakeholders in this case except for K.P. have recognized this for months and have been actively and passively thwarted by her actions and inactions.

I therefore **FIND** that a balancing of the equities clearly and convincingly favors the District.

While I can empathize with K.P.'s long-standing frustration given her impression that her child has been ill-served by the District, her continual course of non-cooperation, delay and circular reasoning has been nothing but deleterious to his well-being.

The bottom line here is that we have a deeply disturbed sixteen-year-old Special Education student who has effectively lost an entire year of school and is spiraling out of control. This is a young man who needs every possible mode of assistance that anyone can muster to overcome serious medical, psychiatric and family issues to reach his underlying potential. Instead, what has happened has been months and months of delay caused by the non-custodial parent who, while rightfully concerned about her son and his education, has effectively done nothing but hamper the possibility of any progress.

Any reasonable person who viewed the video of that IEP meeting cannot possibly come to the conclusion that A.P. can receive FAPE in an in-person, in-district educational setting.

Given the above, I **CONCLUDE** that the petitioner has demonstrated it will suffer greater harm than the respondent if the Emergent Relief is not granted. In **FACT**, I **CONCLUDE** that both the District and A.P. will benefit from the granting of the Emergent Relief.

I therefore **FIND** that the District has met all four conditions set forth in Crowe and as codified in N.J.A.C. 6A:3-1.6(b). At this point in time, the District is making every effort to provide FAPE to A.P. and is being prevented from doing so by K.P.'s unreasonable failure to cooperate with those efforts. I therefore **CONCLUDE** that the District is entitled to the Emergent Relief as requested.

Finally, I would also note that N.J.A.C. 6A:14-2.3(c) provides a district protection against claims that it has denied a student FAPE in situations such as this. While it is premature to address this issue in light of the expectation that K.P. will comply with this Order, it is certainly a scenario that must be kept in mind if a future action is filed by her.

### **ORDER**

It is hereby **ORDERED** that the Emergent Relief requested by the District to modify A.P.'s IEP to change his educational placement to home instruction pending and appropriate out-of-district placement be and is hereby **GRANTED**, and it is further;

**ORDERED** that K.P. shall consent and cooperate with the District in determining an appropriate out-of-district placement for A.P. and it is further;

**ORDERED** that as part of this cooperation, K.P. shall immediately execute and immediately return to the District any consents for the release of necessary records and shall further consent to cooperate with the District in the placement of A.P. following his acceptance into an appropriate placement and it is further;

**ORDERED** that A.P.'s stay-put placement effective on the date of the execution of this Order is home instruction pending out-of-district placement and that once his out-of-district placement is finalized that that placement will be the stay-put placement.

This Order does not resolve all of the issues raised in the due process complaint and the matter remains, at this point, pending the issuance of a decision on respondent's Motion for Summary Decision, scheduled for a hearing on May 15, 2025.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C. § 1415(i)(2). 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.



April 30, 2025

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency

April 30, 2025

Date Mailed to Parties:  
/sej

April 30, 2025 (Sent Via E-Mail)

## **APPENDIX**

### **For Petitioner:**

- P-1 Letter from Sherie Novotny, M.D. (April, 2025)
- P-2 Medical Certification re: Manifestation of Disability
- P-3 Documentation of Initial Evaluation Request (March 2024)
- P-4 Delayed Evaluation Results (October 2024)
- P-5 School District of the Chathams Board of Education v. K.P. o/b/o A.P. (EDS 13507-2024) and K.P. o/b/o A.P. v. School District of the Chathams (EDS 13508-2024) (Final Decision – March 20, 2025)

### **For Respondent:**

- R-1 Certification of Dr. Jacqueline Calle-Andrade (April 17, 2025)
- R-1A A.P. Email November 29, 2023)
- R-1B A.P. Suicide Assessment (November 29, 2023)
- R-1C A.P. School Clearance Assessment Referral Form (November 29, 2023)
- R-1D A.P. Back-to-School Evaluation Letter (November 30, 2023)
- R-1E A.P. Re-entry Form (March 7, 2025)
- R-1F Incident Report (March 11, 2025 incident)
- R-2 Certification of Dr. Emily Sortino (April 17, 2025)
- R-2A GenPsych School Clearance Referral (September 24, 2024)
- R-2B Email with attachments concerning Psychiatric Clearance (September 24, 2024 incident)
- R-2C A.P. Non-clearance Letter (September 25, 2024)
- R-2D District Suicide Prevention Policy (5141.6)
- R-2E A.P. Attendance Calendar (2024-25 school year)
- R-2F Keyword Search Emails (November 18, 2024)
- R-2G Psychiatric Non-clearance Letter (January 13, 2025)
- R-2H Letter from Sherie Novotny, M.D. (January 16, 2025)
- R-2I Re-entry Meeting Emails (March 6, 2025) and Clearance Form (March 4, 2025)
- R-2J Same as R1-E
- R-2K Same as R1-F
- R-2L Manifestation Determination Review Report (March 21, 2025)

R-2M IEP Meeting Video (April 16, 2025)  
R-3 Certification of Melissa Quiceno  
R-3A Re-Entry Form (December 1, 2023)  
R-3B Suicide Risk Assessment Form (February 15, 2024)  
R-3C Outpatient Screening Discharge Instructions (February 16, 2024)  
R-3D Re-Entry Form (February 26, 2024)  
R-3E Suicide Risk Assessment Form and documents (May 20, 2024)  
R-3F Psychiatric Non-Clearance Letter (May 20, 2024)  
R-3G Re-Entry Letter and Plan (June 11, 2024)  
R-3H Re-Entry Form (June 13, 2024)  
R-3I Psychiatric School Clearance Referral (July 19, 2024)  
R-3J Psychiatric Clearance Letter (July 26, 2024)  
R-3K Email re: Suicidal Ideation and Recommendations (January 23, 2025)  
R-3L Eligibility Meeting Notes (February 19, 2025)  
R-3M Same R-1F  
R-3N MDR Scheduling Emails (March, 2025)  
R-3O Same as R-2L  
R-3P Emails to K.P. with MDR documents/video (March 21, 2025)  
R-3Q District request for a Psychiatric Evaluation (December 6, 2024)  
R-3R Signed Release Forms – Out-of-District Placement and IEP Scheduling Emails (April 15-16, 2025)