State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

EMERGENT RELIEF

OAL DKT. NO. EDS 05554-25

AGENCY DKT. NO. 2025-38875

M.J. ON BEHALF OF M.M.,

Petitioner,

v.

HAMILTON TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Regina Ann Smith, Esq., for petitioner (Disability Rights of New Jersey, attorneys)

Ryan J. Clark, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Carrigg & Casey, LLC, attorneys)

Record Closed: April 9, 2025 Decided: April 10, 2025

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF THE CASE

Petitioner, on behalf of M.M., brings an action for emergent relief against the Hamilton Board of Education (Hamilton), seeking the return of M.M. to his special educational program at Reynolds Middle School pending the outcome of her due-process

hearing. Respondent Hamilton opposes and requests emergent relief, seeking a forty-five-day extension of M.M.'s interim alternative educational setting of home instruction because returning M.M. to his last agreed-upon setting would be substantially likely to result in injury to M.M., other students, or staff.

PROCEDURAL HISTORY

On March 29, 2025, the petitioner filed a complaint for a due-process hearing with the New Jersey Department of Education, Office of Special Education (OSE). On March 31, 2025, the petitioner requested emergent relief with the OSE. On April 1, 2025, the OSE transmitted the emergent request to the Office of Administrative Law (OAL) as an emergent, contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. Oral argument on the emergent request was held on April 9, 2025, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute and form the basis for the decision below. Accordingly, I **FIND** as **FACTS**:

M.M. is an eleven-year-old male who is eligible for special education and related services pursuant to the eligibility category of Autism. At all times leading up to the incident that led to the filing of this action, and, according to his February 19, 2025, individualized education program (IEP), M.M. was placed in a self-contained autism classroom at Reynolds Middle School (Reynolds).

At Reynolds, M.M.'s behavioral intervention plan (BIP) required his one-on-one personal care assistant (PCA), Caila Stockton, to remain close to M.M. to block inappropriate social interactions, such as aggression, and facilitate social interactions and functional communication. Before February 11, 2025, M.M. had been exhibiting escalating behaviors. On February 11, 2025, at the end of the school day, M.M. was circulating the classroom and attempting to climb on things and interact in disruptive ways with other students. As stated in M.M.'s BIP, his PCA was in close proximity to him and was attempting to mitigate M.M.'s disruptive behaviors. On February 11, 2025, it is alleged

that M.M. attempted to strike another student in his class. When M.M.'s PCA intervened to prevent M.M. from striking another student, M.M. punched the PCA in the head, temporarily disabling her. M.M. then attacked Sandy Falkenstein, one of the teacher's assistants (TA) in his classroom, by punching her in the head. Both the PCA and TA were injured as a result of M.M.'s assault. The TA had difficulty standing, was dizzy, and had a bump on her head. Both left work and were treated at the emergency room. While both returned to work two days later, the TA was out of work the following week for medical treatment due to headaches.

According to M.M.'s special education teacher, Jaclyn Mladenetz, who witnessed the February 11, 2025, incident, M.M.'s BIP was being closely followed. Hamilton cannot make further accommodations to ensure the safety of staff, students, and M.M. in the classroom setting. In her opinion, out-of-district placement can afford M.M. a higher level of care than Hamilton can accommodate, and M.M. should continue home instruction pending that placement.

M.M. was immediately suspended from school for three days. Given his disability, on February 19, 2025, a manifestation determination review (MDR) was held. It was determined that the incident was NOT a manifestation of his disability, and he began receiving home instruction. The petitioner did not immediately challenge this finding.

From the MDR through March 11, 2025, Hamilton and M.J.'s then-current counsel agreed that M.M. would be placed on home instruction pending an out-of-district placement, and M.M.'s IEP would be amended without a meeting.

On March 12, 2025, M.J. retained new counsel, who contacted Hamilton on March 13, 2025, notifying that M.J. was not agreeing to home instruction pending an out-of-district placement, which would now require the disciplinary hearing to proceed. However, both parties are still in agreement that out-of-district placement is warranted.

A disciplinary board hearing was conducted on March 17, 2025, regarding the February 11, 2025, incident. On March 26, 2025, the board voted to confirm that M.M.'s assaults on the PCA and TA were established, that the assaults justified the initial out-of-

school suspension, and that M.M. should be placed on home instruction pending an appropriate out-of-district placement. By letter dated March 28, 2025, Hamilton notified M.J., through her appointed counsel, of the board's decision.

The emergent application followed, and M.M. has remained on home instruction in the interim.

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 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 must 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.

Petitioner and Hamilton both seek relief under the third prong. Petitioner argues that Hamilton modified M.M.'s IEP in violation of the "stay-put" provision of the Individuals with Disabilities in Education Act (IDEA). 20 U.S.C. 1415(j). Specifically, the petitioner alleges that Hamilton did not have the authority to place M.M. on home instruction beyond the forty-five days permitted under N.J.A.C. 6A:14-2.8(d), instead of returning M.M. to the

self-contained autism classroom at Reynolds. Hamilton contends that placing M.M. in the classroom pending out-of-district placement would be substantially likely to result in injury to M.M., other students, or staff. Therefore, I **CONCLUDE** that it has been established that the issue involves a determination of an interim alternate educational setting and placement pending the outcome of due-process proceedings.

The stay-put provision under the IDEA provides an automatic preliminary injunction, preventing a school district from unilaterally changing placement from the last agreed-upon IEP during the pendency of a petition challenging a proposed IEP. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996).

There are two exceptions to the stay-put provision. The first is if the parties agree to a different placement; otherwise, "the child shall remain in the then-current educational placement of the child." 20 U.S.C. 1415(j). The second exception arises under the disciplinary provisions of the IDEA, 20 U.S.C. 1415(k).

It is undisputed that "in-school" education and related services are the appropriate stay-put placement. However, Hamilton is seeking emergent relief from the stay-put placement due to the asserted danger to other students and staff if M.M. were to return to the classroom after his recent incident on February 11, 2025, pending the outcome of the underlying due-process petition challenging the outcome of the manifestation hearing.

The standards for emergent relief are set forth in Crowe v. De Gioia, 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.

Hamilton 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. ex rel. J.E., 2004 N.J. AGEN LEXIS 115, Initial Decision (Feb. 23, 2004). It is settled in New Jersey that a safe and civil environment in the school is necessary for students to learn, and disruptive or violent behaviors disrupt 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. v. T.D. ex rel. E.D, 2015 N.J. AGEN LEXIS 160, Initial Decision (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 students' ability to access education, and when the student's discipline record and behavior negatively impacted 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., 1995 N.J. AGEN LEXIS 226, Initial Decision (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." Id. at *4 (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. ex rel. A.D., 2011 N.J. AGEN LEXIS 125, Initial Decision (Mar. 17, 2011). In more recent years, 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. ex rel. C.M., 2020 N.J. AGEN LEXIS

458, Initial Decision (Feb. 21, 2020) (granting a school district's application for emergent relief under these circumstances.).

Irreparable harm is also established when a child disrupts his or her education. See West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.D., 1995 N.J. AGEN LEXIS 226 (granting a school district's application for emergent relief changing the placement of a child whose poor academic performance and behavior disrupted the child's education.). Such disruption may delay the delivery of appropriate educational services and, consequently, academic regression. See Howell Twp. Bd. of Educ. v. A.I. and J.I. ex rel. S.I., 2012 N.J. AGEN LEXIS 207, Initial Decision (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.).

Due to M.M.'s attempted strike on a fellow student and attack on the PCA and the TA, which caused injury, irreparable harm is established because of the foreseeable risk of injury and danger to M.M. and other students and staff. Hamilton must maintain the safety of its students and staff and ensure an atmosphere conducive to learning for its students. M.M.'s continued attendance at Reynolds will significantly diminish Hamilton's ability to provide the same.

While I am mindful that M.M. may have received a brief interruption in educational services due to scheduling and vacation, this does not outweigh the harm of the foreseeable risk of injury to other students and staff.

Finally, irreparable harm is established because Hamilton is prevented from meeting its legal obligation to provide M.M. with a Free Appropriate Public Education (FAPE) because placement at Reynolds is no longer appropriate. Knowing that Hamilton cannot offer M.M. a FAPE, it is forced to propose an alternative appropriate placement for him, which it has done by recommending home instruction placement.

Based upon the foregoing, I **CONCLUDE** that Hamilton has met its burden of establishing irreparable harm.

A board of education is entitled to a change of placement of a student with a disability to an interim alternative placement when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement. N.J.A.C. 6A:14-2.7(n); N.J.A.C. 6A:14-2.8(f). In addition, a board of education is entitled to seek an order to change the placement when maintaining a student's current placement that is substantially likely to result in injury to the child or others. 20 U.S.C. § 1415(k)(3)(A). Furthermore, a board of education may apply for emergent relief according to N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(r).

Hamilton has shown that, due to M.M.'s physical attack on the PCA and TA and attempted strike at a fellow student, maintaining M.M.'s placement in the classroom at Reynolds is substantially likely to result in injury. Proof of violence towards staff members or classmates has been deemed sufficient for a finding that maintaining a student's current placement is substantially likely to result in injury. In Lawrence Township Board of Education v. D.F. ex rel. D.F., EDS 12056-06, Final Decision (January 9, 2007), http://njlaw.rutgers.edu/collections/oal/, the ALJ found that maintaining in his current placement a teenage boy who physically attacked other students in two separate incidents was substantially likely to result in injury to others, so he ordered the child's removal to an interim alterative educational setting.

As applied here, Hamilton has shown a settled legal right to bring this application for emergent relief seeking a change of M.M.'s placement from the Reynolds to a home instruction interim alternative placement. Accordingly, I **CONCLUDE** that Hamilton has met its burden that the legal right of its claim is settled.

Furthermore, I **CONCLUDE** that Hamilton has shown a likelihood of prevailing on the merits that M.M.'s placement must continue with home instruction interim alternative placement due to the substantial risk of danger to M.M. and others, M.M.'s disruption of his education and the education of other students, and Hamilton's inability to deliver a FAPE to M.M. in the current placement. As described above, M.M.'s conduct disrupts the educational environment and endangers his safety and the safety of other students and

staff. Maintaining M.M.'s placement in the classroom at Reynolds will likely result in injury to himself or to others in the school setting.

Hamilton's request to extend M.M.'s placement in the interim alternative education setting of home instruction for forty-five calendar days is more than reasonable, given the circumstances of this situation. The risk of harm is too significant to consider M.M. returning to Reynolds at this time. Hamilton must seriously consider M.M.'s conduct to ensure a safe educational environment for him and other students. Moreover, it is unfair and a disservice to the other students at Reynolds to force them to come to school where they fear their safety may be compromised.

That is not to say that I am unsympathetic to the petitioner's concerns that M.M. is not receiving FAPE in his interim alternative education setting of home instruction. Hamilton knows its obligation to provide FAPE to M.M. and has retained a new in-home educational instructor who can meet M.M. at midday.[1]

Having considered the equities and interests of the parties, I **CONCLUDE** that the scales are tipped in favor of Hamilton to demonstrate that it will suffer greater harm than the petitioner M.M. were permitted to remain in the classroom at Reynolds during the pendency of the underlying due-process action. Certainly, this does not make light of the challenges posed to the student by being placed on home instruction and the hardship the parents face in such circumstances.

Based upon the above conclusions that Hamilton has satisfied the requirements to be granted emergent relief, I must **CONCLUDE** that Hamilton shall be granted the emergent relief sought to alternatively place the student on home instruction for forty-five calendar days because M.M.'s classroom placement at Reynolds is substantially likely to result in injury to M.M. or others. I **CONCLUDE** that Hamilton has demonstrated, by a preponderance of the evidence, that the risk of harm to M.M. and other students and staff is too great to allow M.M. to remain in school.

[1] The parties discussed that changing the time of M.M.'s instruction to midday due to M.M.'s medication schedule would benefit M.M.

Hamilton must provide in-person and home instruction by a special education teacher and, if possible, provide M.M.'s related services through in-person professionals. I **CONCLUDE** that such services shall be arranged, with haste, to address M.M.'s academic needs, pending the outcome of the underlying due-process petition.

ORDER

It is **ORDERED** that Hamilton's emergent relief request to place M.M. in an appropriate interim alternative education setting of home instruction for forty-five calendar days is **GRANTED**. It is further **ORDERED** that in-person home instruction shall begin immediately with a special education teacher, and, if possible, related services shall be provided in-person by an appropriate professional. It is **FURTHER ORDERED** that the petitioner's request for a stay put is **DENIED**.

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 parents 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.

April 10, 2025
DATE

NICOLE T. MINUTOLI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

NTM/tc

APPENDIX

List of Moving Papers and Exhibits

For petitioner

Application for Emergent Relief

Brief in Support of Application for Emergent Relief

For respondent

Cross-Application for Emergent Relief

Brief in Support of Cross-Application for Emergent Relief

Certification of Jaclyn Mladenetz

Certification of Susan Conrad