State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF
OAL DKT. NO. EDS 06661-25
AGENCY DKT. NO. 2025-38966

A.C. AND D.C. ON BEHALF OF C.C.,
Petitioners,
v.

VERONA BOROUGH BOARD OF EDUCATION,
Respondent.

Mark A. Tabakin, Esq., for petitioner (Weiner Law Group, attorneys)

Kyle J. Trent, Esq., for respondent (Apruzzese, McDermott, Mastro and Murphy, attorneys)

BEFORE **WILLIAM COURTNEY**, ALJ:

STATEMENT OF THE CASE

Petitioners, A.C. and D.C. on behalf of their minor child C.C., have filed an application for emergency relief wherein they seek and order for temporary home instruction pending and out of district program and placement and resolution of their Expedited Due Process Petition filed on April 16, 2025. Respondent Verona Borough Board of Education ("District") seeks denial of the requested relief on procedural and

substantive grounds. The District maintains that petitioners' application is moot because they have already agreed to provide home instruction to C.C. pending the resolution of petitioner's due process petition. Petitioner's application for Emergency Relief was heard, and the record was closed, on April 23, 2025.

After full consideration of the evidence presented and for the reasons set forth below, **I CONCLUDE** that petitioners' application for emergency relief must be denied.

FINDINGS OF FACT

I have adopted the following factual findings almost verbatim from the April 18, 2025 Certification of Diane DiGiuseppe, Superintendent of Schools for the District. Ms. DiGiuseppe's Certification is the only certification submitted concerning the facts that led to the dispute before this tribunal. I also find the facts presented by Ms. DiGiuseppe to be logical and balanced.

1. C.C. is a fourteen year old ninth grade student eligible for special education services under the Autism classification who has attended an in-district program in the Verona Public Schools since the 2012-2013 school year.

2. For the period of October 8, 2024 through April 15, 2025, C.C.'s IEP provided for an in-district placement at Verona High School. (**Exhibit R-1**).

3. Upon information and belief, the District fully implemented this IEP during the period it was in place.

4. On the afternoon of Friday, March 28, 2025, a fellow student in C.C.'s high school physical education class reported to the Verona High School Assistant Principal that two other students made inappropriate comments toward C.C. that were sexual in nature during their physical education class earlier that day.

5. The District immediately commenced a harassment, intimidation, and bullying ("HIB") investigation and contacted C.C.'s parents to notify them of same. (**Exhibit R-2**).

6. The March 28, 2025 report from the other student was the first time the District received any information suggesting that C.C. was the potential victim of HIB or other misconduct by any other student.

7. Despite the report and allegations about what occurred in the physical education class on March 28, 2025, C.C. attended school on Monday March 31, 2025, without any claim of inappropriate behavior toward him on that date.

8. District personnel interviewed several students as part of its investigation on Monday, March 31, 2025. A true and accurate redacted copy of the timeline and notes prepared by the District's investigators is provided in **Exhibit R-3**. A true and accurate redacted copy of notes prepared by the District's investigators is provided in **Exhibit 4**.

9. Regarding what occurred during the physical education class on March 28, 2025, the students' statements were not entirely consistent and at times based on what they heard from other students rather than directly witnessed, but multiple students reported that one or two boys were asking C.C. "about how he likes [a female student in the class]" and that they made inappropriate comments including those of a sexual nature. (See Exh. 3.)

10. When interviewed, each of the alleged aggressors (hereinafter referred to Alleged Aggressor #1 and Alleged Aggressor #2) accused the other of hiding C.C.'s hoodie and Chromebook in the locker room without specifying when this occurred. (See Exh. 3.) This had never previously been reported by C.C., his parents, or any other person.

11. After being interviewed earlier that day, Alleged Aggressor #2 and another student (Student A) returned to the Assistant Principal's office later in the day and

alleged for the first time that Aggressor #1 "flicked [C.C.] in his chest and groin area, and press[ed] up against him to invade his space" and that Alleged Aggressor #1 "admitted to taking a lacrosse stick and sticking it up [C.C.]'s rectal area." Neither student indicated that they witnessed this conduct. (See Exh.3).

12. Given the serious allegations, the District conducted additional interviews of seven students. None reported witnessing the lacrosse stick allegation. (See Exh. 3).

13. When interviewed again, Alleged Aggressor #1 stated that he "tapped" C.C. between the legs with the butt end of a lacrosse stick a single time while C.C.'s pants were on. (See Exh. 3.)

14. Although the full facts remained in dispute, based on the information gathered and allegations made on March 31, 2025, the District took immediate disciplinary action against Aggressor #1 and contacted both the Verona Police Department and Division of Child Protection & Permanency ("DCP&P").

15. The District stayed further investigation pending permission to proceed given the law enforcement investigations.

16. The District also notified C.C.'s parents about the additional allegations learned that day and the steps being taken on March 31, 2025. After hearing of the understandably disturbing allegations that would be investigated, the parents communicated that they wanted C.C. immediately placed on home instruction and an out-of-district placement.

17. C.C.'s Case Manager responded to the parents' request for home instruction pending an out-of-district placement via email the next morning by inviting them to an IEP meeting that could occur as quickly as that same week, and by also communicating that a Safety Plan would immediately be put in place. A true and accurate copy of the Case Manager's email with attached Safety Plan dated April 1, 2025, is provided in **Exhibit R-5**.

18. C.C.'s parents did not respond to that email or send C.C. to school on April 1, 2025, or any subsequent date.

19. C.C. contacted his Track coach and communicated that "[m]y mom and dad won't let me in school anymore because of those bullying kids." A true and accurate screenshot of C.C.'s message to the Track coach is provided in **Exhibit R- 6**.

20. The Board's attorney was subsequently contacted by Petitioners' attorney and the IEP meeting was convened for April 9, 2025 at 1:30pm.

21. An hour prior to the IEP meeting on April 9, 2025, Petitioners' attorney contacted the District's attorney to request that the meeting be converted to a virtual meeting and to communicate that the parents would not be attending. The District accommodated that request. Petitioners' attorney provided power of attorney documentation and represented their interests at the meeting. A true and accurate copy of the Power of Attorney is provided in Exhibit **R-7**.

22. After considering the information presented during the IEP meeting, the IEP Team proposed a new IEP on April 10, 2025, providing home instruction pending completion of the investigations and no later than 60 days. A true and accurate copy of the April 2025 IEP is provided in **Exhibit R-8**.

23. The District's schools were closed for the period of and including April 14, 2025, through April 21, 2025, due to Spring Break, but the District secured teachers to provide the proposed home instruction services before its Spring Break began while awaiting Petitioners' response.

24. The District received the Petitioners' consent at approximately 6:17pm on April 15, 2025, when Petitioners' attorney emailed the Petitioners' signed consent to implement the April 9, 2025 IEP to the Board's counsel, who forwarded the consent to me and other District personnel. A true and accurate copy of the Petitioners' signed consent dated April 14, 2025, is provided in **Exhibit R- 9**.

25. Because the parents signed consent to implement the April 9, 2025 IEP, the

District was able and is willing to implement that IEP including the provision of home instruction for a period not to exceed 60 days.

26. On April 16, 2025, the parents filed a Expedited Due Process Petition and a request for emergent relief. A true and accurate copy of the Expedited Due Process Petition is provided in **Exhibit 10**.

27. Because an investigation by law enforcement remains underway, the District's investigation has not yet been completed.

LEGAL ANALYISIS

The first issue I feel compelled to address is petitioner's disregard of multiple procedural requirements that support the denial of their request for emergent relief.

Special procedures apply in special education due process hearings and expedited due process hearings. See N.J.A.C. 6A:14-2.7; N.J.A.C.1:6A-1.1 to – 18.5. As discussed below, emergent relief is available in limited circumstances, but certain procedural requirements must be met to seek such relief. N.J.A.C. 6A:14-2.7(r). Among those requirements, "[t]he request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief." Id. More specifically, "[e]ach application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein..." N.J.A.C. 1:6A–12.1(a). By failing to provide the requisite affidavit or certification of a person with knowledge, petitioners have failed to meet this procedural requirement.

Petitioners rely upon facts alleged in their brief and Expedited Due Process Request, signed by their attorney without citation to any competent supporting material. I **FIND** that the facts presented by petitioner will need to be addressed through a hearing and credibility determinations where the witnesses asserting such facts will be subject to cross- examination. What the petitioners have submitted and rely on as facts, is procedurally deficient and cannot serve as the basis for any emergent relief. Accordingly,

the petitioner's request for emergent relief must be denied on this and other procedural grounds without even addressing its merits.

The primary types of hearings under the Individuals with Disabilities Education act ("IDEA") are regular and expedited hearings. The default term "regular" refers to most hearings under the IDEA, with the limited exception for those specifically and expressly reserved for an "expedited" timeline.

Among the special procedures applicable to due process and expedited due process proceedings is also a limitation on the scope of matters which may be addressed through requests for emergent relief. N.J.A.C. 6A:14-2.7(r). In special education due process hearings, [e]mergent relief shall only be requested for the following issues:

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

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

An emergent relief application must set forth the specific relief sought and the specific circumstances which the applicant contends justifies the relief sought. N.J.A.C. 1:6A-12.1(a).

Petitioners assert they are entitled to emergent relief for "[i]ssues involving a break in the delivery of services" and "issues concerning placement pending the outcome of due process proceedings."

I **FIND** that that there has been no break in service to C.C. It is undisputed that on the day prior to the filing of their Emergent Due Process Petition, the Petitioners executed the April 10, 2025 IEP which provided for Home Instruction while the issues now before this tribunal are resolved. For the same reason, I **FIND** that there is no outstanding or emergent issue concerning C.C.'s placement pending the outcome of the Expedited Due Process proceedings.

Finally, I also agree with respondent's position that petitioners have not satisfied the substantive criteria necessary to obtain emergent relief. To obtain emergent relief in a special education dispute, the moving party must demonstrate that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying the 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.

[N.J.A.C. 1:6A-12.1(e); see also N.J.A.C. 6A:14-2.7(s).]

This rule mirrors the standard for injunctive relief established by the New Jersey Supreme Court in its seminal case of Crowe v. DeGioia, 90 N.J. 126, 132-35 (1982). Under such standard, the moving party has the burden to prove all of the factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div.

2012); Waste Management of New Jersey v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008).

For the reasons set forth below, **I FIND**, Petitioners fail to meet the required criteria and that their Request for Emergent Relief must still be denied.

Irreparable Harm

Petitioners argue that C.C. has suffered and will continue to suffer irreparable harm if not placed on home instruction pending his immediate placement out of district." (Pb8.) However, we know that C.C. has already been placed on home instruction as of April 15, 2025, when Petitioners consented to the IEP proposing home instruction.

"Irreparable harm" is defined as the type of harm "that cannot be redressed adequately by monetary damages." Crowe, supra, 90 N.J. at 132-33. An applicant for emergent relief maintains the burden to show such harm by clear and convincing evidence. See ibid. The harm suffered must be imminent, concrete, and non-speculative. See Subcarrier Communications, Inc. v. Day, 299 N.J. Super 634, 638,691 A.2d 876 (App. Div. 1997). "More than a risk of irreparable harm must be demonstrated. The requisite for [emergent] relief requires 'a clear showing of immediate irreparable injury,' or a 'presently existing actual threat; [emergent relief] may not be used simply to eliminate a possibility of a remote future injury[.]" D.J. v. Sussex-Wantage Reg'l Bd. of Educ., EDS 4488-11, Final Decision, 2011 N.J. AGEN LEXIS 237, *8 (April 29, 2011);S.H. v. Sussex-Wantage Reg'l Bd. of Educ., EDS 4720-11, Final Decision, 2011 N.J. AGEN LEXIS 246, *9 (May 6,2011).

In the special education context "rais[ing] unfortunate scenarios which could possibly unfold which will cause irreparable harm to . . . students" that are "couched in terms of a possibility and not a certainty and not proven by facts" has been deemed insufficient to satisfy the irreparable harm standard necessary for obtaining emergent relief. D.J., supra,

2011 N.J. AGEN LEXIS 237 at *9-10; S.H., supra, 2011 N.J.AGEN LEXIS 246 at *11. Emergent relief is not available where the party seeking such relief identifies potential harm to a student's safety, health, or welfare that is speculative in nature. D.J., supra, 2011 N.J. AGEN LEXIS 237 at *10; S.H., supra,
2011 N.J. AGEN LEXIS 246 at *11-12.

Additionally, "the availability of compensatory education defeats [parents'] contention that [their child] will suffer irreparable harm without an injunction." M.N. v. Sparta Twp. Bd. of Educ., CV 21-19977, 2022 WL 1093667 at *12 (D.N.J. Apr.12, 2022). "Compensatory education is an equitable remedy created by the courts. Ibid. (citing Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 717 (3d Cir. 2010); see also 20 U.S.C. § 1415(i)(2)(C)(iii). Courts have explained that "the purpose of compensatory education is to "replace[ ] educational services the child should have received in the first place" and that such awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."'" M.N., CV 21-19977, 2022 WL 1093667 at *12 (quoting Ferren C., 612 F.3d at 717-18 (alteration in original)).

I FIND petitioners failed to satisfy the irreparable harm standard. As was the case in D.J. and S.H., Petitioners' arguments are entirely couched in terms of possibility and are entirely speculative. The parents repeated assertions that the District engaged in "gross negligence in failing to detect and the stop [sic] the abuse of C.C." or is "uncaring and disinterested in taking even a modicum of action to protect one of its most vulnerable children" is unsupported by any competent evidence. There has been no admissible information provided that would indicate any history of misconduct toward C.C. by any other student before March 2025, let alone that the District was or should have been on notice of any issues or was indifferent to such concerns prior to March 28, 2025. In fact, it does appear from the evidence provided that as soon as the District learned about the allegations of mistreatment, it immediately commenced an investigation and took appropriate remedial steps to address the issues discovered the very next school day, which C.C. attended without incident.

Petitioners' claim that irreparable harm exits is also belied by the statement contained in their Petition for Expedited Due Process which clearly indicates that the agreed upon home instruction has removed C.C. from immediate danger of harm. Paragraph 26 of the Expedited Due Process Petition states "While the proposed Amended-IEP **removes C.C. from immediate danger at Verona High School** and is acceptable on the most temporary basis …". (Exhibit R-1 at ¶ 26, emphasis added).

Because the moving party must meet all the Crowe factors, petitioner's failure to establish irreparable harm is a sufficient basis for denying the requested emergent relief. However, I also **FIND** that petitioners have also failed to establish a reasonable likelihood of success on the merits of their underlying Expedited Due Process Petition.

Likelihood of Success on the Merits

The Petitioners have failed to provide any cognizable basis for their Expedited Due Process Petition. While petitioners assert that their situation is emergent, and expedited Due Process Hearings do proceed at an accelerated timeline compared to a normal due process filing, they can only be "requested due to disciplinary action[.]" N.J.A.C. 6A:14–2.7(o). In fact, it was recently emphasized that

> [t]he regulation governing requests for expedited due process hearings, N.J.A.C. 1:6A-14.2, expressly states that an expedited **hearing may be requested only when the parent disagrees with the determination that the pupil's behavior in violating school rules was not a manifestation of the pupil's disability or when the pupil is removed from his or her current educational placement**.
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> [T.M. v. Berlin Boro. Bd. of Educ., EDS 18066-24, Final Decision, 2025 WL 698966, (January 30, 2025) (emphasis added)]

Where petitioners seek to address issues beyond the scope of challenging disciplinary action against their children, the expedited due process proceeding must be dismissed. Ibid.

Here, Petitioners seek to address an alleged denial of FAPE rather than any disciplinary action against C.C. (See R-10). I **FIND** the law does not permit them to do so. See N.J.A.C. 6A:14–2.7(o); N.J.A.C. 1:6A-14.2. I further **FIND** that if petitioners assert that the District failed to provide C.C. with FAPE, the District is entitled to the normal due process timeline and applicable discovery to address Petitioners' factual and legal claims. Moreover, respondent has already indicated in its brief in opposition to petitioner's application for emergent relief that it will seek to dismiss petitioner's Expedited Due Process Petition because it does not challenge a disciplinary action. Given the facts before me, I **FIND** petitioners have no likelihood of success on their Expedited Due Process Petition and it is highly likely that the same will be dismissed because it seeks to address and alleged denial of FAPE rather than disciplinary action.[1]

Legal Right to Petitioner's Claim

The Third Circuit has broadly held that a classified student may be found to have been denied a FAPE due to bullying the student experienced. Shore Reg'l, 381F.3d 194 at 199-201. But it did so in that case while focused on the district court's failure to address witness credibility in light of conflicting expert testimony and the particular weakness of the school district's witnesses in that case. Ibid. Shore Regional is not remotely analogous to the facts at issue in this case, because it involved repeated complaints that the student at issue was bullied over several school years from elementary school through eighth grade, which involved "relentless physical and verbal harassment as well as social isolation by his classmates" and where "[d]espite repeated complaints, the school administration failed to remedy the situation." Id. at 195. Shore Regional also included substantial evidence that the student "became depressed, and his schoolwork suffered" resulting in a psychiatric diagnosis and prescribed medication with "no appreciable improvement." Ibid.

[1] My findings concerning the likelihood of success on the merits relates only to Petitioner current Expedited Due Process Petition.

While the allegations petitioners make about what happened to C.C. in March 2025 are certainly serious, the record is clear that the District here acted immediately and appropriately to remedy the situation as soon as it was discovered. In fact, it must be emphasized that the more serious allegations came to light only through the District's thorough and immediate investigation rather than a report from Petitioners, C.C., or any witness.

While Shore Regional opens the door to a determination that FAPE may be denied as a result of prolonged and unaddressed bullying of a student, it has also been distinguished in circumstances more analogous to the present matter.[2] For example, in N.P. v. Gloucester Township Board of Education, EDS 3121-17, Final Decision, 2018 WL 7021013 at *2-3, (December 12, 2018), an administrative law judge rejected parents' effort to rely on Shore Regional to find a denial of FAPE based on bullying, because the school district did not have a prolonged history of failing to remedy bullying complaints over multiple years. As the administrative law judge explained

> [t]he comparison [of the circumstances in N.P. to Shore Regional is] tenuous. The court in Shore Regional deferred to an OAL opinion that found a denial of FAPE where a student was subjected to severe and prolonged harassment for perceived effeminacy. This extended through his K-8 years, and he was about to enter high school with the same grouping of classmates. This student's grades and emotional health had suffered, and the administrative law judge concluded that the harassment was likely to continue.

[2] As an indication the law is not well-settled in their favor, the Third Circuit has not developed a particular test for alleged denials of FAPE through bullying. Other circuits have suggested a different heightened standard for alleged denials of FAPE arising from alleged bullying. See, e.g., T.K. v. New York City Dep't of Educ., 810 F.3d 869, 874 (2d Cir. 2016) (explaining that "unremedied bullying could constitute the denial of a FAPE" under a four-part test to determine whether bullying resulted in the denial of a FAPE: (1) was the student a victim of bullying; (2) did the school have notice of substantial bullying of the student; (3) was the school "deliberately indifferent" to the bullying, or did it fail to take reasonable steps to prevent the bullying; and (4) did the bullying "substantially restrict" the student's "educational opportunities"?

> Thus, reimbursement was ordered to his parents for the costs of attendance at another high school. There are key distinctions between the instant matter and Shore Regional; the latter record manifestly presented long-term harassment, and in sum the conduct repressed educational progress.
> [Ibid.]

If that test were to be applied to the present case, it is unlikely the parents would prevail due to the absence of any notice of substantial bullying of C.C. and the absence of any deliberate indifference by the District, without even addressing the other factors.

Similarly, in L.S. v. Central Jersey Arts Community School Board of Education, EDS 09573-07, Final Decision, 2007 WL 3287693 at *5-6, the administrative law judge also rejected parents' analogy to Shore Regional in an effort to claim a denial of FAPE based on bullying. The administrative law judge found and concluded that based on testimony and a police report "it is clear that C.S. was a victim of bullying" but that due to the steps taken by the school district, the record did not support a finding of that "the hostile environment was substantially preventing a FAPE" as the parent "failed to consider the supplementary services (Mr. T [an aide assigned to the student]) the school district has provided to stop the bullying." Ibid. As such, the parent's petition was dismissed. Ibid.

Also, more akin to the present situation than Shore Regional is the case of F.F. and L.F. obo N.F v. Matawan-Aberdeen Regional Board of Education, EDS 2287-12, Final Decision, 2012 WL 3142522 at *8-10. There too, an administrative law judge rejected the argument that bullying resulted in a denial of FAPE. Ibid. In doing so, the administrative law judge explained that

> Although N.F. has situation anxiety, there is no evidence that the current program and placement, which include measures that were not in place when she last attended MARHS, would be insufficient to provide FAPE. First, the District proposes considerable accommodations for N.F., including: (1) a one-to-one aide to monitor other students' behavior and provide a

> constant presence for her safety and comfort; (2) daily access to her case manager or a guidance counselor as needed and/ or a “go to” or contact staff member who would be available to her and maintain weekly contact; (3) a personalized daily schedule consisting of altered class hours and lunch periods, as well as early dismissal from class; (4) “no-contact” contracts with any student deemed threatening to her; (5) utilization of a specific plan to identify and monitor her needs and concerns; (6) weekly counseling for thirty minutes; and (7) other necessary preemptive measures if petitioners identified any students who caused N.F. concern. Second, N.F. has the ability to receive an educational benefit from regular education, as she is capable academically and does not require any specific accommodation in that regard. Third, there is also no evidence that her presence would adversely impact the regular classroom.
>
> It is particularly significant that there is no medical evidence, expert testimony, or even first-hand witness testimony to demonstrate that the current school environment under the protections of the [HIB law] and the District's HIB Policy would interfere with N.F.'s ability to learn. Petitioners' understandable apprehension does not alone amount to persuasive evidence in that regard.
> [Id. at 10.]

There too, the administrative law judge denied the parents’ claim that alleged bullying resulted in a denial of FAPE.

While the facts in this matter will be more fully fleshed out through a due process hearing, on the competent evidence before this tribunal, this case is not remotely analogous to Shore Regional. There is no factual information regarding any history of misconduct toward C.C. by any other student before March 2025, let alone that the District was or should have been on notice of the issues or was indifferent to such concerns prior to the March 28, 2025 report. The facts reveal that as soon as the District learned about the allegations of mistreatment, it immediately commenced an investigation and took appropriate remedial steps to address the issues discovered the very next school day,

which C.C. attended without incident. (R 2-5). In addition to its investigatory steps, the very next day it also offered a comprehensive safety plan to address the areas of concern identified. Those focused on physical education class and C.C. going into the locker room, the only place there is any allegation of C.C. being bullied, but also expanded to other areas. (R.5). The additional steps offered by the District in the safety plan are similar to the steps taken by school districts to defeat parents' claims of a denial of FAPE due to bullying in N.P., L.S., and F.F.

Notwithstanding steps taken by the District, it also recognized that the matter had not yet been fully investigated due to the pending law enforcement investigation, and given the parents' demand for home instruction, it acted to consider the parents' request and offered them exactly that.

On this record, Petitioners' claims are not well-settled under the law and they cannot demonstrate a likelihood of prevailing on their claim that the District denied FAPE due to the alleged bullying C.C.

Balancing of the Hardships

Finally, in arguing that hardship favor them rather than the District, Petitioners maintain that the District cannot provide a safe or appropriate placement. They state in their brief that "Respondent has the responsibility to offer and implement home instruction and immediately place C.C. in an appropriate alternative setting to address his needs." In doing so, they again ignore that the District has already offered, and as of April 15, 2025, they have consented to, a temporary program for home instruction. **I FIND** that there is no hardship on Petitioners by allowing this case to proceed to a due process hearing where the facts can fully be established and this tribunal can make findings and conclusions based on the expert and other testimony presented by both sides. In fact, the availability of compensatory education if Petitioners' are able to demonstrate a denial of FAPE eliminates any harm or hardship that would exist in denying immediate relief. See, M.N., CV 21-19977, 2022 WL 1093667 at *12 (D.N.J. Apr. 12, 2022).

Accordingly, I **FIND** that the District's interests in a full hearing to determine whether it provided C.C. with FAPE outweighs any harm to Petitioners. In making this finding I place great weight on the fact that the home instruction requested was already offered and consented to before Petitioners filed their request for emergent relief. As such, Petitioners have also failed to meet the fourth prong for emergent relief, and their request must be denied.

For the reasons set forth above, I **CONCLUDE** that petitioner's application for Emergent Relief must be denied.

ORDER

IT IS on this 25th day of April 2025**, 0RDERED** that:

1. Petitioner's April 16, 2025 Application for Emergent Relief is **DENIED**.
2. A prehearing conference shall take place on May 1, 2025 at 2:30 pm. The telephone number to dial into the prehearing conference call is 866-561-8735 and the access code is 98897440.

This order on application for emergency relief remains 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. Since the parents requested the due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).

April 25, 2025
DATE

WILLIAM J. COURTNEY, ALJ

db

APPENDIX

For Petitioner:

None

For Respondent:

R-1 A true and accurate copy of C.C.'s IEP dated October 8, 2024

R-2 A complete and accurate copy of the redacted HIB 338 Form dated March 28, 2025

R-3 A true and accurate redacted copy of the timeline and notes prepared by the District's investigators

R-4 A true and accurate redacted copy of notes prepared by the District's investigators

R-5 A true and accurate copy of the Case Manager's email with attached Safety Plan dated April 1, 2025

R-6 A true and accurate screenshot of C.C.'s message to the Track coach

R-7 A true and accurate copy of the Power of Attorney

R-8 A true and accurate copy of the April 2025 IEP

R-9 A true and accurate copy of the Petitioners' signed consent dated April 14, 2025

R-10 A true and accurate copy of the Expedited Due Process Petition