



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION – EMERGENT
RELIEF**

OAL DKT. NO. EDS 00200-23

AGENCY DKT. NO. 2023-35331

L.C. AND G.H. ON BEHALF OF J.C.H.,

Petitioners,

v.

WAYNE TOWNSHIP BOARD OF EDUCATION,

Respondent.

Mark Voigt, Esq., for petitioners L.C. and J.H. obo J.C.H. (Law Office of Mark Voigt, attorneys)

Margaret A. Miller, Esq., for respondent Wayne Township Board of Education (Weiner Law Group, attorneys)

Record Closed:¹ January 17, 2023

Decided: January 18, 2023

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

¹ This matter is final with record closed only as to the Application for Emergent Relief. As set forth below, the due process petition remains at the OAL at which time the record closed.

By petition dated January 4, 2023, petitioners L.C. and J.H. sought emergency relief from or in relation to the alleged unilateral determination of the Wayne Township Board of Education (District) to place their fourteen-year-old son, J.C.H., on home instruction pending location of an appropriate out-of-district placement. Petitioners further allege that the District expelled their son and request his immediate reinstatement to the LLD/MM² classroom specified in his Individualized Education Plan (IEP) as the “stay put” placement.

The petition for emergent relief and the underlying expedited due process application were docketed by the Department of Education, Office of Special Education Policy and Dispute Resolution (OSEP) and forwarded on January 6, 2023, to the Office of Administrative Law (OAL) on that same date pursuant to N.J.A.C. 6A:14-2.7. The emergent application was argued on Friday, January 13, 2023. Both parties submitted additional documents on Tuesday, January 17, 2023, on which date I have deemed the record closed.

RELEVANT FACTUAL DISCUSSION

J.C.H. is a fourteen-year-old student who has been receiving special education services from the District for a classification of other health impaired (OHI) because of his diagnoses of persistent depressive disorder, ADHD, and ODD. J.C.H. attended regular classroom programs at the Abundant Christian Life School, Whippany, New Jersey, for kindergarten and first grade, and then Randall Carter Elementary School within the District for most of second grade. In each of these school settings, his teachers described him as angry, frustrated, refusing to engage in the schoolwork, socially awkward, and physically aggressive. The Randall Carter Child Study Team (CST) recommended placing him in a self-contained classroom at the District’s Pine Lakes Elementary School. J.C.H. attended the remainder of second grade and all of third grade at Pine Lakes but was having behavioral issues in the classroom and reportedly suicidal ideations at home almost from the beginning. He demonstrated increased frustrations, tantrums, and physical and verbal outbursts at school. Accordingly, the CST recommended a therapeutic out-of-district placement.

² LLD/MM refers to a language learning disabilities mild-to-moderate self-contained classroom.

J.C.H. started to attend Windsor Learning Center (Windsor) at the beginning of fourth grade in September 2017. Several assessments were undertaken in the spring of 2019 while J.C.H. was in fifth grade at Windsor. Those resulted in the diagnoses listed above. He also had speech and language deficits but was on a fourth-grade level in math and English language arts during fifth grade, having made significant academic progress. As with every school in New Jersey, Windsor closed for in-person learning in March 2020 because of the Covid-19 pandemic. It engaged the students through virtual classrooms. This was sixth grade for J.C.H. Windsor instruction was back to in-person for his seventh grade (2020-2021) and eighth grade (2021-2022). Several evaluations were undertaken in that last school year, that are not relevant to this immediate proceeding.

Just prior to completion of eighth grade, the CST conducted an IEP meeting to plan for J.C.H.'s freshman year. Windsor was not recommending that he continue at their high school facility. The IEP discussed at a meeting held on August 8, 2022, with Windsor staff and both parents' participation and input, and then drafted by the District CST³, provided for ninth grade at the Wayne Valley public high school in the LLD/MM classroom with related speech and language supports.

There are additional facts, some of which are in dispute and some of which are not. I will set forth the undisputed facts because no testimony was taken at today's oral argument.

TIMELINE OF EVENTS RELEVANT TO PETITION FOR EMERGENT RELIEF

- 8/8/22 J.C.H.'s IEP established his placement for his freshman year at Wayne Valley High School in the LLD/MM classroom.
- 9/6/22 First day of the current school year.
- 9/15/22 J.C.H. sent text messages to a friend expressing rage about bullying, loneliness during Covid, and suicidal thoughts. That friend's parents advised petitioners and apparently the District.
- 9/16/22 Parent called J.C.H. out of school for a "mental break" she said he needed.

³ Albeit with some different participants due to summer recess.

- 9/16/22 District completed Crisis Intervention Summary Form.
- 9/16/22 Wayne Township police officers, at the request of the District, conducted a wellness check on J.C.H. Later that day, he was taken by a parent to ER for mental health issues (*e.g.*, anger management) caused allegedly by that police check.
- 9/17/22 J.C.H. was taken by a parent to ER for drug-induced acute dystonia, *i.e.*, adverse reaction to the medication given to him the day before at the ER.
- 9/21/22 District completed Crisis Intervention Summary Form.
- 9/22/22 J.C.H. was taken by parent to ER for mental health issues.
- 9/23/22 An informal meeting took place where the parent met with the District Psychologist, Social Worker, and Counselor. Parent signed consent forms to release student's records to several therapeutic day schools. District placed J.C.H. on home instruction pending a therapeutic placement or psychiatric clearance to return to school because of his suicidal ideations.
- 10/17/22 IEP Meeting held which set forth FAPE as an out-of-district therapeutic day school, related supports, and home instruction pending a placement being found.

It is also not disputed that petitioners and J.C.H. wanted him returned to his Wayne High School LLD/MM classroom with new therapeutic supports. The legal characterization and justification of why he was on home instruction, as well as whether he was receiving it, whether petitioners were cooperating with that and the intakes at the therapeutic day schools, and whether the IDEA was violated because of the District's actions are very much disputed by the parties.

As an initial matter, I **FIND** that J.C.H. was not suspended or expelled; rather, the school team deemed him to be in crisis, completed those forms, and then convened a meeting with the parent after the second ER visit caused by her concerns for the mental health of her son. I cannot determine at this preliminary, nonevidential stage of the case whether the District advised petitioners that J.C.H. could return to school if he had a psychiatric clearance to do so notwithstanding his prior expressions of suicidal thoughts. I also cannot determine at this time whether the proper medical clearance was produced

to the District or when.⁴ What is clear at this juncture is that any days between September 15 and September 23 when he was not in class should not be at issue because any absences were not only fewer than ten (10) days, but were also absences for which petitioners sought a medical excuse from the school.

LEGAL ANALYSIS AND CONCLUSIONS

The only issue on this emergent application concerns what relief should be granted, if any, pending the expedited hearing on the due process petition. Both parties argue that the IDEA's "stay put" provisions are applicable, but they disagree as to what "current placement" is operable. I must note, however, that there are also many demands included by the petitioners that are not part of this emergent application: (1) compensatory education claims; (2) a new IEP to include therapeutic supports; and (3) a determination that Wayne Valley public high school is the least restrictive environment placement that provides FAPE to J.C.H.

Pursuant to N.J.A.C. 6A:14-2.7(r), emergent relief shall only be requested for the following issues:

- 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.

⁴ Subsequent to the oral argument, petitioners forwarded a letter and medical information from Dr. Daniel Kahn. The relevant visit with J.C.H. was undertaken by Dr. Adam Handler on December 15, 2022; entry of the procedure codes and an electronic signature Dr. Handler was done on December 26, 2022; and, Dr. Kahn's letter to have J.C.H. readmitted to school for in-person instruction was dated January 13, 2023. I have located no other medical clearance for J.C.H. to return to in-person instruction since his expression of suicidal ideations.

Here, the application for emergent relief concerns a break in service and/or interim alternate educational settings in accordance with N.J.A.C. 6A:14-2.7(r)(1)(iii).

Putting aside the traditional equitable criteria for emergent relief, Crowe v. DeGoia, 90 N.J. 126 (1986), it is important to recognize the “stay put” provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1400, et seq.; 20 U.S.C.A. § 1415(j). That provision and its counterpart in the New Jersey Administrative Code require that a child remain in his or her then-current educational placement “during the pendency of any administrative or judicial proceeding regarding a due process complaint.” 34 C.F.R. § 300.518(a); N.J.A.C. 6A:14-2.7(u). The stay put provision functions as an automatic preliminary injunction and it assures stability and consistency in the student’s education by preserving the status quo of the student’s current educational placement until the proceedings under the IDEA are finalized. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864--65 (3d Cir. 1996); Susquenita Sch. Dis't v. Raelee S., 96 F.3d 78, 82 (3d Cir. 1996).

These principles inform this emergency relief petition. The petitioners refer to the action(s) that removed J.C.H. from the LLD/MM classroom as a “*de facto* expulsion” or a disciplinary action, that not only required a manifestation determination but also required the District to proactively file an expedited due process application if it considered the classroom placement to be dangerous for the student pursuant to N.J.A.C. 6A:14-2.7(n). The District refers to J.C.H.’s removal in mid-September to be a necessary, nondisciplinary crisis intervention action because of J.C.H.’s texts that included suicidal ideation, followed by trips to the ER for mental health reasons.

N.J.A.C. 6A:14-2.7(n) provides in pertinent part:

To remove a student with a disability when district board of education personnel maintain that it is dangerous for the student to be in the current placement and the parent and district board of education cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. [emphasis added.]

Further,

However, removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. § 1415.(k) shall be for a period of no more than 45 calendar days.

[N.J.A.C. 6A:14-2.8.]

Thus, as correctly argued by petitioners,

We think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. In so doing, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials their former right to “self-help,” and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, the courts.

[Honig v. Doe, 484 U.S. 305, 323-24, 108 S. Ct. 592, 604 (1988).]

These uncontroverted principles, however, must be applied to the unique facts of this particular controversy.

Petitioners cite to Christine C. v. Hope Twp. Bd. of Educ., 2021 U.S. District LEXIS 20132, Civil Action No. 3:18-cv-03984-FLW-DEA (D.N.J. 2/2/21), which they would have me find is conclusive of the issues on their emergent application, due process, and the unfulfilled obligation of the District to have filed for expedited due process in order to remove J.C.H. from his LLD/MM classroom placement. In other words, petitioners argue that J.C.H. must be returned to the Wayne Valley classroom and that doing so will solve all issues. The District asserts that Christine C. is inapplicable because petitioners consented to home instruction at the informal crisis intervention meeting on September 23, 2022, as evidenced by their signed consent for the District to send records and seek intakes with out-of-district therapeutic day schools at that time. This occurred before J.C.H. was removed from the classroom due to his psychiatric crises.⁵

⁵ As found above, it was the parents who kept their son out of school for any absences that occurred between September 16 and 23.

As such, I **CONCLUDE** that the District was under no obligation to file for an expedited due process hearing. Thus, unlike in Christine C., there has not been, at least at this juncture, any finding of a procedural violation of the IDEA. There certainly has not been a disciplinary suspension or expulsion on these facts. I also note, for purposes of the plenary due process hearing, that an IEP goes into effect unless appealed in a timely manner notwithstanding that the parents do not sign their agreement to it.⁶ Thus, the operative IEP for the underlying due process is that drawn up on October 17, 2022, which went into effect and did so within forty-five (45) days of the crisis intervention removal to home schooling. It is also the “stay put” for this interim emergent application.

For the reasons set forth above, I **CONCLUDE** that it is respondent who has satisfied its entitlement to the automatic protections of the IDEA stay put. On a related matter, on which all parties agreed on the record, I **CONCLUDE** that the District must arrange and/or pay for the independent educational evaluation and the forthcoming psychiatric assessment. Determination as to whether the October IEP provides FAPE in the least restrictive environment, the extent of any compensatory education to which the child might be entitled, and the impact, if any, of any lack of cooperation with home instruction or intakes, will be addressed at the plenary hearing.

ORDER

Accordingly, it is hereby **ORDERED** that the emergent application for relief of the petitioners L.C. and G.H. obo J.C.H. is hereby **DENIED**.

This order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The scheduled hearing dates on the underlying expedited due process petition shall be held on **February 8 and 9, 2023**⁷. If the parent or adult

⁶ The exception to this is to the initial IEP for a student. N.J.A.C. 6A:14-3.7(m).

⁷ Unless otherwise agreed to by counsel, each party shall have one, and only one, day on which to present their case because of the requirement for expedition. The District will proceed first and has the burden of proof on the issue of FAPE in the least restrictive environment; and petitioners' have the burden of proof on any claims for compensatory education. For good cause and/or if rebuttal testimony is necessary, we shall continue this case on February 10, 2023. There will be no adjournments granted. The parties should adjust their calendars accordingly.

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 Programs.



January 18, 2023

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency

1/18/23

Date Mailed to Parties:

1/18/23

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