



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

GRANTING EMERGENT RELIEF

OAL DKT. NO. EDS 01492-23

AGENCY DKT. NO. 2023-35486

**WAYNE TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

A.R. ON BEHALF OF C.G.,

Respondent.

Margaret Miller, Esq., for petitioner (Weiner Law Group LLP, attorneys)

No Appearance by respondent,

Record Closed: February 28, 2023

Decided: March 3, 2023

BEFORE **WILLIAM J. COURTNEY, ALJ**

STATEMENT OF THE CASE

Respondent's minor child C.G. was classified as eligible for Special Education and Related Services at her elementary school under the category of Communication Impairment.

Her classification was based on her diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”), and Language Disorder. It is alleged that C.G. set a fire in the bathroom of her school on January 23, 2022. In response to C.G.’s actions, petitioner Wayne Township Board of Education (“Board”) seeks emergent relief directing that C.G. be placed on Home Instruction on a temporary basis until such time that an appropriate out of district placement is identified, the parties agree otherwise, or the court issues a decision on the BOE’s underlying Due Process Petition. Petitioner also seeks an order directing the release of student records to potential out of district placements.

PROCEDURAL HISTORY

The Board filed a Petition for Due Process with Emergent Relief on February 3, 2023. Oral Argument on the emergent portion of the Board’s application was conducted on February 28, 2023.

FINDINGS OF FACT

Based upon the evidence, I **FIND** the following as **FACT** for this application only.

C.G. attended elementary school within the Wayne Township School District (“District”). She is classified as having a communication impairment and has been diagnosed with ADHD and Language Disorder. As part of her Individualized Educational Plan (“IEP”) dated February 7, 2022, she received Out of Class Placement for Math and Language Arts every day, Supported Reading three times a week, Behavioral Supports and Speech Therapy. She also has a shared paraprofessional assigned to her and a Behavioral Intervention Plan (“BIP”).

On October 4, 2022, C.G. was evaluated by a psychiatrist after reports that C.G. stated she was going to “shoot up the school with everyone in it”. Her diagnosis at that time was ADHD, Language Disorder, Gender Dysphoria, Specific Learning Disorder with impairment in reading, Specific Learning Disorder with impairment in mathematics. The

psychiatrist also indicated that C.G. would benefit from further evaluation for “psychosis”, ADHD and the use of psychotropic medication.¹

On January 23, 2023, C.G. informed her paraprofessional that she needed to use the bathroom. The paraprofessional escorted her to the bathroom and waited outside. Another student who was in the bathroom at the same time as C.G. reported that C.G. set fire to toilet paper in the bathroom and that the flames were up “pretty high.” The other student also reported that C.G. had a difficult time “stomping” out the fire that she had lit.

After the incident was reported the building Principal, C.G.’s Case manager and a behaviorist removed C.G. from her class to question her. Although C.G. denied that she set the fire, when she first returned to her classroom she had soot on her face and a lighter was found in her back pack. C.G. was given a three-day suspension from January 24-26, 2023. Respondent was also informed that C.G. would have to obtain psychiatric clearance to return to school.

On January 30, 2023, the parties met for the purposes of conducting a previously scheduled re-eligibility meeting and annual review of C.G.’s IEP. At the meeting it was agreed that C.G. would remain eligible for classification under the category of Other Health Impaired. Due, however, to C.G. escalating behavioral issues it was recommended by the district that she be placed in a proper supportive environment out of District to meet her social, emotional and educational needs to provide her with a Free and Appropriate Public Education (“FAPE”). The district also indicated that it lacked a therapeutic program that would properly support C.G., ensure her safety and the safety of other students and staff members. They also concluded that her continued attendance in district posed a significant risk to the health and safety of C.G., as well as school staff and her fellow students.

¹ There is no indication in the record as to whether C.G. was evaluated further for psychosis or for the use of psychotropic medication.

Petitioner identified Sage Day, Cornerstone, the Calais School and the Sheppard School as potential placements for C.G. Respondent initially did not consent to a therapeutic out of district placement for C.G. and refused to give consent to send C.G.'s records to potential schools. Recently, however, respondent did authorize the release of C.G.'s school records to potential schools and has also scheduled interviews with two of the potential out of district schools.

Respondent failed to submit any written opposition to petitioner's application for emergent relief and has also failed to appear and or submit any evidence on the return date of petitioner's application for emergent relief.

LEGAL DISCUSSION

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482 (the "Act"). One purpose of the Act is to ensure that all children with disabilities have available to them a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. §1400(d)(1)(A). This "Free and Appropriate Public Education" is known as FAPE. Indeed, it is the petitioner's position that a change in C.G. placement is necessary to ensure that she receives FAPE because they cannot provide the required therapeutic environment.

In New Jersey, the State Board of Education has promulgated rules following the standards outlined in the Act. N.J.A.C. 6A:14-1.1(b)(1); N.J.A.C. 6A:14-1.1 to -10.2. Under those rules, a party may request a due process hearing before an Administrative Law Judge (ALJ) to resolve disputes "regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free and appropriate public education, or disciplinary action." N.J.A.C. 6A:14-2.6(a); N.J.A.C. 6A:14-2.7(a).

Further, under N.J.A.C. 6A:14-2.7(r), a party may request emergent relief 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.

Undeniably, this case involves a change of placement to an interim alternative educational setting (home instruction) placement that the district proposes will remain until such time that an appropriate out of district placement is identified, the parties agree otherwise, or the Court issues a decision on the underlying Due Process Petition.

N.J.A.C. 6A:14-2.7(n) sets forth the procedures that must be followed when a Board of Education seeks to change the placement of a student with a disability because the current placement is dangerous for the student. The Regulation states:

To remove a student with a disability when board of education personnel maintain it is dangerous for the student to be in the current placement and the parent and board of education do not agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days according to 20 U.S.C. § 1415.(k) and its implementing regulations at 34 CFR Part 300.

1. The procedure in 20 U.S.C. §1415(k)(3) may be repeated as necessary.

[N.J.A.C. 6A:14-2.7(n)]

I **FIND** that C.G.'s status as a student with a disability is not and cannot be disputed. A review of her psychiatrist's report from October of 2022 reveals the scope of

C.G.'s disabilities and the IEP from February of this year recognizes that her disabilities still exist, and that C.G. remains eligible for classification under Other Health Impaired.

The Petition for Due Process and Emergent Relief clearly indicates the reason the Board is seeking a Court Order approving an interim alternative placement (Home Instruction) is because maintaining the original placement while the Due Process Petition is fully resolved would be dangerous to the student as well as other fellow students and school staff. I **FIND** that the undisputed facts in this case support petitioner's position, that it would be dangerous to maintain her initial placement within the Wayne Township Public School System. Although C.G. denied setting the fire, she admitted to school officials that she was in the restroom when a fire was started, a fellow student observed her trying to extinguish the fire, she had soot on her face when she returned to class, and a lighter was found in her possession. It is also undisputed that only four months earlier, C.G. threatened to "shoot up the school with everyone in it". I further **FIND** that placing C.G. on Home Instruction for a limited time period while a proper, safe and supportive out of district placement is located is the only way to ensure her safety because the Board acknowledged that it lacked a therapeutic program to properly support C.G., ensure her safety and the safety of other students and staff members.

The Board in this case had no choice but to file a Petition for Due Process and Emergent Relief because C.G.'s parents did not consent to a therapeutic out of district placement for C.G. and refused to give consent to send C.G.'s records to potential suggested out of district schools. Based however on the uncontested representations of the Board that consent to release the records has now been obtained and that C.G.'s parents are currently scheduling appointments with the proposed therapeutic out of district facilities, it appears that the Petition for Due Process may no longer be necessary. The emergent relief requested by the Board for an Order placing C.G. on Home Instruction on a temporary basis has not been contested.

I **CONCLUDE** that the Home Instruction is an appropriate interim alternative placement for C.R. I further **CONCLUDE** that due to the delay in forwarding C.G.'s records

to the proposed out of district facilities caused by her parent's initial refusal to execute releases for said records, the 45-day limit set forth in N.J.A.C. 6A:14-2,7(n) for an interim alternative placement should begin as of the date of this Order.

For the reasons set forth above, it is **ORDERED** that C.G. be place on Home Instruction as an interim alternative placement for a forty-five-day period.

This decision on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties will be notified of the scheduled hearing dates. 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.



March 3, 2023

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

March 3, 2023

Date Mailed to Parties:

March 3, 2023

sej