



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 03277-21

AGENCY DKT. NO. 2021-32579

ELIZABETH BOARD OF EDUCATION

Petitioner,

v.

S.E. AND D.B. ON BEHALF OF J.E.,

Respondents.

OAL DKT. NO. EDS 02871-21

AGENCY DKT. NO. 2021-32637

S.E. AND D.B. ON BEHALF OF J.E.

Petitioners,

v.

ELIZABETH BOARD OF EDUCATION,

Respondent.

Richard Flaum, Esq., for Elizabeth Board Education (DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, attorneys)

Michael I. Inzelbuch, Esq., for S.E. and D.B.

Record Closed: April 9,2021

Decided: April 16, 2021

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

On March 25, 2021, Petitioners filed a cross petition for emergent relief with the Office of Administrative Law, seeking a determination that the Elizabeth school district was not providing J.E. with FAPE, and an immediate out-of-district placement day program or other alternative for the parties' son J.E. Other relief, including but not limited to independent evaluations was sought as well. Prior thereto, on March 10, 2021 the district had filed its own due process petition, seeking a determination that under an IEP that was prepared and offered on December 23, 2020, the district had fulfilled its legal obligations to provide FAPE to J.E.

Oral argument was held during the afternoon of April 8, 2021 and was continued on April 9, 2021. No sworn limited testimony was presented, and the district did not present any certifications from personnel or school officials familiar with J.E., his IEP, and/or other educational information. Instead, the district relied upon attorney certifications to support its position and summarize why the relief requested should be denied.

PROCEDURAL HISTORY

On or about March 15, 2020, the State of New Jersey, by Executive Order of the Governor, declared a State of Emergency due to a serious Pandemic which came about due to Covid-19 virus. Among other things, the Order included a shutdown of all schools throughout the State, in an effort to contain the virus, and protect students, teachers, staff and parents from being exposed to others who might be carrying the virus. Little was known at the time about the potential threat, and it was hoped after a two-week period that schools and the rest of the State could open up again, with minimal disruption.

Re-opening did not happen at that time, and school districts including Elizabeth, were left to develop alternate methods of teaching through virtual instruction for the balance of the 2019-20 school year. This was especially challenging for teachers and students including the Elizabeth school district, who are involved with delivering and receiving special education and related services, impacting thousands of students and families of students like J.E. who are eligible to receive these services.

Recognizing the need to address the situation, the Commissioner of Education, and the Department of Education itself, issued some modified guidelines to districts regarding the

alternate method of teaching and delivering services to students, including but not limited to the ongoing obligation to offer and provide FAPE. The directives and guidelines that came out, however, did not require districts to revise the IEP's for students receiving Special Education services. It is against this backdrop that the underlying due process petition filed by the Elizabeth School District, and the Cross-Petition for Emergent Relief were filed.

The 2020-2021 school year began as the prior school year ended in Elizabeth, with education and special education being delivered in an all virtual manner. On September 25, 2020, petitioners on behalf of J.E., wrote to the district and requested that several evaluations be conducted of their son, J.E. The requested evaluations included educational, behavioral, psychological and psychiatric reviews. Upon completion of these reviews, it was expected that the district would prepare an Individualized Education Plan, (IEP) for J.E. that would address and help him to overcome certain challenges he was demonstrating and experiencing, inside and outside the classroom.

With the exception of a Behavioral Analysis which during argument, the district indicated was not called for at the time, evaluations were completed, and an IEP was prepared and presented to petitioners on or about December 23, 2020, some three months after the initial request for evaluations. The evaluations themselves were not presented by the district during this proceeding, so I am left to the summaries of these documents contained in the proposed IEP.

The document itself does not refer anywhere to the well known situation at the time that Elizabeth schools were still closed for in person learning, and that all of the proposed educational goals, services and manner of delivery will be done virtually. Petitioners asked for some time to consider the document, and for an opportunity to observe the class that J.E. would be in. The district argues that once an IEP is presented, if a parent decides to remove a child from the district for their own placement, it is presumed FAPE was offered by the plan itself.

The events which occurred after are somewhat unclear. A brief observation was allowed and took place. Petitioners then advised the district they were in quarantine due to Covid during the second week in January 2020. The district made two attempts in the first two weeks of January to have petitioners "sign-off" on the IEP and start services.

Petitioners did not respond to these requests, and on January 20, 2021, informed the district in writing that they were unilaterally removing J.E. from the district and enrolling him in the Sinai School, a private Jewish based day school, which was offering in person classes.

After a month at Sinai, a behavioral incident occurred between J.E. and a school official, leading Sinai to inform petitioners that if J.E. wanted to continue to attend Sinai, it could only be done virtually, with no in person attendance.

In mid-February 2021, a records request of J.E.'s complete Elizabeth file was submitted. For reasons unknown there was a delay in producing it, and even apparently some resistance to doing so. The next even apparently was on or about March 10, 2021, the district filed a due process petition, which was filed by the within application cross motion for Emergent relief. J.E. was still enrolled at Sinai during this time, although he and petitioners remained as residents of Elizabeth throughout this time, thereby making Elizabeth still responsible for his education, even if the re-enrollment happened sometime thereafter. Oral argument was heard on April 8 and 9, 2021, and on April 12, 2021 with the district closed for spring break, the matter remained open for settlement discussions on April 12, 2021. This was ultimately deemed unsuccessful on April 13, 2021. I don't usually include proposed settlement terms in a case decision, but here it is part of the procedural history, as part of the district interim proposal was for J.E. to return to the district for the balance of the school year in a 3rd Grade class, not the 4th Grade class that was called for in the December 23, 2020 IEP. There were other issues as well on both sides that I will not get into here, which made the arguments on both sides more contentious. During this time, while preserving both sides rights and claims, counsel agreed to extend the time for a decision to be filed. Both sides continued to send submissions, which were not considered as part of this decision. District counsel also sought to have sanctions imposed against petitioners' counsel, which also not being considered. The balance of the case has now also been assigned to this ALJ who now has jurisdiction over all issues. Because the end of the school year is only two months away, and J.E. has not participated in any sort of formal educational experience since February, the rest of this case following this decision will be "fast-tracked" to the extent possible in an effort to get him back in some sort of educational setting.

FACTS

Many, but not all of the underlying facts concerning J.E.'s background and educational history are undisputed.

J.E. is a nine (9) year old boy who chronologically is eligible to attend and participate in school at the 4th Grade level. An IEP presented by the district on December 23, 2020 confirms this. Over the course of the past two to three years, he has attended the Elizabeth Schools,

Joseph Kushner Academy, a private Jewish day school in Livingston, and the Sinai school, also a private Jewish day school. J.E. is a bright child, who has shown the ability to perform at average to above average levels of Language Arts, but he struggles with Math. During his time at Kushner and Sinai, there have been signs and incidents of him exhibiting behavioral issues that interfere with his ability to learn and get along with teachers, administrators and peers.

At all times relevant herein, J.E. and his parents, the petitioners, were residents of the City of Elizabeth.

The Elizabeth Board of Education operates a K-12 public school system, and under IDEA, FAPE and Section 504 of the Rehabilitation Act, operates a system that also is mandated to offer special education services to those students whose needs require it.

On September 25, 2020, J.E.'s parents made a formal written request for the district to conduct several different types of evaluations of J.E., including but not limited to psychological, psychiatric, educational and behavioral assessments of J.E., with a view towards his classification as a student in need of special education and related services. (It appears that there was an earlier request in 2019 to have these assessments conducted, the response to which is unknown.)

Some of these assessments were undertaken through the fall of 2020, from October 27, 2020 through December 18, 2020 with the exception of a full Behavioral Analysis. For purposes of this proceeding, the district did not provide copies of these reports, nor were certifications provided by the officials who would be implementing the findings. A records request sent to the district on behalf of petitioners in February 2021, was not responded to in a satisfactory manner, though part of it was ultimately provided. There is no record that the district sought or received copies of J.E.'s records from Kushner or Sinai, or if needed, asked petitioners for written consent to obtain same.

As a result of the partial assessments conducted by Elizabeth during the fall 2020, the district classified J.E. as "other health impaired." Without the benefit of certifications from district officials, (other than attorney certifications summarizing certain documents, it is unclear how the district arrived at this determination). Petitioners say the classification should go further based on documentation from J.E.'s , and psychiatrist and psychologist and instead of "other health impaired" it should be "multiple disabled." Only a mental health professional would be able to explain the importance of the two classifications to me, in order to better understand J.E.'s challenges.

After completing the assessments, it appears the district Child Study Team met, and prepared an Individual Education Plan (IEP) dated December 23, 2020. Again here, though counsel is not faulted due to extenuating circumstances of a key member of the Elizabeth staff being unavailable due to bereavement leave, and the rest of the staff being out due to spring break, even though the burden in these emergent applications is on the petitioners, no one from the district either supplied a certification before the break started to explain how the IEP was developed, nor was any limited testimony provided. And in fairness to the district, with no one available, I also could not allow limited testimony from petitioners' side, even though it was offered. Thus, I am left to read and review the IEP, and have counsel for both sides argue to me what it means or doesn't mean and try to interpret it myself.

Following the meeting with petitioners concerning the IEP just before the Christmas break, the petitioners asked for an opportunity to think about what was being proposed and to observe a class. After school resumed at the end of the break, a brief observation was granted, but unfortunately petitioners developed Covid and had to go into quarantine. Two more efforts by the district were made to find out what petitioners had decided, with no further response, until petitioners informed the district in writing on January 20, 2020 that they had decided to enroll J.E. at the Sinai school. Within a month of attending Sinai in person, J.E. was involved in a physical incident with an administrator, and though not completely terminated from the school, petitioners were told he would only be welcome to participate in virtual classes. J.E. did not adapt well to this, and his counsel argues he further regressed.

Two mental health professionals, who are familiar with J.E. and his behavioral challenges, Dr. Bartky and Dr. Dykman represent that J.E. needs to attend an in person school, and does not do well with virtual school.

It is undisputed that the New Jersey Department of Education has issued some interim guidelines to schools regarding virtual learning indicating that a school's obligation to continue to deliver FAPE continues even with virtual learning. However, the guidelines do not require districts to revise IEP's nor do they compel a district to arrange and pay for an out of district placement when students struggle with virtual learning as J.E.'s doctors suggest.

Also undisputed is the fact that J.E. did not participate in much of 3rd Grade, and multiple days of truancy and/or not participating in virtual school since the onset of the Pandemic are documented.

It is appropriate here to address the IEP itself, since the document itself is undisputed, even if petitioners do not agree with some of its conclusions. Again, here though, no one from the district supplied a certification as to how the IEP was developed, so it is left to the reader to try to understand and interpret its contents. The document itself, consists of 23 pages, a large portion of which sets forth specific learning goals and objectives for J.E. to meet. The document talks about an 80/20 ratio for J.E. of Gen Ed., with his peers, with supplemental aids and services. The IEP includes one daily 40 minute session of in class support for Language Arts through June 2021, and the same for Math. The same assistance is offered when the new school year starts in September 2021 through December 2021. Individual counseling is offered once a month for 30 minutes, and three consultations a month for 15 minutes each. J.E. is described in the document as a “bright student” with advanced cognitive and academic abilities. The district places him in the category of “other impaired.” Parent concerns are noted and specify social/emotional difficulties that impede his ability to learn. In the Eligibility portion of the document the IEP confirms Anxiety and Defiant Disorder as two of his challenges, as well as Central Auditory Processing Disorder.

The lengthiest and most detailed part of the document came from an educational evaluation done by Ms. Huang, that talks about J.E. as an average or above average student, particularly in Language Arts. Again here though, there is no certification from Ms Huang to ask or interpret this area of the IEP. This part of the IEP acknowledges social and emotional challenges, but does not specify a course of action to address this area as it impacts on J.E.’s ability to learn.

Interestingly, later on in the IEP, it discusses a negative experience J.E. says he had with abuse from a nursery school administrator, yet the issue is dropped and not explored further. Whether this had any impact on J.E.’s ability to respect and interact with authority figures is unknown and not examined any further.

While the document seems to include several pages of academic goals and objectives. it is extremely general and vague about controlling and working with his social/emotional challenges, with such things as, stickers, positive reinforcement, rewards, praise, and broad descriptions of a student with anxiety, but nothing specific to J.E.

Finally, a quick read of the document makes it appear that the student this document is designed for will be attending school in person five days a week. At the time this document was

prepared, Elizabeth had already gone full virtual for the last three and a half months of the spring 2020 school year, and almost four months of fall/winter 2021.

Nowhere in the document itself does it even mention that all of the goals and objectives, as well as the reward system, 80/20 time with General Education peers, and fifteen(15) minute counseling sessions three times a month, will be all virtual. So while the Department of Education does not require IEP's that were in effect at the time of the shutdown to be revised, it seems curious that an IEP that is being proposed after seven months of Covid wouldn't at least mention that the education and related services would all be delivered on a virtual basis. (At the time this emergent application was heard, the district posted a message on its website that suggests it will partly re-open in late April on a hybrid basis. District counsel argued, again without the benefit of hearing it directly from an Elizabeth representative, that the school J.E. would attend, might even be open five days a week.)

Again, however, through no fault of district counsel, it became necessary to secure a Stipulated Statement that were J.E. to return to Elizabeth for the balance of the school year, it would be in 4th Grade (since the non-binding interim proposed resolution that was rejected called for J.E. to return to the school in 3rd Grade, which could be considered as a material alteration of the proposed IEP.)

Multiple email communications from petitioners' counsel to supplement the record after it closed were not considered, nor is the request by district counsel to sanction petitioners' counsel considered for attempting supplement the record after it closed.

Based on the relevant documents submitted, oral argument and evidence I **FIND:**

1. J.E., age 9, is a bright student who excels in Language Arts but struggles in Math.
2. J.E. has multiple disabling challenges, especially social/emotional and behavioral issues. He also has Central Auditory Processing Disorder, anxiety, and possible autism.
3. During the past two years, J.E. has attended three schools, one in Elizabeth, Kushner Academy in Livingston, and the Sinai school. He did not do well at Kushner and left, and the same thing occurred after only one month at Sinai. A letter was presented from a Kushner official that suggests J.E. would do better in public school.
4. Two of J.E.'s mental health professionals represent that he needs to attend school in person as he does not do well in a virtual setting.

5. Interim revised guidelines from the Department of Education compel districts to continue to deliver FAPE, even in a virtual setting. However, the revised guidelines do not require districts to revise a student's IEP to reflect virtual learning, nor do they require districts to arrange for out of district in person placements for students who are struggling with virtual learning.
6. In September 2020, J.E.'s parents, who have resided in Elizabeth throughout, requested the district conduct several evaluations, including but not limited to educational, psychiatric and psychological. A full Behavioral Analysis was not conducted at the time.
7. After the evaluations were completed, an IEP was prepared, and a meeting held with petitioners and some members of the IEP team on December 23, 2020.
8. Petitioners asked for some time to consider the IEP and requested an in-person observation which was briefly granted.
9. Petitioners did not communicate with school officials again about implementing the IEP, and on January 20, 2020, they informed Elizabeth they were unilaterally placing JE. At the Sinai school.
10. Approximately one month after the placement, J.E. had a physical altercation with a Sinai school official, resulting in him being barred from in person attendance at the school, though he was allowed to remain as a virtual student.
11. Coinciding with this development, or shortly thereafter, in February 2021, a records request was sent to Elizabeth seeking his entire file. For reasons unknown, there was a delay in getting these records out to petitioners and/or their counsel. The resulting litigation ensued.
12. J.E. has not attended any school for almost two months, virtually or otherwise for at least two months, and there has been no services provided on an interim basis during the time that Elizabeth filed its own due process petition, and petitioners cross filed for emergent relief. There is concern that though he is bright, he continues to regress with no path forward.

LEGAL DISCUSSION AND CONCLUSIONS

The Individuals with Disabilities Education Act, (IDEA), 20 U.S.C. Sect. 1400-1482, ensures that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet the unique needs and prepare them for further education, employment and independent living, and ensures

that the rights of children with disabilities and parents of such children are protected. See also: N.J.A.C. 6A:14-1.1 et seq.

States qualifying for federal funds under the IDEA must assure all children with disabilities receive the right to a “free appropriate public education.” Hendrick Hudson Cent. Sch. District Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C. Sect. 1412 (a1A,B).

In order to facilitate the implementation of FAPE for eligible students, an Individualized Education Program, (IEP) is prepared, developed and reviewed for each child that is eligible to receive special services. 20 U.S.C. Sect. 1412,1414 respectively. The IEP establishes the rationale for the student’s educational placement and serves as a basis for the implementation of certain programs to meet that student’s unique educational and sometimes behavioral special needs. N.J.A.C. 6A: 14-1.3-3.7. Annually or more often if necessary. The IEP team shall meet to review and revise the IEP to determine an appropriate placement for the student.

The standards that must be met by the moving party in an application for emergent relief are embodied in N.J.A.C. 6A:14-2.7(r)–(s), N.J.A.C. 1:6A-12.1, and Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982). Emergency relief may be granted if the judge determines:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying 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.A.C. 6A:14-2.7(s)(1).]

“Each of these factors must be clearly and convincingly demonstrated” by the moving party. Waste Mgmt. of N.J. v. Union County. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Considering the above factors for emergent relief, I **CONCLUDE** that Petitioners. have satisfied the four criteria, but not to the extent that the remedy is to simply order the district to find

a placement at an in-person day school, as petitioners have requested. By petitioners' choice, J.E. has already engaged in two other in person, out of district placements, Kushner and Sinai School, neither of which resulted in a successful learning experience for J.E. the accompanying documents presented by both sides, petitioners did **satisfy the first prong required for relief because they clearly and convincingly demonstrated J.E..** will suffer irreparable harm, without an alternative educational setting, the question, which neither side has satisfactorily demonstrated, is what does that alternative consist of.

As to the other criteria, the legal rights of J.E. are elaborated above under **IDEA and FAPE**, petitioners on behalf of J.E, at least at the present time, are **likely to prevail on the merits**, and having considered all the documents and thorough and professional presentations by all counsel, **after balancing the equities**, it more likely that petitioners on behalf of J.E. will be prejudiced, unless some version of the relief requested is granted.

Additionally, at this stage of the case which was heard on an emergent basis, petitioners have at least in part met the criteria of demonstrating a likelihood of success on the merits of the underlying claim, and again, through no fault of counsel, without the benefit of either certifications or limited testimony from even one district official, I do not have a basis at this stage of the case to conclude that petitioners claim must fail because the district is offering and providing FAPE to J.E.

Petitioners presented valid reasons to consider other alternatives having considered all of the facts and evidence presented, the most appropriate placement sought for J.E.. The district, by its counsel says what it is offering which starting April 26, 2021, consists of a hybrid of in person and virtual is the most appropriate placement for J.E. at the present time, consistent with its obligation to provide FAPE. (In fairness to counsel, the case manager was not available during argument due to being out on bereavement leave, and other officials were not available due to spring break). Lengthy settlement talks, which would have provided some interim relief, broke down at the end of the day Monday April 12th.

While counsel for the district were extremely professional, prepared and zealous advocates for the district's position, through no fault of their own, they were limited in their ability to address certain aspects of the case by virtue of the lack of availability of district personnel to either provide certifications, and/or participate in the proceedings. To their credit, district counsel offered at least two of their own certifications, which referred to J.E.'s educational history, and the proposed IEP dated December 23, 2020, the focus of which is the subject of this case. But without

certifications or limited live testimony which is sometimes appropriate in these proceedings, the undersigned was left to rely on explanations and advocacy by district counsel, without the benefit of any of the school officials involved in J.E.'s past or proposed future experience within the district.

The district says it was never given an opportunity to implement the December 23, 2020 IEP, which included several academic goals and calls for J.E. to be in the company of General Education peers for eighty (80) percent or more of the day. The IEP also provides for In-class Resource (support) in Language Arts and Math, as well as Counseling services for three fifteen (15) minute sessions three times a month, and one thirty (30) minute monthly session.

Missing from the document however is an explanation of how these provisions would be implemented while Elizabeth remained completely virtual for at least the first four months of 2021. In fact, the word virtual, does not appear anywhere in this twenty-three (23) page document.

So while the New Jersey Commissioner of Education, and the Department itself has promulgated interim guidelines that authorize districts to provide special education services virtually, it seems curious, nine months into providing school through this alternate virtual means, that the IEP being offered to J.E. nowhere mentions that the education and related services referred to therein would be provided virtually, and the method of carrying this out.

Under the facts and circumstances presented, petitioners have met all four criteria required for emergent relief.

Therefore, I **CONCLUDE** that petitioners have demonstrated, at least in part, that J.E. will be irreparably harmed if emergent relief is not granted; and further **CONCLUDE** that petitioners on behalf of J.E. have demonstrated a likelihood of prevailing on the merits at this stage of the proceedings.

Although, I **CONCLUDE** that petitioners have established the necessary criteria to be successful for emergent relief, the relief sought in this emergent application, which seeks an order for an out-of-district in person day placement, **DOES NOT** seem appropriate at the present time since J.E. has already been unsuccessful at two respected out-of-district in person days schools. Without more current evaluations, including an analysis of where J.E. currently stands academically after missing so much school, as well as a current behavioral analysis to speak to why his behaviors impact his learning, and recommendations on how to get this under control, I

AM UNABLE AT THIS TIME TO CONCLUDE that an out of district in person day placement is the long-term appropriate remedy.

Instead, **I CONCLUDE** that an alternate, interim remedy is appropriate, which consists of the following measures, and which the district will be responsible to pay for through the end of this school year ending in June 2020:

1. Participation on a 1:1 basis through a program recognized by the New Jersey Department of Education through the end of this June school year, or in the alternative as the parties may agree upon, twenty-five (25) hours a week of compensatory education in primary academic areas of Language Arts, Math, Science and Social Studies, as may more fully identified by an updated and current Educational analysis set forth below commencing Monday April 19, 2021, through June 25, 2021. If necessary, these services shall be paid for initially by petitioners and reimbursed by the district until the district can arrange for a direct form of payment. **Both counsel are more familiar with the available choices. If, for some reason they are unable to agree on a short-term arrangement for J.E. through the end of this school year, then they shall report back to me within seven (7) days hereof, and I will reluctantly make the selection after the choices are presented to me.** However, this should be a last resort, as with experienced and caring counsel on both sides, I am confident an appropriate choice can be made without my involvement.
2. A full independent Behavioral Analysis, and an independent Education Analysis, that among other things, takes into account J.E.'s behavior that led him to leave the Kushner and Sinai programs, and his academic level considering that he has missed so much time from school. Any reports in this regard should also address, if it is recommended, he repeat 3rd Grade, on the social, emotional and economic impact of such a recommendation, and whether or not a summer program somewhere could bring him to the same academic level as his 9 year old peers. Dr. Bartky and Dr. Dykman shall issue updated reports on this issue as well, within fourteen (14) days hereof.
3. No award of other compensatory education or fees is awarded at this time, and any outstanding bills petitioners may owe to Sinai are petitioners' responsibility.
4. All documents and reports not yet turned over by the district to petitioners shall be provided within ten (10) days hereof, as should any reports in the possession of petitioners' counsel.

5. A follow up conference to discuss a path forward for the balance of this case which has now been assigned to me shall take place on Friday April 30th, 2021 at 8:30 AM, or such alternate time as agreed upon by counsel.
6. All other relief sought is **denied** at this time, subject to renewal in the primary case, and the request to find the district offered and provided FAPE is also **denied** at this time.

ORDER

Petitioners' request for Emergent relief is **GRANTED** in part, in the alternate manner as set forth above. The district's request to determine that FAPE was offered and provided is **DENIED** at this time.

It is further **ORDERED**, that the District shall begin to take the steps necessary to ensure a safe and orderly transition for this interim form of education for J.E., until a longer term plan can be put together after current reports are received. Petitioners shall be equally cooperative in this process.

Finally, it is **FURTHER ORDERED**, that upon receipt of this **Order**, both counsel shall work together and arrange for a full an independent **Behavioral Analysis** of J.E., and an independent **Educational Analysis** as well, as it now has notice of certain behaviors which caused J.E. to be asked to leave in person learning at two private, out of district schools, which was not referred to or addressed at the time the IEP was prepared on December 23, 2021. The district shall be responsible for bearing the cost of these updated evaluations.

Although I am not Ordering an immediate in person day placement now, **I CONCLUDE** J.E.'s time out of school calls for immediate action now, with the implementation of a short term 1:1, for a minimum of ten (10) hours a week, to a maximum of twenty-five (25) hours a week depending on availability, or in the alternative twenty-five (25) hours of compensatory education through the end of this school year, so he does not further regress. In order to make this happen, the parties and counsel need to start communicating better and speaking to each other instead of past each other, in the best interests of J.E.

This **Behavioral Analysis and Educational Evaluation** the length or amount of time for which is unknown, **shall be scheduled immediately, and both should be completed within 21 days**. The results should be shared with both sides within 48 hours of receipt. Both experienced

counsel have sufficient contacts in the industry to select and arrange for these evaluations, which shall be paid for by the district, where J.E. is enrolled and continues to reside.

If the Elizabeth Schools are open during the summer 2021 for an Extended School Year program, (ESY) although it was not part of the December 23, 2020 IEP, the district should consider offering, and petitioners should consider requesting enrollment for J.E. in such a program, which may offer the opportunity to regain some of the learning lost since February, and to avoid further regression before the next school year commences.

Finally, **I FURTHER CONCLUDE**, that once the updated Behavioral and Educational Evaluations are conducted, and J.E. has started short term 1:1 learning, or an alternate form of compensatory education as may be agreed upon, another IEP meeting should be scheduled, some time before the end of this school year, to address where J.E. will be able to get “back on task” for learning, while he and his teachers and parents continue to address and help him to overcome whatever, social, emotional and behavioral challenges are holding him back.

This schedule for the underlying due process matter will also be accelerated to coincide with the issues discussed herein, starting with the next conference on Friday April 30, 2021 at 8:30 AM, or at an alternate time as agreed upon by counsel.

This decision on application for emergency relief resolves all of the issues raised for this proceeding only. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 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.A. § 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 16, 2021

DATE



ANDREW M. BARON, ALJ

Date Received at Agency:

April 16, 2021

Date Mailed to Parties:

April 16, 2021

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APPENDIX

Exhibits

Elizabeth Board of Education:

Certification of Richard Flaum with Exhibits

Certification of Amy Pujara with Exhibits

- A- Dept. of Education Guidelines
- B- MD v. East Orange
- C- Daily attendance report
- D- Attendance

S.E. and D.B.:

- A- Covid Dept. of Health
- B- LA Times article
- C- Hybrid article
- D- 3/1/21/ Tomaino article
- E- Attendance
- F- 3/30/19 letter from district
- G- 9/24/20 email
- Dr. Bartky certifications
- Dr. Dykman certification