



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION – EMERGENT

RELIEF

(REVISED)

OAL DKT. NO. EDS 01253-22

AGENCY DKT. NO. 2022-33903

I.A. and S.A. ON BEHALF OF A.A.,

Petitioner,

v.

UPPER SADDLE RIVER BORO

BOARD OF EDUCATION,

Respondent.

Lori M. Gains, Esq., (Barger and Gains, Attorneys) for Petitioner

Stacey T. Cherry, Esq., (Fogarty & Hara, Attorneys) for Respondent

Record Closed¹: June 16, 2022

Decided: June 20, 2022

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

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.

I.A. and S.A. o/b/o A.A. (petitioners) filed a request for expedited due process seeking immediate return of A.A. to in-school placement, with a 1:1 aide, a bus aide, increased counseling, supplemental instruction, an independent psychiatric evaluation, a functional behavioral assessment, and development of a behavioral intervention plan. The matter was converted to an emergent due process petition seeking immediate return to in-school instruction pending the resolution of the underlying due process claim and was assigned to the undersigned to be heard as an emergent EDS.

PROCEDURAL HISTORY

The request for expedited due process was transmitted to the OAL on February 16, 2022. The matter was stayed pending settlement discussions until the matter was converted to an emergent EDS seeking immediate in-school placement pending the resolution of the underlying due process petition. The emergent matter was heard by the undersigned on June 16, 2022, at which point the record regarding the emergent portion of the due process petition was closed.

FACTS

The following **FACTS** are undisputed.

A.A. is a minor student enrolled in the district who is diagnosed with ADHD and specific learning disability and qualifies for special education services.

On January 3, 2022, A.A. brought a toy gun into school and shot a foam pellet at another student, striking her. A.A. was suspended out of school for 4 consecutive days and one in school suspension day. Subsequent to the incident, on January 8, 2022, A.A. sang a song to his peers regarding his shooting the other student with the foam pellet.

The district determined A.A. posed a safety threat and placed A.A. on immediate home instruction pending out of district placement in a therapeutic school. The district's determination was based, in part, by the recommendation of the district psychologist. A.A.'s parents initially consented to A.A.'s potential placement in a therapeutic school, but after visiting one such school, determined it was not suitable for their son and filed the underlying due process petition for A.A. to return in in-school instruction, with the added supports. The parents also sought the advice of two separate child psychologist who determined A.A.'s placement in therapeutic school was not warranted.

Disputed Facts:

Aside from the undisputed facts above, the district and petitioners dispute the severity and regularity of A.A.'s conduct, which are integral to the case. The district contends that A.A.'s act of bringing a toy gun into school and shooting it at another student is a major cause for concern. They further contend that the song A.A. authored and sung to his peers regarding the incident expressed a clear lack of remorse or concern for the student he shot with the pellet, but rather, A.A. expressed his satisfaction with his actions. The district also notes that another student reported that A.A. told them that A.A. expressed the desire to bring his father's gun into school, though it was subsequently determined A.A.'s father did not possess a firearm. The district also noted that A.A. has, in the past, extorted or otherwise coerced fellow classmates into giving him their usernames and passwords so that he may access prohibited internet sites from school computers. They also brought up an incident wherein A.A. threw a classmate up against a wall and another incident where he drew a picture of a classmate's head exploding while onlookers cheered, which the district found disturbing.

Petitioners, on the other hand, contend that A.A. has exhibited no dangerous or otherwise harmful acts of any kind and characterize A.A.'s disciplinary infringements as minor, few and far between. They deny A.A. ever said he wanted to bring a gun into school, and they argue that A.A. only shot his classmate with the pellet gun because A.A. felt he was being bullied by her. Petitioners also note that the one incident the district

commented on wherein A.A. through a classmate up against a wall, A.A. was not acting out of aggression, but simply horsing around. The petitioners also argue that the pictures A.A. drew that the district found alarming are being taken out of context and are not alarming at all.

LEGAL ANALYSIS AND CONCLUSIONS

One applicable regulation is N.J.A.C. 6A:14-2.7(r), which provides in pertinent part as follows:

1. 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.

Here, petitioner seeks immediate termination of in-home instruction brought forth via a disciplinary act, and return of A.A. to in-school instruction. The also refuse to entertain out of district therapeutic instruction. Thus, I **CONCLUDE** that the petition for emergent relief satisfies (ii) above.

More generally, emergent relief is available pursuant to N.J.A.C. 1:6A-12.1(e), N.J.A.C. 6A:3-1.6(b) and N.J.A.C. 6A:14-2.7(s), if the application meets the following four requirements:

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.

Petitioner argues that A.A. will suffer irreparable harm the longer he is removed from his in-school setting, noting that is the most restrictive environment. They also argue he has already been stigmatized socially as a result of his absence from school. The district argues that A.A. has been successfully completing all his classes during this period of in-home instruction, and that they are not aware of any social stigmatization resulting from it. They Further note that any deficit in FAPE may be ameliorated via compensatory education if needed. I **CONCLUDE** that in home instruction is, in this case, the most restrictive environment A.A. may receive an education in. I further **CONCLUDE** that any extended period of at home instruction with no path to either out of district placement or a return to in-school, in-district placement will, likely, result in irreparable harm to a student due to the sheer nature of limited social interaction with peers and face to face interaction with teachers and staff. As Ms. Gaines noted on the record; compensatory education cannot regain or otherwise make up for a student's experiencing his sixth-grade year. Thus, I **CONCLUDE** the petitioners have met this first prong.

I further **CONCLUDE** that the legal right to receive a free and appropriate education in the least restrictive environment is a well settled right, thus the second prong is satisfied.

I further **CONCLUDE** that petitioner's likelihood of prevailing on the merits of the underlying claim is not established, as the act of bringing a gun, even a toy gun, and discharging it at a classmate is, in our current environment, egregious enough to warrant removal from the classroom. A.A.'s actions must be taken into context with the rash of horrific shootings that have plagued the world in recent years. I find it unlikely that A.A., a sixth grader, is unaware of the current climate surrounding gun violence in schools. I find it disturbing that, given the current climate, A.A. feels that bringing a toy gun into

school and discharging it at a student was a reasonable means of conducting himself. The petitioners, therefore, fail to meet this prong.

I further **CONCLUDE** that when the equities and interests of the parties are balanced, the petitioner will **not** suffer greater harm than the respondent will suffer if the requested relief is not granted. This is due to the fact that any educational deficit experienced by A.A. is overridden by the possibility of A.A.'s presence in school bringing forth a potentially dangerous or harmful situation to his fellow classmates and/or faculty and staff.

Based on the foregoing, I **CONCLUDE** that petitioner has failed to meet the four-pronged requirements to succeed on an emergent action as cited above, and is, therefore, not entitled to injunctive relief pending the outcome of the underlying due process petition. The foregoing emergent petition is, therefore, be **DENIED**.

ORDER

It is, hereby, **ORDERED** that petitioner's request for emergent relief be **DENIED**.

This order 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.

June 20, 2022

DATE



JUDE-ANTHONY TISCORNIA, ALJ

OAL DKT. NO. EDS 01253-22

Date Received at Agency

6/20/22_____

Date Mailed to Parties:

6/20/22_____

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