



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**ON EMERGENT RELIEF**

OAL DKT. NO. EDS 04825-22

AGENCY DKT. NO. 2022-34512

**LAWRENCE TOWNSHIP BOARD  
OF EDUCATION,**

Petitioner,

v.

**V.S. ON BEHALF OF M.S.,**

Respondent.

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**Michael A. Pattanite, Jr.**, Esquire, for petitioner, Lawrence Township Board of Education (Lenox, Socey, Formidoni, Giordano, Cooley, Lang & Casey, L.L.C., attorneys)

**Lacia Japp**, Esquire, for respondent, V.S. on behalf of M.S., (Disability Rights New Jersey, attorneys)

Record Closed: June 22, 2022

Decided: June 22, 2022

BEFORE **JEFFREY R. WILSON**, ALJ:

**STATEMENT OF THE CASE**

The Lawrence Township Board of Education (petitioner/District) brings an action for emergent relief against V.S. on behalf of M.S. (respondent), seeking an order to immediately place the student in an alternative placement of home instruction for

dangerousness pending the outcome of due process proceedings regarding the appropriate program for the student.

The transmittal also includes a request for due process for an order to compel parental consent to release records to an alternate placement. This request was withdrawn during the oral argument for emergent relief.

### **PROCEDURAL HISTORY**

The District filed a request for emergent relief and a due process hearing on June 16, 2022, at the State Office of Special Education (OSE). On the same date, OSE transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for the District. The parties presented oral argument on the emergent relief application on June 22, 2022, utilizing the Zoom platform.

### **FACTUAL DISCUSSION**

The facts of this case are not in dispute therefore, I **FIND** the following as **FACT**:

M.S. is a ten-year-old, fourth grade student attending Lawrence Intermediate School. V.S. is the mother and guardian of M.S. The student resides with his mother in Lawrenceville, New Jersey. The student is currently classified as communication impaired and is eligible for receiving special education and related services.

During the 2021-2022 school year M.S. has been involved in numerous student assaults. The following incidents occurred prior to the first manifestation determination meeting on March 25, 2022:

- October 25, 2021, M.S. assaulted a student. M.S. received an afternoon in-school suspension;
- November 11, 2021, M.S. assaulted another student by kicking him, threw a ball at another student, and hit a third student in the ear. M.S. received a one day in-school suspension;

- February 18, 2022, M.S. assaulted another student. M.S. received a three day in-school suspension;
- February 23, 2022, (first day back from suspension) M.S. assaulted another student with a punch. M.S. received an in-school suspension for the remainder of the day;
- February 24, 2022, (first day back from suspension) M.S. assaulted another student by punching him during gym class. M.S. was not suspended but the parent was notified that further incidents would require her to pick up M.S. from school;
- March 11, 2022, M.S. assaulted another student by punching the student, allegedly in defense of being pushed by the other student. M.S. was not disciplined;
- March 13, 2022, M.S. assaulted another student by punching the student. M.S. received a one day in-school suspension; and
- March 24, 2022, M.S. assaulted another student on the bus by kicking the student, allegedly in defense of himself after the other student's foot made contact with M.S.

On March 25, 2022, the Child Study Team held a manifestation determination meeting due to the number of removals from the M.S.'s program, relating to the above enumerated assaults and corresponding discipline. The Child Study Team determined the most recent assault resulting in a removal from the M.S.'s program was not a manifestation of his disability of communication impaired. The Child Study Team also held a reevaluation planning meeting after the manifestation determination meeting, on March 25, 2022. The reevaluation planning meeting sought to determine whether there was another disability effecting the M.S.'s behavior or emotional regulation and causing the assaults on other students and impairing the M.S.'s ability to access his education. The parent consented to the following evaluations: functional behavioral assessment, neurodevelopmental, educational, psychological, social history, speech and language and occupational therapy.

On March 31, 2022, the Child Study Team held M.S.'s annual review while the evaluations remained outstanding. The Child Study Team recommended M.S. be placed in the self-contained emotional regulation impairment class, a program that is specifically designed to deliver individualized academic instruction while also infusing a class

behavioral system, token economy, and daily social skills instruction. Counseling and Board-Certified Behavior Analyst (BCBA) oversight are infused into this program. There are generally a four student to three staff member ratio within the class comprised of a special education teacher and two aides. Additional staff push into the class for counseling, social skills, and behavioral interventions, increasing the staff to student ratio. Also, M.S. would have access to general education peers during lunch, recess, and special classes like art or world language.

The Child Study Team's recommendation was premised upon the increasing assaulting behavior, and M.S.'s inability to access appropriate strategies in order to abate or prevent the assaults on other students. The program recommended focuses specifically on providing students with social skills needed to avoid these types of situations. Also, the involvement of the BCBA overseeing a proposed behavior intervention plan for M.S. would help avoid these incidents. The parent rejected the March 31, 2022, Individual Evaluation Program (IEP) and filed a Due Process Petition on April 14, 2022, under OAL Docket EDS 04682-22 / 2022-34168.

Despite the District providing a program of a more intensive environment focused on the M.S.'s behavior, his assaultive behavior continued.

- On March 30, 2022, M.S. assaulted another student with a punch. M.S. was suspended two days, out of school;
- On April 4, 2022, (second day back from suspension) M.S. assaulted another student by striking the student. M.S. was suspended for one day, out of school; and
- On April 29, 2022, M.S. made physical contact with another fourth-grade student in the cafeteria. M.S. was counseled for this incident.

On April 27, 2022, the Child Study Team held a second manifestation determination meeting relative to the series of aggregate removals stemming from M.S.'s repeated physical assaults on other students. In the second manifestation determination meeting, the speech therapist commented that M.S.'s speech does not impact his ability to

communicate with friends or peers, and his articulation is ninety-nine percent typical with changes to his speech pattern self-initiated in order to “sound cool.”

The social worker also commented regarding counseling that M.S. has difficulty accepting responsibility for his part in an altercation. There is a block in his thought process on how to change what he could do differently or his responsibility for the result. He will share what happened but trying to get him to share one alternative solution has not occurred.

The parent continued to allege that more supports are required for M.S. in the general education environment and that increased counseling and a 1:1 aide would work to end the physical assaults on other students. On May 3, 2022, the District and parent executed an interim stay put agreement that allowed for the institution of a 1:1 aide, increased counseling, a reward system for positive behavior, and access to the counselor if an incident occurs.

Despite the restriction of a 1:1 aide and increased counseling, M.S. was involved in five additional situations leading to the instant emergent relief application:

- On May 9, 2022, M.S. behaved inappropriately in a physical confrontation that did not rise to an assault with another student. Counseling was provided to M.S.;
- On May 13, 2022, M.S. did not take the bus and avoided his aide upon entry to the school by entering a different entrance, and physically assaulted another student by punching the student in the face on the way to his classroom. M.S. was suspended for two days;
- On May 20, 2022, M.S. physically assaulted another student by punching the student in the face in the cafeteria. M.S. was suspended out of school for two days;
- On May 26, 2022, M.S. avoided his aide in order to physically assaulted another student by punching the student. M.S. was suspended for four days; and
- June 10, 2022, M.S. sprayed a student with cleaning solution. M.S. was immediately confronted by his teacher and aide. After the spray, M.S.’s class was dismissed, at the end of the period. M.S. told his aide and subsequent teacher that he must return to his other class because he left a folder in that

class. When M.S. returned to the classroom, he approached the other student again and attempted to punch the student. M.S. was unsuccessful because the student avoided the punch. M.S. was suspended for June 13, 2022, and placed on administrative leave pending the outcome of this proceeding. The assault took place in an environment with three staff and four students.

On June 2, 2022, an eligibility meeting was held with the Child Study Team to review the evaluations and determine eligibility for the student. Also, the Child Study Team met to develop an IEP in line with the recommendations from the completed evaluations. The Child Study Team determined M.S.'s classification should change to multiply disabled due to the presence of two or more disabling conditions and continued the recommendation to place M.S. within the emotional regulation impairment class. The proposed IEP again proposes a behavior intervention plan for M.S. to be overseen by the BCBA. The parent rejected the IEP and insisted on stay put continuing for the student.

During the 2021-2022 school year, M.S. committed numerous separate incidents of physical assault against different students. Since the implementation of the 1:1 aide and interim stay put agreement, five incidents have occurred involving M.S.'s physical assault of other students. On June 13, 2022, the parent was informed the student is placed on administrative leave pending the outcome of the Harassment, Intimidation, Bullying (HIB) investigation, and this emergent relief matter.

The District feels strongly that M.S. is a danger to himself and others due to his physically aggressive behavior. The District utilized their ability to place M.S. on leave while seeking consent for home instruction for the duration of this school year. M.S. is part of an HIB investigation stemming from the June 10, 2022, incident which must be completed before the end of the school year. Additionally, during the remaining half days of the school year, there is increased unstructured time for students including assemblies and festivities surrounding the end of the school year. M.S. has frequently encountered difficulty in unstructured time, and therefore the District feels there is an increased risk of potential harm to the other students within the school if M.S. is allowed to return to the District.

On June 15, 2022, a third manifestation determination meeting was held. The Child Study Team found that under the lens of a student with multiple disabilities, the incident was a manifestation of his disability (despite the technical classification of communication impaired due to stay put.) However, the Child Study Team also found that the manifestation was not the result of the failure to implement the IEP as the Child Study Team has consistently recommended an increased level of support for the student which the parent has rejected. Home instruction services were offered and on the date of the filing the parent accepted home instruction services.

With this application seeking emergent relief, the District contends that M.S.'s conduct has caused substantial disruption of the educational environment and has created a safety risk on multiple occasions as indicated above. The District is extremely concerned about safety and the emotional and educational well-being of M.S. and the other students given M.S.'s aggressive, unpredictable and disruptive behaviors. The District believes that M.S.'s aggressive, unpredictable and disruptive behaviors severely compromise the safety, education and well-being of him and others at the school.

The parent contends that there are no emergent issues at this time because the school year ends today, June 22, 2022, the same date this matter is being heard. Home instruction will therefore terminate today. M.S. will not participate in extended school year this summer. Therefore, M.S. will not be physically present with other students for school until next fall. The parent contends there is no immediate risk of harm meriting emergent relief.

Furthermore, the parent argues that home instruction is the most restrictive educational placement that eliminates interaction with other peers and greatly reduces instructional time. Home instruction typically consists of ten hours of 1:1 instruction per week with an adult instructor via virtual learning. This format is not an appropriate placement for M.S. Finally, the parent contends that the District has not satisfied factors mandated to grant emergent relief.

## LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district, or public agency may apply in writing for emergent relief. An emergent relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

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

- 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, the petitioner/District seeks an order to immediately place the student in an alternative placement of home instruction for dangerousness pending the outcome of the due process proceedings regarding the appropriate program for M.S. Therefore, I **CONCLUDE** it has been established the issue involves a determination of an interim alternate educational setting and placement pending the outcome of due process proceedings.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6(b):

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



2. The legal right underlying 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.

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

“Generally, irreparable harm may be shown when there is a substantial risk of physical injury to the child or others, or when there is a significant interruption or termination of educational services.” Ocean Twp. Bd. of Educ. v. J.E. and T.B. o/b/o J.E., OAL Dkt. No. EDS 592-04, Agency Dkt. No. 2004 8606, 2004 N.J. AGEN LEXIS 115, at \*8 (Feb. 23, 2004) (emphasis added). It is settled in New Jersey that a safe and civil environment in school is necessary for students to learn, and disruptive or violent behaviors are conducts that disrupts a school's ability to educate its students in a safe environment. N.J.S.A. 18A:37-13; see also, Elizabeth Bd. of Educ., Agency Dkt. No. 2015 22392, 2015 N.J. AGEN LEXIS 160 (Mar. 27, 2015) (granting a school district’s application for emergent relief placing the student in an out-of-district setting when the student was unable to conform to school rules and conduct herself in a manner that is necessary for her to access an education, when the student was unable to act in a manner that does not significantly disrupt the operations of the school and impact other student’s ability to access an education, and when the student’s discipline record and behavior negatively impact the safety, security and well-being of other students, staff and school property.)

Furthermore, a board of education may demonstrate irreparable harm by demonstrating that the child is disrupting the education of other students. West Windsor-Plainsboro Reg’l Sch. Dist. Bd. of Educ. v. J.D., OAL Dkt. No. EDS 3483-95, Agency Dkt. No. 95-6739E, 1995 N.J. AGEN LEXIS 226, at \*4 (Apr. 11, 1995). “The fellow students’

and the school staff's right to a reasonably safe and productive environment is also a factor to be considered in deciding upon appropriate placement of the classified student." Id. (citing U.S. Const. amend. XIV, §1). The child's classmates "deserve a safe environment without harassment and physical aggression." Howell Twp. Bd. of Educ. v. J.D. and T.D. o/b/o A.D., OAL Dkt. No. EDS 02772-11, Agency Dkt. No. 2011 16935, 2011 N.J. AGEN LEXIS 125 (Mar. 17, 2011.) Recently, the court determined an unsafe environment based on two incidents: a student's overreaction and obsessive interactions with some other students at the school and the student breaking a desk giving rise to the need to restrain the student by a security guard and the assistant principal. Sparta Twp. Bd. of Educ. v. R.M. and V.M. o/b/o C.M., OAL Dkt. No. EDS 01975-20, Agency Dkt. No. 2020-31239, 2020 N.J. AGEN LEXIS 458 (Feb. 21, 2020) (granting a school district's application for emergent relief under these circumstances.)

Irreparable harm is also established when a child is disrupting his or her own education. See West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.D., OAL Dkt. No. EDS 3483-95, Agency Dkt. No. 95-6739E, 1995 N.J. AGEN LEXIS 226 (Apr. 11, 1995) (granting a school district's application for emergent relief changing the placement of a child whose poor academic performance and behavior disrupted the child's own education.) Such disruption may result in a delay in the delivery of appropriate educational services and, consequently, academic regression. See Howell Twp. Bd. of Educ. v. A.I. and J.I. o/b/o S.I., OAL Dkt. No. EDS 5433-12, Agency Dkt. No. 2012 18283, 2012 N.J. AGEN LEXIS 207 (May 2, 2012) (granting a school district's application for emergent relief changing the placement pending the outcome of a due process petition of a child whose inappropriate placement would result in academic regression.)

In addition, the expense of education to compensate for such regression also constitutes irreparable harm to a school district. Id. A board of education also shows irreparable harm by demonstrating that it is prevented from meeting its obligation to provide a free appropriate public education because a child's placement is inappropriate. Haddonfield Borough Bd. of Educ. v. S.J.B. o/b/o J.B., OAL Dkt. No. EDS 2441-04, Agency Dkt. No. 2004 8817, 2004 N.J. AGEN LEXIS 645 (May 20, 2004.)

Here, irreparable harm is established because of the foreseeable risk of injury and danger to others given that M.S., not in one instance but in many, engaged in physically assaultive behavior. Physical assault cannot be tolerated. There is a serious risk of harm to other students and their emotional wellbeing when a student engages in physical aggression. Other students have the right to be free of inappropriate physical conduct. The facts demonstrate that M.S.'s conduct is unpredictable.

Irreparable harm is also established because M.S. is substantially disrupting the education of other students and the educational environment. The facts show that M.S.'s conduct has a significant impact on the educational setting. His education and the education of other students is disrupted by his physically assaultive behavior.

Finally, irreparable harm is established because the District is prevented from meeting its legal obligation to provide a Free Appropriate Public Education ("FAPE") to M.S. because placement at the Lawrence Intermediate School is no longer appropriate. Knowing that the District cannot offer M.S. FAPE, the District is forced to propose an alternative appropriate placement for him, which it has done by recommending home instruction placement.

Based upon the forgoing, I **CONCLUDE** that the petitioner district has met its burden of establishing irreparable harm

A board of education is entitled to a change of placement of a student with a disability to an interim alternative placement when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement. N.J.A.C. 6A:14-2.7(n); N.J.A.C. 6A:14-2.8(f). In addition, a board of education is entitled to seek an order changing the placement when maintaining the current placement of a student is substantially likely to result in injury to the child or to others. 20 U.S.C. 1415(k)(3)(A). Furthermore, a board of education may apply for emergent relief pursuant to N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(r).

As applied here, the Board has shown a settled legal right to bring this application for emergent relief seeking a change of M.S.'s placement from the Lawrence Intermediate

School to a home instruction interim alternative placement. Accordingly, I **CONCLUDE** that the petitioner district has met its burden that the legal right of their claim is settled.

Furthermore, I **CONCLUDE** that the District has shown a likelihood of prevailing on the merits that M.S.'s placement must be immediately changed to a home instruction interim alternative placement due to the substantial risk of danger to M.S. and others, M.S.'s disruption of his own education and the education of other students, and the District's inability to deliver FAPE to M.S. in the current placement. As described in detail above, M.S.'s conduct is disruptive of the educational environment and endangers his safety and the safety of other students. Maintaining a placement for M.S. at the Lawrence Intermediate School is likely to result in injury to him and to others in the school setting.

The District's request to change M.S.'s placement on an interim basis is more than reasonable given the circumstances of this situation. The District is simply recommending an interim placement that would better address M.S.'s behavioral and therapeutic needs with the genuine hope that his unpredictable and aggressive behaviors will be more under control so that he may focus on her academic performance and make meaningful educational progress.

The risk of harm is too great to consider M.S. returning to Lawrence Intermediate School at this time, given that he has physically aggressed on several occasions. The District has an obligation to take seriously M.S.'s conduct to ensure a safe educational environment for him and other students. Moreover, it is unfair and a disservice to the other students at the Lawrence Intermediate School to force them to come to school where they are fearful that their safety may be compromised.

Therefore, I **CONCLUDE** that when the equities and interests of the parties are balanced, the District will suffer greater harm than the respondent will suffer, if the requested relief is not granted.

**ORDER**

Having concluded that the petitioner/District has satisfied all of the requirements for emergent relief, it is hereby **ORDERED** that the petitioner's request for emergent relief is **GRANTED**, and it is **ORDERED** that M.C. shall be immediately placed in an alternative placement of home instruction for dangerousness.

As the District has withdrawn its request for due process for an order to compel parental consent to release records to an alternate placement, all outstanding issues included in this docketed petition are resolved with this decision.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 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. § 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.



June 22, 2022  
DATE

\_\_\_\_\_  
**JEFFREY R. WILSON, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

JRW/tat

**APPENDIX**

**WITNESSES**

**For Petitioner:**

None

**For Respondent:**

None

**EXHIBITS**

**For Petitioner:**

P-1 Petitioner's petition and brief with supporting documents, dated June 15, 2022

**For Respondent:**

R-1 Respondent's opposition brief, dated June 20, 2022