



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

**FINAL DECISION**

**ON EMERGENT RELIEF**

OAL DKT. NO. EDS 02635-22

AGENCY DKT. NO. 2022-34111

**L.R. on behalf of C.C<sup>1</sup>.,**

Petitioner,

v.

**KEYPORT BORO BOARD**

**OF EDUCATION,**

Respondent.

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**L.R.**, on behalf of C.C. petitioner, pro se,

**Cherie L. Adams**, Esq., for respondent (Adams, Gutierrez & Lattiboudere, LLC,  
attorneys)

Record Closed: April 8, 2022

Decided: April 11, 2022<sup>2</sup>

BEFORE **SUSAN L. OLGIATI**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, L.R., on behalf of her minor child, C.C. seeks an immediate out-of-

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<sup>1</sup> Initials are used to protect the identity of the student and his parent.

<sup>2</sup> On April 8, 2022, I issued an oral decision denying the request for emergent relief. This written decision memorializes that oral decision and the reasons therefore.

district placement, and/or remote instruction, or home instruction, pending resolution of the underlying due process petition, due to safety concerns, relating to C.C.'s food allergies and his prior participation in a culinary arts class. Respondent, Keyport Boro Board of Education (the District), opposes the emergent relief requested contending there is no basis for the relief sought and that C.C. is no longer enrolled in the culinary arts class.

### **PROCEDURAL HISTORY**

On or about April 4, 2022, L.R. submitted a request for emergent relief to the New Jersey Department of Education, Office of Special Education. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on April 6, 2022, for hearing as an emergent contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

The emergent matter was scheduled for oral argument on April 8, 2022. The proceeding was conducted via zoom (remote video hearing), due to ongoing restrictions on in-person proceedings at the OAL because of concerns relating to the COVID pandemic.

Petitioner's request for emergent relief was submitted and considered for this proceeding. A letter brief on behalf of the District, dated April 7, 2022, and the supporting certification of J. Erik Mammano, Director of Special Services for the District, dated April 7, 2022, was also submitted and considered.

### **FACTUAL DISCUSSION AND FINDINGS**

Based upon the submissions of the parties, and the arguments presented on April 8, 2022, I **FIND** the following as **FACT**:

1. C.C. is currently fourteen years old and is in the ninth grade at Keyport High School (Keyport).

2. C.C.'s has been enrolled at Keyport since approximately September 2, 2021.
3. C.C. has been deemed eligible for Special Education and Related Services. The Individual Education Program (IEP) outlining C.C.'s education program and services was effective September 2, 2022.
4. C.C. has an Allergy Emergency Care Plan and an Asthma Emergency Plan in place at Keyport.
5. In or about January 2022, C.C. enrolled in a culinary arts class with the consent of L.R.
6. On March 15, 2022, L.R. emailed C.C.'s case manager at the District, requesting that C.C. be immediately transferred from the culinary arts class. C.C. was removed from the class on that same date and was placed in an alternative class.
7. Thereafter, L.R. expressed to the District concern about C.C.'s safety and requested that the District grant C.C. a transfer to another school and remote learning access or home instruction until the matter is resolved.
8. C.C. has not attended school since March 29, 2022.

### **ARGUMENTS OF THE PARTIES**<sup>3</sup>

L.R. argues that the District has failed to protect C.C. from life threatening foods to which he is allergic, she fears for his safety, and is concerned about "what may happen next." She generally contends that in March 2022, during a culinary arts class, C.C. was exposed to food (raw eggs) to which he is allergic.<sup>4</sup> L.R. expresses concern about the potential for future harm to C.C. and argues that the district has violated her

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<sup>3</sup> The following is intended to be a summary of the arguments presented.

<sup>4</sup> At oral argument, upon questioning by this ALJ, L.R. declined to provide details regarding the incident(s) occurring in the culinary arts class and stated that she was pleading "the fifth" and invoking her right not to testify regarding same.

trust. As emergent relief she seeks to have C.C. transferred to another school. Additionally and/or alternatively, she requests that C.C. be permitted to participate in remote learning or that the District provide him with home instruction until the issue of placement is resolved. She contends she should be permitted to pick up schoolwork for C.C. to complete at home and that he should not be penalized for a situation he did not create.

The District argues that petitioner is not entitled to the relief she seeks because there is no threat of irreparable harm to C.C. as he was immediately removed from the culinary arts class on the date L.R. requested same. The District additionally argues that it has a medical plan in place to address C.C.'s food allergies and to keep him safe. The District contends that its program appropriately meets C.C.'s needs and that there is no basis to remove him. It argues that petitioner has refused to participate in IEP meetings to discuss any concerns that have arisen concerning C.C.'s IEP. The District further contends that it has an obligation to provide C.C. with a free appropriate public education (FAPE) in the least restrictive environment (LRE). The District advises that remote learning is no longer an option for students and that no medical documentation has been produced to support the request for home instruction. Finally, the District argues that a balancing of the equities shows that petitioner and C.C. will not suffer the greater harm if the requested relief is not granted.

### **LEGAL ANALYSIS**

In special education matters, 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.

N.J.A.C. 6A:14-2.7(r)1.

In her Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief, petitioner indicated that she believes she is entitled to emergent relief on issues concerning placement pending the outcome of due process proceedings (iii).<sup>5</sup>

As petitioner is raising issues concerning C.C.'s current placement and is seeking an out-of-district placement and temporary remote learning or home instruction pending resolution of the due process petition, I **CONCLUDE** it appears that the request for emergent relief has been appropriately filed with the OAL for consideration herein under N.J.A.C. 6A:14-2.7(r)1(iii).

Pursuant to Crowe v. DiGioia, 90 N.J. 126 (1982), and New Jersey Administrative Code, N.J.A.C. 1:6A-12.1(e), emergency relief may be granted if the judge determines from the proofs that each of the following elements have been established:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the 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.

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<sup>5</sup> It appears that in the Certification petitioner also indicated that the issues involved disciplinary action, including manifestation determinations and determinations of interim alternate educational settings. At oral argument petitioner explained that she did not recall checking that issue and believes that this may have been in error. A review of the Emergent Relief filing submitted by petitioner reveals no claim concerning disciplinary actions and supports petitioner's contention that this issue was indicated in error.

N.J.A.C. 1:6A-12.1(e).

As to the first prong of the standard for emergent relief, petitioner acknowledges that C.C. has been removed from the culinary arts class and enrolled in another class but expresses concern about the potential for possible future harm to C.C. While petitioner's concerns about C.C.'s safety may be genuine, they are unspecified, speculative, and unsupported by any medical or other competent evidence. Additionally, as petitioner's concerns relate to possible future harm, L.R. has not presented any evidence of immediate or irreparable harm to C.C. if the requested relief is not granted. Accordingly, I **CONCLUDE** that the petitioner has failed to satisfy the first prong.

As to the second and third prongs of the standard for emergent relief, petitioner has not demonstrated that her claim is well settled in her favor or that she has a likelihood of prevailing on the merits of the underclaim. Rather, as previously indicated, she contends that the District failed to protect her son and the solution is an out-of-district transfer to another school, and/or participation in remote learning/home instruction. L.R. has not fully explained how the district failed to protect C.C. or why and/or how it would be unable to protect him from future harm. Moreover, she has not explained why or how a transfer to an out-of-district placement is needed or presented any medical documentation supporting her concerns or the requested relief. The District correctly asserts that it is obligated to provide a (FAPE) in the least restrictive environment, under to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 (d) (1), 1412 (a)(5)(A) and N.J.A.C. 6A:14-4.2. Accordingly, I **CONCLUDE** that the petitioner has failed to satisfy the second and third prongs.

Finally, as to the fourth prong of the standard for emergent relief, having considered the equities and the interests of the parties, I **CONCLUDE** that the balance weighs in favor of the District. While I am not unsympathetic to petitioner's concerns about C.C.'s safety, they are simply too speculative and too remote, particularly given that C.C. is no longer enrolled or participating in the culinary arts class and there is no medical documentation supporting petitioner's concerns or request for relief. To the extent that L.R. continues to have concerns about C.C.'s IEP, his Allergy Emergency

Care Plan, or any other concerns relating to his health and safety, I encourage petitioner to meet with the District to discuss same and possible changes or modifications to his IEP.

Based on the foregoing, I **CONCLUDE** that the petitioner has failed to meet any of the four required elements of the standard for emergent relief, and as a result, is not entitled to the emergent relief requested.

**ORDER**

It is **ORDERED** that petitioner’s request for emergent relief of an immediate out-of-district placement, and/or temporary placement in remote learning or home instruction during the pendency of the underlying due process petition is **DENIED**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). 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 11, 2022  
\_\_\_\_\_  
DATE

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**SUSAN L.OLGIATI, ALJ**

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

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

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