



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

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 15699-24

AGENCY DKT. NO. 2025-38333

**K.F. ON BEHALF OF S.P.,**

Petitioner,

v.

**MORRIS HILLS REGIONAL BOARD OF EDUCATION,**

Respondent.

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**K.F.**, petitioner, appearing pro se

**Nathanya G. Simon**, Esq., for respondent (Scarinci & Hollenbeck attorneys)

BEFORE **ANDREA PERRY VILLANI**, ALJ:

Record closed: November 13, 2024

Decided: November 14, 2024

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On November 6, 2024, petitioner, K.F., filed a request for expedited due process and emergent relief with the Office of Special Education (OSE) seeking an order to return her minor child, S.P., to school after being placed on home instruction.

Morris Hills (District) opposes this application asserting that K.F. fails to meet the criteria for emergent relief under N.J.A.C. 1:6A-12.1(e).

On November 8, 2024, OSE transmitted the emergent application to the Office of Administrative Law (OAL) for a determination as a contested matter. The underlying expedited due process remains at OSE until the end of the fifteen-day resolution period.

On November 13, 2024, I conducted the hearing and closed the record.

### **FINDINGS OF FACT**

Based on the oral arguments and documents presented by the parties, I **FIND** the following as **FACT** for purposes of this application only:

S.P. is domiciled in Rockaway, New Jersey, and attends Morris Knolls High School. S.P. is a tenth-grade student eligible for special education and related services under the classification of “Emotional Regulation Impairment.” S.P. has diagnoses of Unspecified Depressive Reaction, Selective Mutism, Obsessive-Compulsive Disorder, Mixed Obsessional Thoughts and Acts, Major Depressive Disorder, Anxiety, Trichotillomania, and Avoidant-Restrictive Food Intake Disorder. S.P. has a history of self-harm, including seven hospitalizations in 2023 related to suicide ideation and attempts. S.P. was hospitalized most recently in 2024 due to an eating disorder.

S.P. transferred into the District on April 29, 2024. S.P. was placed in the FLEX program. The FLEX Program provides students with small group instruction, behavior modification, and a high ratio of staff to students to support students with emotional and behavioral disabilities. S.P. was also accepted into the Effective School Solutions (ESS) program. However, S.P. did not report to ESS sessions, which led to the termination of those services. The district also recommended providing S.P. with an individual aide, but K.F. declined.

S.P. attended the in-district program for multiple weeks before she was hospitalized on May 17, 2024, because of her eating disorder. S.P. received home instruction while she was in the hospital. The district issued an IEP on May 29, 2024, placing S.P. on home instruction until her discharge. S.P. was not discharged from the hospital until June 11, 2024, and with classes ending the week prior, S.P. remained on home instruction until June 13, 2024.

In August 2024, S.P. received care from the Children's Hospital of Philadelphia (CHOP), which recommended multiple accommodations for her. These recommendations included waiver of attendance policies, hospital bound instruction, and supervision from school staff throughout the school day.

S.P. commenced the 2024-2025 school year in the FLEX program but struggled academically and behaviorally. Academically, S.P. struggled to complete classroom assignments and regularly avoided activities. She often left class to go to the bathroom for extended periods of time, placed her head down in class, refused to do work, and cut class. Indeed, K.F. contacted the district on multiple occasions to indicate that the FLEX Program was too academically challenging for S.P.

In addition to the above concerns, S.P. threatened school staff, locked herself in the bathroom, and was reported to administration on multiple occasions for suspected drug use. These numerous incidents are set forth in S.P.'s Case Manager Daily Notes and Student Behavior Log. (Exhibit E, Exhibit F.)

Based on K.F.'s concerns with S.P.'s progress, the district amended S.P.'s IEP on September 6, 2024, to place her in the LLD program for ELA and Math while maintaining her placement in the FLEX Program for Science and Social Studies. However, S.P.'s IEP was later amended to place her in the LLD program for ELA, Math, Science, and Social Studies after S.P. continued to struggle academically in the FLEX Program classes.

On September 27, 2024, S.P. was upset, left school, and was walking around the parking area amongst incoming vehicles and other traffic, ignoring the instructions of various school personnel who followed her out. S.P. was then hospitalized from approximately September 30, 2024, to October 2, 2024, due to malnourishment stemming from her eating disorder. The district held a re-entry meeting on October 7, 2024, where the district informed S.P. and K.F. that S.P. would be provided an escort throughout the school day. When S.P. learned that she had an escort, S.P. threatened to punch the staff member, cursed, and ran away down the hallway.

S.P.'s disruptive behavior continued following her re-entry, and the district held a manifestation determination and IEP meeting on October 23, 2024. During this meeting, the district discussed an out-of-district placement for S.P., which K.F. opposed. At the conclusion of the meeting, K.F. allegedly made a comment about how S.P. understood why another District student committed suicide. K.F. denies making the comment, but by the end of the meeting, the district decided to refer S.P. for psychiatric clearance at Saint Clare's Health's Central Evaluation and Referral Services (Saint Clare's).

On October 24, 2024, Saint Clare's cleared S.P. to return to school. That same day, the district held a meeting with K.F. to discuss the criteria for S.P.'s reinstatement. The criteria included restrictions on the number of hall passes and a requirement that S.P. use the nurse's office for bathroom visits longer than ten minutes. K.F. agreed to contact Perform Care to arrange for in-home counseling. The reinstatement meeting notes confirm that "[p]arent was informed that if student...fails to meet re-entry conditions, student will be placed on home bound instruction..." (Exhibit E, Exhibit H.)

Unfortunately, S.P. thereafter violated the terms of reinstatement. Among other things, she exceeded the maximum hall pass allotment and spent more than ten minutes in the bathroom. Of particular concern to the district, however, were the violations that occurred on November 1, 2024.

On November 1, 2024, a staff member reported that there was a student in the single-stall, gender-neutral bathroom for over fifteen minutes. The staff member asked if the student was okay and got no response. The principal knocked on the door with no response. He tried to key open the door, but the student held the latch on the door, preventing the door from opening. The principal reviewed security footage and confirmed that the student in the bathroom was S.P. The principal called K.F. in hopes that K.F. would call S.P. to coax her out of the bathroom.

When S.P. eventually came out of the bathroom, she told staff to "fuck off." She ignored instructions to go to the office and walked upstairs. A school resource officer followed at a distance. When S.P. passed another staff member who asked her for a pass, S.P. told her to "get the fuck away from me" and pushed her arm out of the way. S.P. attempted to exit the building, but the resource officer told her she could not leave

and must report to the office. In the office, the principal told S.P. that she would be sent home. S.P. then left the office and, ultimately, the school building. Various staff left the building soon after in search of S.P. and eventually found her in a nearby parking lot.

K.F. disputes some of what occurred on November 1, 2024. She believes that the principal told S.P. that K.F. was already at the school to pick her up, and that's why S.P. left the building. However, K.F. did not witness this, and I find it unlikely that the principal told S.P. to leave. K.F. also does not believe that S.P. pushed the staff member who asked her for a pass. She suggests that the staff member put her hands on S.P., and S.P. "shrugged" her off. Again, however, K.F. was not present for the altercation. K.F. does not dispute that S.P. locked herself in the bathroom.

After the incident on November 1, 2024, S.P. was placed on home instruction. It took several days for the district to locate a teacher willing to provide the home instruction, and school was also closed on November 7 and 8, 2024, but on November 12, 2024, the District was ready to proceed with home instruction. K.F. declined the home instruction. An IEP meeting is scheduled for November 22, 2024.

### **CONCLUSIONS OF LAW**

This case arises under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. §§ 1400 to 1482. One purpose of the IDEA 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 Appropriate Public Education" is known as FAPE.

In New Jersey, the State Board of Education has promulgated rules following the standards outlined in the IDEA. N.J.A.C. 6A:14-1.1(b)(1); N.J.A.C. 6A:14-1.1 to -10.2.

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 disciplinary action and a break in the delivery of services.

Under N.J.A.C. 1:6A-12.1(e), an ALJ may order emergency relief pending a decision in the case, if the judge determines from the proofs that:

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.

[Ibid.]

The moving party must satisfy all four requirements. Crowe v. DiGioia, 90 N.J. 26 (1982). The moving party must also prove each of the requirements "clearly and convincingly." Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

K.F. did not address any of the requirements of N.J.A.C. 1:6A-12.1(e) in her application.

K.F. did not prove the first requirement of N.J.A.C. 1:6A-12.1(e): that S.P. will suffer irreparable harm pending a decision in this case. The first sentence of K.F.'s application is, "My daughter S.P. is not being provided any education." This is not accurate. The district is providing home instruction. K.F. later stated at oral argument

that S.P. wants to go back to school to see friends, and she's worried that S.P. will be harmed by the lack of social interaction. K.F.'s concerns are surely genuine, but they are only speculative at this point and not supported by any proofs. By contrast, the district has demonstrated that S.P. is at risk of harm in school, as she frequently locks herself in the bathroom for extended periods of time, refuses to heed simple instructions from staff for her own safety, walked out of school twice, and once disappeared from school prompting a campus-wide search. Because K.F. did not prove the irreparable harm factor, and all four factors are required for relief, I **CONCLUDE** that K.F. is not entitled to emergent relief under N.J.A.C. 1:6A-12.1(e).

### **ORDER**

Based on the foregoing, I **ORDER** that K.F.'s request for emergent relief 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.

November 14, 2024



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DATE

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**ANDREA PERRY VILLANI, ALJ**

Date Received at Agency

November 14, 2024

Date Mailed to Parties:

November 14, 2024

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## **APPENDIX**

### **For Petitioner:**

November 6, 2024 Affidavit of Petitioner

Exhibit A	Phone Screenshots
Exhibit B	Nov. 1, 2024 Letter from Person Centered Healthcare Services
Exhibit C	October 23, 2024 Letter from Saint Claire's Behavioral Health
Exhibit D	Screenshots re: School Assignments
Exhibit E	List of Medications
Exhibit F	LabCorp Results
Exhibit G	Text Message to S.P. from Classmate
Exhibit H	Anger Management Class Certificate
Exhibit I	Miscellaneous Medical Documents

### **For Respondent:**

November 12, 2024 Brief and Certification of Sonya Boyer

Exhibit A	October 23, 2024 IEP
Exhibit B	May 29, 2024 IEP
Exhibit C	August 23, 2024 Letter from CHOP
Exhibit D	October 8, 2024 Letter from CHOP
Exhibit E	Case Manager Notes
Exhibit F	Student Behavior Log
Exhibit G	October 21, 2024 Disciplinary Action Manifestation Determination
Exhibit H	October 24, 2024 Reinstatement Meeting
Exhibit I	Roxbury Township Board of Educ v. S.R. obo J.M.
Exhibit J	November 1, 2024 Memo of Record
Exhibit K	November 1, 2024 Letter from Principal to K.F.
Exhibit L	November 1, 2024 Letter from Counseling Supervisor to K.F.
Exhibit M	Email from CHOP