



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

**FINAL DECISION**

OAL DKT. NO. EDS 02991-25

AGENCY DKT NO. 2025-38621

**M.V. ON BEHALF OF N.W.,**

Petitioner,

v.

**GREAT OAKS LEGACY CHARTER**

**SCHOOL BOARD OF EDUCATION,**

Respondent.

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**Ruby Kish**, Esq., for petitioner (Disability Rights New Jersey, attorneys)

**Paul T. O'Neill**, Esq., and **Mariam A. Mboge**, Esq., for respondent (Barton Gilman  
LLP, attorneys)

Record Closed: February 19, 2025

Decided: February 28, 2025

BEFORE **PATRICE E. HOBBS**, ALJ:

**STATEMENT OF THE CASE**

On October 1, 2024, N.W., a twelfth-grade student with a disability who qualifies for special education and related services, was suspended from school and placed on home instruction, an interim alternative setting, for the remainder of the school year. Must N.W. remain on home instruction for the remainder of the school year? No. A student

with a disability cannot be removed to an interim alternative education setting for more than forty-five calendar days without due process. N.J.A.C. 6A:14-2.8(d).

### **PROCEDURAL HISTORY**

On February 5, 2025, the petitioner filed a request for an expedited due process hearing with the Department of Education, Office of Special Education (OSE). On February 11, 2025, the OSE transmitted the case to the Office of Administrative Law, under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4. Petitioner and respondent requested oral argument instead of a hearing. On February 19, 2025, I held oral argument and closed the record.

### **FINDINGS OF FACT**

Based upon the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following **FACTS**:

N.W. is a twelfth-grade student at Great Oaks Legacy Charter School and is eligible for special education and related services based on a diagnosis of other health impairment due to attention-deficit/hyperactivity disorder. N.W. has an individualized education program (IEP) for the 2024–2025 school year.

On September 30, 2024, N.W. brought thirty-seven bullets, which included thirty hollow point bullets, to school in his book bag. The bullets were discovered during the school's routine bag check at the start of the school day by Mikal McDaniel, the associate director of school culture. McDaniel reported the finding to Tyree Barnes, the school's director. N.W. admitted that the bullets belonged to a friend who did not attend the school, and he forgot that the bullets were in his bag.

Barnes contacted N.W.'s father, who immediately came to the school. Barnes informed N.W.'s father that the school resource officer or the police would be contacted.

Law enforcement referred the case to the district attorney because the possession of hollow point bullets is a fourth-degree felony.

N.W. was suspended from school from October 1, 2024, through October 8, 2024, pending an investigation. On October 4, 2024, Respondent scheduled a disciplinary hearing for October 7, 2024. N.W. and his parents participated in that hearing. N.W. took responsibility for bringing the bullets to the school, apologized and acknowledged that his actions put himself, his family, and the school at risk.

Respondent determined that N.W. was to be expelled and informed N.W.'s parents. On October 11, 2024, N.W.'s parents and the child study team (teachers and school administrators), convened an IEP meeting and determined that N.W.'s behavior was not a manifestation of his disability, as it was neither caused by nor had a direct and substantial relationship to his disability.

On October 12, 2024, N.W.'s parents appealed the determination. On November 6, 2024, respondent held an appeal hearing. At this appeal hearing, N.W. and his parents did not present any additional or persuasive evidence that would cause the respondent to reconsider their decision. On November 7, 2024, the respondent affirmed the expulsion.

On January 28, 2025, respondent revised the expulsion to a long-term suspension with academic support through the end of the school year. Respondent did not file an expedited petition for due process. N.W. has only had minor disciplinary issues, and this was his first suspension.

### **CONCLUSIONS OF LAW**

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482. The IDEA ensures that students with disabilities are provided 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). In New Jersey, the implementation regulations are codified in N.J.A.C. 6A:14 et seq.

The expedited due process hearings to be conducted at the OAL in the case of “disciplinary issues” may be requested only when the parent disagrees with the determination that the pupil’s behavior in violating school rules was not a manifestation of the pupil’s disability or when the pupil is removed from his or her current educational placement. N.J.A.C. 1:6A-14.2.8(d).

If the discipline results in the student being kept out of school for more than ten consecutive days, the school must comply with the procedural protections delineated in 20 U.S.C. § 1415(k)(1)(H) and N.J.A.C. 6A: 14-2.8(d). One of these protections is a manifestation determination review. In this review, school representatives, parents, and relevant members of the student’s IEP team must determine if the behavior that gave rise to the violation of school rules or policies was a manifestation of the student’s disability. 20 U.S.C. § 1415(k)(1)(E). If the behavior was a manifestation of the student’s disability, then the student must be returned to the current placement. 20 U.S.C. § 1415(k)(1)(F)(iii). If, however, the behavior was not a manifestation of the student’s disability, the student can be disciplined. 20 U.S.C. § 1415(k)(5)(A).

When a student with a disability is removed from a current placement for more than ten cumulative or consecutive school days in any one school year, the board of education is required to provide services to the extent necessary to enable the student to progress appropriately. N.J.A.C. 6A:14-2.8(e). Further, when a removal constitutes a change of placement and it is determined that the behavior in question is not a manifestation of the student’s disability, the student’s IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in a general curriculum and towards achieving the goals set out in the IEP. N.J.A.C. 6A:14-2.8(e).

In addition, the removal of a student with a disability to an interim alternative educational setting, in accordance with 20 U.S.C. § 1415(k)(1)(G), must not be longer than forty-five calendar days. Removal of a student with a disability to an interim

alternative education setting, even for dangerousness, must not exceed forty-five days. N.J.A.C. 6A:14-2.8(f). To remove a disabled student on the grounds of “dangerousness,” the district must show that maintaining the student in the current placement is “substantially likely to result in injury to the child or to others.” 20 U.S.C. § 1415(k)(3)(A). To effectuate this request, the district must request an expedited hearing. The ALJ can order a change in placement, but the change in placement must not be for more than forty-five days. N.J.A.C. 6A:14-2.7(n).

A student with a disability who is removed to an interim alternative educational setting, irrespective of whether it was a manifestation of the student’s disability, must continue to receive educational support. 20 U.S.C. § 1415(k)(D)(i). A student with a disability who has been removed to an interim alternative educational setting, irrespective of whether it was a manifestation of the student’s disability, for possessing a weapon at school can be suspended. However, the student cannot be suspended for more than forty-five days. 20 U.S.C. § 1415(k)(G).

A school district can impose long-term suspensions for all students under N.J.A.C. 6A:16-7.3(a). N.J.A.C. 6A:16-7.3(b)–(f) enumerate the procedural processes that apply to general education students and therefore do not apply to this case. Long-term suspensions for a student with a disability must be carried out under N.J.A.C. 6A:16-7.3(g). In determining or changing the student’s educational placement to an interim or alternate educational setting, the district must proceed in accordance with N.J.A.C. 6A:14. N.J.A.C. 6A:16-7.3(g). N.J.A.C. 6A:14 imposes a forty-five day limits on long-term suspensions.

There is no dispute that N.W. is a student with a disability who has been suspended from school for more than forty-five days. There is also no dispute that the behavior that resulted in the suspension was not a manifestation of his disability. The sole issue for determination is whether the respondent is permitted under the regulations to suspend N.W., a student with a disability, for more than forty-five days without filing an expedited petition for due process.

Petitioner contends that the respondent does not have the authority under either 20 U.S.C. § 1415 or N.J.A.C. 6A:14 to suspend N.W. for more than forty-five days. Petitioner also contends that even if respondent were permitted under the federal statute to suspend N.W. for greater than forty-five days, the New Jersey regulations are applicable and, because they afford greater protections for students with disabilities are controlling; therefore, respondent is limited to a forty-five-day suspension. Petitioner relies on J.M. o/b/o J.M. v. Ewing Pub. Sch., EDS 13771-23, Final Decision (December 19, 2023) and C.B. o/b/o J.D. v. Bloomfield, EDS 16384-24, Final Decision (December 6, 2024). In both cases, the ALJs concluded that the suspension of a student with a disability is limited to forty-five days.

Respondent argues that these cases are not applicable simply because the cases involved serious bodily injury, and therefore 20 U.S.C. § 1415(k) was applicable, which respondent acknowledges does limit a suspension to forty-five days. Respondent further argues that 20 U.S.C. § 1415(k) does have a forty-five-day limit on a student suspension, but it is limited to specific, enumerated circumstances that do not apply to N.W. Respondent relies on N.C. o/b/o J.C. v. Ocean City Bd. of Educ., EDU 2346-17, Initial Decision, (January 12, 2018), modified by the Commissioner of Education April 5, 2018. In that case, J.C. was a student in an extension program conducted after regular school hours, had violated the school's conduct rules multiple times, had received multiple suspensions, had brought weapons and drug paraphernalia to the school, and had injured another student. J.C. was ultimately expelled.

The facts in Ocean City are clearly distinguishable from the facts in this case. Most importantly, J.C. was not a student with a disability; N.W. is a student with a disability. This is N.W.'s first suspension during his entire time at Great Oaks Legacy Charter High School. Unlike J.C., N.W. was a general education student who attended the school during the entire school day and not after hours. Unlike J.C., N.W. did not injure any other student, and N.W. did not have a weapon or firearm.

Respondent also argues that the forty-five-day time limit does not apply to N.W. because it was "highly dangerous behavior." Respondent has an obligation to provide a safe learning environment for the other students and staff, and the behavior could create

a clear, foreseeable danger to the school and staff in the future. To support this argument, respondent claims that the possession of bullets necessarily implies his access and ability to engage in violent behavior. That is the very nature of the charge; the possession of thirty-seven bullets, including extremely dangerous hollow point bullets, makes N.W. a threat to the safety of the other students and staff at the school. Respondent relies on Lawrence Twp. Bd. of Educ. v. D.F. ex rel. D.F., 2007 N.J. AGEN LEXIS 26 (Jan. 9, 2007). In that case, there were multiple incidents of violent, in-school, physical assaults against fellow students, establishing clear danger to others. Here, there is no physical violence, nor are there any threats. I am not unsympathetic to the very real concerns that the school has and its obligation to protect the other students and staff. I am fully cognizant and appreciative of them. I am not persuaded that bringing bullets to school rises to the level of dangerousness contemplated by the IDEA. N.W. accepted responsibility for bringing the bullets to the school, apologized and acknowledged that his actions put himself, his family, and the school at risk. However, N.W. has never had any serious disciplinary issues, and this was his first suspension.

The regulations for students with a disability are clear. A student with a disability cannot be suspended for more than forty-five days. If the district wanted to suspend N.W. for the remainder of the school year, it must file for an expedited due process hearing before the expiration of the forty-five days, which it did not do. The forty-five-day limit is consistently applied throughout N.J.A.C. 6A:14-2.8, N.J.A.C. 6A:16-7.3(g) and 20 U.S.C. § 1415(k). The dispute here, however, is a very limited one, based on necessarily limited facts, in a very highly regulated area of the law where the protection of students with disabilities has been made a priority. I **CONCLUDE** that respondent did not have the authority to suspend N.W., a student with a disability, for more than forty-five days. I further **CONCLUDE** that N.W. must be returned to in-person general education instruction at Great Oaks Legacy Charter High School.

### **ORDER**

For the reasons stated above, I hereby **ORDER** that petitioner's expedited application to return N.W. to the Great Oaks Legacy Charter High School is hereby

**GRANTED.** I further **ORDER** that Great Oaks Legacy Charter High School immediately permit N.W. to return to in-person general instruction.

This decision on the application for emergency relief resolves all the issues in the due process complaint. No further proceedings are necessary, and this case is now closed. If the parent or adult student believes that this decision is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. This decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 and is appealable by bringing a civil action in the Law Division of the Superior Court of New Jersey or in the United States District Court for the District of New Jersey under U.S.C. § 1415(i)(2) and 34 C.F.R. § 300.516.

February 28, 2025

DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency:

February 28, 2025

Date Mailed to Parties:

February 28, 2025