



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 03565-25

AGENCY DKT. NO. 2025-38682

D.O.S. ON BEHALF OF W.O.S.,¹

Petitioner,

v.

**HAMMONTON TOWN BOARD OF
EDUCATION,**

Respondent.

D.O.S., petitioner, pro se

Kasi M. Gifford, Esq., for respondent (Cooper Levenson, attorneys)

Record Closed: February 26, 2025

Decided: February 27, 2025

BEFORE **ADVIA KNIGHT FOSTER**, ALJ:

STATEMENT OF THE CASE

W.O.S., an eleventh-grade student who is serving a forty-five-day suspension for being under the influence of marijuana, is on homebound instruction. No evidence exists

¹ The transmittal notes petitioners as D.O. and W.O., but the parties advised it is actually D.O.S. and W.O.S.

that W.O.S. is suffering irreparable harm. Must W.O.S. be returned to the school district? No. To prevail on an application for emergency relief, an applicant must demonstrate, among other things, irreparable harm. Crowe v. DeGioia, 90 N.J. 126 (1982).

PROCEDURAL HISTORY

On January 29, 2025, Hammonton High School suspended W.O.S. for forty-five days for being under the influence of marijuana at school and placed him on home instruction.

On February 4, 2025, Hammonton High School held a manifestation hearing and determined that W.O.S.'s conduct was not a manifestation of his disability. On February 5, 2025, petitioner D.O.S. on behalf of her son W.O.S. appealed the determination, and on February 19, 2025, the Board of Education upheld the suspension.

On February 20, 2025, petitioner filed a request for emergency relief with the New Jersey Department of Education, Office of Special Education, which transmitted the case to the Office of Administrative Law (OAL) 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 a 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.

On February 26, 2025, I held oral argument and closed the record.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motion for emergency relief, I **FIND** the following as **FACT** for purposes of this motion only:

W.O.S. is currently sixteen years old. He is eligible for special education and related services under the classification category of autism spectrum disorder, major depressive disorder, attention-deficit/hyperactivity disorder, and generalized anxiety.

On January 24, 2025, at 8:17 am, a teacher noticed that W.O.S. exhibited slow and staggered walking, slurred speech, and extreme drowsiness. (Ex. C.) She suspected that W.O.S. was under the influence of marijuana. The teacher completed a discipline log and a signs-and-symptoms form and referred W.O.S. to school administration and the school nurse. (Exs. A–C.)

Another school staff member contacted D.O.S. to inform her and to discuss medical-examination options. (Ex. B.) D.O.S. authorized the school nurse and physician to examine W.O.S. and, in the school physician's absence, an emergency room physician.

On January 24, 2025, Dr. Falcone, the school doctor, examined W.O.S. and took a urine sample that was sent to Atlantic Investigations, LLC. (Ex. G.) Dr. Falcone found W.O.S. safe to return to school on the same day.

On January 29, 2025, Atlantic Investigations advised the Board that W.O.S.'s urine sample tested positive for marijuana. The Board found W.O.S. to be under the influence of an intoxicating substance on school grounds on January 24, 2025, in violation of District Policy 5530. Policy 5530 provides: "A student who uses, possesses, and/or distributes alcohol or other drugs will be subject to discipline in accordance with the district's Code of Conduct. School authorities also have the authority to impose a consequence on a student for conduct away from school grounds in accordance with the provisions of N.J.A.C. 6A:16-7.5. Discipline may include suspension or expulsion."

The Board suspended W.O.S. from January 29, 2025, through March 14, 2025, or forty-five calendar days, allowing him to return to school on March 17, 2025, provided he submits to a drug test upon his return and random drug tests throughout the remainder of the school year, successfully completes a drug-and-alcohol rehabilitation program with the substance-awareness coordinator or outside counselor, and forgoes school activities until the expiration of the suspension.

W.O.S. is receiving educational services during his suspension. The Board is providing virtual and in-person learning. W.O.S. receives tutoring services around his work schedule. He will receive sixty-four hours of homebound instruction with tutors assigned by the conclusion of the suspension. W.O.S. received instruction in five core subjects and is currently scheduled for in-person instruction in two additional courses, Physical Education/Health on February 21, 2025, and the special-education portion of Math on February 26, 2025. The tutors stated that W.O.S. is doing well academically. The Board would provide compensatory education for any services in his individualized education program (IEP) that could not be provided during the suspension.

LEGAL ANALYSIS AND CONCLUSION

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982), and are codified at N.J.A.C. 6A:3-1.6. The petitioner bears the burden of proving:

1. that the petitioner will suffer irreparable harm if the requested relief is not granted;
2. the existence of a settled legal right underlying the petitioner's claim;
3. that the petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. that when the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent.

The moving party, petitioner D.O.S., must satisfy all four prongs of this standard to establish an entitlement to emergent relief.

Irreparable Harm

In Crowe, the Supreme Court found that irreparable harm is that which “cannot be redressed adequately by monetary damages.” 90 N.J. at 132–33. Indeed, the purpose of emergent relief is to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Id. at 132 (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (E. & A. 1854).) In this case, petitioner D.O.S. argues that W.O.S. will suffer irreparable harm if the requested relief is not granted because his current program is not providing him with a free appropriate public education (FAPE), as he is only receiving virtual tutoring for five of seven of his classes. Petitioner also argues that W.O.S. has regressed academically and emotionally. Petitioner, however, has provided no evidence of regression or other harm. Therefore, I **CONCLUDE** that petitioner has not proven irreparable harm.

The Legal Right is Settled, and the Likelihood of Prevailing on the Merits

Regarding the second and third prongs of the standard for emergency relief, the parties agree that W.O.S. has a settled legal right to FAPE. However, the question of whether W.O.S.’s current placement through virtual home instruction provides him with FAPE, and, if not, whether he should be returned to Hammonton High School pending the outcome of the due process proceeding, can only be determined through a full plenary hearing. However, the Board, in response to the FAPE challenge, noted that W.O.S. will receive sixty-four hours of tutoring by the conclusion of the suspension. The Board provided instruction in five courses and is currently scheduling in-person instruction in two additional courses, Physical Education/Health on February 21, 2025, and the special-education portion of Math on February 26, 2025.

Also, W.O.S.’s tutors said he is having academic success. Further, the Board would provide compensatory education for any services in his IEP that could not be provided. I also **CONCLUDE** that the petitioner has failed to demonstrate a reasonable probability of success on the merits.

Balance of Equities

Petitioners contend that the current placement is causing W.O.S. to decline academically and emotionally. She did not provide any evidence of a decline. When balancing the health, safety, and welfare of the staff and other students against the hardship on W.O.S., I **CONCLUDE** that the welfare of the students and staff clearly outweighs the interests of W.O.S. A student cannot come to school under the influence of marijuana. A student under the influence of a drug can pose harm to himself and others. W.O.S. violated District Policy 5530 and was subject to discipline. The Board has authority to impose discipline, including a suspension or an expulsion for conduct that occurs away from school.

For the reasons set forth above, I **CONCLUDE** that the petitioner has not met the standards for emergency relief.

ORDER

I hereby **ORDER** that the petitioner's request for emergency relief seeking an order for W.O.S.'s return to in-school placement pending resolution of the due process hearing 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 parent, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C. § 1415(f)(1)(B)(i). If the parents 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 Policy and Dispute Resolution.

February 27, 2025

DATE

A handwritten signature in cursive script, appearing to read "Advia Knight Foster", written over a horizontal line.

ADVIA KNIGHT FOSTER, ALJ

Date Received at Agency:

February 27, 2025

Date Mailed to Parties:

February 27, 2025

AKF/mg

APPENDIX

Witnesses

For petitioner:

D.O.S. on behalf of W.O.S.

For respondent:

Jo-Anna Daly, Esq., Hammonton Town Board of Education

Exhibits

For petitioner:

Ex. 1 2/19/25 Manifestation Letter

Ex. 2 2023–2025 IEPs

Ex. 3 Manifestation Determination

Ex. 4 2/3/25 note from Dr. Chase

For respondent:

Brief with exhibits A–L