



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF

OAL DKT. NO. EDS 04690-25

AGENCY DKT. NO. 2025-38775

WESTAMPTON BOARD OF EDUCATION,

Petitioner,

v.

J.J. AND I.R. ON BEHALF OF L.R.,

Respondents.

Emily E. Strawbridge, Esq., for petitioner (Parker McCay, P.A., attorneys)

J.J. and I.R., respondents, pro se

Record Closed: March 21, 2025,

Decided: March 24, 2025

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By request for emergent relief, petitioner Westhampton Board of Education (Board) seeks to temporarily change L.R.'s placement to homebound instruction pending the completion of a child's psychiatric partial care program and pending the resolution of the Board's due-process petition. The basis for the Board's request is an incident that occurred on February 12, 2025, wherein L.R. made threatening comments to a teacher's

aide. L.R. was subsequently evaluated by psychiatrist Dr. Thomas C. O'Reilly, MD, (Dr. O'Reilly), who recommended among other conditions the completion of a child psychiatric program prior to L.R. being returned to on-grounds instruction.

Respondents J.J. and I.R. oppose this request on the grounds that the Board has not satisfied the requirements for obtaining emergent relief and that L.R.'s behavior was a manifestation of his disability.

This matter was transmitted to the Office of Administrative Law, where it was filed on March 14, 2025, for an emergent relief hearing, in accordance with 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500 to 300.587 (2024). Oral argument on emergent relief was held on March 21, 2025.

FACTUAL DISCUSSION AND FINDINGS

Based on the submissions of the parties, including the certification of Ms. Jean Zitter, the Supervisor of Special Education, and of respondents, and on the arguments of counsel, I **FIND** the following statements as **FACTS**:

L.R. is an eight-year-old male third-grade student who is eligible for special education and related services under the Multiple Disabilities classification. L.R. was diagnosed with attention deficit hyperactivity disorder (ADHD) and communication impairment. As a result of Dr. O'Reilly's evaluation on February 19, 2025, L.R. was also diagnosed with an unspecified mood disorder.

L.R. enrolled in the district in October 2024 and was placed at Holly Hills School, where he receives special education services and supplementary aid pursuant to an individualized education program (IEP). L.R. has a behavioral intervention pursuant to the behavioral intervention plan (BIP) contained in his IEP, which indicates that L.R. "will engage in throwing behavior to gain staff attention." It is also specified that "[w]hen L.R. engages in throwing behavior staff should block any attempt of L.R. throwing. If staff are unable to block L.R. from throwing staff will ensure other students and themselves are safe from the objects being thrown."

On February 12, 2025, L.R. stated to the classroom aide and a classmate, "I'm going to send you to heaven." When the aide asked L.R. what he meant by that statement, he stated, "I'm going to meet you there." L.R. was interviewed after the threat was reported, and he admitted to making the statement but insisted he only said it to the aide. L.R. could not explain why he made the statement, and when pressed, he told the interviewer "I don't want to talk about it anymore." It was reported that L.R. refused to answer any further questions and walked out of the counselling office. L.R. walked back to his classroom, where he continued to show aggressive behavior, walking around the classroom and picking up items and slamming them down, then grabbing a broom and swinging it around, almost hitting classmates. When the broom was removed from his possession, L.R. eloped from the classroom. Staff members followed L.R. into the hallway and attempted to get him back to class, but he refused until it was time for lunch.

It was noted that L.R. has recently exhibited concerning behaviors, which include L.R. running into the parking lot at recess; destroying the sensory room by throwing and kicking items around; eloping from the classroom; flipping and throwing chairs in the classroom; swiping items off of tables/desks; and aggressively stepping towards staff members. It was reported that L.R. may have been angry with his classroom aide because on February 11, 2025, he was sent home. On that day, L.R. was eloping from the classroom and would not comply with directions from multiple adults. L.R. was hiding in the bathroom and hallway and refused to return to the classroom. L.R. expressed to his teacher that he "hates Ms. D" because she was the reason he was sent home. Finally, it was noted that although L.R. has stated to staff members that he hates them, this is the first time he has made a direct threat toward a staff member.

Following the incident on February 12, 2025, a threat assessment was conducted by the District's Threat Assessment Team, which resulted in L.R. being placed on homebound instruction pending completion of a psychiatric evaluation. On February 19, 2025, L.R. was evaluated by Dr. O'Reilly. Dr. O'Reilly reported that he had previously screened L.R. in 2021 when L.R. was in the Evesham Township School District. Dr. O'Reilly diagnosed L.R. with an unspecified mood disorder, ADHD, and language disorder. His recommendations were as follows:

1. L.R. is not at imminent risk of harm to self or others. However, I am concerned about his statements and behaviors. I am recommending a referral to a child psychiatric partial program for more intensive mental health services.
2. L.R. should attend and complete such a program before returning to on-grounds instruction. He will need homebound instruction until that time.
3. Following partial care treatment, L.R. should have in-home therapeutic services through Perform Care.
4. I am recommending consideration of treatment for ADHD. The multimodal treatment study for ADHD showed the gold standard of treatment for ADHD includes a direct stimulant. In a child of L.R.'s age and size, I typically initiate treatment for ADHD with methylphenidate, short-acting, 5 milligrams in the morning and at noon, titrating to effect.

A manifestation determination meeting was held on February 28, 2025, wherein it was determined based on a review of evaluations, the IEP, interviews, teacher observations, and parent input, that L.R.'s conduct was a manifestation of his disability. The Board advised L.R.'s parents that he could not return to in-district programs until the child psychiatric partial program was completed, pursuant to Dr. O'Reilly's recommendation. The Board proposed that a temporary change in L.R.'s placement to homebound instruction pending completion of the recommended psychiatric program be made to the IEP.

L.R.'s parents agreed to pursue a child psychiatric program but did not agree to a change in placement pending completion of such a program.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482 (IDEA), is designed to ensure that disabled children may access a free appropriate public education (FAPE) that is tailored to their specific needs. 20 U.S.C. § 1400(c). While the IDEA

recognizes that students with disabilities should not be punished for behaviors that are a manifestation of their disability, the IDEA and its implementing regulations permit a school district to permit a change of placement to an interim alternative education setting for forty-five days on a finding that maintaining the student in his current placement “is substantially likely to result in injury to the child or to others.” 20 U.S.C. §1415(k)(3)(A). Here, the Board contends that it is substantially likely that an injury will occur to L.R., to another student, or to staff, should he remain at Holly Hills School. See also N.J.A.C. 6A:14-2.7(n); N.J.A.C. 1:6A-14.2(a).

As provided in the regulations, the Board requested a due-process hearing. 20 U.S.C. §1415(k)(3); 34 C.F.R. §§ 300.532(a) and (c) (2024); N.J.A.C 6A:14-2.7(n). With the request for an expedited hearing, or afterward, N.J.A.C. 1:6A-12.1(a) provides that the board of education may apply in writing for emergent relief by describing the specific relief sought and the specific circumstances that justify the relief sought. See also N.J.A.C. 6A:14-2.7(r). When, as here, the Board seeks emergent relief on the same basis by which it requests an expedited hearing, that special circumstances support the conclusion that it is dangerous for the child to remain in his placement, the judge may order a change in the placement of the student to an interim alternative educational setting for not more than forty-five days if the Board meets the standards for obtaining emergent relief (described below). N.J.A.C. 1:6A-12.1(e).

Emergent relief shall only be requested for specific issues, including a break in the delivery of services and/or placement pending the outcome of due-process proceedings. N.J.A.C. 6A:14-2.7(r). Here, the petitioner has requested an expedited due-process proceeding to remove L.R. from his current placement to the interim alternative educational setting of home instruction pending completion of a child psychiatric partial program, pursuant to Dr. O'Reilly's recommendation.

Therefore, I **CONCLUDE** that the petitioner has established that the issue in this matter concerns a change in placement for L.R.

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

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.

[N.J.A.C. 6A:3-1.6(b).]

Irreparable Harm

To obtain emergent relief, the petitioner must demonstrate more than a risk of irreparable harm should L.R. remain at Holly Hills School. Petitioner must make a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.” Cont'l. Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980). In an educational setting, “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. ex rel. J.E., 2004 N.J. AGEN LEXIS 115 at *8 (February 23, 2004) (irreparable harm found where an eight-year-old’s “physical aggressiveness and disruptive behaviors [posed] a safety concern to himself and others, and the district’s behavior modification techniques [were] no longer effective”); Sparta Twp. Bd. of Educ. v. R.M. and V.M. ex rel. C.M., 2020 N.J. AGEN LEXIS 458 at *14 (February 21, 2020) (inappropriate interactions with other students and breaking a desk deemed “sufficient evidence of the risk of harm to [the student], school staff, teachers and students that if [the student] remained in school at

this time, other incidents could occur involving the health, safety and welfare of any of these individuals”).

Petitioner contends that irreparable harm is established by L.R.’s “consistent record of disruptive and aggressive conduct towards staff and students” as shown by the undisputed behavior described above. Throwing items, picking up items and slamming them down, elopement from the classroom, and recent aggressiveness toward staff could result in injury to both L.R. and others. Petitioner also describes L.R.’s behavior as unpredictable and notes that his BIP has not curtailed these behaviors. Irreparable harm is also shown by the disruption L.R.’s behavior poses to his peers, all of whom have an equal right to be educated in a safe and secure environment. Finally, the Board maintains that it cannot return L.R. to the classroom until the conditions prescribed by Dr. O’Reilly have been met. If the conditions of Dr. O’Reilly are not met, then there will be a significant disruption of educational services to L.R.

While respondents concede that L.R.’s behavioral issues can be disruptive, it is generally due to his communication issues. Further, L.R. has now taken the medication as recommended by Dr. O’Reilly. L.R. has also begun counselling, which was another recommendation of Dr. O’Reilly. Respondents argue that L.R. has responded well to both of these recommendations and that a return to the classroom is warranted.

I **CONCLUDE** that L.R.’s conduct meets the circumstances contemplated by N.J.A.C. 6A:14-2.7. I further **CONCLUDE** that there is sufficient evidence that L.R.’s behavior presents a risk of injury to L.R., other students, and staff. I **CONCLUDE** that the Board has met the burden of establishing that irreparable harm may result if L.R. is returned to Holly Hills School prior to completing the conditions of Dr. O’Reilly.

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

The second consideration is whether the legal right underlying the Board’s claim is settled, N.J.A.C. 6A:3-1.6(b)(2), and then third, the Board must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. As discussed above, federal and New Jersey law and regulations permit a board of education

to change the placement of a disabled student on an interim basis when special circumstances exist, including when the student uses a weapon in the classroom and/or causes significant bodily injury to another person. Further, a change in placement is permitted when the school district determines the current placement presents a safety risk and the parents and district cannot agree on an alternative. 20 U.S.C. §1415(k)(4)(A); N.J.A.C. 6A:14-2.7(n).

The Board's underlying due-process claim seeks essentially the same relief as that sought on an emergent basis, that relief being the interim alternative placement of home instruction for forty-five days, while L.R. completes the recommendations as outlined by Dr. O'Reilly.

It must again note that the respondents have accepted most of the conditions prescribed by Dr. O'Reilly. They only object to the completion of the child psychiatric program; however, this objection is based upon the respondents finding it difficult to locate a program and not on the belief that the program itself is unnecessary.

For the above reasons, I **CONCLUDE** that the Board meets the second and third prongs of the emergent relief standard.

Balance of Equities and Interests

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief to the Board. The petitioner states that it is obligated to provide a safe educational environment for L.R., to his peers, and to its staff, and at present, L.R.'s documented behavior creates a risk of injury to L.R., his peers, and the staff of Holly Hills School. Further, Dr. O'Reilly has outlined the conditions that must be met prior to L.R.'s return to school grounds.

Respondents have accepted most of the conditions prescribed by Dr. O'Reilly. They only object to the completion of the child psychiatric program; however, this objection is based upon the respondents finding it difficult to locate a program and not on the belief that the program itself is unnecessary.

Respondents argue with some merit that L.R.'s education through home instruction pending completion of a partial care program is akin to no instruction for L.R. The difficulty in identifying a child psychiatric program for L.R. has proven difficult. However, the petitioner has shown a willingness to cooperate with the respondents to work on an alternative condition if acceptable to Dr. O'Reilly; unfortunately, the respondents are unwilling to do so. On balance, it appears unreasonable to risk harm to L.R., or to his classmates, or to the staff assigned to him until the conditions as enumerated by Dr. O'Reilly are met. Petitioner bears the obligation of providing all its students, particularly the classmates of L.R., an appropriate education in a safe and civil environment. Accordingly, I **CONCLUDE** that the Board would suffer greater harm if the requested relief was not granted.

I **CONCLUDE** the petitioner Board's request for emergent relief satisfies the applicable requirements.

ORDER

For the reasons stated above, I hereby **ORDER** that the application for emergent relief of the Westhampton Board of Education for the temporary change of placement of L.R. to home instruction pending the completion of the conditions enumerated by Dr. O'Reilly is **GRANTED**.

It is further **ORDER** a conference has been scheduled for **April 2, 2025, at 2:00pm** a notice will be issued directly following this Order.

This order on application for emergency relief shall remain in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order 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. The parties will be notified of the hearing dates.

March 24, 2025

DATE



WILLIAM T. COOPER III, ALJ

Date Received at Agency

Date Mailed to Parties:

WTC/am