State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

MOTION FOR EMERGENT RELIEF

OAL DKT. NO. EDS 03903-17

AGENCY DKT. NO. 2017 25859

L.B. ON BEHALF OF W.B.,

Petitioner,

v.

GREEN BROOK TOWNSHIP BOARD OF EDUCATION, SOMERSET COUNTY,

Respondent.

_____

L.B., petitioner, pro se

Stephen Bacigalupo II, Esq., for respondent (Schwartz, Simon, Edelstein and Celso, attorneys)

Record Closed: March 27, 2017 Decided: March 28, 2017

BEFORE **ELLEN S. BASS,** ALJ:

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415 et seq. On March 20, 2017, petitioner filed a request for emergent relief on behalf of her son, W.B. The petition asserts that there has been an interruption in services, and that the Green Brook Board of Education (the Board) has failed to meet its obligation to provide a free and appropriate education (FAPE) to W.B. The emergent

relief application was transmitted to the Office of Administrative Law on March 21, 2017. Oral argument took place on March 27, 2017.

W.B. is a sixth-grade special education student who is classified as Emotionally Disturbed. His last in-district placement was in the behavioral disabilities class at Green Brook Middle School. A certification supplied by the Director of Special Services, Derek Ressa, reveals that this placement is not working for W.B. His maladaptive behaviors have escalated during the 2016-2017 school year. A crisis intervention team was called in to assist eighteen times. As recently as March 2017, W.B. had put another student in a headlock; bit a staff member; kicked a staff member; stomped on staff members' feet; used obscenities repeatedly; and stated that he expected to be in jail within five years for killing someone.

He served a two-day suspension in March 2017, but upon his return W.B. again engaged in inappropriate behaviors. More short-term suspensions were imposed, but it was clear that then current placement was unsuccessful; the IEP Team was convened on March 17, 2017, with petitioner participating. An IEP was agreed to by petitioner that placed W.B. on homebound instruction pending out-of-district placement. [1] The district secured the services of homebound tutors, and instruction was to begin on March 24, 2017. Three potential out-of-district placements were located; petitioner declined to attend intake tours at two which expressed interest in W.B. as a candidate for admission. These schools are only about a thirty-minute bus ride from Green Brook.

Petitioner did not bring W.B. to the scheduled homebound session citing work obligations. But the information shared at the hearing made it clear that the district has bent over backwards to made homebound available to W.B. School personnel have offered to conduct sessions at a local school or at home; to be flexible about the time of day; to transport him there; or to have the instruction delivered on-line (remotely). The only stipulation is that an adult representative of the family must be present. At the hearing, L.B. rejected any suggestions that might make homebound work. When

[1] At the hearing L.B. denied signing the IEP until I showed her the signature page. She then stated that she did sign an IEP that was going to help her son with his education; of course, this was the intent of the March 2017 IEP.

advised that the district would offer the instruction after she and her husband came home from work, she then cited her obligations to her other children as an excuse for rejecting homebound.

She likewise refused to explore out-of-district placements, urging, without visiting the proposed placements, that they would not be good for her son. As to W.B.'s behaviors, petitioner simply advised that they are part of his disability; of course, this is not in dispute. Petitioner urged that her son is being discriminated upon based on race, but offered few facts to support that view, and she did not dispute the behaviors cited by the district. These behaviors are extreme, and quite concerning.

My determination in an emergent application such as this one is governed by N.J.A.C. 1:6A-12.1, which provides that a judge may order emergency relief pending issuance of the final decision in a special education matter if it appears from the proofs that:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
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> 2. The legal right underlying the petitioner's claim is settled;
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> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
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> 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.

See also: N.J.A.C. 1:1-12.6, and Crowe v. DeGioia, 102 N.J. 50 (1986), which echoes the regulatory standard for this extraordinary relief. It is well established that a moving party must satisfy all four prongs of the regulatory standard to establish an entitlement to emergent relief. See also: Crowe at 132-35. I **CONCLUDE** that L.B. cannot meet the standard for an award of emergent relief and that her application must be denied.

L.B. cannot make a showing of irreparable harm, as the record reveals no interruption in services; indeed, the last agreed upon IEP places her son on homebound status, and the district has taken the steps needed to deliver these services.

Considering the aggressive behaviors documented by the district, L.B. cannot demonstrate a likelihood of success on the merits of her claim; and the equities, on balance, support keeping W.B. on homebound pending next steps. It would appear to be safer both for him, and for the greater school community, that he remain on homebound for now.

Accordingly, it is **ORDERED** that the relief sought by the petitioner is **DENIED**. Petitioner is directed to cooperate with the scheduling of homebound instruction and with intake/interviews at the schools to which records have been sent for W.B. She should note that doing so does not require her to ultimately agree to these placements; but simply will permit the parties to continue to have intelligent and informed discussions about W.B. and his educational future. And the parties advise that they will be meeting, as a separately filed request for mediation is pending at the Department of Education. Conversations in that forum will hopefully resolve the issue of W.B.'s educational program long term.

This decision on application for emergency relief resolves all the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2). 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 Programs.

March 28, 2017

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DATE **ELLEN S. BASS**, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____