

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

**FINAL ORDER**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 05934-16

AGENCY DKT. NO. 2016/24317

**SUMMIT BOARD OF EDUCATION,**

Petitioner,

v.

**M.A. ON BEHALF OF S.A.,**

Respondent.

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**Marie Laurence Fabian**, Esq., appearing for petitioner (Porzio Bromberg & Newman P.C.)

**No appearance** on behalf of M.A. o/b/o S.A.

Record Closed: April 22, 2016

Decided: April 28, 2016

BEFORE: **CARIDAD F. RIGO**, ALJ

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, the Summit Board of Education, seeks an order to compel respondent to participate in the development of S.A.'s IEP by compelling him to participate in intake meetings at Somerset County Education Commission and Lamberts Mill Academy.

On or about April 18, 2016, petitioner filed a petition with the Office of Special Education Programs pursuant to N.J.A.C. 6A-12.1 and N.J.A.C. 6A:14-2.7(r). The

matter was transferred to the Office of Administrative Law (OAL) and received at the OAL on April 19, 2016, as an emergent and contested matter. The matter was heard on April 22, 2016, at the Newark, New Jersey offices of the OAL.

There was no appearance by M.A, the parent nor was there an appearance by a representative. The respondent was served with copies of the emergent relief petition and notice of the hearing time and place.

### **ISSUES**

Has petitioner met all of the elements necessary to grant emergent relief pursuant to N.J.A.C. 6A: 14-2.7 (s). Should petitioner be permitted to compel respondent to participate in intake meetings at Somerset Education Commission and Lamberts Mill Academy pursuant to S.A.'s IEP.

### **BACKGROUND**

S.A. is an eleventh grade student at Summit High School that has an Individualized Education Plan (IEP) dated March 1, 2016. The IEP calls for S.A. to receive his program in a therapeutic out of district placement. This plan came about because from October 2015, S.A. began a pattern of coming to school to socialize with his friends and refusing to complete any classwork or homework assignments. As such, he began receiving failing grades in all his classes.

On February 3, 2016, the child study team convened an IEP meeting and proposed a half day of academic along with a half day work readiness program with a job coach. The parent consented to that change in the program. However, S.A. has refused to attend the job training and has stopped attending two of his four academic classes.

On March 1, 2016, the child study team convened another IEP meeting and proposed the present out of district placement. The parent consented to the student's records being sent to Lamberts Mill Academy and to the Somerset County Educational

Commission and has not otherwise objected to the current and proposed IEP. However, as of March 9, 2016, S.A. has been out of school and on March 23, 2016, the school principal notified the parent that S.A. had reached the district's attendance limits in all of his courses, which has resulted in his being withdrawn from all classes and receiving a grade of withdrawal/fail for all of his classes.

On March 11, 2016, both Lamberts Mill and Somerset County Education Services Commission requested to schedule intake appointments with the family. However, S.A. and his parent have not made themselves available to schedule any appointments.

S.A. has not attended school since March 9, 2016.

### **LEGAL DISCUSSION AND CONCLUSION**

N.J.A.C. 6A:14-2.7(s) provides that emergent relief may be granted if an administrative law judge determines from the proofs that: The petitioner will suffer irreparable harm if the requested relief is not granted; the legal right underlying the petitioner's claim is settled; the petitioner has a likelihood of prevailing on the merits of the underlying claim; and, 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. Emergent relief may be granted if there exists an issue involving a break in the delivery of services. N.J.A.C. 6A: 14-2.7 (r) (l)i. Such a break has occurred here in view of S.A.'s absences since March 9, 2016.

The Individuals with Disabilities Education Act (IDEA) requires New Jersey to effectuate procedures which ensure that all children with disabilities residing in the State have available a Free Appropriate Public Education (FAPE) consisting of special education and related services provided in conformity with an Individualized Education Plan (IEP). 20 U.S.C. § 1401 (9) and 1412(a)(l).

N.J.A.C. 6A: 14-2.7(b), permits a school district to request a due process hearing seeking authorization to perform elements of the student's IEP or to develop an IEP.

There has already been a break in the services that the district is to provide to S.A., since he has not made himself available to be provided with any educational services since March 9, 2016. Without these intake interviews at Lamberts Mill and at the Somerset County Educational Commission the district is at a loss as to what to do next for S.A. Without these intakes the district's efforts to provide S.A. with FAPE are impaired. This I **FIND** is irreparable harm.

The legal right underlying the district's claim is settled. The situation at school with S.A. warrants a court intervention.

I **FIND** that there is a likelihood of success on the merits of the district's claims. And, a balance of the equities at this time favors the district.

Therefore, having heard the arguments of counsel and having reviewed the affidavits and exhibits attached to petitioner's petition and not having heard or received anything in opposition to the district's allegations from the respondent parent, I **CONCLUDE** that there is good cause to **GRANT** the district emergent relief.

### **ORDER**

It is hereby **ORDERED** that petitioner's application for emergent relief be **GRANTED**. S.A. shall participate in the further development of S.A.'s IEP by compelling him to participate in take meetings at Lamberts Mill Academy and at the Somerset County Educational Commission.

And, it is further **ORDERED** that a copy of this Order shall be served upon all parties within 5 days from the date of entry.

This decision on application for emergency relief resolves all of 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.

April 28, 2016

DATE

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**CARIDAD F. RIGO, ALJ**

Date Received at Agency

April 28, 2016

Date Mailed to Parties:

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