

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON EMERGENT RELIEF

OAL DKT. NO. EDS 07691-17

AGENCY DKT. NO. 2017 26339

D.R. o/b/o M.R.,

Petitioners,

v.

**WOODBURY BOARD OF
EDUCATION,**

Respondent.

D.R., petitioner, pro se

Victoria S. Beck, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: June 2, 2017

Decided: June 2, 2017

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE

In this matter D.R. (petitioner) brings an action for Emergent Relief against the Woodbury Board of Education (respondent) to allow M.R., petitioner's daughter, to attend an 8th grade class trip. Petitioner filed a Verified Petition at the state Office of Special Education Programs (OSEP) on June 1, 2017, and OSEP transmitted the matter to the Office of Administrative Law (OAL) on June 1, 2017, as a contested case seeking emergent relief for M.R. M.R. is educated under an Individual Educational Plan (IEP), dated January 13, 2017, classified as a student with a specific learning disability. The parties presented oral argument on the emergent relief on June 2, 2017 at the Trenton OAL offices in Mercerville. Petitioner, D.R. attending by telephone, as she had

only been informed by e-mail of the hearing on the evening of June 1, 2017, and could not arrange child care for a grandchild under her care.

BACKGROUND

The respondent submitted M.R.'s IEP and a certification from Dr. Jason Vivadelli. The respondent's action to prevent M.R.'s participation in the school trip relates to M.R. attendance issues during the school year. Petitioner determined to participate in the attendance completion program to prevent M.R. from failing to be promoted to ninth grade. Petitioner's participation in the attendance completion program, requires attendance at school at 3:00 p.m. on the day of the class trip which would prevent M.R. from satisfying the requirements of the program if she attends the school trip.

Petitioner D.R. argues that M.R. is an A and B student who missed twenty-two days the 2016-2017 school year due to health reasons and other family issues. The school informed her last week that her child would not attend graduation exercises due to her absences, and, also would be retained in eight grade if she did not attend summer school. On June 1, 2017, the school offered her the 3:00 p.m. to 7:00 p.m. attendance completion program so M.R. could attend graduation. However, as the class trip did not get back to the school until after 3:00 p.m., M.R. would have to miss the trip in order to attend the graduation. D.R.'s did not include any documentation of her argument in the verified petitioner.

LEGAL ANALYSIS AND CONCLUSION

Emergent Relief

N.J.A.C. 6A:3-1.6 provides for emergent relief or stay as follows:

- (a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of

appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

(b) A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

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.

[See also N.J.A.C. 1:1-12.6.]

For emergent relief to be granted, the petitioner must satisfy all four prongs of the Crowe test by clear and convincing evidence, a "particularly heavy" burden. Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006) (quoting Punnett v. Carter, 621 F.2d 578, 582 (3d Cir. 1980)); see also Guaman v. Velez, 421 N.J. Super. 239, 247-48 (App. Div. 2011).

As to the first requirement, petitioner must show she will suffer irreparable harm if the requested relief be not granted. Attendance at a class trip is a privilege and the denial of that privilege may not be actionable, but, it does rise to an irreparable harm. See R.N. v. Bd. Of Educ. Of the Twp. Of Hazlet, OAL Dkt. No. EDU 8026-09 Initial Decision (June 24, 2009), adopted with modifications Final Decision (June 24, 2017).

As to the second requirement, that the legal right underlying petitioner's claim is well settled. The petitioner has not demonstrated that the law favors M.R.

As to the third requirement, the petitioner's likelihood of prevailing on the merits of the underlying claim, this tribunal accepts that if petitioner had documented her daughter's grades, reasons for absences (excused and unexcused), and the school's failure to timely advise petitioner of her attendance absences, she would likely prevail on the merits. The petitioner made an election to promote M.R. to the ninth grade by attending a program designed to address attendance deficiency's. Petitioner's position is weakened by this election, and without the documentation identified above cannot successfully prevail on the merits of her petition. The time frame to satisfy the documentation is impractical under the circumstances.

As to the balancing of the equities of the situation and the interests of the parties, here petitioner made a choice to seek promotion by participation in the attendance completion program. If M.R. revokes this choice, she would likely either be compelled to attend a summer program and fail to attend the graduation ceremony, or fail to be promoted out of the eighth grade. These choices are equally unacceptable. The choice must be balanced against the best interest of the student. This tribunal accepts that M.R. will suffer disappointment from not attending the class trip. However, to do so would put her at greater risk of emotional damage by attending a summer program or failing to be promoted to ninth grade. There is no evidence the balance of the equities would favor M.R.'s position. The respondent is responsible to have students comply with the attendance policy. The school trip is a casualty of that choice.

This is not to say that the school acted timely or with proper notice to petitioner of her choices. This tribunal cannot hold them to task due to the absence of documentation to support petitioner's position on this short notice.

CONCLUSION

In conclusion, the petitioner has not demonstrated entitlement to emergent relief. The relief sought, to be permitted to attend the class trip is **DENIED**.

ORDER

Having concluded that the petitioner has not satisfied three of the four requirements for emergent relief, the petitioner's request for emergent relief is **DENIED**.

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 Programs.

June 2, 2017
DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

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