

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION GRANTING

EMERGENT RELIEF

OAL DKT. NO. EDS 09165-15

AGENCY DKT. NO. 2015-23030

**GLOUCESTER CITY BOARD
OF EDUCATION,**

Petitioner,

v.

A.H. AND K.S. ON BEHALF OF G.H.,

Respondents.

Cameron R. Morgan, Esq., for Gloucester City Board of Education on behalf of
petitioner (Parker McKay, P.A., attorneys)

A.H. and K.S. parents of **G.H.**, respondents, pro se

Record Closed: July 10, 2015

Decided: July 14, 2015

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

Petitioner Gloucester City Board of Education (Gloucester) filed an application for emergent relief with the New Jersey Department of Education, Office of Special Education Programs. The application requested that respondents, A.H. and K.S. be

ordered to cooperate in the reevaluation of G.H. by scheduling the reevaluations, ensuring the G.H. appears for the scheduled sessions, and participating with the reevaluation process for their daughter, G.H. who is five years old. There has been a break in services to G.H. as a result of her parents' refusal to cooperate with the reevaluation.

PROCEDURAL HISTORY

On June 19, 2015, petitioner filed a due process petition with the Office of Special Education Programs of the New Jersey Department of Education, along with a request for emergent relief. On June 23, 2015, the matter was filed with the Office of Administrative Law for oral argument, which was held on July 10, 2015.

FACTUAL DISCUSSION

G.H. is a five-year-old female student, born December 21, 2009, who resides with her parents, K.S. and A.H. in the District at 226 4th Street, Gloucester City, New Jersey. G.H. was initially referred to the District's child study team on November 27, 2012, by her mother K.S., due to speech and language delays. She was evaluated and found eligible for special education on January 31, 2013. Since that time, G.H. has received special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA), under a classification category of "Preschool Child with a Disability." G.H. was placed in a self-contained preschool disabled classroom indistrict. G.H. has been diagnosed with autism spectrum disorder.

Pursuant to her current individualized education program (IEP), G.H. will age out of the Preschool Child with a Disability classification and her current IEP will expire on June 26, 2015. In the Spring of 2015, the District determined that the child needed to be reevaluated, as the most recent evaluations were from when she was three years old. The District maintains that a reevaluation is essential in order to properly assess her classification and to develop a new IEP with appropriate services for her. The District also maintains that it is legally required to reevaluate the student to determine her eligibility under of the other classification categories of the IDEA pursuant to N.J.A.C. 6A:14-3.8(g).

On April 1, 2015, the District's child study team convened a reevaluation planning meeting which the parents attended. The education reevaluation component was completed on April 15, 2015. However, the parents thereafter ceased cooperation with the District. The parents ceased sending the child to school on April 29, 2015, and have continued to refuse to cooperate with the District. The parents expressed a concern about their daughter's treatment at school and filed an institutional abuse complaint against the school. It has been represented by the District, that an investigation was conducted by the State's Institutional Abuse Unit, and the allegations were deemed unfounded. Notwithstanding same, the parents continued to refuse to cooperate and the instant action was filed.

The parents have maintained the child has been mistreated by the District and they would like her placed outside of the District. They have not provided any evaluations or evidence that out-of-district placement is necessary and/or appropriate. In support of their position, the parents submit a December 12, 2012, report form G.H.'s neurologist at the Children's Hospital of Philadelphia. The report notes that the child has been diagnosed with "autism spectrum disorder," but it makes no recommendation regarding treatment or evaluation of G.H. The parents offer no other evidence in defense of their non-cooperation or in support of their request for out-of-district placement for G.H.

LEGAL ANALYSIS AND CONCLUSIONS

The standards that must be met by the moving party in an application for emergent relief in a matter concerning a special-needs child are embodied in N.J.A.C. 6A:14-2.7(m)(1), N.J.A.C. 1:6A-12.1, and Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982). Emergency relief may only be granted if the judge determines that:

1. The petitioner will suffer irreparable harm if the relief is not granted;
2. The legal right underlying the 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.

The petitioner must satisfy all four prongs of the Crowe test.

Pursuant to N.J.A.C. 6A:14-3.8(g), a Board of Education must conduct a reevaluation of any student in a program for preschools with disabilities by the latest June 30th of the student last year of eligibility for the program. The results of that reevaluation shall determine whether or not the student will continue to be a student with a disability and, if so, that student's reclassification according to N.J.A.C. 6A:14-3.5(c) or 3.6(a). Failure of the District to comply with N.J.A.C. 6A:14-3.8(g) will expose them to the imposition of sanctions by the New Jersey Department of Education and the federal governments. A failure to comply will also place the student at risk, as any lapse in special services may well cause the child to regress, erasing all the gains achieved during the school year. Consequently, I am convinced and therefore, I **FIND** that the Board will suffer irreparable harm if the requested relief is not granted.

Given its obligation to reevaluate a classified student by June 30th of the child's final year of eligibility, the Board has an absolute right to obtain the requested relief. Phrased differently, it is well established that when a reevaluation is required under the IDEA or, in this case, the New Jersey Administrative Code, parents do not have a right to refuse to cooperate. If the parents would like to have their own evaluations completed, they may do so after the District has completed its own reevaluation. Therefore, I further **FIND** that the legal right underlying the petitioner's claim is settled. Similarly, because the legal right underlying the petitioner's claim is settled, I **FIND** that it is more likely, than not assured that petitioner will prevail on the merits of the underlying claim.

Given, my findings as to the first three parts of the four-part test, it only follows, that I **FIND** that when the equities and interests of the parties are balanced, petitioner will suffer greater harm than the respondent if the requested relief is not granted.

DECISION AND ORDER

For these reasons, I **CONCLUDE** that the petitioner has established sufficient grounds for granting the emergency relief. Accordingly, it is **ORDERED** that the petitioner's application for emergent relief is **GRANTED**; and it is further **ORDERED** that respondents must cooperate with the Board in the reevaluation process though the scheduling of the psychological and speech reevaluations, ensuring that G.H. appears for scheduled sessions, participating in parent interviews, and accompanying G.H. to outside appointments. It is also **ORDERED** that in the event respondents have decided not to register or reenroll G.H. in the District, respondents shall send written confirmation of their decision to the Board on or before August 31, 2015. It is also **ORDERED** that the Board shall allow one of the parents to accompany G.H. to all such appointments in connection with the reevaluation, provided they do not interfere with the evaluation process.

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.

July 14, 2015 _____

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency

July 14, 2015 _____

Date Mailed to Parties: _____

SGC/mel/mph

WITNESSES

For petitioner:

None

For respondents:

None

EXHIBITS

For petitioner:

None

For respondents:

None