

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

**DECISION ON EMERGENT RELIEF**

OAL DKT. NO. EDS 10944-14

AGENCY DKT.NO. 2015 21665

**D.B. ON BEHALF OF P.B.,**

Petitioner,

v.

**ESSEX FELLS BOARD OF EDUCATION,**

Respondent.

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**D.B.**, petitioner, pro se

**Stephen Fogarty**, Esq. for respondent (Forgarty & Hara, attorneys)

Record Closed: September 4, 2014

Decided: September 5, 2014

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner brings this action seeking an order for continued placement at Nexus Language Builders (Nexus), with consultation from ABA4U and a transition to Essex Fells at the expense of the Essex Fells Board of Education (Board).

On September 2, 2014, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 10944-14. The Board filed opposition to petitioner's motion for emergent relief and a cross motion for emergent relief requesting that P.B. be placed in the Summit School on September 4,

2014. Oral arguments were held on September 4, 2014, on which date the record closed.

### **FACTUAL DISCUSSION**

I **FIND** the following **FACTS**:

L.B and D.B. are the parents of P.B. They are divorced. They share joint legal custody of P.B. The Board has had separate meeting with the parents due to L.B. having a restraining order against D.B.

P.B. is classified as autistic. The parties had previously entered into a settlement whereby P.B.'s placement would be at Nexus from September 2013 to August 1, 2014. The agreement stated that if there was a disagreement regarding P.B.'s placement for the 2014-2015 school year that the stay put placement would Essex Fells. As part of the settlement agreement, the parent waived the right for P.B. to stay put at Nexus for the 2014-2015 school year. An IEP was implemented on January 2, 2014 for the remainder of the 2013-2014 school year.

The Board determined that it did not have an appropriate program for P.B. in Essex Fells for the 2014-2015 school year. P.B. requires an integrated kindergarten program with continued applied behavioral analysis.

In August 2014, D.B. was informed by Sarah Fernandes (Fernandes) of the proposed placement of P.B. at the Summit School. The Board noticed D.B. on August 29, 2014, of an IEP meeting on September 2, 2014 which he could not attend due to being unable to rearrange his schedule. The Board and D.B. were unable to schedule the IEP meeting prior to the motion. L.B. attended an IEP meeting on September 2, 2014 and agreed to the Summit school placement. L.B. executed a proposed IEP and consented to its immediate implementation.

P.B. is currently enrolled in Essex Fells where she is not in an integrated program with continued applied behavioral analysis.

### **LEGAL ANALYSIS AND CONCLUSION**

The standards for the granting of emergent relief are set forth in N.J.A.C. 6A:3-1.6(b). Emergent relief may be granted if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested 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.

In this case, after hearing the arguments of petitioner and respondent and considering any other documentation submitted, I **CONCLUDE** that petitioner is not entitled to emergent relief because the proofs submitted have failed to establish the necessary elements to grant emergency relief under N.J.A.C. 6A:3-1.6(b). Specifically, petitioner has not shown that he has a likelihood of success on the merits of his underlying claim. There is an IEP in place that was signed by L.B that agreed to the placement. In addition the prior settlement it is expressly stated that D.B. and L.B. expressly waive their right to P.B.'s placement at Nexus for the 2014-2015 school year.

I **CONCLUDE** that respondent is not entitled to emergent relief because the proofs submitted have failed to establish the necessary elements to grant emergency relief under N.J.A.C. 6A:3-1.6(b). Specifically, whether the legal right underlying

respondent's claim is settled. Respondent, even with L.B. signing the IEP on September 2, 2013, did not place the P.B. immediately into the Summit School. It wanted to have an IEP meeting with D.B. before placement. In fact, P.B. is currently not enrolled in Summit School, but in Essex Fells. I also **CONCLUDE** that the stay put for P.B. during the pendency of this matter be the Summit School. P.B. is currently in a school that is not providing her with the services she needs because the settlement agreement stated that the stay put was Essex Fells and Essex Fells does not have an integrated kindergarten with continued behavioral analysis, which is what P.B. requires.

I note that the requirements are stated in the conjunctive and, consequently, the moving party must meet all four requirements in order to prevail. Failure to sustain even one of the requirements defeats the application.

After hearing arguments of petitioner and respondent, and considering all the affidavits, certifications and documents submitted, it is **ORDERED** that Petitioner's motion for emergent relief is therefore **DENIED**.

It is further **ORDERED** that respondent's motion for emergent relief is therefore **DENIED**.

It is further **ORDERED** that the stay put placement for P.B. during the pendency of this matter is Summit School.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). 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.

September 5, 2014

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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Mailed to Parties:

ljb

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