

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION GRANTING
EMERGENT RELIEF AND
DENYING CROSS-MOTION

OAL DKT. NO. EDS 12152-14

AGENCY DKT. NO. 2015 21766

J.L. AND A.L. ON BEHALF OF L.L.,

Petitioners,

v.

WANAQUE BOARD OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 12680-14

AGENCY DKT NO. 2015 21805

WANAQUE BOARD OF EDUCATION

Petitioner,

v.

J.L. AND A.L. ON BEHALF OF L.L.,

Respondent.

J.L. and A.L., pro se, for L.L.

Jeffrey Merlino, Esq., for Wanaque Board of Education (Lindabury, McCormich
and Estabrook, attorneys)

Record Closed: October 2, 2014

Decided: October 7, 2014

BEFORE TIFFANY M. WILLIAMS, ALJ:

This matter arises on an emergent basis. On her behalf, the petitioner's parents, J.L. and A.L., request in home instruction pending the resolution of a Due Process Petition revolving proper placement. L.L. is an autistic 6th grade student, in Wanaque, New Jersey. The petitioner filed a cross-motion requesting that L.L. be placed in its self-contained autistic program pending the resolution of the underlying hearing and declined the parents' request to provide in-home instruction to date. Accordingly, L.L., has not received any educational instruction since the start of the school year and the instant emergent appeal follows.

The matter was transmitted to the Office of Administrative Law on an emergent basis and was filed on September 22, 2014. The respondent's cross-motion was filed presumably on October 1, 2014, according to the notations on the facsimile transmission. Oral argument was conducted on October 2, 2014, and both matters were consolidated for the purpose of resolving the emergent relief applications. Prior to the hearing, the respondent filed a pre-hearing brief stating its legal position and certifying accompanying facts.

The facts supporting this matter are undisputed and accordingly are **FOUND as FACT.**

The petitioner first enrolled in the District in February 2006, where she remained until September 2008, when her parents withdrew her enrollment. In the 2006=2007 class year, the petitioner had been classified as eligible for special education and related services. After withdrawing the petitioner from the District in 2008, her parents enrolled her in St. Francis of Assisi School (St. Francis), where she remained until it closed this past summer. At St. Francis, the petitioner's classification changed to Specific Learning Disabled and she received supplemental occupational therapy provided by the District through the 2013-2014 school year. In the summer of 2014, the parents enrolled the petitioner in the District and provided documentation from Dr. Diane Thomas that L.L. had been diagnosed with Autism Spectrum Disorder.

During meetings this summer with the parents, District personnel were aware that the parents sought an out of district placement which included the Windsor

Learning Center and Banyan School. The District began to draft an IEP and communicated that the District's autism program was the most appropriate placement for the petitioner. The District's program constituted a self-contained classroom, providing occupational therapy for thirty minutes weekly, individual counseling for thirty minutes weekly and small social skills groups twice per week for thirty minutes. Presently six student constitute the autism classroom for grades 4-8, along with one teacher and two aides. The program utilizes an Applied Behavioral Analysis approach and positive reinforcements to promote positive behavior. The District proposed that L.L. would be exposed to her mainstream classmates where appropriate.

At the hearing, L.L.'s mom testified regarding her last placement at St. Francis. She described that L.L. was provided instruction in a mainstream environment with supplemental services, including an instructional aid and occupational therapy. Accordingly, she argued that a self-contained classroom in the District would be a drastic step backwards in L.L.'s educational and social advancement. She also testified that an IEP meeting had not yet occurred but that she and her husband believed that the Windsor School was most similar to L.L.'s placement at St. Francis because she would be mainstreamed and switched from class to class for subjects and each teacher is certified in special education. Finally, she indicated that she had been denied her request for home instruction or to receive the textbooks in order to assist her daughter in receiving an educational benefit pending the resolution of the underlying hearing.

Emergent relief pending settlement or decision may be requested by any party as part of the hearing request, or at any time after a hearing is requested. N.J.A.C. 1:6A-12.1(a); N.J.A.C. 6A:14-2.7(r). Emergent relief shall only be requested for issues involving 1) a break in the delivery of services, 2) disciplinary action, 3) graduation or participation in graduation ceremonies, and 4) placement pending the outcome of due process proceedings (also known as the stay-put provision). N.J.A.C. 6A:14-2.7(r).

The judge may order emergent relief if the judge determines that: (1) irreparable harm will result if the requested relief is not granted; (2) the legal right underlying the petitioner's claim is settled; (3) petitioner is likely to prevail on the merits of the underlying claim; and (4) when the interests of the parties are balanced, the petitioner

will suffer greater harm than the respondent will suffer if the requested relief is not granted. N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(s). See also Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982).

Home instruction is appropriate for a student with a disability when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate. N.J.A.C. 6A:14-4.8(a).

In evaluating the petitioner's requested relief, I **CONCLUDE** that emergent relief warrants the District's provision of home instruction for L.L.. As an initial matter, it is of note that L.L. has received no educational services since the start of the school year. Additionally, she and her parents were notified this summer of the closing of the parochial school that had been attending and therefore, had a limited opportunity to prepare L.L. for the self-contained option that the District offered. The concern that L.L.'s development as an autistic student may be threatened by a drastic change in placement pending the outcome of her Due Process Petition is valid and compelling. The District acknowledged that it rejected the two less restrictive environments that the parents posed during the IEP process and I **CONCLUDE** that irreparable harm would flow to L.L. should she be denied home instruction, as the matter is well settled legally that she is entitled to such. Moreover, given the restrictive nature of the District's offered placement as compared to the last placement in St. Francis, the likelihood of success and the balance of the equities weigh in favor of the petitioner receiving home instruction. Accordingly, I further **CONCLUDE** that home instruction of 15 hours per week provides a responsible alternative to the self-contained classroom, pending the outcome of the resolution of the underlying matter.

Finally, as the petitioner has received no instruction since the school year has begun, I **CONCLUDE** that she is also entitled to compensatory education of 15 hours per week for every week that she has already missed. The compensatory hours should run consecutively to the home instruction hours and both should commence immediately.

DECISION AND ORDER

For the reasons stated above, I hereby **ORDER** that petitioners' application for emergent relief is hereby **GRANTED** and the respondent's cross-motion is hereby **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.

October 7, 2014
DATE

TIFFANY M. WILLIAMS, ALJ

Date Received at Agency

Date Mailed to Parties:
