

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENCY RELIEF

OAL DKT. NO. EDS 12702-14

AGENCY DKT. NO. 2015 21796 E

V.P. ON BEHALF OF L.L.¹

Petitioner,

v.

NEWARK BOARD OF EDUCATION,

Respondent.

BEFORE **KELLY J. KIRK**, ALJ:

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1400 to 1482. On September 25, 2014, petitioner, V.P., on behalf of her son, L.C., filed for emergent relief and due process against respondent, Newark Board of Education (District). The Request for Emergent Relief alleges that L.C. was bullied and injured at school on September 16, 2014, and seeks an emergent order for home instruction. The Office of Special Education Programs (OSEP) of the Department of Education (Department) transmitted the Request for Emergent Relief to the Office of Administrative Law (OAL), where it was filed on October 1, 2014. Oral argument was held on October 8, 2014.

Petitioner argued that, on September 16, 2014, L.C., who is eleven years old and classified as Other Health Impaired, was bullied by other students in his gym class while at school. The Request for Emergent Relief, sworn to on September 18, 2014, reflects that L.C. was home on crutches with his left leg swollen and an injury to his right hand/wrist.

¹ Although the documents from the Department of Education and the transmittal reflect the student's initials as L.L., the parties advised that the student's initials are L.C.

Conversely, the District argued that it had no notice of any injury to L.C., and that the student was not bullied, but rather was involved in a game of football and had been tackled.

Specifically, petitioner argued that L.C. left school on September 16, 2014, and was limping and his hand was hurting him, because when L.C. was changing his clothing in the bathroom, four children started pushing him and they pushed him to the floor and hit him, and then they went to play in the gym and a child hit him and two children stepped on his foot and his hands, and another jumped on top of him and there was nobody there to send him to the nurse. Conversely, the District argued that L.C. had gym class with general education and special education students, and that L.C. and a group of friends were horsing around in the locker room before gym and during gym, and that during a game of football, L.C. was tackled. The District further argued that no injuries were reported, the gym teacher who was present told the boys there was no tackling and the boys stopped, and L.C. returned to the locker room with the other students and changed clothes. The Board also argued that L.C. did not go to the nurse and returned to school without crutches or evidence of injury.

Petitioner also argued that there were other instances of bullying, including several other incidents that occurred on September 16, 2014, as well as incidents that occurred thereafter. Conversely, the District argued that petitioner regularly alleges that L.C. is bullied, and that L.C. has gone from classroom to classroom and school to school, having been in at least five schools in the past several years and within weeks of his arrival at a new school there are allegations of bullying.

Petitioner contends that L.C. should be on home instruction because he is bullied in school, and that home instruction will be better because it will reduce the trauma he is suffering and he will be more focused on his reading instead of going to a place where he is always getting beat up and getting bullied. Petitioner further argued that L.C. does not want to walk to school, gets panic attacks because he is being bullied in school, and he has very few friends in school because all the students are bullying him. Conversely, the District argued that L.C. is not bullied in school, and further argued that he has no legal right to home instruction because home instruction is typically

granted when there is medical necessity and the student is completely immobile or where there is such severe educational or academic need that the student must be educated one-on-one at home, and L.C. has no crutches and is mobile.

The District also argued that the emergent relief sought would result in harm to the District because school personnel and other resources would be diverted. The District further argued that petitioner has no likelihood of success on the merits in this matter, because he has no legal right to home instruction and L.C. would not be educated in the least restrictive environment.

Pursuant to N.J.A.C. 6A:14-2.7(s)(1), emergent relief may be requested according to N.J.A.C. 1:6A-12.1 and may be granted if the administrative law judge determines from the proofs that:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of success on the merits of the underlying claim; and
- iv. When the equities and interest of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

In order to prevail on an application for emergent relief, the petitioner must meet all four prongs as set forth above.

The emergent relief requested by petitioner is home instruction. N.J.A.C. 6A:16-1.3 defines "home instruction" as "the provision of one-to-one, small-group, or online instruction in the student's place of residence or other appropriate setting due to a health condition, need for treatment, court order, or exclusion from general education for conduct or safety reasons." Accordingly, home instruction is available for "safety reasons." Petitioner argued that L.C. will be bullied and harmed by other students at school if home instruction is not ordered. The Board argued that L.C. is not bullied and

that petitioner's allegations are without merit. N.J.S.A. 18A:37-14 defines "bullying" and the parties disagree as to whether L.C. has been bullied, but regardless of whether L.C. has been "bullied," petitioner has alleged that he was injured by other students in gym class and is at risk of further harm, implicating safety reasons. However, it is observed that the Request for Emergent Relief reflects a single incident alleged to have occurred "during gym class" on September 16, 2014, and no other incidents on that date or prior to that date. Further, to the extent petitioner also argued that there have been other instances of bullying since she filed the Request for Emergent Relief, she failed to amend the Request for Emergent Relief to identify any other such incidents alleged to have resulted in harm to L.C. Given the single incident identified in the Request for Emergent Relief and the parties' respective arguments, it does not appear that attending school has or will place L.C.'s safety at risk. Accordingly, I **CONCLUDE** that petitioner has failed to demonstrate a likelihood of success on the merits of the underlying claim or that irreparable harm will result if the requested relief of home instruction is not granted. I further **CONCLUDE** that petitioner is not entitled to emergent relief and, as such, the other prongs are not addressed.

It is hereby **ORDERED** that petitioner's application for emergent relief be **DENIED**.

This decision on application for emergency relief shall remain in effect until issuance of the decision on the merits in this matter.

October 8, 2014

DATE

sej

KELLY J. KIRK, ALJ