



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 18014-18

AGENCY DKT. NO. 2019-29178

J.R. ON BEHALF OF A.H.,

Petitioner,

v.

DEPTFORD TOWNSHIP

BOARD OF EDUCATION,

Respondents.

J.R., petitioner, pro se

Albert K. Marmero, Esq., for respondents (Long, Marmero & Associates, L.L.P., attorneys)

Record Closed: December 26, 2018

Decided: December 26, 2018

BEFORE **JEFFREY R. WILSON**, ALJ:

STATEMENT OF THE CASE

The petitioner, J.R., on behalf of her son, A.H., brings an action for Emergent Relief against respondent, Deptford Township Board of Education (the Board), seeking an order for the following: 1.) that A.H. be placed out-of-district at the Y.A.L.E. School in Chery Hill for the remainder of the 2018-2019 school year with transportation; 2.) that A.H. return to

the Deptford Township School District for the 2019-2020 school year in an elementary self-contained classroom other than the Oak Valley Elementary School, with the condition that the in-district school that A.H. is to attend must be equipped with a safe calm-down space; 3.) that the Behavioral Disabilities Program be renamed “Behavioral Support Classroom” or something similar; 4.) that the Spartan Care Program be required to follow special education law as any other District operated extracurricular activity would be; 5.) that the Spartan Care Program’s disciplinary policy be revised to be consistent with the District’s disciplinary policy; 6.) that A.H.’s District re-evaluations be completed and an appropriate Behavior Intervention Plan (BIP) be developed with the input of A.H.’s mental health treatment providers; 7.) that an educational curriculum be developed to meet A.H.’s educational needs; 8.) that Mr. Schilling and Ms. Mills be required to complete training regarding neurodiverse children; and 9.) that the District be required to stop recommending partial hospitalization and medication changes as an educational placement.

The respondent had already satisfied those issues it had deemed as emergent issues.

PROCEDURAL HISTORY

Petitioner filed a request for Emergency Relief and a Due Process Hearing on December 18, 2018, at the State Office of Special Education Programs (OSEP). On December 19, 2018, OSEP transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for the petitioner. The parties presented oral argument on the emergent relief application on December 26, 2018, at the OAL offices in Atlantic City.

FACTUAL DISCUSSION

J.R. is the mother of A.H. They reside in Wenonah, New Jersey. A.H. is presently eight-years-old and is a third-grade student, attending the Oak Valley Elementary School in the Deptford Township School District. A.H. also attends the District operated Spartan Care Program’s aftercare program. A.H. is eligible for special education and related

services. He is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), anxiety and depression.

On December 3, 2018, A.H. physically assaulted his teacher at the elementary school. A.H. also admitted to shouting and using foul language. A.H. has had prior incidents of similar behavior. As a result of the December 3, 2018, incident, A.H. was placed on homebound instruction. His mother declined homebound instruction.

The petitioner secured an out-of-district placement for A.H. at the Y.A.L.E. School, in Cherry Hill, New Jersey, with transportation, for the remainder of the 2018-2019 school year. He will attend the Y.A.L.E. School effective January 3, 2019. J.R. agreed that she will cooperate with A.H. attending the out-of-district placement. Re-evaluations were scheduled for December 21, 2018, in order to complete the IEP for A.H.'s placement at the Y.A.L.E. School. Unfortunately, J.R. was unavailable and unable to attend. The District will make every effort to reschedule the re-evaluations before January 3, 2019. The District's goal is to have A.H. return to an in-district placement for the 2019-2020 school year, however they must first ensure that the services and accommodations necessary for A.H. are in place to guarantee FAPE.

While attending the Y.A.L.E School, A.H. will not be able to attend the Spartan Care Program, however, he will be able to partake in extracurriculars offered through the Y.A.L.E. School.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, District or public agency may apply in writing for emergent relief. An emergent-relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

Here, the petitioner seeks an order 1.) that A.H. be placed out-of-district at the Y.A.L.E. School in Chery Hill for the remainder of the 2018-2019 school year, with transportation, 2.) that A.H. return to the Deptford Township School District for the 2019-2020 school year in an elementary self-contained classroom other than the Oak Valley Elementary School, with the condition that the in-district school that A.H. is to attend must be equipped with a safe calm-down space; 3.) that A.H.'s District re-evaluations be completed and an appropriate Behavior Intervention Plan (BIP) be developed with the input of A.H.'s mental health treatment providers and; 4.) that an educational curriculum be developed to meet A.H.'s educational needs. I **CONCLUDE** that these requests contain issues involving a break in the delivery of services and determinations of alternate educational services.

The respondent has already satisfied all of the aforementioned requests. The District secured an out-of-district placement for A.H. at the Y.A.L.E. School, in Cherry Hill, New Jersey, with transportation, for the remainder of the 2018-2019 school year. He will attend the Y.A.L.E. School effective January 3, 2019. J.R. agreed that she will cooperate with A.H. attending the out-of-district placement. Re-evaluations were scheduled for December 21, 2018, in order to complete the IEP for A.H.'s placement at the Y.A.L.E. School. Unfortunately, J.R. was unavailable and unable to attend. The District will make every effort to reschedule the re-evaluations before January 3, 2019. The District's goal is to have A.H. return to an in-district placement for the 2019-2020 school year, however

they must first ensure that the services and accommodations necessary for A.H. are in place to guarantee FAPE.

The petitioner also seeks an order 1.) that the Behavioral Disabilities Program be renamed “Behavioral Support Classroom” or something similar; 2.) that the Spartan Care Program be required to follow special education law as any other District operated extracurricular activity would be; 3.) that the Spartan Care Program’s disciplinary policy be revised to be consistent with the District’s disciplinary policy; 4.) that Mr. Schilling and Ms. Mills be required to complete training regarding neurodiverse children; and 5.) that the District be required to stop recommending partial hospitalization and medication changes as an educational placement. **I CONCLUDE** these requests are not emergent in nature and will not be addressed on an emergent basis.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6, one of the Department’s regulations governing special education. These standards for emergent relief include 1.) that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted; 2.) the existence of a settled legal right underlying the petitioner’s claim; 3.) that the party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and 4.) a balancing of the equities and interests that the party seeking emergent relief will suffer greater harm than the respondent. The petitioner bears the burden of satisfying all four prongs of this test. Crowe v. DeGoia, 90 N.J. at 132–34.

The petitioner failed to address any of the Crowe standards. However, there has been no showing of any harm to the petitioner if the requested relief is not granted. Here, the District already satisfied all of the petitioner’s request that were deemed to be emergent. Therefore, I **CONCLUDE** that the petitioner has not met her burden of establishing irreparable harm.

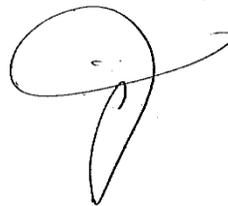
The next prong of the Crowe test to be addressed is whether considering a balancing of the equities and interests, that the party seeking emergent relief will suffer greater harm than the respondent. As previously stated, there has been no showing of any harm to the petitioner because the District already satisfied all of the petitioner’s

request that were deemed to be emergent. Thus, I **CONCLUDE** that the petitioner has failed to satisfy this Crowe standard.

ORDER

Having concluded that the petitioner has not satisfied two of the four requirements for emergent relief, the petitioner's request for emergent relief is **DENIED**. However, it must be noted that the District has already satisfied all of the petitioner's request that were deemed to be emergent.

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 Programs.



December 26, 2018

DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

JRW/dm

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

None

For Respondent:

None