



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION – EMERGENT

RELIEF

OAL DKT. NO. EDS 16564-18

AGENCY DKT. NO. 2019-29023

**LONG HILL TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

L.M. o/b/o N.M.,

Respondent.

Nathanya Simon, Esq., (Scarinci & Holenbeck, LLC) for petitioner

Jerald Oleske Esq., (Oleske & Oleske, LLP) for respondent

Argued: November 27, 2018

Decided: November 28, 2018

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

Long Hill Twp. BOE (“petitioner”) filed a request for emergent relief regarding placement of N.M., a thirteen-year-old minor child who is eligible for special education and related services based on the criteria for multiply disabled and currently receives services in-district. Petitioner seeks an order removing N.M. from the district and placing

him in an out of district facility yet to be determined. Petitioner sights behavioral issues as the impetus for the proposed removal. Parent, L.M., objects and wishes for the child to remain in-district.

PROCEDURAL HISTORY

The request for emergent relief was received by the Office of Special Education Policy and Planning on November 13, 2018, and the matter was transmitted to the Office of Administrative Law (OAL) on November 20, 2018, for determination as a contested case. A hearing was scheduled at the Office of Administrative Law in Newark, New Jersey on November 27, 2018. Oral argument was conducted with testimony.

FACTS

The following **FACTS** are undisputed.

N.M. is a thirteen-year-old minor child who is eligible for special education and related services based on the criteria for “multiply disabled” and currently receives services in-district. A settlement agreement was reached between the parties that was approved and adopted by the Honorable Daniel Pasquale, ALJ and by the Board of Education for Long Hill Township by resolution dated October 15, 2018. The agreement provided for an in-district placement.

Petitioner asserts that N.M. has been exhibiting continuous behavioral issues, that N.M. and L.M. are not complying with the agreement, and as such, the Board cannot provide FAPE in-district. Petitioner therefore asks the Court to remove N.M. from his current in-district placement. Petitioner has not proposed any out-of-district placement for N.M. but asserts that there are spots open at several facilities and a placement could be procured quickly.

Respondent objects to the emergent out-of-district placement arguing that N.M. is behaving well in his current placement and is making progress academically. Respondent further argues that the emergent relief sought would be disruptive to the child's education.

ANALYSIS

One applicable regulation is N.J.A.C. 6A:14-2.7(r), which provides in pertinent part as follows:

1. Emergent relief shall only be requested for the following issues:
 - 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, petitioner admits that there is currently no spot being held for N.M. at any out-of-district facility nor does the District have a proposed facility to place N.M. Petitioner argues that that the District is aware of openings at several facilities and a placement for N.M. could be procured quickly, thus there would be no brake in delivery of services. Petitioner further admits that evaluations would have to be made and applications submitted before the child is admitted to any out of district facility. I **FIND** that the relief sought by the petitioner whereby N.M. is immediately withdrawn from his in-district placement in favor of an out-of-district placement that has yet to be determined would constitute a break in service.

More generally, emergent relief is available pursuant to N.J.A.C. 1:6A-12.1(e), N.J.A.C. 6A:3-1.6(b) and N.J.A.C. 6A:14-2.7(s), if the application meets the following four requirements:

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.

The first requirement is that District/Petitioner will suffer irreparable harm if the requested relief is not granted. N.J.A.C. 6A:3-1.6(b)1. Harm is considered to be irreparable if it cannot be remedied by money damages. Crowe v. DiGioia, 90 N.J. 126, 132-33 (1982). Moreover, the harm must be substantial and immediate; risk of harm alone is not sufficient.

Here, petitioner has failed to show how any irreparable harm would befall upon the District, or anyone else, if the child were allowed to remain in-district. The District argues that irreparable harm will be caused to respondent N.M.'s education if he remains indefinitely at his current placement because the District cannot adequately provide FAPE. This assertion alone does not meet the standard set forth above and I **CONCLUDE** Petitioner will suffer no irreparable harm if the relief sought is not granted.

The final requirement listed above relates to equities and interests of the parties. N.J.A.C. 6A:3-1.6(b)4. As previously discussed, the relief sought by petitioner would constitute a break in services for N.M. Respondent is clearly at a disadvantage and would suffer greater harm than petitioner if the relief sought is granted. Petitioner's application must therefore be **DENIED**.

ORDER

In order to prevail on a motion for emergent relief, the movant must meet all four requirements under N.J.A.C. 1:6A-12.1(e), N.J.A.C. 6A:3-1.6(b) and N.J.A.C. 6A:14-2.7(s). I **CONCLUDE** that petitioner's request for emergent relief does not satisfy the applicable requirements. Accordingly, it is **ORDERED** that petitioner's request for emergent relief be **DENIED**.

This order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties will be notified of the scheduled hearing dates. 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.

November 28, 2018

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency

11/28/18

Date Mailed to Parties:

id