



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 11372-20

AGENCY DKT. NO. 2021-32386

B.R. ON BEHALF OF V.R.,

Petitioner,

v.

EDISON TOWNSHIP BOARD OF EDUCATION,

Respondent.

B.R., petitioner, pro se

Alyssa K. Weinstein, Esq., for respondent, Edison Township Board of Education
(Busch Law Group, LLC, attorneys)

Record Closed: January 4, 2021

Decided: January 5, 2021

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE

In this matter B.R., the mother of V.R. (petitioner), a seventeen-year-old senior, attending J.P. Stevens High School in Edison, New Jersey (District), brings an action for Emergent Relief against the Edison Township Board of Education (respondent) to: 1. Provide an immediate provision for telephonic instruction for her classes during the

remote education occasioned by the Covid-19 pandemic. This request based upon her visual disability, and claims of Post-Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD). The matter was filed in the Office of Special Education Programs on December 21, 2020 and transmitted to the Office of Administrative Law (OAL) on December 21, 2020, for consideration only of emergent relief. The matter was heard by telephone on January 4, 2021, at various locations deemed the Trenton OAL offices in Mercerville.

BACKGROUND

V.R. is classified as visually disabled, she is blind, and the District recognized the diagnosis of ADHD from 2016. It appears at the beginning of the 2020-2021 school year a new IEP issued on September 9, 2020. The IEP accommodates petitioner with additional time to complete assignments and provides among other things for remote classes as a result of Covid-19. The IEP also anticipates an aide. It does not provide for instruction at home. V.R.'s first period grades included three incompletes, an A in Physical Education, and an A- in Sociology, it also reflected thirty-eight absences, eleven in each of the three courses with incompletes. In November, the District raised concern over the incomplete markings and gave notice of the District's graduation requirements. Petitioner offered no information whether she sought to resolve the incompletes.

DISCUSSION

Petitioners argue that V.R. has received no education since September 2020, due to her anxiety caused by the PTSD and ADHD. B.R. in the petition claims, "Hurts her eyes to be on the computer all of the time. Mental health- she has PTSD from harassment that happened over the computer and in person.". The relief requested in the petition is, "Provide a teacher or person to help her in math and other subjects when needed. Provide the person on the phone because she cannot be on screen all of the time because of her eyes."

On September 8, 2020, petitioner provided the District with an alleged medical note from a doctor whose name cannot be identified from the document requesting that video-taped classes be provided V.R.

On September 19, 2020, petitioner provided the District with a medical note from a Dr. Amy L. Kavanaugh, Ph.D., she states petitioner carries a diagnosis of PTSD with dissociative symptoms, and has been treating her since January 2020. Dr. Kavanaugh stressed petitioner, "She experiences a sufficient amount of anxiety and panic attacks, particularly in response to sights, sounds, and experiences that trigger memories of past traumas. She recommended an alternative approach calling for recording the online classes.

On December 28, 2020, Dr. Payal Shah, of Trinitas Hospital in Elizabeth, diagnosed her with PTSD, the letter is insufficient for this tribunal to accept that diagnosis, based upon the information contained therein. He does state, "Her current IEP does mention about Vidhi having anxiety and not attending online classes and difficulties with some students in the past who are in her current class."

None of the above submissions satisfy the requirements for this tribunal to accept them as medical opinions. The tribunal does accept the information contained therein, regarding petitioner suffering from anxiety.

The tribunal can understand that the voice of the student who allegedly abused her may trigger anxiety. The suggested solution of taping the classes does not eliminate the issue of anxiety, if the anxiety is triggered by the voice of the offending student.

The headaches alleged from attending the on-line classes are resolvable by turning off the video which the District has acknowledged is acceptable.

The District has asked petitioner several times for consent to communicate with V.R.'s psychotherapist in an effort to understand and address V.R.'s needs, but consent was never provided. Early in the school year, the District's professionals also telephoned

V.R. on a daily basis to review coursework and offer support, but V.R. hung up on her case manager and thereafter failed to respond to any telephone calls.

The District's teacher assigned to petitioner has had numerous e-mail communications with the student during the course of the marking period, but has been unable to have telephonic communication with the student. This evidences a lack of cooperation by the student or parent with the teachers. It may be a result of her mental health, but it does not relieve the student or parent to cooperate with the District to educate the student.

The issue of graduation is not addressed in this application as the only relief this tribunal was directed to address is the issue of providing telephonic classes to petitioner.

LEGAL ANALYSIS

Petitioner filed an application for emergent relief and as such it is subject to the procedures and conditions of N.J.A.C. 6A:14-2.7 and Crowe v. DeGioia, 90 N.J. 126, 132-33 (1982). The requirements of the Crowe case require petitioners to show:

- “1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying 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.”

N.J.A.C. 6A:14-2.7(s); see also N.J.A.C. 1:6A-12.1(e). The party requesting emergent relief bears the burden to establish all four requirements by clear and convincing evidence.

N.J.A.C. 6A:14-2.7(r)(1) provides:

(r) (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.

Petitioners argue the break in services occurred because she has anxiety and cannot attend the on-line classes. V.R. has refused to participate despite consistent delivery of services and accommodations to provide the requested relief: telephonic instruction.

Addressing the criteria of Crowe:

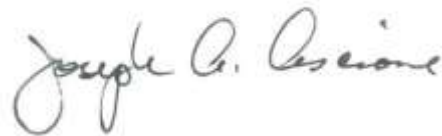
1. Irreparable harm. The absence of appropriate education can be an irreparable harm, however here, the relief requested by Petitioner has already been offered by the District, belying any claim of irreparable harm. The fact that V.R. has not fully availed herself of the offered relief is inconsequential; the offered accommodations have been available to V.R. for several months.
2. Settled legal right. Petitioner has not demonstrated that the legal right underlying her claim is settled or that she has a likelihood of prevailing on the merits. Telephonic communication has been offered and rejected by the petitioner. In home instruction is the most restrictive environment, and is not warranted under these circumstances.
3. Likelihood of prevailing. Here, petitioner has not shown she is likely to prevail on the merits.
4. Balancing of the equities: Here the District has provided many accommodations to the petitioners. They have chosen not to accept them. Their doctor acknowledges that the triggers for V.R.'s anxiety is both visual and auditory. If she

is unable to complete her courses she may require additional time to obtain her high school diploma. This is not only an issue of her disability but of the current circumstances of the Covid-19 pandemic. Many other students may be in similar situations.

Accordingly, I **CONCLUDE**, petitioner has failed to meet their burden of proof as to the criteria of irreparable harm, settled legal rights, and likelihood of success on the merits.

I **ORDER** the emergent application filed in this matter be **DISMISSED** and further **ORDER** the relief requested be **DENIED**.

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.



January 5, 2021 _____

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

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ATTACHMENTS

Moving papers

Responding papers