



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 02747-21

AGY REF NO. 2021-32618

C.B. ON BEHALF OF C.B.,

Petitioner

v.

ELIZABETH CITY BOARD OF EDUCATION,

Respondent

C.B., Petitioner, pro se

Richard P. Flaum, Esq., for Respondent, (DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, attorneys)

Christina M. DiPaola, Esq., for Respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: March 29, 2021

Decided: March 30, 2021

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Request for Emergent Relief with the Office of Special Education Policy and Procedure (OSEP) in the New Jersey Department of Education (DOE). The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on March 23, 2021, to be heard on an emergent basis.

Petitioner seeks a determination on behalf of the student that the Individualized Education Program (IEP), dated December 2, 2020, is the stay put placement and program.

Oral argument on the request for emergent relief was heard on March 29, 2021.

FACTUAL BACKGROUND

C.B. is a seven-year-old second grade student. He was formerly enrolled in the Respondent District. He was found eligible to receive special education and related services under the category “autistic”. C.B. had an IEP, which covers the time period from December 17, 2020 to December 21, 2021. The IEP provided for a placement for C.B. at the Developmental Learning Center in New Providence, New Jersey.

Petitioner appealed a residency determination by respondent, which was heard at the OAL before the Honorable Ernest M. Bongiovanni, ALJ. Judge Bongiovanni entered an Initial Decision, dated December 8, 2020, wherein he determined that petitioner did not reside in the Elizabeth school district. Judge Bongiovanni also

determined that petitioner was to reimburse respondent for tuition expended on behalf of her son. (Exhibit A, Certification of Amy A. Pujara, Esq.)

The Acting Commissioner of Education, by Decision dated March 8, 2021, affirmed Judge Bongiovanni's determination that petitioner did not reside in the Elizabeth school district. The Acting Commissioner did not agree with the calculation of tuition reimbursement ordered by Judge Bongiovanni and remanded the matter to the OAL for a determination of annual tuition cost and a calculation of tuition that is consistent with N.J.S.A. 18A:30-1(b). (Exhibit B, Certification of Amy A. Pujara, Esq.)

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioner is entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7(r)1:

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

The District, in their brief, takes the position that petitioner is not entitled to seek emergent relief in the instant matter. The District asserts that petitioner is not a resident of the Elizabeth school district. Petitioner asserts that she is a resident within the Elizabeth school district.

Specifically, petitioner is seeking stay put and maintaining that the IEP dated December 2, 2020 is the stay put. Petitioner continues to assert that she was and is a resident of the Elizabeth school district.

It has been previously determined by the Decision of the Acting Commissioner that petitioner is not a resident of the Elizabeth School District. That does not preclude a current showing of residency by petitioner. However, as this is not an appeal of a new residency determination by respondent, the undersigned is without jurisdiction to make a residency determination. Petitioner will need to apply to re-enroll her son in the Elizabeth school district, and have the District determine again she is not a resident, before the OAL would have jurisdiction to make a residency determination should petitioner appeal that decision.

On the surface, stay put is in issue. Accordingly, the elements of Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1) need not be analyzed.

The real question that requires resolution herein is not whether the December 2, 2020, IEP is the stay put, but whether petitioner's son is entitled to be educated within the Elizabeth school district. The matter of residency has already been determined. The undersigned cannot rehear the matter heard by Judge Bongiovanni, and affirmed by the Acting Commissioner of Education, relating to residency. That is for the Appellate Division.

In the instant matter, C.B.'s enrollment in the Elizabeth school district ended with the Acting Commissioner's Decision affirming Judge Bongiovanni's determination that petitioner did not reside within the Elizabeth school district.

Further, I find that N.J.A.C. 6A:14-7.7 does not apply in the instant matter, as neither the receiving or sending school district terminated C.B.'s placement at the

Developmental Learning Center. C.B. was rendered ineligible to receive an education within the Elizabeth school district by virtue of not being a resident therein.

Petitioner argues that she was not provided with proper notice regarding respondent's disenrollment in the Elizabeth school district and, therefore, his disenrollment at the Developmental Learning Center, citing N.J.A.C. 6A:14-2.3. I do not agree that the notice requirements set forth in N.J.A.C. 6A:14-2.3 apply herein. This is not a situation wherein respondent is proposing a change in the IEP, or other services. The reality is that respondent's obligation to educate C.B. ended with the Acting Commissioner's decision. Respondent continued C.B.'s placement at the Developmental Learning Center throughout petitioner's appeal of respondent's residency appeal and continued the placement until such time as the Commissioner's Decision was entered.

I would note that the matter regarding residency within the Elizabeth school district might be resolved if petitioner would re-enroll her son. Petitioner maintains she lives in Elizabeth and has always done so. Re-enrollment, with the production of those documents attached to the Request for Emergent Relief, may result in a determination by respondent the petitioner does live in the Elizabeth school district and that C.B. is entitled to be educated therein.

Based upon the foregoing I **CONCLUDE** that petitioner's request for emergent relief must be **DENIED**.

ORDER

It is hereby **ORDERED** that petitioner's request for emergent relief is **DENIED**;
and

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.



March 30, 2021 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

db

APPENDIX

List of Witnesses

For Petitioner:

C.B., Petitioner

For Respondent:

None

List of Moving Papers

For Petitioner:

Request for Emergent Relief
IEP dated December 2, 2020
IEP dated March 1, 2017
Registration form dated March 3, 2016
Rental Agreement dated January 1, 2021
Rental Agreement dated January 1, 2020
Rental Agreement dated January 1, 2019
Tenant Verification Form
NJ Division of Elections search results
Petitioner's drivers' license
PSE&G statement
Elizabethtown Gas statement of account
PSE&G statement
Optimum statement
Form 1095-B for 2018 and 2019
Authorization for Active Duty Training
Letter from Children's System of Care dated July 26, 2019

County of Union Notification Form

Citibank card

USAA statement

Family Care letter

For Respondent:

Letter brief in opposition to request for emergent relief

Certification of Diana Pinto-Gomez, Director of Special Services with Exhibit A

Exhibit A email string

Certification of Amy A. Pujara, Esq., with Exhibits A and B

Exhibit A Initial Decision of Hon. Ernest M. Bongiovani, ALJ, dated December 8, 2020

Exhibit B Decision of Commissioner of Education, dated March 8, 2021