



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 07238-21

AGENCY DKT. NO. 2021-32938

M.V. ON BEHALF OF B.M.,

Petitioner,

v.

**HIGHLAND PARK BORO BOARD OF
EDUCATION,**

Respondents.

Robert A. Robinson, Esq., for petitioner, (Disability Rights New Jersey,
attorneys)

Douglas M. Silvestro, Esq., for respondent (Busch Law Group, attorneys)

Record Closed: September 3, 2021

Decided: September 7, 2021

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

STATEMENT OF THE CASE

In this matter M.V. on behalf of B.M. (petitioners) bring an action for Emergent Relief against the Highland Park Board of Education (respondent) to: 1. Refrain from granting B.M. (her child) a high school graduation degree; and 2. Provide compensatory

education for the period of time B.M. was not receiving sufficient educational services since March 8, 2021. Specifically, petitioners seek an additional year of classification as a special education student, compensatory education, speech and related services, transitional services, community based vocational experiences as outlined in her petition. Petitioners moved into the current district on Mar 6, 2021. Previously petitioners resided in New Brunswick. Petitioners seek Highland Park to be responsible for services from that date forward. The matter was filed in the state Office of Special Education Programs on June 11, 2021; and transmitted to the Office of Administrative Law (OAL) on June 11, 2021, as an emergent graduation matter. The matter number for the first emergent application brought pro se is EDS 5011-21, the petitioner withdrew the initial application without prejudice as S3434 had not been passed or signed at the time. Petitioners' obtained counsel, a second application occurred on July 1, 2021, the matter was assigned EDS 5776-21. The tribunal denied the application without prejudice due to the uncertainty in the moving papers of the existence of an accepted Individual Education Plan (IEP). On June 23, 2021, petitioners' filed a separate action against the New Brunswick School District for lost services from March 2020 through March 2021. This is the third emergent application. The tribunal again dispensed with oral argument. The application is similar to the earlier applications from June and July 2021, among the same parties. The major differences between the June and July applications, being the passage of S3434 (P.L. 2021, c.109) by the New Jersey Legislature signed into law on June 16, 2021, by New Jersey Governor Murphy, extending the age of IDEA eligibility for students who turned 21 during the 2020-21 school year.

BACKGROUND

B.M. reached the age of twenty-one on June 1, 2021. Fifteen days before Governor Murphy signed the new legislation. She is classified as autistic. She chose not to accept her certificate of graduation at the June graduation ceremony. Previous to March 6, 2021, B.M. had resided in New Brunswick. Pursuant to an Individualized Educational Program (IEP) in New Brunswick she was attending the New Road School. In March 2020, many educational services were interrupted by Covid-19 restrictions. A

due process petition is proceeding against the New Brunswick School District for compensatory services denied during the 20/21 school year. Petitioners' are looking for services from the Highland Park School District for services denied from March 8, 2021, to June 26, 2021. The Highland Park School District scheduled an IEP meeting with petitioner for March 26, 2021, providing for a graduation as of the June graduation date. The record did not reflect an executed IEP from the March 26, 2021, Child Study team meeting. An e-mail from respondent to petitioner addressed the impending graduation and conclusion of education at New Roads anticipating the student aging out on June 1, 2021. Respondent did agree to provide transportation to the New Road School from March 2021 through June 2021. Respondent did not request any evaluations pursuant N.J.A.C. 6A:14-4.1(g)1, in an attempt to question the New Roads placement.

On June 22, 2021, after the signing of S3434, Highland Park provided an IEP providing for compensatory education within District during the Extended School Year during July and August 2021, the student B.M., did not attend the offered services, as other arrangements were made by the parent. Highland Park maintains it has provided appropriate compensatory education and has no further obligation under either S-3434 or the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1. Highland Park claims any additional compensatory education should come from the New Brunswick School District, who had B.M. for the majority of the 2020-21 School Year. If Highland Park has any additional obligation to provide compensatory education, it is not a matter appropriate for emergent relief, but rather subject to a full plenary hearing which is pending. Petitioners argue that stay-put requires Highland Park to continue the placement at the New Road School for School Year 2021-2022, despite the fact that the student has aged-out, because of the passage of S-3434.

DISCUSSION

Petitioner argues that even though it filed an emergent relief application the standard for same is the stay put standard and not that set forth in other emergent applications that bring the standard announced in Crowe v. DeGioia, 90 N.J. 126 (1982) and N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1).

Petitioner also argues that B.M. has lost education opportunities as a result of the Covid-19 restrictions, and with S3434, should be entitled to additional schooling at the New Road School. The tribunal accepts petitioners' position, without question, petitioner's educational opportunities were lost, but cannot accept under the circumstances of this matter, the entitlement of petitioner to an additional year of educational services for a potential failure of FAPE for the period of March 8, 2021 through June 21, 2021, a period of sixty-eight school days.

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, supra. Petitioner did not submit in its papers any argument in support of any of the four prongs of the Crowe test it declared the Crowe test to be inapplicable instead relying on the "stay put" standard. The "stay put" provision holds in part "during the pendency of any proceedings . . . the child shall remain in the then-current educational placement of the child." 20 U.S.C.A. § 1415(j).

Regretfully, for petitioners, stay put does not apply when one changes school districts. The new school district is entitled to make an assessment and recommend appropriate comparable educational placement. See, Michael C. v. Radnor Twp. Sch. Dist., 202 F.3d 642, 651 (3d Cir. 2000); J.F. v. Byram Township Board of Education, 629 F. App'x 235, 237-238 (3d Cir. 2015); Cinnaminson Twp. Bd. of Ed. v. K.L. o/b/o R.L., No. 16-3586, 2016 U.S. Dist. LEXIS 104706; 2016 WL 4212121 *5 (D.N.J. Aug. 9, 2016); K.G. v. Cinnaminson Twp. Bd. of Ed., No. 17-04740, 2018 U.S. Dist. LEXIS 159909, 2018 WL 4489672 (D.N.J. Sept. 19, 2018) for the proposition that when a student transfers from a prior district under an existing IEP the receiving district's obligation pursuant to the IDEA is to provide comparable services to what the student received from the prior district and that the receiving district has the authority to determine placement pending the dispute. Here there appears to be an IEP meeting in March 2021 between representatives of the Highland School District and the parent, it does not appear that an IEP was accepted by the parent. Likely, because of the fact, the District proposed the student's graduation in June. Highland Park did not take steps

to evaluate the student for a different placement. Highland Park did provide transportation during the period of March 2021 through June 21. Accordingly, this tribunal cannot say there was acceptance of the placement by Highland Park of the New Road school as the appropriate placement. In June after the Governor signed S3434, another IEP meeting was held, which provided for ESY for the student in District for July and August. This placement was not accepted by the parent, the parent taking advantage of other services the student obtained. This tribunal cannot determine on the record before it whether stay put placement would be in the District or at New Road School. This tribunal sees Highland Park's actions as compliance with the intent of S3434.

As to the claim for emergent relief seeking continued placement at the New Road school, the petitioners have not shown any entitlement for same based on either the stay put standard or the emergent relief standard. Without a showing of irreparable harm, having a settled claim, the likelihood of prevailing and the balancing of interests in favor of the petitioner I will not order B M. receive placement at the New Road School at the expense of the Highland Park District. This is not to say that compensatory education may be due depending on the outcome of the due process hearing.

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

