



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 05776-21

AGENCY DKT. NO. 2021-32938

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

Petitioner,

v.

HIGHLAND PARK BORO BOARD OF EDUCATION,

Respondent.

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

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

Record Closed: July 15, 2021

Decided: July 16, 2021

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

STATEMENT OF THE CASE

In this matter M.V. on behalf of B.M. (petitioner) 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 2020. 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 July 1, 2021; and transmitted to the Office of Administrative Law (OAL) on July 12, 2021, as a contested matter. The tribunal dispensed with oral argument. The application is similar to an application from June 2021, among the same parties. The difference 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. She previously made an emergent application in June to prevent the graduation, that previous application was withdrawn without prejudice. The petitioners did not accept the graduation certificate. 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 6, 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 does not reflect the parent agreed to a proposed IEP.

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., may have attended the offered services, the record is not clear. 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. 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 does not dispute educational opportunities were lost, but cannot accept under the circumstances of this matter, the entitlement of petitioner to an additional year of educational services at an institution where there is no showing that the District accepted the placement at the New Road school.

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, however 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. 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 accepted by the parent by taking advantage of the services offered. The stay put placement would be in the District. 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**¹.

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.

July 16, 2021

DATE


JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

July 16, 2021

Date Sent to Parties:

July 16, 2021

mmm

¹ Paperwork was submitted after the decision had already been written. I have denied the original application but have not considered the additional submission as it was not timely received. The decision is without prejudice to renewal on a complete application.