



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON EMERGENT STAY

OAL DKT. NO. EDS 05189-21

AGENCY DKT. NO. 2021-33017

I.E. ON BEHALF OF M.B.,

Petitioner,

v.

PARAMUS BORO BOARD OF EDUCATION,

Respondent.

I.E., petitioner parent pro se

M.M.B., intervenor parent pro se

Stephen R. Fogarty, Esq., for Paramus Boro Board of Education (Fogarty & Hara,
attorneys)

BEFORE **GAIL M. COOKSON**, ALJ:

By petition dated June 22, 2021, petitioner, I.E., sought emergency relief from or in relation to the Child Study Team (CST) determination to place her son, M.B., in the Paramus Boro Board of Education (District) Extended School Year commencing on June 28, 2021, as part of his latest Individualized Education Plan (IEP), and that it be implemented as written. The child's father, M.M.B.¹ had separately filed a due process petition with OSEP on or about June 15, 2021, without any emergent relief requested, which has remained with that office. The parents are divorced and share joint legal

¹ In order to not cause confusion by duplicate names and initials, I shall refer to the child and father by including middle initials which differentiate them.

custody and decision-making authority over the education of their children, who reside full-time with I.E. in Paramus.

The matter was argued on Thursday, June 24, 2021, at which time the record closed. I issued my Final Decision as to the Emergent Relief on June 25, 2021, granting petitioner's application to require Paramus to place M.A.B. in its ESY starting Monday, June 28, 2021, and denying intervenor's argument that I must place the child in the Windsor Bergen ESY instead. Intervenor has since filed a Motion for Emergent Stay before me, sought leave to file a motion for an emergent stay in the Superior Court – Appellate Division, which was denied, and thereafter filed for review of the denial of same in the New Jersey Supreme Court, although apparently improperly. The District has filed a short opposition letter.

I find that I must highlight certain inaccuracies in M.M.B.'s papers: (1) OSEP did not "grant" a stay-put but rather advised him as it does all due process special education complainants that there is a rebuttable presumption of a stay-put. (2) I do not sit in review of any judge in the Appellate Division or the Supreme Court. (3) Neither of those courts found a defect in M.M.B.'s emergency applications as a result of my not having exhausted his stay application at the OAL and query whether I even retain jurisdiction of the emergency relief component. (4) The Final Decision explicitly set forth that it was final only as to petitioner I.E.'s application for emergent relief, with the underlying due process objections to M.A.B.'s IEP for the 2021-2022 school year awaiting transmittal of intervenor's complaint and scheduling, at which time the IEP will be front and center.

While I might agree with the District that there is no explicit provision for a stay of a special education final decision at the OAL after it has been entered, I would consider any matter to be potentially subject to some limited equitable remedies. The standard for obtaining equitable emergent relief in the form of a stay of my previously issued emergency relief would, however, be the same as I already considered just two days ago: Crowe v. DeGoia, 90 N.J. 126 (1986).

To be entitled to a stay, [movant] must present clear and convincing evidence, Brown v. City of Paterson, 424 N.J. Super. 176, 183, 36 A.3d 1075 (App. Div. 2012), of each of

the following factors: (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were. [Garden State Equal. v. Dow, 216 N.J. 314, 320, 79 A.3d 1036 (2013) (citation omitted); see Crowe, supra, 90 N.J. at 132-34, 447 A.2d 173.])

A case that "presents an issue of significant public importance" requires the court to "consider the public interest in addition to the traditional Crowe factors." Dow, supra, 216 N.J. at 321, 79 A.3d 1036 (citation omitted). When the injunction sought "is merely designed to preserve the status quo," the court "may place less emphasis on a particular Crowe factor if another greatly requires the issuance of a remedy." Brown, supra, 424 N.J. Super. at 183, 36 A.3d 1075 (citation omitted).

[N.J. Election Law Enf't Com'n v. DiVincenzo, 445 N.J. Super. 187, 195-96 (Super. Ct. App. Div. 2016).]

Once again, I **CONCLUDE** that those factors favor petitioner I.E., and the District who both support M.A.B. starting his ESY with the Paramus High School program. First, it is conceded by all parties that M.A.B. will be irreparably harmed if but only if he is denied any ESY placement this summer, but I do not **CONCLUDE** that the child will be prejudiced, let alone irreparably harmed, by where that placement takes place as between these two programs, under all the circumstances laid out in the many documents in this record. Second, the legal right to ESY under these circumstances is not unsettled, and again is undisputed. The parties are reminded that any decision herein on temporary relief with respect to ESY is without prejudice to the underlying due process issues asserted by the parents. No order upholding ESY will prevent a full, complete and expedited consideration of M.A.B.'s placement for freshman year in September. Third, on the balance of interests between the parties, as stated, the District supports I.E.'s application for emergent relief. The disagreement is between petitioner and intervenor, one of whose due process petitions has not even been transmitted to the jurisdiction of the OAL. Fourth, I **CONCLUDE** that the public interest is neutral on the exact facility at which M.A.B. attends the six-week ESY program prior to high school this fall.

Accordingly, I **CONCLUDE** that M.A.B.'s placement at Windsor Bergen pursuant to my Final Decision dated June 25, 2021, will not be stayed.

ORDER

Accordingly, it is hereby **ORDERED** that the emergent motion filed by intervenor M.M.B. for a stay of my decision entered on June 25, 2021, is hereby **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.



June 28, 2021

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency

6/28/21

Date Mailed to Parties:

6/28/21

id

id