



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER ON**  
**EMERGENT RELIEF**

OAL DKT. NO. EDS 05316-21

AGENCY DKT. NO. 2021-33048

**A.M. AND A.M. ON BEHALF OF S.M.,**

Petitioners,

v.

**FREEHOLD REGIONAL BOARD OF  
EDUCATION,**

Respondent.

---

**A.M. and A.M.**, on behalf of S.M., petitioners, pro se

**Alexandra A. Stulpin, Esq.**, for respondent (Comegno Law Group, attorneys)

BEFORE **CATHERINE A. TUOHY, ALJ:**

**STATEMENT OF THE CASE**

Petitioners A.M. and A.M., on behalf of their son, S.M., filed an application for Emergent Relief against the respondent, Freehold Regional Board of Education seeking immediate placement at the Harbor School for an extended school year (ESY) for the 2021 summer. Respondent opposes this request as unnecessary in that S.M. has made progress throughout the year, is not in need of ESY services and has graduated. Respondent further argues that petitioners have not demonstrated they are entitled to emergent relief.

## **PROCEDURAL HISTORY**

Petitioners filed both a due process petition and application for emergent relief with the Office of Special Education Policy and Procedure (OSEP) on June 24, 2021, seeking immediate placement in an ESY for the 2021 summer, pursuant to S 3434. Both matters were transmitted to the Office of Administrative Law (OAL) on June 24, 2021, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The parties presented oral argument on the emergent relief application on June 29, 2021, and the record closed.

## **FACTUAL DISCUSSION**

### **For Petitioner**

Petitioners' son, S.M. is twenty-one (21) years old, multiply disabled and has been receiving special education and related services in an out of district placement, Harbor School in Eatontown, N.J. Petitioners claim that S.M. has not been provided with transition services due to COVID restrictions and that the adult day care programs are not yet able to provide him with a trial date. S.M. was not able to visit Prime Time Day Hab in the Spring, which normally would have occurred as part of his transition services if not for COVID. (Petitioners' Exhibit B). Although the adult day care program opened on June 16, 2021, it is not yet operating at full capacity and S.M. may not get a trial date until July 5, 2021, and then start the month after, in August 2021. (Petitioners' Exhibits C and C-2). Petitioners seek to have S.M. placed at Harbor School for the summer of 2021 to transition him to the adult day care program. The IEP for S.M. expired on June 22, 2021. Petitioner, A.M. admitted that his son undeniably made progress throughout the 2020-2021 school year. S.M. has always been provided with ESY in his prior IEPs to prevent regression and the loss of socialization skills. Petitioners seek to extend ESY services for this summer at Harbor School pursuant to S 3434. They did have an IEP meeting on June 16, 2021, when the law passed and discussed S.M.'s progress in his educational program. (Petitioners Exhibit D).

For Respondent

Respondent submits that S.M. has a full-scale IQ of forty-two and has made measurable progress commensurate with his abilities. Respondent points out that petitioner admitted that undeniably, his son made progress this past year. However, he has aged out of their program since he is now twenty-one years old and will be twenty-two-years-old this coming October. Although S.M.'s prior IEPs all contained ESY services, his October 28, 2020 IEP did not contain an ESY provision because he was aging out of the program and no longer entitled to special education after June 22, 2021 (Exhibit A). The Harbor School was in a hybrid learning environment with partial in person and partial remote sessions for September and October of 2020, but as of November 2020, Harbor School was open for in-person instruction and S.M. attended school in-person for most of the year. S.M. did receive transition services at the Harbor School, but they were remote due to COVID. Although he was at school with the benefit of his 1:1 paraprofessional to assist him, he was not able to physically go into the community to receive community-based transition services. The Harbor School Progress Reports indicate that transition services were being provided and worked on with S.M. (Respondent's Exhibit E, the last two pages). Respondent argues that S.M. has received appropriate services, made measurable progress and is ready to transition to an adult day program which was contemplated in his IEP. They are not responsible for bridging the gap between graduation and the start of an adult day care program.

On June 16, 2021, the day S 3434 passed, the District met with the petitioners to discuss S.M.'s future. The IEP team reviewed S.M.'s progress and noted how well he had done and determined that additional services were not warranted. The June 16, 2021, IEP provided that S.M.'s special education and related services being provided to him at the private day school for students with disabilities would cease June 22, 2021. (Respondent's and Petitioners' Exhibit A).

Respondent further argues that petitioners have not met the Crowe standard for emergent relief which requires irreparable harm if the relief is not granted; a settled legal right underlying a petitioner's claim; a likelihood that petitioner will prevail on the merits of

the underlying claim; and a balancing of the equities and interest that petitioner will suffer greater harm than respondent.

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An emergency relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- 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.

In this case, petitioners assert that there is an issue involving a break in the delivery of services. Respondent contends that S.M. has received all the appropriate services pursuant to his IEP and is now graduated and ready to transition to an adult day care program.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6. These standards for emergent relief require irreparable harm if the relief is not granted; a settled legal right underlying a petitioner's

claim; a likelihood that petitioner will prevail on the merits of the underlying claim; and a balancing of the equities and interest that petitioner will suffer greater harm than respondent.

Petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34. Petitioners cannot establish that irreparable harm will be sustained if the ESY relief requested is not granted. Issues regarding whether the District provided a Free Appropriate Public Education (FAPE) and the allowance of compensatory damages require a plenary hearing and cannot be decided on an application for emergent relief. Petitioners cannot demonstrate that their legal right to relief is well settled since it is premised on the new law, S 3434, and that a full hearing is required to determine issues of FAPE. Furthermore, petitioners cannot demonstrate a likelihood of prevailing on the merits since the new law does not guarantee an automatic extension of special education and related services past twenty-one years of age. At best, it requires a meeting of the parents and the IEP team to determine that the student requires additional or compensatory special education and related services, during the 2021-2022 school year. Respondent and petitioner held an IEP meeting on June 16, 2021, at which time the IEP team determined additional services were not warranted.

The final Crowe factor requires a balancing of the equities in determining who would sustain the greater harm should emergent relief be granted. In this case, it is clear the district would sustain the greater harm if emergent relief were granted and it was forced to pay for ESY services for S.M. for the summer of 2021. By denying emergent relief to S.M., S.M. still has the underlying due process petition pending before this tribunal which would allow for a plenary hearing on all of the facts to determine if S.M. was provided with FAPE. If following a full hearing with fact and expert testimony it is determined that S.M. was not provided with FAPE, he would be entitled to an award of compensatory education to make up for any deprivation suffered.

Therefore, for all of the foregoing reasons, I **CONCLUDE** that petitioners have not demonstrated entitlement to the emergent relief requested since they have not satisfied all four prongs of the test.

**ORDER**

It is **ORDERED** that the petitioners' application for emergent relief is **DENIED**.

It is further **ORDERED** that a telephone pre-hearing conference be conducted on **July 12, 2021, at 3:30 p.m.** to schedule the due process hearing in this matter.

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 30, 2021  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
**CATHERINE A. TUOHY, ALJ**

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

CAT/tat

**APPENDIX**

**WITNESSES**

For Petitioners:

None

For Respondent:

None

**EXHIBITS**

For Petitioners

- Exhibit A    October 28, 2020, IEP (twenty-three pages)
- Exhibit B    Email re: transition services
- Exhibit C    Email re: Prime Time – status as of June 21, 2021 (two pages)
- Exhibit C 2   Prime Time Update email
- Exhibit D    Email chain between petitioners and respondent (four pages)

For Respondent:

- Exhibit A    October 28, 2020, IEP (twenty-three pages)
- Exhibit B    Email chain re: Addiego-Sweeney bill (six pages)
- Exhibit C    June 16, 2021, IEP (twenty-three pages)
- Exhibit D    Harbor School Progress Reports (one hundred pages)
- Exhibit E    Harbor School June 2021 Progress Report (thirteen pages)