



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION
FOR EMERGENT RELIEF
OAL DKT. NO. EDS 06614-21
AGENCY DKT.NO. 2022-33253

S.V. ON BEHALF OF M.G.,

Petitioner,

v.

BUTLER BOROUGH BOARD OF EDUCATION,

Respondent.

S.V., petitioner appearing pro se

Katherine A. Gilfillan, Esq. for respondent (Schenck, Price, Smith & King, LLP)

Record Closed: August 10, 2021

Decided: August 10, 2021

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner, S.V. brings this action seeking emergent relief on behalf of minor child M.G. and an order that the stay-put placement in the Sage Day School or in the alternative be placed on home instruction.

On August 5, 2021, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 06614-21.

Petitioner filed a motion for emergent relief on August 3, 2021. Respondent filed opposition on August 9, 2021. Petitioner responded to the opposition on August 10, 2021. Oral arguments were held on August 10, 2021.

FACTUAL DISCUSSION

I **FIND** the following **FACTS**:

M.G. has been classified by the District as eligible for special education services under the classification of emotionally disturbed. He is presently fifteen and attended the out-of-district therapeutic Sage Day Lower and Middle School for the fifth, sixth, seventh and eighth grade. In March 2021 the parties agreed to delay M.G.'s triennial evaluations. An IEP meeting was held on March 21, 2021. The IEP proposed for M.G. to go to Butler High School for the 2021-2022 school year. At Butler High School, he would have pull out resource replacement English, Math, Social Studies and Science. He would also have group and individual counseling, special transportation lap belt and door to door transportation. The counseling would come from the Thrive Program, which was started by individuals employed by the Sage School. The IEP also included an extended school year (ESY) which included special class behavioral disabilities, group and individual counseling services and parent counseling and training. Petitioner did not accept the IEP. Petitioner did not send M.G. to the ESY program. Petitioner states that M.G. expressed severe anxiety about returning to a school in Butler as he was bullied in the past. He stated that he would hurt himself if he had to return to school in Butler. Petitioner request that M.G. "stay-put" at Sage High School or be given home instruction. M.G. graduated from the Sage Day Lower and Middle School in June 2021.

There was a scheduled meeting between the parties in June 2021, and the ESY program was to begin on July 5, 2021. Petitioner filed this matter on August 3, 2021.

LEGAL DISCUSSION AND CONCLUSION

The standards for the granting of emergent relief are set forth in N.J.A.C. 6A:3-1.6(b). Emergent relief may be granted if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

In the instant case, after hearing the arguments of petitioner and respondent and considering any other documentation submitted, I **CONCLUDE** that petitioner is not entitled to emergent relief because the proofs submitted have failed to establish the necessary elements to grant emergency relief under N.J.A.C. 6A:3-1.6(b). Specifically, petitioner has not shown that the underlying law is settled or that there is a likelihood of prevailing on the merits.

I **CONCLUDE** that petitioner has not established that the legal right underlying their claim is settled or that there is has a likelihood of prevailing on the merits. M.G. graduated from the Sage Day Lower and Middle School. The Sage Day High School is not the same as the Sage Lower and Middle school. In addition, they are not at the same location as the Sage Day Lower and Middle school. There is no evidence that M.G. has been accepted into one of the Sage Day High Schools.

I **CONCLUDE** that M.G. has not been accepted into any of the Sage Day High Schools.

The question of stay put is the identification of the then current educational placement Drinker v. Colonial School District 78 F.3rd 859, 864-65 (3rd Cir. 1996) The test for determining current educational placement is “the operative placement functioning at the time the dispute first arises. Ibid at 867. In this matter, the IEP was in effect fifteen days after its finalization in March 2021. Petitioner did not file for due process until August 2021.

I **CONCLUDE** the March 2021 IEP is the current educational placement. It was the placement in effect when petitioner filed for due process.

I note that the requirements are stated in the conjunctive and, consequently, petitioner must meet all four requirements in order to prevail. Failure to even one of the requirements defeats the application.

It is **ORDERED** petitioner’s motion for emergent relief is **DENIED**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter.

August 10, 2021



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

August 10, 2021_____

Date Mailed to Parties:

August 10, 2021_____

ljb