



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON EMERGENT RELIEF

OAL DKT. NO. EDS 07717-21

AGENCY DKT.NO. 2022-33390

E.B. ON BEHALF OF B.B.,

Petitioner,

v.

ALLENDALE BOARD OF EDUCATION,

Respondent.

E.B., pro se

Elizabeth Jimenez and **Alice Terrill**, Spanish Language Interpreter

Stacey T Cherry, Esq. for respondent (Fogarty & Hara)

Record Closed: September 20, 2021,

Decided: September 20, 2020

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

Petitioner, E.B. on behalf of her minor child B.B., brings this action seeking stay-put be applied and B.B. remain at Woodside Avenue School during the pendency of the due process petition.

On September 16, 2021, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL). Oral arguments were held on September 20, 2021, on which date the record closed.

FACTUAL DISCUSSION

After carefully considering the documentary evidence presented, and having had the opportunity to hear oral arguments, I **FIND** the following **FACTS**:

B.B is a resident of Allendale. He would currently be in the fifth grade. He is eligible for special education services under the category of multiple disabilities. While he was in the fourth grade, he attended a Language and Learning Disability (LLD) class at Woodside Avenue School in Franklin Lakes, an out of district placement. The District did not have LLD class to meet his needs at that time. An IEP meeting was held on May 12, 2021. The IEP lists that B.B. would remain in the Woodside Avenue School.

In the summer of 2021, The District realized that it could offer an in district LLD program that would meet B.B.'s needs. An IEP meeting was held on August 23, 2021. The only change to the IEP was that B.B, would attend LLD class at Brookside School instead of Woodside Avenue School. A Spanish interpreter was present at the IEP meeting. The Spanish interpreter went over the entire IEP and the notice requirements. The District provided petitioner with the Spanish language PRISE on August 23, 2021. Petitioner stated that she was opposed to B.B. going to the Brookside School. The IEP went into effect September 8, 2021. A due process petition was filed by petitioner on September 15, 2021. The District's position is that the placement in the May and August IEPs are the same. The only change is the location of the placement.

Petitioner states that her son has been in Woodside Avenue School for three years and he is doing well there. She does not want his placement to change to Brookside school. She believes that the change will adversely affect him.

The petitioner alleged that there was a break in services for B.B. The August 23, 2021, IEP provided B.B. with programming and services. Petitioner refused to send B.B. to the Brookside School. Petitioner has not identified any differences between the LLD program at Woodside Avenue School and Brookside School.

LEGAL ANALYSIS 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 this case, after hearing the arguments of petitioner and respondent and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b). Petitioner has not demonstrated that B.B. will suffer irreparable harm or that she will prevail on the merits.

Petitioner has not provided any documentation that B.B. would suffer irreparable harm by going to Brookside school. He would be in a LLD class as he was in Woodside Avenue school.

N.J.A.C. 6A;14-2.3 (h) (1-3) provides:

Written notice according to (g) above shall be provided to the parent as follows:

1. The district board of education shall provide written notice no later than 15 calendar days after making a determination.

2. The district board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal. The proposed action may be implemented sooner if the parent agrees in writing;
3. The district board of education shall implement the proposed action after the opportunity for consideration in (h)2 above has expired unless:
 - i. The parent disagrees with the proposed action and the district board of education takes action in an attempt to resolve the disagreement; or
 - ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).

In this matter, the petitioner did not file for mediation or due process within fifteen days of the IEP meeting of August 23, 2021. Although petitioner told the District at the time of the IEP that she did not agree with the change of schools, she did not file a due process petition until twenty-one days after the IEP hearing.

There is no indication that there are differences in the LLD programs at the schools. Petitioner did not articulate the issue that she had with the LLD class at Brookside School other than that she wanted B.B. to remain at Woodside School.

In this case, after hearing the arguments of petitioner and respondent and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b). Petitioner has not shown that B.B. will suffer irreparable harm if the relief is not granted, that the legal right underlying her claim is settled or that she has a likelihood prevailing on the merits of the underlying claim.

Accordingly, it is **ORDERED** that the petition for emergent relief is hereby **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 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 Programs.

September 20, 2021



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

September 20, 2021_____

Date Mailed to Parties:

September 20, 2021_____

ljb