



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

ON EMERGENT RELIEF

OAL DKT. NO. EDS 09838-21

AGENCY DKT. NO. 2022-33574

P.M. on behalf of B.E.,

Petitioner,

v.

**HOLLAND TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

P.M., on behalf of B.E., petitioner, pro se

Nathanya Simon, Esq., for respondent (Scarinci and Hollenbeck, LLC, attorneys)

Record Closed: December 10, 2021

Decided: December 14, 2021

BEFORE **SARAH G. CROWLEY, ALJ:**

STATEMENT OF THE CASE

Petitioner P.M.(petitioner), on behalf of her minor daughter B.E.(B.E. or student), filed a Motion for Emergent Relief against the District seeking an immediate out-of-district placement. There is a due process proceeding which was filed in November seeking the same relief. That matter had been adjourned by the parties to participate in a mediation conference currently scheduled for December 16, 2021.

PROCEDURAL HISTORY

On December 3, 2021, petitioner filed a Motion for Emergent Relief seeking to compel an immediate out-of-district placement for B.E. A brief conference call regarding scheduling was conducted with the parties and the undersigned on December 7, 2021, and the matter was scheduled for an emergent hearing on December 10, 2021. Opposition to the Motion as well as the Certification of Stephanie Snyder were filed on December 8, 2021. A hearing was conducted via Zoom on December 10, 2021, and the record closed on the emergent matter at that time.

FACTUAL BACKGROUND

B.E. is a seventh-grade student in the Holland Township School District. She is eligible for special education services under the classification of Other Health Impaired. She is in a pull-out resource classroom for some classes and receives in-class support in some general education classes. In addition, she receives individual and group counseling sessions through school. After some modifications in her IEP in November of 2021, a due process petition was filed. Shortly thereafter, the within emergent petition was filed seeking an immediate out-of-district placement due to some emotional issues related to B.E. being bullied in school and on the bus. The application further alleges that the IEP is not being implemented properly. Both of the foregoing issues are also the subject matter of a due process proceeding which is scheduled for mediation on December 16, 2021.

In support of the petition, P.M. has provided a copy of a November 2021, Neuropsychologic evaluation. The stated purpose in the evaluations is to assess overall cognitive function and provide recommendations for treatment intervention as necessary. The evaluator reports P.M.'s mood as good and discusses some cognitive issues and makes recommendations for academic accommodations for B.E. The recommendations do not relate to the emotional issues related by the petitioner and does not recommend an out-of-district placement. There is no certification or affidavit provided in support of the application. The petitioner also provides about 100 pages of documentation including

a statement by the petitioner, a copy of email exchanges between the petitioner and the District, B.E.'s IEPs and back-up material.

The petitioner described the problems that B.E. was experiencing at school with being teased and bullied and how this was impacting her ability to function in school. The teasing and bullying begin on the bus and continues throughout the day. She is sad and depressed and this is affecting her ability to learn. She never wants to go to school and is unhappy all the time. She goes to the bathroom when she is upset and then gets scolded for being in the bathroom too long. This has been going on for a long time and the damage to her is irreparable, and therefore she is requesting that she be placed out-of-district where she can have a fresh start.

The opposition to the emergent petition includes the Certification of Stephanie Snyder who is the superintendent of the school district and is familiar with B.E. and her IEP. Dr. Snyder was also available on the Zoom hearing to answer any questions. She describes B.E. as making meaningful progress and that all the appropriate evaluations have been conducted. B.E. was placed in small pull-out setting in several classes to assist in her learning. She states in the certification that what her mom describes is not witnessed by the school and although she needs mental timeouts at school, she appears to be happy and interacting with peers. A bullying complaint was found to be unsubstantiated. Ms. Snyder is aware that B.E. goes to the bathroom if she needs a mental break. Ms. Snyder explained that B.E. used to be provided with a note to go to the nurse, but she has not requested this practice be reinstated. The District is happy to revisit this issue and will explore the problems being described by the mother at their mediation session next week.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district, or public agency may apply in writing for emergent relief. An emergent 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.

The petitioner seeks an order that requires the District to immediately place B.E. out of district. However, there is no evidence that FAPE is not being provided or cannot be provided in the District, nor is there any evidence that there is a break in the delivery of services. The issues with her proposed IEP are due to be discussed at a mediation session next week. B.E. will remain in a stay-put placement pending the outcome of the due process proceeding. The allegations with respect to bullying and emotional issues are not supported by any certifications or affidavits and are inconsistent with the certification provided by the district in opposition to the petition.

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, one of the Department's regulations governing special education. These standards for emergent relief include 1.) that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted; 2.) the existence of a settled legal right underlying the petitioner's claim; 3.) that the party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and 4.) a balancing of the equities and interests that the party seeking emergent relief will suffer greater harm than the respondent. The petitioner bears the burden of satisfying all

four prongs of this test. Crowe, 90 N.J. at 132-34. Arguably, the standard is a high threshold to meet, and I will address each prong separately. Moreover, the petitioner has not established the threshold right to emergent relief under N.J.A.C. 6A:14-2.7.

Irreparable Harm

There has been no showing of irreparable harm to B.E. The District has conducted all the necessary assessments and mediation is scheduled regarding her current IEP. The petitioner argues that since B.E. has some significant social issues with other students, the interference with her school progress is irreparable. However, this falls short of demonstrating irreparable harm entitling petitioner to an immediate out-of-district placement. There has been no irreparable harm demonstrated.

I therefore **CONCLUDE** that petitioner has not met the burden of establishing irreparable harm.

The Legal Right Is Settled

The legal right at issue in this matter is the petitioner's right to an immediate out-of-district placement. The issue of the petitioner's right to such a placement is not settled.

Thus, I **CONCLUDE** petitioner has not met the second prong of the emergent relief standard.

Likelihood of Prevailing on the Merits

Regarding whether the petitioner has a likelihood of prevailing on the merits of the underlying claim, the merits involve whether the petitioner is entitled to an immediate out-of-district placement. To demonstrate the right to an out-of-district placement, the petitioner must demonstrate that the District is not currently and cannot in the future provide FAPE in the least restrictive environment. This has not been demonstrated, and the problems, if any, with the current IEP are the subject matter of the underlying due

process proceeding, and there has been no demonstration of a likelihood of success on the merits of these claims.

Therefore, **I CONCLUDE** petitioner does meet the third prong of the emergent relief standard.

B.E. Will Suffer Greater Harm Than the Respondent

The next prong of the above test to be addressed is whether the equities and interest of the parties weigh in favor of granting the requested relief. The petitioner has not established that B.E. is entitled to an out-of-district placement. Struggles with a current IEP or problems with other students at school do not entitle B.E. to an out-of-district placement. If after a full review of the current IEP in the underlying due process proceeding demonstrate that FAPE is not being provided and cannot be provided in-district for whatever reason, then an out-of-district placement would be appropriate. However, neither of these facts have been demonstrated in the matter before me.

I CONCLUDE that petitioner has failed to meet the final prong of the analysis, and the emergent motion is denied.

ORDER

Having concluded that the petitioner has failed to satisfy all four requirements for emergent relief, the petitioner's request 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. 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 Policy and Dispute Resolution.

December 14, 2021
DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

SGC/sm