



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 09656-21

AGENCY DKT. NO. 2022-33605

BRIDGEWATER-RARITAN REGIONAL
BOARD OF EDUCATION,

Petitioners,

v.

A.M.,

Respondent.

David B. Rubin, Esq. for petitioner

No appearance by or for respondent

Record Closed: December 1, 2021

Decided: December 1, 2021

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

The petitioner, Bridgewater-Raritan Regional Board of Education (the District), seeks emergent relief to compel A.M.'s consent to a psychiatric evaluation. In accordance with N.J.A.C. 6A:14-2.3, as an adult student, A.M.'s consent is needed for this evaluation to proceed. A.M. has refused to cooperate with the District's request.

PROCEDURAL HISTORY

The District filed a Verified Petition for Due Process and Request for Emergent Relief with the Office of Special Education of the New Jersey Department of Education on November 23, 2021. The District's emergent relief, as well as its underlying due process claim, is to compel consent for the completion of a psychiatric evaluation by the District at the District's expense.

The emergent matter was transmitted to the Office of Administrative Law, (OAL) where it was filed on November 24, 2021, as a contested case. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-13. The parties were notified by the OAL that the emergent request would be heard on November 29, 2021, at 9:30 a.m., via Zoom platform.

A.M. was notified of the zoom hearing through his student email address. All students enrolled in the District have an email account assigned by the District. This is the District's regular means of contacting its students. When A.M. failed to join the zoom meeting at 9:30 a.m. on November 29, 2021, a reminder email was sent to him by my judicial assistant as well as counsel for the District. My judicial assistant also placed a telephone call to A.M. at the telephone number provided with the transmittal but there was no answer. Counsel for the District represented that he sent a curtesy copy of the petition and notice of the zoom hearing to A.M.'s parents as well as forwarding the zoom invitation directly to A.M.'s email address. After waiting fifteen additional minutes, the zoom hearing went forward without A.M. or anyone appearing on his behalf.

In accordance with N.J.A.C. 1:6A-12.1(d), an emergent application may proceed without all parties being heard. A.M. was given proper notice and failed to request an adjournment or to participate in the hearing. I held the record open for two days after the hearing to give A.M. an opportunity to take appropriate action. I closed the record on December 1, 2021, after hearing nothing from the absent party.

FACTUAL DISCUSSION

For purposes of deciding this application for emergent relief, the following is a summary of the relevant facts derived from the contents of the petition and oral argument. Therefore, I **FIND** the following as **FACTS**:

A.M. is an adult student, born September 23, 2003, enrolled in twelfth grade at Bridgewater-Raritan High School. After a referral about the need for additional supports, in June 2021, the Child Study Team (CST) and A.M.'s parents agreed on an evaluation plan what included psychological and educational assessments and a social history that was completed before the start of the 2021-2022 school year. Based on the information available, the CST determined that A.M. was eligible for special education under the disability category "emotional regulation impairment" and proposed an Individualized Education Plan (IEP).

Beginning in September 2021, A.M.'s attendance at school was poor. He made demands for changes in his schedule to include classes he was ineligible to take due to the lack of prerequisites or insufficient grades. A.M.'s case manager and guidance counselor held numerous meetings with A.M. and his parents to discuss his unexcused absences, and to offer options to keep A.M. engaged with school, including changes to his course schedule. At a meeting on October 12, 2021, between A.M. and his guidance counselor to make final changes to his course schedule, A.M. became aggressive to the point that the School Resource Officers were summoned for help. It took multiple officers to subdue A.M. before he could be safely transported to the hospital for observation. A.M. kicked an officer, yelled, and cried during this encounter. A.M. was released from the hospital after a determination that he no longer presented an imminent threat of harm to himself or others. The District suspended A.M. for eight days for his aggressive behavior.

On October 26, 2021, the District convened a virtual reentry meeting and presented A.M. with two scheduling choices. This first option was a modified school day. The second option was a full school day comprised of his remaining graduation

requirements and electives. However, the District also informed A.M. and A.M.'s father that it needed communication with A.M.'s mental treatment providers and required that A.M. submit to a psychiatric evaluation. A.M.'s behavior at this meeting was disruptive and verbally aggressive.

The day after the reentry meeting, A.M. returned to school. On November 3, 2021, A.M. was scheduled to report to the school psychologist for his school-based counselling under his IEP. A.M. believed this was an attempt to evaluate him without consent. He exhibited irrational behavior and made additional demands for further changes to his courses. A.M. has only attended two counselling sessions since the start of the school year.

A.M.'s emotional instability and physical aggression in school are cause for concern. Because the staff has been prevented from communicating with A.M.'s mental health providers, the staff is not fully aware of A.M.'s current level of functioning. The lack of cooperation with A.M. and his parents in sharing information prevents the CST from fully understanding A.M.'s current condition and educational needs.

Since the start of the school year, A.M. has exhibited school avoidance, aggressive outbursts, and obstructive behavior. Without A.M.'s cooperation the District has no means to fully evaluate A.M. to implement a plan to address these escalating concerns.

The District filed this request for emergent relief seeking an order to conduct the psychiatric evaluation. They argue that this evaluation is warranted by the behaviors exhibited by A.M. since the start of the school year. Neither A.M. nor anyone on his behalf objected to this request for emergent relief.

LEGAL ANALYSIS AND CONCLUSION

By regulation an affected parent(s), guardian, board, or public agency may apply in writing for emergency relief. The application must set forth the specific relief sought

and the specific circumstances which they contend justify the requested relief. N.J.A.C. 1:6A-12.1(a).

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.

Herein, the District relied on the following circumstances as justification for emergent relief. After an eight-day suspension for aggressive behavior, including an assault of a police officer, a virtual reentry meeting was held, and the District's requirements were made known. The District emphasized its need to communicate with A.M.'s mental health providers and schedule a psychiatric evaluation for A.M.'s safety and the safety of the staff. At the virtual meeting, A.M. became verbally abusive and disruptive, requiring his removal from further participation.

Without an agreement for the evaluation, A.M. returned to school and continued to exhibit emotional instability and physical aggression. His behavior is cause for concern. A.M.'s refusal to submit to the psychiatric evaluation denies the District the tools it needs to impose appropriate discipline for his disruptive behavior and aggression. It further limits the District's ability to implement needed safeguards for A.M.'s safety and the safety of the staff and to formulate appropriate educational programming. The District has demonstrated that its request for a psychiatric evaluation has disciplinary implications given A.M.'s disability of "emotional regulation impairment." The District has also demonstrated that there are issues involving a break in delivery of services because of A.M.'s school avoidance and the District's inability to

understand A.M.'s current condition and educational needs. Therefore, I **CONCLUDE** that this matter satisfies N.J.A.C. 6A:14-2.7(r)(1) and is an appropriate request for emergent relief.

Emergent relief may be granted pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), if the judge determines from the proofs that the following conditions have been established:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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.

N.J.S.A. 6A:14-2.7(s); Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. First, the petitioner must demonstrate irreparable harm will occur if the District is not allowed to conduct a psychiatric evaluation of A.M. Harm is irreparable when there is no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132-133; Nabel v Board of Education of Hazlet, EDU 8026-09, Final Decision on Application for Emergent Relief (June 24, 2009).

Here, there is an assertion involving a break in services due to A.M.'s school avoidance and missed time due to his disciplinary suspension. Additionally, both the District and A.M. face the potential of irreparable harm by the continued delay in allowing the District to meet its obligations to A.M. to provide him with all appropriate

evaluations to meet his educational and emotional needs. Without a proper psychiatric evaluation to support A.M.'s behavior needs, the District's efforts to provide A.M. with an appropriate educational and behavioral plan is impaired with safety implications for A.M. and the District's staff. Gloucester City Board of Education v. A.H. o/b/o K.S., EDS 09165-15, Final Decision, (July 14, 2015) <http://lawlibrary.rutgers.edu/oal/search.html> (finding failure to comply with IDEA regulations puts student at risk because "any lapse in special services may well cause the child to regress"); Haddonfield Borough Board of Education v. S.J.B. o/b/o J.B., EDS 02441-04, Final Decision, (May 20, 2004), <http://lawlibrary.rutgers.edu/oal/search.html>, (finding irreparable harm to student and school district where there is a delay in the District's continued ability to provide an appropriate education due to parents withholding consent to IEP assessments).

The District must ensure that it is providing a safe environment for all its students, including A.M., and its staff. To meet this obligation, the District is seeking to conduct a psychiatric evaluation of A.M., who has a documented history of school avoidance, disruptive behavioral outbursts, and aggression. Given the gravity of the circumstances, the District has shown that there is an urgent need to conduct this evaluation. Therefore, I **CONCLUDE** that the District has met its burden of establishing a clear showing of immediate irreparable injury unless the requested relief is granted.

Second, the District must demonstrate it has a settled legal right to the relief requested. According to N.J.A.C. 6A:14-3.3(a), a district board of education has an obligation to locate, refer, and identify students who may have disabilities due to physical, sensory, emotional, communication, cognitive, or social difficulties. Thereafter, a student may be referred to the child study team for an evaluation to determine eligibility for special education programs and services. N.J.A.C. 6A:14-3.3(e). If the child study team determines that an evaluation is warranted, the district must request and obtain consent to evaluate. N.J.A.C. 6A:14-3.4(b).

Here, the District was presented with a student with a diagnosis of "emotional regulation impairment" who has demonstrable behavioral deficiencies and aggression. The District appropriately reached out to A.M.'s parents and A.M. to request this necessary testing. A.M. refused the District's request but continues to attend school.

The District has a well-settled right to complete an evaluation plan, including a psychiatric evaluation to assess A.M.'s emotional and behavior needs for appropriate services and placement. Accordingly, I **CONCLUDE** that the District has met the second prong of the emergent relief standard in that the legal right underlying its claim is well settled.

In evaluating the petitioner's likelihood of prevailing on the merits of their underlying claim, there are no material facts in dispute in this matter which oppose the petitioner's likelihood of success. There is significant precedent to support the granting of requests by school districts for emergent relief to compel parental cooperation in the IEP evaluation process. See, e.g., Millville Board of Education v. S.L. o/b/o Z.B., EDS 15556-18, Final Decision, (November 5, 2018) <http://lawlibrary.rutgers.edu/oal/search.html>; Washington Township Board of Education v. C.L. and A.L. o/b/o N.L., EDS 06855-17, Final Decision, (May 22, 2017) <http://lawlibrary.rutgers.edu/oal/search.html>; Edison Township Board of Education v. M.B. and P.B. o/b/o M.B., EDS 2319-07, Final Decision, (April 11, 2007) <http://lawlibrary.rutgers.edu/oal/search.html>; Lawrence Township Board of Education v. D.F. o/b/o D.F., EDS 12056-06, Final Decision, (January 5, 2007) <http://lawlibrary.rutgers.edu/oal/search.html>; Trenton Board of Education v. S.P. o/b/o B.P., Final Decision, EDS 874-01, (March 23, 2001) <http://lawlibrary.rutgers.edu/oal/search.html>. As applied here, I **CONCLUDE** that the petitioner has demonstrated a likelihood of prevailing on the merits.

The final prong of the test the District must satisfy is to demonstrate it will suffer greater harm than the respondent student if the relief is not granted. This is shown by a balancing of the equities and interests of the parties. Here, if the District's requested relief is granted, A.M. will be subjected to a psychiatric evaluation which would serve as the basis for decisions to ensure that his academic and emotional needs are met. In contrast, neither the adult student nor his parents have presented any evidence or indication that the student will be harmed if compelled to submit to a psychiatric evaluation. While this issue remains unaddressed, A.M.'s behaviors continue causing self-inflicted irreparable harm. It is the defiant behavior by A.M. that resulted in the scales being tipped to the District suffering greater harm if the student is not compelled

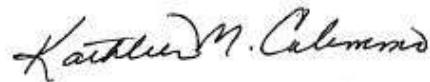
to submit to a psychiatric evaluation. I **CONCLUDE** that the District has demonstrated it will suffer greater harm than the respondent if the emergent relief is not granted.

The District has met the four conditions set forth in Crowe and as codified in N.J.A.C. 6A:3-1.6(b). Therefore, I **CONCLUDE** that the District is entitled to emergent relief compelling A.M. to submit to a psychiatric evaluation.

ORDER

It is **ORDERED** that the emergent relief requested by the District authorizing it to proceed with a psychiatric evaluation of A.M. by a physician selected by the District is **GRANTED**.

This decision on application for emergency relief resolves all the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C. § 1415(i)(2). 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.



December 1, 2021
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

KMC/tat