



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 05889-22

AGENCY DKT. NO. 2022-34529

M.D. ON BEHALF OF S.T.,

Petitioner,

v.

ESSEX COUNTY VOC-TECH

BOARD OF EDUCATION,

Respondent.

M.D., petitioner, pro se

Courtney Gaccione, Esq., for respondent

Record Closed: August 26, 2022

Decided: August 26, 2022

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Due Process Petition with the Office of Special Education (OSE) in the New Jersey Department of Education on or around June 16, 2022, which was subsequently transmitted to the Office of Administrative Law (OAL), and filed on July 18, 2022. The undersigned, who was assigned to the matter, held a pre-hearing

conference with the parties on August 4, 2022, and scheduled the due process hearing for October 7, 2022. Petitioner subsequently filed a Request for Emergent Relief, which was transmitted directly to the undersigned. A telephone conference was held with the parties on August 24, 2022 to obtain additional information concerning the Request for Emergent Relief, and to address any questions or issues concerning the oral argument on the motion that was scheduled for August 26, 2022.

As asserted in the Due Process Petition, petitioner claims that the respondent failed to provide S.T. with an appropriate transition plan and Individualized Education Plan (IEP), and that she was denied a FAPE. As part of the Due Process proceeding, as well as the application for Emergent Relief, petitioner seeks compensatory education.

Oral argument on the application for Emergent Relief was held on August 26, 2022, via Zoom.

STATEMENT OF FACTS

S.T. is currently eighteen years old. In June 2022, she completed the 12th grade at West Caldwell Tech, which is part of Essex County Vocational Technical Schools (District or Respondent), the local education agency that at all relevant times was responsible for providing S.T. with a free and appropriate education. During the 2021–2022 school year, S.T. was eligible for special education under the classification category of Other Health Impaired (OHI).

While the District maintains that S.T. met all graduation requirements by the end of the 2021–2022 school year, and while she did walk during graduation, she refused to accept her diploma and filed for Due Process. As part of petitioner’s application for Emergent Relief, she seeks compensatory education, but did not specify the form of compensatory education requested, only that it not involve S.T. returning to her District school. Petitioner alleges that the District failed to provide S.T. with an appropriate transitional plan and IEP, and that she was denied a FAPE. Petitioner’s allegations,

and requested relief, as part of the application for Emergent Relief mimic what she alleges and seeks with the Due Process Petition.

During oral argument, petitioner alleged that S.T. was not accepted into three of the four colleges that she applied to because the District failed to provide S.T. with the appropriate support to assist her in applying for colleges, and because the District failed to timely forward transcripts and recommendations to the three schools. S.T. was accepted into one out-of-state college, which S.T. plans to attend in the fall.

Respondent denies that the District was responsible for S.T. not being accepted to three colleges that she applied to, and asserts that S.T. failed to attend meetings concerning the college application process, and failed to submit timely requests for transcripts and recommendations. While the District does not concede that S.T. is entitled to compensatory education, it did offer S.T. a position in its Bridge Program (consisting of an additional year at the school), and an Enrichment Program, both of which petitioner declined. Ms. Gaccione argued that the petitioner's application for emergent relief should be denied because it is not an appropriate application pursuant to N.J.A.C. 6A:14-2.7(r)(1); and that even if petitioner's application did meet the standards under N.J.A.C. 6A:14-2.7(r)(1), she is unable to satisfy any of the four-prongs under N.J.A.C. 14:6A-12.1 and N.J.A.C. 6A:14-2.7(s)(1) to obtain emergent relief.

LEGAL ANALYSIS AND CONCLUSION

A party may apply for emergent relief following the filing of a due process hearing. N.J.A.C. 6A:14-2.7(r)(1) specifically provides:

Emergent relief shall be requested only for the following issues:

- 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.

Petitioner's application for emergent relief does not involve any break in the delivery of services nor issues involving discipline. This application also does not involve placement pending the due process hearing since S.T.'s intention is to attend an out-of-state college in the fall. The District offered S.T. an additional year at the District school, and participation in the Bridge Program, which S.T. rejected. Petitioner's application does not seek any specific placement pending the due process hearing, or even as part of the due process petition. Moreover, the application for emergent relief does not involve any issues concerning graduation. Petitioner is not seeking to participate in graduation—she already participated in the graduation ceremony. The District maintains that while S.T. has met the requirements to graduate, and she walked in the ceremony, her refusal to accept the diploma does not negate the fact that she graduated. While the petitioner questions whether S.T. actually met the requirements needed to graduate high school, this emergent application does not involve this issue. Therefore, I **CONCLUDE** that the petitioner's application for emergent relief must be denied because it does not involve any of the four issues for which emergent relief can be awarded. There is simply no available relief that can be granted to petitioner pursuant to this application, and the issues raised by petitioner are more appropriately addressed at the due process hearing.

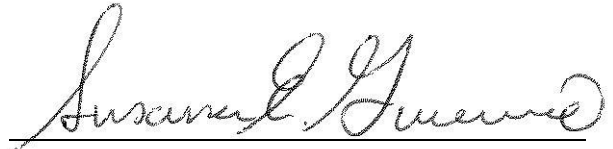
ORDER

It is hereby **ORDERED** that the emergent relief sought by petitioner is **DENIED**. The hearing is scheduled for October 7, 2022, at 9:30 a.m., at the Office of Administrative Law, 33 Washington Street, Newark, New Jersey.

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

August 26, 2022

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency

Date Mailed to Parties:

jb

APPENDIX

List of Moving Papers

For Petitioner:

Application for Emergent Relief, with attachments

For Respondent:

None

Witnesses

For Petitioner:

M.D.

For Respondent:

None