



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF

OAL DKT. NO. EDS 07982-22

AGENCY DKT. NO. 2023-34833

A.F. ON BEHALF OF J.F,

Petitioner,

v.

FREEHOLD BOARD HIGH SCHOOL DISTRICT
BOARD OF EDUCATION

Respondent.

Johanna G. Burke, Esq. for petitioner

Andrew Li, Esq., for respondent, Freehold Board of Education (Comegno Law Group, P.C., attorneys)

Record Closed: December 16, 2022

Decided: December 19, 2022

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner, A.F. on behalf of her son J.F. filed a petition for emergent relief against the respondent, Freehold Regional High School District Board of Education (respondent

or District), seeking an order to allow J.F. to be allowed to go to school for one day with his dog, Dreyfus, who the petitioner alleges is a service dog.

PROCEDURAL HISTORY

The petitioner filed a request for a due process hearing on September 15, 2022. On **October 22, 2022**, OSE transmitted the matter to the Office of Administrative Law (OAL) as a contested case. A prehearing conference was conducted on November 10, 2022. The Prehearing Order was prepared, agreeing to hearing dates on March 9, 10 and 29 of 2023. The respondent informed the tribunal that they would be filing a Motion for Summary Decision. As part of the Prehearing Order, dates for the Motion briefs were also scheduled. On December 13, 2022, I received petitioners' emergent relief request via email. A phone conference was conducted with the parties on December 14, 2022 to discuss the issues. The parties believed that they could work out their differences so that an emergent hearing would not be necessary. The parties agreed to inform this tribunal whether an agreement was reached or whether a hearing would be necessary. The petitioner informed the tribunal on December 14, 2022, that an agreement could not be reached, and that the matter would proceed to a hearing. The respondent informed the tribunal on December 14, 2022, that they would seek sanctions against the petitioner and petitioner's counsel for filing a frivolous lawsuit.

The emergent matter was scheduled for oral argument on December 16, 2022. The proceeding was conducted via Zoom.

Petitioner's request for emergent relief and a letter dated December 15, 2022 from Dr. Sajjad Zaidi, MD were submitted and considered for this proceeding. A letter brief on behalf of the District, dated December 15, 2022, was also submitted and considered.

FACTUAL DISCUSSION AND FINDINGS

Based upon the submissions of the parties and the arguments presented on December 16, 2022, I **FIND** the following as **FACT**:

1. J.F. is currently seventeen years old and is a Junior at Manalapan High School (Manalapan).
2. J.F. is in the Regional Learning Academy (RLA) program at Manalapan.
3. The student is eligible for special education and related services under the classification of "Other health Impairment." J.F. is diagnosed with major depression disorder, disruptive mood dysregulation disorder, generalized anxiety disorder, OCD, AHD and post-traumatic stress disorder.
4. In or about October 2022, J.F. stopped attending RLA.
5. On or about November 28, 2022, the petitioner submitted a medical request for home instruction to the District. Shortly thereafter, home instruction was set up through Educere¹.
6. J.F. has never logged into Educere since it was set up.
7. J.F. has a dog by the name of Dreyfus. The petitioner argues that Dreyfus is a service dog. The issue of Emergent Relief could be resolved if Dreyfus would be allowed to go to school with J.F. for a trial basis, to see how Dreyfus does at school.
8. Respondent argues that this emergent matter arises in the context of an ongoing contested case, where the petitioner alleges that the District has violated the Americans with Disabilities Act, by not permitting J.F. to attend school with Dreyfus.

¹ Educere specializes in providing innovative virtual education services to K-12 schools, students, and educators.

Arguments Of The Parties

Petitioner argues that based on J.F.'s psychiatric diagnoses, his psychiatrist recommended a service dog. In her Request for Emergent Relief, petitioner states they are "only asking that J.F. be allowed to go to school for one day to see how Dreyfus does at school with him." The petitioner also stated that J. F. missed eighty-six days of school last year, because he was not permitted to attend school with his service dog. Currently, he is not receiving any home instruction. Petitioner states that Dreyfus is not a pet, but is a service dog. Dreyfus was obtained from Unleashed Academy in July 2021, where he received specific work tasks for J.F.

J.F. explained that he just wants to go back to school with his service dog. He has not had any education for a month. It is not helpful staying home and not doing anything. He feels the District is making all types of excuses for him not to attend school with his dog. He stated that the district said that the dog is for emotional support, or it is a pet, but never said that it is a service dog. J.F. expressed his feeling of being discriminated against.

Petitioner argues that in the previous year, J.F. missed eighty-six days of school, and was given an in-home instructor, in contrast to now where he does not have an in-home instructor. The sole reason for J.F.'s anxiety is not being allowed to go to school with his service dog. He has issues and feels inadequate, and breaks down when he gets home and he has increased anxiety. Petitioner argues that the dog was trained over eight months with Unleashed Academy in Spokane, Washington. Petitioner stated that J.F. was physically and mentally abused by his father which created post-traumatic stress disorder (PTSD), which causes anxiety. What the service dog does cannot be replicated by a teacher. Petitioner argues that all she is requesting is for J.F. to be allowed to go to school with his service dog. Petitioner argues that she is a child psychologist and so she approaches this matter as a professional and a mother. She states that J.F. needs to get back to school to be with his peers. Petitioner states that J.F. never logged into Educere because after calling them, she realized that they did not have what J.F. requires. There has to be an in-person instructor for J.F.

R.C. is J.F.'s stepfather, and he stated that prior to J.F. having the dog, they never got along. However, now he can see the improvement as they now have a closer relationship. He stated that he believes it is unfair that in another school district, Monroe, other parents did not have to do what is being requested by respondent for Manalapan. He believes that under the ADA, the district is breaking the law. He believes that J.F. can successfully complete college now because he has a medical device that will help him to succeed.

J.F. is seventeen years old and he is unable to hold it together because he is not allowed to take his dog to school. Petitioner argues that according to the ADA, a service dog is not removed unless they exhibit dangerous behavior. J.F. has difficulty with home instruction without a teacher and the school is setting him up for failure. Counsel for the petitioner argues that J.F. would suffer irreparable harm based on his mental status. However, the counsel admitted that the legal right underlying the petitioner's claim is not settled law and was not sure what the specific legal right was. Counsel further argues that the merit of the claim is that J.F. requires home instruction and that he will suffer more than the District.

The District argues that the petitioner's request for emergent relief is deficient and non-compliant with N.J.A.C. 6A:14-2.7(r), and does not "even superficially meet the requirements set forth in the law." In addition, the matter arises from the assertion that the District violated the ADA; it does not fall within the ambit of N.J.A.C. 6A:14-2.7(r). The District argues that while the petitioner's certification for emergent relief is based on "issues involving a break in the delivery of services," there was no break in services provided to J.F. On the contrary, if there was a break in services, it was based on the unilateral decision by the petitioner for J.F. to stop attending school. It was the petitioner who unilaterally and without warning removed J.F. from the RLA program which he had been attending "without a dog." The District inferred that petitioner feared that truancy charges would be brought against her for violating the New Jersey compulsory education law, and requested home instruction on or about November 28, 2022. The request, along with the medical documentation, were reviewed by the District and home instruction was

set up through Educere. The District emphasized that J.F. never logged into the program, even though a Personal Learning Coach was available.

In addition, on December 9, 2022 , the District was informed that the student had “done some very self-destructive behaviors,” and “that they have not seen in years and his fingers are bloody because he’s been chewing them.” (Respondent’s Brief, Exhibit C.)

In response, the District’s medical professional wrote a letter stating, “since it appears that J.F.’s behaviors had worsened at this time, recommendation is made for a higher level of care at PHP and stabilization of symptoms to address his emotional needs based on discharge recommendations, out of district placement may be pursued after partial hospital program”. (Respondents’ Brief, Exhibit D.)

The District further argues that emergent relief should be denied because the petitioner does not satisfy any of the Crowe standards for Emergent Relief. In addition, the petitioner admitted that its second prong of the Crowe standard was not settled law and that this prong does not apply to her. The District stated that J.F.’s IEP calls for him to be in the RUL program and that is still open for J.F to attend. There was no change to the IEP. The school, however, had granted home schooling, based on the recommendation from a medical professional.

The District further argued that because the petitioner’s request for Emergent Relief is utterly devoid of merit, sanctions should be issued against petitioner and her counsel for obstruction.

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.

In her Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief, petitioner indicated that she believes she is entitled to emergent relief on issues involving a break in the delivery of services N.J.A.C. 6A:14-2.7(r)iii.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6. These standards for emergent relief require irreparable harm if the relief is not granted; a settled legal right underlying a petitioner's claim; a likelihood that petitioner will prevail on the merits of the underlying claim; and a balancing of the equities and interests that petitioner will suffer greater harm than respondent.

Petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34. Petitioner cannot establish that irreparable harm will be sustained if the relief requested is not granted. J.F. is placed in RLA at Manalapan which he was attending. J.P. has an IEP. Sometime in October the petitioner unilaterally removed J.F. out of RLA and as such, he has stopped attending school. On November 28, 2022, based on a medical recommendation from Dr. Sajjad A. Zaidi, the petitioner requested home

instruction. The District reviewed the request and a home instruction through Educere was offered. Petitioner decided that the program was not appropriate for J.F. Petitioner determined that J.F. needs an actual person to interact with him, although the program at Educere offers a Personal Learning Coach. The petitioner, based on a call to Educere, unilaterally, decided that it does not offer what J.F. needs. The petitioner claims that J.F. needs his service dog to help him with anxiety, and because the respondent will not allow the dog to attend school with him, that there is a break in the delivery of services.

The district argues that it has provided J.F. with home instruction and the RLA is still open for J.F. to attend. The district further argues that there is no break in services, as they have provided J.F. with home instruction through Educere, a program that J.F. has never logged into, and which offers a Personal Learning Coach. The district has contended that the issue of the service dog is the exact issue which is the subject of the underlying due process petition in this matter. I agree. Additionally, petitioner in her Request for Emergent Relief stated that “[t]he problem can be resolved by the district allowing Dreyfus to go to school with J.F. for a trial basis to see how Dreyfus does at school”. These issues regarding whether J.F. should attend school with the assistance of a service dog, requires a plenary hearing, and cannot be decided on an application for emergent relief. Rather than seeking relief to address a threat of an immediate irreparable injury, the petitioner in this matter is trying to utilize the present action to obtain the approval of a service dog to attend school with J.F. I **CONCLUDE** therefore that the petitioner has failed to meet their burden to satisfy the irreparable harm standard under Crowe.

The petitioner must also demonstrate that the legal right underlying her claim is settled, and she must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. The District’s responsibilities under the IDEA to provide J.F. with a Free and Appropriate Public Education (FAPE) are well-defined in state and federal law. 20 USA § 1415(5)(B); N.J.A.C. 6A:14-4.2 Petitioner cannot demonstrate that her legal right to relief is well settled—a fact that counsel has acknowledged when she states, “it is not settled and not sure what the specific legal right is.” The District has provided J.F. with the RLA program which his IEP calls for. In

addition, the petitioner requested home instruction and the District approved it through Educere. It was the petitioner that both unilaterally removed J.F. from RLA and also determined that Educere did not satisfy J.F.'s needs. Petitioner's action here is tantamount to a change of placement. This she has no right to do. Accordingly, I **CONCLUDE** that the petitioner has failed to satisfy the second and third prongs.

Finally, as to the fourth prong of the standard for emergent relief, having considered the equities and the interests of the parties, I **CONCLUDE** that the balance weighs in favor of the District. While I am not unsympathetic to petitioner's concerns about J.F.'s anxiety and the need for a service dog, without the necessary policies in place, Dreyfus cannot just accompany J.F. to school for a trial run. The determination of whether Dreyfuss is a service dog or a comfort animal is still to be determined in the underlying due process matter. In addition, the District has offered the accommodation of home instruction through Educere which the petitioner has unilaterally determined that it is not appropriate for J.F.

Therefore, for all of the foregoing reasons, I **CONCLUDE** that petitioner has not demonstrated entitlement to the emergent relief requested, since she has not satisfied any of the four prongs of the test.

The District has requested sanctions against the petitioner and her attorney for obstruction. While the petitioner's application is not the most artful or the points for relief not fully set forth in her application for emergent relief, she stated that it arose around "issues involving a break in services" which is allowed under N.J.A.C. 6A:14-2.7 (r)(1). I therefore **CONCLUDE** that this is not obstruction and the petitioner nor her counsel should be sanctioned by this tribunal.²

² I encourage the parties to continue to work together for an amicable result as on December 14, 2022, the requested documentation around Dreyfus, seems to have been possible, and may satisfy the District.

ORDER

It is **ORDERED** that the petitioner's application for emergent relief is **DENIED**. It is also **ORDERED** that the respondent's request for sanctions against the petitioner and her counsel is **DENIED**.

This Order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties have been notified of the scheduled hearing dates. 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.



December 19, 2022 _____

DATE

JOAN M. BURKE, ALJ

Date Received by Agency _____

Date Mailed to Parties _____

JMB/as

APPENDIX

WITNESSES

For petitioner

A.F.

J.F.

R.C.

For respondent

Counsel for District

EXHIBITS

For petitioner

P-1 Petitioner's submission accompanying the Emergent Application

For respondent

R-1 Respondent's December 15, 2022 Brief in Opposition to the Application for Emergent Relief with Exhibits A through D, all of which were considered with this emergent application.