



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 07206-22

AGY REF NO. 2023/34862

M.R. ON BEHALF OF M.M.,

Petitioner,

v.

UNION TOWNSHIP BOARD OF EDUCATION,

Respondent.

Julie Warshaw, Esq., for Petitioner (Warshaw Law Firm, LLC, attorneys)

Caitlin Pletcher, Esq., for Respondent (Florio, Perrucci, Steinhardt, Cappelli,
Tipton and Taylor, LLC, attorneys)

Record Closed: October 5, 2022

Decided: October 18, 2022

BEFORE **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition and motion for emergent relief with the Office of Special Education (OSE) in the New Jersey Department of Education (DOE).

The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on August 19, 2022.

The motion for emergent relief seeks an order for immediate placement at Gateway School, along with transition services, behavioral supports from a BCBA, speech-language supports, Occupational therapy, Physical Therapy, counseling, art and music therapy, and social skills, development of an IEP that reflects the program, placement and all services, along with compensatory education.

The matter was originally scheduled for oral argument on Petitioner's motion for emergent relief on August 24, 2022. The parties requested that oral argument be converted to a settlement conference, which was held said date in lieu of oral argument. The parties pursued settlement thereafter but were unable to reach resolution of the matter. Petitioner then requested the matter be relisted for oral argument, which was held on October 5, 2022.

FACTUAL BACKGROUND

It is not disputed that M.M. has not been in a school setting for almost five years, Petitioner seeks an immediate placement at Gateway School. There is disagreement among the parties as to what is the appropriate placement for M.M., and whether or not he is capable of being evaluated in order to develop an IEP.

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioner is entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7(r)1:

- i. Issues involving a break in the delivery of services;

- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate education settings;
- iii. Issues concerning placement pending outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

As the present matter concerns placement pending the outcome of a due process proceeding, Petitioner is certainly entitled to seek emergent relief.

The New Jersey Supreme Court has set forth a four-prong test for determining whether an applicant is entitled to emergent relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1.)

The four factors (“the Factors”), include:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying 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.

The moving party bears the burden of proving each of the Crowe elements “clearly and convincingly.” Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

A review of the four factors is normally in order. However, the undersigned has determined that it is not possible to determine that Petitioner will meet Factor Three.

Factor Three. Petitioner has a likelihood of prevailing on the merits of the underlying claim. As M.M. has not been in a school setting for almost five years, and

has not been properly evaluated, and may not be capable of being evaluated, it is simply not possible to determine that Petitioner is likely to succeed on the merits regarding the placement of M.M. at Gateway School.

As Crowe v. DeGioia, supra, requires that Petitioner meet all four prongs, I **CONCLUDE** that Petitioner's request for emergent relief be **DENIED**.

ORDER

It is hereby **ORDERED** that petitioner's request for emergent relief be **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.



October 18, 2022
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

db

APPENDIX

List of Moving Papers

For Petitioner:

Brief in support of emergent relief

Affidavit of Petitioner

Report, 7/21/22, Children's Specialized Hospital

For Respondent:

Letter brief in opposition

Certification of Kim Conti, Director of Special Services with Exhibit A

Certification of Caitlin Pletcher, Esq., with Exhibits B and C