



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 02394-24

AGENCY DKT. NO. 2024-36927

L.B. AND G.B. ON BEHALF OF L.B.,

Petitioners,

v.

**WATCHUNG HILLS REGIONAL BOARD
OF EDUCATION, SOMERSET COUNTY,**

Respondent.

Theodore Sliwinski, Esq., for petitioners

Danielle N. Pantaleo, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: March 7, 2024

Decided: March 8, 2024

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By a request for emergent relief, petitioners L.B. and G.B. on behalf of L.B. seek an order for temporary home instruction, pending the outcome of due process proceedings. Respondent Watchung Hills Regional Board of Education, Somerset

County (Board), opposes this request on the grounds that petitioners have not satisfied the requirements for obtaining emergent relief.

On January 12, 2024, petitioners filed a complaint for due process and a request for emergent relief with the Office of Special Education (OSE). The emergent matter only was transmitted to the Office of Administrative Law (OAL) on February 22, 2024,¹ for a hearing. During a prehearing conference on February 27, 2024, petitioners stated that L.B. was scheduled for a psychiatric evaluation on February 29, 2024, and the parties therefore agreed to schedule the emergent hearing after both parties had the chance to review the report of evaluation. The hearing was held on March 7, 2024, via Zoom Video Communications, Inc. (Zoom). After the hearing, petitioners forwarded the report of L.B.'s psychiatric evaluation which was accepted over respondent's objection for the limited purpose described below, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Based on the documents filed in this matter, including the petition and supporting documents and the letters and certifications described below, the following statements are not disputed and therefore, I **FIND** as **FACTS**:

Minor child L.B. is a seventeen-year-old male; he lives with his family within the geographic boundaries of a district which sends its students to Watchung Hills Regional High School (WHRHS, District). L.B. is classified as eligible for special education and related services under the category of Communication Impairment. He currently is enrolled in the eleventh grade at WHRHS.

On November 25, 2023, L.B.'s pediatrician, Shruti Ramesh, D.O., diagnosed him with anxiety and depression, and recommended that L.B. be "granted a 504/IEP Plan" and requested home instruction be provided by the District until L.B. could be further evaluated by a mental health professional. The WHRHS school physician approved home instruction on a temporary basis and the District had a mental health professional,

¹ According to the parties, the due process petition has since been transmitted by OSE to the OAL and has been assigned to the Honorable Catherine Tuohy, ALJ, for a settlement conference.

Michelle H. Pigott, Psy.D., assess L.B. on December 22, 2023. (Letter of Michelle H. Pigott, Psy.D. (December 22, 2023).) Dr. Pigott concluded that L.B. did not demonstrate significant levels of emotionality that would preclude his attendance in school. The District notified petitioners that L.B. was expected to return to WHRHS following the winter break, however, to date, L.B. has not returned to school.

By two letters dated January 9, 2024, petitioners requested independent psychiatric, psychological, educational and speech/language evaluations of L.B. at public expense. By letter dated January 11, 2024, the Board denied the request for independent evaluations and stated its intent to file a due process petition for an order denying the request for independent evaluations.

On January 12, 2024, petitioners filed a request for emergent relief, claiming that L.B. needs an independent educational evaluation, an alternate school placement, and “tutoring, home schooling instruction, and additional services to act as a bridge until he can find a comprehensive solution to his educational crisis.” (L.B. and G.B. on behalf of L.B. v. Watchung Hills Reg. Bd. of Educ., OAL Dkt. No. EDS 00686-24.) Following a prehearing conference with the Honorable Jacob Gertsman, ALJ, petitioners voluntarily withdrew this emergent request.

On or about February 1, 2024, petitioners provided the District an updated report from Dr. Ramesh stating that:

[D]ue to his diagnosis [of anxiety and depression], it is my strong recommendation that [L.B.] continue his 504/IEP Plan. It would be most beneficial for [L.B.] to receive an extension on his home instruction until February 29, 2024, [when] he will be further evaluated by a mental health professional.

[Letter of Shruti Ramesh, DO (February 1, 2024).]

On February 29, 2024, school nurse Danielle Esteves, RN, MSN, CSN, contacted Dr. Ramesh to obtain additional information regarding the doctor’s February 1, 2024 letter recommending home instruction for L.B. (Certification of Danielle Esteves (March 5, 2024), ¶3.) According to Esteves, Dr. Ramesh stated that she had not seen L.B. in her

office since November 2023. (Id. at ¶4.) Dr. Ramesh confirmed that a psychiatric evaluation of L.B. was scheduled for February 29, 2024. (Id. at ¶8.)

On February 29, 2024, L.B. was evaluated by Steven Dyckman, M.D. LLC. The report of Dr. Dyckman's psychiatric evaluation of L.B. was not shared with the District (or with me) prior to the emergent hearing. In his report,² Dr. Dyckman states:

[L.B.] alleges that he has been bullied and harassed over the beginning few months of the school year and refuses to attend schools [sic]. L.B. appears to be somewhat depressed, anxious, and very scared to attend school. It is my medical opinion that L.B. should receive home instruction until an out of district placement can be found that can address his anxiety, fearfulness and issues regarding his experience with being the target of bullying behavior.

[Report of Steven Dyckman, M.D. LLC (March 7, 2024), at 3.]

L.B.'s case manager at WHRHS, Dr. Patrick O'Halloran, spoke to L.B. at an WHRHS dance on February 23, 2024, at which Dr. O'Halloran was a chaperone. (Certification of Patrick O'Halloran (March 5, 2024), ¶4.) According to O'Halloran, L.B. stated that he wants to come back to school, but his mom does not want him to return to WHRHS. (Id. at ¶5.)

Steven C. Searfoss, Vice Principal of WHRHS, stated that no complaints of Harassment, Intimidation and Bullying (HIB) were filed by or against student L.B. for the 2022–2023, and 2023–2024 school years. (Certification of Steven C. Searfoss (March 4, 2024), ¶3.)

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (IDEA), is designed to assure that disabled children may access a free appropriate public education (FAPE) that is tailored to their specific needs. 20 U.S.C. § 1400(c). The regulations

² This report is additional evidence of the conflicting opinions of the medical professionals who have examined L.B. to date.

promulgated by the New Jersey Department of Education to implement the IDEA provide that the affected parent(s) may apply in writing for emergent relief. N.J.A.C. 1:6A-12.1(a).³ Emergent relief shall only be requested for specific issues, including a break in the delivery of services and/or placement pending the outcome of due process proceedings. N.J.A.C. 6A:14-2.7(r). Here, petitioners have initiated due process proceedings to change L.B.'s placement for the remainder of the 2023–2024 school year and the 2024–2025 school year, and by their petition for emergent relief, seek to change L.B.'s placement to home instruction pending the outcome of the due process proceedings.

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. The petitioners bear the burden of proving:

1. that L.B. will suffer irreparable harm if the requested relief is not granted;
2. the existence of a settled legal right underlying their claim;
3. that they have a likelihood of prevailing on the merits of the underlying claim; and
4. when the equities and the interests of the parties are balanced, L.B. will suffer greater harm than the respondent.

[Crowe, 90 N.J. at 132-34.]

Irreparable Harm

To obtain emergent relief, petitioners must demonstrate more than a risk of irreparable harm to L.B.; they must make a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those

³ 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. N.J.A.C. 1:6A-12.1(a).

rights be protected by statute or by common law.” Cont’l. Group, Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (D.N.J. 1980).

Petitioners claim that they have provided adequate medical documentation of L.B.’s pressing need for home instruction. Respondent counters that “in the special education context, irreparable harm is generally substantiated when there is a substantial risk of physical injury to the child or others, or when there will be significant interruption or termination of the child’s educational services.” (Ltr. Br. of Resp’t Opposing Emergent Relief (March 6, 2024) (Br. of Resp’t), at 10, citing C.W. and N.W. o/b/o B.W. v. Willingboro Twp. Bd. of Ed., EDS 6635-06 (Sep. 20, 2006), and M.H. o/b/o N.H. v. Milltown Bd. of Educ., OAL Dkt. No. EDS 4166-03 (June 18, 2003).)

Despite petitioners’ claims that L.B. is fearful, anxious and depressed, there is inadequate proof that he is at substantial risk of physical injury, and the current interruption of his education could be remedied by returning him to school. Should petitioners prevail in the due process proceedings and prove that L.B.’s IEP does not provide him with FAPE, appropriate relief, including compensatory education and a change in placement, will be available.

In light of the above, I **CONCLUDE** that the petitioners have not met the burden of establishing that L.B. will experience irreparable harm.

The Legal Right Is Settled

The second consideration is whether the legal right underlying petitioners’ claim is settled. N.J.A.C. 6A:3-1.6(b)(2). Petitioners meet this requirement; their underlying claims are that the District must provide L.B. with an independent educational evaluation at public expense, and that placement in-District does not provide L.B. with FAPE given his mental health challenges.

As a recipient of federal funds under the IDEA, the State of New Jersey must have a policy that assures all children with disabilities the right to FAPE, 20 U.S.C.A. § 1412, which includes special education and related services. 20 U.S.C.A. § 1401(9); N.J.A.C.

6A:14-1.1 et seq. The responsibility to provide FAPE rests with the local public school district. N.J.A.C. 6A:14-1.1(d). The local district satisfies the requirement that a child with disabilities receive FAPE by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982).

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2012); N.J.A.C. 6A:14-4.3. Respondent has offered to provide L.B. with a special education and related services in a less restrictive environment than petitioners seek; the appropriate placement for L.B. will be determined in the due process proceedings.

Likelihood of Prevailing on The Merits

Petitioners' emergent claim is for respondent to provide home instruction for L.B. pending the hearing on their petition, in which they seek permanent placement for L.B. in a therapeutic, out-of-district setting. Both parties submitted documentation, including certifications of school personnel and medical reports, which support their divergent positions. It is anticipated that those medical and educational professionals will be called to testify at the due process hearing, where their conflicting statements will be examined. Accordingly, prior to a full hearing, I **CONCLUDE** that petitioners have not demonstrated a likelihood of prevailing on the merits of their claim and have therefore, not met the third prong of the emergent relief standard.

The Petitioner Will Suffer Greater Harm Than the Respondent

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief to L.B. Petitioners argue that L.B. will suffer greater harm if emergent relief is not granted, such harm being the loss of his education. They further argue that the equities are in their favor, as the relief they request could be

provided by the District at insignificant cost. Petitioner note that home instruction was until recently, widely used throughout the State.

Respondent argues that providing petitioners with the relief they seek “would set a dangerous precedent that would disrupt the required and well-established practices of how school districts operate.” (Br. of Resp’t at 15.) “Granting this relief would further significantly prejudice the Board’s future ability to retain autonomy in making educational decisions for students work and to work in conjunction with parents in collaboratively determining the educational programs and placements for students with disabilities.” Ibid.

This is the most difficult criteria to evaluate, as L.B. is not being educated and it was apparent at oral argument that his mother is unwilling to send him back to school pending the due process hearing. The District is able to provide home instruction for L.B., as was shown earlier in this school year. The factor that weighs most in favor of the District, however, is that there is no evidence (as of yet) that from home, L.B. was able to satisfy the requirements of the various academic subjects in which he is enrolled. I **CONCLUDE** that on balance, the District would suffer greater harm if the requested relief was granted.

Based on the above, I **CONCLUDE** that petitioners satisfy only one of the four requirements for emergent relief and, therefore, emergent relief is not available.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioners’ application for emergent relief in the form of home instruction for L.B. while the due process proceeding is pending is **DENIED**.

This final decision on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties will be 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.

March 8, 2024

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date emailed to Parties: _____

TMC/nn