



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 14246-24

AGENCY DKT. NO. 2025-38235

J.B. and A.B. ON BEHALF OF A.B.,

Petitioners,

v.

**CLEMENTON BOROUGH BOARD
OF EDUCATION, CAMDEN COUNTY,**

Respondent.

J.B., petitioner/parent, pro se

Emily F. Strawbridge, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: October 15, 2024

Decided: October 16, 2024

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

STATEMENT OF THE CASE

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 to 1484(a) and 34 C.F.R. § 300.500. By a request for emergent relief, petitioners J.B. and A.B., on behalf of A.B., seek an order for temporary transportation to and from school. Respondent Clementon Borough Board of Education (Board) opposes this request on the grounds that petitioners have not satisfied the requirements for

obtaining emergent relief and transportation services are not included in A.B.'s 2024-2024 Individualized Education Program (IEP.)

PROCEDURAL HISTORY

On October 8, 2024, petitioners filed a complaint for an emergent application pending resolution of due process with the New Jersey Department of Education, Office of Special Education (OSE). The OSE transmitted just the emergency relief request to the Office of Administrative Law (OAL), to be heard as an emergent matter on October 15, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On October 11, 2024, respondent submitted a brief in response to the emergent request and a Certification of Kathleen Haines, Superintendent, with Exhibit A, (R-1). Oral argument was held on October 15, 2024, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute and form the basis for the below decision. Accordingly, I **FIND** as **FACTS**:

A.B. started attending school in the Clementon School District (District) as a fifth grader, for the 2023-2024 school year. He is eligible for special education and related services under the classification of Autism. The District is considered a "non-bussing" school district. Under N.J.S.A. 18A:39-2 and N.J.A.C. 6A:27-1, all the students enrolled in the District live within two miles from the school building.

J.B. expressed her concerns about A.B.'s ability to walk to school on busy streets due to his autism. She requested transportation services and provided a medical note from A.B.'s physician dated November 24, 2023. Tresa McSween, M.D., wrote that "[A.B.] has a history of elopement, and therefore to insure his safety, it is requested that he have a bus transport door-to-door." (Exhibit attached to due process complaint.)

As set forth in the Certification from Superintendent Haines, the District reviewed the medical note and contacted the physician for additional information. (R-1.) The District also reviewed A.B.'s records and found no documented concerns or history of elopement. Ibid. Thus, the District denied the parents' request for transportation services for the 2023-2024 school year.

On April 30, 2024, the Child Study Team (CST) met and offered an IEP for the 2024-2025 school year. (R-1.) The IEP went into effect on July 1, 2024. The IEP did not include student transportation services. Ibid.

J.B. showed pictures during the hearing of the streets which her son must travel to attend school. Her son must travel on busy streets with no crossing guards. Due to her son's autism, she believes that walking to school is dangerous. As a result, J.B. drives her son to and from school. She filed this emergency relief request because she is scheduled for surgery on October 29, 2024. After the surgery, her physician advised her that she will not be able to drive for six to eight weeks.

LEGAL ANALYSIS AND CONCLUSIONS

Petitioners filed for emergent relief because of their concern that without transportation services from the Board, A.B. will not be able to attend school due to his mother's surgery. Respondent contends that petitioners claim for transportation services does not fall within one of the permissible emergent relief categories.

Under N.J.A.C. 6A:14-2.7(r)(1), emergent relief shall only be requested 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.

Petitioners' claim involves a potential future break in the delivery of services when J.B. is not medically eligible to drive her son to school. While she acknowledged that transportation was not included in A.B.'s IEP for the 2024-2025 school year, she believes her son needs transportation to access his educational program and attend school.

Transportation is a related service under the regulations in 34 C.F.R. § 300.39(a) and N.J.A.C. 6A:27-5.1. It is the responsibility of the CST to determine if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented.

Pursuant to N.J.A.C. 6A:27-5.1(a) for eligible students, transportation may be provided in accordance with N.J.S.A. 18A:39-1 et seq., and the student's IEP. In this instance, student A.B. is not eligible because he lives less than two miles away from school and the CST did not include transportation as a related service in his current IEP.

The Superintendent's certification stated that the April 30, 2024, "IEP was agreed upon and signed by parents, and took effect on July 1, 2024." (R-1.) This statement was not materially challenged by petitioners. In all instances, each student's need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and IEP meeting.

J.B.'s application was based upon her concern for the safety of her son, which is certainly understandable. Her immediate issue is her upcoming surgery which will prevent her from driving for six to eight weeks. While I am sympathetic to J.B.'s concerns and her predicament based on her genuine health issues, they do not constitute a break in services or any other grounds for emergent relief.

For these reasons, I **CONCLUDE** that petitioners have not established entitlement to relief under N.J.A.C. 6A:14-2.7(r)1.

Finally, it is noted that this application for relief likewise fails under a traditional

emergent relief application analysis of the following factors:

- 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.

See also Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioners bear the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. Harm is irreparable when there can be 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). As discussed above, transportation is not included in A.B.'s IEP as a related service and A.B. lives within two miles of his school. Thus, there is no current harm to A.B., let alone irreparable harm.

The law is well-settled that eligible students may be provided transportation if they live more than two miles from school and the CST includes it as a related service in the student's IEP. See, N.J.A.C. 6A:27-5.1(a) and N.J.S.A. 18A:39-1. Petitioners' claim is not supported by the controlling regulations.

School districts' determinations are subject to deference. The "IDEA does not 'invite the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'" Damarcus S. v. District of Columbia, 190 F.Supp. 3d 35, 56 (D.C. Cir. 2016), (quoting Rowley, 458 U.S. at 206); see also E.E. v. Ridgefield Park Bd. of Educ., 856 Fed. Appx. 367, *7 (3d Cir. 2021). The current IEP

does not provide transportation services. Thus, petitioners have not demonstrated a likelihood of success on the merits.

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting or denying the requested relief. Although the parents of A.B. believe it is not safe for him to walk to school, this request for transportation is to accommodate parental circumstances. As the District does not regularly provide transportation services, such an accommodation would be an unsupported deviation from the District's policies. In this instance, the District's interest in deciding transportation as a related service under the IEP process, outweighs petitioners' interest in seeking an accommodation for a parental concern.

I **CONCLUDE** that petitioners' request for emergent relief does not satisfy any of the four prongs required for emergent relief. Accordingly, I **ORDER** that the request for emergent relief be **DENIED**.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education.

This case is returned to the Department of Education until the end of the thirty day resolution period under 20 U.S.C. § 1415(f)(1)(B)(i).



October 16, 2024

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/lam

APPENDIX

Exhibits

For petitioner:

Medical note provided with due process complaint

For respondent:

Certification of Kathleen Haines, Superintendent
Exhibit A - IEP, effective July 1, 2024