State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
EMERGENT RELIEF
OAL DKT. NO. EDS 02231-25
AGENCY DKT. NO. 2025-38601

ELIZABETH CITY BOARD OF EDUCATION,
Petitioner,
v.
G.G. AND E.A. ON BEHALF OF J.A.,
Respondents.

Basmah E. Raja, Esq., for petitioner (DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys)

Esther Canty-Barnes, Esq., for respondents (Rutgers University Education & Health Law Clinic, attorneys)

Record Closed: March 6, 2025 Decided: March 10, 2025

BEFORE **PATRICE E. HOBBS**, ALJ:

STATEMENT OF THE CASE

Petitioner, Elizabeth City Board of Education, is unable to place J.A., a special education student, in an agreed upon out-of-district school because G.G. and E.A. (respondents) are refusing to provide consent for the release of records and participate in the intake process. Must G.G. and E.A. cooperate with the petitioner's to find an out-of-district placement for J.A.? Yes. Under N.J.A.C. 6A:14-2.3, parental consent is required to release a student's records to another school, and the student's records are required to determine the appropriate placement to continue to provide special education and related services for J.A. and parental cooperation is required in the intake process.

PROCEDURAL HISTORY

On January 31, 2025, petitioner filed an emergent relief claim and due process petition with the Office of Special Education (OSE). On January 31, 2025, the case was transmitted to the Office of Administrative Law (OAL) under N.J.A.C. 1:6A-12.1, and a hearing was scheduled for February 5, 2025.

On February 4, 2025, counsel for the respondents filed her appearance, and on February 5, 2025, respondents filed their opposition to the application for emergency relief.

On February 5, 2025, during oral argument, petitioner complained that it had not yet received respondents' opposition, both parties requested an adjournment of the return date to February 10, 2025. On February 11, 2025, the parties advised that they had reached a settlement and were finalizing the settlement agreement. On February 19, 2025, the parties participated in a settlement conference to finalize one aspect of the settlement agreement. On March 6, 2025, the parties advised that they reached an impasse and did not have a signed settlement agreement. On March 6, 2025, a conference was held to settle the case, but the parties could not agree to final terms of the settlement, and on that date, I closed the record.

FINDINGS OF FACT

J.A. is a fourth-grade student who is eligible for special education and related services under the classification of Mild Intellectual Disability. J.A. has been at the Terrance Reilly School in Elizabeth City since November 2023.

J.A. had an individualized education program (IEP) dated October 21, 2024. This IEP provided for Language Arts ninety minutes per day, Math ninety minutes per day, Social Studies forty-five minutes two days a week, Science forty-five minutes three times per week, Speech Language Therapy thirty minutes twice per week, Occupational therapy thirty minutes per week, counseling services thirty minutes twice a month, and a personal aide every day for the school day. J.A. also had services for the extended school year through July 31, 2025.

On September 30, 2024, J.A. went to the social work office crying uncontrollably, reporting that several of his family members were killed in a car accident, which was untrue.

October 17, 2024, J.A. eloped from the school building and was located three blocks away.

On October 28, 2024, J.A. was sleeping in class. When he woke up, he was aggressive and used weapons, including scissors, to stab the security guards. He was hitting, punching, and kicking staff members. After discussing these issues with G.G., it was agreed that J.A. should be placed in an out-of-district school.

Because of the increasing difficulties with J.A., G.G. E.A. and the IEP team agreed that out-of-district placement was the most suitable educational setting for J.A. They also agreed that the petitioner could not provide the appropriate free appropriate public education (FAPE) outlined in the October 21, 2024, IEP because of the increasing issues with J.A. and that he would need to be placed on home instruction until they could agree upon the appropriate out-of-district school.

On November 4, 2024, IEP team meeting was held to establish a new IEP for an interim alternative education setting until an appropriate out-of-district school could be found. This IEP established home instruction for J.A. and was in effect from November 4, 2024, until January 4, 2025. This IEP provided for two hours of functional academics.

Toward this end, petitioner obtained consents for the release of records to Gramon School, Therapeutic School Belville, Deron School Union, Gateway School Carteret, Benway School, and Mount Carmel Guild Academy. Gramon School and Deron School Union did not have space for J.A., and Therapeutic School, Bellville and Benway School did not think he was a good fit. G.G. did not cooperate with the intakes for Gateway School Carteret or Mount Carmel Guild Academy.

Petitioner was unable to find a suitable out-of-district school for J.A. and on January 2, 2025, respondents met with the child study team to extend home instruction for J.A., and a new IEP was established for continued home instruction until March 2, 2025. This IEP again provided for two hours of functional academics.

Between January 1, 2025, and March 2, 2025, multiple attempts were made to contact G.G. to obtain her cooperation in to place J.A. out of district, but none of the attempts succeeded.

The Allegro School, Calais School, Academy 360: Lower, Center for Lifelong Learning, Children's Center of Monmouth, DLC New Providence, Crossroads School, and Westlake Westfield are other schools that the child study team suggested could be appropriate out-of-district schools for J.A., respondents, however, remain uncooperative. They remain unwilling to consent to the release of records to these schools and participate in any intakes.

Respondents agree that out-of-district placement is the most suitable placement for J.A. They have not objected to the home instruction. They simply refuse to cooperate in the process to obtain and secure an out-of-district placement.

CONCLUSIONS OF LAW

Under N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), emergency relief may be granted if the judge determines from the proofs that (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). The applicant bears the burden of satisfying all four prongs of this test by clear and convincing evidence. Crowe, 90 N.J. at 132–34.

During this emergency proceeding, a school district cannot make any changes to the student's program or placement. N.J.A.C. 6A:14-2.6(d)(10); N.J.A.C. 6A:14-2.7(u), see also, 20 U.S.C. § 1415(j). The "stay-put" provision is one of the most significant safeguards of the Act. 20 U.S.C. § 1415(j). The stay-put provision states that a child is to remain in their "then-current educational placement" during the due process proceedings. Id.; N.J.A.C. 6A:14-2.6(d)(10); N.J.A.C. 6A:14-2.7(u). The purpose of "stay-put" is to maintain the status quo for the child while the dispute over the placement or program remains unresolved. Ringwood Bd. of Educ. v. K.H.J., 469 F.Supp.2d 267, 270–71. (D.N.J. 2006.) Simply put, the "stay-put" provision ensures stability for the student's placement until the due process proceeding is completed.

New Jersey's regulations also provide that a parent who refuses to consent to services cannot later argue that the district failed to provide a FAPE. N.J.A.C. 6A:14-2.3(c), -2.3(e)(4). Thus, "a parent cannot refuse to allow the school district to offer a FAPE, and later seek reimbursement for a unilateral placement, predicated on the school district's failure to offer a FAPE. N.J.A.C. 6A:14-2.3(c); N.J.A.C. 6A:14-2.3(e)(4)." S.W. & J.W. ex rel. W.W. v. Florham Park Bd. of Educ., 2015 N.J. AGEN LEXIS 384 at *71.

The first prong of the Crowe test requires that the petitioner show irreparable harm if their request is not granted. Here, respondents' refusal to provide the consent and participate in the intake process for J.A. will cause J.A. irreparable harm because this

continued non-cooperation causes a break in services, since, given the change in the educational program at J.A.'s current placement, he would not be receiving services required by his current IEP and, consequently, would not be receiving FAPE. G.G. and E.A. agree that out-of-district placement is the most suitable placement for J.A. and that the petitioner's have not been able to provide him with an appropriate FAPE. Further, there is no doubt that the two hours of home instruction for a child with a mild intellectual disability is a far cry from the more than three hundred minutes of daily services the petitioners should be providing for J.A. Based on the above, I **CONCLUDE** that this matter involves the issue of a break in services, which could require emergent relief pursuant to N.J.A.C. 6A:14-2.7(r)1.

There is irreparable harm because without the assistance and cooperation of G.G. and E.A., J.A. will not receive the educational services that his IEP has found to be necessary for the petitioner to meet its requirement under the IDEA to provide him with FAPE. 34 CFR § 300.17. J.A. will lose the benefit of the additional supports required under his IEP and remain on home instruction. His IEP provides for more than 300 minutes per day of education services. Home instruction provides him with only one hundred and twenty minutes of general academics. He is not receiving any of his speech language therapy, occupational therapy or counseling services. G.G. and E.A. agree that out-of-district placement is the most suitable placement for J.A., and they are preventing the petitioners from providing it. There is no other remedy in law or equity, or monetary damages, to compensate either the student or the petitioner. As noted in Pemberton Township Bd. of Educ. v. C.M. and J.M. obo B.M., 2019 N.J. Agen. LEXIS 200 (April 11, 2019), "(t)he impasse…places the District in the untenable (position) of being prevented from meeting its clear obligations under State and Federal law to provide…FAPE." Id. at *11. See also, Haddonfield Borough Bd. of Educ. v. S.J.B. obo J.B., 2004 N.J. Agen. LEXIS 645 (May 20, 2004). Cooperation from G.G. and E.A. will cause J.A. to suffer a break in his services and J.A. will continue to suffer irreparable harm because he is not receiving the support and services required under his IEP. 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

Respondent had the legal right to reject the November 4, 2024, IEP and the January 2, 2025, IEP within fifteen days of the notice of the change. N.J.A.C. 6A:14-2.3(h)(3)(i)(ii). The respondent did not submit a written objection or file for a due process hearing. I therefore **CONCLUDE** that irreparable harm will occur if J.A. is not placed in an appropriate out of district program.

The second prong of the Crowe test requires that the applicant demonstrate that it has a settled legal right to the relief requested. The petitioner has every right to implement an IEP. N.J.A.C. 6A:14-2.3(h)(2). Respondent had the legal right to reject the November 4, 2024, IEP and the January 2, 2025 within fifteen days of the notice of the change. N.J.A.C. 6A:14-2.3(h)(3)(i)(ii). The respondent did not submit a written objection or file for a due process hearing. The petitioner is mandated to implement the proposed action after the opportunity for the parent to contemplate same has expired unless the parent disagrees with the proposed action and the district attempts to resolve the disagreement; or the parent requests mediation or a due process hearing prior to the expiration of the fifteenth calendar day. N.J.A.C. 6A:14-2.3(h)(3)(i)(ii). I **CONCLUDE** the petitioner has a settled legal right to find an appropriate placement for J.A. since it cannot provide FAPE as it is obligated to do under the IDEA.

The third prong of the Crowe test requires that the applicant prove that it is likely to prevail on the merits of the underlying claim. Since the underlying relief sought by the petitioner is to send records that will result in ultimate placement of J.A. in a learning environment that allows petitioner to deliver FAPE, and there is a break in services for the supports that J.A. should receive under his IEP, there is a great likelihood that the petitioner will prevail on the merits of the claim. This is particularly true given that there has been no challenge to the applicability of the IEP and the continuation of J.A.'s current placement is not only the most restrictive environment, and he is not receiving the hours of education and services required for a child with a mild intellectual disability.

The fourth prong of Crowe test requires that the applicant demonstrate it will suffer greater harm than the other party if the relief is not granted. This is shown by a balancing of the equities and interests of the parties. Here, petitioner is attempting to fulfill its obligations to J.A. as it is required to do under the IDEA and respondents are preventing

the petitioner from doing so. Denying the petitioner's request would not only cause J.A. irreparable harm but also cause petitioner harm because there is no compensation that can be awarded to the petitioner for not being able to fulfill their obligations. In addition, G.G. and E.A. agree that J.A. is best suited in an out-of-district placement and J.A., G.G. and E.A. agree that the petitioner cannot provide FAPE. Denying the relief requested deprives J.A. of the FAPE he is guaranteed under the IDEA and all the services outlined in October 2024 IEP. I **CONCLUDE** that the petitioner has demonstrated it will suffer greater harm than the respondent if the emergent relief is not granted.

Since I concluded that petitioner has demonstrated all four conditions set forth in Crowe, as codified in N.J.A.C. 6A:3-1.6(b), I **CONCLUDE** that petitioner is entitled to the emergency relief as requested, that respondents must cooperate with petitioner by consenting to the release of records to Allegro School, Calais School, Academy 360: Lower, Center for Lifelong Learning, Children's Center of Monmouth, DLC New Providence, Crossroads School, and Westlake Westfield and participate in the intake process. Should respondents refuse to cooperate, respondents will have waived their rights to challenge petitioner's programing for J.A. or otherwise allege that petitioner's programing for J.A. failed to provide a FAPE at any time after November 4, 2024.

ORDER

I **ORDER** respondents to cooperate with petitioner's and provide their consent to release the records of J.A. to the Allegro School, Calais School, Academy 360: Lower, Center for Lifelong Learning, Children's Center of Monmouth, DLC New Providence, Crossroads School, and Westlake Westfield.

I further **ORDER** that respondents cooperate with the intake process to facilitate the out-of-district placement for J.A.

I **ORDER** petitioner's to extend the interim alternative education setting of home instruction for forty-five days or until an appropriate out-of-district placement can be secured, whichever is sooner.

This decision on application for emergency relief resolves all the issues in the due process complaint. No further proceedings are necessary, and this case is now closed. If the parent or adult student believes that this decision 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 decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 and is appealable by bringing a civil action in the Law Division of the Superior Court of New Jersey or in the United States District Court for the District of New Jersey under U.S.C. § 1415(i)(2) and 34 C.F.R. § 300.516.

March 10, 2025
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency: March 10, 2025

Date Mailed to Parties: March 10, 2025

APPENDIX

Witnesses

For Petitioner:

None.

For Respondent

None.

Exhibits

For Petitioner:

P-A November 4, 2024, IEP
P-B January 2, 2025, IEP
P-C Records Release Forms for Garmon Schools, Therapeutic School Belville, Deron School Union, Gateway School Carteret, Benway School and Mount Carmel Guild Academy
P-D Letter to G.G. dated December 16, 2024
P-E Letter to G.G. dated January 2, 2025
P-F Letter to G.G. dated January 10, 2025
P-G October 21, 2024, IEP
P-H Behavioral Notes and Referrals
P-I Call Log and DCP&P referral
P-J Email to Truancy Officer
P-K Email to home instructor
P-L Emails to G.G.
P-M Consent forms for placements
P-N Invitations for meeting to confer regarding IEPs

For Respondent:

None