

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 08000-2018

AGENCY DKT. NO. 2018-28192

S.L. ON BEHALF OF A.L.,

Petitioners,

v.

KEYPORT BOARD OF EDUCATION,

Respondent.

S.L., on behalf of **A.L.**, pro se

Cherie L. Adams, Esq. for respondent (Adams, Gutierrez & Lattiboudere, LLC,
attorneys)

Record Closed: June 13, 2018

Decided: June 14, 2018

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Respondent school district, Keyport (District) intends to graduate the petitioner, an eighteen-year-old adult student, from Collier High School (Collier), on June 15, 2018. The petitioner's mother, S.L., wants A.L. to participate in the graduation ceremony, but seeks to "stay" the graduation, so that she and school representatives can reconvene and review the results of an Adaptive Assessment (Assessment) report to re-formulate A.L.'s post-graduation plan.

PROCEDURAL HISTORY

Petitioner filed a Verified Petition at the Office of Special Education Programs of the New Jersey Department of Education, (OSEP), seeking to stay put in the current placement at Collier, pending the completion of an Assessment report so that a post-graduation plan can be formulated. The student, A.L., signed a letter of authorization on June 4, 2018, designating her mother to act on her behalf regarding her educational program.

A request for emergency relief was filed on behalf of the petitioner, disputing the District's proposed graduation of the student. The emergent matter was transmitted by OSEP to the Office of Administrative Law, (OAL) where it was filed on June 4, 2018, as a contested case. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-13. The parties presented oral argument on June 13, 2018, at the OAL Trenton offices in Mercerville, New Jersey, and the record closed.

FACTUAL DISCUSSION

For purposes of deciding this application for emergent relief, the following is a summary of the relevant facts derived from the contents of the petitions and from the arguments at the hearing, and therefore I **FIND** them as **FACTS**.

A.L. is an adult student, currently eighteen-years-old. She attends Collier, a therapeutic high school, through a contract with the District, which is the district where the student resides. She began attending Collier based upon her initial Individualized Education Program (IEP), which was implemented in January 2016. (R-2.) The current IEP for the 2017-2018 school year was completed after the annual review meeting conducted on January 9, 2018. The student is classified as "emotionally disturbed". (R-2.)

Graduation and post-graduation plans for A.L. were discussed during the January 9, 2018, IEP meeting, and were confirmed in the IEP that the student was on track for graduation in June 2018. S.L. received a Notice of Graduation, but would not

sign it, believing it was too early to determine that A.L. was able to be graduated. The petitioner did not file for due process or mediation challenging the IEP within fifteen days.

There was continuing dialogue between S.L. and representatives at Collier and the District, regarding A.L. and her emotional status during the semester. S.L. was concerned about her daughter's emotional status and anxiety, particularly when addressing post-graduation plans with A.L. as to whether she would be attending Brookdale Community College for their culinary program, as contemplated at the January 2018 IEP meeting, or whether she would instead be working. A.L. was demonstrating emotional set-backs, such as not wanting to take the driver's behind the wheel test, even though she passed the written test. When A.L. was scheduled to take a placement examination for Brookdale, she apparently cancelled it because of her anxiety. S.L. addressed this issue with a representative of the school, and asserted that she wanted her daughter to take the test and to have the school encourage same. S.L. did not want the barrier of the test itself removed, rather, she wanted to have addressed the anxiety her daughter would experience when presented with such barriers, and learn to cope with the emotional anxiety and stress.

In approximately March 2018, at the request of S.L., the District agreed to have A.L. undergo a psychiatric evaluation and have an Assessment completed. On or about April 10, 2018, S.L. attended a meeting with representatives of the school and someone from Division of Vocational Rehabilitation Services (DVR), which is a program to assist the student with post high school graduation transitioning with attending school, or job training, or a sheltered work experience. After the meeting S.L. authored a letter, dated April 13, 2018, to the District School Psychologist, regarding her objection to the Notice of Graduation of Age 21-Proposed Action Plan. She acknowledged that although A.L. was receiving passing grades, she did not believe that was an appropriate indicator of success for her daughter. She acknowledged during oral argument that her daughter is "brilliant", but is emotionally disturbed and lacks skills to cope with her anxiety in transitioning to post-high school graduation life.

The psychiatric evaluation S.L. requested for A.L. was completed by Steven Dyckman, MD, on May 3, 2018. (P-1.) Dr. Dyckman indicates that he completed the evaluation because A.L.'s family wanted to determine if there was any change in her diagnoses of major depressive disorder, social anxiety disorder, ADHD inattentive type, and generalized anxiety disorder. S.L. reported that A.L. was struggling with moving on from high school and becomes very anxious and upset when she tries to discuss post-graduation plans. A.L. was not sure what she wanted to do in the future. Dr. Dyckman concluded that A.L. shows many signs and symptoms of high functioning Autistic Spectrum Disorder, previously referred to as Asperger's Disorder. (P-1.) He recommended that she be given "any support deemed appropriate by the child study team post graduation, with the possibility of placing her in another school after high school. It is recommended that [A.L.] continue with her current therapist and psychiatrist." (P-1.)

The Assessment has not yet been completed, although counsel indicated during the oral argument that the Assessment should be done and available to the petitioner later that day.

The Director of Special Services from the District authored a letter, dated May 31, 2018, to S.L. (R-3.) The letter addresses the correspondence that had been exchanged with S.L., including a letter from the Superintendent, dated April 15, 2018, confirming that A.L. met all of her graduation requirements. S.L. stated she never received the April 15, 2018, letter from the Superintendent, nor the May 31, 2018, letter from the Director of Special Services. She could not affirmatively state that her daughter has satisfied all requirements for graduation because she has not seen her final grades.

Arguments of the parties:

The petitioner seeks to “stay” graduation, although she wants to participate in the ceremony itself on June 15, 2018. S.L. wants to have the ability to reconvene with the child study team, after the Assessment is completed, to discuss post-graduation plans for A.L., particularly since she has a new diagnosis of high functioning autism, as per Dr. Dyckman’s psychiatric evaluation. She could not confirm that her daughter has met all requirements for graduation because she has not seen her recent grades, although she concedes her daughter is “brilliant”. She believes that irreparable harm will occur if A.L. is graduated because it may be determined after meeting with the team that A.L. should continue to attend Collier for therapeutic services or attend the county vocational school to assist with her emotional issues in the transition from high school to post-graduation life.

The District asserts that the student has met all academic requirements and has earned the credits necessary to graduate. The District has never deviated from the intended course of graduation for A.L. from the IEP. The District voluntarily agreed to have the psychiatric evaluation and Assessment completed, at the request of the student’s mother, for further information for her regarding A.L.’s transition to post-graduation life. It asserts that by agreeing to have those assessments done, it did not alter the IEP or intended path to graduation.

The District acknowledges that the Assessment is not yet completed, but asserts that it is not an assessment that will alter the 2017-2018 IEP or otherwise suggest that graduation not occur. The student has met all requirements for graduation. The child study team is willing to meet with S.L. and A.L. to review the results of the Assessment, after graduation, to assist as they can with A.L.’s transitioning programs available through DVR, but there are no further services the District even has to offer, since the student has met all academic requirements.

LEGAL ANALYSIS AND CONCLUSION

New Jersey Administrative Code 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An applicant for emergency relief must set forth in their application the specific relief sought and the specific circumstances they contend justify the relief sought. N.J.A.C. 1:6A-12.1(a).

Emergent relief shall only be requested for the following issues pursuant to 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 educational settings;
- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

The District here is seeking to graduate the adult student, while the adult student's parent is objecting to the awarding of a certificate of graduation, and seeking a "stay" of the graduation until the adaptive assessment is completed and the child study team can reconvene to develop a post-graduation plan. I **CONCLUDE** this matter involves the issue of graduation, which could require emergent relief, pursuant to N.J.A.C. 6A:14-2.7(r)1.

Emergency relief may be granted pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), if the judge determines from the proofs that the following conditions have been established:

- 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.

N.J.S.A. 6A:14-2.7(s); Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. First, the petitioner must demonstrate irreparable harm will occur if A.L. graduates. 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).

Petitioner will participate in the graduation ceremony on June 15, 2018. She has confirmed with the District that she intends to do. However, S.L. asserts that irreparable harm will occur to A.L. if a certificate of graduation is awarded, because the results of the Assessment have not yet been discussed and there may be further services provided by the District, despite the District advising her there are no available services for the emotional and mental health issues she wants addressed. If she is awarded her certificate of graduation, then petitioner will no longer be able to challenge the District to determine if she has a right to further services. Thus, I **CONCLUDE** that irreparable harm will occur if the student graduates, because she is foreclosed from contesting whether she has a right to additional services from the District.

Second, the petitioner must demonstrate she has a settled legal right to the relief requested. S.L. attempts to assert "stay put" by stating she wants to "stay" the graduation. Petitioner had the legal right to reject the January 2018 IEP within fifteen days of the meeting. N.J.A.C. 6A:14-2.3(h)(3)(ii). She admittedly did not object to the proposed IEP within fifteen days, so the assertion of "stay put" is not appropriate.

Although S.L. did express concern that it was too early for her to determine in January if her daughter would be ready to graduate in June, and S.L. did not sign the Notice of Graduation, this did not constitute an objection to the IEP. N.J.A.C. 6A:14-2.3(h)(3)(ii). She continued communication with representatives of the school that she was concerned her daughter was not ready to graduate, but never advanced an argument that her daughter was not academically ready to graduate. She essentially wants to establish a new form of relief whereby a student with an emotional or mental health diagnosis can object to graduation, despite being academically qualified to graduate, because the symptoms of their mental health condition continue to persist. There is no legal right to such relief. I **CONCLUDE** the petitioner has not demonstrated that she has a settled legal right to the relief requested.

The third prong petitioner must satisfy is whether she has a likelihood of prevailing on the merits of the underlying claim. Again, the petitioner did not timely file an objection to the proposed graduation. She asserted her concerns about her daughter not being able to cope with post-graduation due to her mental health, but never disputed A.L.'s academic ability. The District provided transitional services and directed the petitioner to the DVR program for post-graduation transitional assistance. They also agreed to obtain the additional evaluation and assessment to help in the transition, but that does not bind them to changing the IEP or halting graduation. The District has confirmed that A.L. has completed all requirements for graduation and she intends to participate in the ceremony. I **CONCLUDE** that the petitioner has failed to demonstrate a likelihood of prevailing on the merits of her underlying claim.

The fourth prong of the test petitioner must satisfy to be entitled to emergent relief is to demonstrate a balancing of the equities and interests of the parties and show that she will suffer greater harm than the respondent will suffer if the relief is not granted. Many senior high school students experience some form of anxiety or uncertainty regarding their post-graduation plans, which S.L. herself raised. However, because of A.L.'s emotional status, she experiences heightened anxiety. A.L. does want to participate in the graduation ceremony itself, but S.L. wants to leave open what she perceives as the possibility of A.L. receiving continued services from the District,

which services are not even provided by the District. S.L. herself has previously advanced that she does not want barriers removed for A.L., rather, she wants A.L. to learn how to alleviate the stress and anxiety she experiences when coping with life's barriers. The relief she seeks is only perpetuating the removal of barriers A.L. must inevitably cope with in life, and the District is not bound to "stay" graduation where a student has completed all requirements necessary to graduate.

If the emergent relief is granted, and the petitioner does not graduate, then the District will bear the cost of continuing the student at Collier and will be required to bear the cost of litigating this dispute, when the petitioner does not have a likelihood of prevailing on the merits. The burden to the District is a greater burden to bear when balancing the equities and interests of the parties. Therefore, I **CONCLUDE** the petitioner has failed to demonstrate that she will suffer greater harm than the District if the emergent relief is not granted.

The petitioner must demonstrate all four conditions set forth in Crowe and as codified in N.J.A.C. 6A:3-1.6(b) to be granted the emergent relief to stay the graduation. She has failed to demonstrate three of the four conditions, and therefore, I must **CONCLUDE** that she is not entitled to the emergent relief.

CONCLUSION AND ORDER

The petitioner has failed to demonstrate the required factors to be entitled to emergent relief. I **CONCLUDE** and **ORDER** that the emergent relief requested by the petitioner is **DENIED**.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C. § 1415(i)(2). 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 Programs.

June 14, 2018 _____

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency

Date Mailed to Parties:

dm

APPENDIX

EXHIBITS

For Petitioner:

P-1 Dr. Steven Dyckman Psychiatric Evaluation, dated May 3, 2018

For Respondent:

R-1 Letter brief in opposition to emergent petition, dated June 12, 2018, certified by Denise Cleveland, Ed.D., Director of Special Services

R-2 Individualized Education Program 2017-2018 school year, from annual review meeting, January 9, 2018

R-3 Letter to S.L. from Denise Cleveland, dated May 31, 2018