

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 14346-14

AGENCY DKT. NO. 2015-21935

E.B. ON BEHALF OF K.B.,

Petitioner,

v.

**NORTH HUNTERDON/VOORHEES
REGIONAL BOARD OF EDUCATION,**

Respondent.

E.B., petitioner, pro se

Rita Barone, Esq. for North Hunterdon/Voorhees Regional Board of Education,
respondent (Purcell, Mulcahy, O'Neill & Hawkins, attorneys)

Record Closed: November 12, 2014

Decided: November 14, 2014

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE

Petitioner E.B. filed a petition for emergent relief with the Office of Special Education Programs of the New Jersey Department of Education on November 3, 2014 indicating there would be an interruption of residential treatment services on November 7, 2014, and seeking continuation of services for her son, K.B. pending hearing. The matter was filed at the Office of Administrative Law (OAL) on November 5, 2014 and in accordance with 20 U.S.C.A. §1415 and 34 C.F.R. §300.500 to 300.587, the

Commissioner of the Department of Education requested that an administrative law judge (ALJ) be assigned to conduct a hearing in this matter. Thereafter, petitioner's insurance carrier informed her that they would continue to pay for the residential treatment services for another thirty (30) days, however, petitioner indicated she was instructed by the Clerk's Office at the OAL to proceed with her emergency application nevertheless. The matter was heard on November 12, 2014.

FACTS

Based on the record, I **FIND** the following **FACTS**:

K.B. was previously enrolled in a day placement at Spring Run in Flemington, N.J., following IEP meetings for the educational program on February 18, 2014 and again on April 15, 2014. The stay put and recommended placement set forth in the IEP is a private day school for students with disabilities.

On December 26, 2013, E.B. emailed the District and advised that due to "extreme crisis" with K.B. at home, she would have him assessed at the short term autism residential stay program known as START, located at Woods, in Langhorne, Pennsylvania. E.B. indicated in her email, "[i]t has gotten to the point where we can't have him home." As such, K.B.'s placement at the START program at Woods was entirely unrelated to his educational needs.

The materials from Woods provide that it is an intensive, 3 to 9 month program to treat children and adolescents with autism who are experiencing intensive behavioral and/or psychiatric symptoms. Once the child is discharged, there is a supportive transition or step-down period, with ongoing consultation. E.B. and Aetna, her health insurer, initiated placement of K.B. at Woods, for residential and medical reasons, with Aetna assuming all financial responsibility for the medical and residential costs associated with the placement. Predicated on the agreement that the District would not be responsible for residential and medical costs, the District agreed to fund K.B.'s educational tuition only. K.B. was admitted to the START Program at Woods on

February 4, 2014, at which time the District terminated his day placement at Spring Run in Flemington, N.J.

Thereafter, at the August 22, 2014 monthly ISP meeting held at Woods, the District was advised that K.B. was anticipated to be discharged from the Woods short term placement on or about October 31, 2014. By letter dated October 9, 2014, the District sought the consent of E.B. to send records in an effort to identify an educational placement for K.B. Such consent was not provided until October 28, 2014. K.B.'s records were then sent to the Bancroft School, a state-approved residential school located in Cherry Hill, N. J., and to Spring Run, a state-approved day school for the disabled. As of the date of hearing, neither school had acted on the very recent applications.

On November 5, 2014, the District learned in a conference call that included E.B.; a friend of E.B.'s; representatives from the New Jersey Department of Developmental Disabilities; the Clinical Director of Woods' START Program and psychologist; K.B.'s social worker at Woods; and the District case manager, that K.B. could be transferred to the Woodlands Program at Woods, and that funding from Aetna would continue until November 30, 2014. The Clinical Director advised that if E.B. agreed to the psychiatric based funding available under New Jersey's Department of Children and Families (DCF), the State of New Jersey would fund the residential and medical costs of the placement once the health insurance coverage ended, and K.B. could remain at Woodlands. The District agreed to continue to fund the educational costs. Petitioner has yet to apply for the DCF funding.

Petitioner indicated she would also be interested in considering an Intensive Residential Treatment Services (IRTS) program offered by the State in Flemington, N.J. The program was visited by Allies, Inc., which is Woods' transition agency, as well as by Josh Ziegler, a social worker at Woods/Allies, and both agreed the program was appropriate for K.B. IRTS is described as a "highly structured non-hospital based treatment setting that brings comprehensive and specialized diagnostic and treatment services to youth and their families." If E.B. chose this option, the District would locate and fund an educational day placement to which K.B. would be transported from the

IRTS. Spring Run, which K.B. previously attended prior to being placed at Woods, and from which he was not terminated is an approved day placement in Flemington, and it has received K.B.'s current records.

E.B. was asked to decide by November 7, 2014 whether K.B. would remain at Woods and be transferred to the Woodlands program, or transition back to New Jersey to the IRTS program in Flemington. In either event, the State of New Jersey would fund the medical and residential costs, and in either event, the District would fund the educational costs.

DISCUSSION AND CONCLUSIONS

The standards that must be met by the moving party in an application for emergent relief are embodied in N.J.A.C. 6A:14-2.7(r)–(s), N.J.A.C. 1:6A-12.1, and Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982). Emergency relief may be granted if the judge determines:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying 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.A.C. 6A:14-2.7(s)(1).]

“Each of these factors must be clearly and convincingly demonstrated” by the moving party. Waste Mgmt. of N.J. v. Union County. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Considering the above factors for emergent relief, and the specific findings herein, I **CONCLUDE** that petitioner does not satisfy the four criteria. Specifically,

petitioner does not satisfy the first prong required for relief because she did not clearly and convincingly demonstrate K.B. will suffer irreparable harm. I reject E.B.'s argument that K.B.'s placement at Woods is being terminated, indeed he remains at the facility. Moreover, the medical insurer has continued the funding for the residential and medical placement, and no evidence was offered to suggest that Aetna would not continue funding what is a placement based upon medical issues. E.B. can either move K.B. to the Woodlands program at Woods, or to the IRTS program in Flemington, N. J., and in either event the residential and medical costs of the placement would be funded by DCF. If E.B. chooses to have K.B. remain at Woods, the District would continue the same educational day placement. If E.B. chooses to move K.B. to the IRTS in New Jersey, the District would fund a day placement that K.B. can be transported to from the IRTS placement, whether Spring Run, which he previously attended, or Bancroft, where application has also been made. As noted, these entities were not provided with current records for K.B. until after E.B. finally consented on October 28, 2014, to the District sending his records to other placements, and action on the applications is pending. This process could have been commenced several weeks earlier if petitioner had provided the consent when first asked to do so.

Additionally, petitioner has not met the criteria of demonstrating a likelihood of success on the merits of the underlying claim or that the law underlying her claim is settled. Petitioner now seeks to have the District fund the medical and residential placement despite the fact that there is State funding available to her, and despite the fact that the need for the placement at Woods was based entirely upon issues that occurred in the home environment, as revealed by the evidence in this matter. Indeed, the credible evidence reveals that petitioner's initial contact with school personnel regarding her son's behavior, as well as the petition filed herein reflect that the need for residential placement arose from psychiatric behaviors in the home. K.B. was not terminated from Spring Run, his previous day placement, rather, he became unmanageable at home, at which point E.B. reached out to the District and advised that she was placing K.B. in the START program, a short term psychiatric facility, at Woods.

Under the facts and circumstances presented, further analysis is not required because petitioner is unable to meet all four criteria required for emergent relief.

Based upon all of the foregoing, I **CONCLUDE** that the facts do not support emergent relief. I further **CONCLUDE** that petitioner has not sufficiently demonstrated that K.B. will suffer irreparable harm, nor that the legal right underlying the claim is settled, or a likelihood of prevailing on the merits.

Accordingly, I **CONCLUDE** that petitioner has not established the necessary criteria for emergent relief.

ORDER

Therefore, the petitioners' request for emergent relief is **DENIED**. Accordingly, it is hereby **ORDERED** that the petition for emergent relief is hereby **DISMISSED**.

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 parent, 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.

November 14, 2014 _____

DATE

LESLIE Z. CELENTANO, ALJ

Date Mailed to Parties:

dr _____