



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON EMERGENT RELIEF

OAL DKT. NO. EDS 12167-18

AGENCY DKT. NO. 2019 28665

R.C. ON BEHALF OF C.B.,

Petitioner,

v.

ELIZABETH BOARD OF EDUCATION,

Respondent.

Andrea Tate, for petitioner, appearing pursuant to N.J.A.C. 1:5.4(b)

Richard Flaum, Esq. for respondent (Difrancesco, Bateman, Coley, Yospin,
Kunzman, Davis & Leher, attorneys)

Record Closed: August 30, 2018

Decided: August 30, 2018

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner, R.C. on behalf of minor child C.B., brings this action seeking an order to compel Elizabeth Board of Education (District) to provide home instruction to C.B. pending an Individualized Educational Plan (IEP).

On August 22, 2018, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 12167-18. Oral arguments were held on August 30, 2018, on which date the record closed.

FACTUAL DISCUSSION

After carefully considering the documentary evidence presented, and having had the opportunity to hear oral arguments, I **FIND** the following **FACTS**:

R.C. is the mother of C.B. They reside in the Elizabeth School District. C.B. is enrolled at Abraham Lincoln School (Lincoln). He is eligible to receive special education services. In April 2018 a plan was discussed by the parties to transition C.B. from the behavioral disabilities program to an in-class support program. The transition was to be based on the reduction in behaviors of C.B. that impact his educational performance, however his behaviors from April through the end of the school year continued. On June 18,19,27,29 and July 2, 2018, the District requested dates from petitioner to schedule an IEP meeting. An IEP meeting was convened on August 8, 2018, wherein petitioner refused to waive the appearances of classroom teachers and the meeting was aborted.

C.B. stated that his aide taunted him regarding his gender, sexual orientation and masculinity. He also stated that a security guard removed him and another student from the classroom, took them to the basement and told them to "Wrestle it out." These claims were investigated at the local level and by the Division of Child Protection and Permanency (DCP&P). Respondent has not received the final report of the investigation. Both employees named in C.B.'s claims are not at Lincoln pending the outcome of the report.

C.B. has been eligible for special education services since June 16, 2016. Petitioner is requesting C.B. receive home instruction. In the past, petitioner has consented to the implementation of an IEP.

LEGAL ANALYSIS AND CONCLUSION

The standards for the granting of emergent relief are set forth in N.J.A.C. 6A:3-1.6(b). Emergent relief may be granted if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. 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.

In this matter, having held arguments in support of and in opposition to emergent relief, and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b). Petitioner has not demonstrated that C.B. will suffer irreparable harm. The school employees that C.B. complained about were investigated. The report from that investigation has not been forwarded to the district. The district employees that C.B. complained about are not presently at Lincoln.

The district and petitioners disagree on the placement for C.B. I **CONCLUDE** that since petitioner previously consented to an IEP placement C.B. 's stay put is the last IEP that petitioner consented to in that placement at Lincoln until the due process is resolved.

Petitioners provided no argument that they have a likelihood of prevailing on the merits, the legal right underlying their claim is settled or 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. In addition, petitioner provided no support for the assertion that home instruction would be appropriate for C.B.

Accordingly, after hearing the arguments in support of and in opposition to emergent relief, and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b).

Based on the foregoing, it is **ORDERED** that the petition for emergent relief be and is hereby **DENIED**.

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 parents, 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 Programs.

August 30, 2018



DATE

KIMBERLY A. MOSS, ALJ

Date Mailed to Parties:

August 30, 2018

ljb