State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING
EMERGENT RELIEF
OAL DKT. NO. EDS 9221-18
AGENCY DKT. NO. 2018-28271

S.B. on behalf of S.B.,
Petitioner,
v.
WEST WINDSOR-PLAINSBORO
REGIONAL BOARD OF EDUCATION,
Respondent.

S.B. on behalf of S.B., petitioner, pro se

Eric L. Harrison, Esquire, for respondent, West Windsor Plainsboro Board of Education (Methfessel & Werbel, attorneys)

Record Closed: July 2, 2018 Decided: July 3, 2018

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

S.B. (petitioner) on behalf of his daughter S.B., brings an action for emergent relief against West Windsor–Plainsboro Board of Education (respondent/Board), seeking an order for the following: 1.) that S.B. be placed at CALO Preteen in Lake of the Ozarks,

Mo. or recommend another placement that provides direct treatment of Reactive Attachment Disorder; and/or 2.) in the interim, provide a one-to-one aide to ensure S.B.'s safety. The respondent asserts that the current placement poses no danger to S.B., her classmates or her teachers.

The respondent further opposes the relief requested and assert that the petitioner should be required to continue S.B.'s placement and program with necessary changes and modifications to her free, appropriate public education (FAPE) and stay-put placement for the pendency of the underlying due process hearing.

PROCEDURAL HISTORY

Petitioner filed a request for emergency relief and a due process hearing on June 14, 2018, at the State Office of Special Education Programs (OSEP). On June 28, 2018, OSEP transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for the petitioner. The parties presented oral argument on the emergent relief application on July 2, 2018, at the OAL and the record closed.

FACTUAL DISCUSSION

S.B. is the father of S.B. S.B. is presently twelve years old and is eligible for special education and related services under the classification of multiply disabled. She is diagnosed with Reactive Attachment Disorder (RAD), and frequently exhibits inappropriate social behaviors that include non-compliance, theft and inappropriate contact.

From the 2015-16 through 2016-17 school years, S.B. attended the Villa Santa Maria School in New Mexico. At that location she received appropriate FAPE and accommodations as well as supervision for her disability. S.B. stayed at that location for two years before transferring to the current school, Devereux Glenholme Therapeutic School in Washington, Connecticut (Glenholme). This out-of-district placement was agreed upon by both parties.

Since filing the first request for due process on January 22, 2018, and the most recent request on June 14, 2018, the risk to S.B.'s safety as well as her well-being has increased dramatically. On June 25, 2018, S.B., along with two other students at the Glenholme school, despite a search that lasted several hours, the girls evaded school personnel and were headed to Danbury Connecticut, nearly thirty miles away. They were ultimately found by the Connecticut State Police and brought back to the school.

The petitioner-parent has significant concerns about the lack of supervision at the school. S.B.'s disability and IEP call for very close supervision at all times. When she is not closely watched S.B. frequently lies, steals, initiates inappropriate contact with peers and engages in anti-social and sometimes harmful interactions. There have been numerous official reports, in the past six weeks, where S.B. had been caught stealing from other students including jewelry, luggage, underwear, books and clothing. She also has had numerous verbal altercations with other students often resulting in racial and sexually explicit epithets being exchanged. Despite the history of inappropriate sexualize behavior and a no-touching rule in effect, S.B has been caught touching the breast of a peer and on other occasions discussing romantic relationships with boys and girls at school. S.B. is currently rooming with an eighteen-year-old woman in her cottage and not an eleven to twelve-year-old girl as was assured upon admission to the school.

Despite all this information, the Board has adamantly refused to examine placing S.B. in another jurisdiction including the CALO School, which is a school for girls with attachment disorder in Lake of the Ozarks, Missouri. They have not visited the current placement school in over nine months nor have they asked for her to receive appropriate supervision in order to keep her safe. The parents have attempted to work with the District to resolve the issue to no avail.

S.B. has been accepted into the CALO preteens school. The petitioner-parents visited the school and the CALO School works frequently with school districts nationwide. Furthermore, the petitioner-parents allege that the dispute is not about money. S.B. is currently placed at the District at Glenholme school at the expense of the Board. Unfortunately, the Board has failed to provide any answers to the parents regarding the difficulties with the current placement. The parents believe that S.B. is not doing well in

the current placement and are concerned about her safety. They allege that she cannot make rational decisions and has never been concerned with the consequences of her actions. And when not supervised, not only can she run away, engage in sexual situations, fabricate allegations about others, but she is also likely to get into a stranger's car or walk into a house.

The petitioner-parent argues irreparable harm is established because there is a tremendous risk of injury and danger to S.B. Documentation reveals that S.B. had demonstrated the same behaviors throughout the 2017-2018 school year. The petitioner-parent also argues irreparable harm is established because S.B.'s disrupting behaviors are depriving S.B. and other students of a meaningful education. However, there is no evidence that any student's education has been compromised by S.B.'s behaviors.

Respondent argues that the Glenholme School is the appropriate placement and although there have been several incidents over the past school year, none rise to the level of irreparable harm.

Karen Slagle has been the current director of special services at West Windsor-Plainsboro Regional School District since June 2017. She has twenty-one years' special education experience with masters' degrees in educational leadership as well as social work.

She noted that the child study team researched and found eight state-approved programs east of the Mississippi that had extensive experience with RAD. They narrowed it down to the Glenholme School and S.B.'s parents visited the location along with the District, and they collectively chose that location. The staff at the Glenholme School has extensive experience with RAD.

Regarding the June 25, 2018 incident, it was testified that at approximately 3:45 p.m. a staff member was escorting a group of students as they were transitioning outside between activities. The group was preparing goodie bags for a celebration at the school. One student in the group expressed annoyance and having to participate in the activity. Influenced by the student, S.B. and two other students began walking ahead of the group,

and when directed to stop by a staff member they did not comply. One member remained with the remaining students and called a supervisor for assistance. Upon arrival the supervisor remained with the students while the staff member and additional staff followed the direction of S.B. and the other students towards a foot path in the tree line of the campus. Unable to immediately locate the girls, local police were called and at 4:25 p.m. a police officer reported that the girls had been hiding in a depression behind a residential property. At that time, S.B. reported that they had remained in a meadow for a period of time before hiding in the depression. She also reportedly thought that the incident was funny until she spoke with her father and counselor at the school. Petitioner-parent shared that S.B. reacted with tears to his admission of her actions. S.B. was remorseful for her actions.

Following the incident, S.B. was placed on a "safety assessment" which is a heightened level of security. This included arms-length supervision, within eyesight of an adult at all times and significant processing of her behavior in counseling with the administrators.

Ms. Slagle also noted that S.B. was making good academic progress and has had no behavioral issues in school. The incident of theft and inappropriate contact with individuals reported by her father have not been found in the school. In fact, one incident, where S.B. stole a suitcase, occurred when both parents were supervising her.

Regarding the parents' allegations of S.B. engaging inappropriate conversations, thoughts, as well as listening to inappropriate rap music, Ms. Slagle indicated that the facility is "not a jail." At no time is the staff at the school going to be able to control every thought or conversation S.B. engages into. S.B. is becoming a teenager and she is very curious and coming into her own. Only so much of her actions can be appropriately controlled.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district or public agency may apply in writing for emergent relief. An emergent relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

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.

Here, the petitioner seeks an order to place the minor student in another out-of-district placement pending the outcome of the due process hearing, as the petitioner believes the student poses a threat to herself and others. Therefore, **I CONCLUDE** it has been established the issue concerns placement pending the outcome of the due process hearing.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6, one of the Department's regulations governing special education. These standards for emergent relief include 1.) that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted; 2.) the existence of a settled legal right underlying the petitioner's claim; 3.) that the party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and

4.) a balancing of the equities and interests that the party seeking emergent relief will suffer greater harm than the respondent. The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. Arguably, the standard is a high threshold to meet and I will address each prong separately.

Irreparable Harm

Here, there has been no showing of irreparable harm to S.B. First, the petitioner argues irreparable harm is established because there is a tremendous risk of injury and danger to S.B. and others. To prevail under this prong, the harm must be substantial and immediate; risk of harm alone is not sufficient. Continental Group v. Amoco Chemicals Corp., 614 F.2d 351 (D.N.J. 1980). Documentation reveals that S.B. demonstrated the same behaviors throughout the 2017-2018 school year and no reports of injury have been reported. Furthermore, similar behaviors have been exhibited by S.B. while attending the Villa Maria school year are well documented. Again, the risk of harm alone is not sufficient.

In light of the aforementioned, I **CONCLUDE** that the petitioner has not met its burden of establishing irreparable harm.

The Legal Right Is Settled

The petitioner has not demonstrated that the law favors him. Indeed, the law supports the Board's position for continued placement pending the conclusion of the due process hearing. When the parties are unable to agree to a placement, a proposed placement by the district is effective to provide free appropriate public education (FAPE) in the least restrictive environment (LRE). If it is ultimately determined that the proposed placement does not meet FAPE and LRE, petitioners are entitled to seek compensatory education. Here, the placement was agreed to by the parties.

Thus, I **CONCLUDE** petitioner has met the second prong of the emergent relief standard in that a legal right underlying his claim is settled.

Likelihood of Prevailing on The Merits

Regarding whether the petitioner has a likelihood of prevailing on the merits of the underlying claim, there are no material facts in dispute that indicate petitioner's likelihood of success. In fact, the assertions by petitioner are not persuasive. While petitioner believes the best opportunity for his daughter is in another residential placement including but not limited to CALO, this tribunal cannot conclude such result will benefit S.B. This tribunal will not compel the District without having the opportunity to contest that conclusion at a due process hearing.

Therefore, I **CONCLUDE** petitioner does meet the third prong of the emergent relief standard.

The Petitioner Will Suffer Greater Harm Than the Respondent

The next prong of the above test to be addressed is whether the equities and interest of the parties weigh in favor of granting the requested relief. The petitioner argues that S.B. will suffer greater harm if emergent relief is not granted. This argument is without merit and speculative. Here, the petitioner seeks an order to place the minor student in another out-of-district placement, pending the outcome of the due process hearing. However, minimal evidence regarding the proposed out-of-district or interim placement was presented by the petitioner. The petitioner failed to demonstrate any potential harm S.B. would suffer and the Board successfully presented evidence that it was providing S.B. with FAPE. It is the undersigned's belief that if the requested emergent relief is granted, S.B. would suffer harm through a disruption to her education and socialization. That is the crux of an individual suffering from Reactive Attachment Disorder. Thus, I **CONCLUDE** that the S.B. would suffer greater harm if the requested relief was granted.

ORDER

Having concluded that the petitioner has not satisfied any of the four requirements for emergent relief, the petitioner's request for emergent relief is **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.

July 3, 2018 _____

DATE

DEAN J. BUONO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

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APPENDIX

WITNESSES

For petitioner:

S.B.

For respondent:

Karen Stagle

EXHIBITS

For petitioner:

P-1 Petitioner’s petition and brief with supporting documents

For respondent:

R-1 Respondent’s brief and supporting documents