



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 06406-18

AGY REF NO. 2018-27918

J.S. ON BEHALF OF R.M.

Petitioner

v.

**RAMAPO INDIAN HILLS REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,**

Respondent

J.S., Petitioner, pro se

Vittorio S. LaPira, Esq., for Respondent (Fogarty & Hara, attorneys)

Record Closed: May 9, 2018

Decided: May 10, 2018

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a motion for Emergent Relief with the Office of Special Education Policy and Procedure (OSEP) in the New Jersey Department of Education (DOE). The

contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on May 4, 2018, to be heard on an emergent basis.

Petitioner feels the student is in danger in his current placement. As to the due process petition, petitioner disputes the Individualized Education Program (IEP); requests re-evaluation; and, requests a one to one aide. Only the motion for emergent relief is to be considered at this time.

The request for emergent relief was heard on May 9, 2018.

FACTUAL BACKGROUND

R.M. is classified to receive special education and related services under the Individuals with Disabilities Education Act (IDEA), under the classification category of "Specific Learning Disability".

Petitioner had previously filed for emergent relief under OAL Docket No. 17600-17. That matter was heard by the undersigned on December 5, 2017. The matter was resolved by way of settlement agreement. On the hearing date the terms of the settlement were placed upon the record. A final decision on the settlement was entered by the undersigned on February 20, 2018, after submission by the parties of a fully executed settlement agreement.

The settlement provided, inter alia, that M.A. be removed from his then current science and mathematics classes and be placed in Biology CP and Algebra I CP. The settlement agreement provided that petitioner would not file any Free Appropriate Public Education (FAPE) claims against respondent for the balance of the 2017/2018 school year.

R.M. is in his freshman year at Ramapo Indian Hills Regional High School. An Individualized Education Plan (IEP) was put into effect on July 1, 2017 and began implementation on the first day of school, September 7, 2017. Pursuant to the settlement agreement, R.M. was transferred to Biology CP and Algebra I CP. He began those classes in December 2017. The IEP was amended to reflect the changes.

Petitioner alleges in her request for emergent relief that there are issues involving a break in services; and, issues involving disciplinary action.

Petitioner argues regarding her claim of a break in services that the aid in her son's Biology class is not doing her job because she takes "incessant notes" and therefore cannot perform her student aide duties. Petitioner further argues that the lack of a student aide is a failure to follow the IEP. Petitioner alleges that the notes are somehow an attack on her son. I have reviewed the notes and they are innocuous. Petitioner claims that the aide has been "constructively evicted" from the classroom as she takes detailed notes and therefore it is "humanly impossible" to act as an aide.

Petitioner guessed that there is "surveillance" on her son and this is somehow a disciplinary issue. The alleged "surveillance" is the student aide taking notes. There has been no disciplinary action taken by the school.

Petitioner provided a summary of anxiety attacks suffered by her son while at school. She offered that all said attacks stemmed from her son being in the Biology class. Petitioner further maintained that the science teacher is ignoring her son's IEP.

Petitioner at some point prior to the filing of the emergent request had requested that the one to one aide provided for in the IEP be removed. The school complied with this request and the IEP was amended accordingly. Only a class room aide is now required. Petitioner is not now requesting a one to one aide. She is requesting that the current aide do her job.

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioners are entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with 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 education settings;
- iii. Issues concerning placement pending outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

Petitioner claims a break in services and disciplinary issues in her request for emergent relief. None of the reasons outlined in N.J.A.C. 6A:14-2.7(r)1 are present in the instant matter. There is no break in services at all, notwithstanding petitioner's testimony to the contrary. There are no disciplinary issues. Petitioner fails in the threshold question of being entitled to seek emergent relief. As none of the reasons set forth in N.J.A.C. 6A:14-2.7(r)1 are present, there can be no emergent relief granted.

Going further, had petitioner set forth a valid reason to request emergent relief, the four prong test of Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1) could not be satisfied.

The New Jersey Supreme Court has set forth a four-prong test for determining whether an applicant is entitled to emergent relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1).

The four factors ("the Factors"), include:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying 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.

The moving party bears the burden of proving each of the Crowe elements “clearly and convincingly.” Waste Mgmt of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

A review of the four factors is in order.

Factor One. The petitioner will suffer irreparable harm if the requested relief is not granted. I cannot reach this conclusion. Petitioner’s assertion of irreparable harm is speculative at best. Petitioner posits that R.M. is suffering anxiety attacks due to the failure to follow the IEP and not providing a classroom aide. These are speculative presently and do not meet the standard of irreparable harm set forth in Crowe.

Factor Two. The legal right underlying petitioner’s claim is settled. The legal right underlying the claim is well settled. Respondent is required to provide FAPE, and petitioner can certainly bring a claim as to the same.

Factor Three. Petitioner has a likelihood of prevailing on the merits of the underlying claim. The underlying claim of failure to provide a free appropriate public education (FAPE) is set forth in the due process petition, claiming, among other things, that there is no IEP. I have determined that there is an IEP and has been implemented. Perhaps that IEP does not provide FAPE. Perhaps it does. This underlying claim cannot be determined in this forum. There are considerable factual disputes regarding

the education of R.M. which cannot adequately be addressed in an emergent petition and will necessarily require a plenary hearing.

Factor Four. 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 will not be granted. At present, if required to do this analysis the equities would be in equipoise.

Even had petitioner set forth a valid reason for emergent relief she could not have satisfied Crowe.

I **CONCLUDE** that petitioner's request for emergent relief should be **DENIED**.

ORDER

It is hereby **ORDERED** that 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.



May 10, 2018 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

APPENDIX

List of Moving Papers

For Petitioner:

Request for emergent relief

Letter to OSEP from petitioner dated May 1, 2018 with attachments

Certification of J.S., petitioner

For Respondent:

Brief in opposition to request for emergent relief

Certification of Michael Marano, Director of Student Personnel Services, with Exhibits A through J