



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON EMERGENT RELIEF

OAL DKT. NO. EDS 15426-18

AGENCY DKT. NO. 2019/28949

**MONROE TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

J.C. ON BEHALF OF R.C.,

Respondent.

John J. Armano, Esq., for petitioner (Trimble and Associates, P.A., attorneys)

No appearance by or on behalf of respondent

BEFORE **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed an Emergent Due Process Petition and Request for Emergency Relief with the Office of Special Education Programs in the New Jersey Department of Education (DOE) on October 24, 2018. In support of the Request for Emergent Relief petitioner also filed a brief in support of thereof. The Request for Emergency Relief shall hereafter be referred as a motion.

Said motion seeks an order, among other things, as follows:

That R.C.'s father, J.C., cooperate fully with any and all required intake procedures in order to permit the Monroe Township Child Study Team to attempt to secure an out-of-district placement potentially appropriate to meet R.C.'s needs.

FACTUAL BACKGROUND

This matter was assigned to the undersigned on October 24, 2018. The oral argument was scheduled for Wednesday, October 31, 2018 at 9:30 a.m. I requested that my assistant schedule a telephone conference with the parties before the oral argument. After confirming the date and time with the parties, the telephone conference was scheduled for Friday, October 28, 2018 at 1:30 p.m.

On Friday, October 28, 2018 at 1:30 p.m., an AT&T operator was able to contact Mr. Armano for the conference call. However, J.C. did not answer his telephone when the conference operator attempted to call him. At that time, my assistant telephoned J.C., and left a voice mail message directing him to contact the judge's chambers, leaving the telephone number to do so. J.C. did not contact my office to explain why he did not participate in this scheduled telephone conference.

On Wednesday, October 31, 2018 at 9:30 a.m., Mr. Armano and Dr. John Bersch, Supervisor of Special Services for Monroe Township Board of Education appeared before me. I did not commence the hearing until approximately 10:15 a.m., in the event that J.C. was running late. J.C. did not appear. I left the record open until the close of business on Thursday, November 1, 2018, in the event that J.C. wished to explain his absence. J.C. did not contact my office to explain why he did not appear at the hearing, nor to provide information on his position in this matter.

Thereafter testimony was taken by Dr. Bersch regarding the underlying matter. As the information presented was not contradicted or challenged, I **FIND** the following as **FACT**:

R.C. is classified to receive special education and related services under the Individuals with Disabilities Education Act (IDEA), under the classification category of "Emotionally Disturbed." R.C. had been a student of the Galloway Public School District (Galloway) until September 21, 2019 (Ex. B). On September 24, 2018, J.C. registered R.C. as a student at the Monroe Township School District (Monroe or District).

R.C.'s had an Individualized Education Program (IEP) at Galloway which provided for him to be placed in an out-of- district placement. The placement was at the Atlantic County Special Services School (Ex. B).

On September 21, 2018, the Atlantic County Special Services School District (Atlantic) sent copies of R.C.'s Child Study Team (CST) and school records to the Monroe CST. This indicated that R.C. was disenrolled from Atlantic.

On October 1, 2018, Monroe CST contacted J.C. to come in for a meeting to discuss programming and placement options for R.C. They did not receive a return telephone.

On October 3, 2018, Monroe CST called J.C. to schedule a meeting for R.C.'s programming and placement options. They left a voicemail which was not returned.

On October 4, 2018, Monroe CST called J.C. to schedule a meeting for R.C.'s programming and placement options. They left a voicemail which was not returned.

On October 5, 2018, Monroe CST contacted J.C. to schedule a meeting to discuss programming placement options for RC. Monroe CST scheduled a meeting for October 10, 2018. The meeting took place on October 9, 2018, due to a scheduling conflict. Monroe CST arranged a tour for J.C. and R.C. at the Gloucester County Special Services School District; specifically, at the Bankbridge Regional School District

(Bankbridge) on October 11, 2018. Bankbridge is the Gloucester County equivalent of the Atlantic County Special Services School District.

On October 11, 2018, Monroe CST was notified by Bankbridge that J.C. and R.C. did not appear for their tour and intake meeting.

Monroe CST arranged for another tour and intake meeting for J.C. and R.C. on October 12, 2018. J.C. attended the tour and intake meeting on October 12, 2018, but did not bring R.C. Bankbridge will not accept a student at the school until they have conducted an intake meeting with the student.

On October 15, 2018, Monroe CST contacted J.C. to schedule an intake meeting for R.C. The telephone was not answered, and CST left a telephone message which has not which was returned. J.C. called back and left a voice message at the end of the day on October 15, 2018, when no staff was present.

Monroe CST received a message on October 16, 2018, from J.C. and returned the telephone call. The voicemail box for J.C. was full. Monroe CST then called J.C.'s work number and left a voicemail with dates an intake meeting at Bank Bridge.

On October 17, 2018, Monroe CST called and left another voicemail for J.C. providing available dates for an intake meeting at Bankbridge. On October 18, 2018, Monroe CST called J.C. to attempt to schedule an intake meeting for R.C. J.C. indicated he was available on October 19, 2018. He also expressed concerns about R.C. attending Bankbridge.

On October 19, 2018, J.C. and R.C. did not appear for the intake meeting at Bankbridge.

R.C. is not attending any school, nor is he receiving any services providing for an education.

As of the date of the hearing October 31, 2018, J.C. had not contacted Monroe CST to arrange for an intake meeting at Bankbridge.

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioner is entitled to 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.

As the present matter concerns a break in the delivery of services pursuant to N.J.A.C. 6A:14-2.7(r)1.

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 (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 District is prevented from fulfilling its legal obligation to provide a Free and Appropriate Public Education (FAPE) by the parent’s refusal to consent or cooperate with the District. See K.P v. Maple Shade Twp. Bd. Of Educ., EDS 8871-09, 2009 N.J. AGEN LEXIS 593 (September 8, 2009); Highlands Bd. of Educ. V. M.F. o/b/o K.F., 39 I.D.E.L.R. 224, 2003 N.J. Agen, Decision) (June 28, 2003); see also, River Edge Bd. Of Educ. V. E.F. o/b/o V.F., 2009 N.J. Agen. LEXIS 313,) OAL Dkt. No. EDS 5680-09, Agen. Ref. No. 2009-14747 (Final Decision) (June 1, 2009).

In River Edge, Judge Strauss wrote:

A break in the services provided to V.F. has already occurred. Without ... the opportunity to explore various placement opportunities, the Districts’ efforts to provide FAPE will be impaired. E.F.’ refusal to consent to the course proposed by the District can only exacerbate a break in services. **This is irreparable harm.** (emphasis added).

Factor Two. The legal right underlying petitioner’s claim is settled. N.J.A.C. 6A:14.2-7(a) provides that either party may request a due process hearing. Further, N.J.A.C. 6A:14.2-7(b) provides that a district board of education is permitted to file for due process “when it is unable to obtain required consent to ... release student records.”

It is clear that ALJs have ordered emergent relief under the same facts set forth herein regarding a parent’s refusal to cooperate with placement of a student. See Maple Shade.

Factor Three. Petitioner has a likelihood of prevailing on the merits of the underlying claim. There is little doubt that petitioner will succeed on the merits. See Hanover Park Regional High School Bd. of Educ. v. F.S. o/b/o S.S., 2014 N.J. Agen. LEXIS, OAL Dkt. No. EDS 9804-14, Agen. Ref. No. 2015-21546 (August 12, 2014). See also Maple Shade.

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. The District will be unable to provide R.C. with an educational program designed to address his needs. The parent will not suffer any harm, but Monroe and R.C. will suffer harm in the prevention of allowing Monroe to provide R.C. with a free and appropriate public education. See Hanover and Maple Shade.

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

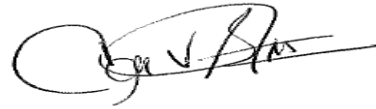
I further **CONCLUDE** that this decision is dispositive of all issues raised in the due process petition and is therefore a **FINAL DECISION**.

ORDER

It is hereby **ORDERED** that petitioner is authorized to immediately take any action necessary to compel J.C. to cooperate with Monroe for the evaluation and placement of R.C. It is further **ORDERED** that Monroe evaluate R.C. for placement in the Monroe educational system or any other out-of-district placement potentially appropriate to meet R.C.'s needs; and

It is further **ORDERED** that R.C.'s father, J.C., cooperate fully with any and all required intake procedures in order to permit an admissions determination by the above placements, or any other out-of-district placement potentially appropriate to meet R.C.'s needs.

This order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties will be notified of the scheduled hearing dates. 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.



November 2, 2018

DATE

CARL V. BUCK III, ALJ

Date Received at Agency

Date Mailed to Parties:

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APPEARANCES

For Petitioner:

John J. Armano, Esq.

John Bersch, Supervisor, Special Services, Monroe Township BOE

For Respondent:

Did not appear

APPENDIX

List of Moving Papers

For Petitioner:

Petitioner for Due Process

Motion for Emergent Relief

Brief in support of motion with Exhibits A through c

For Respondent:

None