



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 12586-18

AGY REF NO. 2019/28629

R.L. AND C.L. ON BEHALF OF R.L.,

Petitioners,

v.

MONTAGUE BOARD OF EDUCATION,

Respondent.

Jacqueline DeVore, Esq., for Petitioners (Mayerson and Associates, attorneys)

Sandra N. Varano, Esq., for Respondent (Nirenberg & Varano, attorneys)

Record Closed: September 5, 2018

Decided: September 6, 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 August 30, 2018, to be heard on an emergent basis.

Petitioners seeks “stay put” at Hamburg School pending the outcome of the due process petition. As to the due process petition, petitioners seek continued placement at the Hamburg School, related services, a one to one aide, compensatory education and reimbursement for all fees associated with the matter.

The request for emergent relief was heard on September 5, 2018.

FACTUAL BACKGROUND

R.L. is a student in the Montague School District. R.L. is a nine year old boy classified with multiple disabilities. Pursuant to an Individualized Education Program (IEP) dated March 28, 2018, R.L. attended the Hamburg School. R.L. had attended the Hamburg School for six years.

The Montague District convened an IEP meeting on June 28, 2018. Notice of the IEP meeting was provided to petitioners. Petitioners sent two emails, dated June 14 and June 17, 2018, respectively, stating that it was their intention to continue with the current March 28, 2018 IEP with placement at the Hamburg School. The June 28, 2018 IEP meeting was held. Both petitioners attended. Petitioners stated their concerns with the transfer from the Hamburg School to the Montague District. Petitioners were provided with Parents Rights in Special Education (PRISE). Petitioners signed an Acknowledgment of Code & PRISE at the IEP meeting.

Fifteen days after the June 28, 2018 IEP meeting the proposed IEP went into effect. This IEP provided for placement of R.L. in the Montague District.

Petitioners, on August 10, 2018, advised the Montague District, through counsel, that a demand for due process was filed with OSEP seeking continued placement at the Hamburg School.

LEGAL ANALYSIS AND CONCLUSION

Petitioners are requesting a “stay-put” preliminary injunction under 20 U.S.C.A. 1414(j). Although the present motion is captioned as seeking emergent relief, petitioners are more specifically seeking to invoke the “stay-put” provision under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C.A. §1400, et seq. Requests for emergent relief under the IDEA’s stay-put provision are subject to a different standard than requests made pursuant to N.J.A.C. 6A:14-2.7(s). The stay-put provision provides in relevant part that “during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.” 20 U.S.C.A. 1414(j).

Both petitioner and respondent agree that an analysis under Crowe v. DeGioia, 90 N.J. 129 (1982) is not required in the instant matter. Rather, they argue, the proper analysis is the “stay put” provision under the IDEA, 20 U.S.C.A. 1414(j), which states in relevant part: “during the pendency of any proceeding conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then current educational placement of the child.” See Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867, (3d Cir. 1996).

The dispute between petitioners and respondent revolves around what the current educational placement should be. Petitioners argue that the previous placement at the Hamburg School should apply under a “totality of the circumstances” argument.

Respondent argues that the present IEP stemming from the June 28, 2018 meeting is the current placement. I agree. Petitioners attended the June 28, 2018 IEP meeting. They received a copy of PRISE and acknowledged receipt thereof. Prior to the IEP meeting petitioners sent the Montague District two emails dated June 14 and

June 17, 2018, respectively, stating it was their intention to have their child remain at the Hamburg School. They expressed this concern at the IEP meeting.

However, petitioners never requested mediation or a due process hearing within fifteen days of the June 28, 2018 IEP meeting. They did not file for due process until August 10, 2018, forty-three days later. Accordingly, pursuant to N.J.A.C. 6A:14-2.3(h)(3), the IEP was implemented fifteen days later on July 13, 2018. This is the current educational placement.

See J.K. v. Ridgewood Vil. Bd. of Educ., 2016 US Dist LEXIS 109826 (DNJ Aug. 18, 2016, Civil Action No 16-5019). In J.K., as here, the parents failed to comply with N.J.A.C. 6A:14-2.3(h)(3). The district in J.K. had already implemented an IEP, as is the case here.

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.



September 6, 2018 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

db

APPENDIX

List of Moving Papers

For Petitioner:

Application for Emergent Relief with Exhibits A, B and C

For Respondent:

Brief in opposition to request for Emergent Relief