



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON EMERGENT RELIEF

OAL DKT. NO. EDS 13007-18

AGENCY DKT.NO. 2019 28761

R.S. and R.S. ON BEHALF OF C.S.,

Petitioner,

v.

WHITE TOWNSHIP BOARD OF EDUCATION,

Respondent.

R.S., pro se

Robert Tosti, Esq. for respondent (Purcell Mulcahy Flanagan, attorneys)

Record Closed: September 17, 2018

Decided: September 17, 2018

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

Petitioners, R.S. and R.S. on behalf of their minor child C.S., brings this action seeking an order to compel White Township Board of Education (District) to maintain C.S.'s out of district placement at Oxford Central School.

On September 7, 2018, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 13007-18. Oral arguments were held on September 17, 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**:

C.S. resides in the White Township School District. C.S. is eligible to receive special education services. In 2016 a settlement agreement was reached by the parties wherein C.S. would attend public school in the neighboring town of Oxford for the 2016-2017 and 2017-2018 school year including related services and transportation. The settlement provides that

“if a dispute arises due to the Board’s proposed program the “stay-put” shall not be Oxford Public School District instead the parties agree that the stay-put will be the program provided in the 2017-2018 school year IEP, However the IEP will be implemented in-district in White Township.”

An IEP conference was held on March 9, 2018 to address C.S. program and placement for the 2018-2019 school year. The District’s IEP proposed, among other things, that C.S. be placed in district at White Township Consolidated school with an extended school year program, a one to one aide, ABA, speech therapy and occupational therapy. Petitioner’s rejected the IEP and filed for mediation with the Office of Special Education Programs. Petitioners then requested that the mediation be converted into a due process petition. The matter was converted into a due process petition and given hearing dates. Petitioner’s withdrew the due process petition on August 27, 2018.

On September 9, 2018, Petitioner’s filed a request for emergent relief. Petitioner claims that the District does not have an appropriate program for C.S. Petitioner sent a note from Dr. Eugene Cullen, dated August 30, 2018, to the Board. The note states that it is medically necessary for C.S. to continue at Oxford. C.S.’s case manager, Marlene Saraiva, sent petitioners a letter dated September 5, 2018, stating that she was in receipt of Dr. Cullen’s note and wanted to schedule a reevaluation meeting. On

September 4, 2018 William Thompson, the District's Chief School Administer, sent petitioners an email stating that they were reviewing medical documentation petitioners provided and Colton's absences will be excused until the review is complete. On September 7, 2018, Petitioners were notified by the District that it had reviewed C.S.'s medical documentation and he should report to school at White Township Consolidated school. As of today, C.S. has not attended the White Township Consolidated School.

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 case, after hearing the arguments of petitioner and respondent 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.R. will suffer irreparable harm. The stay put provision of the 2016 settlement agreement provides for the program provided in the 2017-2018 school year IEP be implemented in-district in White Township. C.R. will have the same program that he had in the 2017-2018 school year.

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 C.S. will suffer greater harm than the respondent will suffer if the requested relief is not granted.

In this case, after hearing the arguments of petitioner and respondent and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b).

Accordingly, it is **ORDERED** that the petition for emergent relief 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.

September 17, 2018

DATE



KIMBERLY A. MOSS, ALJ

Date Mailed to Parties:

September 17, 2018

ljb