



*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 13448-18

AGY REF NO. 2019/28795

**E.C. AND M.C. ON BEHALF OF T.C.,**

Petitioners,

v.

**JEFFERSON TOWNSHIP BOARD OF EDUCATION,**

Respondent

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**Beth C. Manes**, Esq., for Petitioners (Manes and Weinberg, attorneys)

**Marc G. Mucciolo**, Esq., for Respondent (Methfessel & Werbel, attorneys)

Record Closed: September 25, 2018

Decided: September 25, 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 September 14, 2018, to be heard on an emergent basis.

Petitioners seek an immediate out of district therapeutic placement pending the outcome of the due process proceedings.

The request for emergent relief was heard on September 25, 2018.

### **FACTUAL BACKGROUND**

T.C. is a seventeen year old student in the Jefferson Township School District. T.C. was recently classified by the District as Other Health Impaired and entitled to special education and related services. During the 2017/2018 school year T.C. was a junior in a general education setting.

An initial Eligibility and Individualized Education Program (IEP) meeting was held on August 14, 2018. Petitioners received a proposed IEP on August 29, 2018. Petitioners did not accept the proposed IEP.

The District received a Physician's Request for Home Instruction dated September 6, 2018. T.C. is currently receiving ten hours of home instruction per week.

Petitioners maintain that T.C. is incapable of walking into the high school due to anxiety, concern for his own safety, and concern that he will lash out if picked on while in school.

Respondents maintain that the offered IEP provides a Free and Appropriate Public Education (FAPE) and meets T.C.'s needs.

The parties dispute whether or not an out of district therapeutic placement for T.C. represents FAPE in the least restrictive environment.

**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.

As the present matter concerns the issue of placement pending the outcome of due process proceedings petitioner is certainly entitled to seek emergent relief.

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 usually in order. However, it is certainly not clear that petitioners are likely to prevail on the merits of the underlying claim in the due process petition, as required in factor three. Petitioners are requesting an out district therapeutic placement for T.C. The appropriateness of such a placement can only be determined by a full hearing, with expert testimony regarding the same.

“A third rule is that a preliminary injunction should not issue where all material facts are controverted. Thus, to prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Crowe at 134. (citations omitted)

As the burden is upon petitioners to prove each element of Crowe, and I have concluded that petitioners are unable to satisfy factor three, no further analysis is required.

I **CONCLUDE** that petitioner’s request for emergent relief 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 25, 2018

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency

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Date Mailed to Parties:

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**APPENDIX**

List of Moving Papers

For Petitioner:

Application for Emergent Relief

Memorandum of Law in Support of Petitioner's Petition for Emergent Relief

Certification of E.C. in support of application for Emergent Relief with Exhibits A – G

Due Process Petition

For Respondent:

Brief in opposition to request for Emergent Relief

Certification of Patricia Hovey, Director of Special Education