



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 02534-19

AGY REF NO. 2019-29418

J.T. ON BEHALF OF B.T.,

Petitioners,

v.

BUTLER BOARD OF EDUCATION,

Respondent

Sean M. Benoit, Esq., for petitioner (Community Health Law Project, attorneys)

Jeffrey R. Merlino, Esq., for respondent (Sciarrillo, Cornell, Merlino, McKeever
& Osborne, attorneys)

Record Closed: March 8, 2019

Decided: March 11, 2018

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a motion for Emergent Relief with the Office of Special Education Policy and Dispute Resolution (OSEPDR) 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 February 21, 2019, to be heard on an emergent basis.

Petitioner seeks the reinstatement of transportation services that were suspended by the District effective December 12, 2018.

The hearing for emergent relief was initially scheduled for February 27, 2019 but adjourned to March 8, 2019 per the parties' request as they attempted to resolve the matter.

FACTUAL BACKGROUND

B.T. is a twenty-one year old student residing in the Butler Township. B.T. is eligible for special education services under the classification of Autistic, and has a diagnoses of Autism, Epilepsy, and Post-Traumatic Stress Disorder. After moving to Butler in 2017, B.T. was placed in an out-of-district placement at the New Bridges High School in Paramus, New Jersey. Upon being placed at New Bridges High School, Butler set up curb-to-curb transportation, which included a 1:1 bus aide and other related services, in his Individualized Education Program (IEP). The school is approximately thirty miles from B.T.'s home. Transportation was provided to B.T. through the County Educational Services Commission.

Since December 12, 2018, B.T. has not received transportation to his school from the Butler School District. The van company stopped providing transportation services to B.T. following certain incidents on the van where B.T. behaved aggressively and broke windows on the bus. The bus route description for B.T. for the current school year indicates that he requires a 1:1 bus aide, a harness, that he can be violent at times, and that the aide must sit next to him. Since December 12, 2018, B.T.'s mother, J.T., has been driving him to school. Pursuant to a contract J.T. signed with Butler, Butler has been reimbursing her for the transportation she has been providing, however, this contract does not prevent her from seeking transportation services through the Butler Board of Education. J.T. asserts that she works in Passaic and is no

longer able to continue to drive B.T. to school in Paramus. She maintains that she cannot continue to miss work to drive B.T. and is at risk of losing her job due to this daily driving. The driving has also taken a mental and physical toll on her.

While Butler held an IEP meeting on January 31, 2019, J.T. did not sign the IEP because the proposed IEP sought to eliminate the related service of curb-to-curb transportation with a 1:1 bus aide. J.T. rejected the proposed IEP and filed for due process on February 4, 2019. The most current IEP has an implementation date of May 24, 2018, and the parties agree that the current educational placement includes curb-to-curb transportation with a 1:1 aide.

Petitioner maintains that emergent relief is appropriate here because this request for transportation involves an issue regarding stay-put. Petitioner also maintains in their written submission that Butler has failed to provide B.T. with a related service in his IEP, resulting in a break in the delivery of services, and that B.T. is, therefore, entitled to emergent relief.

At the hearing, the parties did not present oral argument. They stipulated that the stay-put provision applies here, and that curb-to-curb transportation with a 1:1 aide is a related service that the District had agreed to provide pursuant to the current IEP. It is also undisputed that respondent has not provided transportation services to B.T. since December 12, 2018.

LEGAL ANALYSIS AND CONCLUSION

In this case, it is unnecessary for me to consider whether the criteria set forth in Crowe v. Di Gioa, 90 N.J. 126 (1982) have been satisfied in granting emergent relief. When the emergent-relief request effectively seeks a “stay-put” preventing the school district from making a change in placement from an agreed-upon IEP, the proper standard for relief is the “stay-put” provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)).

The parties stipulate, and I agree, that this matter is controlled by 20 U.S.C. 1415(j), otherwise known as the “stay put” provision of the IDEA. The statute states in pertinent part:

. . . 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 . . .

The term “placement” is not limited to location. It includes the services and supports set forth in the IEP, such as transportation.

When a school district proposes a change in the placement of a student, it must provide notice to the parent or guardian, who may in turn request mediation or a due process hearing to resolve any resulting disagreements. N.J.A.C. 6A:14-2.3, 2.6 and 2.7. Once a parent timely requests mediation or due process, the proposed action by the school district cannot be implemented pending the outcome. The “stay put” provision of the IDEA, 20 U.S.C. 1415(j), and its New Jersey counterparts, N.J.A.C. 6A:14-2.6(d) and 2.7(u), are invoked, and unless the parties agree, no change shall be made to the student’s classification, program or placement.

The “stay put” provisions of law operate as an automatic preliminary injunction. IDEA’s “stay put” requirement evinces Congress’ policy choice that handicapped children stay in their current educational placement until the dispute over their placement is resolved, and that once a court determines the current placement, petitioners are entitled to an order “without satisfaction of the usual prerequisites to injunctive relief.” Drinker by Drinker v. Colonial School Dist., 78 F.3d 859, 864-65 (3d Cir. 1996).

It is undisputed that the current educational placement here includes curb-to-curb transportation from B.T.’s home in Butler to B.T.’s school in Paramus, with a 1:1 bus aide. In accordance with 20 U.S.C. 1415(j), I **CONCLUDE** that, pursuant to the

stay-put provision, B.T. should continue to receive curb-to-curb transportation with a 1:1 bus aide and all other supports listed in the current IEP; and that the Board should make all reasonable efforts to immediately secure transportation for B.T., including the use of the public bidding process.

ORDER

It is hereby **ORDERED** that the request sought by petitioner is **GRANTED**. The Board is directed to immediately make all reasonable efforts to secure for B.T. the appropriate curb-to-curb transportation, with a 1:1 bus aide and any other supports, consistent with his current educational placement. This includes putting out public bids for transportation. The stay-put provision requires the Board to continue to provide B.T. with transportation.

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.

March 11, 2019
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Moving Papers

For Petitioner:

Application for Emergent Relief, with Exhibits

For Respondent:

None