State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
ON EMERGENT RELIEF
OAL DKT. NO. EDS 05226-20
AGENCY DKT. NO. 2020-31689

J.C. AND E.C. ON BEHALF OF A.C.,
Petitioner,
v.
BUTLER BORO BOARD OF EDUCATION,
Respondent.

J.C. and E.C., parents of **A.C.,** pro se

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

Record Closed: June 12, 2020 Decided: June 15, 2020

BEFORE **EVELYN J. MAROSE**, ALJ (Ret., on recall):

Petitioners J.C. and E.C, on behalf of their son A.C., filed an application for Emergent Relief pursuant to N.J.A.C.1:1-12.6, disputing graduation and seeking continuation of his educational program for one more year, during which time A.C.'s IEP will contain transition planning and placement in Morris Technical School.

FACTUAL DISCUSSION

In the Application for Emergent Relief, petitioners state that A.C. has had an IEP since 8th grade. However, his IEPs have never contained a transition plan and he never received any sort of plan or transitioning help. Accordingly, he should not graduate this year but, rather attend Morris Technical School as a District student to earn a trade. Further, during his year at Morris Technical School, petitioners assert that the District should be required to make sure that A.C. has "a plan going forward".

In its opposition papers, the District provided copies of A.C.'s IEP for Grade 11, dated December 2018, and his IEP for Grade 12, dated January 2020. Both IEPs contain completed "Statement of Transition Services Needed to Attain Measurable Postsecondary Goals: Coordinated Activities/Strategies" and detailed "Graduation Requirements". (Answer Filed on Behalf of The Butler Board of Education, Exhibit 1 and Exhibit 2.) The District also noted numerous activities relating to A.C.'s transition from high school that were completed when A.C. was in 11th grade. (Letter Brief in Opposition to Emergent Relief, Page 2.) In addition, the District provided a copy of "A.C.'s Transition Goals." This document details numerous specific goals and action steps taken by the District with petitioners from October 2019 through March 2020, relating to A.C.'s transitioning from a secondary school student. For example, A.C. initially expressed an interest in Broadcasting and in attending the Connecticut School of Broadcasting after graduation. Then, A.C. advised the District that his parents were "not agreeing to Connecticut School of Broadcasting." The District's Guidance Counselor thereafter discussed programs offered at Passaic County Community College and Morris County Community College and provided information regarding post-secondary Tuition Assistance. (Answer Filed on Behalf of The Butler Board of Education, Exhibit 3.)

In reply Petitioners' submitted three documents: An electronic medical record, dated June 11, 2020 from an unknown source, detailing A.C.'s "health issues", a letter from the Electric Counseling Center, and a letter from A.C.'s parents. As to A.C.'s medical issues, it is undisputed that A.C. was classified and eligible for Special Education during the four years he was a District student. At issue is Petitioner's application for additional years of educational services to learn a trade, at the District's expense. The substance

of the letter from the Electric Counseling Center is A.C.'s counselor's opinion that A.C. is young for his grade, that he presently lacks the personal skills and maturity to be a successful young adult, and that he would greatly benefit from an additional year of high school, where he could advance his academic and vocational awareness and grow emotionally. In the reply letter from the parents, they again affirm that the District never provided A.C. with a transition plan. However, for the first time the parents also assert that the District never provided A.C. with a Psychological Evaluation, that the IEP team met with A.C. privately and that the District insisted that A.C. made decisions about his future without his parents. The parents also increased their demand for additional education services. In their reply paper letter, the parents state that A.C. should be entitled to one or two years of additional public education plus related services.

During Oral Argument, it was noted that A.C.'s Grade 12 IEP expressly indicated that A.C. was on track to graduate in June 2020 and that he had met his high school requirements. The IEP also contained a section detailing those "Graduation Requirements." The IEP further indicated that A.C. was looking forward to attending a Vocational Program, the Connecticut School of Broadcasting, after graduation. In the section entitled "Statement of Transition Services Needed to Attain Measurable Postsecondary Goals: Coordinated Activities/Strategies," it was noted that it was the student's and parents' responsibility to obtain applications to the postsecondary schools of the student's choice and that the counselor would meet with the student regarding submission of applications and to assist A.C. in applying for grants and/or scholarships.

A.C.'s parents acknowledged receiving A.C.'s Grade 11 and Grade 12 IEPs and that both IEP's indicate that A.C will meet the credit/graduation requirements and is on schedule for graduating in 2020. The parties also acknowledged being familiar with the IEPs in connection with the educational services provided to A.C. and his twin, and with being familiar with technical high schools and postsecondary schools in connection with the education of their other children. However, the parents state that despite the numerous written references to a graduation in 2020, they believed that A.C. would be entitled to receive educational services until 21 and that their belief was verbally confirmed by several people in the District. Yet, the parents acknowledged that they never received any written communication confirming this belief, as to entitlement to

educational services after June 2020. To the contrary, the parents provided a copy of a letter that was sent to them by the District's Acting Superintendent on January 24, 2020 in response to the parents' request that the District pay for A.C. to attend a postsecondary institution of his choice, as well as, hiring a bus to take A.C. places for career exploration. In that letter, the Acting Superintendent informed the parents that the District had no obligation under the IDEA to provide FAPE until the age of 21, after a student completes his or her secondary school program, as A.C. would do by June 2020.

A.C.'s parents acknowledged that A.C. was receiving Special Education Services with a classification of "other health impaired" based upon a diagnosis of Attention Deficit Hyperactivity Disorder and with a history of seizures. However, they assert that A.C. is also autistic. A.C.'s mother stated that the diagnosis of being on the Autistic Spectrum was made approximately four years ago, after the standards for such a diagnosis changed. The parents admitted that they never told the District about the diagnosis of Autism but, asserted that the District had to be aware that A.C. was Autistic because it is "visually obvious" when you look at A.C. The District denied being aware of the asserted diagnosis and questioned why the parents had not provided any documentation to the District of such a diagnosis. A.C.'s Mom replied that the District never asked for such documentation and again stated that it is "visually obvious."

A.C.'s parents argue that A.C. is simply not ready to graduate, and that any transition planning that was conducted by the District was not effective if the planning activity was not done in their presence. They affirm their belief that A.C. is entitled to remain a District student while he obtains vocational training at the expense of the District and request Emergent Relief. In addition to the foregoing factual assertions and arguments by the District, the District argues that there is no basis for an award of Emergent Relief when A.C.'s Grade 12 IEP, as well as, his Grade 11 IEP, expressly informed petitioners that A.C. had met the requirements for graduation and was on track to graduate in June 2020. The District also argues that the letter from the District's Acting Superintendent, produced by the parents, further expressly informed petitioners that the District would not be providing A.C. with tuition to a postsecondary institution of his choice, as early as January 24, 2020.

LEGAL ANALYSIS

In accordance with N.J.A.C. 1:1-12.6, Emergency Relief may be granted "where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case…" My determination in this matter is further governed by the standard for Emergent Relief set forth by our Supreme Court in Crowe v. DeGioia, 102 N.J. 50 (1986), as follows:

> The judge may order emergency relief 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 success 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 relief is not granted.

The moving party must satisfy all four prongs of the Crowe v. DeGioia standard to establish an entitlement to emergent relief. Id. at 132-35. In determining whether the moving party has met its burden of proving irreparable harm, more than a risk of irreparable harm must be demonstrated. The requisite for injunctive relief requires a "'clear showing of immediate irreparable injury,'" or a "'presently existing actual threat; (emergent relief) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.'" Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980).

In the instant case, after hearing the arguments of petitioners and respondent and considering all documents and exhibits submitted by the parties, I **FIND**:

1.) It is undisputed that petitioner, for several years, was classified for Special Education by the District.
2.) The District provided A.C. with transition and graduation planning, detailed in his Grade 11 and Grade 12 IEPs, which were developed by the IEP team, including A.C. and his parents. In addition, the District, A.C. and A.C.'s parents conferred on several occasions regarding post-graduation plans and possible postsecondary educational goals for A.C.
3.) While it is the opinion of his parents and A.C.'s private counselor that A.C. will benefit from an additional year of educational services, the petitioners were aware, certainly by January 2020 that A.C. had met the requirements for graduation and was on track to graduate in June 2020 and that the District would not be proving A.C. with postsecondary tuition or services

LEGAL CONCLUSIONS

In this case, A.C. will not suffer immediate and irreparable harm if he does remain a student of the District. There is no claim that A.C. failed to complete his high school criteria and is entitled to graduate, but rather that A.C. wishes to attend a post-secondary institution where he can learn a trade.

As to the law regarding transition services, it is settled, but not in petitioners' favor. The law requires that a District engage with the student in Transitional Assessments. The law does not require a District to provide postsecondary education, even if a student might benefit from postsecondary education. N.J.A.C. 6A: 14-3.7(e).

Petitioners' assertion that A.C. did not receive any sort of plan or help regarding transitioning from high school is not supported by the documentation submitted, that had previously been provided to petitioners. As detailed above, the District submitted copies of A.C.'s IEPs for Grade 11 and Grade 12. Both IEPs contain completed "Statement of Transition Services Needed to Attain Measurable Postsecondary Goals: Coordinated Activities/Strategies" and detailed "Graduation Requirements". The District noted numerous activities relating to A.C.'s transition from high school that were completed when A.C. was in Grade 11. In addition, the District detailed conferences and action

steps taken relating to "A.C.'s Transition Goals" when he was in Grade 12. Thus, it is unlikely that petitioners will succeed on their claim that A.C. never received any sort of plan or help regarding transitioning from high school.

When the equities and interests of the parties are balanced, the District will suffer greater harm than the respondent will suffer if the relief is not granted. It is well-settled that completing secondary school terminates a district's obligation to provide services to a Special Education student. A district is only required to provide post-graduate education to the extent and in the same proportion that it does for nondisabled students. 34 C.F.R. §300.102(a)(3) 2015; Wexler v. Westfield Board of Education, 784 F.2d 176 (3d Cir. 1986). Further, the District did provide petitioners with information as to Tuition Assistance that might be available to A.C. for post-secondary career training. However, A.C.'s parents acknowledged that they never applied for other possible assistance and instead, despite being told that such entitlement did not exist, chose to assert entitlement to educational services until A.C reaches the age of 21.

I **CONCLUDE** that Petitioners have not satisfied the standard for Emergent Relief. Petitioners had to satisfy all four prongs of the Crowe v. DeGioia standard to establish an entitlement to Emergent Relief, and as detailed above, Petitioners failed to satisfy even one of the four prongs.

ORDER

I hereby **ORDER** that Petitioners' application 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 Policy and Dispute Resolution.

June 15, 2020

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DATE **EVELYN J. MAROSE**, ALJ, (Retired, on recall)

Date Received at Agency: June 15, 2020

Date Mailed to Parties: June 15, 2020

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