



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 7245-20

AGENCY DKT. NO. 2021-31935

S.M. AND I.M. ON BEHALF OF A.M.,

Petitioner,

v.

TRENTON PUBLIC SCHOOL

DISTRICT BOARD OF EDUCATION,

Respondent.

Joan Thomas, Esq., for petitioner (Sussan Greenwald & Wesler, attorneys)

Eleisa L. James, Esq., for respondent

Record Closed: August 20, 2020

Decided: August 24, 2020

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE

In this matter A.M., now age twenty-one, through his parents, S.M. and I.M. (petitioners), brings an action for Emergent Relief against the Trenton Public School District Board of Education (respondent or District) to: 1. Provide an immediate provision for home instruction; and 2. Provide compensatory education for the period of time A.M. was not receiving educational services February 2018 through August 2020. The matter

was filed in the state Office of Special Education Programs on August 14, 2020 and transmitted to the Office of Administrative Law (OAL) on August 14, 2020, for consideration only of emergent relief. The matter was heard by Zoom © technology on August 20, 2020, at various locations deemed the Trenton OAL offices in Mercerville.

BACKGROUND

A.M. turned twenty-one on August 17, 2020. He is classified as multiply disabled due to autism and various learning disabilities. At some time, possibly as early as 2010, the Trenton School District provided A.M. placement out of district at the Newgrange School. He attended the Newgrange School for school years ending 2014, 2015, 2016, and 2017, his entire high school education. He earned a cumulative average of 3.2 for his 140 credits earned. This qualified him to graduate high school in June 2017 with an appropriate diploma. There is an indication neither A.M., nor his parent, accepted the diploma. In February 2018, Newgrange School sought to terminate the relationship with A.M., the reasoning, allegedly an unfounded drug and weapon allegation. There was an allegation that no case manager had an assignment for A.M. at the Trenton School District. Upon the severing of the relationship with the Newgrange School, the Trenton School District did not have any additional IEP meeting. The District provided no IEP meeting after December 13, 2016. The District did provide for continuation at Newgrange after graduation so A.M. could attend Mercer County Technical School. The record is not clear which course A.M. took. He had desired a Diesel Technology program but failed to receive acceptance in that program for two consecutive years. He may have been attending Auto Tech Fundamental. However, on the Newgrange School actions, this prevented the use of the existing transportation to the Mercer Technical School. The District maintains its post-graduation actions were discretionary, and a Free Appropriate Public Education (FAPE) had been provided A.M through graduation in 2017. The District also provided in 2018 for psychological, educational and neuropsychological evaluations of A.M. in June 2018 and October 2018. It also appears that on August 30, 2019, the District forwarded a form letter for A.M. welcoming him back to the 2019/2020 school year and placing him in the Daylight/Twilight program. This the District maintains was in error, A.M. never returned, nor received any schedule or placement.

DISCUSSION

Petitioners argue that A.M. has received no education since February 2018, and therefore, should be entitled to compensatory education. Petitioners also argue, despite a filing of August 14, 2020, the statute of limitations should not be applied herein. It argues the District authorized an evaluation in October 2018 and submitted the allegedly erroneous “welcome back 2019/2020” school year letter on August 30, 2019. These facts cloud a clear determination of the applicability of the statute of limitations to the action.

The District argues the qualification for the June 2017 graduation terminated any further legal responsibility for further education of A.M. The District argues petitioners had rights to dispute A.M.’s graduation in a timely manner in 2017 and took no action.

LEGAL ANALYSIS

Petitioners filed an application for emergent relief and as such it is subject to the procedures and conditions of N.J.A.C. 6A:14-2.7 and Crowe v. DeGioia, 90 N.J. 126, 132-33 (1982). The requirements of the Crowe case require petitioners to show:

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.

N.J.A.C. 6A:14-2.7(a)(1) provides:

1. A request for a due process hearing shall be filed within two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if: i. A district board of education specifically misrepresented to the

parent that the subject matter of the dispute was resolved to the satisfaction of the parent; or ii. The district board of education withheld information that was required by law to be provided to the parent.

The submissions here do not support an extension of the two-year period to file the within action.

Petitioners' counsel alluded to reasons for the petitioners' delay, they were not however related to misrepresentations by the District or withholding of information by the District.

N.J.A.C. 6A:14-2.7(r)(1) provides:

(r) (1). Emergent relief shall only be requested for the following issues: i. Issues involving a break in the delivery of services; ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings; iii. Issues concerning placement pending the outcome of due process proceedings; and iv. Issues involving graduation or participation in graduation ceremonies.

Petitioners argue the break in services occurred in February 2018. This fact places petitioners on notice at that time of their rights to make an emergent application. The tribunal does not dispute the District took subsequent actions, but this tribunal's concern is the termination of services in February 2018, commences the clock for evaluating the start of the time for evaluating whether this claim is timely.

Addressing the criteria of Crowe:

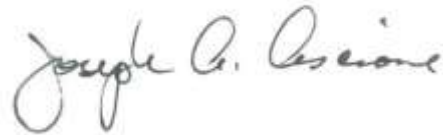
1. Irreparable harm. The absence of appropriate education can be an irreparable harm; however, here A.M. received a high school education, earned a 3.2 cumulative average, and was entitled to accept his diploma and attend graduation. To pursue life activities, he may need additional vocational training. To say if he does not receive it immediately by way of emergent application, he will be irreparably harmed, is not supported by the presentation of petitioners. Compensatory education can be subsequently provided if a determination that FAPE's continuing obligation for a classified student requires more services.

2. Settled legal right. Under certain circumstances FAPE requires services continue to be provided up to the time a student attains the age of twenty-one. Here, there is question whether the entire claim is time barred. There is question whether a FAPE was denied A.M. There is question whether the fact A.M. qualified for graduation terminated the District's legal obligation to A.M. These latter questions defeat petitioners' position of whether A.M.'s legal rights are settled.
3. Likelihood of prevailing. Here, even if the statute of limitations is not a bar to petitioners' claims, the petitioners' laches in presenting their claims may seriously prevent the likelihood petitioners will prevail on the merits of the claim. Petitioners have not shown the likelihood of prevailing on the merits in this emergent application.
4. Balancing of the equities: Here petitioners have the strongest argument, however it is still made more complex by the likelihood there will be no in-person classes for the foreseeable future due to the Corona Virus pandemic. The harm to the District is financial, but not just as to A.M. but also to the class of students who fit into these particular circumstances. It would have been ideal if A.M. were accepted in the Diesel Technology program and he attended it. However, parental or student choices were made to defer an attempt to enter the Auto Tech Foundation course to seek the following year Diesel Technology program, which again A.M. did not obtain entry. A.M. may need additional vocational education which he cannot afford to pay privately, it does not necessarily mean the District has the obligation to subsidize A.M.'s further educational pursuits. There are other social programs available for adults to obtain training.

Accordingly, I **CONCLUDE**, petitioners have failed to meet their burden of proof as to the criteria of irreparable harm, settled legal rights, and likelihood of success on the merits.

I **ORDER** the emergent application filed in this matter be **DISMISSED** and further **ORDER** the relief requested be **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.



August 24, 2020 _____

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

Date Sent to Parties:

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ATTACHMENTS

Moving papers

Responding papers

Reply submission