



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION DENYING**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 10013-20

AGENCY DKT. NO. 2021-32227

**H.S. ON BEHALF OF A.S.,**

Petitioner,

v.

**CHERRY HILL TOWNSHIP BOARD  
OF EDUCATION,**

Respondent.

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**H.S.**, petitioner, pro se

**Robin S. Ballard**, Esq., for respondent (Schenck, Price, Smith & King, LLP,  
attorneys)

Record Closed: October 28, 2020

Decided: October 28, 2020

BEFORE **DAVID M. FRITCH, ALJ**:

**STATEMENT OF THE CASE**

The petitioner, H.S., on behalf of A.S., petitioned the Office of Special Education Policy and Dispute Resolution in the New Jersey Department of Education, pursuant to N.J.A.C. 6A:3-1.6 et. seq., for an order for emergent relief seeking that A.S. be

immediately re-enrolled in the Cherry Hill Township School District (“District”) and be given an immediate and appropriate educational program and placement from the District.

### **PROCEDURAL HISTORY**

On October 23, 2020, Petitioner filed for Emergent Relief from the Office of Special Education Policy and Dispute Resolution pursuant to N.J.A.C. 6A:3-1.6 et seq. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on October 26, 2020. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through 18.5. The matter was heard via video teleconference on October 28, 2020, and the record was closed on that date.

### **FACTUAL DISCUSSION**

A summary of the pertinent evidence presented is as follows, and I **FIND** the following **FACTS** are uncontested by the parties:

1. A.S. is seventeen years old. (Resp. Br. at 2.)
2. A.S. also receives services from the New Jersey Department of Children and Families (“DCF”), Division of Children’s System of Care (“CSOC”).
3. During the 2017-18 school year, A.S. was placed out of the home at a residential placement by DCF CSOC. (Resp. Br. at 3.) While residing there, A.S. attended an approved private school for the disabled that operates a behavioral disabilities program. (Id.) While that school was not geographically in the District, the District paid for A.S.’ education at that school.
4. For the tenth grade (2018-19 school year), A.S. attended an out-of-district program, Eastern Learning Academy, that was designed to address the needs of students with emotional issues. (Resp. Br. at Ex. 4.)

5. A.S. had an Individual Education Plan (“IEP”) through District for the 2019-20 school year for special education and related services under the category of Other Health Impaired. (See Resp. Br. at Ex. 5.)

6. A.S.’ parents challenged the 2019-20 IEP’s recommendation that A.S. be placed in an out-of-district therapeutic school. The District requested due process to compel A.S.’ parents to release his records to potential placements consistent with this recommendation. (Resp. Br. at 3.)

7. The due process action brought by the District resolved with a negotiated settlement agreement between the parties. Pursuant to the terms of that settlement agreement, entered into in August 2019, A.S. enrolled at Camden County College in Blackwood, New Jersey, starting in 2019. (Id.) Under the terms of that settlement agreement, this placement was not a placement made by the District nor was it considered a “stay put” placement for any reason. (Id.)

a. Under the terms of this agreement, the District funded tuition costs for up to sixty credit hours towards the costs of A.S.’ educational program at Camden County College. (Id.) A.S. was in a program working on his high school diploma outside the District through the college. A.S. was not, under the terms of the agreement, going to receive a high school diploma from the District. (Id.)

b. This agreement also provided financial contributions from the District for the 2019-20, 2020-21, and 2021-22 school years if needed to cover costs of transportation, books, and fees for A.S. in his attendance at Camden County College. (Id.)

c. By signing this agreement, A.S.’ parents agreed to disenroll A.S. from the District and agreed not to re-enroll A.S. in the District “absent a significant change in circumstances for A.S. that resulted in new educational needs that would require completely different programming.” (Id.) A.S.’ parents also expressly waived any right to have the District create any IEP, behavior intervention plan, special educational programming, related services, or other services they may otherwise be entitled to, and released the District from “any obligation” to “provide any other educational or special services to which they

or A.S. might otherwise be entitled to under applicable State or Federal law.”

(Id.)

8. On October 13, 2020, A.S. was referred and admitted into the Visions and Passages Group Home (“VPGH”) in Bridgewater, New Jersey, so he could receive more intensive services through DCF CSOC.

9. DCF CSOC is funding A.S.’ stay at VPGH and VPGH is contracted with DCF CSOC to provide services to A.S.

10. VPGH is geographically located in the Bridgewater-Raritan School District.

11. A typical stay at VPGH is between six and nine months, but varies according to individual needs.

12. Because VPGH is far from where A.S. previously attended school in Blackwood, New Jersey, A.S. has been unable to continue his education at Camden County College.

13. Because A.S.’ circumstances have changed following his placement at VPGH, H.S. seeks to re-enroll A.S. in the District and seeks the District to provide A.S. with an appropriate education program near his current CSOC residential placement at VPGH.

14. Education staff at VPGH has recommended enrolling A.S. in Somerset Academy, a school operated by the Bridgewater-Raritan School District. H.S. agrees with A.S.’ placement at this school, but VPGH has directed H.S. to seek the District to pay for A.S.’ attendance at the school.

### **LEGAL DISCUSSION**

N.J.A.C. 1:6A-12.1 provides that the affected parent(s), guardian, board or public agency may apply in writing for emergent relief. An emergency relief application is required to set forth the specific relief sought and the specific circumstances the applicant contends justify the relief sought. N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief:

A motion for stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. Degioia, 90 N.J. 126 (1982):

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 the 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 petitioner has the burden of establishing all of the above requirements in order to warrant relief in their favor. D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J. Agen LEXIS 814, 7 (OAL Docket No. EDS 10816-17, October 25, 2017). The moving party bears the burden of proving each of the Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

In reviewing the present matter, the third requirement is in the forefront of addressing what appears to be a facial deficiency of the petitioner's claim. Respondent raises a legal challenge to Petitioner's claims in noting that the terms of the prior Settlement Agreement between the parties expressly waived any entitlement for A.S. to receive educational services from the District and that Petitioner has failed to demonstrate any significant change in circumstance that would permit A.S. to re-enroll in the District under the terms of the prior settlement agreement. (Resp. Br. at 7.) While these arguments may be compelling and even meritorious in a due process challenge, they do not address what appears to be a facial deficiency in Petitioner's claim.

It is factually undisputed that A.S. was placed in VPGH through the actions of a State agency, DCF CSOC. Under the governing statutes, despite this placement, the District remains A.S.' district of residence. N.J.S.A. 18A:7B-12(b). For a child who has

been placed in a State-contracted facility like VPGH by a public agency, however, DCF CSOC, as the agency responsible for the student's placement, is responsible for ensuring the student is provided with "a free and appropriate education as set forth under the Individuals with Disabilities Education Act" and providing "special education and related services" as stipulated in a student's IEP." N.J.A.C. 6A:17-3.3. See also N.J.A.C. 6A:17-3.2(a)(1)(i) (noting state agency, upon placement of a student in a facility by that agency, shall provide a "program comparable to the special education student's current individualized education program (IEP)"). Following placement in a State facility<sup>1</sup> by "a public agency other than the district board of education," the facility is responsible for providing "an immediate review of the classification and IEP" and for placing the student in a "program consistent with the goals and objectives of the current IEP."<sup>2</sup> N.J.A.C. 6A:14-8.1. The facility may recommend placement of a student with a disability in a school district, N.J.A.C. 6A:14-8.3(a), and tuition for a placed student "shall be paid by the State facility to the district board of education where the student is placed." N.J.A.C. 6A:14-8.3(e) (emphasis added).

These regulations make the District responsible for development of an IEP only where "a Special Education student is placed by the school district on a tuition basis." N.J.A.C. 6A:17-3.2(a)(1)(i). The complaint brought regarding A.S.' IEP and placement against the District ignore the regulatory scheme now applicable following A.S.' placement at VPGH. At a minimum, DCF CSOC, the agency that placed A.S. at VPGH and who is funding A.S.' stay at VPGH, and now responsible for providing A.S. with a free and appropriate education is a necessary party to this action. See State of New Jersey, Department of Education, Determination of Services, Fiscal Responsibility, and Data Reporting Requirements for Students Placed in Alternative Placements, July 10, 2018, available at <https://www.nj.gov/education/specialed/memos/071018fiscalchart.pdf> (noting placing agency and resident school district are

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<sup>1</sup> The term "state facility" is defined as "residential and day programs operated by, contracted with, or specified by the New Jersey Department of Human Services, the New Jersey Department of Corrections, the New Jersey Department of Children and Families, or the New Jersey Juvenile Justice Commission." N.J.A.C. 6A:17-1.2.

<sup>2</sup> Although A.S. does not have a current IEP, the prior settlement agreement between the District and A.S.' parents expressly releases the District from any obligation to create any IEPs for A.S. and left it as "the sole responsibility of the parents in connection with the program they select for A.S. to provide him with an appropriate educational program." (Resp. Br. at Ex. 1.)

appropriate respondents in due process hearings for students placed in group homes by DCF), N.J.A.C. 6A:17-3.3. The guidance of R. 4:28-1(a) is instructive:

A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect that interest .

. . .

The New Jersey Supreme Court has described an indispensable party as one having "an interest inevitably involved in the subject matter before the court and a judgment cannot justly be made between litigants without either adjudging or necessarily affecting the absentee's interest." Allen B. DuMont Labs v Marcalus Mfg. Co., 30 N.J. 290, 298 (1959). This tribunal cannot direct the District to alter a placement that has been ordered by a state agency, and cannot render a decision on whether A.S.' current educational setting is appropriate without the input and participation of the agency that is responsible for selecting his appropriate therapeutic and educational setting. DCF CSOC, as the State agency that placed A.S. at VPGH, should have been named as a necessary party to this action. For this reason, I **CONCLUDE** that Petitioner has not met the requirement that they demonstrate a likelihood of prevailing on the merits of the underlying claim without the inclusion of DCF CSOC as a party.

Returning to address the first prong of the test, Petitioner has not shown that irreparable harm will result in not granting the relief requested. It is well-settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132-33. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as "substantial injury to a material degree coupled with the inadequacy of money damages." Judice's Sunshine Pontiac v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). Petitioner's claim is that, at present, A.S. is not receiving continued educational services due to his relocation to

VPGH by DCF CSOC. A break in educational services being provided to a student has been found to satisfy the irreparable harm standard under Crowe. See, e.g., River Edge Bd. of Education v. E.F. o/b/o V.F., 2009 N.J. Agen. LEXIS 313, OAL Dkt. No. EDS 5680-09, Final Decision (June 1, 2009); Franklin Twp. Bd. of Education v. N.K. on Behalf of M.M., OAL Dkt. No. EDS 07818-16, Final Decision (June 6, 2016). Petitioner, in the present matter, is not seeking the resumption of the educational program A.S. was previously enrolled in. Petitioner is rather seeking to immediately place A.S. at a different school placement and create a new IEP. Further undermining their claim of irreparable harm is the fact that Petitioner asserts, in her filing, that A.S. will be enrolling in Somerset Academy at the recommendation of the staff at VPGH. Because A.S.' educational needs will presumably continue to be met by this recommended enrollment, there is no allegation of irreparable harm in Petitioner's complaint. Accordingly, I **CONCLUDE** that Petitioner has failed to meet her burden to demonstrate this required prong to justify emergent relief.

Regarding the second prong of the test for emergent relief, Petitioner has well-defined rights following A.S.' placement to have A.S.' IEP reviewed by VPGH, see N.J.A.C. 6A:14-8.1, to have VPGH place A.S. in an appropriate educational placement and pay the district board of education where A.S. is placed, N.J.A.C. 6A:14-8.3, and for DCF CSOC to provide A.S. with a free and appropriate educational program. N.J.A.C. 6A:17-3.3, 6A:17-3.2(a)(1)(i). What is lacking in the present matter, as detailed above, is any legal rights to their claims against the Respondent for the relief being sought. For this reason, I **CONCLUDE** that Petitioner has failed to meet her burden to demonstrate a well-settled legal right underlying her claim against Respondent.

Having concluded that Petitioner has not met three of the four requisite standards for emergent relief, I need not go to the fourth standard. However, in order to give a full review of the petition, I will discuss the equities. If the requested relief is not granted, H.S. will have to continue to work with CSOC and VPGH to obtain an appropriate educational placement for A.S. While this is certainly an additional burden on Petitioner, the cause for the change in circumstances which impacted A.S.' current



educational program was not the result of a unilateral action or failure to act by the District, but rather the result of the actions of a State agency who is not a party to these proceedings and who is presently responsible for ensuring A.S. receives a free and appropriate education. N.J.A.C. 6A:17-3.3. Further, for the reasons detailed above, the relief being sought cannot be obtained from the named Respondent. For these reasons, I **CONCLUDE** that a balancing of the equities in this matter do not yield a favorable result for Petitioner and that the equities in this matter balance in favor of Respondent.

To justify the granting of emergent relief, all four of the Crowe v. De Gioia standards as codified in N.J.A.C. 6A:3-1.6 must be met and, for the reasons detailed above, none of those standards have been meet in this matter. I **CONCLUDE**, therefore, Petitioner has not met these required standards, and the petition for emergent relief therefore must be **DENIED**.

### **ORDER**

Having concluded that Petitioners have not met the four requirements for emergent relief, Petitioners' request for emergent relief is **DENIED**.

Because, for the reasons detailed above, the petition fails to include all the indispensable parties that should have been named in this action, this decision on application for emergency relief dismisses all of the claims raised in the due process complaint against the named Respondent; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. §1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C.A. §1415(i)(2). 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



October 28, 2020  
DATE

DAVID M. FRITCH, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

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**APPENDIX**

**EXHIBITS**

**For petitioner:**

None

**For respondent:**

Documents submitted with Respondent's response to Petitioner's petition:

- Exhibit 1 H.S. obo A.S. v. Cherry Hill Township BOE, EDS 09179-2019, Final Decision Approving Settlement
- Exhibit 2 Neuropsychological Evaluation, A.S.
- Exhibit 3 IEP Documents
- Exhibit 4 Cherry Hill Public School District, Grade 10 IEP
- Exhibit 5 Cherry Hill Public School District, Grade 11 IEP