State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING EMERGENT RELIEF

OAL DKT. NO. EDS 04326-22

AGENCY DKT. NO. 2022-34373

S.K. on behalf of A.K.,

Petitioner,

v.

FLEMINGTON-RARITAN REGIONAL BOARD OF EDUCATION,

Respondent.

S.K., on behalf of A.K., petitioner, pro se

John B. Comegno, III, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: June 2, 2022 Decided: June 3, 2022

BEFORE **SARAH G. CROWLEY, ALJ**:

STATEMENT OF THE CASE

S.K., on behalf of, A.K. (petitioner) seeks emergent relief pursuant to N.J.A.C. 6A:14-2.7 for injunctive relief to prevent the evaluations of A.K. The Child Study Team at the Flemington-Raritan Regional School District (District) seeks to conduct a social

history, a psychological evaluation, an educational evaluation and a speech-language evaluation based on academic struggles of A.K. A.K.'s mother had consented and the father, S.K., has filed this action seeking to prevent the evaluations.

PROCEDURAL HISTORY

On May 23, 2022, the petitioner filed an Emergent Due Process Petition and Request for Emergent Relief with the Office of Special Education Programs (OSEP). The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on May 31, 2022. The District filed opposition and petitioner filed a response to the opposition on June 1, 2022. Oral argument on the motion was held on June 2, 2022, and the record was closed.

FACTUAL DISCUSSION

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

1. A.K. is an eleven-year-old student who attends school in the Flemington-Raritan Regional School District.

2. In April of 2022, A.K. was referred to the Child Study Team by his teachers based upon his academic struggles, which was documented by his teachers.

3. The Child Study team met on May 4, 2022, and recommended a social history, a psychologic evaluation, an educational evaluation, and a speech-language evaluation.

4. The parents were both present at the child study team meeting.

5. The mother consented to the proposed evaluation, but the father, S.K., did not.

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).

Beginning with the first requirement, 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).

The moving party bears the burden of proving irreparable harm. More than a risk of irreparable harm must be demonstrated. Continental Group v. Amoco Chemicals Corp., 614 F.2d 351, 359 (D.N.J. 1980). Here, the District asserts that the evaluations are required to assess A.K. for special education services and that such evaluations are essential to meeting its obligation to provide a free and appropriate public education (FAPE). A.K.'s teachers and the child study team have recommended these evaluations to assess his need for any special education services. S.K. has argued that such evaluations are not necessary and that conducting such an evaluation will cause irreparable harm to A.K. by "negatively impacting his self-esteem," and that his performance is currently adequate. However, S.K. has not provided any evidence that these evaluations are not necessary and that they will cause irreparable harm.

Therefore, I **CONCLUDE** that the petitioner has failed to meet his burden of establishing a clear showing of immediate irreparable injury unless the requested relief is granted.

Secondly, the petitioner must also demonstrate that the legal right underlying their claim is settled and they must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. It is well-settled that the Individuals with Disabilities Education Act (IDEA) requires a school district to provide a FAPE to all children with disabilities and determined to be eligible for special education. 20 U.S.C. § 1412(a)(1)(A). According to N.J.A.C. 6A:14-3.3(a), a district board of education has an obligation to locate, refer, and identify students who may have disabilities due to physical, sensory, emotional, cognitive, or social difficulties. This obligation is often referred to as a school district's "child find" obligation. Thereafter, a student may be referred to a child study team for evaluation to determine eligibility for special education programs and services. N.J.A.C. 6A:14-3.3(e). If a child study team determines that an evaluation is warranted, the district must request and obtain consent to evaluate the student. N.J.A.C. 6A:14-3.4(b). If the parent refuses to provide consent

to conduct the initial evaluation, the district may file for a due process hearing to compel consent for the evaluation. N.J.A.C. 6A:14-3.4(c).

Here, the petitioner argues that the District is seeking to conduct a medical assessment under N.J.S.A. 18A:35-4.8. However, even assuming the evaluations that the District is seeking were medical in nature, there is an exception for the assessment of a potential handicapped in school age children. The District has a well-settled right to complete an evaluation plan, which may include, among other things, a psychological and educational evaluations to assess whether A.K. is eligible for special education services and placement. Accordingly, I **CONCLUDE** that the petitioner has failed to meet the second prong of the emergent relief standard in that the legal right underlying their claim is settled.

In evaluating the petitioner's likelihood of prevailing on the merits of their underlying claim, there are no material facts in dispute in this matter. There is significant precedent to support allowing school districts to conduct evaluations in connection with evaluating a child for special education services that may be required in order to provide FAPE. See, e.g., Millville Board of Education v. S.L. o/b/o Z.B., EDS 15556-18, Final Decision, (November 5, 2018) http://lawlibrary.rutgers.edu/oal/search.html; Washington Township Board of Education v. C.L. and A.L. o/b/o N.L., EDS 06855-17, Final Decision, (May 22, 2017) http://lawlibrary.rutgers.edu/oal/search.html; Edison Township Board of Education v. M.B. and P.B. o/b/o M.B, EDS 2319-07, Final Decision, (April 11, 2007) http://lawlibrary.rutgers.edu/oal/search.html; Lawrence Township Board of Education v. D.F. o/b/o D.F., EDS 12056-06, Final Decision, (January 5, 2007) http://lawlibrary.rutgers.edu/oal/search.html; Trenton Board of Education v. S.P. o/b/o B.P, Final Decision, EDS 874-01, (March 23, 2001) http://lawlibrary.rutgers.edu/oal/search.html. As applied here, I **CONCLUDE** that the petitioner has not demonstrated a likelihood of prevailing on the merits. Clearly, the District has a likelihood of success, demonstrating that it has a legal right and obligation to assess A.K. and his needs for special education services and programs.

Finally, in balancing the relative equities of the parties' respective positions, the petitioner argues that such evaluations are unnecessary and will negatively impact A.K.

However, he does not support this argument with anything other than his belief that they are not necessary and could negatively impact him. When balanced against the District's need to conduct the evaluations in order to properly assess the child for special education services, the District, and A.K. will suffer greater harm than the petitioner if relief is granted. The District has documented and identified academic struggles with A.K. which may be the result of disabilities which may require special education and related services. Accordingly, the District must be permitted to investigate those concerns with the recommended evaluations. I **CONCLUDE** that, when the equities and interests of the respective parties are balanced, the District and A.K. will suffer greater harm than the petitioner if the requested relief is granted.

Based upon the foregoing, I **CONCLUDE** that the petitioner has met the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting emergent relief in this matter to enjoin the District from conducting the proposed evaluations of A.K.

ORDER

Accordingly, the petitioner's application for emergent relief to enjoin the District from performing psychological, social history, educational and speech-language evaluations on A.K. 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.

June 3, 2022
DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SGC:sm