



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

ON EMERGENT RELIEF

OAL DKT. NO. EDS 05084-23

AGENCY DKT. NO. 2023-36016

G.P. AND K.P. ON BEHALF OF G.P.,

Petitioners,

v.

**STRATFORD BOROUGH BOARD
OF EDUCATION,**

Respondent.

G.P. and K.P., petitioners, pro se

Daniel H. Long, Esq., for respondent (Wade, Long, Wood, & Long, LLC, attorneys)

Record Closed: June 13, 2023

Decided: June 14, 2023

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Petitioner parents, G.P. and K.P. on behalf of their minor child, G.P., seek the emergent relief of a change in the student's placement, including during Extended School Year (ESY), by moving the student from his current placement in homeroom and science class with general education students, to the Learning and Language Disability (LLD)

classroom, pending resolution of their due process request for a one-to-one aide for the student. Respondent, Stratford Borough Board of Education (the BOE or the District) opposes the emergent application for relief.

PROCEDURAL HISTORY

On June 9, 2023, petitioners submitted a due process petition for relief and a request for emergent relief to the Department of Education (DOE), Office of Special Education. The DOE transmitted only the emergent relief request to the Office of Administrative Law (OAL), where it was filed on June 9, 2023, to be heard as an emergent contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

The parent, K.P., completed a Request for Emergent Relief, Certification, and Request for Due Process Hearing on the DOE forms, which were transmitted with the emergent matter to be heard in the OAL. The emergent matter was scheduled for oral argument via Zoom audio/video technology on June 13, 2023. The District submitted a letter brief in opposition to the emergent request on June 12, 2023. Oral argument was heard via Zoom on June 13, 2023, with argument and information provided by mother, K.P., under oath. The District's counsel provided oral argument and some questions were responded to under oath by the Director of Special Services, Devon Shaffer, (Director Shaffer) and the school's Principal, Brian Blumenstein (Principal Blumenstein).

FACTUAL DISCUSSION AND ARGUMENTS

Based upon the written submissions and information provided during the Zoom proceeding, and having heard oral argument from the parties, I **FIND** as **FACTS** the following:

G.P. is nine years old and enrolled in the elementary school in the Stratford district for his third grade 2022–2023 school year. G.P. has an Individualized Educational Program (IEP). His mother, K.P., advised that G.P. has special needs, is “on the spectrum” and has sensory issues. K.P. explained that as part of his special needs, G.P. often “talks with his hands.”

The IEP for the 2022–2023 school year provides for G.P. being in a homeroom and science class with general education students. Those classrooms have a general education teacher, a special education teacher, and a classroom aide. His IEP also provides that G.P. receive pull out services for language arts and math in the school's Learning and Language Disability (LLD) classroom, with his special education teacher, Ms. V. At some point during this school year, G.P. had one hour of reading special instruction added to his IEP, which is provided by Ms. V., four times per week in fifteen-minute sessions, either during the homeroom class time or when G.P. is pulled out and in the LLD classroom with Ms. V.

G.P. does not have a one-to-one aide as part of his IEP. K.P. testified that in the prior school district where G.P. attended two years ago, he did have a one-to-one aide in his then IEP. She indicated that she “dissolved” that provision, and requested to remove the one-to-one aide from G.P.’s IEP when he was enrolled in the Stratford district. She stated that G.P. is in the choice school program and she allowed him to choose Stratford, where he wanted to attend to be with his friends. She now thinks he should have a one-to-one aide, which is her request in the underlying due process she filed, along with this emergent relief request, after an incident at school on June 2, 2023, between G.P. and a general education student.

K.P. asserts that G.P. is in a homeroom classroom and science class with general education students, each class having approximately twenty-six students. Principal Blumenstein explained that homeroom is approximately twenty-five minutes in duration at the start of the school day. Homeroom generally involves getting the students settled, taking attendance, taking lunch orders, and having general information meetings.

On Friday, June 2, 2023, G.P. was involved in an incident at school. K.P. understands that the students were outside for a Science Technology Engineering and Math (STEM) lesson and when G.P. was trying to go through a doorway, two general education students were in the way and G.P. put his hands in the face of one of the other general education students. The other student grabbed G.P.’s hands and squeezed them. K.P. stated that G.P. was recovering from a fractured finger. He has a buddy loop which is a splint for his finger. However, she admitted that being a child with sensory

issues, G.P. often removes the buddy loop, and did not have it on when the other student grabbed G.P.'s hands. She commented that G.P.'s doctor has indicated he no longer needs to wear the splint.

K.P. received notification of the incident after school hours on Friday, June 2, 2023. On Monday morning, June 5, 2023, K.P. stopped into the front office to speak to Principal Blumenstein. She communicated with him during that day, and later got an email from him, which she asserted indicated that after the matter was investigated, the investigator determined that G.P. was the instigator, whether intentionally or unintentionally, but both students made "poor choices." She was advised that it was a classroom based incident and appropriately handled by the classroom teacher. She complained that the school will not allow her to view a video tape of the incident, because other students are seen in the video.

K.P. requested that G.P. be removed from the general education homeroom and science classroom, based upon safety concerns and the "irreparable harm" that occurred to G.P. being in that classroom. She has asserted that his needs are "intense" and that G.P. has been made fun of and bullied multiple times during the school year and then the physical incident occurred on June 2, 2023. K.P. contends this is a safety issue for G.P. and the school is unable to ensure G.P.'s safety around general education students. Due to his disability, G.P. talks with his hands, spits, rocks, and is not aggressive. The general education students do not know how to react or deal with G.P. He cannot protect himself. K.P. does not want G.P. to interact with other general education students. His safety concerns are not being accommodated by the District.

She does not understand how G.P. can remember lines from movies he saw five years ago, yet when he tells her something that happened at school, it is a different narrative from the school representatives. K.P. says that G.P. is now having nightmares about the hand grabbing incident. He does not want to go to school because he does not feel safe. He no longer wants to go to the latchkey program. That is the after-school program, not part of his IEP, which K.P. has G.P. enrolled in. She acknowledged that he has been in school since the incident and there have been no issues for G.P. since June 2, 2023.

The District asserts that the emergent relief request has two parts, first requesting the change in placement from the homeroom and science classes to the LLD classroom, and the second part requesting that no general education students be around G.P. for ESY. The District contends the second part, regarding ESY, is a moot issue, since G.P.'s participation in the ESY program will not involve any general education students.

Regarding the requested immediate change in placement from homeroom and science class, the District contends that petitioners have not demonstrated the necessary factors under Crowe v. DeGioia, 90 N.J. 126 (1982), to be entitled to such emergent relief. The District asserts that G.P. has not sustained irreparable harm, nor can it be demonstrated that he will suffer irreparable harm if he is not immediately moved out of homeroom and science class to be away from general education students, for the last three days of the 2022–2023 school year. The District recognizes that the incident is upsetting to the parents, but no irreparable harm has occurred to G.P.

The District confirmed that K.P. was notified about the incident via a message from G.P.'s teacher, Ms. V. which stated:

Hi Mrs. [P],
I just wanted to let you know that today [G.P.] got into an argument with another student during STEAM outside. This student and another student were playing a game and [G.P.] put his hand in his face trying to get by, but didn't say anything. This student grabbed his hand and [G.P.] responded by yelling, "Let go or I'll slap you like Will Smith" at this point I intervened and separated them. I then spoke to both of them together and asked what happened and they both agreed on the above story. We talked about how it's important to use words rather than putting our hands in someone's face lets the person know what he is trying to do. The other student apologized for grabbing his hand and [G.P.] apologized to him for yelling at him. They both were calm and content going back into class. As always, I just wanted to make you aware of the incident and how we handled it!

(Exhibit A of District's Letter Brief, teacher's message to K.P.)

The District asserts that petitioners requested that Principal Blumenstein complete an investigation of the incident. Principal Blumenstein authored an email to K.P. on June 7, 2023, at 10:08 a.m., in which he stated:

Good Morning Mrs. [K.P.],

As promised, I fully investigated the incident on Friday regarding [G.P.] Listed below are the facts I was able to uncover.

- Two students were playing a game while waiting to re enter the building from a STEAM activity facilitated outside.
- [G.P.] approached the two students who were playing the game.
- When [G.P.] approached the students, he began waving his hand directly in the one students' face.
- [G.P.] did not say anything to this student.
- This student responded by grabbing [G.P.'s] hand to move it out of his face.
- [G.P.] again put his hand back in front of the student's face for a second time.
- The other student grabbed [G.P.'s] hand to move it out of his face again. I feel it's important to note that this student was not aware of [G.P.'s] hurt finger and I do not believe [G.P.] was wearing his buddy loop at the time. Ms. [V.] prompted him several times to keep it on, but he kept removing it throughout the day.
- When the student grabbed [G.P.'s] hand for the second time, [G.P.] yelled "Let me go or I'll slap you like Will Smith."
- At this time, Ms. [V.] approached the students.
- She asked both students what happened and they both agreed to the details I have included above.
- Ms. [V.] used this as a teachable moment. She assessed the situation, modeled correct behavior and had both students apologize for their inappropriate actions.

After my investigation, I determined that [G.P.] was the instigator in the conflict (intentionally or unintentionally) but both students made poor choices. This was a classroom based incident and was handled appropriately by the classroom teacher.

I spoke to Mrs. Egan [the school Superintendent] directly regarding this situation and informed her that I was taking care of it. You and I spoke at length on Monday and since I was investigating the events from Friday, there was no reason for the superintendent to be involved. Moving forward, I encourage you to continue communicating with the classroom teacher first, then myself.

Thank you.

(Exhibit A of the District's Letter Brief, email by Principal Blumenstein.)

The District asserts that this demonstrates the matter was handled appropriately, and there is no indication that G.P. was harmed or injured during the incident. There is no immediate action needed to prevent harm to G.P.

The District further asserts that petitioners are unable to demonstrate that their claim for relief rests upon settled law and has a probability of success on the merits. Petitioners have only cited this one incident of June 2, 2023, which the District believes was handled appropriately. Petitioners have been unable to demonstrate that G.P.'s needs will be met in the least restrictive environment, by taking him out of the homeroom and science classes, where there are general education students.

The District encourages a finding that when the hardships are balanced between the parties, as to the effect the requested change in placement would have upon each party, the hardship upon the District would be significant and tips in its favor that the relief should not be granted. It would be a hardship for the District to reshuffle and change the student's rooms and staffing, with only three days left for school. There is no homeroom class, without general education students, in which to place G.P. There is no science class, without general education students, in which to place G.P. There are other more restrictive settings in the school, such as the self-contained classroom for autistic students with behavioral and multiply disabled needs.

There are three days left in the 2022–2023 school year, with classes ending on June 16, 2023. The ESY program is slated to begin on July 5, 2023, and run through August 3, 2023. Director Shaffer indicated that G.P.'s ESY programming will be forty-five minute sessions from Monday through Thursday, in a one-to-one in person setting with a reading specialist. He will receive speech therapy sessions remotely for ESY, also as a one-to-one program. There are no other students present during G.P.'s ESY sessions.

LEGAL ANALYSIS AND CONCLUSIONS

The New Jersey Administrative Code provides that parent(s), guardian(s), or the District Board of Education (BOE), or a public agency, may apply in writing for emergency relief. N.J.A.C. 1:6A-12.1(a). An applicant for emergency relief must set forth in their application the specific relief sought and the specific circumstances they contend justify the relief sought. Id.

In special education matters, 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.

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

Petitioners are seeking the immediate relief of changing G.P.'s current placement in a general education homeroom and science class, to a LLD classroom, and to continue that relief through ESY, pending their due process request to have a one-to-one aide assigned to G.P. I **CONCLUDE** that the parent's request for emergent relief is a request for a change in placement, pending the outcome of the due process proceeding.

A request for emergency relief may be submitted when the applicant is seeking immediate relief pending the outcome of a due process petition. N.J.A.C. 6A:3-1.6(a). In order to prevail in their request, the applicant for emergency relief must demonstrate to the Administrative Law Judge (ALJ) the standards for such relief as set forth in Crowe v. DeGioia, 90 N.J. 126 (1982); See N.J.A.C. 6A:3-1.6(b). Those standards are:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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:3-1.6(b); See Crowe v. DeGioia, 90 N.J. 126, 132-135 (1982).

Petitioners bear the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. Petitioners must demonstrate this by "clear and convincing proof" in order to have the emergent relief granted. American Employer's Ins. Co. v Elf Atochem North America, Inc., 280 N.J. Super. 601, 610-611 n.8 (App. Div. 1995.)

Petitioners must demonstrate irreparable harm will occur to G.P. if he is not immediately moved from the general education homeroom and science class. "Irreparable harm" is defined as the type of harm "that cannot be redressed adequately by monetary damages." Crowe, 90 N.J. at 132-33. The irreparable harm standard contemplates that the harm be both substantial and immediate. Subcarrier Communications v. Day, 299 N.J. Super. 634, 638 (App. Div. 1977).

K.P. has indicated that irreparable harm "can and did take place" to G.P. She is concerned for G.P.'s safety after the incident of June 2, 2023, when the general education student reacted to G.P. waving his hands in the student's face by grabbing G.P.'s hands and squeezing them. Although G.P. was recovering from a fractured finger, there was no testimony that the hand squeezing caused G.P. to reinjure his finger or that he sustained any physical injury. K.P. asserted during oral argument that G.P. is now having nightmares related to the incident and that he does not want to go to school or the latchkey program. She acknowledged that he has attended school since the incident and there have been no problems or concerns. K.P. asserts that G.P. has been bullied and harassed throughout the school year by some general education students, yet provided no specifics, nor

demonstrated that such allegations have or will cause irreparable harm to G.P. if he is not removed from the homeroom and science class where there are general education students.

G.P. was deemed to be the instigator of the event “intentionally or unintentionally,” with both students seen as having made poor choices. Neither student was disciplined. Rather, the teacher addressed the situation in the moment and reported that both students apologized to one another. No one was injured.

There has been no clear and convincing proof that the June 2, 2023, incident has caused irreparable harm to G.P. nor that he will suffer irreparable harm if he is not moved out of the homeroom and science classes for the last three days of the school year. He is reportedly having nightmares, specific to the June 2, 2023, incident, and does not want to attend school, yet he has been in school without incident. The nightmares have not been reported as being disabling to G.P. in any way. He will only need to attend school three more days. His ESY will occur thereafter without interaction with general education students. I thus **CONCLUDE** that it has not been demonstrated that irreparable harm did occur or will occur to G.P. if he remains in the homeroom and science classes where general education students are present.

The second and third prongs of the Crowe standards require petitioners to demonstrate that their claim for relief rests upon settled law and there is a probability for success on the merits. The District continues to follow G.P.’s IEP for the 2022–2023 school year, with placement in the least restrictive environment, including programming with G.P. in a homeroom class and science class with general education students. There is a general education teacher, special education teacher, and a classroom aide in those classes. Petitioners are now contending that based upon the June 2, 2023, incident, G.P.’s disability is not being accommodated by the District, since this is a safety issue if he is kept in classes where general education students are present. Their underlying due process claim requests that G.P. be assigned a one-to-one aide.

The law is settled in that the District is required to deliver a Free Appropriate Public Education (FAPE). 20 U.S.C. § 1412(a)(1). FAPE includes special education instruction and related services designed to meet the needs of the child. 20 U.S.C. § 1401(9);

N.J.A.C. 6A:14-1.1, et seq. This one incident on its face does not demonstrate by clear and convincing evidence that petitioners will be successful in demonstrating that FAPE is not being delivered and that the child should be removed from classes with general education students and that a one-to-one aide is needed, as is sought in the underlying claim. I **CONCLUDE** that petitioners have not demonstrated they are likely to prevail on the merits of the underlying claim. That is not to say that petitioners will absolutely not prevail on their underlying claim and are foreclosed from that proceeding. The conclusion is based upon the limited information provided in this emergent proceeding, which has not demonstrated the likelihood of success on the merits of the request for a one-to-one aide.

The final prong of the Crowe review requires a balancing of the relative hardships to the parties, to determine which party would have greater harm occur if the emergent relief was not granted. The ESY session is a non-issue with respect to petitioners' request to keep general education students away from G.P. His ESY sessions will be delivered in person or remotely, in one-to-one settings between G.P. and the professional provider. No other students will be present. I **CONCLUDE** that any asserted harm to occur to G.P. if general education students are in his class, is a moot issue, with respect to ESY.

There are only three days left in the 2022–2023 school year. G.P. has been attending school since the June 2, 2023, incident, without issues involving himself or any general education students. It has not been demonstrated that irreparable harm will occur to G.P. if he remains in homeroom and science class, as per his IEP, at this time. The District asserts it is a significant hardship to shuffle things around if G.P. were to be moved out of the homeroom and science class, with only three days left in the school year. Although this is not seen as being a “significant” hardship to the District, the requested relief is to put G.P. in the LLD classroom for homeroom and science class, which does not appear to be logistically possible. The LLD classroom is where G.P. goes for his pull out instruction for language arts and math with his special education teacher.

The only plausible sounding alternate location would be in the more restrictive, self-contained classroom with the multi-disabled students. That could be a greater hardship upon G.P. by placing him in a more restrictive environment than as set forth in

his IEP. At this point in the school year, with no issues for G.P. since the June 2, 2023, incident, and with only three days to go, the hardship upon the District to coordinate and create a new location/placement for G.P. for those classes outweighs the perceived safety risk K.P. alleges that G.P. faces if he is in class with general education students. I **CONCLUDE** that petitioners have not demonstrated that the alleged hardship to G.P. if he remains in homeroom and science class for the last days of the 2022–2023 school year with general education students, outweighs the hardship to the District if it were required to immediately remove G.P. from those classes with general education students.

Having concluded that petitioners have not demonstrated all four prongs of the Crowe factors, I must **CONCLUDE** that petitioners' request for emergent relief is **DENIED**.

ORDER

It is **ORDERED** that the petitioners' emergent relief request to change the student's placement from his homeroom and science classes to a setting without general education students, pending the outcome of the due process petition, is **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 14, 2023

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency

Date Mailed to Parties:

EBF/gd

APPENDIX

EXHIBITS

For petitioners

Petitioner's Request for Emergent Relief, Certification, and Due Process filings,
submitted to DOE on June 9, 2023

For respondent

The District's Letter Brief in opposition to the emergent relief