



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

ON EMERGENT RELIEF

OAL DKT. NO. EDS 12406-23

AGENCY DKT.NO. 2024-36732

D.K. & J.K. ON BEHALF OF M.K.,

Petitioner,

v.

**BERKELEY HEIGHTS TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Douglas F. Dresher, Special Education Advocate for petitioners

Charolyn R. Chaudry, Esq. for respondent on behalf of respondents
(Chaudry Law)

Record Closed: November 16, 2023

Decided: November 17, 2023

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE

D.K. and J.K. on behalf of minor child M.K., brings this action seeking for M.K. be returned to Governor Livingston High School with appropriate IEP supports and Effective School Services (ESS) program. The Berkeley Heights Township Board of

Education (District) brings a cross motion for temporary home instruction while M.K. completes the IOP program and the Districts seeks an out of district placement.

PROCEDURAL HISTORY

On November 13, 2023, the Office of Special Education Programs transmitted Parents matter to the Office of Administrative Law (OAL) for emergent disposition. On November 14, 2023, the Office of Special Education Programs transmitted the District's matter to the Office of Administrative Law (OAL) for emergent disposition as well as a due process hearing. The district filed opposition to the motion of Parents on November 15, 2023, under OAL Docket Number EDS 12601-23. Oral arguments were held on November 16, 2023.

FACTUAL DISCUSSION

After carefully considering the documentary evidence presented, and having had the opportunity to hear oral arguments, I **FIND** the following **FACTS**:

M.K. was a student at Governor Livingston High School in Berkeley Heights. She receives special education services. In January 2022, M.K. had a psychiatric evaluation done by Dr. Richard Kleinmann, who recommended consideration of whether M.K. would benefit from participation in a partial day program such as High Focus centers or Gen Psych.

An IEP meeting was held on January 2, 2023. It was determined that a therapeutic day school should be considered for M.K. The parents rejected this and it was agreed that a partial school day schedule would be used. M.K. would come to school for one class per day, which would increase to four classes per day. She would have home instruction for her other classes. M.K. was unable to attend those classes. The school psychologist could not deescalate M.K. when dysregulated.

An IEP meeting was held on January 31, 2023, where the IEP team recommended home instruction pending an alternative placement at a therapeutic day

school. The parents agreed to this. When the out-of-the-district schools offered intakes for M.K., the parents changed their mind and contested going to the intakes.

M.K. had a psychiatric evaluation in February 2023 by Dr. Jacob Jacoby who recommended M.K. be in a more comprehensive academic environment that could offer her counseling such as Rutgers Behavioral Health.

An emergent relief motion was heard in March 2023. The result of that was the stay-put which was a continuation of the partial day schedule with an increase in attendance if possible.

The parties subsequently entered into a settlement where the parents agreed to visit three out of district placements and the District would pay for an independent Neuropsychological evaluation. The independent evaluator, Dr Jonathan Mack recommended that M.K. enter a partial hospitalization program and then attend Princeton House. Dr. Mack diagnosed M.K. with Disruptive Mood Dysregulation Disorder, Other Specific Neurodevelopmental Disorder with executive function and to some degree working memory and processing speed deficits, Developmental Coordination Disorder, Generalized Anxiety Disorder, Other Specified Personality Disorder with nascent borderline and narcissistic features, Specific Learning Disorder with impairment in reading: word reading accuracy, reading rate or fluency, reading comprehension, mild to moderate, rule-out autism spectrum disorder and rule out attention-deficit/hyperactivity disorder combined presentation. Dr. Mack believes that M.K. should be treated by a board-certified child and an adolescent psychiatrist. The parents did not follow Dr. Mack's recommendation.

The District contracted with ESS to provide tier three services to M.K. for the 2023-2024 school year. This is the highest level of services provided to districts. M.K. was to get group therapy twice a week, individual therapy once a week, family therapy twice a month and monthly parent support groups. M.K. refused to attend the group therapy. She did not attend scheduled individual therapy sessions but seeks out ad hoc sessions and occasionally therapeutic check-ins.

On October 4, 2023, the IEP team wanted M.K. to have a higher level of care, an evaluation of M.K. and an intensive therapy program. The parents resisted this. The Parents' advocate requested four weeks for further information and to see if M.K.'s attendance, participation and engagement in class would improve. The District agreed but noted if this failed that M.K. would be placed on home instruction pending an out of district therapeutic placement.

On October 11, 2023, M.K. in an ESS session, became agitated and stated that she wanted to kill herself. M.K. was unable to deescalate where she was able to communicate a plan for her safety. She was engaging in self-harm by scratching herself and pulling her hair. The District recommended that M.K. have immediate follow-up with a psychiatrist or be taken to the emergency room. A risk assessment was done. Rafael Contreas, an APN, DNP met with Parents and M.K. He completed a school re-admittance for M.K. on October 16, 2023.

On October 24, 2023, M.K. went to ESS to report a classroom trigger. She became aggressive and was unable to deescalate. She engaged in self-harm and stated, "You are going to make me kill myself." A risk assessment was done at that time. The District attempted to follow up with the parents who refused to take the risk assessment paperwork.

On October 30, 2023, the District spoke with Contreras who stated that he sees M.K. briefly each month for medication modification and monitoring. He agreed that M.K. would benefit from a placement where she can receive a higher level of care. A note from Contreras dated November 3, 2023, states that his recommendation is that M.K. engage in an Intensive Therapy Program (IOP) and once the higher-level treatment is completed, then she should be able to return to school. ESS recommended that M.K. receive a higher level of care.

M.K. displays explosive behaviors and inappropriate language toward peers and staff and resistance to using de-escalation techniques. She is inconsistent in her

attendance at school. In her history class as of October 4, 2023, M.K. attended class thirty-two percent of the time and was absent sixty-eight percent of the time. In English class for that time M.K. was present fifty-three percent of the time and absent forty-seven percent of the time.

One teacher stated that M.K. makes disparaging and accusatory comments about other students in class. These students become hesitant or afraid to participate. M.K. has negatively impacted the students in the ALL room, which is a place where students can work and get academic assistance. M.K. has come into the room yelling, cursing, and throwing papers of work that she has to complete. When she did this a student became visually disturbed and unable to communicate during M.K.'s presence. M.K.'s screaming and slamming of objects, her cursing and threatening while in the ESS room can be heard outside of the ESS room. This made the students in the class near the ESS room uncomfortable, the students had to make edits to its film project to eliminate M.K.'s loud cursing. M.K.'s outbursts from the ESS room can be heard in the library. When M.K. is dysregulated, she engages in self-harm.

On November 13, 2023, Gen Psych provided a letter stating that while M.K. was in their care, she denied homicidal and suicidal thoughts and does not present a danger to herself or others and is cleared to attend school.

M.K. is currently receiving her classes by home instruction. The District's position is that it cannot provide FAPE to M.K. at the Governor Livingston High School.

LEGAL ANALYSIS AND CONCLUSION

The standards for the granting of emergent relief are set forth in N.J.A.C. 6A:3-1.6(b). Emergent relief may be granted 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 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 parents did not address the criteria for emergent relief in their motion. Although, in the motion the parents state that home instruction will significantly impact her socially and emotionally, they have not provided a medical or psychological report to verify that M.K. will suffer irreparable harm. In addition to this the parents did not address the other three criteria: The legal right underlying the petitioner's claim is settled;

The petitioner has a likelihood of prevailing on the merits of the underlying claim; and 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. Each of the criteria for emergent relief must be met for the relief to be granted.

In this matter, M.K. is explosive and dysregulates which the District cannot de-escalate. She also inflicts self-harm. She had two suicide ideations while she was at school. It is dangerous for M.K. to be at Governor Livingston High School. In addition, two doctors, Contreras and ESS stated that she needs a higher level of care that cannot be given at Governor Livingston high school. The right underlying the District's claim is settled, there is a likelihood of prevailing on the merits and when balancing the interests of the parties, the District will suffer greater harm if the relief is not granted.

I **CONCLUDE** that the petitioners have not met the requirements of N.J.A.C. 6A:3-1.5(b).

ORDER

Based on the above, it is **ORDERED** that the petition for emergent relief in this matter be and 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 Programs.

November 17, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

November 17, 2023_____

Date Mailed to Parties:

November 17, 2023_____

ljb