State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING EMERGENT RELIEF
OAL DKT. NO. EDS 11694-24
AGENCY DKT. NO. 2025-38083

K.P. and G.P. ON BEHALF OF G.P.,
Petitioners,
v.
GLOUCESTER TOWNSHIP BOARD OF EDUCATION,
Respondent.

K.P., pro se, for petitioner

Susan S. Hodges, Esq. for respondent (Parker McCay, P.A., attorneys)

Record Closed: August 29, 2024 Decided: August 30, 2024

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioners K.P. and G.P., parents of minor student G.P., seek emergent relief and placement of G.P. in a Learning or Language Disabilities (LLD) program, as designated in his Individualized Education Program (IEP) from Stratford School District, his last district of attendance. Petitioners further contends that a Multiple Disabilities

(MD) program would be more comparable to his prior program than the program offered by respondent.

Respondent Gloucester Township Board of Education (respondent or District) argues that in accordance with N.J.A.C. 6A:14-4.1(g), it immediately offered a comparable program to G.P. upon his transfer from his last school district of attendance. It further maintains that when parents voluntary transfer intrastate, the "stay-put" provision does not apply, and the new school district need only provide services comparable to those the student had been receiving under the IEP in effect before the transfer. Thus, petitioners request for emergent relief does not fall within any of the specifically enumerated categories under N.J.A.C. 6A:14-2.7(r).

PROCEDURAL HISTORY

Petitioners filed a Request for a Due Process Hearing and Request for Emergent Relief with the Office of Special Education Programs of the New Jersey Department of Education, (OSEP). The Request for Emergent Relief was transmitted by OSEP to the Office of Administrative Law, (OAL) where it was filed on August 27, 2023, as a contested case. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15; N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13. A hearing was conducted on August 29, 2023, during which oral argument was heard. The record closed that day.

FACTUAL DISCUSSION

The underlying facts, are derived from the oral argument and the contents of the petition, Certification of Violet Martin, Ed.D, and brief:

G.P. was born on December 2, 2013, and is now ten years old. During the 2023-2024 school year, G.P. was eligible for special education and related services under the classification of Communication Impairment. (Certification, Exhibit A.) He attended Parkview Elementary School in the Stratford School District. On June 12, 2024, his IEP for the 2024-2025 school year was developed for implementation by Stratford. Ibid.

The IEP specified the following summary of Special Education Programs and Related Services:

> Special Class Mild/Moderate Learning or Language Disabilities - Language Arts - 2x Daily 60 min
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> Special Class Mild/Moderate Learning or Language Disabilities – Math - 1x Daily 50 min.
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> In class Resource: Science - 5x Daily 35 min.
>
> In class Resource: Social Studies - 5x Daily 35 min.
>
> Speech-Language Therapy Group (not to exceed 4) - 52 x yearly 20 min.
>
> Special Transportation: Bus with Attendant
>
> [Ibid.]

The IEP further provided for modifications, supplementary aids and services, supports for school personnel, and testing accommodations. As stated in the IEP, G.P. would be placed in the "presence of general education students between 40% and 79% of the school day (2024-2025)." Ibid.

Petitioners moved and enrolled their son, G.P., in the District on July 1, 2024, for fifth grade. Following his enrollment, the District received his records from Stratford, the prior District, including his IEP for the 2024-2025 school year.

Dr. Violet Martin, Ed.D., Director of Student Services, in her Certification stated that the District does not offer a LLD classroom for Language Arts or Math for Grade Five. Dr. Martin attested that a Pull-Out Resource (POR) is the most closely comparable program offered in-District to the program offered by the previous school, Stratford. She further stated that the District intends to hold a thirty-day review meeting to discuss G.P.'s special education and related services.

On August 14, 2024, Dr. Martin sent a letter to K.P., regarding G.P.'s educational program for the 2024-2025 school year. The letter stated as follows:

> Based on the contents of the IEP he will receive the following services:
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> Resource ELA – 75 minutes daily
> Resource Math – 50 minutes daily
> Small Group Speech – 20 minutes twice per cycle

The letter further provided that a "30-day review will be held during the first month of school to ensure the IEP program is properly implemented to meet [G.P.'s] educational needs." (Letter attached to Petition.)

Upon receipt of the letter from Dr. Martin, K.P. filed this emergent request because she does not believe that the District is complying with G.P.'s IEP. Her concern is that G.P. will have no support in a general education setting. She stated that in Stratford, G.P. had the benefit of a special education teacher throughout the day, including special classes and lunch. K.P. believes that the program offered by the District failed to consider her son's hypersensitivity, his sensory processing disorder, and his communication impairment. She believes that her son will be traumatized by the size of the classroom and the lack of support. She would like the District to change his program to the MD classroom, even if its not her neighborhood school. Because the District cannot offer an LLD classroom and refuses to consider a MD classroom, K.P. contends that there has been a break in the delivery of services to her son.

The District maintains that its programming is comparable and offers more time per cycle in a small group instructional setting for G.P. than the IEP offered by the last district of attendance. The District further maintains that placement in the POR for ELA and Math is not a break in services because the LLD and POR settings are substantially comparable. Both programs offer targeted, individualized instruction designed to meet the specific needs of students with learning disabilities. Pursuant to N.J.A.C. 6A:14-4.6(m), Pull-Out support classrooms may not have a group size above six students to one teacher. Similarly, N.J.A.C. 6A:14-4.7(e), provides that a mild/moderate LLD setting may not have a group size above ten students to one teacher.

As stated in Dr. Martin's letter to K.P., the District intends to hold a thirty-day review meeting within the first month of school to make sure the IEP program is being properly implemented. As such, the District believes it is offering comparable services to start the school year but will hold a review and adjust as needed.

LEGAL ANALYSIS AND CONCLUSION

Petitioners maintain that they are entitled to emergent relief because there has been a break in services because the District is not offering an LLD setting.

The Individuals with Disabilities Education Act (IDEA) contains procedural safeguards intended to guarantee that parents are entitled to an "impartial due process hearing" before a local educational agency if they object to the decisions of the local school regarding the education of their disabled child. 20 U.S.C. § 1415(c)(2). The Act provides, "[D]uring the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child," 20 U.S.C. § 1415(j). The stay-put provision functions as an "automatic preliminary injunction," which dispenses with the need for a court to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits and removes the court's discretion regarding whether an injunction should be ordered. "Once a court ascertains the student's current educational placement, the movants are entitled to an order without satisfaction of the usual prerequisites to injunctive relief." Drinker v. Colonial School District, 78 F.3d 859, 864 (3d Cir. 1996).

However, the purpose described above is not implicated when a parent unilaterally acts to change a student's school district. When a student voluntarily transfers to a new district, "the status quo no longer exists." Ms. S. v. Vashon Island Sch. Dist., 337 F.3d 1115, 1133 (9th Cir. 2003). In such situations, the parents of the student must accept the consequences of their decision to transfer districts.

The IDEA's intrastate transfer provision provides that a school district receiving an intrastate transfer student with a previously existing IEP "shall provide . . . a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the [new district] adopts the previously held IEP or develops, adopts, and implements a new IEP." 20 U.S.C. § 1414(d)(2)(C)(i)(I). Unlike the "stay-put" provision—which requires the continued implementation of the child's original IEP—the intrastate transfer provision requires only that the new district provide "services comparable" to those in the child's most recent IEP.

Like the IDEA's intrastate transfer provision, N.J.A.C. 6A:14-4.1(g)(1), provides:

> When a student with a disability transfers from one New Jersey school district to another or from an out-of-State to a New Jersey school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:
>
> 1. for a student who transfers from one New Jersey school district to another New Jersey school district, if the parents and the district agree, the IEP shall be implemented as written. If the appropriate school district staff do not agree to implement the current IEP, the district shall conduct all necessary assessments and within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.

The requirements of the intrastate transfer provision extend beyond merely the provision of comparable services, and include the eventual development, adoption, and implementation of a new IEP (or the adoption of the previous IEP) by the transferee district. Here, the District has stated that it intends to meet the requirements of this provision and within thirty days meet to develop, adopt, or implement a new IEP for G.P.

Emergent relief shall only be requested for the following issues:

> i. Issues involving a break in the delivery of services;
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> ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
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> iii. Issues concerning placement pending the outcome of due process proceedings; and
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> iv. Issues involving graduation or participation in graduation ceremonies.
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> [N.J.A.C. 6A:14-2.7(r)1.]

Petitioners are maintaining that the proposed programming constitutes a break in services. As discussed, the District offered a comparable program and agreed to a review meeting within thirty days. As "stay put" does not apply, respondent's offer of a comparable program complies with N.J.A.C. 6A:14-4.1(g)(1).

K.P. has expressed with obvious sincerity her concern for her son and her belief that he requires more support than 125 minutes in a pull-out resource program. She is concerned about the amount of time, G.P. will spend in a general education setting and questioned whether his teacher will be able to provide the modifications listed in his IEP. While K.P.'s fears are understandable, the District's offer appears comparable to G.P.'s last IEP. The regulation allows the District thirty days to assess and ensure that G.P.'s needs are met. For these reasons, I **CONCLUDE** that the District's offer of a comparable program is not a break in services or a change in placement. For the same reasons, emergent relief is not warranted under N.J.A.C. 6A:14-2.7(r)1.

Finally, it is noted that this application for relief likewise fails under a traditional emergent relief application analysis of the following factors:

> 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.

See also Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132-133; Nabel v Board of Education of Hazlet, EDU 8026-09, Final Decision on Application for Emergent Relief (June 24, 2009). As discussed above, there is insufficient evidence tending to show that the special education and related services to be provided to G.P. in the Pull-Out Resource program and general education setting will be inappropriate and that G.P. will be unable to access his education. Moreover, the District has thirty days to offer a new IEP, if warranted. For these reasons, petitioners have not demonstrated that G.P. will suffer irreparable harm. Further, the IDEA contemplates compensatory damages when there has been a finding that a free and appropriate public education (FAPE) was not provided.

The law is well-settled that upon an intrastate transfer, the new District must provide services comparable to those described in the previously held IEP. Here, respondent maintains that it has offered comparable services, which will be subject to a thirty-day review.

With respect to the likelihood of success on the merits, petitioners assert that the program is not comparable because G.P. will not have access to a special education teacher for most of the school day. G.P. previously had in-class resource for science and social studies while in a general education setting. G.P. has never had a one-to-

one aide. It is unknown at this juncture whether G.P. will have access to support while in his general education setting. Petitioner's concerns are premature.

School districts' determinations are subject to deference. The "IDEA does not 'invite the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'" Damarcus S. v. District of Columbia, 190 F.Supp. 3d 35, 56 (D.C. Cir. 2016), (quoting Rowley, 458 U.S. at 206); see also E.E. v. Ridgefield Park Bd. of Educ., 856 Fed. Appx. 367, *7 (3d Cir. 2021). Without substantive evidence supporting the contention that the program proposed by the District will not offer G.P. sufficient support services as are necessary to permit him to benefit in a meaningful way from the instruction, I am unable to conclude that petitioners have demonstrated a likelihood of success on the merits.

Having found that petitioners failed to satisfy three of the four criteria required for emergent relief, I **CONCLUDE** that they have failed to meet their burden for an order directing the emergent relief they seek. Accordingly, I **ORDER** that the request for emergent relief be **DENIED**.

Although petitioners are not entitled to emergent relief, it appears that the District failed to consult with G.P.'s parents as required under N.J.A.C. 6A:14-4.1(g), before offering its comparable program. This is a procedural violation and should be immediately rectified by the District.

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. § 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 30, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency

Date Mailed to Parties:

KMC/tat