State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING
EMERGENT RELIEF
OAL DKT. NO. EDS 07463-24
AGENCY DKT. NO. 2024-37622

L.C. ON BEHALF OF R.A.,
Petitioner,
v.
SPOTSWOOD BORO BOARD OF EDUCATION,
Respondent.

L.C., petitioner, pro se

David B. Rubin, Esq., for respondent (David B. Rubin, P.C., attorneys)

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner, L.C., on behalf of R.A., an elementary-aged student diagnosed with multiple disabilities, brings an action for emergent relief against respondent Spotswood Boro Board of Education (Board or District) based on a break in R.A.'s educational services, seeking R.A.'s reinstatement to his District school pending the resolution of an underlying petition for due process.

R.A. is an alleged victim of sexual assault, and according to the District, R.A. began engaging in sexually-charged behavior, including statements and alleged conduct, with students at his school. L.C. and the principal at R.A.'s elementary school (Principal),[1] met on Friday, April 26, 2024, and R.A. did not attend school from Monday, April 29, 2024, until June 20, 2024, the last day of school in the District. The District generally argues that R.A.'s behavior was such that it was obligated to protect the other students while working to finding an appropriate placement for R.A.

PROCEDURAL HISTORY

On May 30, 2024, L.C. filed a request for emergent relief and request for due process petition with the Commissioner of the Department of Education (DOE), Office of Special Education. On June 4, 2024, DOE transmitted this matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for R.A. L.C.'s request for emergent relief, as transmitted to OAL, maintains there was a break in services for R.A. and seeks R.A.'s reinstatement to his in-district school pending the resolution of the petition for due process. The petition for due process seeks separate relief, namely the implementation of R.A.'s IEP and training for staff to meet R.A.'s needs within the district.

The Board provided a written response to the request for emergent relief on June 7, 2024. On June 10, 2024, L.C. submitted a letter and brief prepared by the Education Law Center, indicating that it was not representing L.C. but permitting her to submit the letter and brief it prepared in opposition to the Board's written response.

After a status conference on June 10, 2024, the parties agreed to adjourn the hearing for emergent relief from June 12, 2024, until June 24, 2024, to allow the parties the opportunity to resolve the underlying issues amicably.

The parties were not able to resolve these issues, and oral argument on the emergent relief application proceeded on June 24, 2024. The record remained open after the hearing to allow L.C. to present any other documents that she wished to be considered

[1] The principal for R.A.'s school will not be identified by name to maintain confidentiality.

as evidence for her request for emergent relief. L.C. presented additional documents in a timely manner, and the motion record closed on June 25, 2024.

The request for emergent relief is now ripe for adjudication.

FACTUAL DISCUSSION AND FINDINGS

Based on the petition for emergent relief and the briefs and certifications submitted regarding the same, I **FIND** the following as **FACT,** as it is undisputed:

1. R.A. is an elementary-level student at one of the District's schools who is involved in various extracurricular activities. (R-2 at 1; Pet. for Emergent Relief.) He is classified as eligible for special education and related services for multiple disabilities. (R-2 at 1.)

2. Pursuant to his Individualized Education Program (IEP) dated October 16, 2023, R.A. was to receive in-class resources for reading and language arts, pull-out resources for math, and group social skills counseling for the 2023–2024 school year, among other services. (Ibid.) R.A. did not need an extended school year program. (Id. at 19.)

3. R.A. is an alleged victim of sexual assault by an adult in the community. (Certification ¶ 2.) As a result of these allegations, DCP&P[2] and the Middlesex County Prosecutor's Office began investigations. (Id., Ex. A.)

4. After the alleged sexual assault, from approximately February 2024 through April 2024, R.A. began engaging in sexually-charged behavior at school, which included allegations that R.A. was making inappropriate comments and touching other students. (Ibid.)

[2] "DCP&P" is likely a reference to the New Jersey Department of Children and Families, Division of Child Placement and Permanency, which investigates all allegations of child abuse and neglect. See https://www.nj.gov/dcf/about/divisions/dcpp/ (last visited on June 25, 2024).

5. On Friday, April 26, 2024, the Principal held an in-person meeting with L.C. and advised L.C. that R.A. had been sharing information about his alleged sexual assault and other sexual acts with students. (Ibid.)

6. On Friday, April 26, 2024, the Principal spoke with Franklin Frias (Frias), a representative of DCP&P, about R.A.'s incidents at school. (Ibid.) Frias suggested that R.A. be separated from other students. (Ibid.)

7. Beginning on April 29, 2024, through June 20, 2024, the District's last day of school, R.A. did not attend school. (Pet. for Emergent Relief; Cert. Ex. A.)

8. On Monday, April 29, 2024, the Principal spoke with Frias about R.A.'s visit to a psychologist. (Ibid.) The Principal indicated that the school would "call [L.C.] and tell her to keep [R.A.] home tomorrow while we arrange for a sub to work 1:1 with him while we figure out next steps." (Ibid.)

9. On Friday, May 3, 2024, the Principal met with L.C., L.C.'s mother, a case manager, school psychologist, and mental health specialist to share a redacted version of incident reports regarding R.A. with L.C. and discuss options for R.A. (Ibid.) These options included ten hours weekly of instruction at home or a public location, which would not allow R.A. to participate in school activities, or direct instruction for four hours daily five times weekly at an alternate location from a certified teacher substitute and his paraprofessional, which would allow R.A. to participate in school activities with restricted privileges. (Ibid.)

10. During the May 3, 2024, meeting, the parties discussed long-term plans for R.A.'s education, which included three options for an out-of-district placement with mental health support. (Ibid.) L.C. did not sign any releases allowing for the dissemination of R.A.'s records for a potential out-of-district placement. (Ibid.)

11. On May 22, 2024, L.C. participated in a manifestation determination meeting. (Ibid.; P-2.) In this meeting, the participants determined that R.A.'s inappropriate sexual gestures, sexual comments, and touching peers were manifestations of R.A.'s disability. (P-2.) According to the Manifestation Determination Form, R.A. could not be removed from his current placement for more than ten days for disciplinary reasons. (Ibid.)

12. During the manifestation determination meeting, the parties reviewed the three interim options for R.A., which were: (i) home instruction two hours a day five times weekly; (ii) direct instruction with a certified substitute teacher at the District's Central Office four hours a day five times weekly; or (iii) home school option where L.C. would be responsible for R.A.'s education. (Ibid.) The parties also discussed a proposed new IEP, which included an option for an out-of-district placement for the summer and the beginning of the 2024–2025 school year. (Id. at Ex. B.) During this meeting, L.C. and L.C.'s mother indicated that they wanted R.A. to return to his school. (Id. at Ex. A.)

13. In a proposed May 22, 2024, IEP, the date of the meeting is indicated as May 22, 2024, and the purpose of the meeting lists "disciplinary action." (Id. at Ex. B.) The projected start date of the IEP was May 23, 2024. (Ibid.) The proposed IEP did not indicate that extended year placement was necessary. (Ibid.) Finally, the Consent to Implement Initial IEP was not signed. (Ibid.)

13. L.C. and the District have not agreed upon a new placement and/or IEP for R.A.

14. According to the Principal, "as a team, we didn't think any of the options were ideal for R.A. since he was being separated from his friends and teachers. We do believe that he is a victim who has been negatively impacted by something in his life that caused a sharp change in his behavior over the course of the last few months. That being said, there was enough

> evidence that made us very concerned for the other students' safety, as well as R.A.'s mental health. This led us to make the very difficult decision of temporarily removing R.A. from [his school] until he could get the specialized support that, we believe, he desperately needs." (Id. at Ex. A.)

LEGAL ANALYSIS AND CONCLUSION

Pursuant to N.J.A.C. 6A:14-2.7(r), as is relevant, emergent relief can be requested only 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;

Here, L.C.'s petition for emergent relief concerns all three of these issues, namely a break in the delivery of services, issues involving manifestation determinations, and placement pending the outcome of due process proceedings. Ibid.

Before analyzing the legal criteria for emergent relief, the "stay-put" provisions in the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq. (IDEA) and its New Jersey Administrative Code counterpart require that a child remain in his or her current educational placement "during the pendency of any administrative or judicial proceeding regarding a due process complaint." 34 C.F.R. § 300.518(a) (2023); see also 20 U.S.C. § 1415(j); N.J.A.C. 6A:14-2.7(u) (stating, "Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program, or placement unless both parties agree."). These stay-put provisions function as an automatic preliminary injunction and assure stability and consistency in the student's education by preserving the status quo of the student's current educational placement until the proceedings under the IDEA are finalized. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 863–65 (3d Cir. 1996).

At a hearing for emergent relief, the petitioner must show that they satisfy the following four standards:

> 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 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.
>
> [N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013). Arguably, the standard is a high threshold to meet, and I will address each prong separately. The fundamental concepts undergirding the "stay-put" provisions are paramount here and control the outcome of L.C.'s request for emergent relief.

1. Irreparable Harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)).

The threshold standard for irreparable harm in education is showing that once something is lost, it cannot be regained. M.L. ex rel. S.L. v. Bd. of Educ. of Ewing, EDU 04949-09, Initial Decision (June 15, 2009), modified, Acting Comm'r (June 15, 2009),

http://njlaw.rutgers.edu/ collections/oal/. It is also defined as the type of harm that "cannot be redressed adequately by monetary damages." Crowe, 90 N.J. at 132–33. In addition, the irreparable harm standard contemplates that the harm be both substantial and immediate. Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). For special education, irreparable harm may be shown when there was a significant interruption or termination of educational services. See C.W. and N.W. obo B.W. v. Willingboro Twp. Bd. of Educ., EDS 06635-06, 2006 N.J. AGEN LEXIS 837 (Sept. 19, 2006).

R.A. did not attend school from April 29, 2024, through June 20, 2024, which is a termination of the educational services that he was to receive under the October 16, 2023, IEP. Whether the District directed R.A. not to attend school or L.C. chose not to send R.A. to school is a disputed fact that may be addressed, if relevant, during the hearing on the underlying petition. The fact, however, is that R.A. was not in school at the end of the school year, and R.A.'s missed education is a harm that cannot be redressed by monetary damages. L.C.'s concerns about R.A. experiencing summer slide[3], particularly when he was not educated for almost two months, are valid. For the termination of R.A.'s educational services, I **CONCLUDE** that the harm to R.A. is irreparable.

2. Settled Legal Right

Next, emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). As previously discussed, under the IDEA, R.A. has an absolute right to "stay-put" in his current educational placement outlined in the October 16, 2023, IEP. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2023); N.J.A.C. 6A:14-2.7(u). The catalyst for R.A. not attending school from April 29, 2024, to June 20, 2024, is disputed; however, the fact that he was not attending school is undisputed.

In addition, L.C. and other participants held a manifestation determination meeting on May 22, 2024, where they concluded that R.A.'s sexually-charged language and

[3] Summer slide is described as learning loss when students do not engage in any educational activities during the summer.

behaviors were related to his disability. The Manifestation Determination Form from the District specifically provided that R.A. could not be removed from his current placement for more than ten days for disciplinary reasons. Once a determination is made that a student's behavior is related to his or her disability, the IEP team shall "return the child to the placement from which the child was removed, unless the parent and the [District] agree to a change of placement as part of the modification of the behavioral intervention plan." 20 U.S.C. § 1415(k)(1)(F)(iii).

L.C. did not agree with the District to a change in R.A.'s placement, and after the manifestation determination meeting, R.A. was not returned to school, as should have occurred pursuant to 20 U.S.C.A. § 1415(k)(1)(F)(iii). I note that R.A.'s alleged behaviors in school did not satisfy the criteria in 20 U.S.C. § 1415(k)(1)(G), which would allow the District to remove R.A. for an interim forty-five-day period, whether or not the behavior was a manifestation of the student's condition, in one of the following circumstances: (i) inflicted serious bodily injury on another; (ii) carried or possessed a weapon on school grounds or at a school event; or (iii) possessed, used or distributed a controlled dangerous substance on school grounds or at a school event. In sum, R.A.'s manifestation determination did not lead to the outcome required under the IDEA.

Based on the foregoing, L.C. has shown she has a legal right underlying her claim, and I **CONCLUDE** that L.C has satisfied this prong of the standard for emergent relief.

3. Likelihood of Success on the Merits

L.C. has shown that she is likely to succeed on the merits of the underlying claim for emergent relief. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "involves a prediction of the probable outcome of the case based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

I note here that the basis for L.C.'s request for emergent relief is different than her petition for due process; however, as discussed in Section 2, above, R.A.'s rights to the stay-put provisions under the IDEA and accompanying New Jersey regulations, allowing him to receive educational services in the District under his October 16, 2023 IEP, and the District's failure to return R.A. to school after the manifestation determination meeting, both indicate that R.A. has a reasonable probably of success on the merits for this request for emergent relief.

Accordingly, I **CONCLUDE** that L.C. has shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)). It is clear that the burden here is borne more heavily by L.C. and R.A. than the District. The District has provided R.A. with no education and related services under the October 16, 2023, IEP since April 29, 2024. The District cannot replicate the end of the school year and R.A.'s extracurricular activities for R.A. This is a burden that R.A. bears, not the District.

In addition, the District gave insight on its decision making regarding R.A. in a certification from the Principal. The Principal stated as follows:

> We do believe that [R.A] is a victim who has been negatively impacted by something in his life that caused a sharp change in his behavior over the course of the last few months. That being said, there was enough evidence that made us very concerned for the other students' safety, as well as R.A.'s mental health. This led us to make the very difficult decision of temporarily removing R.A. from [his school] until he could get the specialized support that, we believe, he desperately needs.
>
> [Cert., Ex. A. (emphasis added.)]

One of the purposes of the stay-put provisions in the IDEA is to prevent schools and administrators from making unilateral educational placements for students without parental consent when those students present challenges in their behavior or ability to learn. See Honig v. Doe, 484 U.S. 305, 323 (1988) (stating, "We think it clear, however, that Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school.").

While the catalyst for R.A.'s removal from school is a disputed fact, I cannot ignore the District's admission that its concern for the well-being of other students wreaked havoc on R.A.'s rights under the IDEA. Counsel for the District indicated at oral argument that it understands generally that it is subject to litigation and is simply picking its preferred litigation regarding this overall situation. Neither of these admissions nor arguments indicate any type of hardship on the District's part.

When balancing the equities here, the relative hardship that R.A. bears outweighs any hardship the District faces. I **CONCLUDE** that R.A. will suffer greater harm should emergent relief not be granted than the District if the requested relief is granted.

Accordingly, I **CONCLUDE** that L.C. has met all of the requirements set forth in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief in this matter.

ORDER

Accordingly, I **ORDER** that the petitioner's application for emergent relief be and hereby is **GRANTED**. Under the stay-put provisions set forth in 20 U.S.C.A. § 1415(j), 34 C.F.R. § 300.518(a) (2023), and N.J.A.C. 6A:14-2.7(u), R.A.'s October 16, 2023, IEP shall remain in full force and effect unless and until L.C. and the District mutually agree upon a new placement for R.A. In addition, I **ORDER** that R.A. shall return to school on the first day of school for the 2024–2025 academic year and shall be allowed to participate in any academic activities included in R.A.'s October 16, 2023, IEP.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order

is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. Since the parents requested the due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).

June 25, 2024
DATE

KIMBERLEY M. WILSON, ALJ

KMW/dw