State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER
ON EMERGENT RELIEF
OAL DKT. NO. EDS 10804-24
AGENCY DKT. NO. 2025-37910

R.F. AND J.F. ON BEHALF OF G.F.,
Petitioners,
v.
LAWRENCE TOWNSHIP BOARD OF EDUCATION,
Respondent.

Jamie Epstein, Esq., for petitioners R.F. and J.F. (Jamie Epstein Law, attorney)

Patrick Carrigg, Esq., for respondent Lawrence Township Board of Education (Lenox Law Firm, attorneys)

BEFORE **MICHAEL R. STANZIONE**, ALJ:

STATEMENT OF THE CASE

Petitioners R.F. and J.F. on behalf of their daughter G.F. bring an action for emergent relief against respondent Lawrence Township Board of Education seeking an order for at-home instruction pending resolution of the due-process petition. Petitioners would like home instruction so that G.F. could learn outside of the school environment where the alleged harassment, intimidation and bullying is taking place. Petitioners do

not meet all standards for emergent relief as set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6(b).

PROCEDURAL HISTORY

The petitioners filed a request for emergent relief and an underlying due-process petition at the Office of Special Education on or about July 11, 2024. On July 12, 2024, the matter was transmitted to the Office of Administrative Law as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Petitioners appeared pro se for oral argument regarding the application for emergent relief conducted on July 22, 2024. Emergent relief was denied on July 23, 2024. On August 23, 2024, petitioners hired counsel, who filed a motion seeking emergent relief for at-home instruction until the due-process matter was decided. Oral argument regarding the second application for emergent relief was conducted on September 9, 2024. The parties requested that the decision be held until the completion of settlement discussions. The parties had three settlement conferences, and a settlement on all the due-process issues could not be reached. The final settlement conference took place on October 1, 2024.

FACTUAL DISCUSSION

Petitioners

G.F. is a sixth-grade student attending Lawrence Intermediate School (LIS). According to the petitioners' request for emergent relief, G.F.'s mother is J.F., and R.F. is her father. The student is classified with a specific learning disability (dyslexia) and is receiving special education and related services through an individualized education program (IEP) dated January 10, 2024.

The due-process petition seeks out-of-district placement; however, petitioners allege that home instruction is necessary until the due-process petition is resolved because "Petitioners, are opposed to G.F. returning to the BOE's current in-person intermediate school where the toxic environment of harassment, intimidation, and bullying continuously occurs by both students and staffers." Petitioners' Brief at 28. They maintain

that G.F.'s health is in danger at LIS because of the multiple instances of harassment, intimidation, and bullying. On several occasions, the classmates bullying G.F. used her nut allergy as a weapon against her. G.F.'s pediatrician completed the BOE's required "Allergic Reaction Action Plan," which lists her allergy to peanuts and tree-nuts, and advised: "[G]ive epinephrine immediately for ANY symptoms if the allergen is likely eaten," and "[G]ive epinephrine immediately if the allergen was definitely eaten, even if no symptoms are noted." P-49 at 273.

One of the students listed in petitioners' Harassment, Intimidation, or Bullying (HIB) Form, filed in May 2023, mentioned killing G.F. and using her allergy to do so; this is the same student involved in several death threats, one of which was documented in a police report on February 3, 2023. P-2 at 4–5. For these reasons, petitioners maintain that if home instruction is not given pending resolution of the due-process petition, G.F. will suffer irreparable harm.

G.F. has been under the care of Children's Hospital of Philadelphia (CHOP) doctors for Gastroenterology and behavioral health, in addition to a community-based therapist for anxiety and stress due to the bullying she has endured, which is affecting her both mentally and physically. Submitted with Petitioner's Petition dated August 23, 2024, were letters from G.F.'s doctors, Dr. Sarah Mayer-Brown from CHOP, and two from Lauren Jefferson, LCSW from L Consultancy, LLC. P-37 at 189–195 and P-48 at 270–271. Dr. Sarah Mayer-Brown, her pediatric psychologist, wrote that "G.F. endured increased anxiety about eating at school after being teased for her food allergies and potentially being exposed to allergens by her pears." P-27 at 193. Lauren Jefferson wrote that it was best for G.F. to receive at-home instruction to stay out of the school environment. P-48 at 271. Petitioners thus assert that G.F.'s safety has been, and still is, a concern. Due to the school's continuous toxic environment, the BOE has failed to provide a safe learning environment for G.F. and has denied her a Free Appropriate Public Education (FAPE).

The current IEP did not reference G.F.'s anxiety, stress, or post-traumatic stress disorder. However, petitioners contend that in the current situation it is impossible for G.F. to receive a FAPE while enduring the ongoing bullying.

Respondent

The respondent maintains that this is the first time that the petitioners are raising these concerns. The respondent admits that an HIB complaint was filed during the 2022–2023 school year but notes that an investigation concluded that the allegations were unfounded. The IEP does not identify harassment, bullying, or intimidation as an issue. During the 2023–2024 school year, G.F. had 18.5 unexcused absences and 4 excused absences. R-C. Further, during the last three months of the 2023–2024 school year, G.F. had 6.5 absences out of 58 school days. According to the respondent, none of the absences were identified as school avoidance or related to bullying or harassment. It was also noted that the district disputed any medical, psychiatric, or psychological reports or treatment records submitted for the 2023–24 school year that indicated G.F. was experiencing anxiety or stress related to harassment or bullying or that indicated she was denied FAPE because of harassment or bullying.

Respondent maintains that academically, G.F.'s report card reflects that she consistently meets grade-level standards and/or exhibits progress towards meeting grade-level standards.

Lastly, respondent notes that petitioners seek a determination that G.F. will suffer a "break in services" based upon anxiety and an alleged unwillingness to attend Lawrence Township Public Schools. Essentially, petitioners seek an Order that a denial of FAPE has occurred due to alleged bullying in prior school years, incidents that occurred outside of school, and routine conflicts between G.F. and her peers. Respondent disputes that there has been bullying, as there have been no substantiated incidents of bullying, as that term is defined under New Jersey law, where G.F. was the victim. Also, there were no HIB complaints filed by G.F. or her parents during the 2023–24 school year. Rather, respondent contends that the evidence supports that she did well academically and socially during the 2023–24 school year. Consequently, at-home-instruction placement under these circumstances is unwarranted. The petition neither addresses nor sets forth facts that can meet any of the four required elements to prevail on emergent relief.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, district, or public agency may apply in writing for emergent relief. An emergent relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein, and if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

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.

Here, the petitioners seek an order for at-home instruction pending the final resolution of the due-process petition. This issue involves the determination of an interim alternate educational setting and is therefore appropriate before this tribunal.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6(b):

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.

The petitioners bear the burden of satisfying all four prongs of this test. Crowe v. DeGioia, 90 N.J. at 132–134.

The **first consideration** is whether petitioner will suffer irreparable harm if the requested relief is not granted. "Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a 'clear showing of immediate irreparable injury' . . . or a 'presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citations omitted). This was further explained by the New Jersey District Court:

> A party seeking a preliminary injunction must make a clear showing of immediate irreparable injury . . . Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a clear showing of immediate irreparable injury . . . Mere speculation as to an injury that will result, in the absence of any facts supporting such a claim, is insufficient to demonstrate irreparable harm.
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> [Spacemax Int'l LLC v. Core Health & Fitness, LLC, 2013 U.S. Dist. LEXIS 154638, at **4–5 (D.N.J. Oct. 28, 2013) (internal citations and quotations omitted).]

Based upon the prior actions of G.F.'s classmates, the petitioner has established that there is a potential risk that further harassment, intimidation, and bullying will occur. However, that risk does not equate to a clear showing of immediate irreparable harm. Petitioners have not shown that G.F. will suffer irreparable harm if this tribunal does not

grant the request that G.F. be given at-home instruction. In addition to the alleged bullying, petitioners reference G.F.'s food allergies, but there is no evidence provided, that respondent has not been willing to accommodate G.F.'s allergies.

The petitioners have raised some serious issues concerning school safety; however, now, there is insufficient evidence presented that supports the conclusion that G.F. will in fact suffer irreparable harm. Accordingly, I **CONCLUDE** that the petitioners have not met their burden of establishing irreparable harm.

The **second consideration** is whether the petitioners have shown their claim to be well settled. Petitioners are entitled to seek an order changing the placement when maintaining the current placement of a student is substantially likely to result in injury to the child or others. 20 U.S.C. 1415(k)(3)(A). However, the petitioners here have failed to show a settled legal right supporting their request to place G.F. in at-home instruction pending a due process proceeding.

As a recipient of federal funds under the Individuals with Disabilities Education Act, the State of New Jersey must have a policy that assures all children with disabilities the right to FAPE, 20 U.S.C. § 1412, which includes special education and related services. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to provide FAPE rests with the local public school district. N.J.A.C. 6A:14-1.1(d). The local district satisfies the requirement that a child with disabilities receives FAPE by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2024); N.J.A.C. 6A:14-4.3. Here, G.F.'s current IEP placement is a less restrictive environment than petitioners seek; the appropriate placement for G.F. must be determined in the due-process proceedings and not on an emergent basis. Petitioners have not met their burden to demonstrate clear and convincing evidence that any well-settled law exists to support their claim of an immediate placement in at-home instruction.

Accordingly, I **CONCLUDE** that the petitioners have not met their burden of establishing that their claim is well settled.

The **third consideration** is whether petitioners have a likelihood of prevailing on the merits. The petitioners have raised some serious issues regarding the safety of G.F. while she is in class. However, the respondent disputes that there has been ongoing bullying as alleged by the petitioners; that any alleged bullying has not been addressed; and that any alleged bullying has risen to a level where a denial of FAPE has occurred. It can be anticipated that petitioners' medical and respondent's educational professionals will be called to testify at the due-process hearing, where their conflicting opinions will be examined. Accordingly, prior to a full hearing, petitioners have not demonstrated a likelihood of prevailing on the merits of their claim and have therefore not met the third prong of the emergent relief standard.

Accordingly, I **CONCLUDE** that at this stage of the proceedings the petitioners have not demonstrated a likelihood of prevailing on the merits of their claim for out-of-district placement.

The **fourth requirement** for emergent relief entails a balancing of the interests between the parties. Here, the petitioners have not suffered a break in service. G.F. completed the school year, performed academically well, and had a generally satisfactory attendance record. G.F.'s IEP provides for 2024–25 programming and services and was agreed upon between petitioners and respondent. The record at this stage of the proceedings is limited, and so this tribunal is hard pressed to conclude that after six months the IEP should be supplanted with at-home instruction. The respondent has a plan and programming in place for the 2024–25 school year, and there is no showing, at this stage, that there has been a denial of FAPE. The petitioners cite several incidents of bullying that occurred in the 2022–23 school year and again early in the 2023–24 school year. Also, the petitioners have raised some serious concerns regarding school safety, but at this stage of the proceedings it has not been shown that there has been a denial of FAPE, and that G.F. should be placed out-of-district in a private school setting at taxpayer expense.

I **CONCLUDE** that at this stage of the proceedings the equities weigh in favor of the respondent.

Having considered the parties' arguments and submissions, I **CONCLUDE** that the petitioners have failed to meet the standard for emergent relief.

ORDER

It is **ORDERED** that petitioners' motion for emergent relief is **DENIED**.

This order on application for emergency relief remains in effect until the issuance of the final decision on the merits of the case. The underlying due process is scheduled for hearing on November 12, 2024. 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.

October 2, 2024
DATE

MICHAEL R. STANZIONE, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

APPENDIX

Witnesses

For petitioner

None

For respondent:

None

Exhibits

For petitioner:

Petition for Emergent Relief; (P-1 through P-60)

For respondent:

Response to Petition for Emergent Relief (R-A through R-K)