

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 05598-19

AGENCY DKT. NO. 2019-29803

**MONROE TOWNSHIP**  
**BOARD OF EDUCATION,**

Petitioner,

v.

**J.M. ON BEHALF OF E.M.,**

Respondent.

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**Katrina M. Register**, Esq. for petitioner, Monroe Township Board of Education  
(Trimble and Armano, attorneys)

**Zachary J. Marshall**, Esq., for respondent J.M. on behalf of E.M. (Broder Law  
Group, P.C., attorneys)

Record Closed: May 8, 2019

Decided: May 15, 2019

BEFORE **JEFFREY R. WILSON**, ALJ:

**STATEMENT OF THE CASE**

The Monroe Township Board of Education (petitioner/District) brings an action for emergent relief against J.M. on behalf of E.M. (respondent), seeking an order placing the minor student, E.M., at the Brookfield Academy for the remaining 2018-2019 school year and the 2019-2020 school year, in order to provide Free Appropriate Public Education (FAPE).

The respondent opposes the emergent relief requested and asserts that there is no break in service and that the petitioner failed to satisfy the element of irreparable harm. The respondent argues that the minor student should continue with the current homebound instruction pending the outcome of a fulsome due process hearing.

### **PROCEDURAL HISTORY**

Petitioner filed a request for emergent relief and a due process hearing on April 25, 2019, with the State Office of Special Education Programs (OSEP). On April 26, 2019, OSEP transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for the petitioner. The parties presented oral argument on the emergent relief application on May 1, 2019, at the OAL offices in Atlantic City. A telephone conference was held on May 8, 2019. At that time, the parties confirmed that all issues included in the request for emergent relief and the underlying due process had been resolved.

### **FACTUAL DISCUSSION**

E.M. is a fourteen-year-old student with disabilities. He has a diagnosis of Autism Spectrum Disorder, Impulse Control Disorder, and Bipolar Disorder, as well as a diagnosis of Type I Diabetes. He is eligible for special education and related services with an underlying disability of Multiple Disabled.

E.M. was placed at the Gloucester County Special Services School District's Bankbridge Regional School-South for the 2017-2018 school year. On or about November 2017, E.M. was suspended from that school for his actions and placed on homebound instruction pending an alternative placement. On January 3, 2018, a homebound instructor was assigned to E.M.; however, the homebound instructor refused to return to the home due to E.M.'s actions. A subsequent homebound instructor began on February 26, 2018. To date, E.M. remains on homebound instruction.

On or about May 4, 2018, J.M., on behalf of E.M., and through counsel, filed for due process seeking an updated Individual Education Program (IEP), compensatory

education and reimbursement for attorney's fees under OAL Docket No. EDS 07848-18/Agency Ref. No. 2018-27955<sup>1</sup>. The Monroe Township Child Study Team requested the parent, J.M., to sign releases to send E.M.'s student records to out-of-district placements to offer a program for the 2018-2019 school year which J.M. refused to do so, requiring the District to previously file an application for emergent relief under OAL Docket No. EDS 08792-18/Agency Ref. No. 2018-28307<sup>2</sup>.

J.M. agreed to act in good faith and engage in the interview and intake process to determine whether the Burlington County Special Services School District (BCSSSD) was an appropriate placement for E.M. J.M. further agreed to cooperate in the intake and interview process with the District in securing a program placement and further agreed to meet as soon as possible for an annual review meeting for the 2018-2019 school year. Counsel for the District and counsel for J.M. agreed that they would refrain from establishing an IEP until after a placement was secured for E.M.

On or about September 7, 2018, the District was notified that the BCSSSD did not agree to accept E.M. after his intake interview. Thereafter, in January 2019, J.M. agreed to sign additional releases for Creative Achievement, Hampton Academy and Brookfield Academy so that the District could attempt to secure an out-of-district placement for E.M.

On or about March 26, 2019, the District received an acceptance letter from the Brookfield Academy wherein E.M. was accepted into its program for the 2018-2019 school year. The aforementioned acceptance letter was supplied to counsel for J.M. under email, dated March 27, 2019.

On March 29, 2019, after J.M. toured the Brookfield Academy, counsel for the District received a letter from respondent's counsel that J.M. disagreed with any decision to place E.M. at the Brookfield Academy for the present or upcoming school year. The aforementioned letter addressed two concerns: 1) adequacy of nursing staff and 2) the Handle With Care Intervention Program.

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<sup>1</sup> This petition was formally withdrawn in April 2019.

<sup>2</sup> This petition was formally withdrawn in January 2019.

On April 3, 2019, counsel for the District addressed J.M.'s concerns in an email to her counsel and indicated that the Brookfield Academy has a full-time nurse on staff and provided the website link to the Handle With Care Intervention Program that details the program and its history along with their philosophy, safety statistics and frequently asked questions (FAQs).

J.M. will not accept the Brookfield Academy placement and wants E.M. to remain on homebound instruction until an appropriate out-of-district placement is secured. To date, E.M. continues on homebound instruction for over one year now, through a homebound instructor contracted through Brookfield Academy. The parties agree that the ongoing homebound instruction is very successful.

### **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.

On or about November 2017, E.M. was suspended from the Gloucester County Special Services School District's Bankbridge Regional School-South for his actions and placed on homebound instruction pending an alternative placement. E.M. is now accepted to the Brookfield Academy and the petitioner seeks an order placing the minor student, E.M., at the Brookfield Academy for the remaining 2018-2019 school year and the 2019-2020 school year, in order to provide free, appropriate public education (FAPE). Therefore, I **CONCLUDE** it has been established the issue involves a break in the delivery of services.

The standards for emergent relief are set forth in Crowe v. DeGoia, 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 petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

Here, the District is prevented from fulfilling its legal obligation to E.M. to provide FAPE by his parent's refusal to accept the placement at the Brookfield Academy. Therefore, I **CONCLUDE** that the petitioner has met its burden of establishing irreparable harm.

N.J.A.C. 6A:14-2.7(a) provides that any party may request a due process hearing. N.J.A.C. 6A:14-2.7(r) provides that any party may seek an order of emergent relief. The District is the responsible local education agency for E.M. and legally obligated to provide

him FAPE. Accordingly, I **CONCLUDE** that the petitioner has met its burden that the legal right of their claim is settled.

As stated above, the District is the responsible local education agency for E.M. and legally obligated to provide him FAPE. Here, the District is prevented from fulfilling its legal obligation to E.M. to provide FAPE by his parent's refusal to accept the placement at the Brookfield Academy. Therefore, I **CONCLUDE** that 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 respondent will suffer no harm. Furthermore, I **CONCLUDE** that all issues involved in the underlying due process have been resolved.

### **ORDER**

Having concluded that the petitioner has satisfied all of the requirements for emergent relief and that all issues involved in the underlying due process have been resolved, it is hereby **ORDERED** that E.M. shall be placed at the Brookfield Academy for the remaining 2018-2019 school year and the 2019-2020 school year, in order to provide FAPE.

It is further **ORDERED** that the appropriate parties, including J.M., shall convene on or before June 20, 2019 to develop an IEP for E.M. for the 2018-2019 school year and the 2019-2020 school year at the Brookfield Academy.

Finally, it is **ORDERED** that J.M. shall fully cooperate with all efforts, requests and requirements in developing the aforementioned IEP to ensure E.M.'s placement in the Brookfield Academy for the 2018-2019 school year and the 2019-2020 school year.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). 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.

May 15, 2019 \_\_\_\_\_

DATE

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**JEFFREY R. WILSON, ALJ**

Date Received at Agency

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Date Mailed to Parties:

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JRW/tat/lam