

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 06246-15

AGENCY DKT. NO. 2015-22691

V.R. ON BEHALF OF J.R.,

Petitioner,

v.

NEWARK BOARD OF EDUCATION,

Respondent.

V.R., father of **J.R.**, petitioner, pro se

Arsen Zartarian, Deputy General Counsel (Charlotte Hitchcock, General Counsel) and **Rita Barone**, Esq., (Purcell, Mulcahy, O'Neill & Hawkins, attorneys) for respondent

Record Closed: May 7, 2015

Decided: May 8, 2015

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE

On April 20, 2015, Petitioner V.R. filed a request for emergent relief with the New Jersey Department of Education, Office of Special Education. Petitioner requested an emergent order directing respondent Newark Board of Education (Board) to develop and provide a 504 accommodation plan due to the student's emotional needs.

On May 4, 2015, the matter was transmitted to the Office of Administrative Law (OAL). The matter was heard on May 7, 2015, at which time the record closed.

FACTS

Based on the relevant documents and evidence I **FIND** as **FACT**:

J.R. is a seventh grade student who has a behavior intervention plan in place. A 504 eligibility meeting was held on February 5, 2015 and documentation was requested from petitioner to confirm his indication that J.R. had been diagnosed with an adjustment disorder, an anxiety disorder, and his assertion that she is “considered disabled.” No documentation was provided, and so an eligibility meeting was scheduled for March 12, 2015, and again, no documentation to support any diagnoses was provided. The behavior plan currently in place addresses many of J.R.’s issues.

The District has sought to have social, psychological and education evaluations conducted in order to appropriately formulate a 504 plan. V.R. has refused to consent to any evaluations, testifying that he will not agree unless J.R.’s doctor tells him that his daughter needs to be evaluated. Moreover, petitioner testified that he did not want his daughter evaluated by any Child Study Team within the District, and that if J.R.’s doctor indicates she needs to be evaluated, he will only agree to an independent evaluation by her private physician.

Respondent maintains that petitioner has not satisfied the criteria for emergent relief.

DISCUSSION AND CONCLUSIONS

The standards that must be met by the moving party in an application for emergent relief are embodied in N.J.A.C. 6A:14-2.7(r)–(s), N.J.A.C. 1:6A-12.1, and Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982). Emergency relief may be granted if the judge determines:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying 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.

[N.J.A.C. 6A:14-2.7(s)(1).]

“Each of these factors must be clearly and convincingly demonstrated” by the moving party. Waste Mgmt. of N.J. v. Union County. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Considering the above factors for emergent relief, I **CONCLUDE** that petitioner does not satisfy the four criteria. Specifically, petitioner does not satisfy the first prong required for relief because he did not clearly and convincingly demonstrate J.R. will suffer irreparable harm, indeed the credible evidence reveals that petitioner's refusal to provide any medical documentation and his refusal to allow J.R. to be evaluated has been the obstacle to the District formulating a 504 plan for J.R.

Additionally, petitioner has not met the criteria of demonstrating a likelihood of success on the merits of the underlying claim. Petitioner has presented neither expert opinion nor conclusive data to show that the plan in place fails to offer a free appropriate public education. The District has monitored J.R.'s progress, and based upon recent events of J.R.'s disruptive behavior in school, the District requested evaluations of J.R., which the parent declined to agree to.

Under the facts and circumstances presented, further analysis is not required because petitioner is unable to meet all four criteria required for emergent relief.

Therefore, I **CONCLUDE** that petitioner has not proved that J.R. will be irreparably harmed if emergent relief is not granted; and further **CONCLUDE** that petitioner has not demonstrated a likelihood of prevailing on the merits.

Accordingly, I **CONCLUDE** that petitioner has not established the necessary criteria for emergent relief, and that the petition in this matter should be dismissed. At such time as evaluations are completed, J.R.'s behavior and deficits may be addressed, and if appropriate, a 504 plan developed.

ORDER

Therefore, the petitioner's request for emergent relief is **DENIED**. Accordingly, it is hereby **ORDERED** that the petition for emergent relief is hereby **DISMISSED**.

This decision on application for emergency relief resolves all of the issues raised; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) 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.A. § 1415(i)(2). 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.

May 8, 2015 _____

DATE

LESLIE Z. CELENTANO, ALJ

Date Mailed to Parties:

May 8, 2015 _____

dr