

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 08590-17

AGENCY DKT. NO. 2017 26434

L.M. AND W.B. ON BEHALF OF C.B.,

Petitioners,

v.

MAHWAH TOWNSHIP BOARD OF

EDUCATION,

Respondent.

L.M. and **W.B.**, petitioners, pro se

Nathanya G. Simon, Esq., for respondent (Schwartz, Simon, Edelstein & Celso,
attorneys)

Record Closed: June 27, 2017

Decided: June 27, 2017

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

In this matter L.M. and W.B., parents of C.B. (petitioners) brings an action for Emergent Relief against the Township of Mahwah, Board of Education (respondent) on behalf of their son, C.B., seeking transition services program for the 2017–2018 school year and disputing the respondent’s proposal to end all services on or about June 19, 2017. Respondent opposes the relief requested and asserts that C.B. has successfully

completed all course work needed to graduate high school and has met the goals and objectives of his Individualized Education Program (IEP).

PROCEDURAL HISTORY

Petitioners filed a Verified Petition at the Office of Special Education Programs (OSEP) on June 16, 2017. C.B., who is eighteen-years-old, signed a student authorization agreeing to have his parents, L.M. and W.B., act on his behalf on June 15, 2017. The OSEP transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 19, 2017, as a contested case seeking emergent relief for C.B., who is educated under an IEP, dated March 31, 2016, classified as Other Health Impaired. The parties presented oral argument on the emergent relief on June 27, 2017, at the OAL.

FACTUAL DISCUSSION

L.M. asserts that her son, C.B., does not possess adequate life skills, including self-advocacy, transportation training, financial budgeting, home maintenance, self-regulation, self-care, socialization, community involvement, continuing education and career advancement. The parent feels that her son needs additional time to get ready for the world and would benefit from job training and/or transitional services. L.M. also feels that C.B. has no people skills. C.B. has been diagnosed with an Autism Spectrum Disorder. His parents would like respondent to give C.B. further life skill training, including financial responsibility, travel-training, social skills training, stranger-training and advocacy skill. The parents have stated their concerns in the spring of 2017 and have requested a tour of a community-based program in order to evaluate whether it was appropriate for C.B. L.M. states that the respondent is required to provide C.B. with educational services through the age of twenty-one, including transitional training.

Respondent has scheduled an exit IEP meeting several times and again on June 19, 2017. The last IEP developed by the District was on March 1, 2016, which was attended by L.M., W.B., C.B. and representatives from the District. This IEP provided C.B. with a Transition Planning course during the 11th or 12th grades, as well as other

academic courses. The IEP determined that Extended School Year Services are not required for C.B. Respondent stated that C.B. participated in all required State assessments and has demonstrated proficiency in English/Language Arts and Math. The IEP further reflected that C.B. earned 122.5 of 125 credits and is on schedule with the requirements established by the District and the State. The District maintains that C.B. is continuing to meet the requirements of all courses, is acquiring all required credits as well as meeting any attendance requirements and demonstrating proficiency on any required state-mandated assessments will result in C.B. meeting the high school graduation criteria. The District agreed to provide additional instruction in and exposure to adult living skills in order to successfully transition to life after high school for the school year 2016–2017, ending in June 2017. The IEP provided that the completion of the high school credit requirements as well as these additional requirements and issuance of a diploma will end C.B.'s educational program provided by the Mahwah Board of Education in June 2017.

An Educational Evaluation-Reevaluation was completed while C.B. was seventeen years and five months, while he was in 12th grade. The Evaluation consisted of the Wechsler Individual Achievement Test. This test found that C.B.'s developmental level on listening comprehension was within the average range; his developmental level on reading comprehension was within the low average range; his developmental level on math problem solving was within the average range; his developmental level on word reading was within the high average range; his developmental level on essay composition was within the average range; his developmental level on numerical operations was within the high average range; his developmental level on oral expression was within the average range; and his developmental level on oral reading fluency was within the above average range.

On June 14, 2017, a letter was sent from the case manager working for the respondent, inviting L.M. to attend a meeting, scheduled on June 19, 2017, for her son, C.B. The purpose of the meeting was to conduct an exit IEP. L.M. opted not to attend the meeting and it was not held. There is no dispute that C.B. applied for and was accepted by the Bergen County Community College. L.M. asserts that C.B. was bullied into making the application and did not know what he was doing.

Respondent submitted C.B.'s IEPs for November 17, 2015 and March 1, 2016, invitation for an exit IEP for June 12, 2017 and June 19, 2017, an Educational Evaluation and referrals to NJ Disability Determination Service and the Division of Vocational Rehabilitation. (R-1, R-2, R-3 and R-4.) C.B. has been classified as Autistic and he has spent the past school year (2016–2017) in academic classes in the morning and a structured learning program in the afternoon. Petitioners do not dispute C.B.'s educational achievement and assert only that he is not socially ready to graduate and lacks life skills and can benefit from additional job training, social skills and independent living skills.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An emergency-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.

In this case, it is clear that there is an issue involving graduation (respondent's attempt to hold an exit IEP) against the wishes of the parents and/or issues surrounding placement pending the outcome of due process proceedings. Respondent intends to graduate C.B. and provide him with a diploma while the parents do not feel he is ready to graduate after receiving an additional year of transitional services during the 2016–2017 school year pursuant to the last agreed upon IEP. Therefore, I **CONCLUDE** it has been established there exists an issue(s) which could require emergent relief.

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, one of the Department's regulations governing special education. These standards for emergent relief include irreparable harm if the relief is not granted, a settled legal right underlying a petitioner's claim, a likelihood that petitioner will prevail on the merits of the underlying claim and a balancing of the equities and interest that petitioner will suffer greater harm than respondent.

Petitioners bear the burden of satisfying all four prongs of this test. Crowe, supra, 90 N.J. at 132–34. First, there has been no showing of irreparable harm. While L.M. and W.B. assert that C.B. will be harmed if he graduates because he is not ready socially and is not ready to face the world post-graduation, there has been no evidence, save for L.M.'s argument, that the social skills C.B. allegedly lacks cannot be obtained through other State agencies or third parties. There has not been presented by the petitioners any evidence to support any irreparable harm to the student, in the event further transitional services are not provided. As such, I **CONCLUDE** petitioners have been unable to meet the burden of establishing irreparable harm to C.B.

The next prong of the above test to be addressed is whether there is a settled legal right underlying petitioner's claim. It is well-settled law that a parent's failure to object to a proposed IEP within fifteen days of written notice of same results in the implementation of the proposed IEP by the District. See T.P. and P.P. ex rel. J.P. v. Bernards Twp. Bd. of Educ., EDS 6476-03, Final Decision (March 12, 2004), <<http://njlaw.rutgers.edu/collections/oal/>> (if petitioners were unclear or dissatisfied with some detail in the proposed IEP, they were obliged to express that and demand

modifications). Specifically, like in the case of Carlisle Area School v. Scott P. By and Through Bess P., 62 F.3d 520, 583, n.8 (3d Cir. 1995), I find:

The parents apparently did not contest the appropriateness of the March 1, 2016 IEP at the time it was offered. In fact, L.M. (and W.B.) signed off on this IEP, agreeing to its contents. Because appropriateness is judged prospectively, I have declined to play “Monday morning quarterback” by judging the that IEP in hindsight. It was then and it is now an appropriate course of educational and transitional services for C.B.

Similarly, in Fuhrmann ex rel. Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031, 1040 (3d Cir. 1993), the Third Circuit explicitly held that “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.”

Here, petitioners had legal right to reject the March 1, 2016, IEP within fifteen days of the meeting. See N.J.A.C. 6A:14-2.3(h)(3)(ii) (proposed IEP will be implemented after fifteen days unless the parent requests mediation or a due-process hearing). Petitioners took no action to reject any aspect of the IEP and clearly accepted the terms of the IEP, which ended the educational programs for C.B. at the end of the 2016–2017 school year. It is only on the eve of graduation, and after C.B. has successfully completed all of his graduation requirements, that petitioners assert that the March 1, 2016, IEP was somehow insufficient and C.B. required additional transitional services. Even though L.M. attempts to couch C.B.’s admission into Bergen Community College as some sort of bullying by the District, it can only be interpreted as a demonstration of C.B. skills and educational progress given to him by the District. Thus, I **CONCLUDE** that petitioners have not established a settled legal right for the relief requested.

The next prong of the emergent relief analysis is whether there is a likelihood of success on the merits of petitioner’s claim. As set forth above, the law regarding challenges to an IEP is clear that such challenges are to be made within fifteen days of written notice of the proposed IEP. Furthermore, it is undisputed that C.B. has successfully earned enough educational credits to graduate. As a result, petitioner has

not established a likelihood of success on the merits to overcome the test for emergent relief to be granted. For the foregoing reasons, the petitioners have not demonstrated entitlement to emergent relief. The relief sought is therefore **DENIED**.

ORDER

Having concluded that the petitioners have not satisfied any of the four requirements for emergent relief, the request of petitioners for emergent relief is **DENIED**.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; 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 Programs.

June 27, 2017
DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

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APPENDIX

EXHIBITS

For Petitioners:

- P-1 Correspondence from L.M. to Laura Beattie dated June 14, 2017
- P-2 Written presentation of oral argument by L.M dated June 27, 2017

For Respondent:

- R-1 Mahwah IEP dated November 17, 2015
- R-2 Mahwah IEP dated March 1, 2016
- R-3 Psychological Evaluation dated December 10, 2015
- R-4 Referrals of C.B. to DVRNJ Disability Determination Services
- R-5 Educational Evaluation dated December 1, 2015
- R-6 Invitations to meeting for exit IEP for parents of C.B.