

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

**DECISION ON EMERGENT RELIEF**

OAL DKT. NO. EDS 11807-14

AGENCY DKT.NO. 2015 21722

**D.H. and J.H. o/b/o L.H.,**

Petitioner,

v.

**MOUNT OLIVE TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

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**Beth A. Callahan**, Esq., for petitioner (Calahan & Fusco, LLC, attorneys)

**Robin Ballard**, Esq. for respondent (Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: September 22, 2014

Decided: September 22, 2014

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner brings this action seeking an order requiring Mount Olive Township Board of Education (Board) to do the following: place L.H. at the Lake Drive School in Mountain Lakes, New Jersey; provide transportation for L.H. to Lake Drive School; place L.H. in the Lake Drive School ESY and compensatory education be granted for the 2013-2014 and 2014-2015 school year.

On September 15, 2014, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 11807-14. The Board filed opposition to petitioner's motion for emergent relief on September 18,

2014. Oral arguments were held on September 22, 2014, on which date the record closed.

### **FACTUAL DISCUSSION**

Based on the documentary and testimonial evidence presented, I **FIND** the following **FACTS**:

D.H and J.H. are the parents of L.H. L.H. has been found eligible for special education services under the classification of auditory impaired. The parties had a hearing earlier this year. On August 12, 2014, the Honorable Caridad Rigo, ALJ, Ordered the following:

L.H.'s IEP be revised to reflect a full five day a week program; the IEP be revised to specify and include all of the recommendations for teaching L.H. that were outlined by the New Jersey Specialized Child Study Team, the IEP be revised to include the recommendations for classroom accommodations as outlined by the New Jersey Specialized Child Study Team and within three weeks from the issuance of this Order, a meeting be scheduled at a mutually agreed upon time; place to discuss the implementation of this Order and such meeting shall be attended by those individuals specified in N.J.A.C. 6A:14-2.3 et seq. and all attendees at such meeting shall have the opportunity to participate in a full and meaningful discussion and such discussion shall include placement.

In accordance with Judge Rigo's decision the IEP meeting took place on September 2, 2014. Petitioner states that the Board did not comply with the August 12, 2014 decision of Judge Rigo. Petitioner is requesting L.H. be place at Lake Drive School. The Board states that it has complied with the Order of Judge Rigo and that petitioner has not exhausted its administrative remedies.

### **LEGAL ANALYSIS AND CONCLUSION**

The standards for the granting of emergent relief are set forth in N.J.A.C. 6A:3-1.6(b). Emergent relief may be granted if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the 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.

In this case, after hearing the arguments of petitioner and respondent and considering any other documentation submitted, I **CONCLUDE** that petitioner is not entitled to emergent relief because the proofs submitted have failed to establish the necessary elements to grant emergency relief under N.J.A.C. 6A:3-1.6(b). The petitioner has not shown that L.H. would suffer irreparable harm if she is not immediately placed at the Lake Drive School. In her decision Judge Rigo specifically stated that she could not determine if L.H. should be placed in Lake Drive School or any other school.

In addition petitioner has not shown a likelihood of success on the merits of the underlying claim. Petitioner extensively argues that the Board did not comply with the Order of Judge Rigo.

N.J.A.C. 6A:14-2.7(t) provides:

If either party fails to comply with any provision of a final decision in a due process hearing, either party may seek enforcement of the decision in a court of appropriate jurisdiction. If the public agency responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law with respect to the student's program or services, a request for enforcement may be made by the parent or the parent's

attorney on behalf of the student. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement request was required to have occurred. The request shall include a copy of the decision issued by the Office of Administrative Law. If there are multiple requirements or directives in the hearing decision, the 90-day time frame to seek enforcement shall be measured separately for each requirement or directive, based on the date by which each is required in the hearing decision to occur. Upon receipt of this request, the district board of education shall have an opportunity to respond to the request for enforcement and, if appropriate, seek to resolve the request with the parent. The Office of Special Education Programs shall determine the implementation of the decision. If it is determined that the district has failed to implement the decision or part of the decision, the Office of Special Education Programs shall order the district to implement the decision or part of the decision, as appropriate. If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the decision.

It is clear that petitioners are attempting to enforce the Order of Judge Rigo. The above regulation outlines the procedure to be followed when one party believes that the other party has failed to comply with an Order. The request for enforcement of Judge Rigo's Order should have been made to State Director of the Office of Special Education Programs, Department of Education.

After hearing arguments of petitioner and respondent, and considering all the affidavits, certifications and documents submitted, it is **ORDERED** that Petitioner's motion for emergent relief is therefore **DENIED**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter.

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.

September 22, 2014

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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Mailed to Parties:

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